

**THE INDIAN
LAW REPORTS**

M.P. Series

50 years' Digest

1956 to 2005

2

C (Covnts) to L



The Indian Law Reports'

M.P. Series

50 years' Digest

From 1956 to 2005



VOLUME-2

C (Covnts) to L

The Indian Law Reports'

M.P. Series

50 Years' Digest From 1956 to 2005

**VOLUME – 2
C (Covnts) to L**

Office Address:

Principal Registrar (ILR)
Administrative Block,
High Court of M.P.
Jabalpur-482001 (M.P)

First Edition - **2011**

Price : ₹ 250/-

Printed at:

Grenadiers Association
Printing Press,
AWWA Shopping Complex,
Near Defence Cinema,
Jabalpur, M.P.

© with publisher

Every effort has been made to avoid any mistake or omission. The Publisher, Editor or Printer would not be liable in any manner to any person by reason of any mistake or omission in this publication.

LAW REPORTING COMMITTEE OF ILR, M.P. SERIES, 2011

PATRON

Hon'ble Shri Justice S. Rafat Alam, Chief Justice

PRESIDENT

Hon'ble Shri Justice K.K. Lahoti

MEMBERS

Shri R.D. Jain, Advocate General (Ex-Officio)
Shri Rajendra Tiwari, Senior Advocate
Shri P.R. Bhave, Senior Advocate
Shri Rohit Arya, Senior Advocate
Shri G.S. Ahluwalia, Advocate (Ex-Officio)/ Secretary
Shri Ved Prakash, Principal Registrar (Judl.) (Ex-Officio)

~ Published by ~

AWDHESH KUMAR SHRIVASTAVA
Principal Registrar (ILR)

~ Assisted By ~

B.B. SHUKLA, OSD
D.K. MISHRA, Assistant Editor.

~ Edited By ~

G.S. AHLUWALIA, Advocate

For Law Reporting Committee High Court of M.P., Jabalpur
under the Authority of the Governor of M.P.
Madhya Pradesh Shasan, Bhopal

S.No.	Name of the Act	P.No.
1	Covenants of Madhya Bharat Rulers	1
2	Crime	1
3	Criminal Contempt	1
4	Criminal Law	1
5	Criminal liability	1
6	Criminal Practice	1
7	Criminal Procedure Code (V of 1898)	2
8	Criminal Procedure Code, 1973 (II of 1974)	36
9	Criminal Procedure Code, Amendment Act (XXVI of 1955)	171
10	Criminal Proceeding	171
11	Criminal Trial	172
12	Cross-objection	177
13	Crown Grants Act (XV of 1895)	177
14	Custom	177
15	Customs Act (LII of 1962)	177
16	Cycle Rickshaw (Anugyaptiyon Ka Viniyaman) Adhiniyam, M.P. (XXXVI of 1984)	178
17	Dakaiti and Vyapaharan Prabhavit Kshetra Adhiniyam, M.P. (XXXVI of 1981)	178
18	Dakaiti Prabhavit Kshetra Adhyadesh, M.P., 1981	179
19	Damages	180
20	Debt Conciliation Act, C.P. and Berar (II of 1933)	182
21	Debtor and Creditor	183
22	Decree	183
23	Deed	185
24	Defamation	186
25	Defence of India (Amendment) Rules, 1963	186
26	Defence of India Act (XXXV of 1939)	187
27	Defence of India Rules 1962	187
28	Defence of India Rules, 1971	189
29	Defence Services (Classification, control and Appeal) Rules, 1952	189
30	Delegated Legislation	189
31	Delegation	190

32	Department of Defence Procedure (Directorate General of Inspection)	190
33	Departmental Enquiry	190
34	Departmental Examination Rules, 1965	191
35	Deputy Commissioner	191
36	Detention Order, Madhya Pradesh, 1971	192
37	Devi Ahilya Vishwavidyalaya, Indore	192
38	Dewas State Inam Rules, 1916	193
39	Dhan Parichalan Skeem (Pratishedh) Adhiniyam, Madhya Pradesh (XIX of 1975)	194
40	Directory Provisions and Mandatory Provisions how to be construed	194
41	Discharge	194
42	Discipline and Appeal Rules (South-Eastern Railway) – Rule 1706	194
43	Dismissal	195
44	Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)	195
45	Displaced Persons (Compensation and Rehabilitation) Rules	196
46	Displaced Persons (Debts Adjustment) Act (LXX of 1951)	196
47	Displaced Persons (Institution of Suits) Act, 1948	197
48	Dissolution of Muslim Marriages Act, (VIII of 1993)	197
49	District Judge	197
50	District Office (Collectorate) Manual, Madhya Pradesh	198
51	Divorce Act, Indian (IV of 1869)	198
52	Doctrine	203
53	Doctrine of Merger	204
54	Doctrine of Promissory Estoppel	204
55	Document	204
56	Domicile	205
57	Dowry	205
58	Dowry Prohibition Act (28 of 1961)	205
59	Drugs and cosmetics Act (23 of 1940)	205
60	Drugs and Cosmetics Rules, 1940	207
61	Drugs Rules, 1945 and C.P. and Berar Medical Registration Act (I of 1916)	208
62	Easements Act, Indian (V of 1882)	208

63	Educational Service (Collegiate Branch) Recruitment Rules, M.P., 1967	212
64	Election	213
65	Election Rules, 1961	214
66	Electricity Act, Indian (IX of 1910)	215
67	Electricity Act, Indian (LIV of 1948)	218
68	Electricity Act (XXXVI of 2003)	218
69	Electricity Duty Act, Madhya Pradesh (XLIX of 1949)	219
70	Electricity Rules, 1956	220
71	Electricity (Supply) Act (LIV of 1948)	220
72	Electricity (Supply) Amendment Act (XXX of 1966)	223
73	Electricity Tariff	223
74	Employment Exchange (Compulsory Notification of Vacancies) Act (XXXI of 1959)	224
75	Employees Insurance Courts Rules, Madhya Pradesh, 1953	224
76	Employees Insurance Court Rules, Madhya Pradesh, 1963	224
77	Employees' Provident Funds and Miscellaneous Provisions Act, (XIX of 1952)	224
78	Employees State Insurance Act (XXXIV of 1948)	228
79	Employees State Insurance Amendment Act (XLIV of 1966)	233
80	Employee's State Insurance (General) Regulations, 1950	233
81	Employment Service (Gazetted) Recruitment Rules, M.P., 1966	233
82	Enactment	234
83	Endowment	234
84	English Law of Property Act, 1925	234
85	Entertainment Duty and Advertisement Tax Act, M.P. (XXX of 1936)	234
86	Equity	236
87	Equality	237
88	Essential Articles (Exhibition of Prices and Distribution) Order, Madhya Pradesh, 1966	237
89	Essential Commodities Act (X of 1955)	237
90	Essential Commodities (Amendment) Act (XXV of 1966)	242
91	Essential Commodities (Amendment) Act, (XXX of 1974)	243

92	Essential Commodities (Exhibition of Prices and Price Control) Order, Madhya Pradesh, 1977	243
93	Essential Commodities (Special Provisions) Act, Indian (XVIII of 1981)	243
94	Essential Supplies (Temporary Powers) Act, 1946	243
95	Estate Duty (Controlled Companies) Rules, 1953	243
96	Estate Duty Act (XXXIV of 1953)	244
97	Estoppel	248
98	Evacuee Interest (Separation) Act (LXIV of 1951)	250
99	Evidence	250
100	Evidence Act, Indian (I of 1872)	253
101	Excise Act, M.P. (II of 1915)	290
102	Excise Act, Madhya Pradesh (XII of 1950)	298
103	Excise Act, M.P. (II of 1960)	298
104	Excise (Amendment) Act, Madhya Pradesh (IV of 1961)	299
105	Excise (Amendment and Validation) Act, MP (XX of 1964)	299
106	Excise Licence	299
107	Execution	300
108	Executive instructions	301
109	Ex-Parte Decree	301
110	Expenditure Tax, Act (XXIX of 1957)	301
111	Explanation	302
112	Explosive Act, Indian (IV of 1884)	302
113	Explosive Rules, 1940	302
114	Extension of Laws Act, M.P. (XXIII of 1958)	302
115	F.O.R. CONTRACT	303
116	Factories Act (LXIII of 1948)	303
117	Family Courts Act (LXVI of 1984)	305
118	Family Pension Scheme, 1971	306
119	Fatal Accidents Act, Indian (XIII of 1855)	306
120	Finance Act (XXV of 1950)	306
121	Finance Act (XVIII of 1956)	307
122	Finance (No. 2) Act (XX of 1962)	307
123	Finance Act, 1982	307

124	Finance Act, Central Provinces and Berar (XIII of 1938)	307
125	Finance Act, Indian (XXVI of 1997)	308
126	Finance Act (II of 1998)	308
127	Financial Code	308
128	Food Corporation of India (Staff) Regulations, 1971	309
129	Food-grains Dealer's Licensing Order, Madhya Pradesh, 1958	309
130	Food-grains Dealer's Licensing Order, Madhya Pradesh, 1965	310
131	Food Grains (Restriction on Border Movement) Order, Madhya Pradesh, 1959	311
132	Food Regulations	311
133	(Foodstuffs) Civil Supply Distribution Scheme, M.P. Foodstuffs (Distribution) Control Order, M.P. 1960	311
134	Food Stuffs (Distribution) Control Order, M.P., 1960	311
135	Foreign Liquor Rules	312
136	Foreigners Act (XXXI of 1946)	312
137	Forest Act, Indian (XVI of 1927)	313
138	Forest (Conservation) Act (LXIX of 1980)	315
139	Forest Contract Rules	315
140	Forest Financial Rules	316
141	Forest Rules, Indian	316
142	Forum	317
143	Freedom Fighter's Pension Scheme, 1972	317
144	Function of Government	317
145	Fundamental Rules	318
146	Fundamental Rules [as amended by M.P. Shaskiya Seva (Adhivarshiki Aayu) Sanshodhan Adhiniyam 1993]	318
147	General Clauses Act (X of 1897)	319
148	General Clauses Act, 1914	321
149	General Clauses Act, M.P. 1957 (3 of 1958)	321
150	General Insurance Business (Nationalisation) Act (No. LVII of 1972)	323
151	General License Conditions	324
152	General Rules of Goods Tariff	324
153	General Sales Tax Act, Madhya Pradesh, 1958 (II of 1959)	324

154	General Sales Tax, Rules, M.P., 1959	362
155	General Sales Tax (Amendment and Validation) Act, Madhya Pradesh (XIII of 1962)	362
156	General Sales Tax (Amendment and Validation) Act, M.P. (XXIII of 1967)	362
157	General Sales Tax (Amendment) Act, M.P. (XX of 1964)	363
158	General Sales Tax (Second Amendment) Act, M.P. (XX of 1969)	363
159	Gift	363
160	Gift-Tax Act (XVIII of 1958)	363
161	Gold Bonds (Immunities and Exemptions) Ordinance 1993	364
162	Gold Control Rules, 1963	364
163	Goods Tariff General Rules, 1959	364
164	Goodwill	365
165	Government	365
166	Government Electrical Undertakings (Dues Recovery) Act, M.P. (36 of 1961)	365
167	Government Electrical Undertaking (Dues Recovery) Amendment and Validation Act, M.P. (XXXI of 1976)	365
168	Government of India Act, 1915	365
169	Government of India Act, 1935	365
170	Government Order	366
171	Government of Part C States Act (XLIX of 1951)	367
172	Government Premises (Eviction) Act, Madhya Pradesh (XVI of 1952)	367
173	Government Servants (Temporary and Quasi – Permanent Service) Rules, M.P., 1960	367
174	Gramin Rin Vimukti Adhiniyam, M.P. 1982 (V of 1983)	368
175	Gramin Rin Vimukti Tatha Rin Sthagan Adhiniyam, M.P. (XXXII of 1975)	369
176	Gram Panchayats Act, 1947	369
177	Gram Panchayats Act, Madhya Pradesh, 1962 (VII of 1962)	369
178	Gram Panchayat Election and Co-option Rules, Madhya Pradesh, 1963	369
179	Gram Panchayat Act, M.P., 1993	372
180	Gram Panchayats Nirwachan Tatha Sahyojan Niyam, 1978	372

181	Gram Panchayat (No confidence motion against sarpanch or upsarpanch) Rule M.P. 1964	372
182	Gram Panchayat Ordinance, Vindhya Pradesh, 1949	372
183	Grant	373
184	Griha Nirman Mandal Adhiniyam, M.P., 1972 (III of 1973)	373
185	Guardians and Wards Act (VIII of 1890)	374
186	Guardianship	375
187	Gwalior Forest Act, 1950	376
188	Gwalior Pre-emption Act (Samvat 1992)	376
189	Gwalior State Co-operative Societies Act	376
190	Gwalior State Municipalities Act, Samvat 1993	376
191	Gwalior State Protection of Children Act	377
192	Haisiyat Tax	377
193	Heading	377
194	High Court	377
195	High Court Recruitment and conditions of Service Rules, 1937	378
196	High Court Rules	378
197	High Court Rules and Orders (Civil)	378
198	Hind Cycles Limited and Sen –Raliegh Limited (Nationalization) Act (LXX of 1980)	379
199	Hindu Adoption and Maintenance Act (LXXVIII of 1956)	379
200	Hindu Law	381
201	Hindu Marriage Act (XXV of 1955)	392
202	Hindu Married Women' Right to Separate Residence and Maintenance Act (XIX of 1946)	411
203	Hindu Minority and Guardianship Act (XXXII of 1956)	411
204	Hindu Succession Act (xxx of 1956)	412
205	Hindu Temple	418
206	Hindu Widow's Re-Marriage Act (XV of 1856)	418
207	Hindu Women's Rights to Property Act (XVIII of 1937)	419
208	Home Guards Act, C.P. and Berar (XV of 1947)	420
209	Home Guards Rules, 1947	420
210	Homoeopathic and Biochemic Practitioners Act, M.P. (XXVI of 1951)	420

211	Housing Board Act, Madhya Pradesh (XIII of 1955)	421
212	Hydrogenated Vegetable Oil Dealers Licensing Order, M.P., 1968	421
213	Identification	422
214	Illegitimate Son	422
215	Imperial Copy-right Act 1911	422
216	Income Tax Act, Indian (XI of 1922)	422
217	Income Tax Act, Indian (XLIII of 1961)	443
218	Income Tax Appellate Tribunal Rules, 1946	477
219	Income Tax Rules	477
220	India Services (Leave) Rules, 1955	478
221	Indian Administrative Service (Pay) Rules, 1954	478
222	Indian Railways Code for the Engineering Department	479
223	Indian Telegraph Rules, 1951	479
224	Indira Kala Sangeet Vishwavidyalaya Adhiniyam, 1956	479
225	Indore Industrial Tax Rules	480
226	Indore Land Revenue and Tenancy Act, 1931	480
227	Indore Stamp Act (II of 1907)	480
228	Industrial Companies (Special Provision) Act 1985	480
229	Industrial (Development and Regulation) Act (LXV of 1951)	480
230	Industrial Disputes Act (XIV of 1947)	481
231	Industrial Disputes (State) Rules 1957	505
232	Industrial Disputes Settlement Act, Central Provinces and Berar (XXIII of 1947)	505
233	Industrial Employment (Standing Orders) Act (XX of 1946)	508
234	Industrial Employment (Standing Orders) Act, Madhya Pradesh (XXVI of 1961)	509
235	Industrial Employees Standard Standing Orders Rules, M.P., 1963	510
236	Industrial Relations Act, M.P. (XVII of 1960)	511
237	Industrial Relations Rules, Madhya Pradesh 1961	525
238	Industries (Development and Regulation) Act (65 of 1951)	525
239	Inheritance	526
240	Injunction	526
241	Insolvency Court	526
242	Inspection Note	526

243	Instructions	527
244	Insurance Act (IV of 1938)	527
245	Insurer	528
246	Inter Zonal Wheat and Wheat Products (Movement Control) Order, 1964	528
247	Interest Act (XXXII of 1839)	528
248	Interpretation of Deed	529
249	Interpretation of Documents	529
250	Interpretation of entries in previous decision	529
251	Interpretation of Statutes	529
252	Interpretation of taxing Law	552
253	Interpretation of Taxing Statute	553
254	Interpreting – Taxing Statute	553
255	Iron and Steel (Control of Production and Distribution) Order, 1941	553
256	Iron and Steel (Scrap Control) Order, 1953	553
257	Iron and Steel Control Order, 1956	553
258	Irrigation of Engineering Service (Gazetted) Recruitment Rules, 1968	553
259	Jabalpur Corporation Act (III of 1948)	554
260	Jabalpur Corporation Conduct of Business Byelaws	554
261	Jabalpur Municipal Corporation Servants Bye-laws, 1967	554
262	Jabalpur University Act (XXII of 1956)	554
263	Jabalpur University Regulations	559
264	Jagir	559
265	Jagir Land Records Management Act (XXV of 1949)	559
266	Jail Manual Rules	559
267	Jagir Manual of the Holker State	559
268	Jawaharlal Nehru Krishi Vishwa Vidyalaya Act (XII of 1963)	559
269	Jawaharlal Nehru Krishi Vishwa Vidyalaya, Statute, 1964	562
270	Jiwaji University Act, M.P. (XV of 1963)	562
271	Jiwaji University Ordinance 16	563
272	Joint Family Firm	563
273	Joint trial	564
274	Judgment and decree	564

275	Judicial Officers' Protection Act (XVIII of 1850)	564
276	Judicial Service (Classification, Recruitment and Conditions of Services) Rules, 1955	564
277	Jurisdiction	565
278	Jurisprudence	567
279	Juristic Person	568
280	Jus tertii	568
281	Justice	568
282	Juvenile Justice Act (53 of 1986)	568
283	Kanoon Mal (Gwalior)	569
284	Kanoon Registry, Riasat, 1337, Mohammadi	569
285	Karadhan Adhiniyam M.P., (XV of 1982)	569
286	Karadhan Vidhi (Sanshodhan) Adhiniyam, M.P., (IX of 1972)	570
287	Kashtha Chiran (Viniyaman), Adhiniyam (XIII of 1984)	570
288	Kawaid Motor-Gadiyan Riyasat, Bhopal 1941	572
289	Khudkasht	572
290	Khadya Padarth Sarvajanik Nagrik Purti Vitaran Scheme, M.P. 1981, and Essential Commodities Act (X of 1955)	572
291	Koyala Upkar (Manyatakarana) Adhiniyam, Madhya Pradesh (XVIII of 1964)	573
292	Krishak Pashu Parirakshan Adhiniyam, 1959	574
293	Krishi Upaj (Mandi Samiti Ka Nirvachan) Niyam, 1997	574
294	Krishi Upaj Mandi Adhiniyam, M.P., 1972 (XXIV of 1973)	574
295	Krishi Upaj Mandi (Adhisuchana – Gathan) Niyam, 1974	579
296	Krishi Vishwa Vidyalaya Statute, 1964	579
297	Labour Commissioner	579
298	Labour Law	580
299	Laghu Udyog Nigam Recruitment and promotion Rules, M.P. 1986	580
300	Land Acquisition (Madhya Pradesh Amendment) Act (V of 1959)	580
301	Land Acquisition (Mines) Act (XVIII of 1885)	581
302	Land Acquisition Act (1 of 1894)	581
303	Land Acquisition Manual, Paragraph 34	592
304	Land Alienation Act, C.P. (II of 1916)	592
305	Land Improvement Loans Act, Madhya Bharat (LII of 1950)	592

306	Land Revenue Act, C.P. (XVIII of 1881)	593
307	Land Revenue Act-Central Provinces, (II of 1917)	593
308	Land Revenue and Tenancy Act, Madhya Bharat (LXVI of 1950)	596
309	Land Revenue and Tenancy Act, Vindhya Pradesh, 1953	598
310	Land Revenue Code (XX of 1959)	598
311	Land Revenue Code, Madhya Pradesh, 1954 (II of 1955)	618
312	Land Revenue Code, Madhya Pradesh (XXV of 1964)	621
313	Land Tenure Order, 1949	621
314	Landlord and Tenant	622
315	Law	623
316	Lease	623
317	Lease and license	624
318	Leave Rules, M.P., 1977	624
319	Legal fiction	624
320	Legal Person	624
321	Legal Practitioners Act (XVIII of 1879)	624
322	Legal representative	624
323	Legal Services Authorities Act (XXXIX of 1987)	625
324	Legislation	625
325	Legislative Assembly Members (Disqualification on the ground of Defection) Rules, M.P., 1986	626
326	Legislature	626
327	Lessor and Lessee	627
328	Letters Patent	627
329	Letters patent (Nagpur)	653
330	Letting of Houses and Rent Control Order 1949 M.P.	654
331	Licence	655
332	Licensee	655
333	Licensing of Wireless Receiving Apparatus Rules, 1965	655
334	Life Insurance (Emergency Provisions)	656
335	Life Insurance Corporation Act (XXXI of 1956)	656
336	Limitation	656
337	Limitation Act, Indian (XXXVI of 1963)	657

338	Limitation Act, Indian (IX of 1908)	665
339	Limited owner	680
340	Local Authorities School Teachers (Absorption in Government Service) Act, Madhya Pradesh (XXV of 1963)	680
341	Local Government Act, C.P. and Berar (XXXVIII of 1948)	680
342	Local Self – Government Act, C.P. (IV of 1920)	684
343	Locus Standi	684
344	Lok Adhikaron Ke Madhyam Se Bis Sutriya Karyakram Ka Kriyanvayan Adhiniyam, M.P. (XIII of 1980)	684
345	Lok Ayukt Evam Up Lokaykt Adhiniyam, M.P. (XXXVII of 1981)	685
346	Lok Dhan (Shodhya Rashion Ki Vasuli) Adhiniyam, 1987, M.P. (I of 1988)	685
347	Lok Parisar (Bedakhali) Adhiniyam, M.P. (XLVI of 1974)	686
348	Lottery (Niyantaran Tatha Kar) Adhiniyam, M.P. 1973 (IX of 1974)	686
349	Lotteries (Relegation) Act (XVII of 1998)	686
350	Lottery Pratibandh Act, M.P. (VIII of 1993)	687

Covenants of Madhya Bharat Rulers

- **Article 13**-Nature and enforceability of Rulers of Indian States whether privileged to claim examination on commission when figuring as complainant : *Abdul Alim Khan Vs. Sagarmal, I.L.R. (1964) M.P. 971*

Crime

- **Social Crime** – Connotation of – Quantum of sentence Consideration of : *State of M.P. Vs. Ghulam Nabi, I.L.R. (1987) M.P. 253*

Criminal Contempt

- **What it means** : In Re. *Guljarilal I.L.R. (1970) M.P. 1024 (D.B.)*

-**Concept of “Mens rea” not to be imported in criminal contempt**-
Determination of question of guilt for contempt-Bona fides of writer or publisher not material-In case of liberty of citizen freedom of press has no precedence : *Smt. Padmavati Devi Bhargava Vs. Shri R.K. Karanjia, I.L.R. (1963) M.P. 952 (D.B.)*

Criminal Law

- **Object - indicated** : *A.P. Shrivastava Vs. State of M.P., I.L.R. (1990) M.P. 122,*

Criminal Liability

- **When can be fastened** : *State of Madhya Pradesh Vs. Harimohan Khomaka, I.L.R. (1978) M.P. 490 (D.B.)*

-**Case of contributory negligence not relevant** : *Jiwanlal Vs. Devi Luhar, I.L.R. (1972) M.P. 766 (D.B.)*

Criminal Practice

-**Circumstantial Evidence**-Nature of the real test is quality and not quantity : *Mojiya Vs. The State, I.L.R. (1960) M.P. 692 (D.B.)*

- **Injuries caused to accused**- Injuries caused to accused/appellant were not self suffered and suffered during the occurrence for which prosecution had not rendered any explanation – The superficial nature of injuries by it self was the explanation : *Bhaiya Bahadur Singh Vs. State of M.P., I.L.R. (1996) M.P. 239 (D.B.)*

-Testimony of witness-Witness implicating also persons not found guilty-Need not be discredited if it proves guilt of accused-Statement of witness recorded at late stage of investigation-No question asked to investigating officer regarding delay-No ground to disbelieve the witness : *Bhagwant Singh Vs. The State of M.P.*, I.L.R. (1961) M.P. 873 (D.B.)

Criminal Procedure Code (V of 1898)

-Sentence-Two accused convicted under Sections 323 and 324 respectively – Accused in jail for 10 months as undertrials – Considered to be sufficient punishment – No sentence awarded on conviction – Order illegal – Sentence to follow conviction – Sentence may be minimum – Detention in jail prior to conviction – Not to be regarded as sentence: *The State of Madhya Pradesh Vs. Govind Singh*, I.L.R. (1962) M.P. 338,

-Cognizance-What is meant by taking cognizance and when can the Magistrate be said to have taken cognizance of offence : *State Vs. S.P. Mathur*, I.L.R. (1972) M.P. 589 (D.B.)

-Chapter XIV - Difference between “a police report” and “report of a police officer”-Complaint does not include a report of a police officer : *The State of M.P. Vs. Abdul Kadir Khan*, I.L.R. (1962) M.P. 629 (D.B.)

-Chapter XIV - Prosecution under Opium Act-Not one under the provisions of this Chapter—Section 190(1)(b) as amended-Includes “police report” as well as “police reports” as a result of investigation otherwise than that provided by Criminal Procedure Code-Sections 251(a) and (b) and 252-Complaint by Excise Officer -Falls under clause (b) of Section 251-Procedure under Section 252 applicable-Wrong procedure followed in trial-Causes prejudice to accused : *Sardarkhan Vs. The State of Madhya Pradesh*, I.L.R. (1964) M.P. 808 (D.B.)

-Limitation -Complaint does not fall in the category of suit, appeal or application - limitation Act makes no provisions of limitation for filing complaint: *Janardan Baliram Mankar Vs. The Government Pleader (Public Prosecutor), Durg*, I.L.R. (1971) M.P. 1070 .

-Section 4(h) and Section 417(3) - Section 417(3)-Applies to the case of complaint by public servant in discharge of his duties except in case of police report-Application for leave to appeal by such public servant-Maintainability-Public servant can be a complainant and allegations made by him is complaint-Word “complaint” in-Not to be understood in the sense given by section 4(h) of the Code : *Drugs Inspector, Madhya Pradesh, Indore Vs. Messrs Himanlal And CO.*, I.L.R. (1968) M.P. 173 (F.B.)

- **Section 4 (r)** - Advocate can plead and act on memo of appearance signed by him - No necessity to file Wakalatnama : *State of M.P. Vs. Lohra, I.L.R. (1977) M.P. 84*

- **Section 4 (r)** - Advocate praying for exemption for accused - Amounts to acting : *State of M. P. Vs. Lohra, I.L.R. (1977) M.P. 84*

- **Section 4 (r)** - Pleader in - Includes an Advocate, A Vakil and an attorney of a High Court so authorised - Advocate can plead and act on memo of appearance signed by him-No necessity of file Wakalatnama - Advocate praying for exemption for accused - Amounts to acting : *State of M.P. Vs Lohra, I.L.R. (1977) M.P. 84*

-**Section 5**-Contravention of Section 14 (1) of M.P. Trusts Act-Registrar, Power to inflict punishment-Power of Criminal Court to try the offender for breach under Criminal Procedure Code : *Hiralal Singhai Vs. Collector And Registrar Public Trusts, Damoh I.L.R. (1960) M.P. 250 (D.B.)*

-**Section 5**-Prevention of Corruption Act-Section 5-A-Offences under Section 161, I.P.C. and Section 5 of Prevention of Corruption Act-Investigation provided by Section 5, Criminal Procedure Code controlled by Section 5-A, Prevention of Corruption Act-Prevention of Corruption Act, Section 5-A-Makes offences under Section 5 thereof and Sections 161, 165 and 165-A, I. P. C., cognizable if investigation made by police officers not below the rank of Deputy Superintendent of Police-Interpretation of Statute-To imply repeal, specific provision in subsequent Act necessary-C.P. and Berar Special Police Establishment Act-Notification issued under Section 3 there-of-Provisions meant to supplement provisions of Prevention of Corruption Act and not to override or modify them : *The State of M.P. Vs. Bheronlal , I.L.R. (1963) M.P. 761*

-**Section 5 (2)**-Makes Criminal Procedure Code applicable to offences for which provision not made in Special Acts dealing with these offences : *State of M.P. Vs. Narayan Singh, I.L.R. (1972) M.P. 782 .*

-**Section 10**-Power of District Magistrate under-Cannot be taken away by Coal Mines Regulations, 1957 which are only executive instructions-Factories Act-Section 105-Personal presentation of complaint by District Magistrate not required-District Magistrate forwarding complaint to Magistrate authorised to try the offence is sufficient compliance of requirement-What is meant by taking cognizance and when can the Magistrate be said to have taken cognizance of offence : *State Vs. S.P. Mathur, I.L.R. (1972) M.P. 589 (D.B.)*

-**Sections 10(2) and 192**-Additional District Magistrate, Power of, to transfer the case when Magistrate has taken cognizance : *Kanhaiyalal Vs The State of M.P., I.L.R. (1965) M.P. 347*

-Sections 14 and 29(1)-Special Court created under statute for trial of certain offences-That Court alone can try the offences-Jurisdiction of ordinary Courts excluded : *State Vs. Bhure Khan, I.L.R. (1967) M.P. 1000*

- Section 29-B and Bal Adhiniyam, Madhya Pradesh (XV of 1970), - Section 6 - Order of Juvenile Court committing juvenile offender to Sessions - Validity - Criminal Procedure Code, 1973, Section 27 - Excludes offences punishable with death or imprisonment for life from jurisdiction of ordinary Court - Makes them triable by Courts empowered under any other law in force - Bal Adhiniyam, 1970-Section 67 - Suspends operation of Section 29-B, Criminal Procedure Code, 1898 - Criminal Procedure Code, 1973 - Section 27 - Is a provision to the contrary contemplated by Section 67 of Bal Adhiniyam - Constitution of India - Article 254 (1) and (2) - Bal Adhiniyam saved in case of repugnancy with the Central enactment in other case matter governed by Article 254 (1) - Circumstances in which Bal Adhiniyam is saved and when not - Bal Adhiniyam, 1970 - Section 4 and 6 - Contravene Section 4,26 and 27 of Criminal Procedure Code, 1973 - Provision void to the extent of repugnancy - Bal Adhiniyam, 1970 - Scheme of the Act - Words “Enquiry” and “Trial” - Must be construed with regard to particular extent and with regard to the scheme and provision under consideration - Conferral of power on Magistrates - Invests magistrate with ordinary powers specified in third schedule as provided by Section 36, Criminal Procedure Code, 1898 - Bal Adhiniyam, 1970 - Section 6(1) - Does not exclude offences punishable with death or imprisonment for life - Jurisdiction to try an offence – Not same thing as jurisdiction to try offender - Court under special Act - Exercise special jurisdiction and not ordinary jurisdiction - Bal Adhiniyam, 1970 - Section 4 - Overrides Section 27 of Criminal Procedure Code, 1973 - Bal Adhiniyam, 1970, Section 6 and Criminal Procedure Code, 1973, Section 27-No conflict between two provisions - General Clauses Act, 1897 - Section 8 - Permits reading of re-enacted provision if the same did not evidence different intention. : *State of Madhya Pradesh Vs. Ramesh Nai I.L.R. (1976) M.P. 386 (F.B.)*

- Section 36 - Conferral of power on Magistrate - Invests magistrate with ordinary powers specified in third Schedule as provided by Section 36 of the Code : *State of Madhya Pradesh Vs. Ramesh Nai, I.L.R. (1976) M.P. 386 (F.B.)*

-Sections 91 and 205-Power of Magistrate to direct accused to furnish bond under section 91 even though exemption is granted under Section 205 : *Mst. Mahkaniya Vs. Badri Prasad, I.L.R. (1974) M.P. 358*

-Section 94-Process issued against a person to produce certain Jwar crop-No investigation, inquiry, trial or other proceeding initiated or pending against that person-Process under Section 94, Criminal Procedure Code if can be issued : *Mangilal Vs. Ayodhia Bai, I.L.R. (1959) M.P. 795*

-Section 99-A-Conditions necessary for exercise of power of forfeiture : *Ram Lal Puri Vs. State of Madhya Pradesh* , I.L.R. (1973) M.P., 1 (F.B.)

-Section 99-A-High Court, Power of to review action of Government in the matter of forfeiture of book : *Ram Lal Puri Vs. State of Madhya Pradesh* , I.L.R. (1973) M.P., 1 (F.B.)

-Section 99-A-and Penal Code, Indian (XLV of 1860)-Section 295-A-Book giving objective picture of happenings in remote past without comment and based on historical fact-Book cannot come within mischief of section 295-A, Indian Penal Code-Cannot be forfeited under section 99-A, Criminal Procedure Code : *Ram Lal Puri Vs. State of Madhya Pradesh* , I.L.R. (1973) M.P. 1 (F.B.)

-Sections 107, 112 and 117-Proceedings under Section 107-Magistrate, jurisdiction of, to pass order to furnish security before show cause notice given and substance of information received is explained : *Kanhaiyalal Vs. State of Madhya Pradesh*, I.L.R. (1964) M.P. 643

-Section 107 and 145-Circumstances in which proceedings under one or the other of the section should be taken : *Sewaram Vs. Ghisibai*, I.L.R. (1971) M.P. 765.

-Section 107 and 145-Scope of-Circumstances in which proceedings under one or the other of the section should be taken : *Sewaram Vs. Ghisibai*, I.L.R. (1971) M.P. 765.

-Section 133- Sanction of Municipal Committee for a particular trade or business-Does not authorise a person to commit actionable public nuisance : *The State of Madhya Pradesh Vs. Manji*, I.L.R. (1965) M.P. 173

-Section 133 - Cognizance of offence under-Generally inexpedient -Existence of alternative remedy-Jurisdiction of Magistrate not taken away-Sanction of Municipal Committee for a particular trade or business-Does not authorise a person to commit actionable public nuisance-Nuisance injurious to physical comfort of neighbours-Amounts to physical discomfort of community : *The State of Madhya Pradesh Vs. Manji*, I.L.R. (1965) M.P. 173

- Section 144 - Right of passage and easementary rights - Assertion by one party and disputed by the other - Is a dispute of a civil nature - Obstruction in the alleged passage made - Right of removal of obstruction - Remedy is by a Civil suit or proceedings under section 147 of the Criminal Procedure Code : *Dayaram Vs. Jamuna Prasad*, I.L.R. (1979) M.P. 476,

-Section 145 - -Proceedings under-Certified copies of documents by themselves not admissible unless proved : *The State of M.P. Vs. Swami Prasad*, I.L.R. (1963) M.P. 360

-Section 145-Decree of Civil Court regarding title to property-Magistrate has to give effect to that decree : *State of M.P. Vs. Sitaram I.L.R. (1968) M.P. 829*

-Section 145-Effect of order of injunction of the civil Court : *Iqbal Mohd. Khan Vs. State of M.P., I.L.R. (1974) M.P. 713*

- Section 145 - Preliminary order can be passed two months after dispossession : *State of Madhya Pradesh Vs. Badgaiya, I.L.R. (1976) M.P. 562 (D.B.)*

-Section 145-Court has to decide question of actual possession and not the right to possession : *Bholanath Vs. Ram Shanker, I.L.R. (1973) M.P., 535*

-Section 145-Does not specify authority before whom affidavits can be sworn : *State of M.P. Vs. Triveni Prasad , I.L.R. (1972) M.P. 959 .*

-Section 145-Affidavit in proceedings to be sworn before the Magistrate dealing with the particular case : *State of M.P. Vs.Triveni Prasad and others, I.L.R. (1972) M.P. 959*

- Section 145 - Date on which a particular party was dispossessed - Material to determine in whose favour order is to be passed- Not necessary for passing preliminary order : *State of M.P. Vs. Badgaiya, I.L.R. (1976) M.P. 562, (D.B.)*

- Section 145 - Person entering into possession with permission - Cannot disclaim the nature of that possession and exclude persons, who granted permission, from possession : *Raja Meghraj Singh Vs. Baba Devidas, I.L.R. (1977) M.P. 174*

- Section 145 - Possession of trespasser - Protected if he is in possession within two months of the date of preliminary order : *Raja Meghraj Singh Vs. Baba Devidas, I.L.R. (1977) M.P. 174*

-Section 145-Police report stating that there was no likelihood of breach of peace-Magistrate not exercising independent judgment after taking material on record into consideration-Magistrate acting on police report and dismissing complaint - Order of Magistrate not legal : *Kesarsingh Vs. The State, I.L.R. (1961) M.P. 647*

-Section 145-Object and purpose of-Section 517- Power of Magistrate to make incidental order-Proper incidental order which Magistrate should pass - Decree of Civil Court regarding title to property-Magistrate has to give effect to that decree: *State of Madhya Pradesh Vs. Sitaram, I.L.R. (1968) M.P. 829*

-Section 145-Condition precedent for passing preliminary order-Satisfaction of Magistrate to be based on police report or information received from the parties or otherwise-Magistrate not concerned with merits of case-Section 145(4),Proviso 2-Power of Magistrate to restore possession to party forcibly and wrongfully dispossessed : *Moolchand Patni Vs. The State of M.P. I.L.R. (1968) M.P. 146*

-Sections 145-Civil Court passing order of temporary injunction-Jurisdiction of Magistrate not taken away-Magistrate can come to his own conclusion regarding possession on the relevant date - Effect of order of injunction of the Civil Court : *Iqbal Mohd. Khan Vs. State of M.P., I.L.R. (1974) M.P. 713*

-Section 145-Does not specify authority before whom affidavit has to be sworn - Oaths Act, 1873 - Section 4 - Power of Court to administer oath in a matter pending before it - Words “in discharge of the duties” in-Modifies “administer” - Affidavit in Section 145, Criminal Procedure Code proceedings - To be sworn before the Magistrate dealing with the particular case : *State of M.P. Vs. Triveni Prasad, I.L.R. (1972) M.P. 959*

- Section 145 - Object of - Date on which a particular party was dispossessed - Material to determine in whose favour order is to be passed - Not necessary for passing preliminary order - Preliminary order can be passed two months after dispossession - Section 145 (4) - Words “date of order” in - Mean date of preliminary order referred in sub-section (1) - Section 439 - High Court can take notice of laches - Can treat that as done which ought to have been done - Can decide case assuming the date of preliminary order to be date of complaint : *State of Madhya Pradesh Vs. Badgaiya, I.L.R. (1976) M.P. 562 (D.B.)*

- Section 145 - Purpose and scope of - Section 482 - Circumstances in which inherent powers can be used : *Gajpati Vs. Sardar Uttamsingh, I.L.R. (1977) M.P. 1027*

-Section 145 and 107-Circumstances in which proceedings under one or the other of the section should be taken : *Sewaram Vs. Ghisibai, I.L.R. (1971) M.P. 765.*

-Sections 145 and 146-Proceedings under Section 146-Continuation of proceedings under section 145 - Circumstances in which Section 146 comes into operation - Word “May” in Section 146 - Does not confer discretion on Magistrate for refusing to make reference - Refers to a compellable duty - Attachment of property-Is condition precedent for making reference to civil court : *Kamal Chand Vs. Chhaganlal, I.L.R. (1975) M.P. 731*

-Section 145(1)(4) and (5)-Sub-section (1) casts duty on Magistrate to hold enquiry as contemplated by sub-section (4) - Ordinarily Magistrate not to hold enquiry regarding likelihood of breach of peace - Other side appearing in pursuance of notice and alleging non-existence of breach of peace - Magistrate has to consider whether there is likelihood of breach of peace and enquiry not restricted to question of possession only : *Akbar Ali Vs. Pyara, I.L.R. (1974) M.P. 862*

- Section 145 (4) - Words “date of order” in - Mean date of preliminary order referred in sub-section (1) : *State of Madhya Pradesh Vs. Badgaiya I.L.R. (1976) M.P. 562 (D.B.)*

- Section 145 (4), Second Proviso - Does not permit introduction of legal fiction to extend time in the proviso : *Mangal Vs. Achhelal I.L.R. (1976) M.P. 790 (D.B.)*

-Section 145(4), Proviso 2-Power of Magistrate to restore possession to party forcibly and wrongfully dispossessed : *Moolchand Patni Vs. The State of M.P. I.L.R. (1968) M.P. 146*

- Section 145 (4), Second Proviso - Provision to be strictly construed - Does not permit introduction of legal fiction to extend time in the proviso - Time taken for calling for a report or other preliminary enquiry - Not to be excluded in interpreting this provision : *Mangal Vs. Achhelal I.L.R. (1976) M.P. 790 (D.B.)*

-Section 146-Attachment of property-Is condition precedent for making reference to Civil Court : *Kamal Chand Vs. Chhaganlal, I.L.R. (1975) M.P. 731*

-Section 146-Word “May” in-Does not confer discretion on Magistrate for refusing to make reference-Refers to a compellable duty : *Kamal Chand Vs. Chhaganlal, I.L.R. (1975) M.P. 731*

-Section 146(1)-Purpose of reference-Court to which reference can be made by Magistrate under Section 146(1) and (1-A)-Section 146(1-E)-Contemplates decision in a regular suit-Court to be competent both in respect of territorial jurisdiction though not pecuniary jurisdiction-Envisages that both civil and revenue Courts should be competent in all respects : *Sagarmal Vs. Dilip Singh, I.L.R. (1971) M.P. 749. .*

-Section 146 (1-D)-Words “any revision or review of any such findings” in-Wide enough to cover a revision of such finding even under Code of Criminal Procedure-Not open to revisional Court to interfere with findings of Civil Court as to possession in revision : *Banmali Vs. Kanahiya , I.L.R. (1973) M.P. 360*

-Section 146(1-E)-Contemplates decision in a regular suit-Court to be competent both in respect of territorial jurisdiction though not pecuniary jurisdiction : *Sagarmal Vs. Dilip Singh, I.L.R. (1971) M.P. 749.*

-Section 146(1-E)-Envisages that both civil and revenue Courts should be competent in all respects : *Sagarmal Vs. Dilip Singh, I.L.R. (1971) M.P. 749.*

-Section 147(2)-Magistrate, Power of, to issue mandatory injunction : *State of Madhya Pradesh Vs. Phodal , I.L.R. (1973) M.P., 711 (D.B.)*

-Section 161 (3)-Statement of witnesses not recorded during investigation-Evidence of witnesses not inadmissible- Non recording of statements during investigation-Does not amount to contravention of provision-Criminal trial-Practice-No adverse inference for non-examination of witness who does not help in unfolding prosecution story-Section 162(1)- Statements during investigation signed by witnesses-Statements

not inadmissible : *State of Madhya Pradesh Vs. Babulal, I.L.R. (1960) M.P. 1069 (D.B.)*

-Section 162- Case registered whether on police report or complaint-Accused entitled to copies : *Kanhaiyalal Vs. The State of M.P., I.L.R. (1965) M.P. 347*

-Section 162-Not applicable to statement of accused leading to investigation by police : *Faddi Vs. The State of M.P., I.L.R. (1965) M.P. 657 (D.B.)*

-Section 162-Principle for exclusion of police from identification parade : *Narayan Singh Vs. The State, I.L.R. (1968) M.P. 117 (D.B.)*

- Section 162 – Applicability of, to a case under Section 26(1)(f) and (g) of Forest Act started on complaint of forest officer – Giving of copies of statement of persons recorded during investigation – *Obligatory: The State of M.P. Vs. Ramadhin, I.L.R. (1961) M.P. 1050,*

-Section 162 (1) -Statements during investigation signed by witnesses-Statements not inadmissible : *State of Madhya Pradesh Vs. Babulal, I.L.R. (1960) M.P. 1069 (D.B.)*

-Section 162 and 173-Statement recorded under section 162-Is a document under section 173 : *Kishun Vs. State of M.P., I.L.R. (1975) M.P. 935 .*

-Section 164-Statement recorded under Section 164-Can be used against maker- Cannot be made sole foundation of charge against other persons : *Kishun Vs. State of M.P., I.L.R. (1975) M.P.935 .*

-Section 164-Does not refer to anything done by persons other than Magistrate- Does not imply statements which fact of identification involves-Does not refer to things done by Magistrate who was not acting in the official capacity : *Narayan Singh Vs. The State, I.L.R. (1968) M.P. 117 (D.B.)*

-Section 164-Exception to the section-Admissibility of statements of identification of witnesses-Circumstances in which evidence of Magistrate recording statement is admissible : *Narayan Singh Vs. The State, I.L.R. (1968) M.P. 117 (D.B.)*

-Section 164- Accused persons before arrest making confessions before magistrate-Section 164 not applicable : *Mishri Vs. State of M.P., I.L.R. (1962) M.P. 133 (D.B.)*

- Section 167 - Person released on bail under Section 167 - Shall be deemed to be released under provisions of chapter 33 - Provision does not restrict the bail till filing of challan : *Dashrath Vs. State of Madhya Pradesh I.L.R. (1978) M.P. 1087*

- Section 167 (2) - Person released on bail under Section 167 (2)- To be treated as a person released on bail by court itself - Court can consider whether such person be

arrested and committed to custody : *Laloo Vs. State of Madhya Pradesh, I.L.R. (1978) M.P. 502*

- **Section 167 (2)** - Proviso-Effect of - Person released on bail under section 167 - Shall be deemed to be released under provisions of chapter 33 - Provision does not restrict the bail till filing of challan - Section 209 - Power of Magistrate to cancel bail - Accused committed for trial - Provision of cancellation of bail not applicable - But provision for granting fresh bail has to be considered - Words “subject to the provision of this Code relating to bail” - Meaning and implication of - Magistrate has to take accused in custody even though they were granted bail by order of superior Court : *Dashrath Vs. State of Madhya Pradesh, I.L.R. (1978) M.P. 1087*

- **Section 167 (2), 437 (1) and (2)** - Section 167 (2), proviso Clause (b) - Accused becomes entitled to bail irrespective of nature of offence if challan not presented within 60 days - Once challan filed - Matter governed by Section 309 (2) of the Code - Person released on bail under Section 167 (2) - To be treated as a person released on bail by court itself - Court can consider whether such person be arrested and committed to custody - After presentation of challan - Court has power to re-arrest a person released on bail by it- Bail granted on grounds which have ceased to be operative - Court can exercise its discretion under Section 437 (5) of the Code : *Laloo Vs. State of Madhya Pradesh I.L.R. (1978) M.P. 502*

-**Section 173** - Failure to supply copies of statements recorded under section 164, Criminal Procedure Code-No presumption of prejudice can be drawn : *Mangilal Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 104 (D.B.)*

-**Section 173 and 162** - Statement recorded under section 162-Is a document under section 173 : *Kishun Vs. State of M.P., I.L.R. (1975) M.P. 935*

-**Section 179** - Defamatory imputation published at particular place -Court of the place has jurisdiction to try offence- - Word “consequence” in-Denotes consequence which is integral part of offence-Words “By reason of which” in-Governs both clauses-Every consequence flowing from crime-Confers no jurisdiction-Does not contemplate remote loss or consequence-Penal Code, Indian, Section 420-Offence of cheating-Not committed by reason of loss suffered-Offence complete as soon as deception practiced : *Ganga Prasad Vs. Chhotelal, I.L.R. (1963) M.P. 559*

- **Section 190(1)**- - Circumstances in which Divisional Magistrate or Sub-Divisional Magistrate can take cognizance-Section 190(1)(a) and (b)-Complaint need not be in writing in clause (a) but must be so in clause (b)- Complaint made in writing to the police who forwarded it to the Additional District Magistrate- Case covered by Section 190(1)(a), Criminal Procedure Code-Sections 10(2) and 192-Additional District Magistrate, Power of, to transfer the case when Magistrate has taken cognizance-

Section 200(a), Proviso-Complaint in writing-Not necessary to examine complainant for taking cognizance-Section 162-Case registered whether on police report or complaint-Accused entitled to copies-Sections 251 and 252-Distinction between two, regarding power to grant copies: *Kanhaiyalal Vs. The State of M.P., I.L.R. (1965) M.P. 347*

-Section 190(1)(a) - Complaint made in writing to the police who forwarded it to the Additional District Magistrate- Case covered by the section : *Kanhaiyalal Vs. The State of M.P., I.L.R. (1965) M.P. 347*

-Section 190(1)(a) and (b) - Complaint need not be in writing in clause (a) but must be so in clause (b) : *Kanhaiyalal Vs. The State of M.P., I.L.R. (1965) M.P. 347*

-Section 190(b)- Magistrate, jurisdiction of, to take cognizance on report of police officer in non-cognizable case-Section 247 -Case instituted on report of police officer in non-cognizable case-Cognizance cannot be said to be on complaint-Provision not applicable to such a case -"Complaint"-Not to be given the same meaning in other Acts as is given in Criminal Procedure Code : *The State of Madhya Pradesh Vs. Abdul Rashid, I.L.R. (1964) M.P. 136 (D.B.)*

-Section 190(1)(b) as amended-Includes "police report" as well as "police reports" as a result of investigation otherwise than that provided by Criminal Procedure Code : *Sardarkhan Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 808 (D.B.)*

-Section 190(1)(b)-A report to Magistrate by police officer of non-cognizable offence-Falls in the category of a "report in writing of such facts made by any police officer : *Narmada Prasad Vs. Moorat Singh, I.L.R. (1969) M.P. 332*

-Section 190(1)(b) and 251-A-Case started on report of police officer under Opium Act-Report if police report under section 190(1)(b), Criminal Procedure Code-Procedure prescribed by Section 251-A-Whether applicable : *Ashiq Miyan Vs. The State of M.P., I.L.R. (1966) M.P. 1 (F.B.)*

-Sections 192 and 10(2) - Additional District Magistrate, Power of, to transfer the case when Magistrate has taken cognizance: *Kanhaiyalal Vs. The State of M.P., I.L.R. (1965) M.P. 347*

-Section 195 - Object and purpose of the provision : *Gayaram Vs. Smt. Shanti Kunwar, I.L.R. (1971) M.P. 373*

-Section 197- For removal of non-councillor President-Sanction of State Government not necessary: *J.M. Pendse Advocate, Kannod Vs. Chandra Gopal I.L.R. (1972) M.P. 381*

-Section 197- Prosecution of President and Vice-President-Sanction is necessary: *J. M. Pendse Advocate, Kanod, Vs. Chandra Gopal, I.L.R. (1972) M.P. 381*

-Section 197-Section not applicable if President can be removed in other ways than by order of State Government : *J.M. Pendse Advocate, Kanod, Vs. Chandra Gopal, I.L.R. (1972) M.P. 381*

-Section 197-Object of : *Regional Inspector of Mines, Parasia Vs. K.K. Sengupta, I.L.R. (1975) M.P. 173*

-Section 197-Servant must be public servant at the relevant time : *Regional Inspector of Mines, Parasia Vs. K.K. Sengupta, I.L.R. (1975) M.P. 173*

- Section 197-Person a Councillor and also President of Municipal Committee- Person is a public servant-Section not applicable if President can be removed in other ways than by order of State Government-For removal of non-councillor President- Sanction of State Government not necessary-Municipalities Act, Madhya Pradesh, 1961- Section 47-Restricted meaning not to be given to the word "removal" in-Prosecution of President and Vice-President-Sanction is necessary-Section 38 - Councillor can be removed only by State Government : *J.M. Pendse Advocate, Kanod, Vs. Chandra Gopal, I.L.R. (1972) M.P. 381*

-Section 198-Relates to offences of private character-Object of the section : *Gayaram Vs. Smt. Shanti Kunwar, I.L.R. (1971) M.P. 373.*

-Section 198 - Scope of : *Nathu Vs. Sheopal, I.L.R. (1964) M.P. 159*

-Section 198 - Scope of-Limits power of Court to initial cognizance of offence-Death of complainant during pendency of case-Proceedings do not abate-Are not terminated merely on ground of complainant's death-Criminal Procedure Code - Section 259 - Case instituted on complaint-Charge framed against accused - Complainant absent on subsequent hearing -Court has no option but to proceed : *Nathu Vs. Sheopal, I.L.R. (1964) M.P. 159*

-Section 198 B-(4)- Provides limitation for filling complaint-Prohibits Magistrate from taking cognizance when complaint not filed within time : *Janardan Baliram Mankar Vs. The Government Pleader (Public Prosecutor), Durg, I.L.R. (1971) M.P. 1070.*

-Section 200(a), Proviso-Complaint in writing-Not necessary to examine complainant for taking cognizance : *Kanhaiyalal Vs. The State of M.P., I.L.R. (1965) M.P. 347*

-Sections 205 and 91-Power of Magistrate to direct accused to furnish bond under section 91 even though exemption is granted under Section 205 : *Mst. Mahkaniya Vs. Badri Prasad, I.L.R. (1974) M.P. 358*

-Section 205(2)-Power of Magistrate to direct personal attendance of accused at any stage-Power of Magistrate to direct accused to furnish bond under section 91 even

though exemption is granted under section 205 : *Mst. Mahkaniya Vs. Badri Prasad, I.L.R. (1974) M.P. 358* .

-Section 207-A-Witnesses not examined in Court-Statements before police can be considered by committing magistrate for committal : *Kishun Vs. State of M.P., I.L.R. (1975) M.P. 935* .

-Section 207-A - Accused originally charged and tried for offence under section 409, Indian Penal Code-After close of prosecution evidence charges under section 467, Indian Penal Code framed-Accused had no opportunity to cross-examine prosecution witnesses- Accused committed for trial for both offences - Accused prejudiced by irregular procedure-Trial vitiated : *Rajaram Pande Vs. The State of M.P., I.L.R. (1962) M.P. 622 (D.B.)*

-Section 207-A and 215-Commitment under Section 207-A-Section 215 not applicable-Power of High Court to quash the commitment in revisional powers-Section 207-A(6)-Evidence referred in, includes documents referred to in Section 173, Criminal Procedure Code-Statement recorded under section 162-Is a document under Section 173-Witnesses not examined in Court-Statements before police can be considered by committing magistrate for committal-Statement recorded under Section 164-Can be used against maker-Cannot be made sole foundation of charge against other persons : *Kishun Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 935* .

-Sections 207-A and 251-A-Magistrate coming to the conclusion that case not fit for committal but some other offence seems to have been committed-Magistrate can frame charge-In such case procedure under Section 251-A to be followed if a case started on police report-Witnesses examined before charge - Witnesses have again to be examined after charge : *Nazir Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 653*

-Section 207-A(6)-Evidence referred in, includes documents referred to in Section 173, Criminal Procedure Code : *Kishun Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 935* .

- Section 209 - Magistrate has to take accused in custody even though they were granted bail by order of superior Court : *Dashrath Vs. State of Madhya Pradesh I.L.R. (1978) M.P. 1087*

- Section 209 - Power of Magistrate to cancel bail - Accused committed for trial - Provision of cancellation of bail not applicable - But provision for granting fresh bail has to be considered : *Dashrath Vs. State of Madhya Pradesh I.L.R. (1978) M.P. 1087*

- Section 209-Words : “Subject to the provision of this Code relating to bail” - Meaning and implication of : *Dashrath Vs. State of Madhya Pradesh I.L.R. (1978) M.P. 1087*

-Sections 211, 291 and 540-Accused not mentioning names of witnesses in the list submitted to the Committal Court - Accused submitting the names before Sessions Court - Court has power to summon them-Power of Court to be exercised looking to the circumstances of the case and importance of evidence –Practice - Duty of prosecution to place all evidence before Court-Power of Court to examine such evidence to find out truth-In serious offence reasonable opportunity to be given to accused to prove his case : *Chiman Singh Vs. The State of M.P. I.L.R. (1961) M.P. 748 (D.B.)*

- Sections 215, 271 (1), 338, 342 - A, 343, 435 and 561 (A) - Sessions Judge passing order “I proceed to ignore the Charge” - Session Judge has no power under the Code (old) - Such order cannot be passed even under inherent powers of the Code (old) - Co-accused - When can be a competent witness - Co-accused not given pardon - Cannot be a competent witness against accused - Evidence Act - Section 30 - Statement of co-accused - When can be considered : *Chhotelal Vs. State of Madhya Pradesh, I.L.R. (1982) M.P. 77, (D.B.)*

-Section 221(7)-Contemplates stating of facts, date and place of previous conviction in the charge : *The State of M.P. Vs. Ambalal, I.L.R. (1969) M.P. 308 (D.B.)*

-Section 226 - Accused committed to sessions-Sessions Court not bound by the charges framed by committing Magistrate-Section 227-Authorises Court to alter or add to any charge at any time-Sessions Judge can frame proper charge on basis of material on record-Theory of implied discharge-Applicable only in cases where no order of commitment is made : *Bhagwandas Vs. State of Madhya Pradesh I.L.R. (1975) M.P. 738*

-Section 227-Authorises Court to alter or add to any charge at any time : *Bhagwandas Vs. State of Madhya Pradesh I.L.R. (1975) M.P. 738*

-Section 227-Sessions Judge can frame proper charge on basis of material on record : *Bhagwandas Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 738*

-Section 233-Breach of the requirements of Section 233-Fresh trial not necessary unless failure of justice shown : *Lachhman Vs. State of M.P., I.L.R. (1966) M.P. 135 (D.B.)*

-Section 233, 239(d) and 537(b)-Breach of the requirements of Section 233-Fresh trial not necessary unless failure of justice shown-Section 537(b)-Expression “Misjoinder of charges”-Meaning of-Word “Charge” in-Meaning of-The Expression “Misjoinder of charges” - Has wider meaning -Includes joinder of offences against same person and different persons jointly tried for one or more offences-Joint trial - Circumstances in which it is justified : *Lachhman Vs. State of M.P., I.L.R. (1966) M.P. 135 (D.B.)*

-Section 235(1) and 403(2)-Acquittal under Section 345, Criminal Procedure Code of offences under Sections 324 and 325, Indian Penal Code read with Section 149-No bar to subsequent trial under Sections 147 and 148 : *State of M.P. Vs. Rukman, I.L.R. (1971) M.P. 153. (D.B.)*

-Section 236 - The existence of the contradictory statements in the same deposition or different depositions-Framing of alternative charges under Section 193 : *The State Vs. Dhanna, I.L.R. (1958) M.P. 589 (D.B.)*

-Sections 236, 237 and 238-Charge under Section 409, Indian Penal Code-Conviction under Section 403-Permissibility : *The State of M.P. Vs. Promod Mategaonkar, I.L.R. (1965) M.P. 509 (D.B.)*

-Section 238(2)(a)-Charge framed for substantive offence-Conviction can be recorded for attempt to commit offence : *State of Madhya Pradesh Vs. Murat Singh, I.L.R. (1974) M.P. 990 (D.B.)*

-Sections 242 and 243-Word “accused” in-Not limited to person of accused but includes a pleader permitted to represent accused-Permission when can be presumed-Plea given by a pleader when accused exempted from personal attendance-Power of Court to act on it : *The State of Madhya Pradesh Vs. Lakhanlal, I.L.R. (1959) M.P. 461*

-Sections 242 and 561-A -Accused charged with offence under Sections 482, 486 I.P.C. and Trade Marks Act, Section 68(2) -Case triable as summons case but tried as Warrant case-Order of discharge passed because of absence of complainant on date of hearing—Order of discharge amounts to acquittal-Revision filed against the order though order appellable-Power of High Court to set aside order under Section 561- A : *The State of Madhya Pradesh Vs. Babulal Shukla, I.L.R. (1961) M.P. 765*

- Sections 244 and 245 -Directions mandatory-In case of non-compliance, Magistrate has no jurisdiction to acquit accused-Section 249-Police papers not disclosing offence, no evidence likely to be produced not advancing prosecution case-Not valid grounds for stopping proceedings without pronouncing judgment either of acquittal or of conviction : *State of Madhya Pradesh Vs. Shantilal, I.L.R. (1962) M.P. 740 (D.B.)*

-Section 247 - Case instituted on report of police officer in non -cognizable case-Cognizance cannot be said to be on complaint-Provision not applicable to such a case : *The State of M.P. Vs. Abdul Rashid, I.L.R. (1964) M.P. 136 (D.B.)*

-Section 247, Proviso-As amended-Charge-sheet lodged by police-Does not amount to complaint-Difference between “a police report” and “report of a police officer”-Complaint does not include a report of a police officer- Magistrate, Power of, to dismiss

Complaint and acquit the accused : *The State of M.P. Vs. Abdul Kadir Khan, I.L.R. (1962) M.P. 629 (D.B.)*

-Section 249- - Police papers not disclosing offence, no evidence likely to be produced not advancing prosecution case -Not valid grounds for stopping proceedings without pronouncing judgment either of acquittal or of conviction : *State of M.P. Vs. Shantilal, I.L.R. (1962) M.P. 740 (D.B.)*

-Sections 251 and 252-Distinction between two, regarding power to grant copies : *Kanhaiyalal Vs. The State of M.P., I.L.R. (1965) M.P. 347*

-Section 251(a)- - Procedure thereunder applicable to a case on an Excise Officer's report, the report being on same footing as police report : *Laxminarayan Vs. The State of M.P., I.L.R. (1960) M.P. 1090*

- Section 251 - A - Case instituted on police report - Procedure of warrant case to be followed for trial - Section 251 - A (6) - Magistrate has no power to compel attendance of witness unless it is applied for - Duty of Magistrate to see whether his directions are carried out - If directions are carried out, magistrate has further to enquire into causes of non-service or non-return of summons : *State of Madhya Pradesh Vs. Ramsingh I.L.R. (1977) M.P. 689 (D.B.)*

-Section 251- A - Does not prohibit magistrate from summoning prosecution witnesses : *The State Vs. Premnarain, I.L.R. (1963) M.P.174*

-Section 251-A and 190(1)(b) -Case started on report of police officer under Opium Act-Report if police report under section 190(1)(b), Criminal Procedure Code-Procedure prescribed by Section 251-A-Whether applicable : *Ashiq Miyan Vs. The State of M.P. I.L.R. (1966) M.P. 1 (F.B.)*

-Sections 251-A and 207-A-Magistrate coming to the conclusion that case not fit for committal but some other offence seems to have been committed-Magistrate can frame charge-In such case procedure under Section 251-A to be followed if a case started on police report-Witnesses examined before charge- Witnesses have again to be examined after charge: *Nazir Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 653*

-Sections 251-A and 252-Case triable according to section 252-Case tried under section 251-A- Trial vitiated : *State of M.P. Vs. Baital, I.L.R. (1965) M.P. 830 (D.B.)*

-Sections 251 (a) and (b) and 252-Complaint by Excise Officer-Falls under clause (b) of Section 251-Procedure under Section 252 applicable-Wrong procedure followed in trial- Causes prejudice to accused : *Sardarkhan Vs. The State of M.P., I.L.R. (1964) M.P. 808 (D.B.)*

- **Section 251** - A (6) - Duty of Magistrate to see whether his directions are carried out - If directions are carried out, magistrate has further to enquire into causes of non-service or non-return of summons : *State of Madhya Pradesh Vs. Ramsingh, I.L.R. (1977) M.P. 689 (D.B.)*

- **Section 251** - A (6) - Magistrate has no power to compel attendance of witnesses unless it is applied for : *State of Madhya Pradesh Vs. Ramsingh, I.L.R. (1977) M.P. 689 (D.B.)*

- **Section 256**-Right of accused to call prosecution witnesses for cross-examination after charge : *Kodu Vs. Banmali, I.L.R. (1970) M.P. 1003 (D.B.)*

-**Section 259** - -Case instituted on complaint-Charge framed against accused-Complainant absent on subsequent hearing -Court has no option but to proceed : *Nathu Vs. Sheopal, I.L.R. (1964) M.P. 159*

-**Section 269(3)** -Principle applicable to cases where some accused triable by jury and some triable by Judge-Offences being such as can be tried jointly-Offences triable by jury tried by assessors-Trial not invalid-All accused not charged with all offences-One of offences charged, some triable by jury and some by Judge-All offences tried by jury or by Judge-Trial not invalid-Section 269(3)-Scope and applicability of : *Dhaniram Vs. The State of Madhya Pradesh, I.L.R. (1960) M.P. 194 (D.B.)*

-**Section 288**-Provision has to be carefully used-Circumstance in which the statement recorded in committal Court can be taken on record of the sessions Court : *Shyama Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 533*

-**Section 291** - -Accused not giving list of defence witnesses under section 211-Accused cannot ask as of right to summon them in Sessions Court-Discretion in Sessions Judge to summon or not-Witnesses present though not named ought to be examined-Criminal Procedure Code, Section 207-A-Accused originally charged and tried for offence under Section 409, Indian Penal Code-After close of prosecution evidence charges under Section 467, Indian Penal Code framed-Accused had no opportunity to cross-examine prosecution witnesses- Accused committed for trial for both offences-Accused prejudiced by irregular procedure-Trial vitiated : *Rajaram Pande Vs. The State of M.P., I.L.R. (1962) M.P. 622 (D.B.)*

-**Sections 291, 211 and 540**-Accused not mentioning names of witnesses in the list submitted to the Committal Court - -Accused submitting the names before Sessions Court -Court has power to summon them-Power of Court to be exercised looking to the circumstances of the case and importance of evidence -Practice - Duty of prosecution to place all evidence before Court-Power of Court to examine such evidence to find out truth-In serious offence reasonable opportunity to be given to accused to prove his case : *Chiman Singh Vs. The State of M.P., I.L.R. (1961) M.P. 748 (D.B.)*

- **Section 310 (a)** - Charge for previous conviction not to be read over to accused unless under he is convicted in subsequent offence - Prosecution can refer to previous conviction and accused can be asked to plead to it after conviction - Section 537 - Does not include a trial conducted in a manner different from that prescribed by the Code - Non - compliance with Section 310, Criminal Procedure Code - Trial vitiated - Penal Code, Indian - Section 75 - Condition necessary for applicability of the provision : *Ghisulal Vs. State of M. P., I.L.R. (1977) M.P. 157*

- **Section 310 (a) and Section 37** - Non-compliance with Section 310, Criminal Procedure Code - Trial vitiated : *Ghisulal Vs State of M. P., I.L.R. (1977) M.P. 157*

-**Section 342** - -Explanation of accused in a statement recorded under the section-Need not necessarily to be accepted : *Jaganlal Vs. The State of M.P., I.L.R. (1964) M.P. 419 (D.B.)*

-**Section 342** - Statement made by accused to the Inspector of Mines during enquiry - Statement not put to the accused during the examination - Omission amounts to mere irregularity - If no prejudice caused; no repercussion on the trial - Evidence Act, Indian - Section 25 - Inspector of Mines - Not a police officer for the purpose of this provision - Words and Phrases - “Fault”, ‘Slip” and “Slickenside” Meanings of - Coal Mines Regulations, 1957 - Regulation 102 - Requirement of - In case of fall - presumptive evidence of breach of this regulation - Contravention of this provision - Sirdar, Overman, Asistant Manager become liable - Mines Act, 1952 - Section 74 - Does not require mens - rea as essential ingredient of the offence - Section 78 - Act to come under protection - Act must be done or intended to be done under the Act, rules or regulations made thereunder : *H. S. Sachdeo Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 172*

- **Section 342, Personal presence of accused normally necessary under Section 205 (2)**-Magistrate-Discretion to direct attendance of accused for examination when exemption granted : *The State Vs. Tarachand, I.L.R. (1957) M.P. 218*

-**Section 345** -Offences under Sections 147 and 148, Indian Penal Code-Not compoundable even with permission of Court-Sections 235(1) and 403(2) -Acquittal under section 345, Criminal Procedure Code of offences under Sections 324 and 325, Indian Penal Code read with Section 149-No bar to subsequent trial under Sections 147 and 148: *State of M.P. Vs. Rukman, I.L.R. (1971) M.P. 153. (D.B.)*

-**Section 350** - -Not applicable to Sessions Court- Evidence partly recorded by one Sessions Judge and partly by successor-Successor Sessions Judge cannot decide case upon such recording of evidence : *Suratsingh Vs. The State of Madhya Pradesh, I.L.R. (960) M.P. 330*

- Section 367 (5) - Before amendment and after amendment - Scope of : *Pravin Kumar Gupta Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 768 (D.B.)*

-Section 369-Does not permit reconsideration of the question of sentence : *State of M.P. Vs. Narain Datta, I.L.R. (1967) M.P. 822 (D.B.)*

-Section 369-High Court has no power to alter or review its judgment : *Shyam Bihari Vs. State of Madhya Pradesh, I.L.R. (1974) M.P. 185*

-Section 369-In case of illegal or irregular exercise of jurisdiction-Proper remedy is appeal or revision or review : *Shyam Bihari Vs. State of Madhya Pradesh, I.L.R. (1974) M.P. 185*

-Section 369-Lack of inherent jurisdiction-Proceedings are null and void and can be attacked in collateral proceedings : *Shyam Bihari Vs. State of Madhya Pradesh, I.L.R. (1974) M.P. 185*

-Section 369-Words “save as otherwise provided” in-Do not refer to section 561-A-Refer to express provisions of Code which empower Court to alter or review judgment : *Shyam Bihari Vs. State of Madhya Pradesh, I.L.R. (1974) M.P. 185*

-Section 369-Court becomes functus officio when judgment is signed except for correcting clerical errors-Words “save as otherwise provided” in-Do not refer to section 561-A-Refer to express provisions of Code which empower Court to alter or review judgment-High Court has no power to alter or review its judgment-Lack of inherent jurisdiction-Proceedings are null and void and can be attacked in collateral proceedings-In case of illegal or irregular exercise of jurisdiction-Proper remedy is appeal or revision or review-High Court Rules-Rule 4-Word “shall”-Denotes that requirements are mandatory-Probation of Offenders Act, 1958-Section 11(3)-Competency of Single Judge to exercise power under this provision of his own motion : *Shyam Bihari Vs. State of Madhya Pradesh, I.L.R. (1974) M.P. 185*

- Section 397 and Section 427-General rule regarding commencement of sentence-Components of judgment in Criminal case-Confer power pertaining to the manner of execution of subsequent sentence rather awarding of appropriate sentence-Direction regarding running of subsequent sentence concurrently with previous sentence-Does not amount to review of judgment-Power can be exercised at any time when Court is moved-Power can be exercised even after judgment : *A.S. Naidu Vs. State of Madhya Pradesh, I.L.R. (1974) M.P.1033 (D.B.)*

-Section 397 (2) and Section 35-Do not enable the Court to order running of two consecutive sentences of imprisonment for life : *Johrilal Vs. State of M.P., I.L.R. (1973) M.P., 350 , (D.B.)*

- **Section 401** - Release from jail - Does not amount to any remission of sentence : *Shibbu Vs. Superintendent, Central Jail, Jabalpur, I.L.R. (1978) M.P. 639 (D.B.)*

- **Section 403** - and Constitution of India, Article 20 (2) - Disciplinary action - Not within purview of section 403, Criminal Procedure Code : *Factory Manager, Central India Machinery And Manufacturing Co. Ltd. Vs. Abdul Rehman, I.L.R. (1976) M.P. 19 (D.B.)*

-**Section 415**-Fine coupled with forfeiture-Appeal against conviction is maintainable : *State of Madhya Pradesh Vs. Kapurchand, I.L.R. (1975) M.P. 925 (D.B.)*

-**Section 415**-Prescribed appeal in case of combination of sentences : *State of Madhya Pradesh Vs. Kapurchand, I.L.R. (1975) M.P. 925 (D.B.)*

-**Section 417**-Competency of appeal by State in a case instituted on complaint : *The State of M.P. Vs. Ambalal, I.L.R. (1969) M.P. 308 (D.B.)*

-**Section 417**-Setting aside of order of Magistrate convicting accused-Amounts to acquittal-Provision of Section 417 attracted-Section 417(1)-Includes three types of cases mentioned in Section 190-Exception relates to a case under sub-section (5) of Section 417-Competency of appeal by State in a case instituted on complaint-Section 221(7)-Contemplates stating of facts, date and place of previous conviction in the charge : *The State of M.P. Vs. Ambalal, I.L.R. (1969) M.P. 308 (D.B.)*

-**Section 417**-Appeal by State against accused acquitted by the Sessions Court and also against accused who have been acquitted for offence under Section 323, Indian Penal Code because of compounding of offence-Maintainability : *State of Madhya Pradesh Vs. Hukum Singh, I.L.R. (1971) M.P. 5 (F.B.)*

-**Section 417** --Application against acquittal-Approach of High Court to the appeal to be on two lines-Evidence Act, Section 27-Statements to police leading to discovery – Admissibility - Discovery to be of physical fact, which is partly or wholly concealed-Discovery should be the finding of something-There can be no discovery of shop or the person-Motive not of consequence when evidence sufficiently strong to base conviction or is altogether inconclusive—Evidence Act, Section 45-Difference between the evidence of handwriting expert and of other experts on poison, blood or finger prints-Evidence of handwriting expert is comparatively of weaker type than that of other experts : *The State of Madhya Pradesh Vs. Dhannalal Lodhwal, I.L.R. (1962) M.P. 314 (D.B.)*

-**Section 417(1)**-Includes three types of cases mentioned in Section 190-Exception relates to a case under sub-section (5) of Section 417 : *The State of M.P. Vs. Ambalal, I.L.R. (1969) M.P. 308 (D.B.)*

-**Section 417** - Under Section 417 (1) of Criminal Procedure Code the State has a right to file an appeal where the prosecution is on the complaint of a Court or of a

public servant acting in the discharge of his official duties, while under Section 417 (3) Criminal Procedure Code the private complainant has a right to file an appeal in a case started on the complaint by private person : *State Vs. Daulatsingh, I.L.R. (1957) M.P. 216 (D.B.)*

- **Section 417 (3)** - Leave petition pending - Complainant dying - His heir can prosecute appeal after obtaining leave : *Prayagdutt Tiwari Vs. Gajdhar Prasad Tiwari I.L.R. (1978) M.P. 686 (D.B.)*

-**Section 417(3)**-Public servant can be a complainant and allegations made by him is complaint : *Drugs Inspector, Madhya Pradesh, Indore Vs. Messrs Chimanlal And Co.I.L.R. (1968) M.P. 173 (F.B.)*

-**Section 417(3)**-Applies to the case of complaint by public servant in discharge of his duties except in case of police report-Application for leave to appeal by such public servant-Maintainability : *Drugs Inspector, Madhya Pradesh, Indore Vs. Messrs Chimanlal And Co.I.L.R. (1968) M.P. 173 (F.B.)*

-**Section 417 (3)** - Appeal against acquittal - Practice- Judgment written by trying Magistrate, but pronounced by his successor-No illegality-No substance in appeal : *Paras Ram Vs. Laxminarayan, I.L.R. (1960) M.P. 882 (D.B.)*

-**Section 417 (3)** - -Word “case”—Meaning of-Cause when comes into existence-Cognizance under Criminal Procedure Code taken of an offence and not against offender - -Magistrate taking an action in respect of offence not mentioned in complaint or police report-Does not amount to starting fresh case but would be taken in proceedings already started : *Premdas Vs. Lalloo Ram, I.L.R. (1960) M.P. 927*

-**Section 417(3) and Section 4(h)** - Section 417(3)-Applies to the case of complaint by public servant in discharge of his duties except in case of police report-Application for leave to appeal by such public servant-Maintainability-Public servant can be a complainant and allegations made by him is complaint-Word “complaint” in-Not to be understood in the sense given by section 4(h) of the Code : *Drugs Inspector, Madhya Pradesh, Indore Vs. Messrs Chimanlal And Co., I.L.R. (1968) M.P. 173 (F.B.)*

-**Section 421**- Order of summary dismissal of appeal-Effect is different from the effect of dismissal of appeal after notice to State : *State of M.P. Vs. Narain Datta, I.L.R. (1967) M.P. 822 (D.B.)*

-**Section 421**-Appeal by an accused against his conviction-Circumstances in which State Government can apply for enhancement of sentence-Notice of enhancement issued to accused-New right given to accused to show cause against conviction-Section 439-Power of revision when can be exercised-Section 421-Order of summary dismissal of appeal-Effect is different from the effect of dismissal of appeal after notice to State-

Section 369-Does not permit reconsideration of the question of sentence-Jurisdiction-Distinction between lack of jurisdiction and illegal or irregular exercise of it-Section 561-A-Does not confer power to alter the judgment of sentence : *State of M.P. Vs. Narain Datta, I.L.R. (1967) M.P. 822 (D.B.)*

- **Section 421 to 423** - Appellate Court has no power to permit withdrawal : *State of Madhya Pradesh Vs. Mooratsingh I.L.R. (1976) M.P. 962 (D.B.)*

- **Section 421 to 423** - Appeal not dismissed summarily - Cannot be dismissed for default of appearance - Has to be decided on merits : *State of Madhya Pradesh Vs. Mooratsingh I.L.R. (1976) M.P. 962 (D.B.)*

- **Section 421 to 423 and 494** - Appellate Court cannot act outside the provisions of these sections : *State of Madhya Pradesh Vs. Mooratsingh, I.L.R. (1976) M.P. 962 (D.B.)*

-**Section 423(1) and 522(1)**-Order regarding restoration of possession passed in the order of conviction-Appellate Court can pass order concerning it in appeal against conviction-Order passed separately-Order is only revisable-Order not liable to be set aside by High Court in revision simply because accused is acquitted in appeal : *Ganeshram Vs. Savitri, I.L.R. (1973) M.P., 1122 .*

-**Section 423(1) (b)(2)**-Court, Power of, to alter conviction without altering sentence even though no appeal preferred- Section not governed by Sections 236 to 238, Criminal Procedure Code : *Gangadhar Vs. The State of M.P., I.L.R. (1962) M.P. 449 (D.B.)*

- **Section 435** - “Proceeding” in - Means proceeding before inferior criminal Court : *Sitaram Heda Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 982 (D.B.)*

-**Section 435** - -Revision to Sessions Judge against order of the Rent Controlling Authority imposing fine before Sessions Judge-Revision not maintainable : *The State of M.P. Vs. Gulabkhan, I.L.R. (1964) M.P. 442 (D.B.)*

- **Section 435 and 439** - Both provisions to be read together - Section 435 - “Proceeding” in - Means proceeding before inferior criminal court - Essential Commodities Act, 1955 - Section 6 - C (1) - Appeal against order of confiscation - Entertainable by District and Sessions Judge as judicial authority and not as Sessions Judge of the Court of Sessions - Essential Commodities (Amendment) Act, 1966 - Section 6 - A - Collector passing order of confiscation - Collector does not act as Magistrate as defined by Section 6, Criminal Procedure Code - Not subordinate to Court of Sessions - Essential Commodities Act, 1955 - Section 6 - C (1) - Judicial authority appointed by State under - Not an inferior criminal court - No revision against the order entertainable by High Court : *Sitaram Heda Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 982 (D.B.)*

-Sections 436 and 437- "Discharge" in- Includes case of a person partially discharged- Person accused of major offence - Charge for lesser offence- Person deemed to be discharged of major offence when charge of lesser offence framed- Two views possible on evidence- Duty of magistrate to commit accused to sessions for trial : *Randhir Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 321*

- Section 437 - After presentation of challan - Court has power to rearrest a person released on bail by it : *Laloo Vs. State of Madhya Pradesh I.L.R. (1978) M.P. 502*

- Section 437 (1), (2) and 162 (2) - Section 167 (2), proviso Clause (b) - Accused becomes entitled to bail irrespective of nature of offence if challan not presented within 60 days - Once challan filed - Matter governed by Section 309 (2) of the Code - Person released on bail under Section 167 (2) - To be treated as a person released on bail by court itself - Court can consider whether such person be arrested and committed to custody - After presentation of challan - Court has power to re-arrest a person released on bail by it- Bail granted on grounds which have ceased to be operative - Court can exercise its discretion under Section 437 (5) of the Code : *Laloo Vs. State of Madhya Pradesh, I.L.R. (1978) M.P. 502*

Section 437 (5) - Bail granted on grounds which have ceased to be operative - Court can exercise its discretion under Section 437 (5) of the Code : *Laloo Vs. State of Madhya Pradesh I.L.R. (1978) M.P. 502*

- Section 439 - High Court can take notice of laches - Can treat that as done which ought to have been done - Can decide case assuming the date of preliminary order to be date of complaint : *State of Madhya Pradesh Vs. Badgaiya I.L.R. (1976) M.P. 562 (D.B.)*

-Section 439- High Court's revisional jurisdiction under the section unaffected- Special Court under the M. B. Public Security Act is a Criminal Court inferior to High Court : *State of M.P. Vs. Gangasingh, I.L.R. (1962) M.P. 145*

-Section 439 -Revisional jurisdiction, Exercise of, to correct error of Magistrate : *Shankerlal Vs. Ramshanker I.L.R. (1962) M.P. 746 (D.B.)*

-Section 439 - Revision-Finding of fact regarding possession-No interference with finding of trial Court : *The State of M.P. Vs. Swami Prasad, I.L.R. (1963) M.P. 360*

- Section 439-Revision-Mis-apprehension on the part of Judge -Interference-Powers under this section wider than those under section 435 : *Shri Chintamanrao Vs. Digram, I.L.R. (1959) M.P. 620*

-Section 439-Power of revision when can be exercised : *State of M.P. Vs. Narain Datta, I.L.R. (1967) M.P. 822 (D.B.)*

- **Section 439**-High Court competent to alter or reverse order of lower Court or pass such order as lower Court is competent to pass subject to provisions in the Code : *The State of Madhya Pradesh Vs. Rampratap, I.L.R. (1974) M.P. 878 (D.B.)*.

-**Section 439**-Power in revision-Same as that of Court of Appeal : *The State of Madhya Pradesh Vs. Rampratap, I.L.R. (1974) M.P. 878 (D.B.)*.

-**Section 439**-Objection to entertain ability of revision when cannot be taken : *Nageshwar Vs. State of M.P., I.L.R. (1971) M.P. 951* .

-**Section 439**-Revisional Court, Powers of, to order prosecution of witness-Section 479-A(5)-Recording of finding regarding prosecution-To be done by original or appellate Court at the time of delivery of judgment-Both exercise powers in their own independent jurisdiction : *The State of M.P. Vs. Kampta Prasad, I.L.R. (1966) M.P. 857 (D.B.)*

-**Section 439**-High Court, jurisdiction of, to entertain revision directly-Objection to entertain ability of revision when cannot be taken-Prisoners Act, Madhya Bharat, 1950-Accused released after furnishing security after repeal of Act-The whole proceedings are illegal - Criminal Procedure Code- Section 514(1) -Refers to two classes of bonds-Bond taken under the Prisoner's Act-Bond cannot be enforced under this provision-Bond executed by surety but not by accused-Bond can be enforced under this provision : *Nageshwar Vs. State of M.P., I.L.R. (1971) M.P. 951*.

-**Section 439(5)**-When appeal lies-Revision is barred Criminal Procedure Code-Section 198-B(4)-Provides limitation for filing complaint-Prohibits Magistrate from taking cognizance when complaint not filed within time- Limitation Act(old)- Section 29(2)-Did not make Section 5 applicable to suits, appeals and applications-Limitation Act, 1963 makes Sections 4 to 24 applicable to them-Complaint does not fall in the category of suit, appeal or applications-Limitation Act-Makes no provision of limitation for filing complaint-Complaint under Section 198-B not governed by Limitation Act : *Janardan Baliram Mankar Vs. The Government Pleader (Public Prosecutor), Durg, I.L.R. (1971) M.P. 1070* .

-**Section 439(6)**-Notice of enhancement issued to accused-New right given to accused to show cause against conviction : *State of M.P. Vs. Narain Datta, I.L.R. (1967) M.P. 822 (D.B.)*

- **Section 468** - Magistrate barred from taking cognizance of offences of the categories mentioned in section 468 (2), Criminal Procedure Code after period of limitation - Provision mandatory - Section 473 - Satisfaction for purposes of extending the period of limitation to be done before taking cognizance of offence - Provision to be construed liberally but not too liberally - Before condonation of delay accused must be heard : *Shri Krishna Sanghi Vs. State of M.P., I.L.R. (1976) M.P. 899*

- **Section 471**-Complaint under-Not to be thrown out because procedure under Section 479-A not followed : *Mst. Sukhrani Vs. Ganpat, I.L.R. (1970) M.P. 683*

- **Section 473** - Before condonation of delay accused must be heard : *Shri Krishna Sanghi Vs. State of M. P. I.L.R. (1976) M.P. 899*

- **Section 473** - Provision to be construed liberally but not too liberally : *Shri Krishna Sanghi Vs. State of M. P. I.L.R. (1976) M.P. 899*

- **Section 473** - Satisfaction for purposes of extending the period of limitation to be done before taking cognizance of offence : *Shri Krishna Sanghi Vs. State of M.P., I.L.R. (1976) M.P. 899*

-**Sections 476 and 479-A** - Distinction between - Non obstante clause in Section 479-A - Effect - Section 479-A overrides provisions of sections 476 to 479-Word “May” in sub-section (6) of Section 479-A - Does not confer option in the matter of initiation of proceedings -Intention with which section 479-A is framed-Scope of Section 479-A wide and includes every kind of witness and every type of statement—Cannot be limited to offences of perjury of serious type—Statement of witness or document tendered by him in evidence not relevant or material to matter in issue in judicial proceeding-Prosecution of such person cannot be considered expedient in the interest of justice-Fact to be considered in starting prosecution under section 479-A-Section 479-A existed not only to eradicate perjury but also to protect a witness from harassment against frivolous prosecution - Interpretation of statutes—Rule of construction - Words clear and mischievous-Effect to be given to these words even though it may appear absurd or mischievous : *Dhansingh Vs. Ramsaran, I.L.R. (1960) M.P. 707 (D.B.)*

-**Section 479-A** - -Non obstante clause-Effect-Section 479-A overrides provisions of sections 476 to 479 : *Dhansingh Vs. Ramsaran, I.L.R. (1960) M.P. 707 (D.B.)*

-**Section 479-A** -Intention with which section 479-A is framed- - Scope of Section 479-A wide and includes every kind of witness and every type of statement-Cannot be limited to offences of perjury of serious type-Statement of witness or document tendered by him in evidence not relevant or material to matter in issue in judicial proceeding-Prosecution of such person cannot be considered expedient in the interest of justice-Fact to be considered in starting prosecution under section 479-A-Section 479-A existed not only to eradicate perjury but also to protect a witness from harassment against frivolous prosecution : *Dhansingh Vs. Ramsaran, I.L.R. (1960) M.P. 707 (D.B.)*

- **Section 479-A**-Person filing affidavit in Section 145 proceedings-Person cannot be said to have appeared as witness-Complaint under Section 471-Not to be thrown out because procedure under Section 479-A not followed : *Mst. Sukhrani Vs. Ganpat , I.L.R. (1970) M.P. 683*

- **Sections 476 and 479-A**-Distinction between : *Dhansingh Vs. Ramsaran, I.L.R. (1960) M.P. 707 (D.B.)*

- **Section 479-A (5)** – Recording of finding regarding prosecution – To be done by original or appellate Court at the time of delivery of judgment – Both exercise powers in their own independent jurisdiction : *The State of M.P. Vs. Kampta Prasad, I.L.R. (1966) M.P. 857 (D.B.)*

- **Section 482** - Complaint liable to be quashed : *Chandrika Prasad Vs. Smt. Kanchan, I.L.R. (1979) M.P. 1121*

- **Section 482** - Circumstances in which inherent powers can be used : *Gajpati Vs. Sardar Uttamsingh, I.L.R. (1977) M. P. 1027*

- **Section 482**- Quashing of complaint- Complaint making out prima facie case- Absence of mens rea- Not enough to quash prosecution : *M/s. Ranbaxy Laboratories Limited Vs. State of M.P., I.L.R. (1995) M. P. 720*

-**Section 485-A** -Condition precedent necessary for imposing a fine upon witness for non-attendance-Section 486 - Order passed under Section 485-A is appealable : *State of M. P. Vs. Premchand Kashyap, I.L.R. (1964) M.P. 301 (D.B.)*

-**Section 486**- Order passed under Section 485-A is appealable : *State of M. P. Vs. Premchand Kashyap, I.L.R. (1964) M.P. 301 (D.B.)*

- **Section 488**-Basic purpose underlying the provisions of the Section : *Sadashiv Vs. Parubai, I.L.R. (1970) M.P. 180*

-**Section 488** - Requirement of-Second marriage-Not sufficient to infer neglect or refusal-Denial of marital intercourse or avoiding society of wife by husband- - Amounts to proof of neglect : *State of Madhya Pradesh Vs. Smt. Deobati, I.L.R. (1960) M.P. 150*

-**Section 488**-Object of-Summary remedy available only to a faithful wife-Evidence Act-Section 112-Presumption regarding legitimacy of child during subsistence of marriage-Presumption rebuttable-Burden on husband to rebut presumption-Nature of evidence needed for rebutting presumption : *State of M.P. Vs. Mst. Somti, I.L.R. (1971) M.P. 173.*

-**Section 488**- Term “Resided” in-Covers temporary as well as permanent residence-What constitutes “Residence” depends on facts of each case-Not possible to fix any particular period of time to raise inference of residence to attract provision of Section 488, Criminal Procedure Code : *Tulsiram Vs. Smt. Narbadabai, I.L.R. (1957) M.P.438*

-**Section 488** - -Compromise during proceedings under this section - Order not passed in terms of compromise petition simply dismissed-Effect-Fresh petition if

maintainable-Fresh proceedings-Conduct of husband before and subsequent to compromise can be taken into consideration-Order passed on compromise - Fresh petition when maintainable : *The State of Madhya Pradesh Vs. Parashram*, I.L.R. (1962) M.P. 782 (D.B.)

-Section 488-Limitation Act-Section 15(1)-Application for recovery of maintenance for a period of more than a year -Decision of the application depending upon the decision of the various contentions raised in the previous case regarding recovery of arrears for a prior period-Time taken in decision of previous application -Liable to be excluded for computing period of subsequent application-Words “from the date on which it becomes due” in Section 488, Criminal Procedure Code-Meaning of : *Devideen Vs. Nankibai* I.L.R. (1966) M.P. 828

- Section 488 and Criminal Procedure, 1973 (II of 1974), Section 484 (2) (a)
 - Maintenance - Right to claim - Not available to divorced wife under the Code of 1898
 - Petitioner claiming maintenance filed under the Code of 1898 has to be decided according to the provisions of the Code of 1898 only even after its repeal by the Code of 1973 - Construction of Statute - Cardinal Principles of - Statute prospective in operation unless expressly or by necessary implication made retrospective : *Mohammad Jalil Khan Vs. Anwari Begun*, I.L.R. (1983) M.P. 342,

-Section 488 and 489-In special circumstances order of cancellation can be effective from date of application-Order passed under section 10 of Hindu Marriage Act on the evidence- Is not a special circumstance : *Smt. Indra Kumari, Vs. Rajkumar Mahant*, I.L.R. (1974) M.P. 1017

- Section 488 (1) - Imposes obligation on husband in absolute terms - Cannot ask the Court to stay execution on consideration of balance of convenience : *Nemchand Vs. Smt. Kusum Bai* I.L.R. (1976) M.P. 283

-Section 488 (1) and (3) -First proviso-Proviso applicable to sub-section (1) only-Husband marrying second wife or keeping mistress-Wife living separate-Husband not providing maintenance - Action amounts to negligence and refusal to maintain—Wife entitled to maintenance : *Jamuna Prasad Patel Vs. Smt. Premabai*, I.L.R. (1961) M.P. 181 (D.B.)

- Section 488(3), Proviso-Does not enable wife to claim maintenance because of polygamy : *Munawarbai Vs. Sabir Mohammad*, I.L.R. (1970) M.P. 125

- Section 488(3), Proviso-Does not apply to Muslim Law in general : *Munawarbai Vs. Sabir Mohammad*, I.L.R. (1970) M.P. 125

- Section 488(3) Proviso-Cannot be engrafted to Mahamedan Law in Section 2 of dissolution of Muslim Marriage Act : *Munawarbai Vs. Sabir Mohammad*, I.L.R. (1970) M.P. 125

- Section 488 (3), Proviso - If this proviso is considered as proviso to sub-section (1), grounds available under proviso are bound to be considered while making order under subsection (1) : *Nemchand Vs. Smt. Kusum Bai I.L.R. (1976) M.P. 283*

- Section 488 (3) - Words “Fails without sufficient cause” in - Are of wider import
 - Have to be construed in the context in which they occur - Cannot be deemed to embrace such reasons as have already been raised and inquired into - Section 488 (3), Proviso - If this Proviso is considered as proviso to sub section (1), grounds available under proviso are bound to be considered while making order under sub-section (1) - Section 488 (1) - Imposes obligation on husband in absolute terms - Cannot ask the Court to stay execution on consideration of balance of convenience : *Nemchand Vs. Smt. Kusum Bai, I.L.R. (1976) M.P. 283*

- Section 488(3), Proviso-Second marriage by husband-No absolute ground for grant of maintenance-Neglect or refusal still to be proved-Does not apply to Muslim Law in general-Proviso cannot be engrafted to Mohamedan Law in Section 2 of dissolution of Muslim Marriage Act-Marriage is a contract-Husband bound to maintain wife so long as she is faithful-Loses right if she willingly leaves husband’s protection-Does not enable wife to claim maintenance because of polygamy : *Munawarbai Vs. Sabir Mohammad, I.L.R. (1970) M.P. 125*

- Section 488(4) and (5)-Magistrate cancelling maintenance order-Date from which liability to give maintenance comes to an end-Basic purpose underlying the provisions of section 488 : *Sadashiv Vs. Parubai, I.L.R. (1970) M.P. 180*

-Sections 488(4) and (5)-Order of maintenance cancelled on ground of refusal to live with husband-Right of wife to get maintenance for the period between the date of order granting maintenance and the date of order cancelling it : *Sadashiv Vs. Parubai, I.L.R. (1967) M.P. 995*

-Section 489 and 488-In special circumstances order of cancellation can be effective from date of application-Order passed under section 10 of Hindu Marriage Act on the evidence- Is not a special circumstance : *Smt. Indra Kumari Vs. Rajkumar Mahant, I.L.R. (1974) M.P. 1017*

-Section 489(2)-Permits prospective cancellation of order passed under section 488- Interpretation of Statutes-Statutes affecting vested right or legal character of past transaction- It has to be construed prospectively-Criminal Procedure Code- Sections 488 and 489-In special circumstances order of cancellation can be effective from date of application-Order passed under section 10 of Hindu Marriage Act on the evidence - Is not a special circumstance : *Smt. Indra Kumari Vs. Rajkumar Mahant, I.L.R.(1974) 1017*

-Section 491-Circumstances when a writ of habeas corpus can be issued : *Budhulal Vs. An Infant Child, I.L.R. (1972) M.P. 621 (D.B.)*

- Section 491-Guardian's claim to the custody of the child is a right in the nature of trust for benefit of minor : *Smt. Bhagwati Bai Vs. Yadav Krishna Awadhiya, I.L.R. (1972) M.P. 25 (D.B.)*

-Section 491-In exceptional cases writ can be issued for restoration of custody of minor to guardian entitled to the custody of child : *Smt. Bhagwati Bai Vs. Yadav Krishna Awadhiya, I.L.R. (1972) M.P. 25 (D.B.)*

-Section 491-Writ can be issued when ordinary remedy is not available or is ineffective or inadequate : *Smt. Bhagwati Bai Vs. Yadav Krishna Awadhiya, I.L.R. (1972) M.P. 25 (D.B.)*

-Section 491-Relief under, available only when person illegally detained -No direction to be issued unless person is in unlaw-ful detention-Remedy not to be resorted to where dispute is regarding guardianship of minor : *Mohd. Hanif. Vs. Zahiruddin, I.L.R. (1963) M.P. 773 (D.B.)*

-Section 491-Detention of minor by a person not entitled to legal custody-Writ can be issued-Detention is equivalent to imprisonment of minor-Writ can be issued when ordinary remedy is not available or is ineffective or inadequate-In exceptional cases writ can be issued for restoration of custody of minor to guardian entitled to the custody of child-Guardian's claim to the custody of the child is a right in the nature of trust or benefit of minor : *Smt. Bhagwati Bai Vs. Yadav Krishna Awadhiya, I.L.R. (1972) M.P. 25 (D.B.)*

-Section 491 - Issue of direction in the nature of Habeas corpus -Power of Court to enquire into previous detention after a person is released-High Court-Power to go into merits of wrongful restraint after detenu released - Costs-When permissible to be awarded in these proceedings : *Haji Mohd. Ramzan Vs. The Station Officer, Ghamapur Police Station, Jabalpur, I.L.R. (1960) M.P. 191 (D.B.)*

-Section 491-Nature of the writ of habeas corpus-Scope of -Circumstances when it can be issued-Guardianship-Custody of the minor when cannot be given to the natural guardian father : *Budhulal Vs. An Infant Child, I.L.R. (1972) M.P. 621 (D.B.)*

- Section 494 and 421 to 423 - Appellate Court cannot act outside the provisions of these sections : *State of Madhya Pradesh Vs. Mooratsingh, I.L.R. (1976) M.P. 962 (D.B.)*

-Section 494 and 421 to 423 - Provisions are exhaustive and are peremptory : *State of Madhya Pradesh Vs. Mooratsingh, I.L.R. (1976) M.P. 962 (D.B.)*

-Section 496, 497 and 498-Power of Magistrate to grant bail in offences punishable with death or imprisonment for life-Sections 497 and 498-Cases in which Magistrate can grant bail and cases in which Sessions or High Court can grant bail-Section 497-Word “or” in the phrase “death or imprisonment for life” in-Is disjunctive-Penal Code, Indian-Section 326-Jurisdiction of Magistrate to grant bail : *State of Madhya Pradesh Vs. Laxmi Narayan, I.L.R. (1971) M.P. 1082*

-Section 497-Word “or” in the phrase “death or imprisonment for life” in-Is disjunctive : *State of Madhya Pradesh Vs. Laxmi Narayan, I.L.R. (1971) M.P. 1082*

-Section 497 and 498- Cases in which Magistrate can grant bail and cases in which Sessions or High Court can grant bail : *State of Madhya Pradesh Vs. Laxmi Narayan, I.L.R. (1971) M.P. 1082*.

-Section 499(1) - -Accused released on bail-Condition in surety bond that he should report himself every day to the Palasia Police Station-Condition valid-Any other condition restricting movements of accused would be illegal : *Lal Singh Vs. State of Madhya Pradesh, I.L.R. (1964) M.P. 451*

-Section 503 – Confers discretion on magistrate to examine witness on commission-Magistrate in his discretion issuing commission for examination of witness - Superior Court not to interfere lightly with that discretion - Magistrate refusing to exercise discretion-Witness insisting that it is his privilege-Witness to show relevant provision of law : *Abdul Alim Khan Vs. Sagarmal, I.L.R. (1964) M.P. 971*

-Section 514-Bond not to be rejected because surety possessing immoveable property : *Shri Ram Soni Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 182 .*

-Section 514- Not pecuniary sufficiency but extent of power of control of surety over accused- To be criteria for determination of sufficiency : *Shri Ram Soni Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 182 .*

-Section 514- Sufficiency of surety – A matter to be determined by Court-Affidavit to be accepted as proof of facts contained in bond : *Shri Ram Soni Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 182*

-Section 514-Solvency of surety to be considered with respect to both moveable and immoveable property-Bond not to be rejected because surety possessing immoveable property- Not pecuniary sufficiency but extent of power of control of surety over accused-To be criteria for determination of sufficiency- Sufficiency of surety-A matter to be determined by Court- Affidavit to be accepted as proof of facts contained in bond : *Shri Ram Soni Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 182 .*

-Section 514(1)-Refers to two classes of bonds-Bond taken under the Prisoners Act-Bond cannot be enforced under this provision-Bond executed by surety but not by

accused-Bond can be enforced under this provision: *Nageshwar Vs. State of Madhya Pradesh, I.L.R. (1971) M.P. 951* .

-Section 516-A, 517 and 523 -Refer to different stages in connection with release of property which has been seized : *State of M.P. Vs. Narayan Singh, I.L.R. (1972) M.P. 782* .

- Section 516 - A and 523 - After Completion of enquiry and trial - Criminal Court can exercise power under Section 516 - A for due custody or return or for final disposal of property under Section 523 : *Rameshwar Rathod Vs. State of M. P. I.L.R. (1981) M.P. 1008, (D.B.)*

-Section 517-Power of Magistrate to make incidental order-Proper incidental order which Magistrate should pass: *State of Madhya Pradesh Vs. Sitaram I.L.R. (1968) M.P. 829*

-Section 517-Test to be applied for considering restoration of property : *Bhagchand Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 201* .

-Section 517-Circumstances in which property can be restored to the original owner : *Bhagchand Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 201* .

-Section 517-For purpose of considering return of property after trial, two points required to be considered-Test to be applied for considering restoration of property- Circumstances in which property can be restored to the original owner : *Bhagchand Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 201* .

-Section 517 - -Specific coins seized from accused in connection with an offence under the Gambling Act-Not liable to be forfeited : *Maganlal Vs. State, I.L.R. (1958) M.P. 232*

-Section 517 and 523-Distinction between : *Mohammad Ismail Vs. Fehmada Nahid I.L.R. (1966) M.P. 492*

-Sections 517(i) and 520-Disposal of property on conclusion of inquiry or trial by Criminal Court-Order not appealable-Superior Court having supervisory powers can interfere with the subordinate Court's Order-Superior Court, for the purpose of section 520 of the Code, is one to which appeals generally lie-Sessions Judge can under section 520 modify or alter an order of the Magistrate 1st class passed under section 517 (i) not by entertaining the case as an appeal : *Shantaram Vs. State, I.L.R. (1960) M.P. 731 (D.B.)*

-Section 520- - Scope of-Petition to the High Court against order of lower Court-Maintainability : *Lala Har Bhagwandas Vs. Diwanchand, I.L.R. (1960) M.P. 367*

-Section 520 - Sessions Judge can modify or alter an order of the Magistrate 1st class passed under section 517 (i) not by entertaining -the case as an appeal : *Shantaram Vs. State* , *I.L.R. (1960) M.P. 731 (D.B.)*

-Section 520- - Superior Court, for the purpose of this section is one to which appeals generally lie-Superior Court having supervisory powers can interfere with the subordinate Court's order : *Shantaram Vs. State, I.L.R. (1960) M.P. 731 (D.B.)*

-Section 522(1)-Order not liable to be set aside by High Court in revision simply because accused is acquitted in appeal : *Ganeshram Vs. Savitri, I.L.R. (1973) M.P., 1122.*

-Section 522 (1)-Order passed separately-Order is only revisable : *Ganeshram Vs. Savitri, I.L.R. (1973) M.P., 1122 .*

-Section 522(1) and 423(1)-Order regarding restoration of possession passed in the order of conviction-Appellate Court can pass order concerning it in appeal against conviction-Order passed separately-Order is only revisable-Order not liable to be set aside by High Court in revision simply because accused is acquitted in appeal : *Ganeshram Vs. Savitri, I.L.R. (1973) M.P., 1122 .*

-Section 523-Does not exclude application to a property which is liable to confiscation-Empowers a person affected by seizure for release of property : *State of M.P. Vs. Narayan Singh, I.L.R. (1972) M.P. 782 .*

-Section 523-Power under Section 523 not limited by Section 190, Criminal Procedure Code-Sections 523, 516-A and 517-Refer to different stages in connection with release of property which has been seized-Excise Act, Central Provinces and Berar, 1915-Section 61-No bar to the exercise of powers under Section 523-Criminal Procedure Code-Section 5(2)-Makes Criminal Procedure Code applicable to offences for which provision not made in Special Acts dealing with these offences-Excise Act, Central Provinces and Berar, 1915-Sections 46 and 47-Provide for liability to confiscation and power to order confiscation-No provision in Excise Act authorising Magistrate to order disposal of seized property-Section 48(b)-Merely confers power to substitute money value for property which is liable to confiscation and is applicable where offence is sought to be compounded-Language not analogous to that of section 523 of Criminal Procedure Code-Word "Release" in section 48 (b) of the Excise Act-Refers to final release in lieu of payment of the value of the property-Section 48-Scope of -Criminal Procedure Code-Section 523-Does not exclude application to a property which is liable to confiscation-Empowers a person affected by seizure for release of property : *State of M.P. Vs. Narayan Singh, I.L.R. (1972) M.P. 782 .*

-Section 523-Permit for running bus in opposite party's name-Petitioner in management thereof-Due to monetary disputes petitioner took away bus from possession

of permit holders-Report to police-Bus seized from petitioner's possession-No criminal case filed-Application made by different persons for return of the bus-Matters to be considered in deciding the applications in such circumstances-Criminal Procedure Code-Section 517 and 523-Distinction between : *Mohammad Ismail Vs. Fehmada Nahid I.L.R. (1966) M.P. 492*

-Section 523 and 517-Distinction between : *Mohammad Ismail Vs. Fehmada Nahid I.L.R. (1966) M.P. 492*

- Section 523(5)-Order under-Does not conclude rights of the parties : *The State of Madhya Pradesh Vs. Rampratap, I.L.R. (1974) M.P. 878 (D.B.)*

- Section 525-Goods can be handed over to owner or person entitled with directions considered fit : *The State of Madhya Pradesh Vs. Rampratap, I.L.R. (1974) M.P. 878 (D.B.)*

- Section 525-Sale of perishable goods-Not imperative : *The State of Madhya Pradesh Vs. Rampratap, I.L.R. (1974) M.P. 878 (D.B.)*.

- Section 525-To be read with Section 523 of the Code : *The State of Madhya Pradesh Vs. Rampratap, I.L.R. (1974) M.P. 878 (D.B.)*.

-Section 535-Not confined to cases where no charge is framed-Applies to a case of omission to frame a charge of which accused may be convicted : *Hariprasad Vs. Nanoo Khan , I.L.R. (1971) M.P. 139. (D.B.)*

-Section 535-Provides for curing all irregularities provided prejudice not caused to accused : *Hariprasad Vs. Nanookhan, I.L.R. (1971) M.P. 139. (D.B.)*

- Section 537- Cures defect in the trial concluded by competent Court : *Sonelal Vs. State of M.P., I.L.R. (1973) M.P. 925. .*

- Section 537 - Does not include a trial conducted in a manner different from that prescribed by the Code : *Ghisulal Vs. State of M. P., I.L.R. (1977) M.P. 157*

- Section 537 - Instead of summary procedure, warrant procedure followed - Defect is curable - Essential Commodities Act - Section 12 - A - Empowers magistrate to try offence in regular manner instead of trying summarily - Food - Grains Dealers Licensing Order, Madhya Pradesh, 1965 - Definition of Dealer - Excludes agriculturist and persons not engaged in the business of purchase and sale of food grains - A rebuttable presumption can be drawn from storage of - Food Grains of 10 quintals or more is for purpose of sale : *Prem Sahu Vs. State of Madhya Pradesh, I.L.R. (1977) M.P. 712*

-Section 537(a)- Complaint not by competent authority-Irregularity cannot be cured under the section : *Loknath Mishra Vs. The State of M.P., I.L.R (1964) M.P.*

-Section 537 (b)-Expression “Misjoinder of charges”-Meaning of : *Lachhman Vs. State of M.P. I.L.R. (1966) M.P. 135 (D.B.)*

-Section 537(b)-The expression “Misjoinder of Charges”-Has wider meaning- Includes joinder of offences against same person and different persons jointly tried for one or more offences : *Lachhman Vs. State of M.P., I.L.R. (1966) M.P. 135 (D.B.) 978*

-Section 537(b), 233 and 239(d) - Breach of the requirements of Section 233- Fresh trial not necessary unless failure of justice shown-Section 537(b)-Expression “Misjoinder of charges”-Meaning of-Word “Charge” in-Meaning of-The Expression “Misjoinder of charges”- Has wider meaning -Includes joinder of offences against same person and different persons jointly tried for one or more offences-Joint trial - Circumstances in which it is justified : *Lachhman Vs. State of M.P., I.L.R. (1966) M.P. 135 (D.B.)*

-Section 540- - Magistrate, Power of, to examine a witness whose evidence necessary for ends of justice-Evidence Act, Section 21-Statement by accused immediately after incident-Admissibility- Railways Act-Subsidiary Rules framed thereunder-Subsidiary Rule 147 1(a)- “Supervision” in-Meaning of : *The State Vs. Darshansingh, I.L.R. (1961) M.P. 403 (D.B.)*

-Section 540 - -Circumstances in which Sessions Court can examine a witness as a Court witness : *Ramgopal Vs. State, I.L.R. (1959) M.P. 137 (D.B.)*

-Sections 540, 211 and 291-Accused not mentioning names of witnesses in the list submitted to the Committal Court -Accused submitting the names before Sessions Court -Court has power to summon them-Power of Court to be exercised looking to the circumstances of the case and importance of evidence –Practice - Duty of prosecution to place all evidence before Court-Power of Court to examine such evidence to find out truth-In serious offence reasonable opportunity to be given to accused to prove his case : *Chiman Singh Vs. The State of M.P., I.L.R. (1961) M.P. 748 (D.B.)*

-Section 549- - Circumstances when magistrate can refuse to hand over accused to military authorities : *Major Gopinathan, Military Medical Specialist, Military Hospital, Jabalpur Vs. The State of M.P., I.L.R. (1963) M.P. 157*

-Section 549, Rules framed thereunder- Rules 3 and 4-Scheme under the rules-Person subject to military law- Magistrate not to try unless moved by competent authority- Circumstances when magistrate can try when not moved by competent authority-A case governed by rules-Magistrate has to stay proceedings and deliver accused to competent military authorities-Army Act, Section 69-Word “charged” in - -Used in the sense of “accused” and not in the sense of “charge-sheeted”-Complaint regarding civil offence registered by Magistrate-Offence is triable by court-martial as offence deemed

to be offence under Army Act-Commanding Officer in pursuance of notice issued to him stating that accused is to be tried by court martial-Magistrate has no power to proceed with case-Proper procedure is to stay trial and hand over accused to military authorities with prescribed statement-Rule 5-Stay of proceedings obligatory if conditions fulfilled- Section 549- Circumstances when magistrate can refuse to hand over accused to military authorities : *Major Gopinathan Military Medical Specialist, Military Hospital, Jabalpur Vs. The State of Madhya Pradesh, I.L.R. (1963) M.P. 157*

-Section 549, Rules 3 and 4-Scheme under the rules - Person subject to military law-Magistrate not to try unless moved by competent authority - Circumstances when magistrate can try when not moved by competent authority-A case governed by rules-Magistrate has to stay proceedings and deliver accused to competent military authorities : *Major Gopinathan Military Medical Specialist, Military Hospital, Jabalpur Vs. The State of Madhya Pradesh, I.L.R. (1963) M.P. 157*

-Section 549, Rule 5-Stay of proceedings obligatory if conditions fulfilled : *Major Gopinathan Military Medical Specialist, Military Hospital, Jabalpur Vs. The State of Madhya Pradesh, I.L.R. (1963) M.P. 157*

-Section 561-A-Circumstances in which remarks against persons made can be justified and when they can be expunged : *The State of M.P. Vs. Mustaq Hussain Azad, I.L.R. (1966) M.P. 979 (D.B.)*

-Section 561-A-Does not confer power to alter the judgment or sentence : *State of M.P. Vs. Narain Datta, I.L.R. (1967) M.P. 822 (D.B.)*

- Section 561 - A - Merely saves inherent powers of High Court - Does not speak of powers regarding subordinate Court : *Administrator, Municipal Corporation, Bhopal Vs. Rafique Ahmad, I.L.R. (1976) M.P. 1076*

- Section 561 - A - Power has to be exercised for doing real and substantial justice : *Administrator, Municipal Corporation, Bhopal Vs. Rafique Ahmad, I.L.R. (1976) M.P. 1076*

- Section 561 - A - Subordinate Court can exercise inherent power in interest of justice - Power not to be exercised arbitrarily or capriciously : *Administrator, Municipal Corporation, Bhopal Vs. Rafique Ahmad, I.L.R. (1976) M.P. 1076*

-Section 561-A - Contain no provision for issue of injunction - Merely saves inherent powers of High Court - Does not speak of power regarding subordinate Courts - Subordinate Court can exercise inherent power in interest of justice - Power not to be exercised arbitrarily or capriciously - Power has to be exercised for doing real and substantial justice - No statutory bar to institute departmental enquiry for misconduct which is subject - matter of criminal charge : *Administrator, Municipal Corporation, Bhopal Vs. Rafique Ahmad, I.L.R. (1976) M.P. 1076*

- **Sections 561** – (A), 215, 271 (1), 338, 342-A, 343 and 435 - Sessions Judge passing order “I proceed to ignore the Charge” - Session Judge has no power under the Code (old) - Such order cannot be passed even under inherent powers of the Code (old) - Co-accused - When can be a competent witness - Co-accused not given pardon - Cannot be a competent witness against accused - Evidence Act - Section 30 - Statement of co-accused - When can be considered : *Chhotelal Vs. State of Madhya Pradesh I.L.R. (1982) M.P. 77 (D.B.)*

-**Sections 561-A** and 242 -Accused charged with offence under Sections 482, 486 I.P.C. and Trade Marks Act, Section 68(2) -Case triable as summons case but tried as Warrant case-Order of discharge passed because of absence of complainant on date of hearing—Order of discharge amounts to acquittal-Revision filed against the order though order appellable-Power of High Court to set aside order under Section 561- A : *The State of Madhya Pradesh Vs. Babulal Shukla, I.L.R. (1961) M.P. 765 (D.B.)*

-**Section 562 (1-A)**-Not applicable to offences punishable under Acts other than Penal Code or to offence under Penal Code punishable with more than two years imprisonment: *The State of M.P. Vs. Mustaq Hussain Azad I.L.R. (1966) M.P. 979 (D.B.)*

Criminal Procedure Code, 1973 (II of 1974)

- **Sections 2 (d), 155, 190 (1)(a), 190 (1) (b) and Explanation** - Police investigating a non-cognizable offence without sanction of Magistrate and lodging report of offence to Magistrate - Report would be ‘complaint’ and not ‘Police report’ - Procedure in a complaint case to be followed by Magistrate - Section 202 (2) - Magistrate following procedure of complaint case, committing case to Court of sessions as offence exclusively triable by Court of Sessions but without recording evidence of all witnesses on oath - Order of commitment violates provisions of section 202 (2) - Non-compliance with mandatory requirements of Section 202 (2) - Not merely an “irregularity” but an “illegality” - Not curable under section 465 - Words “irregularity” and “illegality” - Meaning of : *Bajji Vs. State, I.L.R. (1981) M.P.896*

- **Sections 2 (r), 167 (2), 170, 173 (5) and 439** - Bail grant of - Word ‘investigation’ - Meaning and interpretation of - The expression “police report” - Ingredients of - Expression “Sufficient evidence or reasonable grounds” in section 170 - Implications of - Police filing challan after mentioning therein that report of Chemical Examiner and Serologist and additional papers regarding accused’s plea of alibi shall be filed later on - Whether amounts to incomplete investigation - Papers referred to in Section 173 (5) - Whether form integral part of Police report - Whether accused entitled to bail at the expiry of 60 days from arrest : *Raghavendra Singh Hazari Vs. State of Madhya Pradesh, I.L.R. (1982) M.P. 186*

-Section 10(3)- Whether the Addl. Sessions Judge can refuse to hear an application made over to him; by the Sessions Judge in exercise of his power u/s. 10(3), Cr. P.C.- No - transfer of a Sessions trial also includes transfer of interlocutory application including the bail application filed before the Sessions Judge of said Sessions Division. *The District & Sessions Judge, Shajapur Vs. Chandrakant, I.L.R. (1998) M.P. 992*

– **Section 10(3)** – Power of Sessions Judge to transfer urgent application to Additional Sessions Judge/Assistant Sessions Judge/Chief Judicial Magistrate – When can be exercised – Purpose and object of – Issuance of general order by Sessions Judge interims of Section 10(3) is permissible and not illegal or without jurisdiction or in contravention of Section 10(3) : *Sesh Narayan Bajpai Vs. State of M.P., I.L.R. (1990) M.P. 475, (D.B.)*

– **Section 10(3)** – Expression “Court of Sessions” appearing in Sections 437, 438 and 439 of Criminal Procedure Code – Meaning of – Power of Sessions Judge to transfer urgent application to Additional Sessions Judge/Assistant Sessions Judge/Chief Judicial Magistrate – When can be exercised – Purpose and object of – Issuance of general order by Sessions Judge interims of Section 10(3) is permissible and not illegal or without jurisdiction or in contravention of Section 10(3) : *Sesh Narayan Bajpai Vs. State of M.P., I.L.R. (1990) M.P. 475, (D.B.)*

- Sections 10(3), 194 and 400 and section 14 of Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989- Reference- Where in the event of absence of the Sessions Judge an application for bail is heard and rejected by an Additional Sessions Judge, whether subsequent application for bail by the same accused should go before the same additional Sessions Judge if he is available or it should be heard by the sessions Judge himself-Yes-There is no law or any statutory rule making it obligatory that all subsequent bail applications should be placed before the same bench or judge who passed earlier order but it is only a rule of convenience based on judicial discipline developed by a long standing convention-Section 10(3)-Whether the Additional Sessions Judge can refuse to hear an application made over to him by the Sessions Judge in exercise of power u/s. 10(3), Cr. P. C.- No Transfer of a Sessions trial also includes transfer of interlocutory application including the bail application filed before the Sessions Judge of said sessions division : *The District & Sessions Judge, Shajapur Vs. Chandrakant, I.L.R. (1998) M.P. 992*

– **Sections 19(1)(a), 156(3), 190(1)(b) and 200** – Magistrate obtaining police report on complaint filed by complainant – Magistrate not examining complainant and his witnesses as required u/s 200 – Magistrate deemed to have acted on police report – Report not containing anything worth while – Cognizance of offence wrongly taken : *Smt. Hemlata Vs. Gyanchandra, I.L.R. (1989) M.P. 310*

–**Section 24(2), 3**–Appeal against Conviction and Sentence–Illegal possession of 50 grams contraband opium - Search, seizure and seal - Presence of accused is necessary when samples are intermeddled by the investigating officer : *Anand Bairagi Vs. State of M.P., I.L.R. (2004) M.P. 72*

–**Sections 24(8) and 301(2) and Constitution of India, Articles 226/227 and Penal Code, Indian (XLV of 1860) , Sections 302, 498-A, 304-B** – Dowry Death – Section 24(8), Cr.P.C. – Application under, for appointment of Special Public Prosecutor – Allowed by State Govt. on the recommendation of District Judge – Articles 226/227 – Writ Petition – Merely because the crime is heinous – No ground for appointment of a Special Public Prosecutor – Sections 24(8) and 301(2) – Only in exceptional cases and for reasons to be recorded the State Govt. can exercise its power appointment Special Public Prosecutor – Order does not show that the case is one of exceptional nature – Order quashed – Appointed Special Public Prosecutor permitted to assist the prosecution as envisaged under Section 301(2), Cr.P.C.: *Poonam Chand Jain Vs. State, I.L.R. (2001) M.P. 503*

–**Sections 26, 325 & 461(1)**–Madhya Pradesh Excise Act, 1915–Section 34(2)–Irregularities which vitiate proceedings–JMFC holding trial for offence punishable under Section 34 of M.P. Excise Act–Forwarding the case to CJM as minimum fine prescribed is Rs. 25,000/- –Judgment passed by ACJM–JMFC was well within jurisdiction to try as maximum punishment is 3 years–Proceeding covered by Section 325 and not vitiated: *Ramesh Vs. State of M.P., I.L.R. (2002) M.P. 1030*,

- **Section 27** - Excludes offences punishable with death or imprisonment for life from jurisdiction of ordinary Court – Makes them triable by Courts empowered under any other law in force : *The State of Madhya Pradesh Vs. Ramesh Nai, I.L.R. (1976) M.P. 386 (F.B.)*

- **Section 27** - Is a provision to the contrary contemplated by Section 67 of Bal Adhiniyam : *The State of Madhya Pradesh Vs. Ramesh Nai I.L.R. (1976) M.P. 386 (F.B.)*

–**Section 28**–Illiterate and coming from rural area–Cannot be construed to be either adequate or special reason to reduce minimum mandatory period of sentence : *State of Madhya Pradesh Vs. Balu, I.L.R. (2004) M.P. 1105 (SC) (D.B.)*

–**Section 28**–Sentence–Duty of the Court to award proper sentence having regard to the nature of offence and the manner in which it was executed–Long pendency of a matter by itself could not justify lesser sentence : *State Vs. Ghanshyam Singh, I.L.R. (2003) M.P. 1058 (SC) (D.B.)*

–**Section 28 and Penal Code, Indian (XLV of 1860)**–Section 148, 149, 300, Explanation 302, 304 part I, 307–Sudden and free fight–Deceased came to the spot

hearing alarm and received gun shot injuries—Act of accused is relatable to Section 304 Part-I and not Section 302 I.P.C.—Sentence—Duty of the Court to award proper sentence having regard to the nature of offence and the manner in which it was executed—Long pendency of a matter by itself could not justify lesser sentence : *State of M.P. Vs. Ghanshyam Singh, I.L.R. (2003) M.P. 1058 (D.B.) (SC)*

- **Sections 28, 320(3), 397, 401 and Penal Code Indian, 1860, Sections 326, 452**—Conviction—Question of Sentence—Application for compromise filed but rejected by appellate Court—Facts of compromise can be taken into account in determining quantum of sentence even in non-compoundable offence—Sentence modified to the period already undergone : *Bhandas Vs. The State of M.P., I.L.R. (2003) M.P. 725*

- **Sections 28, 374(2), and Penal Code Indian, 1860**—Section 376—Rape—Prosecutrix minor—To fold defence—Animosity and also consent—Being self-contradictory cannot be accepted—Illiterate and coming from rural area—Cannot be construed to be either adequate or special reason to reduce minimum mandatory period of sentence—Sympathy shown wholly misconceived—Likely to send wrong signals—Order of High Court set aside—Sentence awarded by Trial Court restored : *State of Madhya Pradesh Vs. Balu, I.L.R. (2004) M.P. 1105 (SC) (D.B.)*

- **Sections 34, 120-B, 420**—No allegation in the complaint that the appellants or any one on their behalf ever met the complainant or asked it to invest any money or to do anything for improvement of the bottling plant—Appellant came in picture much later—Even if allegations made in complaint are accepted to be absolutely true and correct appellant cannot be said to have committed any offence of cheating : *Ajay Mitra Vs. State of M.P., I.L.R. (2003) M.P. 1 (SC) (F.B.)*

- **Section 41**—It is the duty of the Police to take care of the persons taken into custody—Police should not lose interest in the welfare and safety of the detainee : *Vikram Bahadur Singh Vs. District Magistrate, Jabalpur, I.L.R. (1992) M.P. 298 (D.B.)*

- **Sections 41, 109, 111, 176**—Production of persons arrested under preventive provisions before City Magistrate—Detenues directed to be produced the next day as the Magistrate was busy in meeting—Procedure adopted in improper—Magistrate cannot abdicate his duty on ground of being busy in meeting : *Vikram Bahadur Singh Vs. District Magistrate, Jabalpur, I.L.R. (1992) M.P. 298 (D.B.)*

- **Sections 41, 109, 111 and 176**—Constitution of India – Articles 14, 19, 20, 21, 22 and 226 – Writ Petition—Habeas Corpus – Custodial death – Production of persons arrested under preventive provisions before City Magistrate – Detenues directed to be produced the next day as the Magistrate was busy in meeting – Procedure adopted is improper – Magistrate cannot abdicate his duty on ground of being busy in meeting – Provisions of Chapter VIII of the Code are preventive in nature and not punitive – Had

the authorities been little careful the incident of custodial death could be averted – Judicial Magistrates are more perfect in following the law in this respect – Legislators expected to consider vesting of such powers to judicial Magistrates as well – It is the duty of the Police to take care of the persons taken into custody – Police should not lose interest in the welfare and safety of the detainee – Custodial death – Dead body exhumed and further autopsy carried out – Two concurrent post mortem report confirming suicide by deceased – In absence of any other evidence inference of physical torture in custody cannot be drawn – Compensation – Relatives of deceased received Rs. 4,000/– No further compensation deemed necessary : *Vikram Bahadur Singh Vs. District Magistrate, Jabalpur, I.L.R. (1992) M.P. 298 (D.B.)*

- **Sections 72, 438**–Procedure to be followed–Order of anticipatory bail passed after issuance of arrest warrant–Police officer to produce the accused before Magistrate who will deal with accused as per order of anticipatory bail: *Nirbhay Singh Vs. State of M.P., I.L.R. (1994) M.P. 294 (D.B.)*

-**Sections 82, 83, 299, 438 and Penal Code Indian, 1860, Sections 307, 394**–Alleged offence–Accused not attending Court after grant of anticipatory bail–Issue of non bailable warrant of arrest–Failure to execute and to secure attendance of accused by police officer–Magistrate has a duty to proceed to declare such person as proclaimed offender and police officer has to approach the Court for such a declaration as provided in Regulation 789 of M. P. Police Regulations–In a fit case Magistrate also has to proceed under Section 299 of the code against the police officer executing such warrant of arrest–Magistrate not expected to fail in taking prompt action and allow such matter to get prolonged: *Ramesh Chand Gupta Vs. State, I.L.R. (2002) M.P.168,*

- **Sections 91, 482** – Power of superintendence – Prevention of Corruption Act, 1988 – Sections 13(1)(e) and 13(2) – Case of acquiring assets disproportionate to known sources of income – Prayer for calling report of Lokayukt in an earlier investigation against petitioner on similar allegation – Lokayukt & Up-lokayukt Act – Sections 12,13 and 14 – Bar on calling any evidence collected by Lokayukt includes the report of the Lokayukt as it is necessarily based on comments on evidence collected by it through various agencies – Unless the Lokayukt himself makes the report published Courts of law will not call for that report – Trial Court justified in rejecting petitioner’s prayer : *Khageshwar Prasad Vs. State, I.L.R. (2001) M.P. 1097*

- **Section 91** – A fair and reasonable opportunity has to be given to accused for cross examining prosecution witness – Court rejected prayer made by accused for calling such document enabling him to cross examine prosecution witness effectively – Without proper enquiry Court is not expected to reject prayer of such an accused without mentioning sufficient and reasonable grounds : *S.K. Singhal Vs. State of M.P. Through P.S. Industry, I.L.R. (1996) MP 555*

- **Section 93 and Constitution of India, Article 20(3)** – Search of the premises of the accused – Accused not compelled to be a party to search – Search not violative of Constitution : *Rajmal Vs. Manmal, I.L.R.(1990) M.P. 717*

- **Section 93(1) and Sections 397/401** - Order for general search- Section 93(1) (c) authorizes the Court to order general search or inspection if it serves the purposes of any enquiry or trial or other proceeding under the Code-Does not amount to compulsion to give evidence and is not violative of Article 20(3) of the Constitution- Constitution of India- Article 20(3)- Testimonial compulsion- Order passed u/s. 93(1) (C) of the Criminal Procedure Code- Order for general search in order to secure the document in question- Not violative of Article 20(3) of Constitution of India : *Anil Kumar Vs. Thakur Indrajeet Singh, I.L.R. (1998) M.P. 431*

- **Section 95** - Notification not stating the grounds of Government's opinion declaring certain publications forfeited - Notification is invalid and liable to be quashed - Courts not entitled to consider the justification offered by State Government in its return or at the hearing of the case for deciding the validity of the notification : *Uday Pratap Singh Chandel Vs State, I.L.R. (1982) M.P. 573, (F.B.)*

- **Section 95** - Notification issued thereunder - Express mention of 'statement of the grounds of Government's opinion' essential - Notification not stating the grounds of Government's opinion declaring certain publications forfeited - Notification is invalid and liable to be quashed - Courts not entitled to consider the justification offered by State Government in its return or at the hearing of the case for deciding the validity of the notification : *Uday Pratap Singh Chandel Vs State, I.L.R. (1982) M.P. 573, (F.B.)*

-**Sections 107, 108, 111 and 482**–Petition invoking inherent powers of High Court–Proceedings before S.D.M.–Magistrate has to apply his mind to the information received and on being satisfied pass an order in writing –The process cannot be reduced to a mechanical one–Cyclostyled/Proforma and filling in the blanks–It was never the intention of the legislature to provide proforma orders to be passed under section 111, Criminal Procedure Code–Proceedings quashed.: *Babulal Vs. State, I.L.R. (1992) M.P. 967*

-**Sections 107, 111, 116 and 151**– Constitution of India–Article 226–*Habeas Corpus*–Detenue arrested under Section 151, Cr. P. C.–Brought before the Magistrate who passed order under Section 116 requiring bail bond to be furnished without any order under Sections 107 and 111 of the Code–Procedure adopted by Magistrate bad in law as also the detention order : *Centre of Indian Trade Unions Through Secy. Distt. Committee C.I.T.U., Gwalior Vs. State, I.L.R. (1992) M.P. 539 (D.B.)*

- **Sections 109, 41, 111 and 176**–Constitution of India–Articles 14, 19, 20, 21, 22 and 226–Writ Petition–*Habeas Corpus*–Custodial death–Production of persons arrested

under preventive provisions before City Magistrate–Detenues directed to be produced the next day as the Magistrate was busy in meeting–Procedure adopted is improper–Magistrate cannot abdicate his duty on ground of being busy in meeting–Provisions of Chapter VIII of the Code are preventive in nature and not punitive–Had the authorities been little careful the incident of custodial death could be averted–Judicial Magistrates are more perfect in following the law in this respect–Legislators expected to consider vesting of such powers to judicial Magistrates as well–It is the duty of the Police to take care of the persons taken into custody–Police should not lose interest in the welfare and safety of the detainee–Custodial death–Dead body exhumed and further autopsy carried out–Two concurrent post mortem report confirming suicide by deceased–In absence of any other evidence inference of physical torture in custody cannot be drawn–Compensation–Relatives of deceased received Rs. 4,000/–No further compensation deemed necessary. : *Vikram Bahadur Singh Vs. District Magistrate, Jabalpur, I.L.R. (1992) M.P. 298 (D.B.)*

–**Sections 109 and 111**–Provisions of Chapter VIII of the Code are preventive in nature and not punitive–Had the authorities been little careful the incident of custodial death could be averted–Judicial Magistrates are more perfect in following the law in this respect–Legislature expected to consider vesting of such powers to judicial Magistrates as well: *Vikram Bahadur Singh Vs. District Magistrate, Jabalpur, I.L.R. (1992) M.P. 298 (D.B.)*

–**Sections 115-J, 234-B and 234-C**–Would be applicable–Assessee liable to pay simple for deferment of advance tax–Reference answered in forum of the Revenue : *Itarsi Oil and Flours Pvt. Ltd., Raipur Vs. Commissioner of Income Tax, Jabalpur, I.L.R. (2000) M.P. 900, (F.B.)*

–**Sections 120-B, 34, 420**–No allegation in the complaint that the appellants or any one on their behalf ever met the complainant or asked it to invest any money or to do anything for improvement of the bottling plant–Appellant came in picture much later–Even if allegations made in complaint are accepted to be absolutely true and correct appellant cannot be said to have committed any offence of cheating : *Ajay Mitra Vs. State of M.P., I.L.R. (2003) M.P. 1 (SC) (F.B.)*

- **Sections 120-B, 197, 500 and 501**–Penal Code Indian–Petitioner is an Officer of Union of India–Taking cognizance without prior sanction of Central Govt.–Improper–Proceedings quashed in so far as it relates to petitioner : *Dr. Kalyan Chakravarthy Vs. D.N. Agrawal, I.L.R. (2004) M.P. 707*

–**Sections 120-B, 302**–Criminal Conspiracy–Circumstance of alleged public humiliation of co-accused by deceased–Even if found proved would not lead to inference of guilt–Co-accused entitled to benefit of doubt–Acquitted : *Purushottam Vs. State, I.L.R. (2004) M.P. 393 (D.B.)*

- **Section 125** - Proceedings are of quasi Civil and quasi Criminal nature - Service by post is permissible : *Farida Vs. Nisarali, I.L.R. (1986) M.P. 600*

- **Section 125** – Ability of wife to maintain herself – Not to be Judged in the light of her capacity to make a living : *Rewati Bai Vs. Jageshwar, I.L.R. (1990) M.P. 530,*

- **Section 125** – Application for maintenance by wife – Award of interim maintenance – Revisable – As it affects the financial position of both the parties : *Madhu @ Sanjeev Kumar Vs. Smt. Lalita Bai, I.L.R. (2001) M.P. 905*

-**Section 125**–Talaq–Plea of divorce taken in written statement is no proof of divorce–Husband is required to prove that he has given divorce to his wife in accordance with Mohammedan Law–Husband shall continue to remain liable until obligation comes to an end in accordance with law : *Wali Mohd. Vs. batul Bi, I.L.R. (2004) M.P. 37 (F.B.)*

- **Section 125 and Civil Procedure Code (V of 1908)**–**Section 115** - Family Courts Act of 1984, Sections 7,8,10,18 and 19–Application for maintenance under Section 125 Cr.P.C.–Power of J.M.F.C. exercised by Family Court while deciding such application–Revision arising out of such application flows from proceedings under the Cr.P.C.–Should be registered as Criminal Revision : *Rajesh Shukla Vs. Smt. Meena, I.L.R. (2005) M.P. 686 (F.B.)*

-**Sections 125** – Maintenance – Application for maintenance by wife and three children – Allegation of desertion by husband – Grant of maintenance by Magistrate – Revision Court reduced the maintenance – Husband engaged in family business and earning 16,500/- per month – Held – The husband has capacity to earn and liable to maintain his wife and children – Revisional court erred in reducing the amount of maintenance – Fixation of Rs. 500/- for wife and Rs. 300/- for each of the children fixed by Magistrate not excessive – Revision allowed : *Smt. Kamla Bai Vs. Ghanshyam Agarwal, I.L.R. (1997) M.P. 598*

-**Section 125**-Maintenance-Respondent mother an illiterate lady having no source of income except Rs. 100 per month from rented premises-Children residing with mother not in a position to maintain her-Applicant who is son having monthly income of Rs. 7200/- per month-Merely because some litigation going on between applicant and respondent not a ground to refuse maintenance-Award of maintenance at the rate of Rs. 400/- per month to respondent by Court below not illegal-Application dismissed : *Bharatlal Awadhiya Vs. Smt. Bhanumati Awadhiya; I.L.R.(1994) M.P. 516*

- **Section 125 and Muslim Women (Protection of Rights on Divorce) Act 1986** – Section 3, 4 and 5 - Section 125 Cr.P.C. is a secular provisions appearing in the Criminal Procedure Code, 1973 – If a divorced Muslim woman who has not remarried,

is unable to maintain herself and desirous of obtaining maintenance for post iddat period her remedy is that mentioned in section 4 of the Muslim Woman Act – All applications by divorced Muslim women under section 125 Cr.P.C. pending at the commencement of the Muslim Women Act would be governed by the provision of Muslim women Act : *Abdul Rashid (Dr.) Vs. Mst. Farida W/o Abdul Rashid, I.L.R. (1993) M.P. 673*

– **Section 125, Hindu Marriage Act, 1955**–Sections 24, 25 and Family Courts Act (LXVI of 1984)–(as amended), Sections 19(1), 19(4), 19(5)–Matrimonial case–Order of maintenance passed by Family Court under Section 125 Cr. P. C.–One of Civil nature–Revision alone could be maintainable–Neither criminal revision nor civil revision–Only a Revision Petition simpliciter–To be heard by Single Bench of the High Court–No limitation prescribed–Limitation would be same as for Civil Revision under Section 115 C.P.C.–Hindu Marriage Act, Sections 24 and 25–Order of interim maintenance–Interlocutory order–No appeal or revision provided–Remedy available to aggrieved party could be only under Article 227 of the Constitution : *Aruna Choudhary Vs. Sudhakar Choudhary, I.L.R. (2004) M.P. 834 (D.B.)*

– **Section 125** – Object and purpose of – The phrase ‘unable to maintain herself’ used in this section – Connotation of – Ability of wife to maintain herself – Not to be Judged in the light of her capacity to make a living : *Rewati Bai Vs. Jageshwar, I.L.R. (1990) M.P. 530,*

- **Section 125** - Step mother not entitled to claim maintenance against her ‘step son’: *Rewalal Vs. Smt. Kamlabai, I.L.R. (1984) M.P. 738*

– **Section 125** – Maintenance – Divorced – Wife can claim – Separate living – Divorce – Is not enough to hold that parties are living separately by mutual consent: *Arjunlal Thawait Vs. Mst. Shashikala, I.L.R. (1991) M.P. 492*

- **Sections 125, 126 (2) and 397** - Revisional Jurisdiction - Exercise of - Remedy of appeal available - Revision not entertainable - Section 125 - Proceedings are of quasi Civil and quasi Criminal nature - Service by post is permissible - Section 126 (2) - Exparte order thereunder - Remedy - Party not availing of such remedy - Not entitled to invoke revisional Jurisdiction : *Farida Vs. Nisarali I.L.R. (1986) M.P. 600*

- **Section 125 and 127** - Divorce - Payment of dower and other dues by husband - Right of wife to receive maintenance : *SK. Hamid Khan Vs Mst. Jummi Bi, I.L.R. (1978) M.P. 595*

– **Sections 125, 127 and Contract Act, Indian 1956, Section 23**–Children’s right to maintenance–Statutory right–Cannot be bartered or negated by the father by setting up an agreement to the contrary–Agreement whereby right of children to maintenance was relinquished cannot be given effect to : *Nizamul Haq Vs. Pholl Begum, I.L.R. (2005) M.P. 1099*

- **Sections 125, 127, 295 and 482 and Constitution of India, Article 141, Muslim Women (Protection of Rights on Divorce) Act, 1986 Sections 3, 4 and 5**—Precedent—Decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding—Interpretation of statute—Cardinal principle—Every statute is prima facie prospective unless expressly or by necessary implication made to have retrospective operation—More so when object is to affect vesting rights or to impose new burden or to impair existing obligation—Right to get maintenance from her husband is a vested right of a woman in any religion—No provision in the Act of 1986 so as to give it retrospective operation—Substantive law relating to vested rights—Such law are normally treated as prospective—Provision neither retrospective in operation nor have the effect of nullifying the order already made under Section 125 or 127 Cr.P.C.—Talaq—Plea of divorce taken in written statement is no proof of divorce—Husband is required to prove that he has given divorce to his wife in accordance with Mohammedan Law—Husband shall continue to remain liable until obligation comes to an end in accordance with law : *Wali Mohd. Vs. Batul Bi, I.L.R. (2004) M.P. 37 (F.B.)*

-**Sections 125 to 128**—Exercise of option—In absence of option envisaged Sections 125 to 128, Cr. P.C. would not be applicable : *Julekha Bi Vs. Mohd. Fazal, I.L.R. (2000) M.P. 631*

- **Section 125 and 397** - Joint award of maintenance to wife and her children - Such irregularity can be caused by apportionment of the amount under revisional jurisdiction : *Smt. Radhamani Vs. Sonu, I.L.R. (1985) M.P. 443.*

- **Section 125 and 397** - Maintenance - Tyranny of mother-in-law over daughter-in-law—Amounts to ‘cruelty’ entitling wife to live separately from her husband - Joint award of maintenance to wife and her children - Such irregularity can be caused by apportionment of the amount under revisional jurisdiction - Oral evidence in maintenance cases - Appreciation of - Interference by revisional Court in appreciation of evidence by the trial court - when can be made : *Smt. Radhamani Vs. Sonu, I.L.R. (1985) M.P. 443,*

-**Sections 125, 397, 401**—Application for maintenance—Plea of wife as to marriage with petitioner and a son having born to them proved from entry of nomination in husbands service record—Husband not disputing fact of marriage but stated he turned her out because of her immoral character—Facts proved that she is wife of non-applicant—Maintenance granted : *Smt. Rambai Choudhary Vs. Bhagwandeem Choudhary, I.L.R. (2002) M.P. 160.*

- **Sections 125, 397, 401 and Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 2(a)**—‘Divorced Women’—Application for grant of maintenance by muslim women—Objection by husband as to maintainability on ground of divorce—

Obligatory on the part of husband to frame “divorce in accordance with Muslim Law” – No divorce is duly effected if it is in violation of the injunction of the Quoran – Prior to pronouncement of divorce no reconciliation had taken place as mandated by the Quoran for a valid divorce – Trial Court committed error in accepting the factum of valid divorce – Order of revisional court fair and proper – No interference called for : *Mohd. Idris Vs. Smt. Nigar Sultana, I.L.R. (2004) M.P. 698*

– **Sections 125, 397 and 482** – Inherent powers of High Court – Revisional Court quashing the order of maintenance – Husband contracted Second marriage – Total repudiation of the obligations of marriage – Finding based on total misconception of Law – Liable to be interfered with – Legal connotation of ‘desertion’ has not been taken into account by the Revisional Court – Revisional order set aside. : *Ganga Bai Vs. Shriram, I.L.R. (1992) M.P. 964.*

Sections 125, 397 and 482 – Petition against revisional order – Application for maintenance – Marriage with petitioner established – Objection on ground of legality of marriage – Cannot be allowed to stretch as to defeat the very purpose of law – Question already decided by Court below – Invoking power of Superintendent none of the objects envisaged in Section 482 could be achieved – No case for interference: *Manohar Soni Vs. Kamla Bai; I.L.R. (1992) M.P. 962*

– **Section 125, 482** – Inherent power of Superintendence of High Court – Section 125 – Application for maintenance by wife - Award of interim maintenance – Revisable – As it affects the financial position of both the parties – Hindu Marriage Act, 1955 – Section 9 – Suit for restitution of conjugal rights decreed – Question as to which of the parties is not complying with the decree – Can only be decided finally by the Trial Court – No case for interference in interim award of maintenance on ground of decree under Section 9 of Hindu Marriage Act : *Madhu @ Sanjeev Kumar Vs. Smt. Lalita Bai, I.L.R. (2001) M.P. 905*

– **Sections 125 and 482** - Application under made by petitioner wife after 12 years after the alleged refusal to maintain by husband - Inordinate delay in filing the application - Without there being any cogent reason or explanation the Magistrate would be justified in dismissing the application – Besides the long delay it has been found by the Courts below that wife had no justification for living separately - She had sufficient means to maintain herself - Discretion exercised by Courts below cannot be termed as arbitrary or manifestly unjust: *Smt. Kuntibai Vs. Alakhram, I.L.R. (1999) M.P. 516*

– **Section 125 (1) and (3)** – The word ‘Means’ used in Sub-Section (1) – Connotation of – It includes capacity to earn – Non-compliance of order of maintenance by husband – Liability of husband to imprisonment – Prior issue of distress warrant not necessary – Husband healthy and able bodied persons – Presumption about his capacity to earn : *Durga Singh Vs. Prembai, I.L.R. (1990) M.P. 411 (D.B.)*

-Section 125(1) (b)-Word 'his' used in this section includes both 'male' and 'female'- Claim of maintenance by minor children from widowed mother-Deceased father-An employee of M.P.E.B.-Applicant must be receiving family pension-Liable to pay maintenance for minor child-Order of both the Courts below proper and maintained : *Madhuri Bai Vs. Minor Surendra Kumar, I.L.R. (2000) M.P. 289*

- Section 125(2) – Date of Order of Maintenance – Meaning of – Date of Order means the date of order of Magistrate and not of Revisional Court: *Smt. Krishna Jain Vs. Dharamraj, I.L.R. (1991) M.P. 121 (F.B.)*

- Section 125 (2) – Court can allow maintenance from the date of order or date of application – Reasons to be recorded in both situations – Absence of reasons does not automatically make the maintenance payable from the date of order – Date of order of maintenance – Meaning of – Date of order means the date or order of Magistrate and not or Revisional Court: *Smt. Krishna Jain Vs. Dharamraj, I.L.R. (1991) M.P. 121 (F.B.)*

- Section 125 (3) – Non-compliance of order of maintenance by husband – Liability of husband to imprisonment – Prior issue of distress warrant not necessary : *Durga Singh Vs. Prembai, I.L.R. (1990) M.P. 411, (D.B.)*

- Section 125 (3) - Recovery of arrears of maintenance against husband - Issue of distress warrant at first not mandatory - Court can sentence husband to jail for default of payment of arrears of maintenance: *Bhure Vs. Gomatibai, I.L.R (1981) M.P. 1073,*

-Sections 125(3), 125(4), 397, 401-Revision- Application for maintenance-Recovery of amount falling due during recovery proceedings–Applicant not required to file application for recovery of amount every time it is falling due–Disqualification is found baseless the court case order recovery of amounts that has fallen due in the cause investigation–Stay of recovery of maintenance pending enquiry into the objection as to adultery–Provision disentitles only the wife and not the children for getting maintenance : *Nanhi Bai Vs. Netram, I.L.R. (2003) M.P. 839(D.B.)*

- Section 126 (2) - Exparte order thereunder - Remedy - Party not availing of such remedy - Not entitled to invoke revisional jurisdiction : *Farida Vs. Nisarali I.L.R. (1986) M.P. 600*

-Sections 133, 144, Constitution of India, Article 21–Public Nuisance–Air and water pollution by discharge of Industrial effluents–Right to live with human dignity becomes illusory in absence of human and healthy environment–Notice by Sub-Divisional Magistrate to close the Industrial units–Air (Prevention and Control of Pollution) Act, 1981 – Sections 18 , 20 and 22 - A and Water (Prevention and Control of Pollution) Act, 1974, Sections 30, 32, 33– Characteristically special enactments–Relate to prevention and control of pollution and also provide for penal consequences in case of breach of

statutory provisions—Fields of operation are different—Provisions of Section 133 Criminal Procedure Code, can be culled in aid to remove public nuisance caused by effluent of discharge and air discharge causing hardship to general public—High Court not justified in holding that there was any implied repeal of Section 133, Criminal Procedure Code by the Special enactments—Implied repeal—Can be inferred when provisions of two Acts are repugnant and cannot stand together : *State of M.P. Vs. Kedia Leather And Liquor Ltd.*, I.L.R. (2003) M.P. 1051 (SC) (D.B.)

– **Section 144** – Urgent cases of Nuisance or apprehended danger – Magistrate before passing an order under section 144 of Criminal Procedure Code should either make an enquiry or should have personal knowledge of facts or should have a report which prima facie expects to be correct, : *Nandkishore Tiwari Vs. Collector-Cum-District Magistrate*, I.L.R. (1993) M.P. 378 (D.B.)

– **Section 144** – Public Nuisance – Order restraining private operators to operate their buses from open land adjoining to National Highway – Order passed without discussing any fact of urgency – Magistrate should have given opportunity of hearing to Petitioner – Order passed on wrong assumption legal provisions – Order quashed. : *Nandkishore Tiwari Vs. Collector-Cum-District Magistrate*, I.L.R. (1993) M.P. 378 (D.B.)

– **Section 145** – Scope of the section – Mere pendency of Civil Litigation does not oust Magistrate's Jurisdiction – No question of breach of peace if final order u/s 145 (6)(a) is passed or there is subsisting order of temporary injunction : *Mahant Ramratan Das Vs. Mahant Narayandas*, I.L.R. (1988) M.P. 579

- **Section 145** - Magistrate passing preliminary order and ultimately final order directing delivery of possession of disputed lands to one of the parties - Sessions Judge in revision directing S. D. M. not to proceed further with the case and to withdraw attachment in case he finds no longer likelihood of breach of peace - Validity of : *Aram Singh Vs. Smt. Hansia Bai*, I.L.R. (1981) M.P. 1089

- **Section 145** - Existence of likelihood of breach of peace - Magistrate passing preliminary order and ultimately final order directing deliver of possession of disputed lands to one of the parties - Sessions Judge in revision directing S. D. M. not to proceed further with the case to withdraw attachment in case he finds no longer likelihood of breach of peace - Validity of : *Aram Singh Vs. Smt. Hansia Bai*, I.L.R. (1981) M.P. 1089,

- **Section 145** - Property in dispute attached - Subsequently proceedings dropped as apprehension of breach of peace ceased to exist - Proper order to be passed by the Magistrate with regard to possession of disputed property indicated : *Pannalal Vs. Deviram*, I.L.R. (1981) M.P. 524,

-Sections 145, 146 and Land Revenue Code, M.P. (XX of 1959), Sections 2(4), 168 and 257(k)—A lessee under Section 168(2) of the Code is not a tenant as defined under section 2(y) of the Code, but a lessee having no statutory right of occupancy tenant—Section 257(k)—Excludes jurisdiction of Civil Court in matter of ejection of a lessee of a Bhumiswami—Section 145(6)—Expression ‘until evicted therefrom in due course of law’ is not confined to the eviction order by a Civil Court—Order of eviction passed by Board of Revenue is an order in due course of law—Sections 145 and 146, Cr.P.C.—Eviction of lessee ordered by the Revenue Authorities under Section 168 (4) MPLR Code & confirmed by the Board of Revenue—Possession handed over to Deity/ Sarvarakar in execution proceeding—Subsequent proceeding under section 145, Cr. P.C. at the instance of lessee and appointment of receiver under section 146, Cr.P.C. by S.D.M.—Not proper and abuse of process of law—Proceeding quashed. : *Hariram Singh Vs. Manohar Rao; I.L.R. (1992) M.P. 55*

—Sections 145, 146, 482—Dispute as to immoveable property—Attachment—Restoration of possession on termination of proceeding—Possession of disputed land restored to petitioner in execution of decree passed in Civil suit—Proceedings initiated by S.D.M. restoring possession to respondent—Grossly improper, unjust and contrary to facts— Order impugned quashed—Restoration of possession to petitioner directed : *Ramratan Vs. Lalbihari, I.L.R. (2004) M.P. 808*

—Section 145(6)—Expression ‘until evicted therefrom in due course of law’ is not confined to the eviction order by a Civil Court—Order of eviction passed by Board of Revenue is an order in due course of law : *Hariram Singh Vs. Manohar Rao, I.L.R. (1992) M.P. 55*

—Sections 151, 107, 111 and 116—Detenue arrested under Section 151, Cr.P.C.—Brought before the Magistrate who passed order under Section 116 requiring bail bond to be furnished without any order under Sections 107 and 111 of the Code—Procedure adopted by Magistrate bad in law as also the detention order : *Centre of Indian Trade Unions Through Secy. Distt. Committee C.I.T.U. Gwalior Vs. State, I.L.R. (1992) M.P. 539 (D.B.)*

—Sections 151, 107, 111 and 116—Constitution of India—Article 226—Habeas Corpus—Detenue arrested under Section 151, Cr. P. C.—Brought before the Magistrate who passed order under Section 116 requiring bail bond to be furnished without any order under Sections 107 and 111 of the Code—Procedure adopted by Magistrate bad in law as also the detention order. *Centre of Indian Trade Unions Through Secy. Distt. Committee C.I.T.U., Gwalior Vs. State, I.L.R. (1992) M.P. 539 (D.B.)*

- Section 154 - Appellant accused filing application and affidavit of prosecutrix stating that report against the accused was lodged under duress - Effect and

value of - Recent trend in this respect affecting dispensation of justice - Deserves to be curbed : *Ganesh Vs. State of Madhya Pradesh, I.L.R. (1985) M.P.114*

-Section 154 – FIR cannot be used as substantive evidence or for corroborating statement of third party - Can be used either to corroborate or to contradict its maker : *State of M.P. Vs. Surbhan, I.L.R. (1996) M.P. 47 (D.B.)*

- Section 154 - F. I. R. -Delay in lodging in Rape Cases - Delay explained - F. I. R. relied on : *Ganesh Vs. State of Madhya Pradesh, I.L.R. (1985) M.P.114,*

-Sections 154 – FIR – It is no doubt that the copy of FIR was received by the concerned magistrate on 10th August, 1984 but that by itself could not be a circumstance to hold that the FIR was ante dated and was in fact not lodged on 7th August 1984 : *Madru Singh Vs. State of M.P., I.L.R. (1997) M.P. 288 (SC) (F.B.)*

– Section 154 – First Information Report – On disclosing commission of cognizable offence, police should register a case and investigate the same in accordance with law: *Abdul Ghaffar S/O Jahangir Vs. State of M.P., I.L.R. (1993) M.P. 434 (D.B.)*

– Section 154 and Evidence Act, Indian, 1872 – Section 118 – Child witness alleged to have witnessed the incident and disclosing to his brother – F.I.R. lodged by his brother contains omni bus allegations and does not disclose weapons used – Child witness not disclosing details to his brother but giving minute details in evidence – Possibility of tutoring not ruled out – Witness unreliable. : *Kalusingh Vs. State of M.P., I.L.R. (1993) M.P. 242 (D.B.)*

–Section 154–Delay in FIR–Father of victim went out of station–On coming back he was told about the incident and he decided first to trace the accused and take him to police station–Delay in such process–Not fatal : *State of Chhattisgarh Vs. Derha, I.L.R. (2004) M.P. 725.(SC) (D.B.)*

–Section 154 and Penal Code Indian 1860, Section 376(2)–Delay in FIR–Father of victim went out of station–On coming back he was told about the incident and he decided first to trace the accused and take him to police station–Delay in such process–Not fatal–Fact of rape proved by medical evidence–Mere fact that in reply to a suggestion doctor replied that such injuries could be caused by fall on a hard and blunt object would not suffice to reject evidence of victim–High Court erred in taking different view and acquit accused–Acquittal set aside–Accused convicted and sentenced to RI for seven years : *State Of Chhattisgarh Vs. Derha, I.L.R. (2004) M.P. 725 (SC) (D.B.)*

–Sections 154, 156, 200, 482 and Penal Code, Indian, 1860, Sections 34, 120-B, 420–Cheating–By false representations–Complaint laid before the Magistrate

made over to the police for investigation—Police officer's power to investigate and quashing of FIR—FIR not disclosing commission of a cognizable offence—Surely not within the province of police to investigate—Investigation can be quashed in exercise of powers under Article 226 of the Constitution or Section 482 Cr.P.C.—Cheating—Guilty intention is essential ingredient of the offence of cheating—Complainant claims to have spent considerable amount of money in improvement of bottling plant—No allegation in the complaint that the appellants or any one on their behalf ever met the complainant or asked it to invest any money or to do anything for improvement of the bottling plant—Appellant came in picture much later—Even if allegations made in complaint are accepted to be absolutely true and correct appellant cannot be said to have committed any offence of cheating—Order of High Court set aside and complaint against appellants quashed : *Ajay Mitra Vs. State of M.P., I.L.R. (2003) M.P. 1 (SC) (F.B.)*

- **Sections 154, 157, 374 (2), Evidence Act, Indian, 1872, Section 3 and Penal Code, Indian (XLV of 1860)—Section 302—Murder—Eye witnesses—Mere fact that witnesses are consistent in what they say is not sure guarantee of their truthfulness—High Court—Final Court of fact—Necessary for the High Court to scrutinize the evidence in some details—Accused allegedly put the gun on back of the deceased and fired—Sat on his body and strangled him to death—Eye witnesses no other than forest officers—Seeing ghastly crime started running and did not stop or inform villagers—No blackening or charring of skin around the wound nor any mark of injury on neck of deceased found by the doctor—Conduct of witness highly unnatural, doubtful and not believable—Serious doubt about their presence at the time of occurrence—Delay in sending information to the Magistrate—No explanation—Prosecution case doubtful—Deceased a history sheeter—Had many enemies—May have been murdered by one of them—Appellant falsely implicated—Acquitted giving benefit of doubt : *Badam Singh Vs. State of Madhya Pradesh, I.L.R. (2004) M.P. 91 (SC) (D.B.)*.**

–**Sections 154 and 161**—Report of crime which is lodged in police station first in order is the F. I. R.—Any subsequent report cannot be treated as F. I. R. being hit by section 161 : *Vijay Shankar Vs. State, I.L.R. (1992) M.P. 113 (D.B.)*

–**Sections 154, 161, Evidence Act, Indian 1872, Section 3 and Penal Code Indian, 1860, Sections 34,392,307,323—Murder—Conviction and Sentence—Conflict between ocular and medical evidence—Injuries by Lathis cannot be said to have been caused by hard and heavy articles—FIR not brought on record—Investigating officer not examined—Statements made by witnesses before the court not made in their Statements under Section 161 Cr. P.C.—Appellants seriously prejudiced—Judgments of the Courts below set aside : *Lakhan Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 928 (SC) (D.B.)***

- **Sections 154, 161, 164, Penal Code 1860, Section 300—Murder—Accused persons armed with lathies and axes committed rioting and killed one person and attempted**

to kill another-Telephonic information to police - Recording in daily dairy book-Statement of seriously injured witness recorded by Magistrate as dying declaration-Held-Telephonic information, notwithstanding the absence of the names of assailants discloses, a cognizable offence-Is to be treated as FIR in statement of injured there is no material showing statement was tutored-Conviction by High Court proper : *Sunil Kumar Vs. State of M.P., I.L.R. (1997) M.P. 5 (SC) (D.B.)*

- **Sections 154, 161, 374(2) and Penal Code, Indian (XIV of 1860), Section 302**-Conviction and sentence-Appeal against, under Section 374(2)-F.I.R.-Sections 154 and 161, Cr. P. C.-Report of crime which is lodged in police station first in order is the F.I.R.-Any subsequent report cannot be treated as F.I.R. being hid by section 161-Evidence Act, 1872-Section 3-Only eye-witness also injured in the incident-Disbelieved by the Trial Court in respect of other co-accused person-Conduct being doubtful-Cannot be relied on in respect of only one accused while the Trial Court has disbelieved him in respect of four other co-accused persons-F.I.R. not showing only involvement of appellant-Variance in testimony of material witnesses-Conviction and sentence set aside-Words and phrases-'F.I.R.'-Report of crime which is lodged in police station first in order is the first information report : *Vijay Shankar Vs. State, I.L.R. (1992) M.P. 113 (D.B.)*

-**Sections 154, 320, 482 and Penal Code, Indian, 1860, Section 498-A**-Quashing of F.I.R.-Petition for-High Court can quash criminal proceeding and F.I.R.-Section 320 does not limit the powers under Section 482 Cr.P.C.-Differences resolved-Parties have entered into compromise-Living happily together-F.I.R. quashed : *Smt. Farhona Khan Vs. State of M.P., I.L.R. (2003) M.P. 475.*

- **Section 154, 374(2), Penal Code, Indian (XIV of 1860), Section 302, and Arms Act, Indian, Section 25(1)(a)**-Murder-Conviction and Sentence-Appeal-Evidence specifying role of appellant causing gun shot injury-Corroborated by independent witnesses-Seizure of gun proved-Pellets recovered from body of deceased were fired by the gun seized-Mere non-mention of names of witnesses in FIR-Not in itself a ground to discredit entire case of prosecution-Finding of Trial Court based on proper appreciation of evidence-Conviction upheld : *Girbal Vs. State of M.P., I.L.R. (2003) M.P. 456 (D.B.)*

- **Sections 155, 2 (d), 190 (1)(a), 190 (1) (b) and Explanation** - Police investigating a non-cognizable offence without sanction of Magistrate and lodging report of offence to Magistrate - Report would be 'complaint' and not 'Police report' - Procedure in a complaint case to be followed by Magistrate - Section 202 (2) - Magistrate following procedure of complaint case, committing case to Court of sessions as offence exclusively triable by Court of Sessions but without recording evidence of all witnesses on oath - Order of commitment violates provisions of section 202 (2) - Non-compliance with mandatory requirements of Section 202 (2) - Not merely an "irregularity" but an

“illegality” - Not curable under section 465 - Words “irregularity” and “illegality” - Meaning of : *Bajji Vs. State, I.L.R. (1981) M.P.896*,

-**Sections 156**-Information given to R.I. over phone-Not an F.I.R. as he is not an officer in charge of a police station : *Jagdish Vs. State, I.L.R. (1992) M.P. 931 (F.B.)*

-**Sections 156, 157**-Dispute over land-Police Investigation-Police no step collect documentary evidence to indicate as to which of the parties was in actual possession-Investigation falls short of the investigation that was expected : *Latel Vs. State, I.L.R. (2000) M.P. 72 (F.B.)*

-**Sections 156, 190, 200, 202, 299, 397, 401**-**Criminal Procedure**-FIR and cognizance of offence by Magistrate-An order is a document and has to be construed in its ordinary and natural meaning in absence of any ambiguity-Magistrate in complaint case after examining complainant may order for police investigation under Section 156(3) Cr. P.C.-Mere examination of complainant does not mean that he had taken cognizance-Warrant of arrest-On the date of filing charge sheet accused not present-To secure attendance of accused Magistrate rightly ordered for issuance of warrant of arrest : *Harbhajan Vs. State, I.L.R. (2003) M.P. 1041*.

-**Section 156, 203**-Trial Judge on receipt of complaint opined that it discloses cognizable offence and directed for police investigation and report-Under Section 203 of the Code such complaint can only be dismissed after considering statement on oath of the complainant and witnesses-Impugned order set aside matter remanded for fresh consideration : *Shyamlal Vs. Lav Kush, I.L.R. (1999) M.P. 621*

-**Sections 156, 360 and 376(2)**-Death reference and Appeal against conviction and death sentence-Penal Code, Indian, 1860, Sections 147, 148, 149, 302, 323-Murder of five persons-Death sentence-Information given to R.I. over phone-Not an F.I.R. as he is not an officer in charge of a police station-Evidence Act, Indian, 1872-Section 3-Appreciation of evidence-Two of the alleged eye witnesses are not residents of village of occurrence-How there happened to come to the place of occurrence not satisfactorily explained-Did not disclose the fact of having seen the incident-Rightly disbelieved by Trial Court-Witnesses substantially making improvement-Have to be dealt with cautiously but not liable to be rejected out right-Eye witness accused corroborated by ‘Court witness’ to the effect that in Dehati Nalishi recorded soon after the incident she named only two accused persons-Seizure of broken handle of ballam and axe used in Commission of offence proved-Conviction of charge of murder against the accused named in the Dehati Nalashi confirmed-Rest accused not named nor the eye witness accused corroborated by ‘Court witness’-Such appellants/accused entitled to benefit of doubt and directed to be set at liberty-Murder-Death sentence-Alleged eye witness tried to falsely implicate as many as 19 persons in the offence-Real genesis of incident not disclosed-Overt act of causing respective injury on deceased could not

be attributed to any of the accused definitely—Death sentence not warranted—Death Reference rejected—Death sentence converted to life imprisonment : *Jagdish Vs. State; I.L.R. (1992) M.P. 931 (F.B.)*

-Section 156(3)- Investigation by police-Procedure adopted by Magistrate not illegal : *Smt. Manorama Patel Vs. Subhash Soni, I.L.R. (2000) M.P. 758 .*

-Sections 156(3), 19(1)(a), 190(1)(b) and 200 – Magistrate obtaining police report on complaint filed by complainant – Magistrate not examining complainant and his witnesses as required u/s 200 – Magistrate deemed to have acted on police report – Report not containing anything worth while – Cognizance of offence wrongly taken : *Smt. Hemlata Vs. Gyanachandra, I.L.R. (1989) M.P.310*

-Sections 156(3), 169, 174, 200 and 482 - ‘Petition for quashing complaint case - On receipt of complaint Magistrate directing police to further investigate in the matter - On receipt of such direction police is not bound to file challan under Section 173 of the Code if on investigation he forms an opinion there no case is made out : *Rajendra Ardhvayu Vs. Sheikh Raees, I.L.R. (2002) M.P. 1052*

- Sections 156(3), 200, 202(1), 408, 410 and Penal Code, Indian, 1860, Section 500 and Judges Protection Act, Section 3—Alleged defamation—CJM called comments from the Magistrate from which transfer of case was sought—In reply expression made is that the application is based on little legal knowledge—(Alp Gyani Kanooni Salah)—Transfer application not disclosing that it was moved through any counsel or drafted by complainant advocate—Act of Magistrate in making the reply is protected as done in official capacity—Magistrate erred in taking cognizance : *A.K. Singh Vs. Virendra Kumar Jain; I.L.R. (2002) M.P. 399*

-Section 157-Non-compliance-Delay in sending report to Magistrate-Subsequent inclusion of names of appellants in the FIR based on suspicion-Possibility of false-Implication cannot be overruled-Conviction cannot be safely based on such evidence – Conviction and sentence set aside : *Keshri Vs. State, I.L.R. (2000) M.P. 1288*

- Section 161—Delayed examination of witness—Defence cannot gain therefrom unless the investigating officer is asked why there was delay : *Banti @ Guddu Vs. State of M.P., I.L.R. (2004) M.P. 28 (SC) (D.B.)*

- Section 161 – Delay in recording statement of witness named in F.I.R. – Investigating Officer not offering explanation for delay of 7 days in recording statement of witness not reliable. : *Kalusingh Vs. State of M.P., I.L.R. (1993) MP 242, (F.B.)*

- Section 161 – Statement recorded under Section 161 of Cr.P.C. cannot be read unless and until confronted with any material statement or omission and then proved by person who had recorded it : *Ratanlal Vs. State of M.P., I.L.R. (1993) M.P. 252*

–**Section 161**–No explanation for delay in recording P.C.D. statements–Witness unbelievable : *State of M.P. Vs. Ramkripal, I.L.R. (2004) M.P. 875 (D.B.)*

–**Section 161**–Statements made by witnesses before the court not made in their Statements under Section 161 Cr. P.C.–Appellants seriously prejudiced–Judgments of the Courts below set aside : *Lakhan Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 928 (SC) (D.B.)*

–**Sections 161 and 154**–Report of crime which is lodged in police station first in order is the F. I. R.–Any subsequent report cannot be treated as F. I. R. being hit by section 161 : *Vijay Shankar Vs. State, I.L.R. (1992) M.P. 113 (D.B.)*

–**Sections 161, 162, 374 (2) and Evidence Act Indian, 1872 Sections 3, 157–**Penal Code Indian, 1860–Section 302–Murder–Conviction and sentence–Appeal–Amputation of head from neck by hard and sharp object–Prompt FIR–Incident narrated by eye witness to other witnesses–Corroborated by other evidence–Statement of such witnesses admissible–Cannot be said hearsay–Prompt FIR and postmortem report and evidence adduced - Prosecution case proved beyond reasonable doubt defect in seizure in weapon and in sending copy of FIR to Magistrate is of no consequence : *Shankar S/O Gul Singh Bhilala Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 160 (D.B.)*

–**Sections 161, 164**–Statement recorded under Section 164 Cr. Procedure Code–Not a substantive piece of evidence–Can be used only to corroborate or contradict its maker : *State of M.P. Vs. Nand Kishore @ Nandu, I.L.R. (2003) M.P. 1231 (D.B.)*

–**Sections 161, 164, 366, 374(2)**–Penal Code, Indian, 1860, Sections 193, 201, 302, 380, 411, 449 and Evidence Act, Indian, 1872, Sections 3, 9–Murder–Conviction and Death Sentence–References for confirmation of death sentence and Appeal by convict–Circumstantial evidence–Appreciation of–Identification–Articles shown to witnesses before identification–Witness not identifying the same in the Court–Identification is of no value–Cannot be construed as substantive evidence–Not subjected to cross-examination–Cannot be used against the accused–Statement recorded under Section 164 Cr. Procedure Code–Not a substantive piece of evidence–Can be used only to corroborate or contradict its maker–Seizure of blood stained dagger like knife and clothes at the instance of accused–Blood found on sweater was of blood group ‘O’–Not proved to belong to the same blood group of deceased–An incriminating circumstance–But can only be used as corroborative evidence–House of accused searched–Seizure made–No evidence that those articles belonged to deceased–According to prosecution they were subject matter of some previous theft–There is a reasonable doubt about guilt of the accused–Benefit should go to him–Conviction and sentence set aside–Accused set at liberty : *State of M.P. Vs. Nand Kishore Alias Nandu, I.L.R. (2003) M.P. 1231 (D.B.)*

-Sections 161 and 173-Challan-Statement of deceased under Section 161, Cr. P.C. recorded in the form of dying declaration- Not filed alongwith challan-Cannot be used for any purpose unless proved-Prosecution required to file said dying declaration and supply copy to the defence to meet the ends of justice : *Arun Kumar Vs. State, I.L.R. (2000) M.P. 896*

-Sections 161, 200, 202, 397/401-Criminal Revision-Penal Code, Indian, 1860, Sections 307, 149, 147, 148, 323, 324 and 325-Complaint by victim with list of sixteen witnesses-Magistrate examining only four witnesses committed the case of Session-Not proper-Proviso to sub-section (2) of Section 200 is mandatory-Intention of Legislature All the prosecution witnesses have to be examined by the Magistrate before committal-Procedure adopted by Magistrate is illegal-Committal order quashed-Case remanded to the Court of Judicial Magistrate. *Prayag Singh Vs. State, I.L.R. (1992) M.P. 369*

-Sections 161, 319, 397, 401 & Penal Code, Indian, 1860-Sections 34, 201, 302-Power to Proceed against other persons appearing to be guilty of offence-Trial Court should refrain from adopting the course unless it is hopeful that case against newly brought accused would end in conviction-Petitioner not chargesheeted by police-Deposition of witness implicating petitioner-In police case diary statement witnesses did not make reference to the petitioner-Order of trial Court for impleading the petitioner as an accused-Cannot be upheld : *Tarunendra Bahadur Vs. State of M.P., I.L.R. (2003) M.P. 649.*

-Sections 161, 366 and 374(2), Evidence Act, Indian, 1872-Sections 3,8,26 and Penal Code Indian, 1860, Section 302-Murder-Conviction and death sentence-Reference and appeal-High Court has to examine whole case for itself-Eye witness named in F.I.R. not examined-Material witness relied on by prosecution remained silent for about a month-Conduct of witness unnatural-No explanation for delay in recording P.C.D. statements-Witness un-believable-Persons claiming to be eye- witness knew arrival of police--Not making statement that they were eye-witnesses--Delay in recording their statements not explained--Probative value of such evidence is extremely weak-Can not be relied upon-Extra-judicial confession-Not supported by prosecution witness--Not reliable-Recovery of weapon, allegedly made on information by accused, not proved-Conviction and sentence set aside-Accused acquitted : *State of M.P. Vs. Ramkripal, I.L.R. (2004) M.P. 875 (D.B.)*

-Sections 161, 374 (2), Penal Code Indian, 1860,Section 300, Exception 4,302, 304-II-Murder-Conviction and sentence-Appeal-Accused acted in cruel manner-After assault brought an axe and caused further injuries while deceased lay inert-Cannot get benefit of Exception 4 to Section 300-Appeal Dismissed : *Janak Singh Vs. The State of M.P., I.L.R. (2005) M.P. 524 (D.B.)*

-Sections 161, 378(3) and Penal Code, Indian (XLV of 1860)–Section 302 --

Application for leave to appeal–Mere possibility of another view will not be a sufficient ground to warrant interference in appeal against acquittal–Recording statement of eye witnesses–Delay of two days assumes importance when eye witness is available even on date of incident : *State of Madhya Pradesh Vs. Mannu @ Manohar, I.L.R. (2004) M.P. 1184 (D.B.)*

- Section 162 – Injuries of the accused persons – Only those injuries caused at the time of occurrence are to be explained – Injury reports of the accused with corresponding requisition forms admitted by prosecution – Contents of requisition forms not hit by section 162, Criminal Procedure Code : *Jagdish Singh Vs. State of M.P., I.L.R. (1989) M.P. 664 (D.B.)*

- Section 162 – Question by police Inspector and reply by accused in respect of whereabouts of bribe money, inadmissible : *Jagdish Vs. State of M.P., I.L.R. (1989) M.P. 237*

-Sections 162, 313-, Evidence Act, Indian, 1872--Sections 3 and 9 and Penal Code, Indian, (XLV of 1860)– Sections 302, 304 Part–II, 330, 331–Custodial death-- Occular evidence of police personnel alone can explain the circumstances but bound by ties of brotherhood they remain silent and feign ignorance–Courts must deal with such cases in a realistic manner and with sensitivity they deserve–Punishment for causing hurt for extorting confession–Convictions have been very few because such atrocities are left without traces of any ocular or direct evidence–Recommendation of the Law Commission in its 113th Report–Presumption that injury was caused by Police Officer having custody unless said Police Officer proves contrary–Government and Legislature must give serious thoughts and bring about appropriate changes in law–Test identification parade–Does not constitute substantive piece of evidence–Failure to hold would not make inadmissible the evidence of Identification in Court–May be accepted even without corroboration–Eye witness evidence full of unexplained contradictions–Not sufficient to fasten guilt on accused persons–Definite plea raised in defence that deceased had come to police station in a severe condition and collapsed after telling his name–Falsified by statement under Section 313, Cr.P.C. that deceased was lying injured near Nala and information to that effect was received at police station–Accusation of custodial torture established–Injuries confined to skin and upper level of body–Grievous injuries not found on vital parts–Right lung of deceased T.B. effected–Combine effect of alcohol and injuries shortened period of death–Conviction in terms of Section 304, Part–II, I.P.C.–Cannot be faulted with : *Munshi Singh Gautam (D) Vs. State of M. P., I.L.R. (2004) M.P. 983 (SC) (D.B.)*

– Section 164 – Before passing impugned order trial Court referred to witnesses's statement under section 164, Cr.P.C. – Shows that he passed the order after satisfying

himself as to complicity of petitioner – Order passed on sound material – Not interfered within revisional power : *Moti Vs. State, I.L.R. (2001) M.P. 1074*

- **Sections 164, 319, 397 and 401** – Revision against impleadment of petitioner as accused during trial – Penal Code, Indian, 1860 – Sections 302, 307, 323, 294/34 – Offences alleged – Examination in Chief of witness revealing complicity of petitioner in commission of the Crime – Trial Court within its jurisdiction to take cognizance and issue summons directing to implead the petitioner as accused even before the witness in cross-examination – Condition precedent is that from evidence it should appear that any person not being accused has committed offence and could be tried together – Evidence Act, Indian, 1872, Section 3 – Evidence – The term ‘evidence’ has a wider connotation – Deposition of a witness on oath administered by the Court – Can form evidence contemplated under Section 319, Cr.P.C. even in absence of cross-examination – Section 164, Cr.P.C. – Before passing impugned order trial Court referred to witnesses’ statement under Section 164, Cr.P.C. – Shows that he passed the order after satisfying himself as to complicity of petitioner – Order passed on sound material – Not interfere within revisional Power : *Moti Vs. State, I.L.R. (2001) M.P. 1074*

- **Section 164(2)** – Recording of judicial confession – Magistrate administered necessary caution – He, however, failed to comply with the mandatory provisions of Section 164(2) Cr.P.C. – Confession so recorded could not be entertained as a piece of evidence – Accused acquitted : *Preetam Vs. State of M.P., I.L.R. (1996) M.P. 30 (D.B.)*

- **Sections 167, 439** – Bail-Application for grant of bail rejected on merits – Rejection of bail under Section 167(2) – Merits of case cannot be considered when right to bail is earned under Section 167(2). : *Banwari Vs. State of M.P., I.L.R. (1993) M.P. 350*

- **Section 167 (i)** – Physical production of accused at the time of remand to custody is mandate of law – However, absence of accused will not render remand order per se invalid if production of accused is beyond control – Non-availability of escort or guard – Not a sufficient ground for non-production of accused – Order of remand is a judicial order – Remedy of aggrieved person : *Raju Alias Rajkumar Vs. State of Madhya Pradesh, I.L.R. (1990) M.P. 130 (D.B.)*

- **Section 167 (i), Constitution of India** – Article 226 - Proviso – Physical production of accused at the time of remand to custody is mandate of law – However absence of accused will not render remand order per se invalid if production of accused is beyond control – Non-availability of escort or guard – Not a sufficient ground for non-production of accused – Order of remand is a judicial order – Remedy of aggrieved person – Writ jurisdiction cannot be invoked – Writ of Habeas Corpus – When can be

issued : *Raju Alias Rajkumar Vs. State of Madhya Pradesh, I.L.R. (1990) M.P. 130 (D.B.)*

- **Section 167 (2), Proviso** - Magistrate not forwarding the accused to special Court and continued granting remands after the period of 90 days - Detention of the accused not illegal - Accused not entitled to be released on bail on that ground : *Dildar Singh Vs. State of M.P., I.L.R. (1984) M.P. 415*

- **Section 167(2)** – Filing of challan ipso-facto does not lead to cancellation of bail – Order for release on bail – Accused cannot be deprived of benefit because of their inability to furnish bail straight way: *Jagdish Vs. State of M.P., I.L.R. (1991) M.P. 318*

- **Section 167(2)** – Right to be released on bail in default of investigation and filing of challan within stipulated period is an indefeasible right – Ensures till filing of challan subject to provision of Section 439(2) of the Code : *Akhilak Vs. State, I.L.R. (2001) M.P. 134*

-**Section 167(2)**–Charge-sheet appears to be filed after 90 days–Provision of Section 167(2), are mandatory non-observance of mandatory provision–Accused held entitled to bail : *Tulsiram Vs. State, I.L.R. (1992) M.P. 295*

- **Section 167 (2), Proviso (a)** - Accused intimating Magistrate about his preparedness to furnish bail - Magistrate has to grant bail : *Umashanker Vs. The State of M. P., I.L.R. (1982) M.P. 651, (D.B.)*

- **Section 167 (2), Proviso (a)** - Magistrate not passing order for release of accused on bail after the period of detention allowed thereunder - Meanwhile challan filed by police - Accused still entitled to be released on bail : *Umashanker Vs. The State of M.P., I.L.R. (1982) M.P. 651, (D.B.)*

- **Section 167(2)** – Charge Sheet not filed within statutory period – Right to be released on bail earned by accused – Such right cannot be defeated by filing challan after expiry of stipulated period – Non release of accused due to non furnishing of bail or because of any other reason – Challan filed in the meanwhile – Right of accused to be released not defeated by mere filing of challan. : *Banwari Vs. State of M.P., I.L.R. (1993) M.P. 350*

-**Section 167(2)** - Extension of judicial remand - Non-production of accused – Does not vitiate remand order - When Magistrate is satisfied that such physical non-production of accuse is for reasons beyond control of authorities – The Magistrate may expressly or impliedly waive production - Endorsement of extension made on reverse side of original warrant itself - Is curable irregularity and not incurable and does not renders the detention illegal : *Rahul Gupta Vs. State of M. P., I.L.R. (1995) M.P. 389,*

-Section 167 (2), Proviso and General Clauses Act (X of 1897), Section 9 - Period of 90 days provided for in the Proviso to section 167 (2) of the Code - Calculation of - Date of arrest has to be excluded and filing of challan to be included - Accused arrested on 19.11.82 and challan filed on 17.2.83 - Is within 90 days - Accused not entitled to be released on bail on that ground : *Jagdish Vs. State of M. P., I.L.R. (1983) M.P. 474*,

-Section 167(2) – Computing the period of limitation – Will commence from the date of remand-Both the terminal days are to be excluded – Challan was filed on 90th day: *Pappu Vs. State of M.P., I.L.R. (1991) M.P. 311*

-Section 167(2) – Bail-once granted cannot be cancelled without justifiable grounds – Filing of challan ipso-facto does not lead to cancellation of bail – Order for release on bail – Accused cannot be deprived of benefit because of their inability to furnish bail straight way : *Jagdish Vs. State of M.P., I.L.R. (1991) M.P. 318*

- Section 167 (2), Proviso (a) - Right of accused to be released on bail and duty of Magistrate thereunder - No written application necessary - Accused intimating - Magistrate about his preparedness to furnish bail - Magistrate has to grant bail - Magistrate not passing order for release of accused on bail after the period of detention allowed thereunder - Meanwhile challan filed by police - Accused still entitled to be released on bail : *Umashanker Vs. The State of M. P., I.L.R. (1982) M.P. 651, (D.B.)*

- Sections 167 (2), 2 (r), 170, 173 (5) and 439 - Bail grant of - Word ‘investigation’ - Meaning and interpretation of - The expression “police report” - Ingredients of Expression “Sufficient evidence or reasonable grounds” in section 170 - Implications of - Police filing challan after mentioning therein that report of Chemical Examiner and Serologist and additional papers regarding accused’s plea of alibi shall be filed later on - Whether amounts to incomplete investigation - Papers referred to in Section 173 (5) - Whether form integral part of Police report - Whether accused entitled to bail at the expiry of 60 days from arrest : *Raghavendra Singh Hazari Vs. State of Madhya Pradesh, I.L.R..(1982) M.P. 186*,

- Sections 167 (2), 209 and 437 (5) - Bail granted under the proviso to Section 167 (2) - Not restricted upto the time the challan is filed - Operative till the conclusion of the trial, unless cancelled under Section 437 (5) : *Kabilas Vs. State of M.P., I.L.R. (1981) M.P. 806*

- Sections 167(2), 439 and Penal Code, Indian (XLV of 1860), Sections 302/201–Bail application–Charge-sheet alleged to be filed within 90 days but order sheet written by clerk of the Court not signed by the presiding officer–Order not in accordance with Law–Presiding Magistrate should not act in a clerical manner but in a judicial

manner—Charge-sheet appears to be filed after 90 days—Provision of Section 167(2) are mandatory non-observance of mandatory provision—Accused held entitled to bail: *Tulsiram Vs. State, I.L.R. (1992) M.P. 295*

- **Sections 167(2), 439(2)**— Cancellation of bail – Bail granted under Section 167(2) Proviso can be cancelled after considering merits of the case: *Banwari Vs. State of M.P., I.L.R. (1993) M.P. 350*

-**Sections 167(2)(a), 207**—Charge sheet filed on 90th day when accused was not produced from jail custody—Copy of charge sheet not served to accused even in jail—No requirement that charge sheet must be supplied to accused on the date of submission of charge sheet—Accused not entitled to be enlarged on bail under Section 167 (2)(a) of Criminal Procedure Code. : *Neetu @ Neetu Sharma Vs. State of M.P.; I.L.R. (1994) M.P. 522.*

-**Section 170** - Expression “sufficient evidence or reasonable grounds” in section 170 - Implications of : *Raghavendra Singh Hazari Vs. State of Madhya Pradesh, I.L.R. (1982) M.P. 186,*

-**Sections 173, 200, 482 and Penal Code, Indian, 1860, Section 498-A**—Complaint case dismissed—Second complaint on the same allegation—Barred—Subsequent framing of charge by J.M.F.C. on police challan—Police report filed on the FIR lodged by the complainant—Principle of atrofist acquit—Not applicable : *Sharda Prasad Gupta Vs. Smt. Vidyadevi Gupta, I.L.R. (2003) M.P. 94*

- **Sections 173, 207, 238 and Constitution of India, Article 21**—Provisions and mandatory—Cannot be given a go bye furnishing illegible obscure copies to the accused and showing compliance on paper—Such paper compliance causes serious prejudice to accused—Court has to satisfy itself that necessary compliance are made in right spirit : *Ram Charan Vs. State, I.L.R. (1999) M.P.1195*

- **Sections 173, 482** – Prescribed authority directed police investigation on receipt of a report from the Collector and consequent filing of challan by police to Court after investigation – Procedure adopted is illegal – Charges quashed : *Sultan Khan Vs. State, I.L.R. (2001) M.P. 745*

- **Section 173, 482** – Petition for quashing charges – Vinirdishta Bharashta Acharan Niwaran Adhiniyam, MP (XXXVI of 1982) – Sections 24, 27 and 39 – Illegal colonization – Offence cognizable – On Collector’s report Divisional Commissioner directing police investigation and subsequent filing of challan to the Court by police – Procedure adopted illegal – Section 39 and proviso thereunder – Cognizance of offence under the Adhiniyam - Condition precedent – Prescribed authority can direct investigation only on receipt of an information of a report from the police and not otherwise – Prescribed authority

directed police investigation on receipt of a report from the Collector and Consequent filing of challan by police to Court after investigation – Procedure adopted is illegal – Charges quashed : *Sultan Khan Vs. State, I.L.R. (2001) M.P. 745*

- **Section 173 (5)** - Papers referred to in Section 173 (5) - Whether form integral part of Police report - Whether accused entitled to bail at the expiry of 60 days from arrest : *Raghavendra Singh Hazari Vs. State of Madhya Pradesh, I.L.R. (1982) M.P. 186*

-**Sections 173 (5) and 207** - Prosecution required to supply copies of documents on which it proposes to rely - Floppies produced but not relied upon by prosecution - Print-Out of much floppies need not be supplied to accused: *G. P. Pathak Vs. State of M.P., I.L.R. (2002) M.P. 762,*

-**Sections 173(8), 397 and 401**–Revision–Papers not submitted to police who held investigation–Complainant cannot file application for taking documents on record– Instead should approach the police : *Lalmanendra Singh Vs. The State of M.P., I.L.R. (2005) M.P. 372*

-**Sections 173(8), 397, 401 and Penal Code, Indian, 1860, Sections 302, 120-B**–Revision–Rejection of prayer for re-investigation by police–Sessions Judge has jurisdiction to direct reinvestigation–Trial Court noticed various lacuna in the investigation–No effort was made to collect evidence on truth of facts and motive behind murder–Case requires further investigation–Revision allowed : *Dr. (Smt.) Sulekha Mishra Vs. Purushottam Lal , I.L.R. (2005) M.P. 1105*

- **Section 174 and 378(1) and Penal Code Indian (XLV of 1860)**–Section 302, Evidence Act Indian, 1872 Section 3–State appeal against acquittal–Murder–Delay in lodging first information report not explained–Place of occurrence doubtful–Eye–witness claiming to be present at the spot not reacting naturally–No mention of the name of accused in inquest Report–Direct evidence in conflict of medical evidence–Prosecution not able to substantiate the charge – Finding of trial Court reasonable and in accordance with evidence–Upturning the order of acquittal would not be proper : *State Vs. Rajaram, I.L.R. (2003) M.P. 645.*

- **Section 178 (b)** – Cause of action – Only arises on the expiry of one year when the person fails to transfer : *Harbhajan Singh Vs. Smt. Manpreet Kaur, I.L.R. (1988) M.P. 404*

-**Section 180** – Place of trial when act is offence by reasons of relation to other offence : *Dr. Nisha Malivya Vs. State, I.L.R. (2001) M.P. 742*

- **Sections 180, 397, 406 and Penal Code, Indian (XLV of 1860), Sections 201, 313 and 376** – Rape case – Doctors abetting mis-carriage without consent of

minor prosecutrix and her mother – Charge under Sections 201, 313 and 376, I.P.C. rightly framed – Section 180 Cr.P.C. – Place of trial when act is offence by reasons of relation to other offence - Offence under Sections 201, 313 IPC committed at a place other than the place of trial under Section 376 – Offence under Sections 201, 313 IPC can also be tried together under this provision of Section 180 Cr.P.C. : *Dr. Nisha Malivya Vs. State, I.L.R. (2001) M.P. 742*

-Sections 181, 200, 482 and Penal Code, Indian, 1860, Section 406–Criminal Breach of trust–Complaint case–Jurisdiction–One of the Bank draft was received by accused at Bhopal– Court at Bhopal has Jurisdiction to try the offence : *Vikas Kumar Jain Vs. Smt. Rita Jain, I.L.R. (2003) M.P. 860.*

-Section 182-Jurisdiction-Complaint under Sections 109, 494 of I.P.C. - The offended spouse by first marriage has the choice to lodge the complaint and having the offender tried at place where she has taken up permanent residence after commission of the offence-Spirit of law is to throw open a convenient jurisdiction to the wife by the first marriage : *Shri Urbhay Kumar Vs. Smt. Hema Bai, I.L.R. (1999) M.P. 176*

– **Sections 182, 397, 401** – Revision – Penal Code, Indian 1860 – Section 494 – Begamy – Jurisdiction – Court at the place where the complainant first wife has taken up residence will have jurisdiction to try the offence – Intention of the legislature is to make it convenient for the deserted wife to prosecute the offending spouse – Impugned order set aside : *Smt. Usha Gurubaxani Vs. Lalit Gurubaxani, I.L.R. (2001) M.P. 1605*

- **Section 186 (b)** - Competency of High Court thereunder to decide place of inquiry or trial - The word 'cognizance' - Connotation of Theft and possession of stolen truck - One case under sections 379 and 411, I. P. C. taken cognizance of by a subordinate Court under Punjab and Haryana High Court - Subsequently another case under section 379, I. P. C. taken cognizance of by a court at Bhopal under M. P. High Court - Proceedings were first commenced in the subordinate Court under Punjab and Haryana High Court - High Court of M. P. not competent to exercise jurisdiction under section 186 (b) : *State of M. P. Vs Bahadursingh, I.L.R. (1984) M.P. 122*

- **Sections 190, 193, 319, 397 and 401** – Revision – Trial Magistrate not empowered to arraign a person as accused not sent for trial by filing charge sheet in exercise of power under Section 319, Criminal Procedure Code – Court of Session or the Trial Magistrate empowered to take cognizance against such a person not sent for trial till framing of the charges and thereafter this power can be exercised only on the basis of evidence adduced against such person- Trial Court though referring to a wrong Section 190, 193, Criminal Procedure Code – Order impugned maintained – Cognizance means taken a Judicial notice of an offence – Does not necessarily mean commencement of a proceedings : *D.R. Maheshwar Vs. State, I.L.R. (2001) M.P. 1412*

-Section 190(1)(a)-Magistrate sending the complaint for investigation and thereafter upon police report taking cognizance of the offence-No infirmity or illegality : *Smt. Manorama Patel Vs. Subhash Soni, I.L.R. (2000) M.P. 758* .

-Section 190 (1)(a), 2 (d), 155, 190 (1) (b) and Explanation - Police investigating a non-cognizable offence without sanction of Magistrate and lodging report of offence to Magistrate - Report would be 'complaint' and not 'Police report' - Procedure in a complaint case to be followed by Magistrate - Section 202 (2) - Magistrate following procedure of complaint case, committing case to Court of sessions as offence exclusively triable by Court of Sessions but without recording evidence of all witnesses on oath - Order of commitment violates provisions of section 202 (2) - Non-compliance with mandatory requirements of Section 202 (2) - Not merely an "irregularity" but an "illegality" - Not curable under section 465 - Words "irregularity" and "illegality" - Meaning of : *Bajji Vs. State, I.L.R. (1981) M.P. 896*

-Section 190(1)(a) and 204-Magistrate is not bound to take cognizance and follow the procedure laid down in Sections 200 to 204, Cr. P.C.-He may also get the alleged commission of offence investigated by police and take cognizance upon police report : *Smt. Manorama Patel Vs. Subhash Soni, I.L.R. (2000) M.P. 758*

- Sections 190(1)(b), 191(a), 156(3) and 200 – Magistrate obtaining police report on complaint filed by complainant – Magistrate not examining complainant and his witnesses as required u/s 200 – Magistrate deemed to have acted on police report – Report not containing anything worth while – Cognizance of offence wrongly taken : *Smt. Hemlata Vs. Gyanchandra, I.L.R. (1989) M.P. 310*

-Section 190(e)-Forest Range Officer filing complaint-Magistrate taking cognizance issued summons-Section 26(i) (ga) (gha), 41(2) (Kha) (Ga) (Gha), 42 and 69 of the Indian Forest Act, 1927, Section 4 of the M.P. Kasth Chiran (Viniyaman) Adhiniyam, 1984, Rules 23 and 24 of the M.P. Vanopaj Abhivan Gaman Niyam, 1961 and Sections 379, 420, 468 and 471 of the Penal Code, Indian, 1860-Offences alleged under consist of both bailable and non-bailable offences-Section 438, Cr.P.C.-Application for grant of anticipatory bail-Maintainability-Test-Application has to have reasonable apprehension that he may be arrested in non-bailable offence-Though only summon has been issued it cannot be said that applicant's apprehension of being arrested is unfounded-Applicant entitled to move the competent court seeking anticipatory bail-Gravity of offence as alleged-Accused given liberty to appear before Magistrate and move for regular bail : *Arun Kumar Vs. State, I.L.R. (2000) M.P. 1323* .

- Sections 194, 10(3), and 400 and section 14 of Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989- Reference- Where in the event of absence of the Sessions Judge an application for bail is heard and rejected by an Additional Sessions Judge, whether subsequent application for bail by the same

accused should go before the same additional Sessions Judge if he is available or it should be heard by the sessions Judge himself-Yes-There is no law or any statutory rule making it obligatory that all subsequent bail applications should be placed before the same bench or judge who passed earlier order but it is only a rule of convenience based on judicial discipline developed by a long standing convention-Section 10(3)-Whether the Additional Sessions Judge can refuse to hear an application made over to him by the Sessions Judge in exercise of power u/s. 10(3), Cr. P. C.- No Transfer of a Sessions trial also includes transfer of interlocutory application including the bail application filed before the Sessions Judge of said sessions division :*The District & Sessions Judge, Shajapur Vs. Chandrakant, I.L.R. (1998) M.P. 992*

-Sections 195(1)(b), 340-Locus Standi-Application filed by appellant under Section 340 of Criminal Procedure Code challenged on the ground that only Court can file complaint-Held-Appellant had filed application under Section 340 of Criminal Procedure Code for taking action and not the complaint-Application by appellant maintainable: *Mohammad Ibrahim Vs. Imdadulla; I.L.R.(1994) M.P. 398.*

– Section 195 (1) (b) (ii) – Provisions of section 195 (1)(b)(ii), Criminal Procedure Code attracted only when original forged document and not a copy is produced in Court : *Shivkant Choubey Vs. Smt. Chhotibai Alias Badibai, I.L.R. (1988) M.P. 337*

- Sections 195 (1) (b)(ii), 204 and Penal Code, Indian (XLV of 1860), Section 467, 468 – Complaint case – Magistrate gets jurisdiction only if there are sufficient grounds for proceeding – Sufficient grounds equated to Prima facie case – Provisions of section 195 (1) (b) (ii), Criminal Procedure Code attracted only when original forged document and not a copy is produced in Court : *Shivkant Choubey Vs. Smt. Chhotibai Alias Babibai, I.L.R. (1988) M.P. 337*

-Section 195 (1) (b) (ii) and 482 and Penal Code, Indian, 1860, Sections 420, 467, 468 and 471–Forgery of will–Mutation obtained from Revenue Court producing forged will–Police investigation and consequent registration of Criminal case–Complaint by the revenue Court is not necessary as the will was forged before the commencement of the proceeding in the said revenue Court : *Vijay Ram Vs. State of M.P., I.L.R. (2003) M.P. 566.*

-Sections 195(2), 340-Prosecution for contempt of Lawful authority-Respondent filed affidavit in execution proceedings that revision against order issuing warrant of possession filed and order of stay has been passed by High Court-Proceedings adjourned by Lower Court by relying on affidavit-Appellant filed application for initiating action under Section 340 against deponent-Application rejected by Executing Court holding that relief can be sought in separate proceedings-Held-Statement of filing revision was based on personal knowledge of deponent-Deponent stating that information regarding stay was based on telephonic message without disclosing that from whom it was received-Contents of affidavit were false-Intention of deponent not bonafide-Rejection of

application by Lower Court without application of mind on merits not proper-Order of Lower Court set aside-Matter remanded back for fresh consideration : *Mohammad Ibrahim Vs. Imdadulla; I.L.R.(1994) M.P. 398.*

-Section 197 - Bar of cognizance- Alleged Act committed by police/petitioners while discharging official duty - Sanction necessary-Absence of sanction-Prosecution quashed : *Surdarshan Kumar Vs. Gangacharan Dubey, I.L.R. (2000) M.P. 1489, .*

– **Section 197** – Necessary for proceeding against the DIG, Police – Want to sanction- Petitioner could not be prosecuted: *R.K.E. Yadalwar Vs. A.B. Singh , I.L.R. (2001) M.P. 426*

– **Section 197** – Sanction for prosecution – Petitioner/accused are public servants – Alleged act committed in discharge of their official duties – Sanction from departmental head necessary – Absence of sanction – Prosecution deserves to be quashed : *Amir Ullah Khan Vs. Anand Chandra Mishra, I.L.R. (2001) M.P. 282*

– **Section 197 - Sanction for prosecution-**Respondent working as Fisheries Extension Officer appointed by Collector as Asstt. Returning Officer for conducting election of Sarpanch-Complaint filed against applicant that he had abetted filing of forged nomination paper-Complaint dismissed for want of sanction under Section 197 by Revisional Court—Held-Act was committed in the capacity of Asstt. Returning Officer and not Fisheries Extension Officer-Asstt. Returning Officer not removable by Government-Sanction under Section 197 of Criminal Procedure Code not required-Trial Court directed to dispose of the complaint expeditiously : *Champatlal Patel Vs. Vrindawan Mishra; I.L.R.(1994) M.P. 496*

– **Section 197** – Sanction – If this type of offence under 1989 Act as alleged is committed no sanction can be required : *J.N. Fuloria Vs. Smt. Benibai, I.L.R. (2001) M.P. 560*

– **Section 197** – Sanction for prosecution – Applicant posted as Asstt. Surgeon – Being prosecuted for giving false injury report – Act of giving false Injury Report cannot be said to be outside the duty – Sanction for prosecution necessary – Proceedings dropped in absence of sanction: *Awatarsingh Dharamsingh (Dr.) Vs. State of M.P., I.L.R. (1993) M.P. 320*

– **Section 197 and Prevention of Corruption Act (XLIX of 1988)** – Section 19 – Petitioner a member of Indian Administrative Services employed as Managing Director of M.P. Leather Corporation – Compulsorily retired before charge sheet was filed – Petitioner not a public servant so as to attract provision of Section 197 Cr.P.C. or Section 19 of the Prevention of Corruption Act : *V.P. Sheth Vs. State, I.L.R. (2001) M.P. 1767*

-Section 197 and Penal Code, Indian (XLV of 1860), Sections 120-B, 409, 420, 467, 468, 471 – Offences alleged under – When alleged forgery is said to be a mechanism to facilities ultimate end of offence under Sections 409 and 420, there is no necessity of sanction – Prima facie no case made out to interfere in the order of trial Court on the point of Sanction : *Babulal Tantuway Vs. State, I.L.R. (2001) M.P. 903*

- Section 197, Constitution of India, Articles 239 (2), 163, Indian Penal Code, Section 120--B, Prevention of Corruption Act, Section 13(1) (d), 13(2)–Corruption–Prosecution of Ministers–Sanction–Power of Governor–Normal rule is that Governor acts on aid and advice of the Council of Ministers–But there are exceptions–Governor can act in his own discretion–If the Governor cannot act in his own discretion there would be complete breakdown of rule of law and it would be open to Government to refuse sanction even if a prima facie case is made out–Bias–Lead to automatic disqualification–Lokayukta Office held by former Supreme Court Judge–Difficult to assume that Lokayukta would give report without any material whatsoever–Order of Governor sanctioning prosecution should be given effect to : *Madhya Pradesh Special police Establishment Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 179 (SC) (F.B.-5JJ.)*

– Section 197, Prevention of Corruption Act (II of 1947), Section 6 and Business Allocation Rules, M.P. 1957 – Sanction for prosecution of Govt. Servant – Sanction given by Law and Legislative Affairs Department for offence under section 161, Indian Penal Code, read with section 5 (1)(d) read with section 5(2) of the Prevention of Corruption Act is valid sanction although appointing and removing authority was Revenue Department : *Sunderlal Vs. State of M.P., I.L.R. (1988) M.P. 119. (F.B.)*

- Sections 197, 120-B, 500 and 501–Penal Code Indian–Petitioner is an Officer of Union of India–Taking cognizance without prior sanction of Central Govt.–Improper–Proceedings quashed in so far as it relates to petitioner : *Dr. Kalyan Chakravarthy Vs. D.N. Agrawal, I.L.R. (2004) M.P. 707*

– Sections 197, 197(1) & 2 – Protection of Public Servant under – Complaint filed against certain Police officers under Sections 120-B, 175, 181, 182 and 500, Indian Penal Code – Sanction to prosecute them not obtained – Trial Court dismissed the complaint for want of sanction – Held, the view taken by the Trial Court was proper – Criminal Procedure Code, 1973 – Section 397 and 401 – High Court’s revisional jurisdiction is to ensure that no miscarriage of justice is done and not to correct errors of law or fact: *Dedamchand Mahajan Vs. Ramsharan Singh, I.L.R. (1991) M.P. 413*

-Sections 197, 200, 202, 397, 401 and Penal Code, Indian 1860, Section 420–Complaint case–Prosecution —Public Servant–Test–Person to be prosecuted must be a public servant and not removable save by or with the sanction of the Government —Patwari —Removable by the Collector by virtue of his power of appointment–Not a

public servant–Exemption under Section 197 (1) not attracted : *Ashok Kumar Vs. Balmukund, I.L.R. (2003) M.P. 651.*

- **Sections 197, 397 and Penal Code, Indian (XLV of 1860), Sections 294, 325, 506**–Revision–Public servants present at the spot in discharge of official duties–No allegation that they used force–Complaint could not be filed without sanction under Section 197–Use of force so as to dislocate shoulder of the complainant while escaping arrest in bailable offence–No record that S.H.O. offered bail–*Prima facie* difficult to accept that such force was used in discharge of official duties–Complaint must proceed against S.H.O. : *Deepchand Gupta Vs. State, I.L.R. (1999) M.P. 1094*

– **Sections 197, 397, 401** – Revision against order rejecting objection under Section 197, Cr.P.C. on ground of want of sanction – Penal Code, Indian, 1860, Sections 120-B, 409, 420, 467, 468, 471 – Offences alleged under – When alleged forgery is said to be a mechanism to facilitate ultimate end of offence under Sections 409 and 420, there is no necessity of sanction – *Prima facie* no case made out to interfere in the order of trial Court on the point of sanction : *Babulal Tantuway Vs. State, I.L.R. (2001) M.P. 903*

– **Sections 197, 397, 401** – Revision – Penal Code, Indian, 1860, Section 120-B and Prevention of corruption Act, 1988, Sections 13(1)(d)(ii), 13(2) and 19 - Petitioner a member of Indian Administrative Services employed as Managing Director of M.P. Leather Corporation – Compulsorily retired before charge sheet was filed – Petitioner not a public servant so as to attract provision of Section 197, Cr.P.C. or Section 19 of the Prevention of Corruption Act : *V.S.P. Sheth Vs. State, I.L.R. (2001) M.P. 1767*

- **Sections 197, 482**–Quashing of proceedings–Where further proceedings in criminal case would be in abuse of process of Court, High Court has jurisdiction to quash the proceedings–Penal Code Indian, 1860–Sections 120-B, 500, 501–Complaint before Magistrate alleging that the contents of Article published are defamatory in character–Authorship of the Article attributed to petitioner–Nothing to suggest that petitioner was instrumental for publication–Article also cannot be said to be defamatory–Ground to proceed does not exist–Petitioner is an Officer of Union of India–Taking cognizance without prior sanction of Central Govt.–Improper–Proceedings quashed in so far as it relates to petitioner : *Dr. Kalyan Chakravarthy Vs. D.N. Agrawal, I.L.R. (2004) M.P. 707*

- **Sections 197, 482**–Quashing of proceedings–Where further proceedings in criminal case would be in abuse of process of Court, High Court has jurisdiction to quash the proceedings : *Dr. Kalyan Chakravarthy Vs. D.N. Agrawal, I.L.R. (2004) M.P. 707*

– **Sections 197, 482 and Penal Code, Indian (XLV of 1860), Sections 166, 120-B, 196** – Complaint case – Allegation that DIG police coerced the complainant to

return Rs. 15,000/- to the lady from the whom the amount was taken by complainant on false promise to get her brother employment – Both the employers of State Govt. under control of the DIG police – In his official capacity he had ample power to advise the complainant to return the amount – Sections 166, 120-B, 196, IPC – Coercion is one thing and advise is another – Alleged act squarely false within the ambit of official discharge of duties – Sanction under Section 197, Cr.P.C. necessary for proceeding against the DIG, police – Want of sanction – Petitioner could not be prosecuted : *R.K.E. Yadalwar Vs. A.B. Singh, I.L.R. (2001) M.P. 426*

– **Sections 197(1) & 2, 197** – Protection of Public Servant under – Complaint filed against certain Police officers under Sections 120-B, 175, 181, 182 and 500, Indian Penal Code – Sanction to prosecute them not obtained – Trial Court dismissed the complaint for want of sanction – Held, the view taken by the Trial Court was proper – Criminal Procedure Code, 1973 – Section 397 and 401 – High Court's revisional jurisdiction is to ensure that no miscarriage of justice is done and not to correct errors of law or fact : *Dadamchand Mahajan Vs. Ramsharan Singh, I.L.R. (1991) M.P. 413*

– **Section 199 and Penal Code, Indian (XLV of 1860), Section 500** - Publication of article with malicious and deliberate intention of outraging religious feelings - Proper course to be adopted : *Laxminarayan Singh Vs Shriram, I.L.R. (1984) M.P. 339*

– **Section 200** – Complaint case – Allegation that petitioner used filthy language and abused – Complainant's own witnesses not supporting her case – Prima-facie no case made out – Magistrate erred in taking cognizance – Impugned order set aside : *J.N. Fuloria Vs. Smt. Benibai, I.L.R. (2001) M.P. 560*

Section 200 – Central Bank is nationalised Bank – Employees are public servant -Need not be examined under Section 200 : *Rakesh Kumar Vs. Central Bank of India, I.L.R. (1991) M.P. 496*

– **Sections 200, 19(1)(a), 156(3) and 190(1)(b)** – Magistrate obtaining police report on complaint filed by complainant – Magistrate not examining complainant and his witnesses as required u/s 200 – Magistrate deemed to have acted on police report – Report not containing anything worth while – Cognizance of offence wrongly taken : *Smt. Hemlata Vs. Gyanchandra, I.L.R. (1989) M.P.310*

– **Sections 200, 154, 156, 482 and Penal Code, Indian, 1860 Sections 34, 120-B, 420**–Cheating–By false representations–Complaint laid before the Magistrate made over to the police for investigation–Police officer's power to investigate and quashing of FIR–FIR not disclosing commission of a cognizable offence–Surely not within the province of police to investigate–Investigation can be quashed in exercise of powers under Article 226 of the Constitution or Section 482 Cr.P.C.: *Ajay Mitra Vs. State of M.P., I.L.R. (2003) M.P. 1 (SC) (F.B.)*

- Sections 200, 202 and 203—Complaint case—Police investigation—Rejection of complaint upon considering the police report as the dispute appeared to be of civil nature—Magistrate not required to record statement of complainant or his witnesses before such dismissal—Magistrate is not required to utilise both course for collecting evidence—No illegality committed in dismissing the complaint : *Santosh Kumar Jaiswal Vs. Vivek Jain, I.L.R. (2003) M.P. 347* .

—Sections 200, 202, 203 and 204—Complaint case—Issue of process—Magistrate at the stage of issue of process not required to evaluate the evidence adduced by the complainant nor required to examine handwriting expert or prove his report—Penal Code, Indian 1860 Sections 120-B, 465, 469, 471 and Gram Panchayat (Election and Cooption) Rules, M. P., 1982, Rule 28—Nomination form of complainant got withdrawn by forgery—*Prima facie* case made out—Magistrate ought to have issued process: *Bachchu Vs. Ashok Kumar Tiwari, I.L.R. (1992) M.P. 433*

—Sections 200, 202, 204, 397 and 401—Complaint case—Revision against order taking cognizance and issue of process—Penal Code, Indian (XLV of 1860), Sections 109, 323 and 506—Offences alleged—On complaint being filed Magistrate requiring Police to conduct inquiry—Police report so filed after inquiry is not binding on the Magistrate—Magistrate empowered to proceed with the case if deemed fit in view of Section 202(2) of the Code—Magistrate issued process on appreciation of evidence—Not liable to be interfered with at this stage: *Dr. Kanhaiyalal Modi Vs. Dwarka Prasad Modi, I.L.R. (1992) M.P. 696*

—Sections 200, 202, 205, 245(2), 482 and Penal Code, Indian, 1860, Sections 34, 406 and 420—Complaint case—Cognizance by Magistrate—Issue of bailable warrant followed by warrant of arrest—Remedy provided under Section 245 (2) is an effective remedy—Already pressed into service—Can be devided even in the absence of the accused—Application for disposing with personal attendance and application for discharge pending—Without waiting for their disposal petition filed in High Court for exercise of inherent power—Petition not maintainable : *Shri Shailendra Vs. Som Distilleries & Breweries Limited., I.L.R. (2003) M.P. 659*

—Sections 200, 204 and Civil Procedure Code (V of 1908)—Section 151—Magistrate taking cognizance—Plea taken by defendant in written statement likely to prejudice him in criminal trial—Stay of suit in exercise of power under Section 151 C.P.C.—Proper—No interference called for: *New Bank of India Vs. Film M/S. Naramdeo Brothers Indore, I.L.R. (1992) M.P. 429*

—Sections 200, 204 and Penal Code, Indian—Sections 420, 467 and 468—Complaint case filed by plaintiff during pendency of suit in relation to same transaction: *New Bank of India Vs. Film M/s. Naramdeo Brothers Indore, I.L.R.(1992) M.P. 429*

– **Sections 200, 204, 244 and 245** – Issue of process after examination of complainant – Does not debar the Magistrate for discharging the accused under Section 245 even without recording further evidence under Section 244 : *Mahendra Kumar Mishra Vs. Chandra Shekhar Prasad Mishra, I.L.R. (2001) M.P. 586*

- **Sections 200, 204, 244, 245, 482, Penal Code, Indian, (XLV of 1860), Sections 294, 323 and 506, Part-II and Dowry Prohibition Act, (XXVIII of 1961), Sections 3, 4** – Complaint case – Power of Magistrate – Sections 200, 204, 244 and 245 – Issue of process after examination of complainant – Does not debar the Magistrate for discharging the accused under Section 245 even without recording further evidence under Section 244 – Sections 294, 323, 506, Part-II, IPC and Sections 3, 4, Dowry Prohibition Act, 1961 – Offences alleged – Complaint case – Issue of process – On appearance accused the Magistrate found that police charge sheet against complainant is pending in his Court and the charges against the accused persons are groundless – Order discharging accused rightly passed – No interference called for : *Mahendra Kumar Mishra Vs. Chandra Shekhar Prasad Mishra, I.L.R. (2001) M.P. 586*

- **Sections 200, 204, 397, 401 and 482 and Penal Code, Indian (XLV of 1860), Sections 499 and 500**–Complaint case–Jurisdiction–Suit filed at Bombay High Court containing defamatory imputation–Writ of summons served on the complaint at Chhindwara–On complaint filed J.M.F.C., Chhindwara has jurisdiction to take cognizance–Section 204, Cr.P.C.–Issue of process–Subjective satisfaction of Magistrate as prima facie case is sufficient to issue process–Suit containing defamatory imputation–Plaint verified by petitioner who alone is laible to be proceeded–Proceeding against other petitioners quashed–‘Publication’–Suit filed in which writ of summons issued and served on the complainant amounts to publication–Section 482, Cr.P.C.–Power of Superintendence of High Court–Exception 9 of section 499 of I.P.C.–Cannot be looked into at the stage of exercising power of Superintendence under section 482 or Revisional powers under sections 397/401 of the Cr.P.C.–Petitioner is at liberty to take recourse to such provision at appropriate stage–Prayer of stay of Trial till final decision in Civil Suit at Bombay cannot be acceded to–Words & Phrases ‘Publication’–Plaint filed with defamatory imputation amounts to ‘Publication’: *Trichinopoly Ramaswami Ardhanani Vs. Kripa Shankar Bhargava; I.L.R. (1992) M.P. 60.*

-**Sections 200, 300 and 482**–Private complaint–Cognizance by the Magistrate–Power of Superintendence of High Court–Petitioners acquitted in trial instituted on police report under Sections 498-A and 506, I.P.C.- Private Complaint after acquittal on same set of facts-Barred under Section 300 (1) of the Cr.P.C.-Proceeding quashed : *Rafique Khan Vs. Smt. Jamila Bee, I.L.R. (2000) M.P. 762*

- **Sections 200, 397, 401, Penal Code, Indian (XLV of 1860), Sections 294, 500 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)**

Act, 1989 – Sections 3(1)(x), 14 – Complaint case, Allegation that petitioner abused complainant calling them low caste wretches – Magistrate taking cognizance of offence under the Special Act of 1989 – Without jurisdiction – Sections 3 and 14 – Constitution of Special Courts – Only the Special Courts under Section 14 of the Act can take cognizance of an offence under Section 3 of the Act – Section 197 Cr.P.C. sanction – If this type of offence under 1989 Act as alleged is committed no sanction can be required – Section 200 Cr.P.C. – Complaint case – Allegation that petitioner used filthy language and abused – Complainant's own witnesses not supporting her case – Prima-facie no case made out – Magistrate erred in taking cognizance – Impugned order set aside : *J.N. Fuloria Vs. Smt. Benibai*, I.L.R. (2001) M.P. 560

–Sections 200, 482, Penal Code Indian, 1860, Section 420 and Trade and Merchandise Marks Act, 1958, Section 2 (u) 78, 79–Petition for quashing prosecution–Documents filed by accused cannot be looked into at the time of taking cognizance or framing charge–Toothpaste advertisement–Advertiser is permitted to indulge in some amount of exaggeration or hyperbole–Ingredients of offence not discernible from statement of complainant–Prosecution quashed : *Colgate Palmolive (India) Ltd., Mumbai Vs. Shri Satish Rohra*, I.L.R. (2005) M.P. 1113

- Sections 200, 482 and Penal Code Indian, 1860, Sections 120-B, 409, 420–Complaint case–Against Bank Officers–Petitioner Assistant General Manager–Not incharge of the Bank at relevant time to which the offence related–Had this fact been brought to knowledge of M.F.C. complaint must not have been registered against petitioner–Proceeding would be an abuse of the Court–Quashed in so far it relates to petitioner : *Union Bank of India Vs. Bharat Bhushan Pal Verma*, I.L.R. (2004) M.P. 704.

–Section 200(2)–Proviso to Sub-section (2) of Section 200 is mandatory–Intention of Legislature all the prosecution witnesses have to be examined by the Magistrate before committal–Procedure adopted by Magistrate is illegal–Committal order quashed–Case remanded to the Court of Judicial Magistrate: *Prayag Singh Vs. State*, I.L.R. (1992) M.P. 369

- Section 201 - Complaint filed on 7-9-1973 without copies of complaint - Magistrate making endorsement of its presentation but returning it for purposes of copies - Complaint represented on 14-9-1973 with copies - Complaint deemed to have been filed on 7 - 9 - 1973 : *State (Union of India), Through Regional Inspector of Mines, Nagpur Division Vs. L. Jain*, I.L.R. (1983) M.P.121, (F.B.)

-Section 202-Scope of enquiry-Magistrate has to be satisfied whether there is sufficient ground for proceedings and not to see that whether there is sufficient ground for conviction. : *M/s. Swaroop Vegetables Product Industries Ltd. Vs. M/s. Vindhya Soya Limited*, I.L.R. (1994) M.P. 493

–**Sections 202, 203 and 482**–Petition for quashing proceedings–Complaint case–Penal Code, Indian, 1860–Sections 415 & 420–Cheating–For prosecution under Section 420 the ingredient of cheating as defined under Section 415, IPC are to be there–Accused alleged to have induced the complainant to purchase a car and pay for that yet the car was not delivered–Complainant stating that he wanted to purchase a car–Requirement of ‘dishonestly’ inducing to part with’ not fulfilled–Magistrate not acted judicially–Proceedings quashed. : *Vinod Doshi Vs. State, I.L.R. (1992) M.P. 527*

- **Sections 202(1), 156(3), 200, 408, 410 and Penal Code, Indian, 1860, Section 500 and Judges Protection Act, Section 3**–Alleged defamation–CJM called comments from the Magistrate from which transfer of case was sought–In reply expression made is that the application is based on little legal knowledge–(Alp Gyani Kanooni Salah)–Transfer application not disclosing that it was moved through any counsel or drafted by complainant advocate–Act of Magistrate in making the reply is protected as done in official capacity–Magistrate erred in taking cognizance: *A.K. Singh Vs. Virendra Kumar Jain; I.L.R. (2002) M.P. 399*

- **Section 202 (2)** - Magistrate following procedure of complaint case, committing case to Court of sessions as offence exclusively triable by Court of Sessions but without recording evidence of all witnesses on oath - Order of commitment violates provisions of this section : *Bajji Vs. State, I.L.R. (1981) M.P.896*

–**Section 202(2)**–Magistrate empowered to proceed with the case if deemed fit in view of Section 202(2) of the Code–Magistrate issued process on appreciation of evidence–Not liable to be interfered with at this stage: *Dr. Kanhaiyalal Modi Vs. Dwarka Prasad Modi, I.L.R. (1992) M.P. 696*

- **Section 202 (2) and 465** - Non-compliance with mandatory requirements of Section 202 (2) - Not merely an “irregularity” but an “illegality” - Not curable under Section 465 : *Bajji Vs. State, I.L.R. (1981) M.P.896*

–**Section 204**–Issue of process–Subjective satisfaction of Magistrate as prima facie case is sufficient to issue process–Suit containing defamatory imputation–Plaint verified by petitioner who alone is liable to be proceeded–Proceeding against other petitioners quashed: *Trichinopoly Ramaswami Ardhanani Vs. Kripa Shankar Bhargava, I.L.R. (1992) M.P. 60*

- **Sections 204, 209 and 438**–Anticipatory bail–Apprehension of arrest on accusation of commission of non-bailable offence–Accusation will continue even if the Magistrate issued process under Section 204 or at the committal stage or even at a subsequent stage–Application for grant of anticipatory bail maintainable: *Nirbhay Singh Vs. State of M. P.; I.L.R.(1994) M.P. 294*

-Section 207 – Alleged public address is subject matter of prosecution which in audio-video cassettes – Trial Court denied to supply copy of such cassettes on the ground that machinery required for preparing copies of cassettes not available in Court – Order is not proper – Court should have directed the prosecution to make available necessary facilities for preparing & supplying copies of such cassettes to accuse : *Sadhvi Ritumbhara Vs. State of M.P., I.L.R. (1996) M.P. 557*

–Sections 210, 200, 311 and Penal Code Indian, 1860, Sections 34, 302– Amalgamation of complaint case with criminal Trial–Witnesses examined in absence of newly impleaded accused–Trial Court committed serious infirmity in dismissing application for recalling witnesses : *Munnalal Vs. State of M.P., I.L.R. (2005) M.P. 1211*

– Section 216 – Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Framing of additional charge – During the course of trial – If any additional charge was to be framed even prima facie material had to be brought on record – Mere fact that the F.I.R. was lodged claiming the prosecutrix to be a member of Scheduled Caste was not a sufficient material to presume that the charge under Section 3(1)(XI) of the Act was called for : *Ram Prashad Vs. State of M.P., I.L.R. (1996) MP 214*

- Section 218, 219, 397/401, 464 (1) and Penal Code, Indian (XLV of 1860), Section 409 – Joinder of charges – Permitted by law in certain cases – Scope of provisions of Section 464, Criminal Procedure Code – Occurrence of failure of justice in Court's opinion required – Criminal Breach of Trust – Entrustment of property necessary – Mens rea – Essential element : *Badrilal Vs. State of M.P., I.L.R. (1988) M.P. 708*

- Section 218 (1) and (2) and Proviso - Joint Trial - Object of - Magistrate, discretion of, in holding joint trial - Principle of - Magistrate consolidating four cases for distinct offence under Section 409, Indian Penal Code and recording joint evidence and holding joint trial - Accused not raising objection - No prejudice caused to accused by such joint trial - Amounts to substantial compliance of proviso to section 218 (1) - Trial not vitiated : *Manoharlal Lohe Vs. State of Madhya Pradesh, I.L.R. (1981) M.P. 790*

– Section 220, Rule of Estoppel – Same Transaction – Main test, continuity of action and community of purpose – Interval of time though important element but not necessarily indicate want of continuity – Judgments in both trials pronounced on the same date – Rule of Estoppel not applicable : *Sheikh Jumman Vs. State of M.P., I.L.R. (1990) M.P. 633*

– Sections 221, 300, 386, 397, 401 – Revision – Penal Code, Indian, 1860 – Sections 304-A, 314, 315 – Negligence leading to death – Accused nurse administered medicine for abortion to two months old pregnancy – Death of victim – Prima-facie

offence under Sections 314, 315, Indian Penal Code made out – Appellate Court has jurisdiction to remit the case for committal after setting aside conviction and sentence under Section 304-A Indian Penal Code – Such re-trial would not amount to retrial but continuation of trial – Framing of charge under Sections 304-A, 314, 315, Indian Penal Code by Sessions Judge on committal proper – Bar under Section 300 Criminal Procedure Code would not come in the way : *Smt. Nirmala Bai Vs. State, I.L.R. (2001) M.P. 1775*

-Sections 226, 161, 231, 233 and Penal Code Indian (XLV of 1860)–Section 302–Murder–Prosecution–Defence witnesses–Not to be ignored–To be tested on the touchstone of reliability, credibility and truthfulness – Particularly when attempts to resile and speak against the record–No legal bar in discarding it if found untruthful – Prosecution witness–Public Prosecutor is expected to produce evidence “in support of the prosecution” and not in derogation of the prosecution case–Free to skip a witness on reliable information that he would not support the prosecution case – Open to the defence to cite and examine him as defence witness – Decision has to be taken in a fair manner–Delayed examination of witness – Defence cannot gain therefrom unless the investigating officer is asked why there was delay : *Banti @ Guddu Vs. State of M.P., I.L.R. (2004) M.P., 28 (SC) (D.B.)*

- Section 227 and Penal Code Indian, 1860, Section 376 - Rape - Charge - Prosecutrix succumbed to the lust of accused on misrepresentation that he was a bachelor and would marry her - Consent obtained by misrepresentation - Not a consent under the law - Order of discharge set aside: *Ku. Renu Yadav Vs. Madhusudan Elawadi, I.L.R. (2002) M.P. 752,*

-Sections 227, 161, 228, 397, 401 and Penal Code Indian, 1860 Section 376– Allegation of rape–Discharge –On misrepresentation and false promise that accused is a bachelor and will marry her that the prosecutrix succumbed to his lust–Her consent was not a true consent–Fearing prosecution, accused also threatened her of dire consequences and also attempted to set her on fire–Sufficient material to frame charge–Order impugned set aside–Matter remanded for framing charge : *Ku. Renu Yadav Vs. Madhusudan Elawadi, I.L.R. (2003) M.P. 655*

– Sections 227, 228 – If materials on record remain un-rebutted an conviction could result, charge must be framed : *Kishorilal Agrawal Vs. Smt. Rampyaribai, I.L.R. (1989) M.P. 737.*

- Sections 227, 228 – Discharge on plea of alibi - Accused charged for offence under Section 307/34, Penal Code- At stage of framing charge defence plea of alibi cannot be considered and accepted -Discharging accused without testing truth of alibi at trial – Is Premature and therefore not proper : *Chandrika Vs. Rajaram, I.L.R. (1995) M.P. 374*

-Sections 227, 228, 397 And 401-Revision-Framing of charge-Sections 227 & 228-If two possible and reasonable construction can be put the Court must lean towards the one which exempts the subject from penalty-Prevention of Food Adulteration Act, 1954-Section 2(r) -‘Ice’-Not food-Provision of Sections 7/14 not attracted-Prosecution quashed-Words & Phrases-‘Ice’-Is water in solid form i.e. Hydrogen and Oxygen : *Udhabdas Vs. State, I.L.R. (2000) M.P. 203*

- Sections 227, 397 (2) – Revision against framing of the charge – Maintainability – Accused pleaded that there was no material on record against him and claimed to be discharged – Held – If the plea is accepted it would put an end to the matter – An order discharging accused or refusing to discharge is not an interlocutory order – Revision is maintainable : *Khagesh Kumar Goel Vs. State of M.P., I.L.R. (1997) M.P. 591*

-Sections 228, 397/401-Revision against framing of charge-Accused charged for possession of property disproportionate to his pecuniary resources and assets-Prevention of Corruption Act, 1988-Sections 13(1)(e) and 13(2)-Charges framed under-Investigative trial before charge giving opportunity to accused to produce evidence- Not necessary-Challan showing extent of properties beyond known sources of income-Prima facie case for charge made out-No interference called for : *Permanand Jha Vs. State, I.L.R. (2000) M.P. 888*

-Sections 228, 397, 401-Revision- Framing of charge-*Prima facie* material must be there-Penal Code, Indian-Sections 302, 304-B-Dowry death-Ingredients for framing of charge-Death within seven years of marriage and that she was subjected to cruelty or harassment soon before her death for or in connection with dowry-Though some of the accused reside at a distant place from the place of incident but evidence collected *prima facie* indicated nexus between the accused persons and the death of deceased-Charged framed by Trial “Court needs no interference : *Rajiv Kumar Vs. State, I.L.R. (2000) M.P. 410*

-Sections 228, 397 and 482-Inherent power of High Court-Sections 161 and 173-Challan-Statement of deceased under Section 161 Cr.P.C. recorded in the form of dying declaration-Not filed alongwith challan-Cannot be used for any purpose unless proved-Prosecution required to fill said dying declaration and supply copy to the defence to meet the ends of justice-Sections 228 and 397-Framing of Charge and Revision-Penal Code, Indian, 1860-Sections 304-B and 498-A-Charge framed under-Not challenged by way of revision under Section 397,Cr.P.C.-Cannot be gone into in exercise of inherent powers : *Arun Kumar Vs. State, I.L.R. (2000) M.P. 896*

-Section 233–Defence witnesses–Not to be ignored–To be tested on the touchstone of reliability, credibility and truthfulness–Particularly when attempts to resile and speak against the record–No legal bar in discarding it if found untruthful : *Banti @ Guddu Vs. State of M. P., I.L.R. (2004) M.P. 28 (SC) (D.B.)*

- **Sections 235 (2) and 248 (2)** – Provisions are mandatory – Applicable in appeals also – Judgment pronounced convicting and sentencing accused without hearing him on question of sentence – Sentence vitiated – Section 482, 362 and 393 – Exercise of inherent powers by High Court to correct this error – No bar – High Court set aside the sentence and after hearing accused passed fresh sentence after taking into consideration fact of compromise into account even though offence is non-compound : *Haji Abdul Rehman Vs. Ashok Kumar, I.L.R. (1988) M.P. 287*

- **Section 238** – Gum seized at the instance of accused from jurisdiction of different police station – Failure to keep personnel of concerned police station may be an irregularity but it would not vitiate the recovery : *Gomda Vs. State of M.P., I.L.R. (2004) M.P. 779 (D.B.)*

- **Sections 238, 374(2), - Evidence Act Indian, Sections 9, 114 and Penal Code Indian, 1860, Sections 300, 392, 396, 397, 411, 412** – Dacoity and murder – Conviction and sentence – Appeal against Death as a result of injury inflicted during dacoity – Act of miscreants amounted to murder – Identification – Sufficient light at the place of occurrence – Witnesses had opportunity to see the miscreants for sufficiently long time – Features and other particulars of miscreants described in the F.I.R. – Identification not doubtful – Gum seized at the instance of accused from jurisdiction of different police station – Failure to keep personnel of concerned police station may be an irregularity but it would not vitiate the recovery – Possession of property stolen in commission of dacoity – Knowledge of accused that the property was stolen in dacoity is an essential ingredient of Section 412, I.P.C. – In absence of evidence of such knowledge only presumption that accused knew that article was a stolen property fit case to convert conviction under Section 412, IPC to one under Section 411 I.P.C. – Act of accused in commission of dacoity covered by Section 396 – Separate sentence under Section 392 read with Section 397 I.P.C. is improper and is set aside – Appeal partly allowed : *Gomda Vs. State of Madhya Pradesh, I.L.R. (2004) M.P. 779 (D.B.)*

- **Section 240 (1)** – Framing charge – At the stage – Court have to presume that material collected by I.O. is true – Can not assess probative value or to appreciate credibility of material – Charges U/ss 457, 380 & 427 I.P.C. were framed against 4 applicants – Complainant alleged in FIR that applicant W&T committed theft – Statements of witnesses prima facie make out a case of presence of other 2 applicants – Order of framing charge U/s 380 proper – Revision against the order dismissed : *Haider Ali Vs. State of M.P., I.L.R. (1996) MP 568*

- **Sections 241, 374(2), and 394** – Appeal against conviction – Death of appellant during pendency of appeal – Widow granted permission to prosecute the appeal – Penal Code, Indian, 1860, Sections 409, 477-A and Prevention of Corruption Act, 1947, Sections 5(1)(c) and 5(2) – Charge of dishonest mis-appropriation of fund – Conviction on basis of

admission is unqualified—Accused admitted the charge expecting exoneration or leniency in sentence by placing extenuating and mitigating circumstances that there was a theft in his house and as he fell ill he spent some amount for his treatment of Tuberculosis and also wanted to deposit balance amount which was not taken—Such admission is not unequivocal or unqualified—Mens rea or dishonesty on his part not admitted by him—Conviction and sentence on such plea of guilt—Not sustainable: *Vijay (Dead) Through Kamlesh Thakur Vs. State*, I.L.R. (2002) M.P. 341,

- **Section 244, 200, 204 and 245** – Issue of process after examination of complainant – Does not debar the Magistrate for discharging the accused under Section 245 even without recording further evidence under Section 244 : *Mahendra Kumar Mishra Vs. Chandra Shekhar Prasad Mishra*, I.L.R. (2001) M.P. 586

-**Sections 244, 200, 204, 245, 482, Penal Code, Indian, (XLV of 1860), Sections 294, 323 and 506, Part-II and Dowry Prohibition Act, (XXVIII of 1961), Sections 3, 4** – Complaint case – Power of Magistrate – Sections 200, 204, 244 and 245 – Issue of process after examination of complainant – Does not debar the Magistrate for discharging the accused under Section 245 even without recording further evidence under Section 244 – Sections 294, 323, 506, Part-II, IPC and Sections 3, 4, Dowry Prohibition Act, 1961 – Offences alleged – Complaint case – Issue of process – On appearance accused the Magistrate found that police charge sheet against complainant is pending in his Court and the charges against the accused persons are groundless – Order discharging accused rightly passed – No interference called for : *Mahendra Kumar Mishra Vs. Chandra Shekhar Prasad Mishra*, I.L.R. (2001) M.P. 586

- **Section 245(1), Indian, Penal Code, 1860, Section 494, 109** – Warrant case instituted upon private complaint – Discharge of accused – Magistrate discharging accused after sifting and weighing evidence regarding factum of marriages applying standards applicable at final decision of case – Order of discharge set aside by Sessions Court – Order of Sessions Court challenged – Court to prima facie consider whether there is sufficient materials against accused – Discharge of accused amounts to miscarriage of justice – Order of Sessions court affirmed.: *Surendra Kumar Jain Vs. Rajkumari*, I.L.R. (1993) M.P. 325

-**Section 245(2) and Penal Code Indian (XLV of 1860)**-Complaint against officers of the Co-operative Bank-Magistrate taking cognizance under section 380, 458 – Indian Penal Code - Even after opportunities to the complainant he was neither appearing nor bringing his witnesses nor taking steps for the same- In such a situation Section 245(2) becomes applicable-Magistrate is empowered to discharge the accused-In absence of evidence Magistrate dismissed the complaint and discharged the accused persons giving reasons-Second complaint filed-Attitude of complainant was of misusing the process of the Court to prosecute the accused and not prosecute them-Effect of discharge under Section 245(2) Criminal Procedure Code was discharge after trial-Complainant cannot

be allowed to regitate the matter against those very accused : *Bhagmal Jain Vs. Bhaiyalal*, I.L.R. (1999) M.P. 392

-Sections 245(2), 200, 202, 205, 482 and Penal Code, Indian, 1860, Sections 34,406 and 420-Complaint case–Cognizance by Magistrate–Issue of bailable warrant followed by warrant of arrest–Remedy provided under Section 245 (2) is an effective remedy–Already pressed into service–Can be devided even in the absence of the accused–Application for disposing with personal attendance and application for discharge pending–Without waiting for their disposal petition filed in High Court for exercise of inherent power–Petition not maintainable : *Shri Shailendra Vs. Som Distilleries & Breweries Limited.*, I.L.R. (2003) M.P. 659

- Section 245(2) and 397/401 – Power of discharge – Complaint not disclosing a prima facie case – Accused could be discharged u/s 245(2) by Magistrate – Neither taking cognizance nor issuing process sufficient to decline exercise of this power to discharge – Revisional powers of the Court – Powers include the power to quash proceedings : *Alok Mitra Vs. Narendra Kumar*, I.L.R. (1989) M.P. 178

- Section 248 - Award of sentence - Accused convicted for an offence under Sec. 326, I. P. C. but imposed a sentence of fine only on consideration of long trial and accused remaining in jail for sometime - Case presenting a picture of extreme brutality and lawlessness - Accused liable to be visited with maximum penalty for 3 years R. I. - Theory and principles for awarding punishment discussed : *The State Vs. Ganga Singh*, I.L.R. (1986) M.P. 465 (D.B.)

- Sections 248, 482-Acquittal giving benefit of doubt-Petition for expunging remark “benefit of doubt”-Acquittal means the person concerned has not committed the offence for which he was charged-No difference between “clean acquittal” and honourable acquittal or acquittal based on benefit of doubt-Words “beyond reasonable doubt-Cannot be termed as stigma or proof of any criminal charge-No case made out for invoking power under Section 482 Cr.P.C.: *Smt. Panna Mehta Vs. State of M.P.*, I.L.R. (2002) M.P. 1047,

- Sections 249 and 482 – Inherent power of High Court – Though by virtue of death of complainant in view of Section 249, Criminal Procedure Code, the complaint case cannot be quashed as the offences are not compoundable and absence of complainant not willful but for death, yet the inordinate delay amounts to miscarriage of justice and abuse of process of the Court – Prosecution quashed – Applicant awarded Rs. 5,000/- as compensation – Accused discharged : *Ramesh Chandra Vs. Kailash*, I.L.R. (2001) M.P. 1261

- Sections 276-C, 277 and 482 - Quashment of Criminal Prosecution- Delation of penalty by the Income Tax Tribunal- Criminal proceeding against the applicant accused

deserves to be quashed : *Suresh Chandra Vs. Union of India, I.L.R. (1998) M.P. 439*

-Sections 293, 397 and 401 – Revision – Description and power to exercise suo-motu interference by High Court – Depend upon character of evidence whether admissible or inadmissible – Evidence Act, Indian, 1872, Sections 3, 59, 67, 74, 77, 79, “Document” means the original document – Section 293 Criminal Procedure Code – Intention legislature is to confine the provision only to primary document or original document – F.S.L. Report is an expert evidence – Its certified copy cannot be given in evidence as it is not a public document nor can be proved under Section 77 of the Act – Document envisaged in Section 293, Criminal Procedure Code does not fall within the meaning of public document under Section 74 of the Evidence Act – Hence certified copy thereof not admissible – Order impugned set aside – Prosecution directed to examine the person making such report to prove its contents or produce the originals for proving the documents : *Govind Vs. State, I.L.R. (2001) M.P. 1088*

- Section 294 and Evidence Act (II of 1872), Section 45 - Post-mortem report - Value of - When can be used in evidence against the accused for the offence of murder - Doctor not examined by the prosecution to prove it - Accused cannot be convicted on the basis of post-mortem report : *Bahadaria Vs. State of Madhya Pradesh I.L.R. (1980) M.P. 1169 (D.B.)*

-Sections 294/374(2), - Evidence Act Indian 1872, Sections 3, 145, 146 and Penal Code Indian 1860, Section 161 and Prevention of Corruption Act (II of 1947), Section 5 (2)–Appeal against conviction and sentence–Trap case–Sanction–Genuineness–Not required to be proved by examining the authority granting sanction as in the case of a post mortem report–Court is only required to see whether the sanction has been given after proper application of mind–Evidence showing preparation of ante dated ante time documents–Second trap laid– Nothing to show that appellant demanded bribe–Failure of prosecution to explain why first trap was unsuccessful– Only inference that unsuccessful trap was planted one and the appellant was falsely implicated–Relevant question to show motive for false implication not allowed to be put to complainant–Prejudice caused to defence–Conviction and sentence set aside : *Abdul Rahman Sheikh Vs. State, I.L.R. (2003) M.P. 994*

- Sections 295, 125, 127 and 482 - and Constitution of India, Article 141, Muslim Women (Protection of Rights on Divorce) Act, 1986 Sections 3, 4 and 5–Precedent–Decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding–Interpretation of statute–Cardinal principle–Every statute is prima facie prospective unless expressly or by necessary implication made to have retrospective operation–More so when object is to affect vesting rights or to impose new burden or to impair existing obligation–Right to get

maintenance from her husband is a vested right of a woman in any religion—No provision in the Act of 1986 so as to give it retrospective operation—Substantive law relating to vested rights—Such law are normally treated as prospective—Provision neither retrospective in operation nor have the effect of nullifying the order already made under Section 125 or 127 Cr.P.C.—Talaq—Plea of divorce taken in written statement is no proof of divorce—Husband is required to prove that he has given divorce to his wife in accordance with Mohammedan Law—Husband shall continue to remain liable until obligation comes to an end in accordance with law : *Wali Mohd. Vs. Batul Bi, I.L.R. (2004) M.P. 37 (F.B.)*

-Sections 299, 82, 83, 438 and Penal Code Indian, 1860, Sections 307, 394—Alleged offence—Accused not attending Court after grant of anticipatory bail—Issue of non bailable warrant of arrest—Failure to execute and to secure attendance of accused by police officer—Magistrate has a duty to proceed to declare such person as proclaimed offender and police officer has to approach the Court for such a declaration as provided in Regulation 789 of M. P. Police Regulations—In a fit case Magistrate also has to proceed under Section 299 of the code against the police officer executing such warrant of arrest—Magistrate not expected to fail in taking prompt action and allow such matter to get prolonged: *Ramesh Chand Gupta Vs. State, I.L.R. (2002) M.P.168,*

-Sections 299, 156, 190, 200, 202, 397, 401—Criminal Procedure—FIR and cognizance of offence by Magistrate—An order is a document and has to be construed in its ordinary and natural meaning in absence of any ambiguity—Magistrate in complaint case after examining complainant may order for police investigation under Section 156(3) Cr. P.C.—Mere examination of complainant does not mean that he had taken cognizance—Warrant of arrest—On the date of filing charge sheet accused not present—To secure attendance of accused Magistrate rightly ordered for issuance of warrant of arrest : *Harbhajan Vs. State, I.L.R. (2003) M.P. 1041*

-Sections 299, 374(2)—Appeal from conviction—Dacoity—Co-accused absconded—Trial Court required to be strict enough to take action for not producing witnesses—Non-examination of key witness—Trial not held properly—Conviction and sentence set aside : *Janardhan Vs. State of M.P. : Through P.S. Ramnagar District Satna (M.P.), I.L.R. (2005) M.P. 1199*

-Sections 300, 200 and 482—Private complaint—Cognizance by the Magistrate—Power of Superintendence of High Court—Petitioners acquitted in trial instituted on police report under Sections 498-A and 506, I.P.C.—Private Complaint after acquittal on same set of facts—Barred under Section 300(1) of the Cr.P.C.—Proceeding quashed : *Rafique Khan Vs. Smt. Jamila Bee, I.L.R. (2000) M.P. 762*

- Sections 300, 221, 386, 397, 401 – Revision – Penal Code, Indian, 1860 – Section 304-A, 314, 315 – Negligence leading to death – Accused nurse administered

medicine for abortion to two months old pregnancy – Death of victim – Prima-facie offence under Sections 314, 315, Indian Penal Code made out – Appellate Court has jurisdiction to remit the case for committal after setting aside conviction and sentence under Section 304-A Indian Penal Code – Such re-trial would not amount to retrial but continuation of trial – Framing of charge under Sections 304-A, 314, 315, Indian Penal Code by Sessions Judge on committal proper – Bar under Section 300 Criminal Procedure Code would not come in the way : *Smt. Nirmala Bai Vs. State, I.L.R. (2001) M.P. 1775*

-Sections 300, 386 and Penal Code, Indian (XLV of 1860) – Section 304-A – Appellate Court has jurisdiction to remit the case for committal after setting aside conviction and sentence under Section 304-A Indian Penal Code – Such re-trial would not amount to re-trial but continuation of trial – Framing of charge under Section 304-A, 314, 315, Indian Penal Code by Sessions Judge on committal proper – Bar under Section 300 Criminal Procedure Code would not come in the way : *Smt. Nirmala Bai Vs. State, I.L.R. (2001) M.P. 1775*

- Sections 301(2) - and 24(8) and Constitution of India, Articles 226/227 and Penal Code, Indian (XLV of 1860) , Sections 302, 498-A, 304-B – Dowry Death – Section 24(8), Cr.P.C. – Application under, for appointment of Special Public Prosecutor – Allowed by State Govt. on the recommendation of District Judge – Articles 226/227 – Writ Petition – Merely because the crime is heinous – No ground for appointment of a Special Public Prosecutor – Sections 24(8) and 301(2) – Only in exceptional cases and for reasons to be recorded the State Govt. can exercise its power appointment Special Public Prosecutor – Order does not show that the case is one of exceptional nature – Order quashed – Appointed Special Public Prosecutor permitted to assist the prosecution as envisaged under Section 301(2), Cr.P.C.: *Poonam Chand Jain Vs. State, I.L.R. (2001) M.P. 503*

-Sections 302, 120-B–Criminal Conspiracy–Circumstance of alleged public humiliation of co-accused by deceased–Even if found proved would not lead to inference of guilt–Co-accused entitled to benefit of doubt–Acquitted : *Purushottam Vs. State, I.L.R. (2004) M.P. 393 (D.B.)*

- Sections 304 and 374(2) and Legal Services Authorities Act (XXXIX of 1987) – Criminal Appeal – Came up for hearing after a long gap – Appellant found not represented by any advocate as the advocate who filed the appeal left practice – Constitution of India – Articles 21, 39-A and 215 – Powers under – Invoked to ensure that appellant is not deprived of the equal opportunity to secure justice – Senior Advocate engaged with a junior to assist him at the state expenses – Words and phrases: “procedure established by law” means the procedure which is just, fair and reasonable : *Azad Vs. State, I.L.R. (2001) M.P. 243 (D.B.)*

- **Section 306** - Tender of pardon to approver - Prescribed procedure has to be followed - Chief Judicial Magistrate not complying with mandatory provision of sub-section (4) and (5) and conditions imposed are only half-hearted - Chief Judicial Magistrate acts illegally - Commitment order quashed and directions given : *The State of M. P. Vs. Laxmi*, I.L.R. (1985) M.P. 64

- **Sections 306, 397/401 and 482 and Penal Code, Indian (XLV of 1860), Section 420** – In exercise of inherent powers of High Court recalled the judgment passed in earlier revision – Objection that Section 362, Cr.P.C. prohibits the Court for allowing or reviewing the final order passed except correction of clerical error – Not tenable as there is distinction between reviewing and recalling of an order – High Court in exercise of powers under Section 482 recalled the order passed in earlier revision because the same was heard in absence of respondent as they failed to appear : *Gulam Ahmad Vs. Late Haji Maulana Mohd. Zahoor*, I.L.R. (2001) MP 266

- **Sections 307, 401 & Prevention of Food Adulteration Act 1954, 7(1)(3) and 16(1)(a)(i)**– Scope of revisional Court – To correct any jurisdictional error or perversity in appreciation of evidence - But not empowered to sit as a Court of appeal and re-appreciate the evidence – Evidence of Food Inspector found reliable by the two Courts below – No perversity or unreasonableness demonstrated – Revisional Court has not re-appreciated the evidence of Food Inspector : *Uma Prasad Vs. State of M.P.*, I.L.R. (1995) M.P. 697,

- **Section 308**- Provisions Mandatory-Non-compliance of requirement of sub-sections (1), (4) and (5) of Section 308, Criminal Procedure Code is writ large & non-compliance of above provision will vitiate the trial-Nature- The provision is for safeguarding the right of the person who has been granted pardon i. e., has been made approver in any case as he is the person for helping prosecution for bringing home the offence in respect of other co-accused person and if such person is put to trial without any safe-guard then a position may develop that the service crimes may go unpunished-Requirement of certification-First approver should willfully conceal something essential to the prosecution or 2nd that he has given false evidence-Opportunity to an approver-An opportunity to be made available to the approver for proving non-satisfaction of condition precedent and whereon the Court to take decision : *Mrs. Gunwannta Bai Alias Munnibai Vs. State of Madhya Pradesh*, I.L.R. (1998) M.P. 972 (F.B.)

- **Section 311** – Prosecution has closed its evidence – Court finds that a report lodged by deceased against accused is written by Head Constable – Evidence of such witness is essential for just decision of case – Order of summoning witness proper : *Lalu Alias Lal Singh Vs. State of M.P.*, I.L.R. (1996) MP 560

- **Section 311** - Application for recalling an eye-witness for cross-examination - On receipt of letter allegedly written by eye-witness admitting lack of personal knowledge

of the perpetrators –Addressee not produced for examination- Application lacking bona fides - Order rejecting said application, proper : *Shyam Vs. State of M.P., I.L.R. (1995) M.P. 322, (D.B.)*

-Sections 311, 200, 210 and Penal Code Indian, 1860, Sections 34, 302– Amalgamation of complaint case with criminal Trial–Witnesses examined in absence of newly impleaded accused–Trial Court committed serious infirmity in dismissing application for recalling witnesses : *Munnalal Vs. State of M.P., I.L.R. (2005) M.P. 1211*

-Section 313–Failure accused to give an explanation in his statement under Sec. 313 Cr.P.C. and to only circumstance that deceased had left with appellant–Not sufficient to sustain conviction : *Bharat Vs. State of M.P., I.L.R. (2003) M.P. 100 (SC) (D.B.)*

-Section 313 – Accused not mislead in absence of charge under section 147 Indian Penal Code, questions asked about incriminating circumstances, unlawful assembly and common object under section 313 Criminal Procedure Code – No failure of justice and no question of prejudice : *Jagdish Singh Vs. State of M.P., I.L.R. (1989) M.P. 664 (D.B.)*

- Section 313 – Statement of accused under section 313 Criminal Procedure Code – Has to be read as a whole – Cannot be split up for using against accused : *Vasudeo Vs. State of M.P., I.L.R. (1988) M.P. 324 (D.B.)*

- Section 313 – Scope of – Statement of accused recorded under – Not alone sufficient to base conviction – Defence taken by one accused – Not to be treated as evidence against the co-accused : *Dinesh S/o Khemjibhai Vs. Union of India, I.L.R. (1990) M.P. 450,*

- Section 313 and Drugs and Cosmetics Act (XXIII of 1940), Section 18(a)(1), read with Section 27(b)–Conviction under-Section 25-Provisions are mandatory in nature-Report of Government Analyst suffering from infirmities- Detailed report of Government analyst not brought to the notice of accused-It has caused prejudice to his defence and also snatched evidentiary value of report of the Govt. analyst-Conviction set aside : *M/s. Vishal Pharmaceuticals Vs. State, I.L.R. (1999) M.P. 704*

-Sections 313, 397 and 401–Revision–Appellant entering into second marriage during subsistence of first marriage–Deposition by complainant that Saptapadi marriage was solemnised remained unrebutted–Applicant also admitting this fact in his statement under Section 313, Cr.P.C.–Conviction of applicant justified: *Shriram Vs. State, I.L.R. (1992) M.P. 523*

-Sections 317, 397 and 401–Revision-Trial Judge refused to grant exemption from personal appearance during trial-Power of grant or refuse exemption is discretionary –Such discretion should be exercise carefully-Punitive approach is totally undesirable-

Trial pending since 1991-Accused are required to come from a distant place to attend trial-One aged and the other young married lady-Exemption from personal appearance granted till their statement under Section 313, Cr.P.C. is required to be recorded : *Rameshwari Devi Vs. State, I.L.R. (2000) M.P. 407, .*

-Section 319 – Court of Session or the Trial Magistrate empowered to take cognizance against such a person not sent for trial till framing of the charges and thereafter this power can be exercised only on the basis of evidence adduced against such person – Trial Court though referring to a wrong Section but passed the order within its jurisdiction : *D.R. Maheshwar Vs. State, I.L.R. (2001) M.P. 1412*

-Section 319–House and land belongs to one of the PW-5, in whose name search warrant issued and raid arranged –Personal belongings of landlord also found during search–Warrant for arranging land owner as accused issued but not executed–Affidavit of co-accused admitting that house and land was taken on sikmi for three year–Affidavit not seized by police nor there is any mention of its seizure in police Diary–Fact of sikmi not proved -Miscarriage of justice–Apparently efforts made to save influential land owner : *Har Narayan Vs. State, I.L.R. (2004) M.P. 389*

-Section 319 - Summons –After investigation, the investigating agency having found that there was no complicity of three accused in the commission of the offence – Filed charge sheet in respect of the accused who were offender - Additional accused - Power to summon - No evidence led before trial Court - Trial Court ordered summoning of accused person by exercising power under Section 319 - Not proper exercise of power conferred under section 319 : *Abdul Karim Khan Vs. State of M.P., I.L.R. (1995) M.P. 377*

- Section 319 - Framing of charge - Certain persons were not charge sheeted by Police – The testimonies of eye-witnesses showed enough involvement of said persons in the commission of offence – They can be proceeded against U/s 319 by the Court. : *Girish Yadav Vs. State of M.P., I.L.R. (1996) M.P. 34 (D.B.)*

-Sections 319, 161, 397, 401 & Penal Code, Indian, 1860–Sections 34, 201, 302–Power to Proceed against other persons appearing to be guilty of offence–Trial Court should refrain from adopting the course unless it is hopeful that case against newly brought accused would end in conviction–Petitioner not chargesheeted by police–Deposition of witness implicating petitioner–In police case diary statement witnesses did not make reference to the petitioner–Order of trial Court for impleading the petitioner as an accused–Cannot be upheld : *Tarunendra Bahadur Singh Vs. State of M.P., I.L.R. (2003) M.P. 649.*

- Sections 319, 374 (2) and Narcotic Drugs and psychotropic Substances Act, 1985, Sections 20 (a) (6) (i)–Seizure of 33 Kg. of ‘Ganja’ and unlawful cultivation

of Ganga—Conviction and sentence—Appeal—None of the accused present in the house at the time of seizure House and land belongs to one of the PW-5. in whose name search warrant issued and raid arranged—Personal belongings of landlord also found during search—Warrant for arranging land owner as accused issued but not executed—Affidavit of co-accused admitting that house and land was taken on sikmi for three year—Affidavit not seized by police nor there is any mention of its seizure in police Diary—Fact of sikmi not proved -Miscarriage of justice—Apparently efforts made to save influential land owner—Appeal allowed—Conviction and sentence set aside—Direction issued to prosecute the land owner—Director General of Police directed to take action against those responsible for miscarriage of justice :*Har Narayan Vs. State, I.L.R. (2004) M.P. 389*

-Sections 319, 397 and 401—Revision—Application for impleading as accused—Witness stated that apart from the charge-sheeted accused N.A.-2 also participated in the crime—Name of N.A.-2 finds place in the F.I.R. as also in the PCD statement under Section 161—Array of the accused even at the cost of de novo trial appears to be just—Trial Court erred in rejecting the application : *Narayan Vishwakarma Vs. State, I.L.R. (2003) M.P. 1227.*

– Sections 319, 397, 401 and 482 – Arraigning petitioner as accused during proceedings – Penal Code, Indian, 1860 – Sections 34, 307, 323, 325 and 327 – Name included in F.I.R. but investigating officer left name in charge-sheet – Examination of complainant in progress – It is not necessary for Court to wait till entire evidence is collected for arraigning accused – No interference in Trial Court order called for : *Shiv Prasad Tiwari Vs. Jagdish Prasad Patel, I.L.R. (2001) M.P. 1935 (D.B.)*

–Sections 319, 397, 401, 482 and Penal Code Indian,1860—Sections 34,201,202,306,418 and 427—Abetment of suicide—Witness disclosing murder of deceased by her mother-in-law—Trial Court could have itself proceeded against the persons who appeared to it to be guilty of the offence - Having not exercised such power trial Court directed prosecution to take cognizance and investigate the matter—Order illegal—Trial Court has no inherent power under section 482 Cr. P. C.: *Bihari Vs. State, I.L.R. (2003) M.P. 721.*

– Section 319 and 482 – Power of Magistrate to add a new person as an accused, when can be exercised – The word ‘evidence’ in – Meaning of – Inherent powers of High Court under section 482, Criminal Procedure Code – When to be exercised – Criminal Law – Object of indicated : *A.P. Shrivastava Vs. State of M.P., I.L.R. (1990) M.P. 122,*

- Sections 320 (2), 374(2) and Penal Code, Indian (XLV of 1860)—Sections 34, 325, 333 – Conviction and appeal—Application to compromise on behalf of late father—Son—Legal representative—Can be allowed if compromise is in the interest of better

future relation of parties–Non-compoundable offence–Fact of compromise can be taken into consideration while deciding the question of sentence–Jail sentence reduced to period undergone and fine enhanced : *Shyam Babu Vs. State of M. P., I.L.R. (2003) M.P. 1100.*

–**Section 320**–Complainant and accused persons developed intimacy–Prayer for compounding offence–Can be granted on conversion of offence from 307 to 324 IPC : *Gopal Tiwari Vs. State, I.L.R. (2002) M.P. 146.*

- **Section 320, Penal Code, Indian Section 326** – Appellant convicted U/s 326 IPC and sentenced 2½ years RI with fine – Joint application moved by complainant & appellant for seeking permission to compound the offence – Offence non-compoundable – Fact of compromise taken into consideration – Sentence reduced to already undergone i.e. 2 ½ month maintaining imposition of fine : *Ishaque Alias Totaliya Vs. State of M.P., I.L.R (1996) MP 480*

- **Section 320-** Compounding of offence- Resort to Section 482 after dismissal of appeal against conviction- Not permissible : *Madhusudan Vs. State of M. P., I.L.R. (1998) M.P. 717*

– **Section 320** – Compounding of offence – Offences under sections 323 and 325 are compoundable – Offences under sections 147 and 452 not compoundable – Convictions under these sections maintained but the accused sentenced to period undergone: *Ramlal Vs. State of M.P., I.L.R. (1989) M.P. 168*

- **Section 320** - and Civil Rights Protection Act (XXII of 1955) as amended by Act No. 106 of 1976, Section 15 - Whether offences under section 4 read with section 7 of the Act are compoundable: *State of M. P. Vs. Kapure, I.L.R. (1982) M.P. 911*

-**Sections 320, 154, 482 and Penal Code, Indian, 1860, Section 498-A**–Quashing of F.I.R.–Petition for–High Court can quash criminal proceeding and F.I.R.–Section 320 does not limit the powers under Section 482 Cr.P.C.–Differences resolved–Parties have entered into compromise–Living happily together–F.I.R. quashed : *Smt. Farhona Khan Vs. State of M.P., I.L.R. (2003) M.P. 475*

-**Section 320 (1) & (2) (9) and Penal Code, Indian (XLV of 1860), Section 498- A** and Section 482 and Criminal Procedure Code- Whether High Court exercises inherent powers u/s. 482, Cr. P. C. for quashment of order where the matter in controversy is covered by specific provisions of any law-No-Under the scheme of Section 320 no person has right to compound any offence not specifically mentioned therein : *Chanderlal Vs. State, I.L.R. (1998) M.P. 797*

-**Section 320(2)**–Son-legal representative–Can be allowed if compromise is in the interest of better future relation of parties : *Shyam Babu Vs. State of M.P., I.L.R. (2003) M.P. 1100*

- **Section 320(2)** – Sentence – Discretion in refusing permission to compound the offence under section 338, no exercised wrongly – No interference in revision – However sentence reduced in view of compromise by the parties : *Mustaq Ali Vs. State of M.P.*, *I.L.R. (1989) M.P. 691*

- **Sections 320(2), 320(9) and 482** – Inherent power of High Court – Constitution of Indian, Article 142 and Penal Code, Indian, 1860 – Sections 406, 498-A – Offences alleged under – Application for permission to compromise – Rejection by Trial Magistrate – High Court Rules and Orders, Rule – Reference to larger bench – In view of express statutory bar under Section 320(9), Cr.P.C., High Court in exercise of inherent powers cannot grant such permission to compromise a non-compoundable offence what can be permitted by the Supreme Court in plenary jurisdiction under Article 142 of Constitution of India : *Deepak Dewar Vs. State*, *I.L.R. (2001) M.P. 1269 (D.B.)*

- **Section 320(2), 482**-Inherent jurisdiction of High Court – If an offence is non-compoundable-High Court cannot grant permission for compounding : *Rajkumar Vs. State of M.P.*, *I.L.R. (1999) M.P. 402*

- **Sections 320(3), 28,397, 401 and Penal Code Indian, 1860, Sections 326, 452**–Conviction–Question of Sentence–Application for compromise filed but rejected by appellate Court–Facts of compromise can be taken into account in determining quantum of sentence even in non-compoundable offence–Sentence modified to the period already undergone : *Bhandas Vs. The State of M.P.*, *I.L.R. (2003) M.P. 725*

-**Sections 320(5), 374(2)**–Appeal against conviction and sentence–Penal Code, Indian, 1860–Sections 307, 324–Attempt to commit murder–Sole injury by knife on chest–Medical opinion that in absence of immediate medical assistance death could have been caused due to haemorrhage–Injury not on vital part–Case under Section 307, IPC not made out–Conviction altered to one under Section 324, IPC–Complainant and accused persons developed intimacy–Prayer for compounding offence–Can be granted on conversion of offence from 307 to 324 IPC : *Gopal Tiwari Vs. State*, *I.L.R. (2002) M.P. 146*

-**Section 321**-While considering an application for withdrawal for prosecution Court has to exercise judicial discretion to grant or not to grant consent-Court not required to assess evidence whether trial would end in conviction or acquittal not to record reasons-Order of Trial Court not arbitrary-No interference called for : *Mahendra Vs. State*, *I.L.R. (2000) M.P. 640*

- **Section 321**-Withdrawal from prosecution- A Public Prosecutor in good faith, is entitled to withdraw from prosecution of any person, at any stage before pronouncement of Judgment with the permission and consent of the Court- This postulates moving of an application stating grounds for permission to withdraw from prosecution so as to enable

the Court to exercise its judicial discretion- Public Prosecutor exercising powers under Section 321 moved application in a mechanical way- Court refusing application- High Court refused to exercise revisional powers and dismissed the revision : *Tariq Riyaz Vs. State, I.L.R. (1998) M.P. 340*

-Sections 321, 397, 482 and Penal Code Indian, 1860—Sections 34,294,341, 506(2)—Withdrawal of prosecution—Even of Government direct public prosecutor to withdraw prosecution the Court must consider of withdrawal would advance cause of justice—Case about to be over should out have been alleged to be withdraw on ground of pending for over seven years : *Rahul Agarwal Vs. Rakesh Jain, I.L.R. (2005) M.P. 91 (SC) (D.B.)*

- Section 323 - Magistrate finding from Police report and documents that case under sections 366, 376/511 of Indian Penal Code appear to have been made out, committing it to the Court of Sessions - Court of Sessions finding the order of commitment to be wrong and remitting the case to the Chief Judicial Magistrate for trial of offences under sections 148, 341, 342 and 354 of Indian Penal Code - Magistrate recording plea of accused and evidence of prosecutrix and on the basis of additional material on record again recommitting the case to Court of Sessions for trial of an offence under Section 366 of Indian Penal Code - Order of recommitment is legal - Framing of charge by the Court of Sessions against the accused for an offence under Section 366, Indian Penal Code does not amount to review of the previous order remitting the case : *Bondal Vs. State of M. P., I.L.R. (1982) M.P. 1067*

-Sections 325, 26 & 461(1)-Madhya Pradesh Excise Act, 1915-Section 34(2)-Irregularities which vitiate proceedings-JMFC holding trial for offence punishable under Section 34 of M.P. Excise Act-Forwarding the case to CJM as minimum fine prescribed is Rs. 25,000/- Judgment passed by ACJM-JMFC was well within jurisdiction to try as maximum punishment is 3 years-Proceeding covered by Section 325 and not vitiated under Section 461 (1) Criminal Procedure Code: *Ramesh Vs. State of M.P., I.L.R. (2002) M.P. 1030*

- Section 327 - Criminal trial - Validity of in camera proceedings - Presence of large number of people resulted in order to hold murder trial in camera - Not proper - Court to regulate access number of people so as not to obstruct trial : *Chhatisagarh Mukti Morcha Vs. State of M.P., I.L.R. (1995) M.P. 204*

– Section 327(2) – In Camera trial of person accused of committing sexual offence – Trial Court has discretion to restrict appearance of number of lawyers engaged in trial – Trial Court can refuse to permit a junior lawyer to appear with his Senior Lawyer. : *Sumeshwar Vs. State of M.P., I.L.R. (1993) M.P. 664*

- Section 333 - Not applicable to such contingency : *State of Madhya Pradesh Vs. Mooratsingh I.L.R. (1976) M.P. 962 (D.B.)*

-Sections 340, 195(1)(b)-Locus Standi-Application filed by appellant under Section 340 of Criminal Procedure Code challenged on the ground that only Court can file complaint-Held-Appellant had filed application under Section 340 of Criminal Procedure Code for taking action and not the complaint-Application by appellant maintainable : *Mohammad Ibrahim Vs. Imdadulla; I.L.R.(1994) M.P. 398.*

-Sections 340, 195 (2)-Prosecution for contempt of Lawful authority-Respondent filed affidavit in execution proceedings that revision against order issuing warrant of possession filed and order of stay has been passed by High Court-Proceedings adjourned by Lower Court by relying on affidavit-Appellant filed application for initiating action under Section 340 against deponent-Application rejected by Executing Court holding that relief can be sought in separate proceedings-Held-Statement of filing revision was based on personal knowledge of deponent-Deponent stating that information regarding stay was based on telephonic message without disclosing that from whom it was received-Contents of affidavit were false-Intention of deponent not bonafide-Rejection of application by Lower Court without application of mind on merits not proper-Order of Lower Court set aside-Matter remanded back for fresh consideration. : *Mohammad Ibrahim Vs. Imdadulla; I.L.R.(1994) M.P. 398*

-Sections 340, 341, 344-Order passed by Court under Section 344 of Criminal Procedure Code Challenged by filing appeal under Section 341 of Cr.P.C.-Order passed under Section 340 of Cr. P.C. is appealable under Section 341 of Cr. P.C.—Order passed under Section 344 not appealable-Appeal misconceived hence dismissed. : *Deep Narayan Singh Vs. State of M.P., I.L.R.(1994) M.P. 456*

- Sections 340, 344 and 374(2) and Penal Code, Indian (XLV of 1860), Section 307—Conviction and sentence—Appeal against—Material witness turned hostile—Testimony of hostile witnesses cannot be washed of merely because they have been cross-examined—Evidence Act, 1872—Section 32—Dying declaration recorded in view of injuries dangerous to life—Victim named accused appellant in the dying declaration—Part of evidence supported by F. I. R. and earlier statement of witnesses—Conviction and sentence sustained—Sections 340, 344 Cr. P. C.—Apparent efforts made by material prosecution witnesses to protect the accused by giving false testimony—A threat to the system of administration of justice—Direction given to proceed against such witnesses : *Babla Vs. State, I.L.R. (1992) M.P. 208*

-Section 340(1)(a)-Provisions mandatory-Court has to record a finding before making a complaint-Non compliance vitiates the proceedings-In absence of any finding

recorded the proceedings initiated are unsustainable in law- Proceedings quashed : *Ashok Kumar Bhandari Vs. State, I.L.R. (2000) M.P. 294, .*

-Sections 354, 366-Death Sentence-Incident occurred out of rival claims of possession over land in dispute by both the parties-Murder of four persons-Not rarest of rare case-No special reason-Accused sentenced to life imprisonment. : *State of M.P. Vs. Vishal Singh, I.L.R. (1994) M.P. 249 (D.B.)*

- Section 354(3)–Judgment–In case of death sentence must state special reasons for imposing such sentence–Grave and sudden provocation takes out the case from “rarest of rare cases”–Death reference rejected–Accused sentenced to R.I. for life : *State of M.P. Vs. Punaji Dhurve, I.L.R. (2004) M.P. 688 (F.B.)*

- Section 354(3) and Penal Code, Indian (XLV of 1860), Section 302 – Punishment for Murder – Statutory rule is life imprisonment, death sentence being exception – Mitigating circumstances – Anger erupted as the accused was slapped and insulted – Case does not come in the category of rarest of rare cases for awarding death sentence : *Ramnarayan Vs. State of M.P. I.L.R. (1990) M.P. 584, (D.B.)*

- Sections 354(3), 366, 374(2) - and Penal Code Indian, 1860, Sections 300,302, 436 and Evidence Act Indian, 1872, Sections 3, 25, 27–Murder & arson–Conviction–Death sentence–Reference and appeal–After pouring kerosene accused set the deceased person on fire inside the room–Presence of accused in the house, his subsequent conduct, no chance of fire from outside the room, no chance of anybody entering into the house cumulatively point towards guilt of the accused–No escape from the conclusion that within all human probability the crime was committed by the accused and none-else–Conviction upheld–No confession made to Police Officer shall be proved as against the person accused but he can use it to support defence plea–These statements can be looked into to ascertain whether the defence set-up by accused at earliest stage in reasonable and probable–In trial defence of grave and sudden provocation not set up–In his statement to police he took defence that he saw deceased Suresh having sexual intercourse with his wife, he was enraged, he poured kerosene on his wife and Suresh and ignited–There was provocation which supplied immediate motive–Takes the case out of the category of “rarest of rare cases”–Judgment–In case of death sentence must state special reasons for imposing such sentence–Grave and sudden provocation takes out the case from “rarest of rare cases”–Death reference rejected–Accused sentenced to R.I. for life : *State of M.P. Vs. Punaji Dhurve, I.L.R. (2004) M.P. 688 (F.B.)*

- Section 357, - as amended by M. P. Act No. 29 of 1978, Constitution of India, Article 366, Clauses (24) and (25) and Constitution (Scheduled Tribes) Order, 1950 - Accused persons committing offences against Bhils belonging to scheduled Tribes - Imposition of sentence of fine besides imprisonment of accused persons - Desirability

of payment of compensation to the victims : *Nannusingh Vs. State of Madhya Pradesh, I.L.R. (1984) M.P. 443*

- **Section 357** – Trial Judge ordered that first accused shall pay compensation and as recovery may be delayed or not possible at present, in his place, the state shall pay this amount and later recover it from the property of the first accuse - Held –Field of payment of compensation is covered by Section 357 of the Court – Therefore, inherent powers cannot be exercise - Statutory liability is only on accused who caused loss or injury to victim - State has no liability to pay compensation :*State of M.P. Vs. Mangu Alias Mangilal, I.L.R. (1995) M.P. 392*

- **Section 357 (1) (b)**, - as amended by M.P. Act No. 29 of 1978 for application in Madhya Pradesh and Indian Penal Code, Section 376 – Sentence – Compensation to victims belonging to Scheduled Castes and Scheduled Tribes made Mandatory : *Shyam Rao Vs. State of M.P., I.L.R. (1988) M.P. 95*

-**Sections 360, 156 and 376(2)**–Death reference and Appeal against conviction and death sentence–Penal Code, Indian, 1860, Sections 147, 148, 149, 302, 323–Murder of five persons–Death sentence–Information given to R.I. over phone–Not an F.I.R. as he is not an officer in charge of a police station–Evidence Act, Indian, 1872–Section 3– Appreciation of evidence–Two of the alleged eye witnesses are not residents of village of occurrence–How there happened to come to the place of occurrence not satisfactorily explained–Did not disclose the fact of having seen the incident–Rightly disbelieved by Trial Court–Witnesses substantially making improvement–Have to be dealt with cautiously but not liable to be rejected out right–Eye witness accused corroborated by ‘Court witness’ to the effect that in Dehati Nalishi recorded soon after the incident she named only two accused persons–Seizure of broken handle of ballam and axe used in Commission of offence proved–Conviction of charge of murder against the accused named in the Dehati Nalashi confirmed–Rest accused not named nor the eye witness accused corroborated by ‘Court witness’–Such appellants/accused entitled to benefit of doubt and directed to be set at liberty–Murder–Death sentence–Alleged eye witness tried to falsely implicate as many as 19 persons in the offence–Real genesis of incident not disclosed–Overt act of causing respective injury on deceased could not be attributed to any of the accused definitely–Death sentence not warranted–Death Reference rejected–Death sentence converted to life imprisonment : *Jagdish Vs. State; I.L.R. (1992) M.P. 931 (F.B.)*

-**Section 362** – No Court can alter or review judgment or final order passed under the Code after signature : *Mohammad Ishaq Vs. Tahira Khatoon, I.LR (1988) M.P. 349*

-**Section 362**–Review of its own order by High Court–Review is barred but power to declare its own order as nullity is not : *Yesu Vs. State, I.L.R (2002) M.P. 375*

-Sections 362, 383, 384, 386, 390, 391, 401, 482 and Penal Code Indian 1860, Section 392–Dismissal of Revision–Review of its own order by High Court–Review is barred but power to declare its own order as nullity is not–Earlier order was passed in a revision which was not maintainable–Order set aside: *Yesu Vs. State, I.L.R. (2002) M.P. 375*

- Section 362, 393 and 482 – Exercise of inherent powers by High Court to correct this error – No bar – High Court set aside the sentence and after hearing accused passed fresh sentence after taking into consideration fact of compromise into account even though offence is non-compound : *Haji Abdul Rehman Vs. Ashok Kumar, I.L.R. (1988) M.P. 287*

- Sections 362, 401 (2), 403 and 482 – No provisions under the Code to dismiss the Criminal Appeal or Criminal Revision in default – No Court can after or review judgment or final order passed under the Code after signature – Order dismissing revision in default not covered under section 362, Criminal Procedure Code – Can be restored under section 482 of the Code : *Mohammad Ishaq Vs. Tahira Khatoon, I.L.R. (1988) M.P. 349*

- Sections 362, 482 – Review – Appeal filed by several accused persons partly allowed by High Court and persons armed with lathis and sticks acquitted – Six persons were armed with lathis and Sticks but in judgment only five persons were acquitted – Applicant Babulal was also armed with lathi but by mistake was not acquitted – Babulal filed application under Section 362 of Criminal Procedure Code for correction of clerical error – Court has no jurisdiction to review the judgment once it is pronounced – Power under section 482 of Criminal Procedure Code cannot be invoked for review – Applicant not seeking review but correction of clerical mistake as number of persons holding lathis or sticks were six and not five – Application falls under Section 362 of Criminal Procedure Code as the mistake was clerical and the Court never intended to convict the applicant – Application allowed and applicant acquitted. : *Munshi Singh Vs. State of M.P. I.L.R. (1993) M.P. 342 (D.B.)*

-Sections 362 and 482 – Accused acquitted by the trial Court but convicted by the appellate Court – No opportunity of pre-sentence hearing by appellate Court – Judgment vitiating the sentence-Bar under Section 362 of the Code is not sufficient to prohibit the Court from doing justice exercising the powers under section 482 : *Narayansingh Vs. State of M.P., I.L.R. (1991) M.P. 58 (D.B.)*

-Section 366 –Murder–Conviction and death sentence–Reference and appeal–High Court has to examine whole case for itself : *State of M.P. Vs. Ramkripal, I.L.R. (2004) M.P. 875 (D.B.)*

-Section 366–Death Sentence–Rarest of Rare Case–Case appears to be ordinary case of murder to facilitate robbery–No special reasons which could justify awarding of

death sentence. : *State of M.P. Vs. Samaylal Vishwanath Chandra, I.L.R. (1994) M.P. 238 (D.B.)*

–**Sections 366, 161, 164, 374(2)**–Penal Code, Indian, 1860, Sections 193, 201, 302, 380, 411, 449 and Evidence Act, Indian, 1872, Sections 3, 9–Murder–Conviction and Death Sentence–References for confirmation of death sentence and Appeal by convict–Circumstantial evidence–Appreciation of–Identification–Articles shown to witnesses before identification–Witness not identifying the same in the Court–Identification is of no value–Cannot be construed as substantive evidence–Not subjected to cross-examination–Cannot be used against the accused–Statement recorded under Section 164 Cr. Procedure Code–Not a substantive piece of evidence–Can be used only to corroborate or contradict its maker–Seizure of blood stained dagger like knife and clothes at the instance of accused–Blood found on sweater was of blood group ‘O’–Not proved to belong to the same blood group of deceased–An incriminating circumstance–But can only be used as corroborative evidence–House of accused searched–Seizure made–No evidence that those articles belonged to deceased–According to prosecution they were subject matter of some previous theft–There is a reasonable doubt about guilt of the accused–Benefit should go to him–Conviction and sentence set aside–Accused set at liberty : *State of M.P. Vs. Nand Kishore Alias Nandu, I.L.R. (2003) M.P. 1231.*

–**Sections 366, 161 and 374(2), Evidence Act, Indian, 1872**–Sections 3, 8, 26 and Penal Code Indian, 1860, Section 302–Murder–Conviction and death sentence–Reference and appeal–High Court has to examine whole case for itself–Eye witness named in F.I.R. not examined–Material witness relied on by prosecution remained silent for about a month–Conduct of witness unnatural–No explanation for delay in recording P.C.D. statements–Witness un–believable–Persons claiming to be eye- witness knew arrival of police–Not making statement that they were eye-witnesses–Delay in recording their statements not explained–Probative value of such evidence is extremely weak–Can not be relied upon–Extra-judicial confession–Not supported by prosecution witness–Not reliable–Recovery of weapon, allegedly made on information by accused, not proved–Conviction and sentence set aside–Accused acquitted : *State of M.P. Vs. Ramkripal, I.L.R. (2004) M.P. 875 (D.B.)*

–**Sections 366, 354**–Death Sentence–Incident occurred out of rival claims of possession over land in dispute by both the parties–Murder of four persons–Not rarest of rare case–No special reason–Accused sentenced to life imprisonment: *State of M.P. Vs. Vishal Singh, I.L.R. (1994) M.P. 249 (D.B.)*

–**Sections 367, 374(2), 391**–Taking on record further evidence at appellate stage–Penal Code, Indian, 1860, Sections 147, 148, 149, 302, 323–Murder of five persons and causing hurt–Prosecution named a witness in challan but did not examine him–Defence

at one stage wanted to examine that very witness but subsequently dropped him—In facts of the case he appears to be material witness to arrive at the true genesis of the incident—Appeal Court in a fit case may direct examination of such a person as ‘Court witness’ without prejudice to the defence. : *State Vs. Jagdish; I.L.R. (1992) M.P. 926 (F.B.)*

-Section 374 - and Scheduled Cast & Scheduled Tribes (Prevention of Atrocities) Act, of 1989, Sections 3 (1) (x) and 3 (1) (xiv)—Complainant ‘Chamar’ by caste—No evidence that in order to insult he was addressed by naming his caste ‘‘Chamar’’—Also no evidence of restraint to any customary right of passage to a place of public resort for he was a member of Scheduled Caste—Provisions of ‘atrocities’ Act not attracted—Conviction and sentence set aside : *Sharad Kachhi Vs. State of M.P., I.L.R. (2005) M.P. 899*

- Sections 374, 397, 399 and 401 - Applicable to proceeding instituted on or after 1.4.74 : *Dhruvnathsingh Vs. Shivnaresh I.L.R. (1977) M.P. 985 (D.B.)*

- Section 374, 397, 399 and 401 - Provision not applicable to proceedings pending on 1.4.74 - Applicable to proceedings instituted on or after 1.4.74 : *Dhruvnathsingh Vs. Shivnaresh, I.L.R. (1977) M.P. 985 (D.B.)*

-Section 374 (2) and Arms Act, 1959, Section 25(1) (a)—Appeal against conviction and sentence—Seizure of fire arms and cartridge—Evidence of Police Officer not cogent and convincing—Police Officer could not ever tell the place where he found and took the accused in custody—Independent witness not supporting prosecution case—Recovery of fire arms and cartridge not proved—Conviction and sentence set-aside : *Vinod Kumar Shukla Vs. State, I.L.R. (2002) M.P. 346*

– Section 374(2) and Evidence Act, (I of 1872), Section 3 – Appeal – Appreciation of Evidence – Injuries on persons of accused appellant – Incident occurred in the field while victim were harvesting with sickle and they must have used sickle in self-defence – Accused were aggressors – Non-explanation of injuries on accused – Not fatal to the prosecution : *Dhaniram Vs. State, I.L.R. (2001) M.P. 874*

– Section 374(2) – Appeal by accused convict – Murder – One of the two doctors who conducted post mortem examined in witness box – Examination of the other doctor not necessary as both of them had given the same opinion in Post mortem reports – Medical evidence about absence of soot or carbon particle in breathing system, protruding tongue suggesting throttling : *Madan @ Madhu Vs. State, I.L.R. (2001) M.P. 1235 (D.B.)*

– Sections 374(2) – Appeal against conviction and sentence – Scheduled Caste Schedule Tribe (Prevention of Atrocities) Act, 1989, Section 3(1)(v) and Penal Code,

Indian, 1860, Sections 34, 447 – Criminal trespass – Defence witness – Approach of a Court to very lightly brush aside the defence witness cannot be approved of – Delivery of possession not proved – Defence witness proving possession of accused on the date of alleged offence – Case for criminal trespass or interference with enjoyment of complainant's right not made out – Conviction and sentence set asides : *Jaggu Vs. State, I.L.R. (2001) M.P. 1756*

–**Section 374(2), -** Penal Code, Indian, 1860, Sections 302, 304 Part II and Evidence Act, Indian, 1872, Section 3–Appreciation of evidence–Other witnesses found hostile–Solitary eye-witness consistent–Common friend of the deceased and the accused both–Would be the last person to spare real culprit and falsely implicate another friend–Trial court rightly believed the evidence of solitary eye-witness–Murder of culpable homicide not amounting to murder–Solitary blow on neck by screw driver during course of altercation–Not murder–Conviction altered to one under Section 304 Part II IPC : *Kailash Mistri Vs. State, I.L.R. (2003) M.P. 332*

–**Sectoin 374(2)**–Appeal against conviction and sentence–Penal Code, Indian, Sections 149, 302, 307, 324 and Evidence Act, Indian, 1872, Sections 32(1) and 45–Dying declaration–No evidence to show that maker of declaration died due to injuries received in the incident in issue–Such declaration cannot be used as dying declaration–Medical Evidence–Mainly opinion evidence–Testimony of eye witness cannot be thrown out unless it goes so far as to loosing out probabilities of injuries taking place in the manner alleged by eye witness–Ocular evidence reliable–Some of them also received injuries in the incident–No reason shown why they would spare real assailant and implicate appellants falsely–Minor discrepancies or inconsistencies not touching hard core of prosecution case–No error in conviction and sentence under Sections 302/149, 324 IPC.: *Rajalal Vs. State of M.P. Through Police Kachnar, District Guna, I.L.R. (2003) M.P. 461 (D.B.)*

–**Section 374 (2) and Penal Code, Indian, (XLV of 1860) Section 306**–Appeal against conviction and sentence–Abetment of suicide–Allegation as a whole is that the deceased was brought to him and, was asked to take care of her whereupon he exerted ‘let her die ‘ – No positive steps for abetting suicide established–Conviction and sentence set aside : *Sitaram Vs. State of Madhya Pradesh, I.L.R. (2003) M.P. 551*

- **Section 374(2) and Penal Code Indian (XLV of 1860)**–Section 307, Evidence Act, 1872, Section 9–Attempt to commit murder–Conviction and sentence–Appeal against–Assailants unknown to victim–After arrest identification parade not held–Victim identifying appellants in the court after about one year of the incident–Impossible to believe that witness did not see the appellants in all this period–Such identification is hardly of any value–Weapon recovered not contained blood–Case of prosecution not established–Conviction and sentence set aside : *Jagdish Vs. State, I.L.R. (2003) M.P. 147*

– **Section 374(2)** – Appeal against conviction and sentence – Penal Code, India, (XLV of 1860) – Sections 363, 366, 376(2)(g) – Abduction and gang rape – Plea of false implication on ground that one of the accused persons refused to marry prosecutrix – Unbelievable because a woman in a case of rape would not falsely implicate two persons If one of them refused to marry her – Evidence Act, Indian, 1872 – Section 114-A – Presumption as to absence of consent in rape case – victim of rape stands on a different footing – Provision enables court to raise presumption that the victim was raped against her will – Legislature has brought in the aforesaid provision because of the obtaining social back drop – Version of prosecutrix inspires confidence – Conviction can be recorded even if her version is not corroborated by medical evidence – Conviction upheld : *Miyani Lal Vs. State, I.L.R. (2001) M.P. 715*

- **Section 374(2) and Penal Code Indian (XLV of 1860)** –Sections 34,120-B,302 – Appeal against conviction and sentence–Criminal conspiracy and murder–Head severed from the body by axe–Eye witnesses corroborated by medical and other witnesses could safely be relied upon–Deceased fell on ground after receiving axe blow on neck–Accused thereafter dealt repeated blows severing the head from trunk–Would not amount to any thing short of ‘murder’–Criminal conspiracy–Circumstance of alleged public humiliation of co-accused by deceased–Even if found proved would not lead to inference of guilt–Co-accused entitled to benefit of doubt–Acquitted : *Purushottam Vs. State, I.L.R. (2004) M.P. 393 (D.B.)*

–**Section 374(2)**–Appeal against conviction and sentence–Penal Code Indian, 1860, Section 186 and Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(x)–Alleged insult of Government Servant by name of caste and obstructing in discharge of public function–Material contradiction in prosecution story–Long delay in lodging FIR–Act allegedly committed inside the house and not in public place–False implication not ruled out–Appellant entitled to benefit of doubt : *Badrinarayan Vs. State, I.L.R. (2003) M.P. 327.*

- **Section 374 (2) and Evidence Act Indian,1872, Section 3, Penal Code Indian (XLV of 1860)**–Sections 302,201–Appeal against conviction and sentence–Murder–Circumstantial evidence– Deceased Forest guard–Detected commission of forest offence by the deceased person and was taking there to lodge the report–Found missing thereafter–Disclosure statement by accused person lead to discovery of the dead body–Bicycle and other belonging of deceased also recovered at the instance of the accused–No other hypothesis than guilt of the appellant is plausible–No interfere in the conviction recorded by the Trial court : *Jhalle Vs. State of Madhya Pradesh, I.L.R. (2003) M.P. 1005 (D.B.)*

-**Section 374(2)**–High Court–Final Court of fact–Necessary for the High Court to scrutinize the evidence in some details : *Badam Singh Vs. State of M.P., I.L.R. (2004) M.P. 91 (SC) (D.B.)*

- **Section 374(2)** - and Penal Code, Indian (XLV of 1860)–Section 376(2)(g)– Rape on minor–Conviction and sentence–Appeal–Eye witnesses examined–Merely because the lady doctor could not opine definitely about rape the eye witness cannot be disbelieved–Conviction & sentence maintained : *Sukhram Vs. State, I.L.R. (2003) M.P. 1214*

- **Section 374(2)**- Evidence Act Indian, 1872, Section 3 and Penal Code, Indian, 1860, Sections 302, 304 (II)–Murder–Eye witnesses widow of deceased–Close relative–Categorically stated that appellant dealt lathi blows–No reason to spare real assailant and falsely implicate appellant–Can be safely relied upon –No prior ill will–Reason of assault shrouded in mystery–Stick used to cause injury–Offence is culpable homicide not amounting to murder–Conviction altered to one punishable under Section 304 (II) IPC : *Bhagat Vs. State, I.L.R. (2004) M.P. 60 (D.B.)*

– **Section 374(2)** – Appeal against conviction and sentence - Penal Code, Indian, (XLV of 1860) – Sections 107, 306, 498-A and Evidence Act (II of 1872) – Sections 113-A – Abetment of suicide and presumption unless husband is held guilty of treating wife with cruelty no presumption of abetting the suicide by deceased is available – Prosecution witnesses not disclosing fact of cruel treatment or beating given to deceased in police case diary statement – Cruelty not proved – Charge under Section 306 I.P.C. not established : *Nandlal Vs. State, I.L.R. (2001) M.P. 1386*

– **Section 374(2)** – Appeal against conviction and sentence – Penal Code, Indian, 1860 – Sections 34, 302 and 307 – Offence of murder and attempt to commit murder – Attempt by alleged eye witness to falsely implicate person with whom they are having enmical terms – Alibi of accused person proved from Court and jail record – Conviction cannot be recorded on basis of testimony of such witness – Conviction and sentence set aside : *Nirbhay Vs. State, I.L.R. (2001) M.P. 1570 (D.B.)*

- **Section 374(2)**, - Evidence Act, Indian 1872, Section 3 and Penal Code, Indian, 1860, Section 302– Murder–Conviction based on testimony of sole eye witness–As many as fourteen injuries including one stab injury found on deceased–Witness deposing in the Court not naming other accused persons already named by herself in FIR–Attributing only the stab injury to appellant–Not a truthfull witness–Cannot be relied upon– Conviction & sentence set aside : *Pappu Alias Mansingh Vs. State, I.L.R. (2004) M.P. 508 (D.B.)*

- **Section 374(2)**–Penal Code Indian (XLV of 1860)–Sections 300 and 302–Murder–Conviction and sentence–Evidence Act, Indian, 1872, Sections 3 and 32–Appreciation of evidence–Deceased making two dying declarations–Categorically making statement that appellant caused the injury on his head with a sword–Eye witness present on the spot also named in the declaration–Corroborated by eye witness–Recovery of weapon at the instance of appellant–Prosecution story cannot be disbelieved merely on the

ground of absence of report as to presence of human blood on the sword–Nature of offence–Has to decided on the facts and in the circumstances of each case–Deceased unarmed at the time of incident–Assault with sword on head with premeditation in public place–Intention to kill established–Knowledge is also attributable–Appellant rightly convicted under Section 302 I.P.C. : *Hiralal Vs. State, I.L.R. (2003) M.P. 236 (D.B.)*

- **Section 374 (2)**, - Evidence Act, Indian, Section 3 and Penal Code Indian, 1860, Sections 300, Cls. 2 and 4, Exception Fourth and 302–Murder–Conviction and sentence–Appeal–Interested witnesses–Not necessarily unreliable–Can be relied upon if court is satisfied after careful scrutiny that their evidence has a ring of truth–Nothing elicited to discredit–Presence on the spot natural–Inspire confidence– Conviction based on such testimony–Cannot be found fault with–No fight nor any provocation–Appellant came armed with an axe–Situs of injury selected neck–Vulnerable part of body– Carrying of axe indicated premeditation–Axe blow from sharp side with considerable force on neck–Case covered under 2nd and 4th clauses of Section 300 IPC–Exception 4 not attracted–Conviction under Section 302 IPC–Proper : *Shahadat Noor Vs. State of Madhya Pradesh, I.L.R. (2004) M.P. 186 (D.B.)*

- **Section 374 (2)** - and Penal Code Indian (XLV of 1860) – Section 300 - Exception Clause I, 302, 304 Part I – Murder—Conviction and sentence —Appeal—Having seen her in compromising position with paramour accused lost his balance and beat her to death —Defence plea of grave and sudden provocation cannot be slurred over —Conviction altered to one under Section 304 Part I, IPC : *Samaru Baiga Vs. State, I.L.R. (2003) M.P. 1019 (D.B.)*

-**Section 374 (2)**, - Evidence Act, Indian, 1872, Section 3,24,27 and Penal Code Indian, 1860, Section 302–Murder–Conviction and sentence–Appeal–Circumstantial evidence–Discovery statement–Allegedly made to the police officer leading to the discovery of dead body not bearing signature or thumb impression of the deceased making the statement–Detracts materially form authenticity–Appears to have made after discovery of the body–Discovery statement not reliable–Extra Judicial confession–No reason why accused would take the witness into confidence and make confession–Not reliable–No evidence that on any of the seized articles human blood was found seizure does not connect the appellants with death of deceased conviction and sentence set aside : *Rekhlal Vs. State, I.L.R. (2003) M.P. 543 (D.B.)*

- **Section 374 (2)**, -Evidence Act Indian, 1872, Section 3 and Penal Code, Indian, 1860, Section 120-B, 302–Murder–Circumstantial evidence–Deceased went with the accused and thereafter was not found–Dead body found next day identified to be that of the deceased–Persons belonging to Kachhi community might have caused the murder because deceased outraged modesty of a girl of that community–Blood stains found on clothes of accused not found sufficient for serological examination–Raises serious doubt–

Appellant acquitted : *Mahesh Vs. State of Madhya Pradesh, I.L.R. (2003) M.P. 711 (D.B.)*

- **Section 374(2)**, - Evidence Act, Indian, 1872, Sec. 3, 25 and Penal Code, Indian, 1860, Section 302, 376—Rape on wife of deceased and murder—Two separate trial—Only eye witness wife of deceased retracting from her evidence in the other Session trial on which conviction for murder is based—Trial Court committed illegality in relying on such evidence—Witnesses deposed that the wife of accused disclosed to police that she and appellant had killed the deceased—Such statement of her is neither admissible nor can be used against appellant—Other witnesses also not deposing anything against appellant—Merely because appellant absconded from the village after the incident it cannot be held that he had killed the deceased—Conviction and sentence set aside—Appellant in jail for 13 years—Be set at liberty forthwith : *Kallu Vs. State, I.L.R. (2004) M.P. 684 (D.B.)*

- **Section 374(2)**, - Evidence Act, Indian, (I of 1872), Sections 8, 24, 25, 27 and Penal Code Indian, 1860, Section 300, Exception I, Section 302, 304 Part II - Murder—FIR lodged by accused himself and recoveries made in consequence of information given by him—Admissible in evidence under Section 27, Evidence Act—Self incriminating conduct of accused—Admissible in evidence under section 8 of the Evidence Act—Recovery of dead-body, severed arm and the axe from accused coupled with his conduct in lodging FIR, taking police to his house lead to the conclusion that accused caused the injuries on deceased—Sudden provocation—Accused entering house saw deceased in the room with wife of his elder brother—Prosecution not assigned any reason for entry of deceased in the house of accused—Any reasonable person would be deprived of power of self-control in such a situation—Fatal blow given is traceable to the passion arising from provocation—Accused entitled to benefit of Exception I to Section 300, IPC—Conviction altered to one under Section 304 (Part II) IPC and sentenced to 5 years R.I. : *Gouri Shankar Vs. State, I.L.R. (2004) M.P. 511 (F.B.)*

-**Section 374(2)**, - Evidence Act, Indian (I of 1872), Section 32 and Penal Code, Indian (XLV of 1860), Section 302—Murder—Prosecution—Conviction and sentence—Appeal against—Conviction based on dying declaration—Reliability—Four dying declaration made by deceased—Each inconsistent with the other—Conviction based on dying declaration alone cannot be sustained—Trial Court choosing and picking up one of them which implicated the appellant wife—Not the case prosecution that he was set on fire while asleep - Appellant herself rushed to Police station and narrating the incident to the police—Such conduct runs counter to her being guilty mind—Appellant acquitted : *Durga Bai Vs. State of M.P., I.L.R. (2004) M.P. 599 (D.B.)*

-**Section 374 (2)** -Appeal –Penal Code Indian, 1860—Section 34, 325—Accused held to be in actual possession—Complainant an aggressor on the land in dispute—Accused had the right of Private defence of property and person while causing injuries

conviction and sentence set aside : *Chitter Singh Lodhi Vs. State, I.L.R. (2003) M.P. 908*

–**Section 374(2)** - and Penal Code, Indian, 1860, Sections 34,302, 352–Murder and Criminal assault–Common intention–One accused took out a gupti to assault–Brother of deceased intervened and then the pistol was suddenly brought into sight and fired by the other accused–Knowledge of pistol cannot be attributed to the former–His acquittal under section 302/34 I. P.C. proper–Incident in front of a pan shop–Presence of eye witnesses–Hardly occasion any surprise–It is matter of common knowledge that people do spend some time while buying pan and other article–Eye witness account duly corroborated by dying declaration–Death due to gun shot injury proved by medical evidence–Conviction and sentence upheld : *Brijesh Singh S/o Tulsiram Vs. The State of Madhya Pradesh, I.L.R. (2005) M.P. 266 (D.B.)*

–**Section 374 (2)** - and Evidence Act Indian, 1872 Section 45–Penal Code Indian, Sections 34,302,304, Pt.II–Murder or culpable homicide not amounting to murder–No corresponding hurt/damage beneath head injury–Dr. has not assigned any reason for the conclusion that injury on head was sufficient to cause death–To act on such a bald statement would be perilous–Deceased was belaboured with lathi and when tried to escape was caught and dragged back and when he fell down assault continued–Legitimate conclusion would be that accused knew by the said act they were likely to cause death–Conviction altered to Section 304, Part-II, I.P.C. and sentence to R.I. for 7 years : *Ramjag Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 349 (D.B.)*

–**Section 374(2)** - and Penal Code Indian, 1860, Sections 147,148, 149,300, and 302–Murder–Conviction and sentence–Appeal–Enmity–A two edged weapon–Because of enmity one could cause severe blow resulting into death and at the same time deceased and other witness could falsely implicate accused persons–Eye witness account that the deceased and the first accused were grappling for the blood stained knife–If co-accused were present occasion of such grappling would not arise –Case of unlawful assembly not made out–Severe blow causing damage to intestines–Solitary blow sufficient to cause death in ordinary course of nature–Act is murder : *Ramlal Vs. State of M.P., I.L.R. (2004) M.P. 869 (D.B.)*

- **Section 374(2)** - and Penal Code, Indian (XLV of 1860)–Sections 147,148, 149,302, Arms Act, Indian (LIV of 1959) Sections 25,27–Unlawful assembly and Murder–Conviction and Sentence–Appeal–Unless it is shown that there was some participation or other act towards commission of the offence it is difficult to hold that the others present had formed an unlawful assembly–Death caused by gun shot on the exhortation by another accused–Conviction under Section 302 and 302/109 IPC affirmed : *Hari Singh Vs. State of Madhya Pradesh, I.L.R. (2004) M.P. 1157 (D.B.)*

–**Section 374(2)** - and Penal Code, Indian, 1860–Sections 34,302, 201–Co-accused–Not implicated by any of the eye-witnesses–In cross-examination witnesses stated that co-accused was with the main accused but stated nothing against him in examination–in-Chief–Prosecution not able to bring home the charge against co-accused–Co accused acquitted : *Shivanath Vs. State of M.P., I.L.R. (2003) M.P. 833 (D.B.)*

–**Section 374(2)** - and Penal Code, Indian (XLV of 1860), Sections 300, 302–Murder–Conviction and Sentence–Appeal against–Severe axe blow dealt on the deceased juvenile in reply to alleged teasing–Plea of grave and sudden provocation not available–Verbal teasing could not be responded to so violently–Conviction under Section 302 I.P.C.–Well founded : *Shaligram Vs. State, I.L.R. (2003) M.P. 141*

- **Section 374(2)** - and Narcotic Drugs and Psychotropic Substance Act (LXI of 1985), Sections 18, 55–Appeal against conviction and sentence–Illegal possession of 50 grams contraband opium–Search, seizure and seal–Presence of accused is necessary when samples are intermeddled by the investigating officer–Original samples re-adjusted and seals broken twice without authority of law–Benefit of doubt must go to the accused–Samples of 10 gm., 10 gm. and 30 gm. prepared and sealed in presence of accused–10 gm. sample sent back from Neemuch without examination–Sent to FSL, Sagar also returned as quantity was insufficient–Incumbent upon the prosecution to prove that seals put on the sample were in tact till delivery to the Chemical Examiner–Seals broken, packets of 24 gm. and 26 gm. prepared and again sent to FSL Sagar–Variation of date–Cannot be ignored as typographical error in such a grave case–No person present when seals were broken–Intermeddling with seized article in absence of accused–Samples handled without any sanctity of law–Conviction and sentence set aside–Appellant acquitted : *Anand Bairagi Vs. State of M.P., I.L.R. (2004) M.P. 72*

–**Section 374 (2)**–Evidence Act, Indian 1872, Sections 3,25,26 and Penal Code, Indian 1860, Section 302–A Murder–Conviction and sentence–Appeal–Appreciation of evidence–Accused himself went to police station and lodged the F.I.R–F.I.R in the nature of confession and inculcates the accused–F.I.R. cannot be used against the accused–Solitary eye witness–Closely related to deceased–In absence of some corroboration his evidence cannot be used to convict the accused–Conviction and sentence set aside : *Naresh Vs. State of M.P., I.L.R.(2003) M.P. 1012 (D.B.)*

– **Section 374 (2)** - and Evidence Act, Indian, 1872 – Section 32 and Penal Code, Indian (XLV of 1860) – Sections 34, 107, 306 – Abetment of suicide – Conviction and sentence – Appeal – Dying declaration – Certificate of fitness not taken nor it is mentioned if deceased was conscious and fit to speak–Thumb impression of deceased and dying declaration not proved–Cannot be made basis of conviction–Post mortem report reveals death due to asphyxia injection of poison not confirmed by chemical analyst nor its report is as record–Not safe to hold that deceased died consuming sulphas–

Conviction and sentence set aside : *Smt. Tara Bai Vs. State of M.P., I.L.R. (2004) M.P. 1161*

-Section 374(2), - Evidence Act, Indian 1872 Section 3 and Penal Code, Indian (XLV of 1860)—Section 376—Appeal against conviction and sentence— Rape on a mentally retarded girl—Discrepancies which do not shake evidence of witness shall not be attached undue importance particularly when all important probabilities—Factors echo in favour of prosecution case—Testimony of prosecutrix corroborated by medical evidence—Fresh tear of hymen found—Promptly lodged F.I.R.—No error in convicting the accused under Section 376, I.P.C : *Raju Vs. State of M.P., I.L.R. (2004) M.P. 799*

-Section 374 (2) - and Penal Code, Indian 1860, Sections 302, 304 Part-I and Evidence Act, Indian, 1872, Section 45—Murder—Conviction and sentence—Appeal against—Ocular version corroborated by dying declaration—Expert evidence silent if the injury was sufficient in the ordinary course of nature to cause death—Absence of any other circumstances—Not possible to hold the accused guilty under Section 302 IPC—Intention to cause such bodily injury as is sufficient to cause death can safely be inferred—Offence is punishable under Section 304 Part—I, IPC—Appeal partly allowed : *Hemraj S/o Tikaram Gwara Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 439 (D.B.)*

-Section 374(2)—Appeal against conviction and sentence—Penal Code Indian, 1860, Sections 306, 498-A—Dying declaration that deceased committed suicide because appellant mother-in-law used to taunt her for being ugly and no demand of dowry alleged—Alleging to be ugly was not such a nature so as to drive the bride to commit suicide—Offence not proved beyond reasonable doubt—Conviction and sentence set aside : *Smt. Annapurna Bai @ Bhoori Vs. State, I.L.R. (2003) M.P. 1047*

- Section 374(2), - Evidence Act, Indian 1872, Sections 3 and 32 and Penal Code, Indian (XLV of 1860)—Sections 34, 302, 304 Part II—Murder—Appeal against Conviction and sentence—Appreciation of evidence—Close relative—Requires close scrutiny—However witness cannot be discarded merely because he is close relative—Dying declaration—Oral declaration corroborated by one recorded by Nayab Tehsildar—Witness stood firm to depose that deceased was able to speak—Doctor also testified that she was in a fit condition to speak—Evidence of child witness who saw appellants beating the deceased is also on record—Trial Court rightly believed dying declaration—Deceased could not be attended by a lady doctor—Could be saved had she been provided proper medical treatment—Difficult to hold that appellant intended to cause her death—Knowledge that injuries were likely to cause her death can be attributed to the appellants conviction altered to one under Section 304 part II IPC and sentenced to RI for 10 years : *Kamal Vs. The State of M.P., I.L.R. (2004) M.P. 773 (F.B.)*

-Section 374(2)—Appeal—Accused persons alleged to have been masked—Yet named in F. I. R.—Prosecutrix alleged to have been dragged in a harvested field—Clothes

not torn nor any corresponding injury—Prosecution case doubtful : *Nanka Vs. State, I.L.R. (1992) M.P. 286*

-Section 374(2)-Appeal against conviction-Age of prosecutrix alleged to be below 16 years based on Kotvar's record-Entry in Kotvar's record found interpolated - interpolated entry as to age cannot be relied upon - Prosecution failed to prove age of prosecutrix below 18 years of age-Offence under Section 363, I.P.C. demolished : *Rafique Khan Vs. State, I.L.R. (2000) M.P. 1006* .

-Section 374(2)-Appeal against conviction and sentence – Abetment of suicide and demand of dowry-Section 306 and 498-A, I.P.C.-Deceased expressing reluctance to go back to matrimonial home went to her brother-in-law (Jijaji) but not disclosing the fact of demand of dowry as a reason for her disinclination to go with the accused-Evidence revealing cordial relation between accused husband and the deceased –No evidence to suggest accused ill-treating deceased or demanding dowry- Conviction and sentence set aside : *Harish Chandra Vs. State, I.L.R. (2000) M.P. 276*

-Section 374(2)-Appeal against conviction and sentence, Penal Code, Indian, Sections 320, 307, 149, 307/149-Murder and attempt to commit murder-Sections 156, 157, Code of Criminal Procedure-Dispute over land-Police Investigation-Police took no step collect documentary evidence to indicate as to which of the parties was in actual possession-Investigation falls short of the investigation that was expected-Evidence Act, Indian, Sections 3 and 114, presumption-Possession of land-Absence of proof by reference to revenue record-Kotwarin of village had seen accused all though cultivating-Irresistible conclusion that deceased was not in possession-Once it is held that deceased was not in possession there could be none else in possession except the accused-Sections 99, 103 of the Code-Right of private defence-Accused were not only in possession but also had sown crops-They had a right to defend their property from any mischief or trespass-Section 103, I.P.C.-Private defence-Restrictions-Complainant party not carrying any arm except normal agricultural implements and wielding lathis to escape further on slaught-No evidence of persistence in ploughing the filed-Invasion not of any description contained in Section 103 of the Code-Accused did not have right to cause death and clearly exceeded the right-Section 300, Exception 2-Capable homicide not murder if caused in the exercise in good faith of right of private defence- Death was caused without premeditation- Accused not liable for offence under Section 302 but under Section 304-I of the Code Sections 307, 307/149-Accused not liable under Sections 307, 307/149 of the Code as victims received injury in the land in which accused were entitled to use reasonable force-Evidence not consistent as against co-accused-They are entitled to benefit of doubt-Section 302, I.P.C.-Accused chased another deceased to a considerable distance from the disputed filed and caused injury sufficient in the ordinary course of nature to cause death-Rightly convicted under section 302 of the Code : *Latel Vs. State, I.L.R. (2000) M.P. 72, (F.B.)*.

- **Section 374 (2)**-and Penal Code, Indian (XLV of 1860)-Section 374 (2)-Conviction and Sentence-Under Sections 302/34, 120-B, 323/34-Large number of injuries on the deceased-Appreciation of evidence-Eye witnesses Father and Son of the deceased-Sleeping 70-80 yards away-Reached up to 4-5 paces away the spot hearing cries of deceased-Witnesses had seen the assault and the assailants-Narration supported by F.I.R. which is immediate and without premeditation-Further supported by medical evidence about nature of injuries-Appellants rightly convicted-Sentence being imprisonment for life cannot be interfered note : *Kamal Vs. State, I.L.R. (1999) M.P. 969 (D.B.)*

-**Section 374(2)**-Appeal against conviction and sentence-Trap case-Prevention of Corruption Act, 1947-Section 5(1)(d) r/w Section 5(2) and Penal Code, Indian, 1860-Section 161-Conviction under Section 6 of the 1947 Act-Public Servant-Sanction for prosecution-Not necessarily should be in writing-Satisfactory proof of sanction sufficient to prosecute the accused-Case of prosecution would not suffer for non-production of original order of sanction-Section 5(1)(d), r/w Sec. 5(2) of the Act and Section 161, IPC-Punishment-Minimum sentence of imprisonment for one year provided under the Act- Considering age of appellant sentence reduced to SI for 4 months and fine of Rs. 5,000/- in default to under two years S.I.: *Vishwanath Pd. Dubey Vs. State, I.L.R. (2000) M.P. 1146, .*

-**Section 374(2)**-Appeal against conviction-Penal Code, Indian, 1860-Section 498-A-Subjecting deceased to cruelty-Proof-Nature of-Letters produced by prosecution to prove cruelty relates to the period prior to 'Gauna' ceremony-Oral evidence of prosecution witness that deceased was not subjected to cruelty-Non-production of any letter as to demand of dowry after 'Gauna' ceremony demolishes case of the prosecution-Cruelty not proved-Conviction and sentence set aside : *Nawal Kishore Vs. State, I.L.R. (2000) M.P. 1464*

-**Section 374(2)**-Appeal against conviction-Penal Code, Indian, 1860-Sections 302, 149, 323-Murder and unlawful assembly-Prosecution is obliged to prove that the accused formed an unlawful assembly for purpose of executing common object and each one of them wanted to accomplish it- Failure by prosecution-Conviction set aside-Evidence Act, Indian, 1872- Section 3-Appreciation of evidence-Prosecution witnesses showing ignorance of material facts- Unsafe to base conviction in case of serious offences-Conviction and sentence set aside : *Kunwarji Vs. State, I.L.R. (2000) M.P. 749, (D.B.)*

-**Section 374 (2)**-Appeal against conviction-Section 394(2), Cr.P.C.-Death of appellant /accused -Legal Representative granted permission to prosecute the appeal-Penal Code, Indian, 1860-Section 161 and Prevention of Corruption Act, 1947-Section 5(2)-Acceptance of illegal gratification for mutation of land-Trap-Evidence Act, Indian, 1872- Section 3 – Appreciation of Evidence - Accused kept pending with him the

application of complainant-Under Section 110 of the M.P. Land Revenue Code, 1959-For mutation for five months while as per law he is required to dispose of the application either why in one month-Plea that complainant wanted to mutate more land than his entitlement hence delay-Cannot be accepted-Currency notes smeared with phenophthalein powder-Handwash found pink-Offence successfully brought home by prosecution-Conviction and sentence maintained : *Shyamlal Vs. State, I.L.R. (2000) M.P. 870, .*

-Section 374 (2)-Appeal against conviction under Sections 302/34, 307, I.P.C.-Murder and attempt to commit murder-Plea of private defence and criminal trespass-Sections 96, 103, 104 and 441 of the I.P.C.-Dispute over land-Appellants found to be in settled possession of land-Criminal trespass by complainant party instead of taking recourse to remedies available under the civil law-Act of accused falls within the meaning of private defence- Death caused while exercising right to private defence- Offence would be one under Section 304, Part I and not Section 302 of the I.P.C.-Words and Phrases - “Settled possession’ mean clear and effective possession including that of a trespasser, who gets right to defend the property even against the true owner - ‘Private defence’-Right of, is preventive and not punitive: *Krishan Kumar Vs. State, I.L.R. (2000) M.P. 619 (D.B.).*

-Section 374(2)-Appeal against conviction-Vinirdishta Bhrastra Acharan Nivaran Adhiniyam, M.P. (as amended), 1982-Sections 10 and 39-Offences alleged under Section 10 of the Act- Section 39-Cognizance of offence taken by Collector prior to Amending Act of 1984-Does not suffer from jurisdictional error as prior to amendment Collector was notified to be competent authority for purpose of Section 39 of the Act- Sanction granted by Collector after perusal of record-No infirmity-Deceased misappropriated huge quantity of bitumen given to his custody as incharge of the road repair-Public wrong committed-Deserves to be dealt with severely-Conviction and sentence confirmed : *Radharaman Agrawal Vs. State, I.L.R. (2000) M.P. 1469, .*

-Section 374(2)-Appeal- Injured witness not disclosing names of miscreants immediately-Enmity prevailed as complainant was prosecuted in forest offence at the instance of appellants-Prosecution case doubtfully : *Keshri Vs. State, I.L.R. (2000) M.P. 1288, .*

-Section 374(2)-Section granted by Collector after perusal of record – No infirmity – Deceased appellant misappropriated huge quantity of bitumen given to him custody as in-charge of the road repair – Public wrong committed – Deserves to be dealt with severely – Conviction and sentence confirmed : *Radharaman Agrawal Vs. State, I.L.R. (2000) M.P. 1469, .*

–Section 374(2)–Appeal against conviction and sentence–Penal Code, Indian, 1860–Sections 34, 294, 302, 506-II–Murder–Identification–Incident occurred in night hour–Eye witness identified–Accused also known to witnesses being residents of same

area–Identification not doubtful–Incident occurred in quick succession and thereafter accused took to their heels on chasing–Witness cannot be blamed for not intervening–Conviction and sentence for murder upheld. : *Om Prakash Vs. State, I.L.R. (1992) M.P. 484 (D.B.)*

–**Section 374(2)**–Appeal against conviction and sentence–Penal Code, Indian (XLV of 1860)–Section 302 and Arms Act, Indian (LIV of 1959), Section 25-B and 27–Murder by inflicting stab injury–Blow given with such force that the injury was sufficient to cause death in ordinary course of nature–Dying declaration corroborated by independent witnesses–Trial Court rightly convicted and sentenced the appellant. : *Dashrath Vs. State, I.L.R. (1992) M.P. 676 (D.B.)*

–**Section 374(2)**–Appeal against conviction and sentence–Penal Code, Indian (XLV of 1860)–Section 376–Alleged rape–Medical evidence and chemical examiner’s report falsified case of prosecution–Approach of Trial Judge in returning the finding of guilt on basis of so called implied admission by accused in his defence–Wrong–Suppression of valuable evidence–Veracity of F.I.R. doubtful–Conviction and sentence set aside: *Sakaria Vs. State, I.L.R. (1992) M.P. 664*

–**Section 374(2)**–Appeal against conviction and sentence–Penal Code, Indian, 1860–Sections 34 and 307–Common intention and attempt to commit murder–Material witness as also injured witness stated that on sound of the bomb they turned back and saw the accused appellants standing there–Who among the accused persons actually hurled the bomb not proved–Identifying accused person on seeing their back–Weak piece of evidence–Police constable claiming to have identified accused in similar way not deposed that accused were known to him–Injured in enemical terms with appellants–Shaky piece of evidence–Not safe to record conviction: *Aziz Vs. State, I.L.R. (1992) M.P. 423*

–**Section 374(2)**–Appeal against conviction and sentence–Penal Code, Indian, 1860, Sections 148, 149 and 304-I–Culpable homicide–Incident took place when deceased persons were causing damage to the standing crop–Open fight–Accused also sustained injuries–Evidence reveals that deceased on falling on the ground could not have caused any more damage or apprehension of death or grievous hurt–Accused exceeded in exercise of right of private defence–Two out of six accused found guilty–Charge under Sections 148, 149, India Penal Code not sustainable as ingredients of unlawful assembly not established–Conviction under Section 304 Part (I), Indian Penal Code maintained against two and four of them acquitted. : *Kanchhedi Vs. State, I.L.R. (1992) M.P. 583 (D.B.)*

- **Section 374(2)** - and Penal Code, Indian, 1860–Sections 302, 304, Part II–Murder and culpable homicide not amounting to murder–Conviction based on eye witness accounts–Appellant dealt a blow of ballam which landed on the neck of deceased–

Ocular evidence corroborated by autopsy surgeon—Appellant guilty of causing external injury which ultimately resulted in death of victim—Solitary external injury leading to death—No prior ill-will—Injury caused during sudden quarrel over a petty matter—Offence would not be murder—Conviction altered to one under Section 304 Part-II, I.P.C. sentence reduced to the period already under gone : *Madanlal Vs. State of M.P., I.L.R. (2004) M.P. 383 (D.B.)*

—**Section 374, (2)** - and Penal Code Indian, 1860—Sections 302, 304, Part-II—Murder and culpable homicide not amounting to murder—After initial quarrel was subsided by villagers - Accused came with tractor and run over the deceased on exhortation given by acquitted co-accused persons—FIR merely stated that deceased was hit by tractor and he fell down—Theory of exhortation and running over appears to be introduced subsequently and not a case of two separate incident but incidents have occurred in quick succession—Where accused had apprehension of being belaboured by other party started the tractor intention of accused was only to frighten—Certainly accused can be imputed with knowledge that he was likely to cause injuries which may result in death—Act of accused would fall under Section 304-II, IPC and not murder under Section 302—Appeal partly allowed : *Narendra Singh Vs. State of M.P., I.L.R. (2005) M.P. 70 (D.B.)*

- **Section 374 (2)** - and Penal Code Indian, 1860 Sections 342, 366, 376 and 506—Abduction—Wrongful confinement and rape case of sexual assault—Normally testimony of prosecutrix is believed even without corroboration—But in case of inherent suspicion rule of prudence require that her statement is corroborated atleast by some evidence—Prosecutrix sleeping with younger sister aged 9 years—Accused entered and forcibly took her to adjacent field —In presence of other person allegedly committed rape Prosecutrix not raising alarm —Prosecution case does not inspire confidence—Not safe to believe testimony of prosecutrix—Conviction and sentence set aside : *Dasru Vs. State, I.L.R. (2004) M.P. 290.*

- **Section 374(2)**, - Penal Code, Indian (XLV Of 1860), Section 302 and Evidence Act, Indian, 1872, Sections 3, 9—Appeal against conviction and sentence—Murder—Axe blow on neck and face of deceased—Extra-judicial confession—Identification—Accused, deceased and the witnesses are resident of the same village—Total number of house is only 20—Difficult to believe that villagers did not know each other and witnesses had no occasion to see the accused and that test identification was necessary—Evidence of eye witnesses corroborated by extra-judicial confession—No reason to take a different view than that of Trial Court—No interference in appeal : *Komal Singh Gond Vs. State of Madhya Pradesh, I.L.R. (2004) M.P. 678 (D.B.)*

—**Section 374 (2)** - and Narcotic Drugs and Psychotropic Substances Act (LXI of 1985), Sections 20(b) (i), 50,57 —Appeal—Seizure of 1 kg. Ganja and 2 kg. Bhang found

on the lap of accused—No need of personal search—Information sent to superintendent of Police next day—No violation of section 50 and 57 of the Act : *Raju @ Shivban Giri Vs. State of M.P., I.L.R. (2004) M.P. 193*

– **Section 374 (2)** - and Penal Code Indian, 1860, Section 376—Sentence—Punishment should always be proportionate to gravity of crime—Accused lost control of passion—Offence committed without prior concert—Swayed by sexual impulse and urge—Minimum sentence prescribed will meet the ends of justice : *Kailash S/o Savaji Jatiya Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 994 (D.B.)*

- **Section 374 (2)** - and Penal Code, Indian (XLV of 1860)—Sections 302, 304 Part II—Appeal against conviction and sentence—Culpable homicide—Accused dealing only two blows of lathi—No previous illwill—Knowledge could be attributed but no intention—Case false one under Section 304 Part-II, I.P.C. : *Gopal Vs. State of Madhya Pradesh, I.L.R. (2003) M.P. 716 (D.B.)*

– **Section 374(2)**, - Penal Code, Indian, 1860, Section 376 and Evidence Act, Indian, 1872, Sections 3, 118—Rape on minor—Conviction & sentence—Appeal—Appreciation of evidence—Child witness— Merely because oath was not administered her evidence does not become inadmissible—Duty of Sessions Court is to record such evidence in the form of question and answers—Account of incident given by prosecutrix not corroborated by Medical evidence – Mere presence of semen on cloth of prosecutrix and absence of smegama—Not sufficient to prove the offence of rape—Conviction and sentences set aside : *Santosh @ Lal Singh Vs. State of Madhya Pradesh, I.L.R.(2004) M.P. 792*

– **Section 374(2)** – Appeal against conviction and sentence – Penal Code, Indian, 1860 – Sections 147, 149, 302, 362, 364 and 365 – Abduction and murder of wife – Dead body found in a well Absence of external or internal injury – Definite medical opinion that condition of body in absence of external or internal injuries does not indicate that the death was homicidal – Charges under Section 302 Indian Penal Code cannot be sustained – Evidence Act, Indian, 1872, Section 3 – Server criticism of autopsy surgeon or a direction for an enquiry against them would not be a circumstances to infer that death was homicidal – Abduction as defined under Section 362 – Not punishable unless it is done with certain intention punishable under Section 364 to 366 of Indian Penal Code – Prosecution miserably failed to prove that death was homicidal – Essential ingredient of intention to murder or to put the person in danger of being murdered not established – Accused cannot be convicted under Section, 364, IPC – Husband with other co-accused abducted and confined his wife at a place not known to her parents – Case of wrongful abduction and secret confinement made out – Conviction under Sections 302, 364, IPC set aside instead Conviction under section 364, read with Sections 147, 149 IPC recorded – Husband sentenced to R.I. for 7 years’ – Sentence of co-

accused person reduced to the period already undergone and fined as imposed by Trial Court : *Shobhanlal Vs. State, I.L.R. (2001) M.P. 1052 (D.B.)*

–Sections 374(2), 28 and Penal Code Indian, 1860–Section 376–Rape–Prosecutrix minor–To fold defence–Animosity and also consent–Being self-contradictory cannot be accepted–Illiterate and coming from rural area–Cannot be construed to be either adequate or special reason to reduce minimum mandatory period of sentence–Sympathy shown wholly misconceived–Likely to send wrong signals–Order of High Court set-aside–Sentence awarded by Trial Court restored : *State of Madhya Pradesh Vs. Balu, I.L.R. (2004) M.P. 1105 (SC) (D.B.)*

- Section 374(2), - 154, Penal Code, Indian (XLV of 1860), Section 302, and Arms Act, Indian, Section 25(1)(a)–Murder–Conviction and Sentence–Appeal–Evidence specifying role of appellant causing gun shot injury–Corroborated by independent witnesses–Seizure of gun proved–Pellets recovered from body of deceased were fired by the gun seized–Mere non-mention of names of witnesses in FIR–Not in itself a ground to discredit entire case of prosecution–Finding of Trial Court based on proper appreciation of evidence–Conviction upheld : *Girbal Vs. State of M.P., I.L.R. (2003) M.P. 456 (D.B.)*

- Sections 374 (2), - 154, 157, Evidence Act, Indian, 1872, Section 3 and Penal Code, Indian (XLV of 1860)–Section 302–Murder–Eye witnesses–Mere fact that witnesses are consistent in what they say is not sure guarantee of their truthfulness–High Court–Final Court of fact–Necessary for the High Court to scrutinize the evidence in some details–Accused allegedly put the gun on back of the deceased and fired–Sat on his body and strangled him to death–Eye witnesses no other than forest officers–Seeing ghastly crime started running and did not stop or inform villagers–No blackening or charring of skin around the wound nor any mark of injury on neck of deceased found by the doctor–Conduct of witness highly unnatural, doubtful and not believable–Serious doubt about their presence at the time of occurrence–Delay in sending information to the Magistrate–No explanation–Prosecution case doubtful–Deceased a history sheeter–Had many enemies–May have been murdered by one of them–Appellant falsely implicated–Acquitted giving benefit of doubt : *Badam Singh Vs. State of Madhya Pradesh, I.L.R. (2004) M.P. 91 (SC) (D.B.)*

- Sections 374(2), - 154, 161 and Penal Code, Indian (XLV of 1860), Section 302–Conviction and sentence–Appeal against, under Section 374(2)–F.I.R.–Sections 154 and 161, Cr. P. C.–Report of crime which is lodged in police station first in order is the F.I.R.–Any subsequent report cannot be treated as F.I.R. being hid by section 161–Evidence Act, 1872–Section 3–Only eye-witness also injured in the incident–Disbelieved by the Trial Court in respect of other co-accused person–Conduct being doubtful–Cannot be relied on in respect of only one accused while the Trial Court has disbelieved

him in respect of four other co-accused persons–F.I.R. not showing only involvement of appellant–Variance in testimony of material witnesses–Conviction and sentence set aside–Words and phrases–'F.I.R.'–Report of crime which is lodged in police station first in order is the first information report. : *Vijay Shankar Vs. State, I.L.R. (1992) M.P. 113 (D.B.)*

-Sections 374 (2), - 161, Penal Code Indian, 1860,Section 300, Exception 4,302, 304-II–Murder–Conviction and sentence–Appeal–Accused acted in cruel manner–After assault brought an axe and caused further injuries while deceased lay inert–Cannot get benefit of Exception 4 to Section 300–Appeal Dismissed : *Janak Singh Vs. The State of M.P., I.L.R. (2005) M.P. 524 (D.B.)*

-Sections 374 (2), - 161, 162 and Evidence Act Indian, 1872 Sections 3, 157–Penal Code Indian, 1860–Section 302–Murder–Conviction and sentence–Appeal–Amputation of head from neck by hard and sharp object–Prompt FIR–Incident narrated by eye witness to other witnesses–Corroborated by other evidence–Statement of such witnesses admissible–Cannot be said hearsay–Prompt FIR and postmortem report and evidence adduced Prosecution case proved beyond reasonable doubt defect in seizure in weapon and in sending copy of FIR to Magistrate is of no consequence : *Shankar S/O Gul Singh Bhilala Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 160 (D.B.)*

-Sections 374(2), 320(5)–Appeal against conviction and sentence–Penal Code, Indian, 1860–Sections 307, 324–Attempt to commit murder–Sole injury by knife on chest–Medical opinion that in absence of immediate medical assistance death could have been caused due to haemorrhage–Injury not on vital part–Case under Section 307, IPC not made out–Conviction altered to one under Section 324, IPC–Complainant and accused persons developed intimacy–Prayer for compounding offence–Can be granted on conversion of offence from 307 to 324 IPC : *Gopal Tiwari Vs. State, I.L.R. (2002) M.P. 146*

-Sections 374(2), - 238, Evidence Act Indian, Sections 9, 114 and Penal Code Indian, 1860, Sections 300, 392, 396, 397, 411, 412–Dacoity and murder–Conviction and sentence–Appeal against Death as a result of injury inflicted during dacoity–Act of miscreants amounted to murder–Identification–Sufficient light at the place of occurrence–Witnesses had opportunity to see the miscreants for sufficiently long time–Features and other particulars of miscreants described in the F.I.R–Identification not doubtful–Gun seized at the instance of accused from jurisdiction of different police station–Failure to keep personnel of concerned police station may be an irregularity but it would not vitiate the recovery–Possession of property stolen in commission of dacoity–Knowledge of accused that the property was stolen in dacoity is an essential ingredient of Section 412, I.P.C.–In absence of evidence of such knowledge only presumption that accused knew that article was a stolen property fit case to convert conviction under

Section 412, IPC to one under Section 411 I.P.C.–Act of accused in commission of dacoity covered by Section 396–Separate sentence under Section 392 read with Section 397 I.P.C. is improper and is set aside–Appeal partly allowed : *Gonda Vs. State, I.L.R. (2004) M.P. 779 (D.B.)*

- **Sections 374(2), 241 and 394**–Appeal against conviction–Death of appellant during pendency of appeal–Widow granted permission to prosecute the appeal–Penal Code, Indian, 1860, Sections 409, 477-A and Prevention of Corruption Act, 1947, Sections 5(1)(c) and 5(2)–Charge of dishonest mis-appropriation of fund–Conviction on basis of admission is unqualified–Accused admitted the charge expecting exoneration or leniency in sentence by placing extenuating and mitigating circumstances that there was a theft in his house and as he fell ill he spent some amount for his treatment of Tuberculosis and also wanted to deposit balance amount which was not taken–Such admission is not unequivocal or unqualified–Mens rea or dishonesty on his part not admitted by him–Conviction and sentence on such plea of guilt–Not sustainable : *Vijay (Dead) Through Kamlesh Thakur Vs. State, I.L.R. (2002) M.P. 341,*

–**Sections 374(2), 299**–Appeal from conviction–Dacoity–Co-accused absconded–Trial Court required to be strict enough to take action for not producing witnesses–Non-examination of key witness–Trial not held properly–Conviction and sentence set aside : *Janardhan Vs. State of M.P., I.L.R. (2005) M.P. 1199*

-**Sections 374(2)0 - and 304 and Legal Services Authorities Act (XXXIX of 1987)** – Criminal Appeal – Came up for hearing after a long gap – Appellant found not represented by any advocate as the advocate who filed the appeal left practice – Constitution of India – Articles 21, 39-A and 215 – Powers under – Invoked to ensure that appellant is not deprived of the equal opportunity to secure justice – Senior Advocate engaged with a junior to assist him at the state expenses – Words and phrases: “procedure established by law” means the procedure which is just, fair and reasonable : *Azad Vs. State, I.L.R. (2001) M.P. 243 (D.B.)*

-**Sections 374 (2), 319 - and Narcotic Drugs and psychotropic Substances Act, 1985, Sections 20 (a) (6) (i)**–Seizure of 33 Kg. of ‘Ganja’ and unlawful cultivation of Ganga–Conviction and sentence–Appeal–None of the accused present in the house at the time of seizure House and land belongs to one of the PW-5. in whose name search warrant issued and raid arranged–Personal belongings of landlord also found during search–Warrant for arranging land owner as accused issued but not executed–Affidavit of co-accused admitting that house and land was taken on sikmi for three year–Affidavit not seized by police nor there is any mention of its seizure in police Diary–Fact of sikmi not proved –Miscarriage of justice–Apparently efforts made to save influential land owner–Appeal allowed–Conviction and sentence set aside–Direction issued to prosecute the land owner–Director General of Police directed to take action against those responsible for miscarriage of justice : *Har Narayan Vs. State, I.L.R. (2004) M.P. 389*

- **Sections 374(2), - 340 and 344** and Penal Code, Indian (XLV of 1860), Section 307–Conviction and sentence–Appeal against–Material witness turned hostile–Testimony of hostile witnesses cannot be washed of merely because they have been cross-examined–Evidence Act, 1872–Section 32–Dying declaration recorded in view of injuries dangerous to life–Victim named accused appellant in the dying declaration–Part of evidence supported by F. I. R. and earlier statement of witnesses–Conviction and sentence sustained–Sections 340, 344 Cr. P. C.–Apparent efforts made by material prosecution witnesses to protect the accused by giving false testimony–A threat to the system of administration of justice–Direction given to proceed against such witnesses. : *Babla Vs. State, I.L.R. (1992) M.P. 208*

–**Sections 374(2) and 378**–Appeal against conviction and sentence and state appeal against acquittal–Penal Code, Indian, 1860, Sections 120-B, 409, 420, 467 and Prevention of Corruption Act, 1947–Section 5(1)(d)(2)–No allegation that any amount was entrusted to accused or that he has faked any signatures of any teacher–Ingredients of criminal breach of trust or cheating or forgery not made out–Accused admitted receipt of money but failed to show to whom payments were made–Case of obtaining pecuniary advantage abusing the position as a public servant made out–Criminal conspiracy–Unless any other accused is convicted appellant alone cannot be convicted for this offence–No evidence to show involvement of District Education Officer, Accountant and his Clerk in the offence except for negligence in checking and re-checking–Mere negligence is not punishable : *Shankarlal Vishwakarma Vs. State, I.L.R. (1992) M.P. 791 (F.B.)*

–**Section 374(2) and 387**–Appellate Court or revisional Court has power only to suspend execution of sentence–Stay of conviction can be ordered only in exceptional case : *Jamna Prasad Vs. State., I.L.R. (2003) M.P. 368 (F.B.)*

–**Sections 374(2) and 387**–Civil Services (Classification Control and Appeal) Rules 1966 Rule 19 –Penal Code Indian, 1860–Sections 326, 320 Administrative Tribunals Act, 1985 Section 19 and Constitution of India, Article 227–Service Law–Termination on ground of conviction in criminal case–Claim of subsistence allowance till decision in appeal by High Court and Appellate Court or revisional Court has power only to suspend execution of sentence–Stay of conviction can be ordered only in exceptional case–Competent authority can terminate the services after conviction by criminal Court–On termination master and servant relationship comes to an end–Filing of appeal or stay of execution of sentence does not revive the relationship–Employee cannot be taken to be under suspension till decision in appeal–Not entitled to suspension allowance : *Jamna Prasad Vs. State, I.L.R. (2003) M.P. 368 (FB)*

– **Sections 374(2), 389 and 482** - and Panchayat Raj Adhiniyam, MP, 1993 (I of 1994) – Section 41-A – Conviction of Panch rendering him disqualified to hold office in the Panchayat – Relying on apex Court judgment – High Court in appeal suspending

conviction in exercise of powers under Sections 389 and 482 of the Criminal Procedure Code – Effect – Conviction having been suspended the incumbent would not incur any disqualification under the Act of 1993 : *Jamuna Prasad Jaisani Vs. Smt. Shikha Dubey, Collector, Harda, I.L.R. (2001) M.P. 1286*

–**Sections 374(3), 386, 401, 432** - and Penal Code, Indian (XLV of 1860)–Sections 109, 409, 420, 468 and 477 - Conviction and sentence–Remission of sentence–Power to grant of–Vests with the appropriate Government and the accused has to be in custody–Court has no jurisdiction of remission of sentence–Order of remission by Court–Illegal–Revision at the instance of complainant–Maintainable–Lower appellate Court in appeal not considered factual aspect of the case but merely proceeded to consider the quantum of sentence and remission–Appellants have been denied opportunity of agitating their case on merits–Order of High Court set aside and matter remanded to the lower appellate Court : *K. Pandurangan Vs. S.S.R. Velusamy, I.L.R. (2003) M.P. 1067 (SC) (D.B.)*

–**Section 378**–Appeal against acquittal–Penal Code Indian 1860–Section 409–Criminal breach of trust–Gravamen is dishonest misappropriation or conversion of money entrusted–Accused failed to account for the money and also to return it at once–Took fourteen months to deposit the money–Charge of criminal breach of trust established–Order of acquittal set aside. : *State Vs. Prempal; I.L.R. (1992) M.P. 865 (F.B.)*

– **Section 378** – Appeal against acquittal – High Court should be very slow in dislodging the order of acquittal unless the same is perverse, inconsistent with the evidence on record and against the provisions of law : *State Vs. Babulal, I.L.R. (2001) M.P. 95*

–**Section 378**–Appeal by state against acquittal–Penal Code Indian, 1860, Section 161 and Prevention of Corruption Act, 1947, Sections 5(1) (d), 5 (1) (2) and Prevention of Corruption Act, 1988, Section 7–The accused cannot escape the liability for his illegal act even if he had accepted the gratification for the officer under whom he was working–The words “for himself or for any other person” used in the Section are material–Trial Court erred in acquitting the accused–Acquittal reversed–Accused convicted–Sentence–19 years elapsed since the date of commission of offence–Section 7 of 1988 Act providing minimum sentence does not apply to offence prior to its coming into force–Accused sentence to R.I. for 4 months and fine of Rs. 200 : *State Vs. Girja Prasad, I.L.R (2003) M.P. 554*

- **Section 378** – Appeal against acquittal – Powers of High Court to interfere with the finding of trial Court acquitting the accused – Extent of : *State of M.P. Vs. Sheikh Lallu, I.L.R. (1990) M.P. 102,*

- **Section 378** - Appeal against acquittal - View taken by trial Court reasonable - Appellate Court will not substitute its own views - Interference not called for - Section 248 - Award of sentence - Accused convicted for an offence under section 326, I. P. C.

but imposed a sentence of fine only on consideration of long trial and accused remaining in jail for sometime - Case presenting a picture of extreme brutality and lawlessness - Accused liable to be visited with maximum penalty for 3 years - R. I. - Theory and principles for awarding punishment discussed : *The State Vs. Ganga Singh I.L.R. (1986) M.P. 465 (D.B.)*

- **Sections 378 & 386** – Code does not make any distinction between an appeal from acquittal and an appeal from conviction – However certain unwritten rules of adjudication have been followed, while dealing with appeals against acquittal – In such appeals Court has to proceed more cautiously and only if there is absolute assurance of the guilt of accused then order of acquittal be interfered with or disturbed : *Dhanna Vs. State of M.P., I.L.R. (1996) M.P. 264 (D.B.)*

–**Section 378** - and Prevention of Food Adulteration Act (XXXVII of 1954) Sections 11(3), 16(1)(a)(i)–Sale of adulterated jaggery–Acquittal–Appeal against–Sample taken is required to be sent to public analyst on the next working day–Nominal delay–Not fatal to prosecution–Inference that the sample was changed cannot be inferred in absence of any material on record to that effect. : *State Vs. Nanhelal; I.L.R. (1992) M.P. 869*

–**Section 378(1)**–Appeal against acquittal–Appellate Court should be slow in reversing the order of acquittal : *State Vs. Vishnu Prasad Babela, I.L.R. (1992) M.P. 497*

–**Section 378(1)**–Mere possibility of another view on the prosecution evidence will not be sufficient to warrant interference in the order of acquittal : *State Vs. Kishori @ Kishora, I.L.R. (2004) M.P. 65 (D.B.)*

- **Section 378(1)** - Prevention of Corruption Act (II of 1947), Section 5(1)(a), 5(2) and Penal Code, Indian (XLV of 1872), Section 161–Appeal against acquittal–Appellate Court should be slow in reversing the order of acquittal–Difference in versions of material prosecution witnesses–Witnesses not supporting prosecution case have not been declared hostile nor cross-examined–Order of acquittal proper–No interference. : *State Vs. Vishnu Prasad Babela I.L.R. (1992) M.P. 497*

- **Section 378(1)** - Evidence Act, Indian, 1872, Section 3 and Penal Code, Indian, 1860, Sections 147, 148, 149, 302, 307–Murder and attempt of murder–Acquittal recorded by Trial Court–State Appeal–Injured eye witness–Presence of injuries by itself not a guarantee of truthfulness of his evidence–FIR lodged within three hours but names of actual assailants not mentioned–Came out with the names of accused persons after 2½ months–In deposition before Trial Court took the stand that he neither lodged FIR nor made dying declaration–Evidence suffers from serious infirmities–Cannot be acted upon–Mere possibility of another view on the prosecution evidence will not be sufficient to warrant interference in the order of acquittal : *State Vs. Kishori @ Kishora, I.L.R. (2004) M.P. 65 (D.B.)*

-Section 378(1) - and Penal Code, Indian (XLV of 1860), Section 302–Appeal against acquittal– Murder–Allegation that deceased was offered liquor mixing “Sulphas”– Conviction on basis of dying declaration–No enmity between deceased and the appellant– No explanation as to how deceased came to know that “Sulphas” was mixed with the liquor–Trial Court rightly held that prosecution failed to prove its case– Acquittal proper : *State Vs. Prithvi, I.L.R. (2004) M.P. 505 (D.B.)*

- Section 378(1) - and Penal Code, Indian (XLV of 1860)–Sections 147, 149, 300, 302 and Evidence Act, Indian, 1872–Section 3–Murder–Rioting–Prosecution–Appreciation of evidence–Assailants six in numbers–Armed with lathis–Attacked deceased–Neither safe nor desirable for a witness to endanger his life–Witness not making efforts to save the deceased at the time of incident–Not unnatural–Evidence corroborated by other witnesses–High Court justified in reversing the order of acquittal– Only head injury proved fatal–Head injury inflicted by A-6–Nothing to indicate that deceased was to go to the place of occurrence at the given time–Co-accused persons caused injuries on other parts of body–No intention or knowledge to kill the deceased– No common object to attract Section 149, IPC–Could be held guilty under Section 147, IPC–Judgment and order of High Court modified : *Bharosi Vs. State of M.P., I.L.R. (2003) M.P. 163 (SC) (D.B.)*

– Section 378(1) – State Appeal against acquittal – High Court should be slow in disturbing the finding of Trial Court who has the opportunity to watch demeanour of witness : *State Vs. Balu, I.L.R. (2000) M.P. 613 (D.B.)*

-Section 378 (3) - Indian Penal Code, 1860, Sections 306, 498A–Appeal against acquittal–Respondents acquitted for offences punishable under Sections 306 and 498-A of I.P.C.–Allegation of cruelty against brother of husband–Approach of Trial Court not vitiated by some manifest illegality neither conclusion recorded by Court below perverse–Interference with judgment not called for even if different view is possible–Appeal dismissed. : *State of M.P. Vs. Hakam Singh; I.L.R.(1994) M.P. 213*

– Section 378(4) – State Appeal against acquittal – Prevention of Food Adulteration Act, 1954 – Section 16(1)(a)(i) and Prevention of Food Adulteration in Rules, 1955 – Rules 14, 15 and 16 – Manner of taking samples and also packing, sealing of the samples provided – Strict compliance not made by Food Inspector – Food Inspector also not able to state why the variation in the two reports – No evidence to show that sample was collected properly and was of representative character – Order of acquittal proper : *Municipal Corporation, Khandwa Vs. Narsingh Das, I.L.R. (2001) M.P. 246*

–Section 378(4)–Appeal against acquittal–Penal Code Indian (XLV of 1860), Sections 494, 494/114–Bigamy–Trial Court fell in error in requiring clinching evidence as to first and second marriage–Fact of first marriage admitted by accused and also support by judicial finding in proceeding under Section 125 Criminal Procedure Code–

No better proof ought to have been insisted for—Second marriage—Usually performed in clandestine manner—Prosecution witness disposed about their presence in the second marriage and having witnessed ‘Pav Poojan’ and ‘Bhanwar’—Second marriage established—Order of acquittal reversed and accused convicted—Sentence—12 years elapsed since second marriage—Marriage with complainant irretrievably broken—Instead of substantive jail sentence accused sentenced to imprisonment till rising of the Court and fine of Rs. 20,000/- each—On realisation to be paid to complainant : *Smt. Kashibai Vs. Himmat Singh*; *I.L.R. (1992) M.P. 872*.

- **Sections 379, 380** - and Penal Code, Indian (XLV of 1860)-Sections 363, 366 and 376—Appeal against acquittal recorded by High Court—From materials on record both the girls found not below 18 years of age—Conclusion that the act, if any was done with consent—Not perverse—Abduction by deceitful means—Victims consented to travel with the accused—Not a ground to hold that there was no abduction if deceit is established and victim is induced by the deceitful means—Prosecution version that accused promised to get the girls married at better places—Not substantiated by the victims and their respective fathers—Accusation not established : *State of Chhattisgarh Vs. Malti Bai*, *I.L.R. (2004) M.P. 218 (SC) (D.B.)*

-**Sections 383, 362, 384, 386, 390, 391, 401, 482** - and Penal Code Indian 1860, Section 392—Dismissal of Revision—Review of its own order by High Court—Review is barred but power to declare its own order as nullity is not—Earlier order was passed in a revision which was not maintainable—Order set aside: *Yesu Vs. State*, *I.L.R. (2002) M.P. 375*,

- **Section 386** - and Prevention of Food Adulteration Act, 1954, Section 7(i), 16(1)(a)(i) – Power of Appellate Court to order retrial – Food Inspector collected sample from accused on 10-10-1985 – Trial Court convicted accused on 6-4-1998 – Appellate Court held that Trial Court should have tried the case summarily and not as warrant case – Appellate Court set aside the judgment and directed for re-trial 7 years from incident already passed – Power directing re-trial should be sparingly used and for grave reasons – Order of re-trial set aside. : *Samaliya Kishanlal Vs. State of M.P.*, *I.L.R. (1993) M.P. 305*

- **Sections 386, 221, 300, 397, 401** – Revision – Penal Code, Indian, 1860 – Section 304-A, 314, 315 – Negligence leading to death – Accused nurse administered medicine for abortion to two months old pregnancy – Death of victim – Prima-facie offence under Sections 314, 315, Indian Penal Code made out – Appellate Court has jurisdiction to remit the case for committal after setting aside conviction and sentence under Section 304-A – Such re-trial would not amount to retrial but continuation of trial – Framing of charge under Sections 304-A, 314, 315, Indian Penal Code Indian Penal Code by Sessions Judge on committal proper – Bar under Section 300 Criminal Procedure

Code would not come in the way : *Smt. Nirmala Bai Vs. State, I.L.R. (2001) M.P. 1775*

-Sections 386, 387 — Appellate Powers of the High Court—Appeal against Acquittal —Essentially same as in appeal against Conviction — Court can come to its own conclusions about credibility of witness if credibility depends on factors other than demeanour of witness—Acquittal should not however be reversed if view taken by trial Court not essentially wrong—High Court should consider the reason advance by trial Court before altering the order of Acquittal to order of Conviction—No infirmity with the judgment of the High Court : *Betal Vs. State of M.P, I.L.R. (1995) M.P. 71, (D.B.)*

–Sections 386 (b) (i)–Recovery proved–Non production of seized articles before the court is a technical lacuna–To deny opportunity to remove formal defect would amount to abort a case against an alleged offender–Appellate Court committed no error in remanding the case for retrial : *Manoj Rawat Vs. State of M.P., I.L.R. (2005) M.P. 1102*

–Section 387, 374(2)–Appellate Court or revisional Court has power only to suspend execution of sentence–Stay of conviction can be ordered only in exceptional case : *Jamna Prasad Vs. State, I.L.R. (2003) M.P. 368 (F.B.)*

- Section 389- and Constitution of India, Articles 226, 14, 19(1)(g), 227 and Excise Act, M.P. 1915(As amended by Act No. XX of 2000), Sections 34,46,47, 47-A,47-B,47-C and 47-D–Offences relating to liquor exceeding fifty bulk litres at the time of detection–Penal provisions made more condign and deterrent–Confiscation–Power of appellate and revisional Courts–Sessions Judge exercising power of revision can also pass orders which can be passed by the appellate authority–Power to pass order for preserving and keeping the seized articles in fact is thus saved–Restriction on the power to stay the order of confiscation–Cannot be held to be arbitrary irrational or unreasonable–Not ultra vires–Remedy of appeal and revision available–Petitioner may pursue the remedy : *Shrish Agrawal Vs. State, I.L.R. (2003) M.P. 579 (F.B.)*

- Sections 389 and 397- Sentence- Means substantive sentence- Once the sentence has been suspended it means the suspension of substantive sentence as well as sentence of fine - Unless it is not specially indicated- No specific reasons mentioned for denying the suspension of sentence of fine, when substantive sentence has been suspended- It is nothing but denying him the fruits of concession provided by law and subjected to the judicial discretion- Discretion-Suspension of sentence is a matter pertaining to the field of- Discretion- Discretion has to be used always with a circumspective approach of the facts and circumstances of each and every case- But that is to be consistent with traditions, methodized analogy and disciplined system. : *Ramesh Chandra Vs. State of M.P., I.L.R. (1998) M.P. 983*

– **Sections 389, 438, 439**– *Successive bail applications to be placed before the same Bench or Judge if available.* : *Narayan Prasad Vs. State of M.P.*, I.L.R. (1993) M.P. 34 (D.B.)

-**Section 389, 437, 439**-Application for grant of bail pending appeal or ordinary bail pending trial-In both cases bail is granted for a limited purpose to secure presume of convict of the accused-All such bail application-Second or successive-Should be placed for consideration before the bench which earlier decided the first application unless that bench is not available for sufficient duration-Such practice is a matter of long standing conversion and judicial discipline to prevent abuse of process of the Court : *Santosh Vs. State*, I.L.R. (1999) M.P. 1103 (F.B.)

- **Section 389(i)** - and Constitution of India, Articles 226, 227-M.P.Civil Services (Classification, Control and Appeal) Rules, 1966 - Rule 19-Writ challenging order of State Administrative Tribunal- Conviction of Government servant by trial Court - Termination - Competent authority can terminate services after conviction by criminal court - Stay of execution of sentence will not debar competent authority from doing so - Master and servant relationship terminates on termination order- Government servant cannot be taken to be under suspension from the date of his termination following conviction by trial Court till date of judgment of Appellate Court - Subsistence allowance cannot be granted for the period. : *Jamna Prasad Vs. State of M.P.* ; I.L.R. (2002) M.P. 809 (F.B.)

–**Sections 391, 367, 374(2)**–Taking on record further evidence at appellate stage– Penal Code, Indian, 1860, Sections 147,148,149,302,323–Murder of five persons and causing hurt–Prosecution named a witness in challan but did not examine him–Defence at one stage wanted to examine that very witness but subsequently dropped him–In facts of the case he appears to be material witness to arrive at the true genesis of the incident–Appeal Court in a fit case may direct examination of such a person as ‘Court witness’ without prejudice to the defence: *State Vs. Jagdish*, I.L.R. (1992) M.P. 926 (F.B.)

–**Sections 391, 397, 401**- and Wild Life Protection Act, 1972, Section 9–Remand by appellate Court for limited purpose of re-examining the prosecution witness for proving statement of accused and not for de novo trial–Well within the law–No illegality or irregularity committed–No scope for interference : *Rambux Vs. State*, I.L.R. (2003) M.P. 247

– **Section 393, 362 and 482** – Exercise of inherent powers by High Court to correct this error – No bar – High Court set aside the sentence and after hearing accused passed fresh sentence after taking into consideration fact of compromise into account even though offence is non-compound : *Haji Abdul Rehman Vs. Ashok Kumar*, I.L.R. (1988) M.P. 287

– **Sections 394(2)** – Death of appellant/accused – Legal Representative granted permission to prosecute the appeal : *Shyamlal Vs. State, I.L.R. (2000) M.P. 870*

– **Section 397** – Absence of any glaring defect in the procedure or manifest error on point of law resulting in flagrant miscarriage of justice – No interference by High Court in revision : *Kishorilal Agrawal Vs. Smt. Rampyaribai, I.L.R. (1989) M.P. 737*

–**Section 397, -** Prevention of Food Adulteration Act, 1956, Sections 7(1) and 16(1)(a)(i) –Revision against order of conviction–Milk not stirred while collecting sample–Variation in two reports carried out by public analyst and Central Food Laboratory–Prosecution did not produce the material which was placed before the sanctioning authority for purpose of enabling the authority to apply mind–Order of conviction and sentence set-aside: *Mehboob Khan Vs. State, I.L.R. (2002) M.P. 372,*

- **Sections 397, 28, 320 (3), 401-** and Penal Code Indian, 1860, Sections 326, 452–Conviction–Question of Sentence–Application for compromise filed but rejected by appellate Court–Facts of compromise can be taken into account in determining quantum of sentence even in non-compoundable offence–Sentence modified to the period already undergone : *Bhandas Vs. The State of M.P., I.L.R. (2003) M.P. 725*

- **Section 397 and 125** - Joint award of maintenance to wife and her children - Such irregularity can be caused by appointment of the amount under revisional jurisdiction : *Smt. Radhamani Vs. Sonu, I.L.R. (1985) M.P. 443*

- **Section 397 and 125** - Maintenance - Tyranny of mother-in-law over daughter-in-law-Amounts to ‘cruelty’ entitling wife to live separately from her husband - Joint award of maintenance to wife and her children - Such irregularity can be caused by apportionment of the amount under revisional jurisdiction - Oral evidence in maintenance cases - Appreciation of - Interference by revisional Court in appreciation of evidence by the trial court - when can be made : *Smt. Radhamani Vs. Sonu, I.L.R. (1985) M.P. 443*

- **Sections 397, 125 and 126 (2)** - Revisional Jurisdiction - Exercise of - Remedy of appeal available - Revision not entertainable - Section 125 - Proceedings are of quasi Civil and quasi Criminal nature - Service by post is permissible - Section 126 (2) - Exparte order thereunder - Remedy - Party not availing of such remedy - Not entitled to invoke revisional Jurisdiction : *Farida Vs. Nisarali, I.L.R. (1986) M.P. 600*

–**Sections 397, 125, 401**–Application for maintenance–Plea of wife as to marriage with petitioner and a son having born to them proved from entry of nomination in husbands service record–Husband not disputing fact of marriage but stated he turned her out because of her immoral character–Facts proved that she is wife of non-applicant–Maintenance granted : *Smt. Rambai Choudhary Vs. Bhagwandeem Choudhary, I.L.R. (2002) M.P. 160*

- **Sections 397, 125, 401** - and Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 2(a)–'Divorced Women'–Application for grant of maintenance by muslim women–Objection by husband as to maintainability on ground of divorce–Obligatory on the part of husband to frame “divorce in accordance with Muslim Law”–No divorce is duly effected if it is in violation of the injunction of the Quoran–Prior to pronouncement of divorce no reconciliation had taken place as mandated by the Quoran for a valid divorce–Trial Court committed error in accepting the factum of valid divorce–Order of revisional court fair and proper–No interference called for : *Mohd. Idris Vs. Smt. Nigar Sultana, I.L.R. (2004) M.P. 698*

–**Sections 397, 125 and 482**–Inherent powers of High Court–Revisional Court quashing the order of maintenance–Husband contracted Second marriage–Total repudiation of the obligations of marriage–Finding based on total misconception of Law–Liable to be interfered with–Legal connotation of 'desertion' has not been taken into account by the Revisional Court–Revisional order set aside. : *Ganga Bai Vs. Shriram, I.L.R. (1992) M.P. 964*

–**Sections 397, 125 and 482**–Petition against revisional order–Application for maintenance–Marriage with petitioner established–Objection on ground of legality of marriage–Cannot be allowed to stretch as to defeat the very purpose of law–Question already decided by Court below–Invoking power of Superintendent none of the objects envisaged in Section 482 could be achieved–No case for interference. : *Manohar Soni Vs. Kamla Bai, I.L.R. (1992) M.P. 962*

– **Sections 397, 190, 193, 319 and 401** – Revision – Trial Magistrate not empowered to arraign a person as accused not sent for trial by filing charge sheet in exercise of power under Section 319, Criminal Procedure Code – Court of Session or the Trial Magistrate empowered to take cognizance against such a person not sent for trial till framing of the charges and thereafter this power can be exercised only on the basis of evidence adduced against such person- Trial Court though referring to a wrong Section 190, 193, Criminal Procedure Code – Order impugned maintained – Cognizance means taken a Judicial notice of an offence – Does not necessarily mean commencement of a proceedings : *D.R. Maheshwar Vs. State, I.L.R. (2001) M.P. 1412*

–**Sections 397, 125(3), 125(4), 401**–Revision- Application for maintenance- Recovery of amount falling due during recovery proceedings–Applicant not required to file application for recovery of amount every time it is falling due–Disqualification is found baseless the court case order recovery of amounts that has fallen due in the cause investigation–Stay of recovery of maintenance pending enquiry into the objection as to adultery–Provision disentitles only the wife and not the children for getting maintenance : *Nanhi Bai Vs. Netram, I.L.R. (2003) M.P. 839(D.B.)*

–**Sections 397, 156, 190, 200, 202, 299, 401**–Criminal Procedure–FIR and cognizance of offence by Magistrate–An order is a document and has to be construed in its ordinary and natural meaning in absence of any ambiguity–Magistrate in complaint case after examining complainant may order for police investigation under Section 156(3) Cr. P.C.–Mere examination of complainant does not mean that he had taken cognizance–Warrant of arrest–On the date of filing charge sheet accused not present–To secure attendance of accused Magistrate rightly ordered for issuance of warrant of arrest : *Harbhajan Vs. State, I.L.R. (2003) M.P. 1041*

–**Sections 397, 161, 319, 401** & Penal Code, Indian, 1860–Sections 34, 201, 302–Power to Proceed against other persons appearing to be guilty of offence–Trial Court should refrain from adopting the course unless it is hopeful that case against newly brought accused would end in conviction–Petitioner not chargesheeted by police–Deposition of witness implicating petitioner–In police case diary statement witnesses did not make reference to the petitioner–Order of trial Court for impleading the petitioner as an accused–Cannot be upheld : *Tarunendra Bahadur Singh Vs. State of M.P., I.L.R. (2003) M.P. 649*

–**Sections 397, 161, 227, 228, 401 and Penal Code Indian, 1860 Section 376**–Allegation of rape–Discharge –On misrepresentation and false promise that accused is a bachelor and will marry her that the prosecutrix succumbed to his lust–Her consent was not a true consent–Fearing prosecution accused also threatened her of dire consequences and also attempted to set her a fire–Sufficient material to frame charge–Order impugned set aside–Matter remanded for framing charge : *Ku. Renu Yadav Vs. Madhusudan Elawadi, I.L.R. (2003) M.P. 655*

– **Sections 397, 164, 319 and 401** – Revision against impleadment of petitioner as accused during trial – Penal Code, Indian, 1860 – Sections 302, 307, 323, 294/34 – Offences alleged – Examination in Chief of witness revealing complicity of petitioner in commission of the Crime – Trial Court within the its jurisdiction to take cognizance and issue summons directing to implead the petitioner as accused even before the witness in cross-examined – Condition precedent is that from evidence it should appear that any person not being accused has committed offence and could be tried together – Evidence Act, Indian, 1872, Section 3 – Evidence – The term ‘evidence’ has a wider connotation – Deposition of a witness on oath administered by the Court – Can form evidence contemplated under Section 319, Cr.P.C. even in absence of cross-examination – Section 164, Cr.P.C. – Before passing impugned order trial Court referred to witnesses’s statement under Section 164, Cr.P.C. –Shows that he passed the order after satisfying

himself as to complicity of petitioner— Order passed on sound material – Not interfered with in revisional Power : *Moti Vs. State, I.L.R. (2001) M.P. 1074*

–**Sections 397, 173(8) and 401**–Revision–Papers not submitted to police who held investigation–Complainant cannot file application for taking documents on record– Instead should approach the police : *Lalmanendra Singh Vs. The State of M.P., I.L.R. (2005) M.P. 372*

–**Sections 397, 173(8), 401** - and Penal Code, Indian, 1860, Sections 302, 120-B– Revision–Rejection of prayer for re-investigation by police–Sessions Judge has jurisdiction to direct reinvestigation–Trial Court noticed various lacuna in the investigation–No effort was made to collect evidence on truth of facts and motive behind murder–Case requires further investigation–Revision allowed : *Dr. (Smt.) Sulekha Mishra Vs. Purushottam Lal , I.L.R. (2005) M.P. 1105*

–**Sections 397, 180, 406** - and Penal Code, Indian (XLV of 1860), Sections 201, 313 and 376 – Rape case – Doctors abetting mis-carriage without consent of minor prosecutrix and her mother – Charge under Sections 201, 313 and 376, I.P.C. rightly framed – Section 180 Cr.P.C. – Place of trial when act is offence by reasons of relation to other offence - Offence under Sections 201, 313 IPC committed at a place other than the place of trial under Section 376 – Offence under Sections 201, 313 IPC can also be tried together under this provision of Section 180 Cr.P.C. : *Dr. Nisha Malivya Vs. State, I.L.R. (2001) M.P. 742*

– **Sections 397, 182, 401** – Revision – Penal Code, Indian 1860 – Section 494 – Bigamy – Jurisdiction – Court at the place where the complainant first wife has taken up residence will have jurisdiction to try the offence – Intention of the legislature is to make it convenient for the deserted wife to prosecute the offending spouse – Impugned order set aside : *Smt. Usha Gurubaxani Vs. Lalit Gurubaxani, I.L.R. (2001) M.P. 1605*

- **Sections 397, 197** - and Penal Code, Indian (XLV of 1860), Sections 294, 325, 506–Revision–Public servants present at the spot in discharge of official duties–No allegation that they used force–Complaint could not be filed without sanction under Section 197–Use of force so as to dislocate shoulder of the complainant while escaping arrest in bailable offence–No record that S.H.O. offered bail–*Prima facie* difficult to accept that such force was used in discharge of official duties–Complaint must proceed against S.H.O. : *Deepchand Gupta Vs. State, I.L.R. (1999) M.P. 1094*

–**Sections 397, 197, 200, 202, 401** - and Penal Code, Indian 1860, Section 420– Complaint case–Prosecution —Public Servant–Test–Person to be prosecuted must be a public servant and not removable save by or with the sanction of the Government — Patwari —Removable by the Collector by virtue of his power of appointment–Not a

public servant—Exemption under Section 197 (1)not attracted : *Ashok Kumar Vs. Balmukund, I.L.R. (2003) M.P. 651*

– **Section 397, 197, 401** – Revision against order rejecting objection under Section 197, Cr.P.C. on ground of want of sanction – Penal Code, Indian, 1860, Sections 120-B, 409, 420, 467, 468, 471 – Offences alleged under – When alleged forgery is said to be a mechanism to facilitate ultimate end of offence under Sections 409 and 420, there is no necessity of sanction – Prima facie no case made out to interfere in the order of trial Court on the point of sanction : *Babulal Tantuway Vs. State, I.L.R. (2001) M.P. 903*

– **Sections 397, 197, 401** – Revision – Penal Code, Indian, 1860, Section 120-B and Prevention of corruption Act, 1988, Sections 13(1)(d)(ii), 13(2) and 19 - Petitioner a member of Indian Administrative Services employed as Managing Director of M.P. Leather Corporation – Compulsorily retired before charge sheet was filed – Petitioner not a public servant so as to attract provision of Section 197, Cr.P.C. or Section 19 of the Prevention of Corruption Act : *V.P. Sheth Vs. State, I.L.R. (2001) M.P. 1767*

–**Sections 397, 200, 202, 204 and 401**–Complaint case–Revision against order taking cognizance and issue of process–Penal Code, Indian (XLV of 1860), Sections 109, 323 and 506–Offences alleged–On complaint being filed Magistrate requiring Police to conduct inquiry–Police report so filed after inquiry is not binding on the Magistrate–Magistrate empowered to proceed with the case if deemed fit in view of Section 202(2) of the Code–Magistrate issued process on appreciation of evidence–Not liable to be interfered with at this stage. : *Dr. Kanhaiyalal Modi Vs. Dwarka Prasad Modi, I.L.R. (1992) M.P. 696*

- **Sections 397, 200, 204, 401** - and 482 and Penal Code, Indian (XLV of 1860), Sections 499 and 500–Complaint case–Jurisdiction–Suit filed at Bombay High Court containing defamatory imputation–Writ of summons served on the complainant at Chhindwara–On complaint filed J.M.F.C., Chhindwara has jurisdiction to take cognizance–Section 204, Cr.P.C.–Issue of process–Subjective satisfaction of Magistrate as prima facie case is sufficient to issue process–Suit containing defamatory imputation–Plaint verified by petitioner who alone is laible to be proceeded–Proceeding against other petitioners quashed–’Publication’–Suit filed in which writ of summons issued and served on the complainant amounts to publication–Section 482, Cr.P.C.–Power of Superintendence of High Court–Exception 9 of section 499 of I.P.C.–Cannot be looked into at the stage of exercising power of Superintendence under section 482 or Revisional powers under sections 397/401 of the Cr.P.C.–Petitioner is at liberty to take recourse to such provision at appropriate stage–Prayer of stay of Trial till final decision in Civil Suit at Bombay cannot be acceded to–Words & Phrases ‘Publication’–Plaint filed with defamatory imputation amounts to ‘Publication’. : *Trichinopoly Ramaswami Aradhanani Vs. Kripa Shankar Bhargava, I.L.R. (1992) M.P. 60*

- Sections 397, 200, 401,- Penal Code, Indian (XLV of 1860), Sections 294, 500 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Sections 3(1)(x), 14 – Complaint case - Allegation that petitioner abused complainant calling them low caste wretches – Magistrate taking cognizance of offence under the Special Act of 1989 – Without jurisdiction – Sections 3 and 14 – Constitution of Special Courts – Only the Special Courts under Section 14 of the Act can take cognizance of an offence under Section 3 of the Act – Section 197 Cr.P.C. sanction – If this type of offence under 1989 Act as alleged is committed no sanction can be required – Section 200 Cr.P.C. – Complaint case – Allegation that petitioner used filthy language and abused – Complainant’s own witnesses not supporting her case – Prima-facie no case made out – Magistrate erred in taking cognizance – Impugned order set aside : *J.N. Fuloria Vs. Smt. Benibai, I.L.R. (2001) M.P. 560*

- Sections 397, 221, 300, 386, 401 – Revision – Penal Code, Indian, 1860 – Section 304-A, 314, 315 – Negligence leading to death – Accused nurse administered medicine for abortion to two months old pregnancy – Death of victim – Prima-facie offence under Sections 314, 315, Indian Penal Code made out – Appellate Court has jurisdiction to remit the case for committal after setting aside conviction and sentence under Section 304-A Indian Penal Code – Such re-trial would not amount to retrial but continuation of trial – Framing of charge under Sections 304-A, 314, 315, Indian Penal Code by Sessions Judge on committal proper – Bar under Section 300 Criminal Procedure Code would not come in the way : *Smt. Nirmala Bai Vs. State, I.L.R. (2001) M.P. 1775*

-Sections 397, 227, 228 And 401-Revision-Framing of charge-Sections 227 & 228-If two possible and reasonable construction can be put the Court must lean towards the one which exempts the subject from penalty-Prevention of Food Adulteration Act, 1954-Section 2 (r)-‘Ice’-Not food-Provision of Sections 7/14 not attracted-Prosecution quashed-Words & Phrases-‘Ice’-Is water in solid form i.e. Hydrogen and Oxygen : *Udhabdas Vs. State, I.L.R. (2000) M.P. 203*

-Section 397 and 228 -Framing of charge and Revision : *Arun Kumar Vs. State, I.L.R. (2000) M.P. 896*

-Sections 397, 228, 401-Revision- Framing of charge-*Prima facie* material must be there-Penal Code, Indian-Sections 302, 304-B-Dowry death-Ingredients for framing of charge-Death within seven years of marriage and that she was subjected to cruelty or harassment soon before her death for or in connection with dowry-Though some of the accused reside at a distant place from the place of incident but evidence collected *prima facie* indicated nexus between the accused persons and the death of deceased-Charged framed by Trial Court needs no interference : *Rajiv Kumar Vs. State, I.L.R. (2000) M.P. 410* .

-Sections 397, 228 and 482-Inherent power of High Court-Sections 161 and 173-Challan-Statement of deceased under Section 161 Cr.P.C. recorded in the form of dying declaration-Not filed alongwith challan-Cannot be used for any purpose unless proved-Prosecution required to fill said dying declaration and supply copy to the defence to meet the ends of justice-Sections 228 and 397-Framing of Charge and Revision-Penal Code, Indian, 1860-Sections 304-B and 498-A-Charge framed under-Not challenged by way of revision under Section 397, Cr.P.C.-Cannot be gone into in exercise of inherent powers : *Arun Kumar Vs. State, I.L.R. (2000) M.P. 896, .*

- Sections 397, 293 and 401 – Revision – Description and power to exercise suo-motu interference by High Court – Depend upon character of evidence whether admissible or inadmissible – Evidence Act, Indian, 1872, Sections 3, 59, 67, 74, 77, 79, “Document” means the original document – Section 293 Criminal Procedure Code – Intention legislature is to confine the provision only to primary document or original document – F.S.L. Report is an expert evidence – Its certified copy cannot be given in evidence as it is not a public document nor can be proved under Section 77 of the Act – Document envisaged in Section 293, Criminal Procedure Code does not fall within the meaning of public document under Section 74 of the Evidence Act – Hence certified copy thereof not admissible – Order impugned set aside – Prosecution directed to examine the person making such report to prove its contents or produce the originals for proving the documents : *Govind Vs. State, I.L.R. (2001) M.P. 1088*

-Sections 397, 313 and 401-Revision-Appellant entering into second marriage during subsistence of first marriage-Deposition by complainant that Saptapadi marriage was solemnised remained unrebutted-Applicant also admitting this fact in his statement under Section 313, Cr.P.C.-Conviction of applicant justified: *Shriram Vs. State, I.L.R. (1992) M.P. 523*

-Sections 397, 317 and 401-Revision-Trial Judge refused to grant exemption from personal appearance during trial-Power of grant or refuse exemption is discretionary –Such discretion should be exercise carefully-Punitive approach is totally undesirable-Trial pending since 1991-Accused are required to come from a distant place to attend trial-One aged and the other young married lady-Exemption from personal appearance granted till their statement under Section 313, Cr.P.C. is required to be recorded : *Rameshwari Devi Vs. State, I.L.R. (2000) M.P. 407, .*

-Sections 397, 319 and 401-Revision-Application for impleading as accused-Witness stated that apart from the charge-sheeted accused N.A.-2 also participated in the crime-Name of N.A.-2 finds place in the F.I.R. as also in the PCD statement under Section 161-Array of the accused even at the cost of de novo trial appears to be just-Trial Court erred in rejecting the application : *Narayan Vishwakarma Vs. State, I.L.R. (2003) M.P. 1227.*

– **Sections 397, 319, 401 and 482** – Arraigning petitioner as accused during proceedings – Penal Code, Indian, 1860 – Sections 34, 307, 323, 325 and 327 – Name included in F.I.R. but investigating officer left name in charge-sheet – Examination of complainant in progress – It is not necessary for Court to wait till entire evidence is collected for arraigning accused – No interference in Trial Court order called for : *Shiv Prasad Tiwari Vs. Jagdish Prasad Patel, I.L.R. (2001) M.P. 1935 (D.B.)*

– **Sections 397, 319, 401, 482** and Penal Code Indian, 1860 – Sections 34, 201, 202, 306, 418 and 427 – Abetment of suicide – Witness disclosing murder of deceased by her mother-in-law – Trial Court could have itself proceeded against the persons who appeared to it to be guilty of the offence – Having not exercised such power trial Court directed prosecution to take cognizance and investigate the matter – Order illegal – Trial Court has no inherent power under section 482 Cr. P. C.: *Bihari Vs. State, I.L.R. (2003) M.P. 721*

– **Sections 397, 321, 482** - and Penal Code Indian, 1860 – Sections 34, 294, 341, 506(2) – Withdrawal of prosecution – Even if Government direct public prosecutor to withdraw prosecution the Court must consider if withdrawal would advance cause of justice – Case should not have been allowed to withdraw on the ground of pendency for over seven years : *Rahul Agarwal Vs. Rakesh Jain, I.L.R. (2005) M.P. 91 (SC) (D.B.)*

– **Section 397, 374, 399 and 401** - Provision not applicable to proceedings pending on 1.4.74 - Applicable to proceedings instituted on or after 1.4.74 : *Dhruvnathsingh Vs. Shivnaresh I.L.R. (1977) M.P. 985 (D.B.)*

– **Section 397/401** – Revisional powers of the Court – Powers include the power to quash proceedings: *Alok Mitra Vs. Narendra Kumar, I.L.R. (1989) M.P. 178*

– **Sections 397/401** - and Penal Code, Indian (XIV of 1860), Section 306 – Abetment of Suicide - Evidence Act, 1872 – Section 113-A – Victim husband committed suicide – Prosecution case rested on suicide note written by deceased to his sister – Note narrated that wife behaving in immoral manner having sexual relation with other – Mental cruelty by wife – Not covered u/s. 113-A of Evidence Act – Presumption in absence of presumption inference of abetment against wife can not be raised – Charges set aside : *Alka Grewal Vs. State, I.L.R. (2001) M.P. 414*

– **Sections 397/401** – Revision-Prevention of Food Adulteration Act, 1954 – Section 16(1)(a)(i) – Conviction and sentence – Evidence of Food Inspector cannot be discarded unless proved to be *mala fide* – General Clauses Act, 1897, Section 27 and Indian Evidence Act, 1872, Section 114(e) and (f) – Service of Report of Public Analyst sent to accused through Regd. Post – Returned back with endorsement “Refused” – Report presumed to be duly served – Rule 9 of the P.F.A. Rule 195 – Non-Compliance by the Food Inspector –

Word not initiate the proceedings-Forum for such breach is elsewhere-Revision sent substance : *Gattu Vs. State, I.L.R. (2000) M.P. 286*

– **Sections 397/401** – Revision against charge – Prevention of Corruption Act, 1988 – Sections 13(1)(e) and 13(1)(2) – Charge framed for allegedly possessing assets disproportionate to known sources of income – Plea that income from agricultural sources not taken into consideration – Can be raised during trial – Cannot be aground for quashing the Charge – Central Civil Services Pension Rules – Rules 6(6) and 9(3) – Limitation for taking cognizance of offence alleged – Deleted before the state of framing of charge – Can be of no help to applicant – Article 309 of the Constitution of India – Services Rules framed thereunder by appropriate government – Cannot be read to put an embargo on prosecution of a Govt. Servant under the Penal statutes – Impugned order framing charge not interfered with : *Badri Prasad Vs. State, I.L.R. (2000) M.P. 1316*

– **Sections 397/ 401** – Revision-Section 407-Transfer of pending Special cases from one Special Judge to another-Narcotic Drug and Psychotropic Substance Act, 1985-Sections 36 and 36-D-Constitution of Special court and transitional provisions-Notification issued in supersession of earlier one constituting Special Court in all Sessions Division all over the State-Subsequent notification not having retrospective effect-Cases in which cognizance already taken and charges framed by the Special Courts constituted under earlier notification-Not liable to be transferred-General Clauses Act, 1897-Section 6-Rule of construction-Notification issued in supersession of earlier one- Will not wipe put the steps taken in already pending Special Cases under the N.D.P.S. Act-Section 36-D of the Act-Subsequent notification-Effect-Cases in which cognizance has not been taken shall only stand transferred to newly constituted Sessions Division- Reference answered accordingly : *Barji Vs. State, I.L.R. (2000) M.P. 1018, (D.B.)*

– **Sections 397/401** – Revision – Claim of maintenance by deserted Muslim wife allowed under Section 125 of the Cr.P.C.–Subsequent ‘Talaq’/Divorce by husband – Execution under Section 125(3) of the Code no more maintainable after Talaq/Divorce – Original order ceases to be effective and in executable from the date of divorce-Wife can only claim maintenance under the Code upto date of divorce-Muslim Women (Protection of Rights on Divorce) Act, 1986-Provision come into play as soon as divorce/ ‘Talaq takes place-Sections 3, 4 and 5-*Non-obstante clause*- After period of *Iddat* the liability of such divorced muslim women lay on her relatives or on the Waqf Board-Section 5-Exercise of option-In absence of option as envisaged Sections 125 to 128, Cr. P.C. would not be applicable : *Julekha Bi Vs. Mohd. Fazal, I.L.R. (2000) M.P. 631,*

– **Sections 397/401** – Revision –Magistrate sending the complaint for investigation and thereafter upon police report taking cognizance of the offence-No infirmity or illegality-Section 190(1)(a)-Word ‘May’ used in the provisions cannot be construed as

‘must’-Magistrate is not bound take cognizance and follow the procedure laid down in Sections 200 to 204, Cr.P.C.-He may also get the alleged commission of offence investigated by police and take cognizance upon police report-Section 156(3)-Investigation by police-Police report revealing *prima facie* cognizable offence under Sections 323, 294 and 506-B of the Penal Code, Indian-Procedure adopted and cognizance taken by Magistrate not illegal : *Smt. Manorama Patel Vs. Subhash Soni, I.L.R. (2000) M.P. 758*

– **Section 397/401** – Revisions against order of C.J.M. taking cognizance of offence of alleged offer of disrespect to human dead body by police – Penal Code, Indian, 1860 – Sections 297, 34 – Deceased a dreaded Criminal died in police encounter – Display of his dead body by police for satisfaction of the public – Act of police cannot be said to be with intention to show indignity to the human dead or to hurt religious feelings – Section 197, Criminal Procedure Code – Bar of cognizance – Alleged Act committed by police/petitioners while discharging official duty – Sanction necessary – Absence of sanction – Prosecution quashed : *Surdarshan Kumar Vs. Gangacharan Dubey, I.L.R. (2000) M.P. 1489* .

- **Sections 397/401 and Section 93(1)**- Order for general search- Section 93(1) (c) authorizes the Court to order general search or inspection if it serves the purposes of any enquiry or trial or other proceeding under the Code-Does not amount to compulsion to give evidence and is not violative of Article 20(3) of the Constitution- Constitution of India- Article 20(3)- Testimonial compulsion- Order passed u/s. 93(1) (C) of the Criminal Procedure Code- Order for general Search in order to secure the document in question- Not violative of Article 20(3) of Constitution of India : *Anil Kumar Vs. Thakur Indrajeet Singh, I.L.R. (1998) M.P. 431*

–**Sections 397/401, 161, 200, 202**–Criminal Revision–Penal Code, Indian, 1860, Sections 307, 149, 147, 148, 323, 324 and 325–Complaint by victim with list of sixteen witnesses–Magistrate examining only four witnesses committed the case of Session– Not proper–Proviso to sub-section (2) of Section 200 is mandatory–Intention of Legislature - All the prosecution witnesses have to be examined by the Magistrate before committal–Procedure adopted by Magistrate is illegal–Committal order quashed– Case remanded to the Court of Judicial Magistrate. : *Prayag Singh Vs. State, I.L.R. (1992) M.P. 369*

- **Section 397/401, 218, 219, 464 (1)** - and Penal Code, Indian (XLV of 1860), Section 409 – Joinder of charges – Permitted by law in certain cases – Scope of provisions of Section 464, Criminal Procedure Code – Occurrence of failure of justice in Court’s opinion required – Criminal Breach of Trust – Entrustment of property

necessary – Mens rea – Essential element : *Badrilal Vs. State of M.P.*, I.L.R. (1988) M.P. 708

-Sections 397/401, 228-Revision against framing of charge-Accused charged for possession of property disproportionate to his pecuniary resources and assets-Prevention of Corruption Act, 1988-Sections 13(1)(e) and 13(2)-Charges framed under-Investigative trial before charge giving opportunity to accused to produce evidence-Not necessary-Challan showing extent of properties beyond known sources of income-Prima facie case for charge made out-No interference called for : *Permanand Jha Vs. State*, I.L.R. (2000) M.P. 888

- Section 397/401 and 245(2) – Power of discharge – Complaint not disclosing a prima facie case – Accused could be discharged u/s 245(2) by Magistrate – Neither taking cognizance nor issuing process sufficient to decline exercise of this power to discharge – Revisional powers of the Court – Powers include the power to quash proceedings : *Alok Mitra Vs. Narendra Kumar*, I.L.R. (1989) M.P. 178

- Sections 397/401, 306 and 482 - and Penal Code, Indian (XLV of 1860), Section 420 – In exercise of inherent powers of High Court recalled the judgment passed in earlier revision – Objection that Section 362, Cr.P.C. prohibits the Court for allowing or reviewing the final order passed except correction of clerical error – Not tenable as there is distinction between reviewing and recalling of an order – High Court in exercise of powers under Section 482 recalled the order passed in earlier revision because the same was heard in absence of respondent as they failed to appear : *Gulam Ahmad Vs. Late Haji Maulana Mohd. Zahoor*, I.L.R. (2001) M.P. 266

- Sections 397/401, 452 – Revision against appellate order – Penal Code, Indian, 1860 – Section 411 – Trial for possessing allegedly theft property i.e. coal by petitioner – Magistrate while acquitting directed release of coal to accused – Petitioner claiming to have purchased ‘D’ grade coal – General Manager deposed even analyst cannot say whether it is ‘B’ or ‘D’ grade coal – Inference can be drawn either way – Release of movable property – As normal rule should be released to the person from whom article was seized – Coal Seized from petitioner – Liable to be released in his favour – Approach of appellate Court erroneous – Order of Trial Magistrate restored : *Vishnuram Agrawal Vs. South Eastern Coal Fields Ltd.*, I.L.R. (2001) M.P. 1599

-Sections 397, 401–Revision against acquittal–Entire evidence cannot be re-appreciated : *Munsa Kumhar Vs. Brij Kishore*, I.L.R. (2005) M.P. 1216

-Sections 401, 397–Revision against appellate order of conviction and sentence–Penal Code, Indian, 1860, Section 409–Criminal liability has to be established by proving mens rea–Gate passes issued to accused Co-operative Inspector to bring grain from godown–Grain transported in trucks–Supply found short on delivery–Accused did not travel in the truck–No evidence to show that accused instructed driver to misappropriate–

Mens rea not proved—Conviction and sentence set aside: *Ram Chandra Tiwari Vs. State*; *I.L.R. (2002) M.P. 369*,

– **Sections 397 and 401** – High Court’s revisional jurisdiction is to ensure that no miscarriage of justice is done and not to correct errors of law or fact: *Dedamchand Mahajan Vs. Ramsharan Singh*, *I.L.R. (1991) M.P. 413*

– **Sections 397, 401** – Revision against conviction and sentence – Penal Code, Indian, 1860 – Sections 84, 224 – Escape by accused from jail custody – Defence plea of unsound mind – Accused need not prove beyond doubt such defence – Medical evidence showing accused was treated for mental illness earlier also – At the time of escape also he was hospitalized for same treatment – Accused entitled to benefit of Section 84, IPC – Conviction and sentence set aside : *Dhani Ram Vs. State*, *I.L.R. (2001) M.P. 127*

- **Sections 397, 401**–Revision–Prevention of Corruption Act, 1988, Sections 7, 13(1)(d), 13(2) and 19 and Rajya Beej Evam Farm Vikas Nigam Adhiniyam, M. P., 1980, Section 12–Alleged offence of bribe–Prosecution for–Accused Managing Director of M. P. Rajya Beej Nigam–Sanction–Accused appointed by the State Govt. under Section 12 of the Adhiniyam–Power to grant sanction vests with the State Government and not the Board of Directors of Beej Nigam–Sanction for prosecution by the Board–Illegal and without jurisdiction–Proceedings set aside: *Ramraj Prasad Karsoliya Vs. State*, *I.L.R. (2002) M.P. 163*

- **Sections 397, 401**, - Penal Code Indian, 1860, Section 302 and Juvenile Justice Act, 2000, Sections 14, 20- Age of Juvenile - Enquiry should be conducted by giving opportunities to the parties -Once matter is considered in terms of Section 20, provisions of Section 14 shall not come into play : *Sitaram Vs. State of M.P.*, *I.L.R. (2002) M.P. 756*

–**Sections 397, 401** - and Penal Code, Indian, 1860, Sections 406, 420 - Concurrent revisional jurisdiction of the High Court and the Sessions Court and the option is with the Party aggrieved to approach any one of the two courts - Seizure of vehicle by finance company on failure to deposit installments in time - No offence is committed: *IsaacJaise Vs. Jasmit* , *I.L.R. (2002) M.P. 1034*,

–**Sections 397, 401** - and Prevention of Food Adulteration Act, 1955 (as amended) Sections 7,16,20-Change in prescribed standard by amendment - Beneficial for accused-Has to be given retrospective effect - Accused entitled to benefit - Sanction-Validity-Signature of Sanctioning Authority not proved - Mere filing is not sufficient - Trial vitiated: *Dinesh Chand Kanoongo Vs. State of M.P.*, *I.L.R. (2002) M.P. 1025*,

-**Sections 397, 401** - and Prevention of Insults to National Honour Act, 1971, Sections 2, 3-Revision against framing of charges-History of National flag in reverse

order-No material to show intention or mens rea to disrespect the national flag-The moment irregularity noticed the flag was tied in proper order-No offence made out-Charges framed against accused quashed: *Ganesh Lal Bathri Vs. State of M.P., I.L.R. (2002) M.P.1039*,

–**Sections 397, 401**–Revision-Forest offence–Seizure & confiscation–Validity–Forest Act, Indian, 1927, Section 33(i) (b) and Van Upaj (Vyapar Viniyaman) Adhiniyam M.P. 1969, Sections 15, 16,18–Cognizance of offence–Seizure and Report made by the Forest Guard–Not authorized by the Adhiniyam–Trial Court erred in taking cognizance–Conviction set aside : *Ramlal Vs. State of M.P., I.L.R. (2003) M.P. 728*.

–**Sections 397, 401**– Negotiable Instrument Act, (XXVI of 1881), Section 138 Proviso (b) and Limitation Act 1963, Section 4, 5 –Dishonour of cheques–15 days period for sending notice prescribed–Plea that for public holiday notice could not be sent through registered post on 14.4.2000–Not tenable as there is no particular mode of service of notice prescribed–Notice could go by Courier or Fax–Complainant not entitled to benefit of Section 4 or 5 of Limitation Act –Notice not sent within 15 days–Lapse is fatal–Complaint has to be dismissed–Order of Magistrate set aside : *Devendra Kumar Surane Vs. Lalit Porwal, I.L.R. (2003) M.P. 564*

– **Sections 397, 401** – Revision-Prevention of Food Adulteration Act, 1954-Sections 2(ia) 7,16 and 20-Alleged sale of adulterated ‘peppermint’ -Report of public analyst not showing that it was unfit for human use-Article would not fall within the definition of clause (1) or (m) of Section 2(ia) of the Act defining the term ‘adulterated’ in absence of any standard prescribed for peppermint-Section 20-Sanction-Not obtained from the District Health Authority-Fatal for the prosecution-Prevention of Food Adulteration Rules, 1955-Rule 5-Peppermint not included as an article in Appendix ‘B’-Both the Courts below fell in error of law in holding the article adulterated as no standard is prescribed therefor as per Rule 5-Conviction and sentence set aside –Accused acquitted of the charge : *Motumal Vs. State, I.L.R. (2000) M.P. 1165*

- **Sections 397 and 401** – Revision against Charge – Prevention of Corruption Act, 1988, Sections 13(1)(e), 13(2) and 17 – Allegation of possessing assets disproportionate to known sources of income – Investigation – Power of – Authorisation from superintendent of Police required – S.P. has to satisfy himself that an investigation is necessary – For this he is not required to record reasons for his satisfaction – Validity of such authorisation cannot be allowed to be gone into at Pre-trial stage – Accused has liberty to prove the authorization otherwise during the Course of Trial : *Mahavir Prasad Vs. State, I.L.R. (2001) M.P. 1407*

- **Section 397 and 401** - and Penal Code Indian (XLV of 1860) Section 279, 337 — Revision–Scope of interference–Only when substantial question arises or where material error affects the decision or when the order is without jurisdiction–Rash and negligent

driving–Accident in a busy Square–Driver expected to drive with due care and caution–Dragging the motor cycle 30 to 40 paces also indicates–Petitioner was driving the Jeep rashly and negligently - Concurrent finding of courts below based on proper appreciation of evidence —No interference called for : *Ram Bahadur Vs. State, I.L.R. (2003) M.P. 912.*

–**Sections 397, 401**–Revision against conviction & sentence–Sale of adulterated milk–Prevention of Food Adulteration Act, 1954, Sections 7(5), 16(1)(a)(i), 20(1)–Prosecution can only be launched by a person duly authorised by State Govt.–Food Inspector launching prosecution failed to prove authority–Conviction and sentence set aside. : *Chaturbhuj Yadav Vs. State, I.L.R. (1992) M.P. 603*

– **Sections 397, 401** – Revision – Custody of seized property pending proceeding – Duty of the State of take due care – Failure to ensure proper care resulting in loss of property in custody – State is liable to make good the loss – No interference in revision : *State Vs. M/s. Mohan Sales, Gwalior, I.L.R. (2001) M.P. 124*

–**Sections 397 and 401**–Revision against charge–Prevention of Corruption Act, 1947–Section 5(2), 5(1)(d) and Penal Code, Indian, 1860–Sections 468, 471–Corrupt Practices–Charges framed by Special Judge–Comments on merits of the case would not be proper–Private individuals grabbing public funds in connivance with public servants cannot escape the liability of the charge under the P.C. Act.: *Ramesh Chand Jain Vs. State, I.L.R. (1992) M.P. 812*

–**Sections 397, 401**, - Arms Act, Indian, 1955–Section 27 and Penal, Code Indian (XLV of 1860)–Sections 294, 307–Revision–Order of Acquittal recorded by trial court–Cannot be over turned on ground that another view is possible–Serious injury sustained by accused–Necessary for prosecution to explain such injury–Non–explanation–No error committed in acquitting the accused : *Smt. Maya Bai Vs. Bhajan Lal, I.L.R. (2004) M.P. 1181 (D.B.)*

– **Sections 397 and 401** – Revision against order of Sessions Court – Van Upaj (Vyapar Viniyaman) Adhiniyam, M.P., 1969 – Section 5 – Non-obstante clause – Gives overriding effect over the Criminal Procedure Code – Order passed under Section 15 of the Act assailed in Revision under Section 15-B – Law attaches finality to the order passed in said revision – Not open to challenge in revision under Sections 397/401, Cr.P.C. : *State Vs. Dularsingh, I.L.R. (2000) M.P. 1314*

– **Sections 397, 401** – Revision against discharge – Prevention of Food Adulteration Act, 1954, Sections 7(1) and 16(1)(A) – Report of Public Analyst – Prima facie sample not consistent with the standard prescribed – It is for respondent to show why the report of Public Analyst should not be accepted as evidence against him – Unless that is done it is not proper and legal to discharge the accused – Order set aside – Matter remanded for trial : *State Vs. Badrilal, I.L.R. (2000) M.P. 93,*

– **Sections 397 and 401** – Revisional Jurisdiction – This is not the stage for examining the question as to whether an offence u/s 307 of the IPC has been made out or not – Assessment of sufficiency of material for basing conviction for a particular charge is not within the domain of the court when revisional jurisdiction is being exercised. : *Khajjansingh Vs. State of M.P., I.L.R. (1996) M.P. 220*

– **Sections 397, 401** – Revision – Trap case – Prevention of Corruption Act, 1988, Section 2(c)(xi), 13(1)(d), 13(2) – Demand of bribe – Trap laid by Special Police Establishment attached to Lokayukt – Validity – S.P.E. constituted for investigation of offences affecting public administration – Administration vests with Inspector General of Police – Members of S.P.E. exercise same powers as an Officer in charge of a police station and not same as inquiries by Lokayukt or Up-Lokayukt – Members of Special Police Establishment has powers to deal with offences under Prevention of Corruption Act – Public Servant – Accused Reader in Medical college attached to University and was acting as internal examiner for M.B.B.S – Accused is a public servant : *Dr. A.K. Mukherjee Vs. State, I.L.R. (2001) M.P. 1928*

– **Sections 397, 401** – Revision against confirmation of conviction and sentence – Prevention of Food Adulteration Act, 1954 – Section 7(1) r/w 16(1)(a) and Section 13 and Prevention of Food Adulteration Rule 1955 – Rule 44(h) – Conviction based on the report of Director Central Food Laboratory that the turmeric powder contained foreign starch – Selling of turmeric powder with any foreign starch prohibited under Rule 44(h) of the Rules – Section 13(2-B) – Though public analyst found only presence of impermissible colours, but under Section 13(2-B) report of the Director, CFL shall supersede the report of Public Analyst – Report of Director CFL has to be accepted finally – Finding of guilt of accused does not suffer from any infirmity – Section 7(1) r/w 16(1)(a) – Sentence – Turmeric Powder contained foreign starch i.e. starch of rice – Report not showing whether it is harmful for health – Sentence reduced to statutory minimum sentence of six months R.I. : *Nandlal Khatri Vs. State, I.L.R. (2001) M.P. 269*

– **Sections 397, 401, 428** - and Penal Code, Indian, 1860, Sections 406, 420 – Cheating and mis-appropriation – Arrest and release on Bail – Arrested in another case and remained in jail custody – Set off – Detention for whatever reason during the stage of investigation inquiry or trial – Should be counted as sentence imposed – Accused entitled to set off for the period of detention in jail in the other case : *Sunil Vs. State of M.P., I.L.R. (2003) M.P. 472*

– **Sections 397, 401, 438 and 439** – Revision against order refusing bail for want of jurisdiction – Penal Code Indian, Sections 363, 366, 376 and Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act, 1989 – Sections 3(1)(X), 14, 18 and 20 – Accused arrested for alleged offences punishable under the Special Act – Special Court at Jabalpur

constituted under the Act covers the area of Katni–Session Court at Katni has no jurisdiction to grant bail when the offence alleged is punishable under the Special Act– Words ‘Session Court’ used in Section 439 Cr.P.C. has to be interpreted as the ‘Special Session Court’ for the purposes of offences punishable under the Special Act : *Mirchi @ Rakesh Jain Vs. State, I.L.R. (2003) M.P. 156*

– **Sections 397, 401, 451, 457**, - Krishak Pashu Parirakshan Adhiniyam, 1959 Section 4 (10), 6 (a) (b) and Prevention of Cruelty to Animals Act, 1960, Section 11– Cruelty to animal–Offence registered–Application for interim custody–Cattle seized from custody of applicant–No other person came to claim that cattle did not belong to applicant–Prima facie proved that applicant is the real owner–Claim for interim custody bonafide–Allegation of cruelty to animal–Interim custody can be given imposing material term and condition : *Nabhu Vs. State of M.P., I.L.R. (2005) M.P. 773*

- **Sections 397, 401, 482**, - Penal Code Indian, 1860, Section 500 - Revision - Trial before Magistrate - Evidence - Cross-examination - Question disallowed on ground of irrelevancies - Inherent powers cannot be exercised to defeat bar under Section 397(2) Cr.P.C. : *Sunderlal Patwa Vs. Shri Digvijay ; I.L.R. (2002) M.P. 748*,

- **Section 397 and 408** – No law enjoining trial of counter cases by the same presiding officer – Application made at early stage ought to be allowed – No interference in revision when application made at a very late stage is dismissed by the Sessions Judge : *Azizkhan Vs. State of M.P., I.L.R. (1990) M.P. 596*,

– **Sections 397 (1), (3) and 402** - Whether it is obligatory to move the Court of Sessions first before asking High Court for exercise of revisional jurisdiction u/s 397(1) of Code – No – Option contained in Section 397 (1) of Code – Is with the aggrieved party and the High Court cannot insist that the party should first approach the Sessions Court before its powers of revision are invoked. : *State of M.P. Vs. Khizar Mohammad, I.L.R. (1996) MP 223 (D.B.)*

- **Sections 397 (2) and 227** – Revision against framing of the charge – Maintainability – Accused pleaded that there was no material on record against him and claimed to be discharged – Held – If the plea is accepted it would put an end to the matter – An order discharging accused or refusing to discharge is not an interlocutory order – Revision is maintainable : *Khagesh Kumar Goel Vs. State of M.P., I.L.R. (1997) M.P. 591*

- **Sections 397 (2), 451 and 482** - Order under section 451 cannot be treated to be of interlocutory nature - Expression ‘any property’ in section 451–Covers immovable property as well - Section 397 (2) - Second revision when barred - Section 482 - Interference under inherent powers of High Court - When can be made : *Punamchand Vs. Chandabai, I.L.R. (1986) M.P. 547*

– **Section 397(3)** – Bar of second revision by the same party – Controversy not falling under the Cr.P.C. – Question of circumventing statutory bar of second revision under Section 397(3) of the Code does not arise : *Smt. Mani Jain Vs. Sub-Divisional Forest Officer, Mhow, I.L.R. (2000) M.P. 1257 (D.B.)*

- **Section 397 (3)** - Second Revision, whether barred - Section 482 - Inherent powers of High Court - When can be exercised - Sections 125 and 127 - Divorce - Payment of dower and other dues by husband - Right of wife to receive maintenance - Mohamedan Law - Mariage - Dissolution of, by agreement - Khula Talak - Consideration to husband for release from marriage tie - Whether operates as a release of dower - Effect on the liability of the husband for maintenance : *SK. Hamid Khan Vs. Mst. Jummi Bi, I.L.R. (1978) M.P. 595*

- **Section 398, Proviso** - Requirement of notice thereunder - Complaint dismissed under section 203, Criminal Procedure Code for want of sufficient ground to proceed - Accused cannot be said to have been “discharged” - Accused not entitled to a notice from the Sessions Court before making a direction for further enquiry : *Shivprasad Dube Vs. Harinarain, I.L.R. (1981) M.P. 428*

- **Sections 399, 374, 397 and 401** - Applicable to proceeding instituted on or after 1.4.74 : *Dhruvnathsingh Vs. Shivnaresh, I.L.R. (1977) M.P. 985 (D.B.)*

- **Sections 400, 10(3), 14** - and 194 and of Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989- Reference- Where in the event of absence of the Sessions Judge an application for bail is heard and rejected by an Additional Sessions Judge, whether subsequent application for bail by the same accused should go before the same additional Sessions Judge if he is available or it should be heard by the sessions Judge himself-Yes-There is no law or any statutory rule making it obligatory that all subsequent bail applications should be placed before the same bench or judge who passed earlier order but it is only a rule of convenience based on judicial discipline developed by a long standing convention-Section 10(3)-Whether the Additional Sessions Judge can refuse to hear an application made over to him by the Sessions Judge in exercise of power u/s. 10(3), Cr. P. C.- No Transfer of a Sessions trial also includes transfer of interlocutory application including the bail application filed before the Sessions Judge of said sessions division : *The District & Sessions Judge, Shajapur Vs. Chandrakant, I.L.R. (1998) M.P. 992*

- **Section 401** - Acquisition of knowledge about illegal conviction may be by any manner - Revisional powers can be exercised : *Ratan Singh Vs. State of M. P., I.L.R. (1978) M.P. 1165 (D.B.)*

–**Section 401**–Revision at the instance of complainant maintainable : *K. Pandurangan Vs. S.S.R. Velusamy, I.L.R. (2003) M.P. 1067 (D.B.)*

-Section 401-Revision-Murder-Trial Court acquitting accused mainly on the ground of result of investigation-Revisional power of the High Court while sitting in judgment over on order of acquitted should not be exercised unless there exists a manifest illegality in judgment, or order of acquittal-Held-Trial Court is required to base its conclusion solely on the evidence adduced during trial-It can not rely on investigation or result thereof - Order of High Court setting aside acquittal proper-Appeal dismissed. : *Kaptan Singh Vs. State of M.P.*, I.L.R. (1997) M.P. 41 (SC) (D.B.)

- Section 401 - Conviction illegal - High Court can interfere even though accused has not filed an appeal - Acquisition of knowledge about illegal conviction may be by any manner - Revisional powers can be exercised - Suo motu powers can be exercised to set aside order even though it is appealable - In suo motu exercise of revisional powers conviction can be set aside even though accused may have suffered punishment after conviction - suo motu powers can be exercised even in the absence of appeal by the other convicted accused - Suo motu powers can be exercised at any time and not only at the time of deciding the appeal : *Ratan Singh Vs. State of M. P.*, I.L.R. (1978) M.P. 1165 (D.B.)

- Sections 401, 28, 320(3), 397 - and Penal Code Indian, 1860, Sections 326, 452-Conviction-Question of Sentence-Application for compromise filed but rejected by appellate Court-Facts of compromise can be taken into account in determining quantum of sentence even in non-compoundable offence-Sentence modified to the period already undergone : *Bhandas Vs. The State of M.P.*, I.L.R. (2003) M.P. 725

-Sections 401, 125, 397-Application for maintenance-Plea of wife as to marriage with petitioner and a son having born to them proved from entry of nomination in husbands service record-Husband not disputing fact of marriage but stated he turned her out because of her immoral character-Facts proved that she is wife of non-applicant-Maintenance granted : *Smt. Rambai Choudhary Vs. Bhagwandeem Choudhary*, I.L.R. (2002) M.P. 160,

- Sections 401, 125, 397 - and Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 2(a)-'Divorced Women'-Application for grant of maintenance by muslim women-Objection by husband as to maintainability on ground of divorce-Obligatory on the part of husband to frame "divorce in accordance with Muslim Law"-No divorce is duly effected if it is in violation of the injunction of the Quoran-Prior to pronouncement of divorce no reconciliation had taken place as mandated by the Quoran for a valid divorce-Trial Court committed error in accepting the factum of valid divorce-Order of revisional court fair and proper-No interference called for : *Mohd. Idris Vs. Smt. Nigar Sultana*, I.L.R. (2004) M.P. 698

- Sections 401, 307 - & Prevention of Food Adulteration Act 1954, 7(1)(3) and 16(1)(a)(i)- Scope of revisional Court - To correct any jurisdictional error or perversity

in appreciation of evidence - But not empowered to sit as a Court of appeal and re-appreciate the evidence – Evidence of Food Inspector found reliable by the two Courts below – No perversity or unreasonableness demonstrated – Revisional Court has not re-appreciated the evidence of Food Inspector : *Uma Prasad Vs. State of M.P.*, I.L.R. (1995) M.P. 697

- **Sections 401, 397** – Revision – Custody of seized property pending proceeding – Duty of the State of take due care – Failure to ensure proper care resulting in loss of property in custody – State is liable to make good the loss – No interference in revision : *State Vs. M/s. Mohan Sales, Gwalior*, I.L.R. (2001) M.P. 124

- **Sections 401 (2), 362, 403 and 482** – No provisions under the Code to dismiss the Criminal Appeal or Criminal Revision in default – No Court can after or review judgment or final order passed under the Code after signature – Order dismissing revision in default not covered under section 362, Criminal Procedure Code – Can be restored under section 482 of the Code : *Mohammad Ishaq Vs. Tahira Khatoon*, I.L.R. (1988) M.P. 349

- **Section 407**-Transfer of pending Special cases from one Special Judge to another : *Barji Vs. State*, I.L.R. (2000) M.P. 1018 (D.B.)

-**Section 407**-Transfer of case-Petition for transfer filed by complainant alleging that Presiding Officer is taking keen interest and is giving short adjournments for examination of prosecution witnesses-Held-Order sheets of other Sessions Trial show that Presiding Officer tries to give short adjournments in all cases in which accused are in jail-Said act of Presiding Officer has to be commended and appreciated rather than to be frowned or viewed with suspicion-No ground for transfer. : *Chetram Gouli Vs. Ramdin Gouli*, I.L.R. (1994) M.P. 229,

-**Section 407**-Transfer of case-Complaint to Presiding Officer and Public Prosecutor regarding threat to prosecution witness-Direction by Presiding Officer to lodge police report-Held-Presiding Officer rightly advised complainant to lodge report in police station-Can not be said that Presiding Officer is biased : *Chetram Gouli Vs. Ramdin Gouli*, I.L.R. (1994) M.P. 229

-**Section 407**-Transfer of case-Allegation of non co-operation of Public Prosecutor-Held-No suggestion as to what material aspect was suggested to Govt. Pleader and he did not pay any attention to it-Over all change of conducting trial is in hands of Govt. Pleader and privately engaged counsel would merely assist him-No ground for transfer made out. : *Chetram Gouli Vs. Ramdin Gouli*, I.L.R. (1994) M.P. 229

-**Section 407**-Transfer of case-Statement of witness appeared and examined on a date on which he was not summoned-Held-No contention that witness who was examined

was not the same person-Nothing wrong of said witness was produced and examined-If said witness was abducted then privately engaged counsel could have requested Court to put said questions as Court questions-Presiding Officer can not be criticized if cited witness was examined-No ground for transfer. : *Chetram Gouli Vs. Ramdin Gouli, I.L.R. (1994) M.P. 229*

- **Sections 407** – Transfer of case – Accused, a Lawyer facing trial for offences – On the report of accused, Bar Association passed a resolution condemning act of police in arresting accused – Accused made complaint against additional public prosecutor and the judge – Additional Public Prosecutor stopped appearing in the case – Held – Facts shows that prosecution is not being conducted in all its seriousness – There is reason for apprehension of denial of justice in the mind of complainant – Application for transfer of case allowed. : *Ku. Bhawna Vs. State of M.P., I.L.R. (1997) M.P. 622*

- **Section 407** - and Penal Code, Indian (XLV of 1860), Section 498-A – Criminal case – Transfer of – Complainant setting MLA and her father ex-M.P. – Alleged political influence because of which no advocate is prepared to defend applicants in the trial Court – A local Senior Advocate as also two advocate from out station are already defending accused persons in trial court – Mere rejection of anticipatory bail application – Not sufficient to give rise to apprehension of unfair trial – Most of the prosecution witnesses are local – Transfer of the case to some other place would not be proper – Note of caution recorded that the trial Court should ensure fairness and neutrality in trial : *Smt. Sita Devi Vs. State, I.L.R. (2001) M.P. 148*

- **Section 407** - Application for transfer of a case - Grounds for - Petitioner's wife and sister failing to attend the Court as prosecution witnesses despite service of process on them - Additional Session Judge issuing non-bailable warrants and after procuring their attendance refusing their release on bail and detaining them in Jail for sufficiently long period - Course of action adopted by Additional Sessions Judge, held sufficient to cause reasonable apprehension in the mind of the petitioner that he may not get a fair and impartial trial in that Court - Even after filing of transfer application Court has powers to make ancillary order not affecting merits of the case : *Shambhoo Dayal Vs. Kesharilal Nayak, I.L.R. (1986) M.P. 47*

-**Sections 407, 408**-Transfer of Session Trial-Grounds mentioned in clauses (a) to (c) of sub-section (1) must be alleged and substantiated-Threats by accused to informant and witnesses cannot be a factor for transfer-Allegation of laud claim by accused to obtain order of acquittal without any basis-Cannot form basis of transfer-Prayer not based on reasonable apprehension-Trial Court directed to dispose of the trial as expeditiously as possible: *Surendra Prasad Mishra Vs. Kanhairam, I.L.R. (1999) M.P.796*

-**Section 407 and 482**-Transfer of criminal case-Subordinate judiciary of Madhya Pradesh is known for its independence, Integrity and impartiality-Apprehension that

petitioner's safety would be in danger—Direction issued to ensure petitioner safety : *Laxmi Narayan Khatri Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 654*

-Sections 408, 156(3), 200, 202(1), 410 - and Penal Code, Indian, 1860, Section 500 and Judges Protection Act, Section 3—Alleged defamation—CJM called comments from the Magistrate from which transfer of case was sought—In reply expression made is that the application is based on little legal knowledge—(Alp Gyani Kanooni Salah)—Transfer application not disclosing that it was moved through any counsel or drafted by complainant advocate—Act of Magistrate in making the reply is protected as done in official capacity—Magistrate erred in taking cognizance : *A.K. Singh Vs. Virendra Kumar Jain; I.L.R. (2002) M.P. 399,*

- Section 408 and 397 – No law enjoining trial of counter cases by the same presiding officer – Application made at early stage ought to be allowed – No interference in revision when application made at a very late stage is dismissed by the Sessions Judge : *Azizkhan Vs. State of M.P., I.L.R. (1990) M.P. 596,*

-Sections 420, 120-B, 34—No allegation in the complaint that the appellants or any one on their behalf ever met the complainant or asked it to invest any money or to do anything for improvement of the bottling plant—Appellant came in picture much later—Even if allegations made in complaint are accepted to be absolutely true and correct appellant cannot be said to have committed any offence of cheating : *Ajay Mitra Vs. State of M.P., I.L.R. (2003) M.P. 1 (SC) (F.B.)*

- Section 421 (1) (6)- Warrant issued by Labour Court to recover the amount as arrears of land revenue- Cannot be executed by arrest or detention in prison of the offender : *Kumar Textiles Ltd. East Nimar, Khandwa Vs. Anwar Khan , I.L.R. (1999) M.P. 997*

- Section 427 (1) and Section 482 – High Court under inherent powers can order subsequent sentence to run concurrently with earlier sentence even in appropriate cases: *Sher Singh Vs. State of M.P., I.L.R. (1989) M.P. 1 (F.B.)*

- Sections 427(2) and 482-Subsequent sentence to run concurrently with previous sentence-Previous sentence completed and applicant not undergoing jail sentence in any case on the date of application-Question of giving benefit of section 427(2) Cr.P.C. does not arise : *Ajit @ Bhuriya Vs. The State of M.P., I.L.R. (2002) M.P. 1045,*

-Section 428—Arrested in another case and remained in jail custody—Set off—Detention for whatever reason during the stage of investigation, inquiry or trial—Should be counted as sentence imposed—Accused entitled to set off for the period of detention in jail in the other case : *Sunil Vs. State of M.P., I.L.R. (2003) M.P. 472*

- Section 428 - Period of detention to be set off-Accused convicted in one case on 14.12.1991- Convicted in second case on 8.8.1992-Accused was arrested on the same

day in both the criminal cases- Accused acquitted by appellate Court in first case- Acquittal by Appellate Court will relate back to the date of judgment by Trial Court and will be deemed to be acquittal by Trial Court-It cannot be said that he was undergoing sentence when he was convicted in second case - It must be deemed that accused was in judicial custody when he was convicted in second case - Accused entitled to set off- As accused has already completed period of imprisonment awarded in second case his incarceration. : *Ramgopal Vs. The Superintendent, Central Jail Jabalpur*, I.L.R. (1994) M.P. 342

- **Sections 428 and 432 (1)** - Benefit of set off of the period detention undergone - Available to life convicts also : *Rameshwar Vs. State of M. P.*, I.L.R. (1986) M.P. 16 (D.B.)

- **Section 428 and 432 (1)** - Condition imposed in the impugned order of State Govt. granting special remission to life convicts excluding benefit of undertrial period while computing period of detention undergone - Condition contrary to section 428 - Under trial period liable to be included : *Rameshwar Vs. State of M. P.*, I.L.R. (1986) M.P. 16 (D.B.)

- **Sections 428, 482** – Period of detention during investigation or trial should be set off against the term of imprisonment : *Mehmood Khan Vs. State of M.P.*, I.L.R. (1988) M.P. 531 (D.B.)

-**Section 432**–Remission of Sentence–Power to grant of–Vests with the appropriate Government and the accused has to be in custody–Court has no jurisdiction of remission of sentence–Order of remission by Court–Illegal : *K. Pandurangan Vs. S.S.R. Velusamy*, I.L.R (2003) M.P. 1067 (SC)

- **Section 432** - Remission of sentence - Jurisdiction can be exercised by State Government - High Court has no jurisdiction to remit sentence under Section 432 - Petition erroneously made to High Court - High Court may express opinion as regards sentence and sent it to State Government for exercise of jurisdiction under this Section : *Smt Bhagawatibai Vs. State of M. P.*, I.L.R.(1980) M.P. 288

- **Sections 432, 432(1), 433, 433-A, 460**, - Penal Code, 1860, Sections 120-B, 224, 384-B (Dowry Death), 376, 377, 395, 396 & 498-A, Constitution of India Articles 14 and 21, M. P. Prisoner Release on Probation Act, 1954, Section 9, M. P. Prisoner Release on Probation Rules 1964 Rule 3 - Remission of Sentence - Held - Classification based on the nature of offence cannot be construed as illegal as it is based on reasonable justification - On completion of 14 years of imprisonment does not confers a right to the convict to be released - Remission are granted under special circumstances by the State and also with the object of reforming the prisoners after ensuring that there is no possibility of repeating the offence - Petition Dismissed.: *Jagroop Prasad Mishra Vs. State of M.P.*, I.L.R. (1997) M.P. 88 (D.B.)

- **Section 432 (1)** - and Notification No. 6-131/3/Jail/83, dated 10.8.1983 issued by the State Govt-thereunder and Constitution of India, Article 14 - Fixation of two sets of periods of Jail sentence for granting remissions depending upon age of life convicts is not violative of Article 14 : *Amritlal Vs. State of M. P., I.L.R. (1984) M.P. 631 (D.B.)*

- **Section 432(2)** - Grant of special remission - Prisoners belonging to Scheduled Castes and Scheduled Tribes only were given special remission with the aid of Article 15(4) of the Constitution - Benefit denied to other prisoners - Discriminatory and not justified in law : *State of M. P. Vs. Mohan , I.L.R. (1995) M.P. 438 (D.B.)*

- **Section 432(2)** - Special remission - Unjustified - High Court could strike it down - However, High Court could not extend its benefit to other prisoners - As power to grant remission lies: *State of M.P. Vs. Mohan , I.L.R. (1995) M.P., 438 (D.B.)*

- **Section 433-A** - Prisoners' Release on Probation Act, M.P. (XVI of 1954) and Prisoners' Release on Probation Rules, M.P., 1964 – Prison Rules, 1908 – Rules 358 and 359 – Ambit and scope of – The word 'release' used therein – Meaning of – Release contemplated by Prison Rules 358 and 359 and under M.P. Prisoners' Release on Probation Act, 1954 and Rules of 1964 – Meaning and scope of as distinguished from release under Section 433 – A of the Code – Provisions not conflicting – Section 433-A – Computation of 14 years duration – Period of conditional release under other statute liable to be reckoned – Prisoners' Release on Probation Rules, M.P., 1964 – Deletion of Rule 3(c) and Explanation thereunder – Effect of : *Babu Pahalwan Vs. State of M.P., I.L.R. (1990) M.P. 316, (D.B.)*

- **Section 437** – Consideration of Bail application – Whether can be postponed until person arrested is produced before the Court handcuffed : *Prabhunarayan Vs. State of M.P., I.L.R. (1988) M.P. 57*

- **Section 437** - Bail - Appendage to the order refusing bail that applicant cannot be released on bail on any terms whatsoever until the disposal of the case - Legality of : *Ram Sahodar Vs. State of M. P., I.L.R. (1985) M.P. 632, (D.B.)*

- **Section 437 and 438** - Bail granted for one offence - Cannot be valid for other offence : *B. L. Verma Vs. State of M. P., I.L.R. (1979) M.P. 748,*

- **Sections 437, 438, 439** – Grant of bail – Courts should deal with more realistic manner – Court to be sensitive in cases involving crimes against women. : *Badriprasad Vs. The State of M.P., I.L.R. (1993) M.P. 712*

- **Section 437 and 439 (1)** - Power to grant bail under - Scope - Section 439 (2) - Cancellation of bail or re-arrest - No bar in entertaining an application for it by a private party - Exercise of powers by High Court suo - motu in cancelling bail - Consideration

and circumstances for cancellation of bail : *Badri Prasad Vs. Bala Prasad, I.L.R. (1984) M.P., 534*

- **Sections 437 (5), 167 (2) and 209** - Bail granted under the proviso to Section 167 (2) - Not restricted upto the time the challan is filed - Operative till the conclusion of the trial, unless cancelled under Section 437 (5) : *Kabilas Vs. State of M.P., I.L.R. (1981) M.P. 806*

- **Sections 437 (5), 438** - and Penal Code, Indian (XLV of 1860), Sections 365, 364 – Accused enlarged on bail for alleged offence under Section 365, I.P.C. – Investigation pointed out to commission of more heinous offence under Section 364, Indian, Penal Code – Accused failed to surrender before the Court pursuant to the directions of the Court – Court justified in canceling the bail: *Kalyan Singh Vs. State of M.P., I.L.R. (1991) M.P. 246*

–**Section 438**–Application for anticipatory bail–Penal Code, Indian, 1860–Section 376–Offence allegedly committed in the territorial jurisdiction of another High Court–Jabalpur High Court has no jurisdiction to entertain bail application. : *Dr. Pradeep Kumar Soni Vs. State I.L.R. (1992) M.P. 972*

– **Section 438**, - Penal Code, Indian, 1860 – Section 498-A – Anticipatory bail – Case triable by Magistrate First Class and maximum sentence is 3 years – Mechanical rejection of bail would be unjust – Accused entitled for bail – Rejection of bail application should be in exceptional cases. : *Badriprasad Vs. The State of M.P., I.L.R. (1993) M.P. 712*

- **Section 438**-No interim order restraining arrest can be passed during pendency of application. : *Nirbhay Singh Vs. State of M.P., I.L.R. (1994) M.P. 294 (D.B.)*

– **Section 438**, - Penal Code, Indian, 1860 – Sections 304-B, 306 – Relevant considerations for grant of anticipatory bail explained. : *Badriprasad Vs. The State of M.P., I.L.R. (1993) M.P. 712*

- **Section 438** - Grant of anticipatory bail - Effective till the conclusion of trial unless cancelled under section 437 (5) or 439 (2) - Directions can also be issued for not to commit the accused persons under custody while committing case to Sessions Court : *Ramsewak Vs. State of M. P., I.L.R. (1980) M.P. 784 (D.B.)*

- **Section 438** - Sessions Court rejecting an application for grant of anticipatory bail-Fresh application to High Court on the same facts and same offence not barred : *Bhagirath Vs. State of M. P., I.L.R. (1981) M.P. 996*

- **Section 438** - Provisions of - Not to be read in isolation but together with those of section 437 (1) : *Ramsewak Vs. State of M. P., I.L.R. (1980) M.P. 784 (D.B.)*

– **Section 438**-Application for anticipatory bail-Scheduled Caste, Scheduled Tribes (Prevention of Atrocities) Act, 1989-Section 18-Bar of anticipatory bail-Offence alleged under Section 3(1)(x) of the Act, 1989 and Sections 341, 294, IPC- Case diary not revealing *prime facie* evidence of- Commission of offence as alleged-Bar under Section 18 would not come into play-Anticipatory bail granted under Section 438 : *Suresh Kumar Tyagi Vs. State, I.L.R. (2000) M.P. 413* .

– **Section 438**-Application for grant of anticipatory bail- Maintainability-Test-Applicant has to have reasonable apprehension that he may be arrested in non-bailable offence-Though only summons has been issued it cannot be said that applicant's apprehension of being arrested is unfounded-Applicant entitled to move the competent court seeking anticipatory bail : *Arun Kumar Vs. State, I.L.R. (2000) M.P. 1323* .

– **Section 438**-Gravity of offence as alleged-Accused given liberty to appear before magistrate and move for regular bail : *Arun Kumar Vs. State, I.L.R. (2000) M.P. 1323*

- **Section 438** - Power of Court to grant anticipatory bail - can be exercised during the pendency of committal proceedings also : *B. L. Verma Vs. State of M. P., I.L.R. (1979) M.P. 748*

- **Section 438** - Accused under protective umbrella of anticipatory bail order appears before competent Court and moves for regular bail-It would be deemed that he is in custody-In absence of physical appearance in court - Prayer for regular bail is not entertainable : *Vinod Kumar Vs. State of M.P., I.L.R. (1999) M.P. 73*

- **Section 438** – Application for anticipatory bail – Accused granted bail not appeared before trial Court – Issue of non-bailable warrant of arrest – Application for anticipatory bail not maintainable : *Yogendra Vs. State, I.L.R. (2001) M.P. 1610*.

- **Section 438**- Order for bail u/s. 438 Cr. P. C. like the one made u/s. 439 comes into operation only when the accused is arrested- It is not necessary that- The accused should be re-arrested or surrender before the Court- It is only when prayer for bail is refused that the accused has to surrender or can be taken into custody : *Rewaram Tada Vs. State of M. P., I.L.R. (1998) M.P. 897*

- **Section 438** — Anticipatory bail—Essentially a statutory right—Conferred long after the Constitution came into force — Cannot be considered as essential ingredient of Article 21— Therefore, cannot be granted as a matter of right and not violative of Article 21 : *State of M.P. Vs. Ram Kishna Balothia, I.L.R. (1995) M.P. 61, (D.B.)*

– **Section 438** – Intention of legislature is to save victims of malicious prosecution from loss of prestige and to protect individual liberty and at the same time investigation must go on – A balanced view has to be adopted – Applicants granted conditional bail with a direction to approach the appropriate Court of competent jurisdiction within stipulated period of time : *Sachindra Mahawar Vs. State, I.L.R. (2001) M.P. 1418*

– **Section 438** - and Scheduled I Part II–Anticipatory Bail–Precedent–Point of Law not brought to the notice of Court in deciding a cause–Decision is not a precedent–Essential Commodities Act, 1955, Sections 3, 7 and 10-A and Kerosene (Restriction on Use and Fixation of Ceiling Price) Order 1993, Clause 4(c)–Offence punishable with imprisonment for seven years–Offence not bailable–Applicant found selling kerosene oil in excess of the price fixed under Control Order–Does not deserve anticipatory bail: *Balwant Vs. State, I.L.R. (2002) M.P. 183*.

- **Section 438** - Grant of anticipatory bail - Applicant setting up a Medical Institution without previous permission of State Govt. - Deceiving and cheating students by fraudulent and dishonest inducement to purchase prospectus forms and to pay heavy fees - Filed application for anticipatory bail - On apprehension that he may be involved in several cases - Grant of bail by a blanket order - Not proper – Blanket order of bail liable to be cancelled : *Dr. Vinod Tiwari Vs. State of M.P., I.L.R. (1995) M.P. 740*.

– **Section 438** – Application under – Who can file – Only the person who has reasonable apprehension or belief that he may be arrested in a non-bailable offence can file the application for anticipatory bail – Reasonable belief is not colourable belief but bona-fide belief – Court has to scrutinize the same with objectivity of approach – Hence the application needs to be supported by an affidavit of the applicant or some other competent person – Sections 420, 467, 468 and 471/34, IPC and Section 438, Cr.P.C. – During pendency of first application for anticipatory bail another application filed terming the later to be first application – Allegation that counsel in former application had no instruction from the applicant – Not a healthy practice – Needs to be curbed as submitted by some distinguished members of the bar so that a litigant cannot put unnecessary blame on a counsel – All Courts should insist on an affidavit of a competent person in respect of an application under Section 438, Cr.P.C. : *V.P. Shrivastava Vs. State, I.L.R. (2001) M.P. 577*

– **Section 438** – Application for grant of anticipatory Bail – Penal Code, Indian (XLV of 1860), Sections 498-A and 406 – Offence registered in police station beyond territorial jurisdiction of Madhya Pradesh High Court – Informant wife lodged complaint after receipt of summons in divorce case filed by husband – Allegations appear to be malicious and false – Intention of legislature is to save victims of malicious prosecution from loss of prestige and to protect individual liberty and at the same time investigation must go on – A balanced view has to be adopted – Applicants granted conditional bail with a direction to approach the appropriate Court of competent jurisdiction within stipulated period of time : *Sachindra Mahawar Vs. State, I.L.R. (2001) M.P.1418*

- **Section 438**, - Essential Commodities Act (X of 1955), Section 12 - AA and Rice Procurement (Levy) Order, M. P., 1960 - Anticipatory bail - Whether can be granted in

cases involving offences punishable under Essential Commodities Act - When may be granted : *Karamchand Vs. State of M. P., I.L.R. (1984) M.P. 475.*

- **Section 438**-Anticipatory Bail-Applicant apprehending arrest in crime registered under Sections 302, 309, Indian Penal Code and Section 3/5 of the Explosive Substance Act, 1908-Confessional statement of co-accused raise accusing finger against applicant-Not fit to intrude in to the sphere of investigation : *Kailash Sonkar Vs. State, I.L.R. (1999) M.P. 1206*

- **Section 438** - Scope of - Sessions Court rejecting an application for grant of anticipatory bail-Fresh application to High Court on the same facts and same offence not barred - Interpretation of Statute - Best clue for interpreting a particular term used in - Is to see its use in another provision thereof : *Bhagirath Vs. State of M.P., I.L.R. (1981) M.P. 996*

- **Section 438** - Anticipatory Bail - Grant of - Deemed to be a bail under section 437 (1) - Operative until the conclusion of trial unless cancelled under section 437 (5) - Power of Court to grant anticipatory bail - Can be exercised during the pendency of committal proceedings also - Bail granted for one offence - Cannot be valid for other offence: *B. L. Verma Vs. State of M. P., I.L.R. (1979) M.P. 748,*

- **Section 438** - Provision regarding grant of anticipatory Bail - Not applicable to offences under Defence of India Act or Rules framed thereunder - Defence of India Rule, 1971 - Rule 184 - Suspends general provisions regarding bail in Criminal Procedure Code - General Clauses Act, 1897 - Section 8 - Reference to old Code of Criminal Procedure - To be construed as reference to new Code - Defence of India Act 1971 - Section - 37 - Provision in Rules framed under the Act to prevail over any other enactment other than the Act - Defence of India Rules - Rule 184 - Clause (b) - Casts burden on person detained unlike other provisions in Code-Scheme of the Rule 184 - General Clauses Act 1897 - Section 8 (1) - New Act repealing old Act and re-enacting one in its place - Additions made by new Act - Fall within the ambit of the word "modification" - Notification No. 40 (C) - 3 (i) - 73 -X-I-dt-14.11.73 issued under rule 184 - Validity : *State of M. P. Vs. Shantilal, I.L.R. (1977) M.P. 281 (D.B.)*

- **Sections 438, - 72**-Procedure to be followed-Order of anticipatory bail passed after issuance of arrest warrant-Police officer to produce the accused before Magistrate who will deal with accused as per order of anticipatory bail : *Nirbhay Singh Vs. State of M.P., I.L.R. (1994) M.P. 294 (D.B.)*

- **Sections 438, 82, 83, 299** - and Penal Code Indian, 1860, Sections 307, 394-Alleged offence-Accused not attending Court after grant of anticipatory bail-Issue of non bailable warrant of arrest-Failure to execute and to secure attendance of accused by police officer-Magistrate has a duty to proceed to declare such person as proclaimed

offender and police officer has to approach the Court for such a declaration as provided in Regulation 789 of M. P. Police Regulations—In a fit case Magistrate also has to proceed under Section 299 of the code against the police officer executing such warrant of arrest—Magistrate not expected to fail in taking prompt action and allow such matter to get prolonged: *Ramesh Chand Gupta Vs. State, I.L.R. (2002) M.P.168*,

- **Sections 438, 204 and 209** -Anticipatory bail-Apprehension of arrest on accusation of commission of non-bailable offence-Accusation will continue even if the Magistrate issued process under Section 204 or at the committal stage or even at a subsequent stage-Application for grant of anticipatory bail maintainable. : *Nirbhay Singh Vs. State of M. P., I.L.R.(1994) M.P. 294*

- **Sections 438, 389, 439**– Successive bail applications to be placed before the same Bench or Judge if available. : *Narayan Prasad Vs. State of M.P, I.L.R. (1993) M.P. 34 (D.B.)*

-**Sections 438, 439**–Anticipatory bail and regular bail–Operation of anticipatory bail comes to an end the moment application under section 439 Cr.P.C. is allowed or dismissed–Anticipatory bail granted for 45 days to surrender and move for regular bail–Applicant cannot move out of Court if regular bail is rejected–Accused not in Court when bail application was rejected by Sessions Judge–Cannot be said to be in custody–Application for regular bail under Section 439, Cr.P.C. shall not be maintainable in High Court : *Sunil Gupta Vs. State of M.P., I.L.R. (2005) M.P. 659*

- **Sections 438 & 439**- Application u/s. 438 has been moved which was allowed - Against which- Complainant approached to High Court- High Court modified the order of bail for a period of 30 days- After expiry of said period applicant has moved application u/s. 439 for regular bail- Which was rejected on ground that accused has not surrendered before Court-It is not necessary- Order for bail u/s. 438 Cr. P.C. like the one made u/s. 439 comes into operation only when the accused is arrested-It is not necessary that - The accused should be re-arrested or surrender before the Court- It only when prayer for bail is refused. : *Rewaram Tada Vs. State of M.P., I.L.R. (1998) M.P. 897*

-**Sections 438 and 439(2)**–Application for cancellation of bail–Penal Code, Indian (XLV of 1860)–Sections 304-B, 306–Dowry death–Anticipatory bail granted by A.S.J. without taking into consideration the gravity of the offence under Section 304-B, I.P.C.–While application was prosecuted by an advocate whose father was appearing for the State in the case–Report about influencing prosecution case also available on case diary–Bail granted by Addl. Sessions Judge deserves to be cancelled. : *Chain Singh Dhakad Vs. Hargovind, I.L.R. (1992) M.P. 700*

- **Section 439**–“Custody”- An accused released on anticipatory bail for a limited period-Must be deemed to be in custody : *Vinod Kumar Vs. State of M.P., I.L.R.*

(1999) M.P. 73

- **Section 439** – Application for bail rejected by Sessions Judge – Trial handed over to A.S.J. – A.S.J. to entertain subsequent bail applications. : *Narayan Prasad Vs. State of M.P.*, I.L.R. (1993) M.P. 34 (D.B.)

-**Section 439**-Jurisdiction-Inability to remand the accused to custody does not affect the jurisdiction to deal with the application under Section 439 on merit : *Vinod Kumar Vs. State of M.P.*, I.L.R. (1999) M.P. 73

- **Section 439**-Prayer for bail on ground of delay-Who is responsible for the delay-Realistic and practical approach should be adopted in such matters instead of a pedantic one-Stay granted by superior Court is by itself no proof that proceeding is not frivolous-Right to speedy trial is a fundamental right-If the trial is delayed it would amount to denial of justice and entitle an accused to be admitted to bail-But delay caused by accused would not entitle him to be released on bail-Cause of delay whether attributable to the accused-Trial commenced and almost all witnesses have been examined-Application filed for clubbing his case with counter case by petitioner-Absence of any role of the prosecution-Petitioner is not entitled to be released on bail : *Gokul Singh Vs. State of M.P.*, I.L.R. (1999) M.P. 807

-**Section 439**-Bail Application - Applicant accused of possessing contraband articles-Narcotic Drugs and Psychotropic substances Act, 1985-Sections 37, 42 and 50-Non-compliance of the mandatory provisions-While dealing with bail application Court has to look for its satisfaction that there are reasonable grounds for believing that he is not guilty of offence alleged-Mandatory provision safeguarding protection of a person against false accusation not complied with-Applicants granted bail. : *Haji Appa Vs. State*, I.L.R. (1992) M.P. 886

- **Section 439**-Bail application on ground of delay in filing challan-Applicant not filed in 90 days-Application filed for release of accused before Magistrate who is not competent- By the time of application came up for bearing challan has been filed-Right extinguished the moment challan was filed : *Tikku Vs. State*, I.L.R. (2000) M.P. 96 .

- **Section 439**-Bail-Second application-Offences punishment u/s. 323, 294, 506-II, Indian Penal Code, read with Section 3/4 - Dowry Prohibition Act, 1961-Section 503, IPC- Criminal intimidation -Ingredients-Threat must be with intent to cause alarm or cause the person to do or omit to do an act-In absence of material allegation offence under Section 506-II, Indian Penal Code not made out-Judge hearing second application does not lose jurisdiction to grant bail-Changed circumstances do not mean some extraordinary change-Unless strong evidence is produced, personal liberty of accused should not be interfered-Bail granted : *Shri Mohan Raikwar Vs. State*, I.L.R. (2000) M.P. 52

-Section 439-Custody-Accused not in custody because of protective order passed by High Court under Section 438-Appears and moves an application under Section 439- Would be deemed to be in proper custody for an application under Section 439- Court subordinate to the High Court is bound to consider the said application on merits : *Kalachand Patel Vs. State, I.L.R. (1999) M.P. 628*

– **Section 439** – Accused in custody from 14.10.86 till March 1988 – Trial not completed for no fault of the accused – Accused released on bail for offence under section 302/149 : *Gajraj Singh Vs. State of M.P., I.L.R. (1989) M.P. 752*

–**Section 439** - and Penal Code Indian, 1860, Sections 34,304 Part-II, 323, 330– Bail–Main accused granted bail–Identically placed accused or an accused whose case is better shall also be entitled to same relief–Bail granted : *Badri Nihale Vs. The State of M.P. Through Police Station Kohefiza, Bhopal District, Bhopal, I.L.R. (2005) M.P. 1020*

– **Section 439** – Application for bail – Penal Code, Indian, 1860 – Sections 467, 471, 478, 487 R/w Section 109 and Excise Act, MP – Sections 34, 36 and 39 – Offence alleged under – Challan not filed within 90 days from the date of arrest – Order of Session Judge rejecting bail application not proper – Section 167(2), Cr.P.C. – Right to be released on bail in default of investigation and filing of challan within stipulated period is an indefeasible right – Ensures till filing of challan subject to provision of Section 439(2) of the Code : *Akhilak Vs. State, I.L.R. (2001) M.P. 134*

–**Sections 439**–Anticipatory bail granted for 45 days to surrender and move for regular bail–Applicant cannot move out of Court if regular bail is rejected–Accused not in Court when bail application was rejected by Sessions Judge–Cannot be said to be in custody–Application of regular bail under Section 439, Cr.P.C. shall not be maintainable in High Court : *Sunil Gupta Vs. State of M.P., I.L.R. (2005) M.P. 659*

– **Section 439** – Stay of proceedings by superior Court on ancillary matters like grant of bail – Considerations for grant of bail : *Vidya Varit Pathak Vs. State of M.P., I.L.R (1988) M.P. 115*

- **Section 439-** Application by a person who is not in custody is not entertainable- Jurisdiction- Inability to remand the accused to custody does not affect the jurisdiction to deal with the application under Section 439 on merits-‘Custody’ An accused released an anticipatory bail for a limited period- Must be deemed to be in custody-Accused under protective umbrella of anticipatory bail order appears before competent Court and moves for regular bail-It would be deemed that he is in custody-In absence of physical appearance in Court prayer for regular bail is not entertainable: *Vinod Kumar Vs. State of M.P.,I.L.R. (1999) M.P. 73*

– **Section 439** – Production of accused necessary when remand is asked – Next date of remand on written only on the jail warrant – Nothing written in the order sheet – Continuing the accused in custody illegal – Bail granted : *Subhash Vs. State of M.P.*, *I.L.R. (1989) M.P. 626*

– **Section 439** – Effect of – Stay of proceedings by superior Court on ancillary matters like grant of bail – Considerations for grant of bail : *Vidya Varit Pathak Vs. State of M.P.*, *I.L.R. (1988) M.P. 115*

– **Section 439** – Bail under – Grant of, on the ground of delay in trial – Conclusion of trial not possible within reasonable time – Accused not causing any delay in it – Entitled to be released on bail : *Munna @ Kamta Prasad Vs. State of Madhya Pradesh*, *I.L.R. (1987) M.P. 585*

- **Section 439** - and Excise Act, Central Provinces (II of 1915), Section 49A and 49B- Marginal notes - Value of, in construction of section - Bail - Grant of, In offences under section 49-A-Scope and consideration for : *Sheikh Salim Vs. State of M.P.* *I.L.R. (1985) M.P. 324*,

- **Sections 439, 2 (r), 167 (2), 170 and 173 (5)** - Bail grant of - Word ‘investigation’ - Meaning and interpretation of - The expression “police report” - Ingredients of Expression “Sufficient evidence or reasonable grounds” in section 170 - Implications of - Police filing challan after mentioning therein that report of Chemical Examiner and Serologist and additional papers regarding accused’s plea of alibi shall be filed later on - Whether amounts to incomplete investigation - Papers referred to in Section 173 (5) - Whether form integral part of Police report - Whether accused entitled to bail at the expiry of 60 days from arrest : *Raghavendra Singh Hazari Vs. State of Madhya Pradesh*, *I.L.R. (1982) M.P. 186*

– **Sections 439, 167**– Bail-Application for grant of bail rejected on merits – Rejection of bail under Section 167(2) – Merits of case cannot be considered when right to bail is earned under Section 167(2) : *Banwari Vs. State of M.P.*, *I.L.R. (1993) M.P. 350*

- **Sections 439**, - 167(2) and Penal Code, Indian (XLV of 1860), Sections 302/201–Bail application–Charge-sheet alleged to be filed within 90 days but order sheet written by clerk of the Court not signed by the presiding officer–Order not in accordance with Law–Presiding Magistrate should not act in a clerical manner but in a judicial manner–Charge-sheet appears to be filed after 90 days–Provision of Section 167(2) are mandatory non-observance of mandatory provision–Accused held entitled to bail : *Tulsiram Vs. State*, *I.L.R. (1992) M.P. 295*

– **Section 439, 439(2), 482** - and Constitution of India, Article 21 – Bail – Cancellation of bail – Consideration of – powers of High Court and Sessions Court are

concurrent – Sessions Court granting bail – High Court moved for its cancellation – Judicial Propriety of – Inherent power of High Court – When can be exercised : *State of M.P. Vs. Dalipa*, I.L.R. (1987) M.P. 524,

– **Sections 439(1), 439(2)** – Cancellation of Bail – Whether a stranger can move an application for it – Stranger has a right in appropriate circumstances – Cognizance of proceeding by High Court – Cannot entertain petition of anonymous petitioner or whose identity remaining secret – Cancellation of bail- Considerations different for Cancellation of bail and admission of bail – Cogent and over – whelming circumstances necessary for cancellation of bail : *Chhotelal Vs. Ganpat Singh Dhruve*, I.L.R. (1988) M.P. 463

– **Section 439 (2)** – Cognizance of proceeding by High Court – Cannot entertain petition of anonymous petitioner or whose identity remaining secret : *Chhotelal Vs. Ganpat Singh Dhruve*, I.L.R. (1988) M.P. 463

- **Section 439 (2)** - Cancellation of bail or re-arrest - No bar in entertaining an application for it by a private party : *Badri Prasad Vs. Bala Prasad*, I.L.R. (1984) M.P. 534

- **Section 439 (2)** - Exercise of powers by High Court suo - motu in cancelling bail - Considerations and circumstances for cancellation of bail : *Badri Prasad Vs. Bala Prasad*, I.L.R. (1984) M.P. 534

- **Section 439 (2)**-Cancellation of bail-Bail obtained in third application by misleading the High Court that the petitioner was moving for the second occasion-Nothing but fraud on the Court-Impropriety has to be condemned : *Ramesh Kateha Vs. State*, I.L.R. (1999) M.P. 1002

– **Sections 439(2), 167(2)**– Cancellation of bail – Bail granted under Section 167(2) Proviso can be cancelled after considering merits of the case. : *Banwari Vs. State of M.P.*, I.L.R. (1993) M.P. 350

–**Sections 439(2) and 438**–Application for cancellation of bail–Penal Code, Indian (XLV of 1860)–Sections 304-B, 306–Dowry death–Anticipatory bail granted by A.S.J. without taking into consideration the gravity of the offence under Section 304-B, I.P.C.– While application was prosecuted by an advocate whose father was appearing for the State in the case–Report about influencing prosecution case also available on case diary–Bail granted by Addl. Sessions Judge deserves to be cancelled. : *Chain Singh Dhakad Vs. Hargovind*, I.L.R. (1992) M.P. 700

– **Section 446-A, 482 and 483** – Default in appearance on one day – Bail bonds forfeited and warrant of arrest directed to be issued – One of the accused appeared

and filed application for condonation of absence – Hearing on application was deferred by Magistrate for two days and accused was sent to jail – Held – In the matter of default of appearance several factors must engage attention – Process should not operate as a weapon of oppression – There has to be harmony between law and justice – Proceedings before Trial Court fail to answer the need of postponing the consideration of application – In exercise of powers under Sections 482 and 483 of Criminal Procedure Code – High Court can issue appropriate directions of subordinate Court – Remaining accused directed to surrender before Trial Court and their applications for their release shall be considered on the same day. : *Mukesh Vs. State of M.P., I.L.R. (1993) M.P. 346*

- **Section 451** - Order under, is temporary, operative during the period of enquiry of trial : *Rameshwar Rathod Vs. State of M. P., I.L.R. (1981) M.P. 1008 (D.B.)*

- **Section 451** - Expression any property in section 451 covers immovable property as well : *Punamchand Vs. Chandabai, I.L.R. (1986) M.P. 547*

-**Sections 451, 397, 401, 457**, Krishak Pashu Parirakshan Adhiniyam, 1959 Section 4 (10), 6 (a) (b) and Prevention of Cruelty to Animals Act, 1960, Section 11–Cruelty to animal–Offence registered–Application for interim custody–Cattle seized from custody of applicant–No other person came to claim that cattle did not belong to applicant–Prima facie proved that applicant is the real owner–Claim for interim custody bonafide–Allegation of cruelty to animal–Interim custody can be given imposing material term and condition : *Nabhu Vs. State of M.P., I.L.R. (2005) M.P. 773*

- **Section 451 and 452** - Powers of Criminal Court under - Not taken away unless there is special provision to that effect : *Rameshwar Rathod Vs. State of M. P., I.L.R. (1981) M.P. 1008 (D.B.)*

-**Sections 451, 457**–Application for interim custody–Cattle seized from custody of applicant–No other person came to claim that cattle did not belong to applicant–Prima facie proved that applicant is the real owner–Claim for interim custody bonafide : *Nabhu Vs. State of M.P., I.L.R. (2005) M.P. 773*

- **Sections 451 and 457** - and Motor Yan Karadhan Adhiniyam, M. P. (XXV of 1991), Section 16(3)- Grant of Temporary Custody- Jurisdiction- Criminal Court has no jurisdiction in the light of Sections 16(4) and 20 of the Adhiniyam for interim release of motor vehicle seized and detained by specified authority under Section 16(3) on supratnama and/or surety- Motor Yan Karadhan Adhiniyam, M. P., 1991- Sections 16 and 20- Seizure under Section 16(3), Section 451 of the Code is in applicable till stage of inquiry or trial in a criminal court and Section 457 of the Code can not be invoked unless seizure is by a police officer and is reported under the Code and some one is “entitled” person- Interpretation of Statutes- Powers- Interpretation of statutes should not lead to

manifest absurdity, fidity, palpable injustice or absurd in convenience or anomaly- Powers of magistrate is not unlimited and is regulated by law- He cannot order the doing of an out in excess of the power conferred on him by law : *State of M. P. Vs. Rakesh Kumar Gupta, I.L.R. (1998) M.P. 721 (D.B.)*

- **Section 452** - Operates when enquiry or trial is complete : *Rameshwar Rathod Vs. State of M. P., I.L.R. (1981) M.P. 1008 (D.B.)*

- **Section 452** – Release of movable property – As normal rule should be released to the person from whom article was seized – Coal seized from petitioner – Liable to be released in his favour – Approach of appellate Court erroneous – Order of Trial Magistrate restored : *Vishnuram Agrawal Vs. South Eastern Coal Fields Ltd., I.L.R. (2001) M.P. 1599*

- **Section 452** – Order for return of seized property on acquittal of accused or offences under sections 457 and 380 – Penal Code, Indian – Considerations for – Accused in his statement to police and examination under section 313, Criminal Procedure Code not claiming certain seized property to be his own – Magistrate directing its return to informant – Order not wrong : *Abhay Kumar Vs. The State of M.P., I.L.R. (1990) M.P. 356*

- **Section 452** - and Limitation Act, Indian (XXXVI of 1963) , Section 115 (6) – Order for disposal of property – Party affected was not before the Court nor notice – Date of order has to be construed as date of knowledge of the order for start of limitation for filing appeal : *Gaya Prasad Vs. State of M.P., I.L.R. (1989) M.P. 298*

- **Section 457** - Forest Act, 1927, Section 52C (as amended in M. P.) – Petitioner filed an application u/s 457 before the Magistrate in an offence relating to Forest Act – Section 457 empowers a Criminal Court to deal with disposal of property –But, Magistrate failed to notice that allege property was admittedly not seized by the police – A Forest Officer cannot be deemed to be a Police Officer - Forest Department intimated Magistrate about confiscation proceedings - Magistrate not empowered for disposal of the seized property - As the property was seized by Forest Department : *Laxmi Chand Vs. State of M.P., I.L.R. (1995) M.P. 403*

- **Section 457** - and Van Upaj (Vyapar Viniyaman) Adhiniyam, M. P. (IX of 1969), Section 15 and 19 - Forest Officer under the Adhiniyam is not a Police Officer - Seizure of property other than forest produce made by Forest Officer - Magistrate has no jurisdiction under Section 457 of the Code to order custody or production of such property - Offence under the Adhiniyam compounded by the applicant - Criminal Court has no jurisdiction to exercise powers under Section 457 of the Code to examine correctness of the orders of D. F. O. - Lacuna in the Adhiniyam pointed out : *Santosh Kumar Mishra Vs. State of M. P., I.L.R. (1983) M.P. 169,*

- **Section 457 and 458** - Wheat Stock Requisitioning Order, Madhya Pradesh, 1973 - Seizure of stock of wheat by Sub-Divisional Officer - Sub - Divisional Officer does not become a “Police Officer” - None claimed to be the owner of seized property - Sub Divisional Officer making reference to Magistrate for directions - Magistrate has no jurisdiction to pass order under section 457 : *Haru Vs. State of M. P., I.L.R. (1981) M.P. 616*

- **Sections 460, 432, 432(1), 433, 433-A**, - Penal Code, 1860, Sections 120-B, 224, 384-B (Dowry Death), 376, 377, 395, 396 & 498-A, Constitution of India Articles 14 and 21, M. P. Prisoner Release on Probation Act, 1954, Section 9, M. P. Prisoner Release on Probation Rules 1964 Rule 3 - Remission of Sentence - Held - Classification based on the nature of offence cannot be construed as illegal as it is based on reasonable justification - On completion of 14 years of imprisonment does not confers a right to the convict to be released - Remission are granted under special circumstances by the State and also with the object of reforming the prisoners after ensuring that there is no possibility of repeating the offence - Petition Dismissed. : *Jagroop Prasad Mishra Vs. State of M.P., I.L.R. (1997) M.P. 88 (D.B.)*

-**Sections 461(1), 26 & 325** - Madhya Pradesh Excise Act, 1915-Section 34(2)-Irregularities which vitiate proceedings-JMFC holding trial for offence punishable under Section 34 of M.P. Excise Act-Forwarding the case to CJM as minimum fine prescribed is Rs. 25,000/- -Judgment passed by ACJM-JMFC was well within jurisdiction to try as maximum punishment is 3 years-Proceeding covered by Section 325 and not vitiated under Section 461 (1) Criminal Procedure Code: *Ramesh Vs. State of M.P. : I.L.R. (2002) M.P. 1030*,

- **Section 464 (1)**, - 218, 219, 397/401 and Penal Code, Indian (XLV of 1860), Section 409 – Joinder of charges – Permitted by law in certain cases – Scope of provisions of Section 464, Criminal Procedure Code – Occurrence of failure of justice in Court’s opinion required – Criminal Breach of Trust – Entrustment of property necessary – Mens rea – Essential element : *Badrilal Vs. State of M.P., I.L.R. (1988) M.P. 708*

-**Section 465 and 202 (2)** - Non-compliance with mandatory requirements of Section 202 (2) - Not merely an “irregularity” but an “illegality” - Not curable under Section 465 : *Bajji Vs. State I.L.R. (1981) M.P. 896*

-**Section 468**-Delay in filing complaint-No period of limitation prescribed as sentence prescribed for offence under Section 497 I.P.C. is 5 years-Explanation of delay is only based on principles of Natural Justice-Held-No police report was lodged inspite of repeated efforts by appellant-Delay in filing complaint properly explained. : *Bharatlal Vs. Top Singh, I.L.R. (1994) M.P. 457*

-Sections 468 and 472- Limitation- Failure to pay the tax is an offence which continues until the tax is paid- It is a continuing offence under Section 472 of the Code and, therefore, the limitation prescribed by Section 468 (2) (b) of the Code is not applicable : *State of M. P. Vs. M/s Textors Corporation, Indore, I.L.R. (1998) M.P. 891*

-Sections 468 and 473- Charge-sheet for offence punishable under Sections 342/323/34 & 294 IPC filed on 13.4.1996 relating to alleged offence committed on 13.4.1993- Objection as to limitation overruled by Magistrate on the ground that once cognizance is taken it will be presumed that the Court has condoned the delay-Order unsustainable in Law: *Suresh Rai Vs. State, I.L.R. (1998) M.P. 625*

-Sections 468, 473, 482 and 484-Inherent jurisdiction of High Court-Power has to be exercised sparingly and only in compelling circumstances-Penal Code, Indian, 1860-Sections 467, 468, 471 and Vinirdist Bhrastr Acharan Nivaran Adhiniyam, 1982-Section 6-Offence alleged-Limitation for taking cognizance of offence under Section 6 is three years-Delay of nine days-Condonation of delay-Offence against poor illiterate and starving segment of the Society which seek to survive by pulling hard labour-Cheating such persons and prospering at their cost cannot be termed as an ordinary offence-Order of Sessions Judge condoning delay affirmed. : *M.L. Mansoori Vs. State, I.L.R. (1992) M.P. 437*

-Sections 469 and 482-Rejection of complaint on ground of delay-Penal Code, Indian, 1860-Sections 405, 406-Criminal breach of trust-Constituent-Refusal on demand-Refusal may be even by conduct-Limitation would start from the date of refusal-Complaint filed within four months of refusal to receive the notice of complainant-Complaint well within limitation. : *Kamlabai Vs. Manoharlal, I.L.R. (1992) M.P. 816*

-Section 482 - Complaint or charge-sheet not making out any offence - High Court may exercise inherent jurisdiction to quash proceedings : *Banshilal Vs. The Nagar Palika, Bhikangaon, I.L.R. (1982) M.P. 290,*

- Section 482 - Does not override express provision of law : *State of Madhya Pradesh Vs. Mooratsingh I.L.R. (1976) M.P. 962 (D.B.)*

-Section 482-Power of Superintendence of High Court : *Trichinopoly Ramaswami Ardhanani Vs. Kripa Shankar Bhargava, I.L.R. (1992) M.P. 60*

-Section 482-Inherent power of superintendence of High Court-Remote chance of conviction-At the most tortuous liability may be fastened-Order of JMFC taking cognizance and the proceeding under Section 304-A, I. P. C. quashed : *B.P. Ram Vs. State, I.L.R. (1992) M.P. 221*

- Section 482 – Objection raised at appropriate pre-trial stage – Prosecution quashed : *Umesh Kumar Chaubey Vs. State, I.L.R. (2001) M.P. 1938*

- **Section 482** – Inherent powers of High Court under this section – When to be exercised : *A.P. Shrivastava Vs. State of M.P., I.L.R. (1990) M.P. 122,*

- **Section 482** – Interference by High Court under – When called for : *Chandu @ Chandraprakash Vs. State of M.P., I.L.R. (1990) M.P. 405,*

- **Section 482** – Inherent powers of High Court – When can be exercised : *State of M.P. Vs. Dalipa, I.L.R (1987) M.P. 524,*

- **Section 482** – Mixing of saccharin with pan Masala or other item of Food – Not permitted – Breach of Rules 44 and 47 – Trial legal, cannot be quashed : *Shivraj Tobacco Company Pvt. Ltd., Kanpur Vs. State of M.P., I.L.R. (1990) M.P. 652,*

- **Section 482** – Sessions Court granting bail – High Court moved for cancellation – Judicial Propriety of : *State of M.P. Vs. Dalipa, I.L.R. (1987) M.P. 524,*

-**Section 482** - Inherent powers of High Court - When can be exercised : *SK. Hamid Khan Vs. Mst. Jummi Bi I.L.R. (1978) M.P. 595*

- **Section 482** - Interference under inherent powers of High Court - When can be made : *Punamchand Vs. Chandabai, I.L.R. (1986) M.P. 547*

- **Section 482**–Authorship of the Article attributed to petitioner–Nothing to suggest that petitioner was instrumental for publication–Article also cannot be said to be defamatory–Ground to proceed does not exist : *Dr. Kalyan Chakravarthy Vs. D.N. Agrawal, I.L.R. (2004) M.P. 707.*

-**Section 482**–Petition for quashing prosecution–Valuable security–Tabulation chart register of marks obtained by a student of university–Constitute valuable security–Charge under Section 467, IPC rightly framed : *A.V. Rao Vs. The State of M.P., I.L.R. (2005) M.P. 1223*

-**Section 482** - and Scheduled Caste Scheduled Tribe (Prevention of Attrocities) Act, (XXXIII of 1989), Section 3(1) (X)–Mere utterance of word ‘Chamara’ without any intention to humiliate shall not make out an offence–Cognizance taken to that extent quashed : *Anil Kumar Pandey Vs. Daulat Prasad, I.L.R. (2005) M.P. 921*

- **Section 482** – Quashing of prosecution – Corruption case – Prevention of Corruption Act, 1988 – Sections 13(1)(e), 13(2) and 17 – Acquisition of property disproportionate to known sources of income – Power to investigate – Post dated order authorizing investigation – Evidence collected and investigation completed prior to issue of authorization – Investigation without jurisdiction – Objection raised at appropriate pre-trial stage – Prosecution quashed : *Umesh Kumar Chaubey Vs. State, I.L.R. (2001) M.P. 1938*

- **Section 482** – Petition for quashing prosecution – Penal Code, Indian, (XLV of 1860) – Section 420 – Petitioner running so called University and imparting degrees in such a manner that common public will take the degrees for MBBS, MD, BAMS and DHMS in Medical Science – By mischief students and public are misguided – Court while granting bail rightly imposed condition that petitioner bail suspend working of his so called university – Petition in the name of institution for quashing prosecution – Not maintainable : *Dhamtari Elector-Homeopathic Medical Institute & Hospital, Dhamtari Vs. State, I.L.R. (2001) M.P. 1781*

-**Section 482** – Power of Superintendence – Expunction of remarks passed by Trial Court against investigating officer – Penal Code, Indian – Sections 302, 201 – Missing person found dead – Delay in receipt of report from Medico Legal Institute resulted in delayed registration of crime and investigation – Stricture passed doubting conduct of petitioner for delay in registering the case – Opportunity of being heard ought to have been given to petitioner – Remarks passed by the Trial Judge deserves to be expunged : *R. Rajan Vs. State, I.L.R. (2001) M.P. 287 (D.B.)*

-**Section 482** - and Forest Act Indian, 1927, Section 52–Forest offence–Seizure of property liable to be confiscated–Notice issued–Benamidar owner–Preferred to be represented by her husband who is the real owner of the truck–Section 52(4) substantially complied with–Truck confiscated : *State Vs. Smt. Farida Bano., I.L.R (2003) M.P. 733.*

-**Section 482**, - Penal Code Indian, 1860, Section 380–Complainant a partner in a firm filed complaint that accounts of firm are being withheld by other partners and his share is not being given to him–Truck owned by firm has also been sold–Offence registered under Section 380 of Indian Penal Code–Held–Nature of case is purely civil–Complaint has been filed to persecute and harass the applicants–Registration of case under Section 380 of Indian Penal Code patently illegal–Complainant can file civil suit against partners for rendition of accounts–Order registering offence quashed. : *Govind Das Biyani Vs. Badri Narayan Rath; I.L.R. (1994) M.P. 518.*

-**Section 482** : and Penal Code Indian, 1860–Section 392–Quashing of prosecution–F.I.R. for taking back possession of the machinery/vehicle–Possession taken back by financier on breach of condition by Hire Purchase borrower–Act does not amount to criminal offence–Prosecution liable to be quashed : *Magma Leasing Limited Vs. State, I.L.R.(2004) M.P. 882*

-**Section 482**–Petition for quashing prosecution–Drugs and Cosmetics Rules, 1940–Rules 17(6), 18(a)(iii), 18(a)(vi), 18-A, 28–Manufacture and Sale of drugs not mentioning batch number and date of manufacture on the carton–Person from whose possession

article taken is duty bound to disclose name of manufacturer–Non furnishing information–Manufacturer cannot be arrayed as accused on basis of presumption as the cosmetic or drug in question may be spuriously manufactured by a person others then the known manufacturer–Prosecution quashed : *Mehli Pestonji Poncha Sea Kist Vs. State, I.L.R. (2002) M.P. 176*,

- **Section 482**-Inherent Power of Superintendence-Invoking of-For quashing of proceedings-Prevention of Corruption Act, 1988-Sections 13(1)(e) and 13(2)-Offences alleged under section 17 of the Act-Power to investigate –Investigation conducted by Inspector S.P.E. on the authorization of Superintendence of Police-Not illegal : *Rajendra Kumar Verma Vs. State, I.L.R. (2000) M.P. 1496 (D.B.)*.

-**Section 482**-Petition seeking quashing of prosecution under Sections 193 and 211 of the Indian Penal Code, 1860-Section 340, Cr. P.C.-Powers under should be exercised very sparingly with circumspection only in cases of deliberate falsehood-Sub-Section (1)(a) of Section 340 of the Code-Provisions mandatory-Court has to record a finding before making a complaint-Non-compliance vitiates the proceedings-In absence of any finding recorded the proceedings initiated are unsustainable in law-Proceedings quashed : *Ashok Kumar Bhandari Vs. State, I.L.R. (2000) M.P. 294* .

- **Section 482**-Power of Superintendence-Penal Code, Indian, Section 8- Postulates that the pronoun he and its derivatives are used for any person male or female –General Clause, Act, 1897, Section 13(1)-Words importing the masculine gender, shall be taken to include female as well unless repugnant to the context-Section 125(1)(b) of Cr. P.C. –Word ‘his’ used in this section includes both ‘male’ and ‘female’ –Claim of maintenance by minor children from widowed mother-Deceased father-An employee of M.P.E.B.-Applicant must be receiving family pension-Liable to pay maintenance for minor child-Order of both the Courts below proper and maintained : *Madhuri Bai Vs. Minor Surendra Kumar, I.L.R. (2000) M.P. 289* .

Section 482-Power of Superintendence-Penal Code, Indian, 1860- Sections 307/34-Case committed to the Sessions Judge for Trial-Permission seeking withdrawal of prosecution by Public Prosecutor-Refusal by Sessions Judge-Section 321,Cr.P.C.-While considering an application for withdrawal for prosecution Court has to exercise judicial discretion to grant or not to grant consent-Court not required to assess evidence whether trial would end in conviction or acquittal nor to record reasons-Order of trial Court not arbitrary-No interference called for : *Mahendra Vs. State, I.L.R. (2000) M.P. 640*

-**Section 482** - and Penal Code Indian,1860, Sections 323, 294, 506–Complaint case–Quashing of–Materials have been suppressed and court would not have issued process if materials were disclosed–Continuance of criminal case will amount to harassment and injustice–High Court would be justified in quashing the complaint : *Ku. Reena Vs. Vallabh Das, I.L.R. (2004) M.P. 1100*.

– **Section 482** – Prosecution of wife and her parents on the complaint by husband alleging that wife suffered from physical disability and incapable of sexual act which was suffered by them at the time of marriage – Complaint and evidence not satisfying the requirements of those offences but Magistrate issuing summons to wife and her parents for appearing after forming his opinion regarding commission of offences – Prosecution quashed in exercise of inherent power of High Court under this Section : *Mahima Kant Chatterjee Vs. Shashank Shekhar Mukherjee, I.L.R. (1990) M.P. 293*,

- **Section 482** - and Penal Code, Indian (XLV of 1872), Section 304-A–Swimming pool of a private club–Boy aged about 13 entered the premises and died of drowning in the pool–No notice board of caution displayed nor the guard could prevent admission of the boy in the swimming pool, does not amount to rash or negligence act referred to in Section 304-A of the I. P. C.–Section 482, Cr. P. C.–Inherent power of superintendence of High Court–Remote chance of conviction–At the most tortuous liability may be fastened–Order of JMFC taking cognizance and the proceeding under Section 304-A, I. P. C. quashed. : *B.P. Ram Vs. State, I.L.R. (1992) M.P. 221*

-**Section 482**–Petition for quashing charge–Penal Code, Indian, 1860–Section 304-A–Essentials for charge–Rash and negligent act alleged should be so proximate to be direct cause of death–Deceased was provided with gas mask but he removed it–Two other persons wearing gas mask did not suffer any harm–Necessary conclusion would be that applicant was not rash and negligent–Charge under Section 304-A.I.P.C. quashed. : *Satya Prakash Choudhary Vs. State, I.L.R. (1992) M.P. 607*

-**Section 482** – After registration of complaint on finding existence of prima facie case against accused persons, Magistrate issuing process to accused persons – Accused persons instead of awaiting of various opportunities under procedural law rushing to High Court praying for quashing the proceeding – Petition misconceived and liable to be dismissed : *Parmanand Vs. Lal Singh, I.L.R. (1990) M.P. 534*,

-**Section 482**, - Constitution of India, Article 21-Speedy Trial-Inordinate delay-Charge sheet filed in the year 1982-Prosecution evidence could not be concluded even after expiry of 10 years-Held-Citizen of India is entitled for fair & speedy trial-However instead of quashing proceedings, trial court directed to close prosecution case on next date of hearing to decide the case immediately after examination of accused and defence evidence, if any-Registry directed to fix-up responsibility for lax-handling of case by those who presided over court for such administrative action. : *Radheshyam Vs. State of M.P., I.L.R. (1994) M.P. 272*

-**Section 482** - and Penal Code Indian, Sections 294, 506–B–Quashing prosecution–Reasonable period of trial should not normally exceed beyond the one year in such

cases—After framing charge case fixed for evidence—Genesis of the crime lying more than 25 years back—Constitutional right to speedy trial by fair, just and reasonable procedure patently violated—Prosecution quashed : *Chhoteylal Misra Vs. State Of Madhya Pradesh*, I.L.R. (2004) M.P. 1097

- **Section 482** - and Prevention of Corruption Act, 1988 Sections 7, 13(2) and Penal Code Indian, 1860—Section 409,120-B—Charge of corruption—Trial Court earlier release the accused holding that for want of proper sanction it had no jurisdiction to take cognizance or acquit the accused—Such release is not acquitted but discharge—Does not post a bar on subsequent prosecution on same charge after obtaining valid sanction—Validity of sanction—Has to be considered by Trial Court and not in this petition—Does not must : *Shiv Kumar Pal Vs. State*, I.L.R. (2003) M.P. 736

-**Section 482** - and Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7, 16,19, - Petition for quashing prosecution—Sealed tins of soyabean oil purchased by retailer under warranty—Sample obtained by Food Inspector breaking open seal of one of such tins— Petitioner entitled to benefit under Section 19—Deserves discharge—Prosecution quashed : *Gulab Chand Modi Vs. The State of M.P.*, I.L.R.(2004) M.P. 294

- **Section 482** - and Companies Act, Indian (I of 1956), Section 175— Neither the complaint allege nor the provisions of Companies Act provide Chairman and Deputy Chairman as persons directly in-charge of business of company – Prosecution of Chairman and Deputy Chairman not in accordance with law – Liable to be quashed in exercise of powers u/s 482, Criminal Procedure Code : *N.A. Palkhivala Vs. Madhya Pradesh Pradushan Niwaran Mandal*, I.L.R. (1990) M.P. 466,

-**Section 482** - and Negotiable Instrument Act—Section 138, Proviso (b)—Notice is essential to be sent within a period of 15 days from the date of receipt of information from the bank—Provision mandatory—Delay in sending notice—Complaint not maintainable : *M/s. Nathusingh Gangrade Vs. Jaswant* , I.L.R. (2003) M.P.153

- **Section 482** - and Prevention of Food Adulteration Act (XXXVII of 1957) – Sections 7,16,17(3), 17(4) – Quashing prosecution – Person nominated to be in charge and responsible for conduct of business shall be deemed to be guilty—Petitioner not a nominee – No allegation of nexus between petitioner and crime – Cannot be held liable even if offence is by company – Prosecution quashed : *R. Subramaniam Vs. State of M.P.*, I.L.R. (2004) M.P. 1187

-**Section 482**-Inherent jurisdiction-Power of Superintendence of High Court-Section 125-Grant of maintenance-Section 127-Application for enhancement filed in the year 1989-Petitioner husband has sufficient means also for paying sufficient amount as maintenance to his wife-Grant of Rs. 150/- per month as maintenance in these days is

nothing but mockery of law-Application allowed-Amount enhanced to Rs. 500/- with liberty to petitioner to file another application for enhancement as and when circumstances so warrant : *Smt. Gyanwanti Bai Vs. Bhagchand, I.L.R. (1999) M.P. 906*

-Section 482 - and Penal Code Indian, 1860, Section 498-A-Petition for quashing prosecution-Allegation *prima facie* absurd and inherently improbable-Power under Section 482 Criminal Procedure Code should be exercised : *Kailash Chandra Maheshwari Vs. State of Madhya Pradesh, Through Police Station-Sehore, District Sehore (M.P.), I.L.R. (2005) M.P. 1226*

-Section 482 – Order dismissing revision in default not covered under section 362, Criminal Procedure Code – Can be restored under Section 482 of the Code : *Mohammad Ishaq Vs. Tahira Khatoon, I.L.R. (1988) M.P. 349*

- Section 482 - Test to be applied for applicability - Does not override express provision of law - Criminal Procedure Code (new) - Contains no specific provision for withdrawal or refusal to withdraw appeal - Section 333 - Not applicable to such contingency - Criminal Procedure Code (Old) - Section 421 to 423 and 494 - Provision are exhaustive and are peremptory - Appellate Court cannot act outside the provisions of these sections - Appeal not dismissed summarily - Cannot be dismissed for default of appearance - Has to be decided on merits - Appellate Court has no power to permit withdrawal - Interpretation of Statutes - To be read so as to harmonise different provisions : *State of Madhya Pradesh Vs. Moorat Singh I.L.R. (1976) M.P. 962 (D.B.)*

- Section 482 - and Constitution of India, Article 21 – Criminal Trial – Order passed therein by Trial Magistrate convicting the applicant – under section 120 of the Railways Act and Section 323, Indian Penal Code without informing him of his entitlement to free legal assistance at Govt. cost – Trial vitiated being violative of Article 21 – Application deserves to be allowed under section 482 : *Pascal Mendonza Vs. State of M.P., I.L.R. (1990) M.P. 358,*

- Section 482 – Principles governing the exercise of inherent jurisdiction of High Court under – After registration of complaint on finding existence of *prima facie* case against accused persons, Magistrate issuing process to accused persons – Accused persons instead of awaiting of various opportunities under procedural law rushing to High Court praying for quashing the proceeding – Petition misconceived and liable to be dismissed : *Parmanand Vs. Lal Singh, I.L.R. (1990) M.P. 534,*

- Section 482 - and Constitution of India, Article 14 and 21 – Speedy Trial in Criminal Prosecution – Constitutes essential and integral part of fundamental right implicit in Article 21 – Delay in – Amounts to denial of Criminal Justice – Violation of fundamental right – Consequence of – Principle of reasonableness – Pervades Article 14 being

element of equality and non-arbitrariness – Procedure contemplated by Article 21 – Must answer test of reasonableness as to be in conformity with Article 14 – Section 482 – Interference by High Court under – When called for : *Chandu @ Chandraprakash Vs. State of M.P.*, I.L.R. (1990) M.P. 405,

-Section 482 - Inherent powers of the Court - Exercise of - Business contracts - Complaints filed under sections 406 and 420, I. P. C. read with section 34, I. P. C. alleging breach of terms and conditions of contract in not rendering accounts or remitting the balance amount - Is a dispute a civil nature - Filing of complaint and order registering the complaint and issue of process to the opposite party - Amounts to abuse of powers of Court - Order liable to be quashed : *Shyam Sunder Banka Vs. State of M. P.*, I.L.R. (1983) M.P. 534,

- Sections 482, - 91 – Power of superintendence – Prevention of Corruption Act, 1988 – Sections 13(1)(e) and 13(2) – Case of acquiring assets disproportionate to known sources if income – Prayer for calling report of Lokayukt in an earlier investigation against petitioner on similar allegation – Lokayukt & Up-lokayukt Act – Sections 12,13 and 14 – Bar on calling any evidence collected by Lokayukt includes the report of the Lokayukt as it is necessarily based on comments on evidence collected by it through various agencies – Unless the Lokayukt himself makes the report published Courts of law will not call for that report – Trial Court justified in rejecting petitioner’s prayer : *Khageshwar Prasad Vs. State*, I.L.R. (2001) M.P. 1097

-Sections 482, - 107, 108 and 111–Petition invoking inherent powers of High Court–Proceedings before S.D.M.–Magistrate has to apply his mind to the information received and on being satisfied pass an order in writing–The process cannot be reduced to a mechanical one–Cyclostyled/Proforma and filling in the blanks–It was never the intention of the legislature to provide proforma orders to be passed under section 111, Criminal Procedure Code–Proceedings quashed. : *Babulal Vs. State*; I.L.R. (1992) M.P. 967

- Section 482, - 125 – Inherent power of Superintendence of High Court – Section 125 – Application for maintenance by wife - Award of interim maintenance – Revisable – As it affects the financial position of both the parties – Hindu Marriage Act, 1955 – Section 9 – Suit for restitution of conjugal rights decreed – Question as to which of the parties is not complying with the decree – Can only be decided finally by the Trial Court – No case for interference in interim award of maintenance on ground of decree under Section 9 of Hindu Marriage Act : *Madhu @ Sanjeev Kumar Vs. Smt. Lalita Bai*, I.L.R. (2001) M.P. 905

-Sections 482 - 125 - Application under made by petitioner wife after 12 years after the alleged refusal to maintain by husband- Inordinate delay in filing the application- Without there being any cogent reason or explanation the Magistrate would be justified in dismissing the application –Besides the long delay it has been found by the Courts

below that wife had no justification for living separately-She had sufficient means to maintain herself-Discretion exercised by Courts below cannot be termed as arbitrary or manifestly unjust : *Smt. Kuntibai Vs. Alakhram, I.L.R. (1999) M.P. 516*

- **Sections 482, 125, 127, 295** - and Constitution of India, Article 141, Muslim Women (Protection of Rights on Divorce) Act, 1986 Sections 3, 4 and 5-Precedent-Decision earlier in time shall hold the field unless it is referred and explained in the latter decision in which case the latter one shall be binding-Interpretation of statute-Cardinal principle-Every statute is prima facie prospective unless expressly or by necessary implication made to have retrospective operation-More so when object is to affect vesting rights or to impose new burden or to impair existing obligation-Right to get maintenance from her husband is a vested right of a woman in any religion-No provision in the Act of 1986 so as to give it retrospective operation-Substantive law relating to vested rights-Such law are normally treated as prospective-Provision neither retrospective in operation nor have the effect of nullifying the order already made under Section 125 or 127 Cr.P.C.-Talaq-Plea of divorce taken in written statement is no proof of divorce-Husband is required to prove that he has given divorce to his wife in accordance with Mohammedan Law-Husband shall continue to remain liable until obligation comes to an end in accordance with law : *Wali Mohd. Vs. Batul Bi, I.L.R. (2004) M.P. 37 (F.B.)*

-**Sections 482, 125 and 397**-Inherent powers of High Court-Revisional Court quashing the order of maintenance-Husband contracted Second marriage-Total repudiation of the obligations of marriage-Finding based on total misconception of Law-Liable to be interfered with-Legal connotation of 'desertion' has not been taken into account by the Revisional Court-Revisional order set aside. : *Ganga Bai Vs. Shriram, I.L.R. (1992) M.P. 964*

-**Sections 482, 125 and 397**-Petition against revisional order-Application for maintenance-Marriage with petitioner established-Objection on ground of legality of marriage-Cannot be allowed to stretch as to defeat the very purpose of law-Question already decided by Court below-Invoking power of Superintendent none of the objects envisaged in Section 482 could be achieved-No case for interference. : *Manohar Soni Vs. Kamla Bai, I.L.R. (1992) M.P. 962*

-**Sections 482, 145, 146**-Dispute as to immoveable property-Attachment-Restoration of possession on termination of proceeding-Possession of disputed land restored to petitioner in execution of decree passed in Civil suit-Proceedings initiated by S.D.M. restoring possession to respondent-Grossly improper, unjust and contrary to facts- Order impugned quashed-Restoration of possession to petitioner directed : *Ramratan Vs. Lalbihari, I.L.R. (2004) M.P. 808*

-Sections 482, 154, 156, 200 - and Penal Code, Indian, 1860, Sections 34, 120-B, 420–Cheating–By false representations–Complaint laid before the Magistrate made over to the police for investigation–Police officer’s power to investigate and quashing of FIR–FIR not disclosing commission of a cognizable offence–Surely not within the province of police to investigate–Investigation can be quashed in exercise of powers under Article 226 of the Constitution or Section 482 Cr.P.C.–Cheating–Guilty intention is essential ingredient of the offence of cheating–Complainant claims to have spent considerable amount of money in improvement of bottling plant–No allegation in the complaint that the appellants or any one on their behalf ever met the complainant or asked it to invest any money or to do anything for improvement of the bottling plant–Appellant came in picture much later–Even if allegations made in complaint are accepted to be absolutely true and correct appellant cannot be said to have committed any offence of cheating–Order of High Court set aside and complaint against appellants quashed : *Ajay Mitra Vs. State of M.P., I.L.R. (2003) M.P. 1 (SC) (F.B.)*

-Sections 482, 154, 320 - and Penal Code, Indian, 1860, Section 498-A–Quashing of F.I.R.–Petition for–High Court can quash criminal proceeding and F.I.R.–Section 320 does not limit the powers under Section 482 Cr.P.C.–Differences resolved–Parties have entered into compromise–Living happily together–F.I.R. quashed : *Smt. Farhona Khan Vs. State of M.P., I.L.R. (2003) M.P. 475*

- Sections 482, 156(3), 169, 174 and 200 - Petition for quashing complaint case - On receipt of complaint Magistrate directing police to further investigate in the matter - On receipt of such direction police is not bound to file challan under Section 173 of the Code if on investigation he forms an opinion there no case is made out : *Rajendra Ardhvaryu Vs. Sheikh Raees, I.L.R. (2002) M.P. 1052,*

- Section 482, 173 – Petition for quashing charges – Vinirdishta Bharashta Acharan Niwaran Adhinyam, MP (XXXVI of 1982) – Sections 24, 27 and 39 – Illegal colonization – Offence cognizable – On Collector’s report Divisional Commissioner directing police investigation and subsequent filing of challan to the Court by police – Procedure adopted illegal – Section 39 and proviso thereunder – Cognizance of offence under the Adhinyam - Condition precedent – Prescribed authority can direct investigation only on receipt of an information of a report from the police and not otherwise – Procedure adopted is illegal – Charges quashed : *Sultan Khan Vs. State, I.L.R. (2001) M.P. 745*

-Sections 482, 173, 200 - and Penal Code, Indian, 1860, Section 498-A–Complaint case dismissed–Second complaint on the same allegation–Barred–Subsequent framing of charge by J.M.F.C. on police challan–Police report filed on the FIR lodged by the complainant–Principle of atrofist acquit–Not applicable : *Sharda Prasad Gupta Vs. Smt. Vidyadevi Gupta, I.L.R. (2003) M.P. 94*

-Sections 482, 181, 200 - and Penal Code, Indian, 1860, Section 406–Criminal Breach of trust–Complaint case–Jurisdiction–One of the Bank draft was received by accused at Bhopal– Court at Bhopal has Jurisdiction to try the offence : *Vikas Kumar Jain Vs. Smt. Rita Jain, I.L.R. (2003) M.P. 860*

-Section 482, - 195 (1) (b) (ii) and Penal Code, Indian, 1860, Sections 420, 467, 468 and 471–Forgery of will–Mutation obtained from Revenue Court producing forged will–Police investigation and consequent registration of Criminal case–Complaint by the revenue Court is not necessary as the will was forged before the commencement of the proceeding in the said revenue Court : *Vijay Ram Vs. State of M.P., I.L.R. (2003) M.P. 566*

- Sections 482, - 197 and Penal Code, Indian (XLV of 1860), Sections 166, 120-B, 196 – Complaint case – Allegation that DIG police coerced the complainant to return Rs. 15,000/- to the lady from whom the amount was taken by complainant on false promise to get her brother employment – Both the employers of State Govt. under control of the DIG police – In his official capacity he had ample power to advise the complainant to return the amount – Sections 166, 120-B, 196, IPC – Coercion is one thing and advise is another – Alleged act squarely false within the ambit of official discharge of duties – Sanction under Section 197, Cr.P.C. necessary for proceeding against the DIG police – Want of sanction – Petitioner could not be prosecuted : *R.K.E. Yadalwar Vs. A.B. Singh, I.L.R. (2001) M.P. 426*

-Sections 482, 197 –Quashing of proceedings–Where further proceedings in criminal case would be in abuse of process of Court, High Court has jurisdiction to quash the proceedings–Penal Code Indian, 1860–Sections 120-B, 500, 501–Complaint before Magistrate alleging that the contents of Article published are defamatory in character–Authorship of the Article attributed to petitioner–Nothing to suggest that petitioner was instrumental for publication–Article also cannot be said to be defamatory–Ground to proceed does not exist–Petitioner is an Officer of Union of India–Taking cognizance without prior sanction of Central Govt.–Improper–Proceedings quashed in so far as it relates to petitioner : *Dr. Kalyan Chakravarthy Vs. D.N. Agrawal, I.L.R. (2004) M.P. 707*

-Sections 482, 200, - Penal Code Indian, 1860, Section 420 and Trade and Merchandise Marks Act, 1958, Section 2 (u) 78, 79–Petition for quashing prosecution–Documents filed by accused cannot be looked into at the time of taking cognizance or framing charge–Toothpaste advertisement–Advertiser is permitted to indulge in some amount of exaggeration or hyperbole–Ingredients of offence not discernible from statement of complainant–Prosecution quashed : *Colgate Palmolive (India) Ltd., Mumbai Vs. Shri Satish Rohra, I.L.R. (2005) M.P. 1113*

- Sections 482, 200 - and Penal Code Indian, 1860, Sections 120-B, 409, 420–Complaint case–Against Bank Officers–Petitioner Assistant General Manager–Not

incharge of the Bank at relevant time to which the offence related—Had this fact been brought to knowledge of M.F.C. complaint must not have been registered against petitioner—Proceeding would be an abuse of the Court—Quashed in so far it relates to petitioner : *Union Bank of India Vs. Bharat Bhushan Pal Verma, I.L.R. (2004) M.P. 704*

-Sections 482, 200, 202, 205, 245(2) - and Penal Code, Indian, 1860, Sections 34, 406 and 420—Complaint case—Cognizance by Magistrate—Issue of bailable warrant followed by warrant of arrest—Remedy provided under Section 245 (2) is an effective remedy—Already pressed into service—Can be devided even in the absence of the accused—Application for disposing with personal attendance and application for discharge pending—Without waiting for their disposal petition filed in High Court for exercise of inherent power—Petition not maintainable : *Shailendra Vs. Som Distilleries & Breweries Limited., I.L.R. (2003) M.P. 659*

- Sections 482, 200, 204, 244, 244, - Penal Code, Indian, (XLV of 1860), Sections 294, 323 and 506, Part-II and Dowry Prohibition Act, (XXVIII of 1961), Sections 3, 4 – Complaint case – Power of Magistrate – Issue of process after examination of complainant – Does not debar the Magistrate for discharging the accused under Section 245 even without recording further evidence under Section 244 – Sections 294, 323, 506, Part-II, IPC and Sections 3, 4, Dowry Prohibition Act, 1961 – Offences alleged – Complaint case – Issue of process – On appearance accused the Magistrate found that police charge sheet against complainant is pending in his Court and the charges against the accused persons are groundless – Order discharging accused rightly passed – No interference called for : *Mahendra Kumar Mishra Vs. Chandra Shekhar Prasad Mishra, I.L.R. (2001) M.P. 586*

-Sections 482, 200, 204, 397 and 401 - and Penal Code, Indian (XLV of 1860), Sections 499 and 500—Complaint case—Jurisdiction—Suit filed at Bombay High Court containing defamatory imputation—Writ of summons served on the complaint at Chhindwara—On complaint filed J.M.F.C., Chhindwara has jurisdiction to take cognizance—Section 204, Cr.P.C.—Issue of process—Subjective satisfaction of Magistrate as prima facie case is sufficient to issue process—Suit containing defamatory imputation—Plaint verified by petitioner who alone is laible to be proceeded—Proceeding against other petitioners quashed—'Publication'—Suit filed in which writ of summons issued and served on the complainant amounts to publication—Section 482, Cr.P.C.—Power of Superintendence of High Court—Exception 9 of section 499 of I.P.C.—Cannot be looked into at the stage of exercising power of Superintendence under section 482 or Revisional powers under sections 397/401 of the Cr.P.C.—Petitioner is at liberty to take recourse to such provision at appropriate stage—Prayer of stay of Trial till final decision in Civil Suit at Bombay cannot be acceded to—Words & Phrases 'Publication'—Plaint filed with defamatory imputation amounts to 'Publication' : *Trichinopoly Ramaswami Aradhanani Vs. Kripa Shankar Bhargava; I.L.R. (1992) M.P. 60*

-Sections 482, 200 and 300-Private complaint-Cognizance by the Magistrate-Power of Superintendence of High Court-Petitioners acquitted in trial instituted on police report under Sections 498-A and 506, I.P.C.- Private Complaint after acquittal on same set of facts-Barred under Section 300(1) of the Cr.P.C.-Proceeding quashed : *Rafique Khan Vs. Smt. Jamila Bee, I.L.R. (2000) M.P. 762*

-Sections 482, 228 and 397-Inherent power of High Court-Sections 161 and 173-Challan-Statement of deceased under Section 161 Cr.P.C. recorded in the form of dying declaration-Not filed alongwith challan-Cannot be used for any purpose unless proved-Prosecution required to fill said dying declaration and supply copy to the defence to meet the ends of justice-Sections 228 and 397-Framing of Charge and Revision-Penal Code, Indian, 1860-Sections 304-B and 498-A-Charge framed under-Not challenged by way of revision under Section 397,Cr.P.C.-Cannot be gone into in exercise of inherent powers : *Arun Kumar Vs. State, I.L.R. (2000) M.P. 896,*

-Sections 482, 202 and 203-Petition for quashing proceedings-Complaint case-Penal Code, Indian, 1860-Sections 415 & 420-Cheating-For prosecution under Section 420 the ingredient of cheating as defined under Section 415, IPC are to be there-Accused alleged to have induced the complainant to purchase a car and pay for that yet the car was not delivered-Complainant stating that he wanted to purchase a car-Requirement of 'dishonestly' inducing to part with' not fulfilled-Magistrate not acted judicially-Proceedings quashed. : *Vinod Doshi Vs. State, I.L.R. (1992) M.P. 527*

- Sections 482, 248-Acquittal giving benefit of doubt-Petition for expunging remark "benefit of doubt"-Acquittal means the person concerned has not committed the offence for which he was charged-No difference between "clean acquittal" and honourable acquittal or acquittal based on benefit of doubt-Words "beyond reasonable doubt-Cannot be termed as stigma or proof of any criminal charge-No case made out for invoking power under Section 482 Cr.P.C. : *Smt. Panna Mehta Vs. State of M.P., I.L.R. (2002) M.P. 1047,*

- Sections 482 and 249 – Inherent power of High Court – Though by virtue of death of complainant in view of Section 249, Criminal Procedure Code, the complaint case cannot be quashed as the offences are not compoundable and absence of complainant not willful but for death, yet the inordinate delay amounts to miscarriage of justice and abuse of process of the Court – Prosecution quashed – Applicant awarded Rs. 5,000/- as compensation – Accused discharged : *Ramesh Chandra Vs. Kailash, I.L.R. (2001) M.P. 1261*

- Sections 482, 276-C and 277- Quashment of Criminal Prosecution- Delation of penalty by the Income Tax Tribunal- Criminal proceeding against the applicant accused deserves to be quashed : *Suresh Chandra Vs. Union of India, I.L.R. (1998) M.P. 439*

-Sections 482, 306 and 397/401 - and Penal Code, Indian (XLV of 1860), Section 420 – In exercise of inherent powers of High Court recalled the judgment passed in earlier revision – Objection that Section 362, Cr.P.C. prohibits the Court for allowing or reviewing the final order passed except correction of clerical error – Not tenable as there is distinction between reviewing and recalling of an order – High Court in exercise of powers under Section 482 recalled the order passed in earlier revision because the same was heard in absence of respondent as they failed to appear : *Gulam Ahmad Vs. Late Haji Maulana Mohd. Zahoor*, I.L.R. (2001) M.P. 266

-Section 482 and 319 – Power of Magistrate to add a new person as an accused, when can be exercised – The word ‘evidence’ in – Meaning of – Inherent powers of High Court under section 482, Criminal Procedure Code – When to be exercised – Criminal Law – Object of indicated : *A.P. Shrivastava Vs. State of M.P.*, I.L.R. (1990) M.P. 122,

-Sections 482, 319, 397 and 401 – Arraigning petitioner as accused during proceedings – Penal Code, Indian, 1860 – Sections 34, 307, 323, 325 and 327 – Name included in F.I.R. but investigating officer left name in charge-sheet – Examination of complainant in progress – It is not necessary for Court to wait till entire evidence is collected for arraigning accused – No interference in Trial Court order called for : *Shiv Prasad Tiwari Vs. Jagdish Prasad Patel*, I.L.R. (2001) M.P. 1935 (D.B.)

- Sections 482, 320(2) and 320(9) – Inherent power of High Court – Constitution of Indian, Article 142 and Penal Code, Indian, 1860 – Sections 406, 498-A – Offences alleged under – Application for permission to compromise – Rejection by Trial Magistrate – High Court Rules and Orders, Rule – Reference to larger bench – In view of express statutory bar under Section 320(9), Cr.P.C., High Court in exercise of inherent powers cannot grant such permission to compromise a non-compoundable offence what can be permitted by the Supreme Court in plenary jurisdiction under Article 142 of Constitution of India : *Deepak Dewar Vs. State*, I.L.R. (2001) M.P. 1269 (D.B.)

- Section 482, 320(2) -Inherent jurisdiction of High Court – If an offence is non-compoundable-High Court cannot grant permission for compounding : *Rajkumar Vs. State of M.P.*, I.L.R. (1999) M.P. 402

-Sections 482, 321, 397 - and Penal Code Indian, 1860–Sections 34, 294, 341, 506(2)–Withdrawal of prosecution–Even of Government direct public prosecutor to withdraw prosecution the Court must consider of withdrawal would advance cause of justice–Case about to be over should out have been alleged to be withdraw on ground of pending for over seven years : *Rahul Agarwal Vs. Rakesh Jain*, I.L.R. (2005) M.P. 91 (SC) (D.B.)

- **Sections 482, 362** – Review – Appeal filed by several accused persons partly allowed by High Court and persons armed with lathis and sticks acquitted – Six persons were armed with lathis and Sticks but in judgment only five persons were acquitted – Applicant Babulal was also armed with lathi but by mistake was not acquitted – Babulal filed application under Section 362 of Criminal Procedure Code for correction of clerical error – Court has no jurisdiction to review the judgment once it is pronounced – Power under section 482 of Criminal Procedure Code cannot be invoked for review – Applicant not seeking review but correction of clerical mistake as number of persons holding lathis or sticks were six and not five – Application falls under Section 362 of Criminal Procedure Code as the mistake was clerical and the Court never intended to convict the applicant – Application allowed and applicant acquitted. : *Munshi Singh Vs. State of M.P. I.L.R. (1993) M.P. 342 (D.B.)*

- **Sections 482 and 362** – Accused acquitted by the trial Court but convicted by the appellate Court – No opportunity of pre-sentence hearing by appellate Court – Judgment vitiating the sentence-Bar under Section 362 of the Code is not sufficient to prohibit the Court from doing justice exercising the powers under section 482 : *Narayansingh Vs. State of M.P., I.L.R. (1991) M.P. 58 (D.B.)*

-**Section 482, 362 and 393** – Exercise of inherent powers by High Court to correct this error – No bar – High Court set aside the sentence and after hearing accused passed fresh sentence after taking into consideration fact of compromise into account even though offence is non-compoundable: *Haji Abdul Rehman Vs. Ashok Kumar, I.L.R. (1988) M.P. 287*

-**Sections 482, 374(2), and 389** - and Panchayat Raj Adhiniyam, MP, 1993 (I of 1994) – Section 41-A – Conviction of Panch rendering him disqualified to hold office in the Panchayat – Relying on apex Court judgment – High Court in appeal suspending conviction in exercise of powers under Sections 389 and 482 of the Criminal Procedure Code – Effect – Conviction having been suspended the incumbent would not incur any disqualification under the Act of 1993 : *Jamuna Prasad Jaisani Vs. Smt. Shikha Dubey, Collector, Harda, I.L.R. (2001) M.P. 1286*

- **Sections 482, 397, 401,** - Penal Code Indian, 1860, Section 500 - Revision - Trial before Magistrate - Evidence - Cross-examination - Question disallowed on ground of irrelevancies - Inherent powers cannot be exercised to defeat bar under Section 397(2) Cr.P.C.: *Sunderlal Patwa Vs. Shri Digvijay , I.L.R. (2002) M.P. 748,*

- **Section 482 and 427 (1)** – High Court under inherent powers can order subsequent sentence to run concurrently with earlier sentence even in appropriate cases: *Sher Singh Vs. State of M.P., I.L.R. (1989) M.P. 1 (F.B.)*

- **Sections 482 and 427(2)**-Subsequent sentence to run concurrently with previous sentence-Previous sentence completed and applicant not undergoing jail sentence in any case on the date of application-Question of giving benefit of section 427(2) Cr.P.C. does not arise: *Ajit @ Bhuriya Vs. The State of M.P., I.L.R. (2002) M.P.1045*

- **Sections 482, 428** – Period of detention during investigation or trial should be set off against the term of imprisonment : *Mehmood Khan Vs. State of M.P., I.L.R. (1988) M.P. 531 (D.B.)*

- **Section 482, 446-A and 483** – Default in appearance on one day – Bail bonds forfeited and warrant of arrest directed to be issued – One of the accused appeared and filed application for condonation of absence – Hearing on application was deferred by Magistrate for two days and accused was sent to jail – Held – In the matter of default of appearance several factors must engage attention – Process should not operate as a weapon of oppression – There has to be harmony between law and justice – Proceedings before Trial Court fail to answer the need of postponing the consideration of application – In exercise of powers under Sections 482 and 483 of Criminal Procedure Code – High Court can issue appropriate directions of subordinate Court – Remaining accused directed to surrender before Trial Court and their applications for their release shall be considered on the same day : *Mukesh Vs. State of M.P., I.L.R. (1993) M.P. 346*

-**Sections 482 and 469**–Rejection of complaint on ground of delay–Penal Code, Indian, 1860–Sections 405, 406–Criminal breach of trust–Constituent–Refusal on demand–Refusal may be even by conduct–Limitation would start from the date of refusal–Complaint filed within four months of refusal to receive the notice of complainant–Complaint well within limitation. : *Kamlabai Vs. Manoharlal, I.L.R. (1992) M.P. 816*

- **Section 483, 446-A and 482** – Default in appearance on one day – Bail bonds forfeited and warrant of arrest directed to be issued – One of the accused appeared and filed application for condonation of absence – Hearing on application was deferred by Magistrate for two days and accused was sent to jail – Held – In the matter of default of appearance several factors must engage attention – Process should not operate as a weapon of oppression – There has to be harmony between law and justice – Proceedings before Trial Court fail to answer the need of postponing the consideration of application – In exercise of powers under Sections 482 and 483 of Criminal Procedure Code – High Court can issue appropriate directions of subordinate Court – Remaining accused directed to surrender before Trial Court and their applications for their release shall be considered on the same day. : *Mukesh Vs. State Of M.P., I.L.R. (1993) M.P. 346*

- **Section 484 (2) (a)** - and Criminal Procedure Code (V of 1898), Section 488 - Maintenance - Right to claim - Not available to divorced wife under the Code of 1898

- Petitioner claiming maintenance filed under the Code of 1898 has to be decided according to the provisions of the Code of 1898 only even after its repeal by the Code of 1973 - Construction of Statute - Cardinal Principles of - Statute prospective in operation unless expressly or by necessary implication made retrospective : *Mohammad Jalil Khan Vs. Anwari Begun, I.L.R. (1983) M.P. 342*

- **Sections 501, 120-B, 197 and 500**—Penal Code Indian—Petitioner is an Officer of Union of India—Taking cognizance without prior sanction of Central Govt.—Improper—Proceedings quashed in so far as it relates to petitioner : *Dr. Kalyan Chakravarthy Vs. D.N. Agrawal, I.L.R. (2004) M.P. 707*

Criminal Procedure Code (Amendment Act) (26 of 1955)

- **Section 116 (a) and concluding part of section 116**—Distinction between eligibility for conferral of powers under section 30 and exercise of those powers - Provision deals with exercise of the powers under section 30—Interpretation of statute—Repeal—Effect - Powers conferred under repealed section 30, Criminal Procedure Code remain unaffected and can be exercised in proceedings commenced after the amended Act came into force : *The State of Madhya Pradesh Vs. Kadore, I.L.R (1959) M.P.467*

Criminal Proceeding

- Starts when magistrate who can deal with matter has seisin of the cause and not necessarily when either committal proceedings start or accused is committed to Sessions—Contempt of Courts Act—Section 3(1)—Prejudicing mankind in favour of or against a party amounts to contempt -Protection afforded when an effective step in pro-secution of the case is taken—In civil matter step begins when notice is given—In Criminal case step in prosecution of case begins when complaint or first information is filed or made—To attract jurisdiction in contempt proceedings—Not necessary that committal proceedings must have been instituted—Criminal proceedings deemed to be pending when arrested person produced before magistrate—Magistrate having reason for directing investigation—Cause must be held to be pending in Court—Knowledge of pendency of a cause—Not a condition for incurring liability for contempt—Publication In good faith immaterial—Test to be applied is whether it is calculated or likely to interfere with course of justice -Concept of “Mens rea” not to be imported in criminal contempt—Determination of question of guilt for contempt—Bonafides of writer or publisher not material - In case of liberty of citizen freedom of press has no precedence—Contempt jurisdiction to be exercised when there is serious interference with justice -Apology to be tendered must be before arguments begin—Circumstances when it can be useful : *Smt. Padmavati Devi Bhargava Vs. Shri R. K. Karanjia, I.L.R. (1963) M.P.952*

Criminal Trial

- Appointment of one Judicial Magistrate for more than one District for trial of cases instituted by Special Police Establishment of the Central Government - Judicial Magistrates trying those cases at their headquarters although offences were committed within the territorial jurisdiction of other Sessions Division - Appeal would lie before the Sessions Judge in respect of offences committed within their respective territorial jurisdiction : *State of M. P. Vs. K. C. Verma I.L.R. (1980) M.P. 175 (D.B.)*

- Appointment of defence counsel – Court should see that the accused are properly defended – Pauper counsel Should be given proper time for preparation of the case: *Thilokchand Vs. State of M.P., I.L.R. (1991) M.P. 238 (D.B.)*

-Accused pointing out place where dead body was-Action not sufficient to hold that accused had thrown the dead body : *Dadulla Vs. The State of M.P., I.L.R. (1961) M.P. 1032*

-Circumstance in which the word “discharge” can be read as “acquittal” : *Nagar Palika Office, Bhandar Vs. Rajendra Singh Senger, I.L.R. (1973) M.P. 162 (D.B.)*

-Circumstances in which the order of conviction or acquittal will be void in a summons case : *Nagar Palika Office, Bhandar Vs. Rajendra Singh Senger, I.L.R. (1973) M.P., 162 (D.B.)*

-Criminal responsibility essentially personal in character-Occasional cases where persons are liable to be convicted even without they being of guilty mind for the offence committed by others : *The State of M.P. Vs. Ramcharan, I.L.R. (1968) M.P. 486 (D.B.)*

-Confession-Confession accompanied by recovery of article-Sufficient basis for conviction : *Kishori Vs. State of Madhya Pradesh , I.L.R. (1973) M.P., 1097 (D.B.)*

- Duty of prosecution – Fair enough to produce all evidence collected during investigation – Material evidence, DD of wife and injury report of husband withhold by prosecution – Such method depreciated. : *Lallusingh Vs. State of M.P., I.L.R. (1996) M.P. 162 (D.B.)*

- Death of complainant - Criminal Proceedings not terminated - Exception : *Prayagdutt Tiwari Vs. Gajadhar Prasad Tiwari I.L.R. (1978) M.P. 686 (D.B.)*

- Difference between “preparation” and “attempt”- Criminal Procedure Code-Section 238(2a)- recorded for attempt to commit offence-Adverse inference-

Incriminating facts and circumstances established- Accused offering no explanation or giving a false statement- Adverse inference can be drawn against him-Penal code, Indian-Section 511-Words “attempt” and “preparation” in-distinction between : *State of Madhya Pradesh Vs. Murat Singh*, I.L.R. (1974) M.P. 990 (D.B.).

-Evidence-Chance witness-Not necessarily a false witness-Penal Code, Indian-Section 441-Mere entry even by bona fide claimant-Not a criminal trespass unless accompanied by criminal intent-Penal Code, Indian-Right of private defence ends where victim leaves the place and fled for safety : *Lalman Vs. State of Madhya Pradesh*, I.L.R. (1973) M.P., 519 (D.B.).

- Evidence Act, Indian 1872, Section 3, and Penal Code, Indian 1860, Section 302-Murder-Prosecution-Appreciation of evidence-Blind murder-Eye witnesses-Long standing enmity of two eye-witnesses with the family of accused-Not assigning any convincing reason for being at the place of incident at that abnormal hour of the day in full summer-Grave doubt on their presence on the spot so as to witness the incident-Conviction on the testimony of said witnesses-Cannot be sustained-Conviction set aside : Having examined the testimony of defence witness, four in number, originating from the residents of the village, we are of the opinion that the same cannot just be thrown overboard. Be that as it may, as we entertain grave doubt on the presence of the two eye witnesses at the place of the incident so as to have witnessed the incident, the conviction of the two accused appellants, which rests on the testimony of the two witnesses cannot be sustained: *Baldev Singh Vs. State of M.P.*, I.L.R. (2003) M.P. 571(SC) (D.B.)

-Evidence-Small difference and variation about small matter-A matter of little consequence-Indicative of the fact about witness speaking the truth : *The State Vs. Hukuma* I.L.R. (1968) M.P. 972 (D.B.)

-Evidence-Statement of accused-Part of it can be relied upon to corroborate prosecution evidence- Identification-Evidence regarding identification not to be struck down as inadmissible because of absence of police officer-Indian Penal Code-Section 201-Requirements of-Indian Penal Code-Section 392-Word “Person” in-Not to be narrowly construed so as to exclude dead body of human being who was killed : *Jamnadas Vs. The State of Madhya Pradesh*, I.L.R. (1963) M.P. 730 (D.B.)

- Evidence- Identifying witness- Identification evidence-Nature of-Circumstances to be taken into consideration in judging observation of identifying witness-Caution to be taken in accepting or rejecting it : *The State of Madhya Pradesh Vs. Manka*, I.L.R. (1959) M.P.590 (D.B.)

-Evidence-Circumstantial evidence for conviction of an accused-Nature of : *Mst. Piyajo Vs. The State*, I.L.R. (1957) M.P. 142 (D.B.)

-Evidence-Circumstances consistent with guilt of the accused and incompatible with his innocence-Accused can be convicted on these circumstances : *Ramu Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 139, (D.B.)*

-Evidence-Nature of corroboration needed for acceptance of testimony of a witness-Constitution of India-Article 220-Detention of person against his will for more than 24 hours without being produced before Magistrate-Amounts to illegal detention-Officer detaining a person-Liable for offence under Indian Penal Code : *Ramdhani Vs. The State of M.P., I.L.R. (1974) M.P. 841*

-Evidence-Testimony of child-Not in admissible-Prudence requires that there should be corroboration-Practice-Criminal trial-Grave suspicion not sufficient to base a conviction : *Dilli Vs. State, I.L.R. (1974) M.P. 831 (D.B.).*

- Evidence regarding motive is irrelevant - Evidence Act, Indian - Section 32 (1) - Statement - regarding cause of death or any circumstance resulting in death - Admissibility - Words, "circumstances of the transaction which resulted in his death" in - Meaning of - Distinction between circumstantial evidence and circumstances of the transaction - Criminal Trial - Motive - Can be considered along with rest of evidence - Cannot be basis of conviction : *Onkar Vs. State of Madhya Pradesh, I.L.R. (1977) M.P. 246 (D.B.)*

- Evidence - First information report recorded during course of investigation - Not admissible in evidence - Penal Code, Indian - Section 302 - Accused knowing the dead body being concealed - Not sufficient to sustain conviction : *Mangusingh Vs. State of Madhya Pradesh, I.L.R. (1977) M.P. 73*

- Forum of appeal - Jurisdiction - Appointment of one Judicial Magistrate for more than one District for trial of cases instituted by Special Police Establishment of the Central Government - Judicial Magistrates trying those cases at their headquarters although offences were committed within the territorial jurisdiction of other Sessions Divisions - Appeal would lie before the Sessions Judge in respect of offences committed within their respective territorial jurisdiction - Trial of cases in wrong Sessions Division. Sub-Division or local area - Findings, sentence or order not vitiated on that ground unless it occasions failure of justice - Objection to Jurisdiction must be raised during trial : *State of M. P. Vs. K. C. Verma, I.L.R. (1980) M.P. 175 (D.B.)*

- Identification Parade – Necessary when accused totally unknown by face or name – Evidence – Non-examination of one important witness must not necessarily result in rejecting the testimony of other witness: *State of M.P. Vs. Jahaval, I.L.R. (1991) M.P. 44 (D.B.)*

- Identification parade- Where necessary- Penal code, Indian- Section 416-Giving out fictitious name also amounts to personation- Essentials necessary for constituting offence- Section 415-Deception by itself does not amount to cheating unless person

cheated induced to do any act specified in the Section : *State of Madhya Pradesh Vs. Padam Singh I.L.R. (1975) M.P. 1087 (D.B.)*.

– **In absence of substantive evidence, corroborative evidence cannot be made basis of conviction** : *Lallusingh Vs. State of M.P., I.L.R. (1996) M.P. 162 R.D. Shukla (D.B.)*

-Investigation-Not divisible into different compartments : *Kishori Vs. State of Madhya Pradesh , I.L.R. (1973) M.P., 1097 (D.B.)*

Irregularities -Conviction not liable to be set aside because of mention of wrong provision provided facts mentioned constitute offence under another provision-Penal Code, Indian, Section 482 and Trade and Merchandise Marks Act. 1958-Section 78-Falsely applying trade mark constitutes an offence-Criminal Procedure Code-Section 535-Not confined to cases where no charge is framed-Applies to a case of omission to frame a charge of which accused may be convicted-Criminal Procedure Code-Provides for curing all irregularities provided prejudice not caused to accused-Test for finding out immitation and infringement of Trade-mark : *Hariprasad Vs. Nanoo Khan, I.L.R. (1971) M.P. 139. (D.B.)*

– **Motive** – Not incumbent on the prosecution to prove – At times it is indicated to heighten the probability – circumstantial evidence – Must prove a chain of which no link is missing : *Papoo Vs. State of M.P., I.L.R. (1991) M.P. 474 (D.B.)*

- **Motive** - Can be considered along with rest of evidence - Cannot be basis of conviction : *Onkar Vs. State of Madhya Pradesh, I.L.R. (1977) M.P. 246 (D.B.)*

-Motive when becomes relevant : *Surajpal Singh Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 708 (D.B.)*.

- **Maxim “actio personalis moritur cum persona”** - Not applicable to criminal prosecution - Succession Act, Indian - Section 306 - Not applicable to criminal prosecution - Criminal Trial - Death of complainant - Criminal proceedings not terminated - Exception - Criminal Procedure Code - Section 417 (3) - Leave petition pending - Complainant dying - His heir can prosecute appeal after obtaining leave - Penal Code, Indian - Section 506 - Implication about character made in good faith to protect interest of person making it or any of the person for public good - Imputation does not amount to offence-Section 499 - Exception 9 - Imputation made after enquiry with due care and attention - Person making imputation is protected : *Prayagadutt Tiwari Vs. Gajadhar Prasad Tiwari I.L.R. (1978) M.P. 686 (D.B.)*

-Non-examination of accused regarding piece of evidence filed after his first examination-Amounts to irregularity which is curable : *State of M.P. Vs. Gangabai, I.L.R. (1969) M.P. 1014 (D.B.)*

- Principle of falsus in uno falsus in omnibus - Applicability of : *Nannusingh Vs. State of Madhya Pradesh I.L.R. (1984) M.P. 443*

-Practice-No adverse inference for non -examination of witness who does not help in unfolding prosecution story : *State of M.P. Vs. Babulal, I.L.R. [1960] M.P. 1069*

- Prosecution withhold the evidence – DD of wife and injury report of husband – Accused can use such document in defence, despite absence of formal proof. : *Lallusingh Vs. State of M.P., I.L.R. (1996) M.P. 162 (D.B.)*

-Punishment-Offence imposing penalty of sentence and fine- Imposition of fine how to be determined-Evidence Act-Section 9-Fact of failure or fact of ability to identify-Are facts admissible in evidence-Identification-Not necessary that it shall be conducted by particular person or class of persons-Evidence Act-Section 9-Evidence of person holding identification- Admissibility – Magistrate holding identification - Empowered to record statements under section 164, Criminal Procedure Code-Condition to be fulfilled to make statements admissible-Criminal Procedure Code-Section 164-Does not refer to anything done by persons other than Magistrate-Does not imply statements which fact of identification involves-Does not refer to things done by Magistrate who was not acting in the official capacity-Exception to the section-Admissibility of statements of identification of witnesses -Circumstance in which evidence of Magistrate recording statement is admissible-Principle for exclusion of Police from identification parade : *Narayan Singh Vs. The State, I.L.R. (1968) M.P. 117 (D.B.)*

-Plea-Plea of self defence not raised by accused in lower Courts-Appellate Court can consider the plea-Evidence Act-Section 105-Burden of proof on prosecution to prove guilt-Accu-sed pleading exception-Nature of proof required--Burden how can be discharged : *Bala Prasad Vs. The State of Madhya Pradesh, I.L.R. (1961) M.P. 149 (D.B.)*

-Practice-Appreciation of evidence-Penal Code, Indian-Section 304-A-Ingredients of-Case not falling under section 304-A-Accused may be guilty of any other offence under Indian Penal Code or by any special enactment-Criminal liability-Case of contributory negligence not relevant-Penal Code, Indian-Section 287-Requirements of : *Jiwanlal Vs. Devi Luhar, I.L.R.(1972) M.P. 766 (D.B.)*

- Standard of proof-Suspicion however strong can not take place of proof : *Motilal Vs. State of M. P., I.L.R. (1998) M.P. 793*

- Sentence - Principles of awarding the same : *Munnalal Vs. State of M.P., I.L.R. (1978) M.P. 973*

- Trial of cases in wrong Sessions Division, Sub-Division or local area - Findings, Sentence or order not vitiated on that ground unless it occasions failure of justice : *State of M. P. Vs. K. C. Verma, I.L.R. (1980) M.P. 175 (D.B.)*

-Two views possible on evidence-Duty of magistrate to commit accused to sessions for trial : *Randhir Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 321*

Withdrawal of appeal- Contains no specific provision for withdrawal or refusal to withdraw appeal : *State of Madhya Pradesh Vs. Mooratsingh I.L.R. (1976) M.P. 962 (D.B.)*

Cross-objection

-objection-Maintainability in appeal against an appellate order : *Beniprasad Bijayakumar Vs. Lever Brothers (I) Ltd., I.L.R. (1957) M.P. 160*

Crown Grants Act (XV of 1895)

-Section 3-Does not have effect to the extent modified by Revocation Act - Distinction between proprietor's right to recover dues from under tenure and the right of State to re-cover revenue from proprietor : *State of M.P. Vs. Laxmi Prasad, I.L.R. (1959) M.P. 755 (D.B.)*

Custom

- Pleading and proof of : *Ramdas Vs. Vaishnavdas, I.L.R. (1983) M.P. 89, (D.B.)*

- Family custom - Burden of proof - Things which should be considered for finding out whether custom is proved - Solitary instance of recent date - Not sufficient - Deed - Interpretation of - Words clear, certain and unambiguous - Should be interpreted in their plain ordinary grammatical meaning - Extrinsic evidence when admissible - Maintenance grant ceases with the life of grantee - Presumption rebuttable - Hindu Succession Act, 1956 - Section 14 (2) - Property held under grant - Property is acquired under an instrument - Nature of estate to be determined in terms of grant - Grant giving restricted estate - The estate cannot be enlarged : *H. H. Maharaja Devendra Singh Ju Deo Vs. The State of M. P. I.L.R. (1978) M.P. 362 (D.B.)*

Customs Act (LII of 1962)

- Section 58 - Petitioner Company was granted a licence for having a private warehouse at Kymore for storing asbestos fibre - Licence renewed upto 31-12-1982- Assistant Collector gave notice to the Petitioner - Company intimating cancellation of Licence after two months and directing it to warehouse its goods in custom bonded warehouse at Bhopal - Action of Assistant Collector based on misconstruction of statute

and the policy and not based on correct principles - Action cannot be upheld - Notice quashed and directions to consider the renewal of licence in accordance with law given : *Asbestos Cement Limited, Kymore Vs. Union of India, I.L.R. (1983) M.P. 542, (D.B.)*

- **Section 58** - Licensing of private warehouses- When can be refused - Policy statement contained in the TRADE NOTICE dated 1st August, 1980 - Proper implementation of - Interpretation of Statute - Exercise of statutory discretion by the authorities - Guiding principles of - Opportunity to make submissions must be given - Petitioner Company was granted a licence for having a private bounded warehouse at Kymore for storing asbestos fibre - Licence renewed upto 31-12-1982 - Assistant Collector gave notice to the Petitioner - Company intimating cancellation of licence after two months and directing to warehouse its goods in custom bonded warehouse at Bhopal - Action of Assistant Collector based on misconstruction of statute and the policy and not based on correct principles - Action cannot be upheld - Notice quashed and direction to consider the renewal of licence in according with law given : *Asbestos Cement Limited, Kymore Vs. Union of India, I.L.R. (1983) M.P. 542, (D.B.)*

Cycle Rickshaw (Anugyaptiyon Ka Vinियaman) Adhiniyam, M.P. (XXXVI of 1984)

- **Section 4 read with Municipal Corporation Act**, - M.P. (XXIII of 1956), Section 427, item 43(a) Municipalities Act, M.P. (XXXVII of 1961), Section 358, Item 7 and Constitution of India, Article 19(g), Seventh Schedule List II, Entry 5 – Section 4 of Adhiniyam not ultra vires-State legislature competence to enact the Adhiniyam : *Rickshaw Malik Sangh, Jabalpur Vs. State of MP, I.L.R. (1989) M.P. 531 (D.B.)*

Dakaiti And Vyapaharan Prabhavit Kshetra Adhiniyam, M.P. (XXXVI OF 1981)

- **Exercise of powers by the District Magistrate under the Adhiniyam**- Requirements of-Rational and intelligible nexus between reasons and belief necessary : *Gorelal Gupta Vs. State of M.P., I.L.R. (1984) M.P. 305 (D.B.)*

- **Property acquired through the commission of specified offences in the affected area prior to the enactment of the Adhiniyam also fall within the mischief of the Adhiniyam** : *Gorelal Gupta Vs. State of M.P., I.L.R. (1984) M.P. 305 (D.B.)*

-**Sections 4-A and 5(2)**, - Proviso and Criminal Procedure Code, 1973 (II of 1974), Section 167(2), Proviso-Arrest of the accused on suspicion of having committed a specified offence under the Adhiniyam-Provisions of sections 4-A and 5(2) of the Adhiniyam applicable and not the provision of section 167(2)-Accused not entitled to be released on bail at the expiry of 90 days by force of proviso to section 167(2) of the Code-Accused when entitled to be released on bail within 120 days-Magistrate not

forwarding the accused to special Court and continued granting remands after the period of 90 days-Detention of the accused not illegal-Accused not entitled to be released on bail on that ground : *Dildar Singh Vs. State of M.P., I.L.R. (1984) M.P. 415*

-Section 14-Provides guidelines for exercises of powers of District magistrate : *Gorelal Gupta Vs. State of M.P., I.L.R. (1984) M.P. 305 (D.B.)*

-Section 14-Does not give arbitrary or naked powers to the District Magistrate : *Gorelal Gupta Vs. State of M.P., I.L.R. (1984) M.P. 305 (D.B.)*

-Section 14-District Magistrate attaching the property of the petitioner without strict compliance of the requirements of Section 14 of the Adhiniyam-Order *ultra vires* and illegal-Liable to be quashed : *Gorelal Gupta Vs. State of M.P., I.L.R. (1984) M.P. 305 (D.B.)*

-Section 14 - and Constitution of India, Article 14-Provisions of the Adhiniyam are not discriminatory-Section 14 of the Adhiniyam does not give arbitrary or naked powers to the District Magistrate-Provides guidelines for exercise of power of District Magistrate-Property acquired through the commission of specified offences in the affected area prior to the enactment of the Adhiniyam also fall within the mischief of the Adhiniyam-Exercise of powers by the District Magistrate under the Adhiniyam-Requirements of –Rational and intelligible nexus between reasons and belief necessary –District Magistrate attaching the property of the petitioner without strict compliance of the requirements of Section 14 of the Adhiniyam-Order *ultra vires and illegal*-Liable to be quashed-Remedial Statute has to be given widest operation according to its language: *Gorelal Gupta Vs. State of M.P., I.L.R. (1984) M.P. 305 (D.B.)*

Dakaiti Prabhavit Kshetra Adhyadesh, M.P., 1981

-Section 2(b)-The word ‘dacoit’ in- Explanation of : *Gulab Chand Vs. State of M.P., I.L.R. (1982) M.P. 919 (F.B.)*

-Section 2(b) - and Penal Code, India(XLV of 1860) Section 391-The word ‘dacoity’ has to be understood as defined in section 391, Indian Penal Code-Dacoity affected area-Commission of offence of dacoity within- Not necessary : *Gulab Chand Vs. State of M.P., I.L.R. (1982) M.P. 919 (F.B.)*

-Section 2(f)-The term “specified offence” in-Meaning of: *Gulab Chand Vs. State of M.P., I.L.R. (1982) M.P. 919 (F.B.)*

-Section 2(f)-Act constituting offence mentioned in schedule must have an nexus with the commission of dacoity to become specified offence : *Gulab Chand Vs. State of M.P.* , I.L.R. (1982) M.P. 919 (F.B.)

-Section 5(2) - and Criminal Procedure Code, 1973 (II of 1974), Sections 41(1)(a) and 167-Arrest and detention under the Ordinance-Legality of- Right to be released on bail-Extent of : *Gulab Chand Vs. State of M.P.* , I.L.R. (1982) M.P. 919 (F.B.)

Damages

– Damages for accident – Principle adopted for awarding damages : *The “AD HOC” Committee The Indian Insurance Companies Association Pool, Bombay Vs. Smt. Radhabai*, I.L.R. (1977) M.P. 61 (D.B.)

– Kinds of damages – What are special damages and general damages : *Bhairodin Vs. Phulchand*, I.L.R. (1967) M.P. 590

– Measure of damages : *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha*, I.L.R. (1970) M.P. 462 (D.B.)

- Principles – Principles on which they are to be assessed : *Madhya Pradesh State Road Transport Corporation, Bairagarh Vs. Sudhakar*, I.L.R. (1969) M.P. 631 (D.B.)

-Interference – Appellate Court, When can : *Indian Trade and General Insurance Co. Ltd., Bombay Vs. Madhukar Bhagade*, I.L.R. (1968) M.P. 281 (D.B.)

- Assessment of damages discretionary matter – Interference by appellate Court : *Kumari Deepti Tiwari Vs. Seth Banwarilal*, I.L.R. (1968) M.P. 428 (D.B.)

– Damages for loss of pleasure – Personal circumstances of plaintiff to form background of assessment – Consideration which must be taken into account in applying Principles : *Kumari Deepti Tiwari Vs. Seth Banwarilal*, I.L.R. (1968) M.P. 428 (D.B.)

– General Damages – Determination of general damages – Two questions to be considered – General damages not determinable with exactitude : *Kumari Deepti Tiwari Vs. Seth Banwarilal*, I.L.R. (1968) M.P. 428 (D.B.)

– Injury to person or reputation – Things to be considered in – Assessment of Damages : *Hazari Lal Vs. Lachhman*, I.L.R. (1960) M.P. 117 (D.B.)

– **Trespasser making improvement** – Not entitled to compensation for ejectment : *Dagdulal Vs. The Municipal Committee, Burhanpur, I.L.R. (1960) MP 82 (D.B.)*

– **Items** – Items of loss and injury to be ascertained for grant of general damages : *Indian Trade and General Insurance Co. Ltd., Bombay Vs. Madhukar Bhagade, I.L.R. (1968) M.P. 281 (D.B.)*

– **Discretion** – Tribunal exercising discretion in matter of grant of general damages – Discretion not shown to be arbitrary – No interference by appellate Court : *Indian Trade and General Insurance Co. Ltd., Bombay Vs. Madhukar Bhagade, I.L.R. (1968) M.P. 281 (D.B.)*

– **Damages for tort** – Allowed as compensation and not by way of restoration or restitution – Tort to person – Measure of damages : *Union of India Vs. Bhagwatiprasad, I.L.R. (1957) M.P. 43 (D.B.)*

– **Death of daughter-in-law** – Damages can be awarded : *M.P. State Road Transport Corporation Vs. Vishambhardayal Agrawal, I.L.R. (1987) M.P. 114*

– **Gratuitous services rendered by female members of the family** – Loss of Damages can be claimed : *M.P. State Road Transport Corporation Vs. Vishambhardayal Agrawal, I.L.R. (1987) M.P. 114*

– **Suit for damages against owner for accident by car** – Presumption that driver is agent of owner – Presumption that car used for owner's purpose – Presumption rebuttable : *Gyarsilal Vs. Pt. Sitacharan Dubey, I.L.R. (1964) M.P. 91 (D.B.)*

– **Failure of defendant to issue release order for lifting paddy** – Not entitled to storage charges or interest : *The Food Corporation of India, Bhopal Vs. M/s. Ramgopal Rambilas, Durg, I.L.R. (1990) M.P. 265*

– **Contract not providing for any precise amount of damages is case of its breach** – No proof of actual loss of damage – Adjustment or forfeiture of amount of security deposit not permissible : *The Food Corporation of India, Bhopal Vs. M/s. Ramgopal Rambilas, Durg, I.L.R. (1990) M.P. 265*

– **Measure of** – Agreement to sell for certain amount stipulating damages of exorbitant amount in case of breach – Stipulation is by way of penalty and not liquidated damages – Proof of actual damages suffered necessary : *Sardar Gurbax Singh Gorwara Vs. Smt. Begum Rafiya Khurshid I.L.R. (1981) M.P. 127 (D.B.)*

– **Death due to Truck dashing against the deceased** – Suit for damages – Burden to prove negligence on person suing – Direct evidence not necessary – Can be inferred from circumstances – Burden shifts on defendants to prove accident or contributory negligence : *Sadaram Vs. Sobharam, I.L.R. (1961) M.P. 90 (D.B.)*

– **Measure of** – Date on the basis of which damages are to be assessed – Cause of action – Does not become inchoate because further efforts made to avoid litigation : *Radheshyam Vs. Jagat Narain, I.L.R. (1962) M.P. 404 (D.B.)*

– **Absence of evidence regarding market rate on the date of delivery at the destination station** – Damages on the basis of price of goods and transportation charges can be granted – Not entitled to excess duty on goods used as Damaged : *The Union of India, Ministry of Railways, New Delhi, Vs. Messrs Allauddin Aulia Sahib, I.L.R. (1962) M.P. 697 (D.B.)*

– **Action for damages based on deceit** – Proof of fraud resulting in actual damages necessary – Measure of damages is price paid by person under inducement for shares which had no value when bought : *Shri S. Chatterjee Vs. Dr. K.L. Bhawe, I.L.R. (1960) M.P. 265 (D.B.)*

– **Person dissuading a servant from performing a Contract contrary to public policy** – Suit for damages against such person – Maintainability : *Sitaram Vs. Baldeo, I.L.R. (1957) M.P. 645*

– **Sentimental damages not to be granted unless financial damages suffered** – Damages – Assessment of – Age of the deceased and their expectation of life to be considered : *Kalloolal Vs. Hemchand, I.L.R. (1957) M.P. 275 (D.B.)*

– **Tortious liability for** – When arises – Artificial channels for flow of water – Right of owner of upper land to overflow water into the lower land – Mode of acquisition – Owner of lower land putting embankment in his land and thereby preventing overflow of water from upper land – Resulting damage to crops in upper land – Owner of upper land not pleading or proving acquisition of right to flow of water from his land into the lower land for further draining it out – Not entitled to claim damages from owner of lower land : *Chandrabhan Singh Vs. Shital Prasad, I.L.R. (1983) M.P. 447*

– **Liability for illegal detention** – Petitioner convicted of two offences and sentence on each count was to run concurrently – However, warrant issued by Additional Sessions Judge omitted to mention that sentence was to run concurrently – Petitioner kept in detention for more than the period of sentence – Superintendent, Central Jail and State not liable for damages for illegal detention – Judicial Officers Protection Act, 1850 – Section 1 and Criminal Procedure Code, 1973 – Section 425 – Additional Sessions Judge while issuing warrant under section 425 performed his judicial function protected under section 1 of the Act – Not liable for damages for illegal detention : *Hamid Raza Vs. Superintendent, Central Jail, Rewa, I.L.R. (1984) M.P. 557 (D.B.)*

Debt Conciliation Act, C.P. and Berar (II of 1933)

– **Section 2(e)** – Decree for mesne profits – Amounts to debt – Evidence Act, Section 114 – Order for issue of certificate – Presumption that it must have been carried out – Evidence Act, Section 148 – Admission by party – Stands on different

footing than the admission of a witness – Not necessary to put admission to a party – Party's duty to explain admission – Debt conciliation Act, Section 21 – Provision peremptory – Execution is barred – Execution – Covers whole period from filing execution till dismissal of application for any reason – Debt Conciliation Act, Section 23 – Word “proceedings” in – Cannot be deemed to continue till amounts under agreements are recovered or certificate under section 13(4) – issued – Limitation Act, Section 15 – Applicability of – Whole period during which prohibition operated against decree-holder liable to be excluded : *Choudhari Raja Bhaiya Vs. Choudhri Daulat Singh, I.L.R. (1962) M.P. 246 (D.B.)*

– **Section 21** – Provision peremptory – Execution is barred – Execution – Covers whole period from filing execution till dismissal of application for any reason : *Choudhari Raja Bhaiya Vs. Choudhari Daulat Singh, I.L.R. (1962) M.P. 246 (D.B.)*

– **Section 23** – Word “Proceedings” in – Cannot be deemed to continue till amounts under agreements are recovered or certificate under section 13(4) issued : *Choudhari Raja Bhaiya Vs. Choudhari Daulat Singh, I.L.R. (1962) M.P. 246 (D.B.)*

Debtor and Creditor

– **Creditor showing price of goods sold on behalf of constituent as cash received** – The relationship of creditor and debtor does not come into existence – M.P. Moneylenders Act, 1934 – Section 2 – Definition of loan – To be read in the background of legal concept of loan – Every debt is not a loan – Concept of debt wider than loan – Loan contemplates actual advance whether of money or in kind in context – Transaction creating different relationship – Is not included in loan – Unpaid price of goods remaining with seller of goods who agrees to pay interest – Does not amount to loan – Section 2 – Word ‘money-lender’ in – Definition of – Words “in the regular course of business” in – Signify certain degree of system and continuity – Stamp Act – Section 29 – Imposes duty on executor to supply proper stamp – Section 44(1) – Stamp duty and penalty recovered from creditor – Creditor entitled to recover from debtor – Hindu law – Pious obligation of son to pay debt of father – Liability restricted to assets inherited – No personal liability arises : *Parmanand Jain Vs. Firm Babulal Rajendra Kumar Jain, I.L.R. (1980) M.P. 743 (D.B.)*

Decree

– **Decree stating that in default of payment, judgment** – Debtor liable to be ejected – Term could be enforced separately : *Hubbilal Vs. Mohammad Makbool, I.L.R. (1977) M.P. 148*

– **Charge decree** – Decree-holder to enforce charge first before proceedings against other property : *The Allahabad Bank Limited, Calcutta, Vs. Chaitram Choudhari, I.L.R. (1963) M.P. 259 (D.B.)*

– **Decree based on compromise** – Not different from contract between parties – Is subject to all provisions regarding contract : *Smt. Attarbai Vs. Seth Mishrilal, I.L.R. (1967) M.P. 773*

– **Compromise decree** – Term “execution of sale-deed on payment of Rs. 800/-” – Term extraneous to suit – This part of decree not executable – Remedy is suit : *Hubbital Vs. Mohammad Makbool, I.L.R. (1977) M.P. 148*

– **Decree which is passed on an unregistered Award** – Decree not without jurisdiction – Decree valid though not according to law : *Moolchand Vs. Maganlal, I.L.R. (1964) M.P. 481 (F.B.)*

– **When can be challenged as a nullity** : *Jasraj Vs.. Kamaruddin, I.L.R. (1974) M.P. 779 (D.B.)*

– **Decree of Civil Court** – Not subject to proceedings of fixation of rent – Can be challenged in appeal or other proceedings – Fixation of rent – Has not the effect of reducing the amount of decree : *Kasturchand Vs. Sirekunwar, I.L.R. (1978) M.P. 188*

– **Distinction between a decree which is a nullity and a decree which is not according to law** : *Moolchand Vs. Maganlal, I.L.R. (1964) M.P. 481 (F.B.)*

- **Decree Passed without jurisdiction** – Decree is nullity – Question of filing appeal irrelevant : *Bisandas Vs. Nirmalkumar, I.L.R. (1958) M.P. 753 (D.B.)*

– **Court Passing decree without notice to defendants** – Decree is nullity but ex-parte decree passed after erroneously holding service of notice good – Decree can be set aside if Court’s finding regarding service of notice shown to be incorrect : *Mujtabai Begum Vs. Mehboob Rehman, I.L.R. (1959) M.P. 256 (D.B.)*

- **Consent decree**-Consent decree providing transfer of certain land by defendant to plaintiff in default of payment of money in installments on fixed date-Stipulation to transfer land is in the nature of penalty-Executing Court can relieve defendant against penalty : *Smt. Parvati Bai Vs. Ayodhya Prasad, I.L.R. (1984) M.P. 526*

– **Compromise decree** – Is nothing but a compromise to which Court puts its approval – Hindu Succession Act, 1956 – Section 14 – Words “ shall be held by her as full owner thereof and not as a limited owner” – Import of – Mere right to possession

acquired in the property belonging to someone else – Is not property acquired to which sub-section or explanation is attracted – Section 14(2) – Decree giving limited estate to a woman – woman does not get absolute estate : *Imrat Vs. Mst. Pyaribahu*, I.L.R. (1977) M.P. 787

Deed

– **Interpretation of, Principle** : *Shri Digambar Jain Tera Panthi Mandir Trust, Shakkar Bazar, Indore Vs. Sub-Registrar, Stamps, Indore*, I.L.R. (1971) M.P. 403 (F.B.)

– **Construction** – Court has to look at language to take meaning of words used – Court not to rely on them to attribute contrary intention to plain meaning of words – Will – Construction – Intention of testator to be looked to – Intention to be ascertained from language used – Document to be read as a whole : *Gopal Krishna Vs. Kamta Prasad*, I.L.R. (1977) M.P. 443 (D.B.)

– **Nature of document to be determined from the language used and also its purpose and also by the substance of the transaction disclosed by the whole of the document** : *BalKrishna Vs. The Board of Revenue, M.P., Gwalior*, I.L.R. (1971) M.P. 597 (F.B.)

– **Construction** – Intention of parties to be gathered from words used, unless they do not convey intention correctly : *M/s. Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal*, I.L.R. (1973) M.P. 88 (D.B.)

Principle of construction – Document to be read as a whole to find out intention of executant or the legal effect of deed : *The Commissioner of Wealth Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur Vs. Begum Hashmatbee*, I.L.R. (1975) M.P. 742 (D.B.)

– **Interpretation of** – Words clear, certain and unambiguous – They should be interpreted in their plain ordinary grammatical meaning – Extrinsic evidence when admissible : *H.H. Maharaja Devendra Singh Ju Deo Vs. The State of M.P.*, I.L.R. (1978) M.P. 362 (D.B.)

– **Rule of construction** – Term of a deed not clear and unambiguous – Extrinsic evidence to ascertain meaning can be considered : *Sheo Bhagwan Vs. Mst. Durgadevi*, I.L.R. (1979) M.P. 349 (D.B.)

– **Interpretation** – Determination of relationship of Parties to the deed – Intention of Parties a decisive consideration – Use of a word in the deed does not change the nature of deed – Need for determining the nature of deed – Comes into existence when

question is raised by parties and evidence is allowed to be given in support of the issue : *Dr. Pratap Singh Vs. Shrimati Kesarbasi, I.L.R. (1963) M.P. 81 (D.B.)*

Defamation

– **Allegation of illegitimacy** – Per se defamatory : *Mst. Ramdhara Vs. Mst. Phulwatibai, I.L.R. (1969) M.P. 474*

– **Mere vulgar abuse and vituperative epithets** – Do not disparage reputation if intended as mere abuse : *Mst. Ramdhara Vs. Mst. Phulwatibai, I.L.R. (1969) M.P. 474*

– **Slander actionable without proof of damages** : *Mst. Ramdhara Vs. Mst. Phulwatibai, I.L.R. (1969) M.P. 474*

– **Circumstance in which innuendo is necessary to be pleaded** : *Ramakant Vs. Shri Devilal Sharma, I.L.R. (1970) M.P. 317*

– **Rules of construction regarding the writing said to be defamatory** : *Ramakant Vs. Shri Devilal Sharma, I.L.R. (1970) M.P. 317*

– **Standard to be applied in determining whether statement is defamatory** – Statement when is defamatory : *Mst. Ramdhara Vs. Mst. Phulwatibai, I.L.R. (1969) M.P. 474*

– **Defendant raising plea of justification of rumour** – Defendant has to prove that rumour is true : *Chhogalal Vs. Purushottam, I.L.R. (1968) M.P. 917 (D.B.)*

– **Presumption that defamatory words are false** – Burden of rebutting it on defendant : *Chhogalal Vs. Purushottam, I.L.R. (1968) M.P. 917 (D.B.)*

– **Burden on plaintiff to prove that the words are defamatory and its publication** : *Chhogalal Vs. Purushottam, I.L.R. (1968) M.P. 917 (D.B.)*

Defence of India (Amendment) Rules, 1963

– **Part XII-A** – Dealer not prohibited from returning pledged ornaments : *Rajmal Vs. Superintendent, Central Excise, Jabalpur, I.L.R. (1966) M.P. 718 (D.B.)*

– **Part XII-A** – Dealer not required to submit a return of pledged gold or to give declaration : *Rajmal Vs. Superintendent, Central Excise, Jabalpur, I.L.R. (1966) M.P. 718 (D.B.)*

– **Part XII-A** – Rule 126-F – Scope of - Dealer not required to submit a return of pledged gold or to give declaration – Dealer not prohibited from returning pledged ornaments – Rule 126(D) – Prohibition in Confined to non-ornament gold not included in a declaration or further declaration under Rule 126-I – Word “Person” in, includes a

dealer as envisaged in the rules – Constitution of India – Article 226 – Writ of certiorari – Does not lie to quash opinion of officer unless there is threat of action against petitioner in carrying on his business : *Rajmal Vs. Superintendent, Central Excise, Jabalpur*, I.L.R. (1966) M.P. 718 (D.B.)

– **Rule 126(D)** – Prohibition in – Confined to non-ornament gold not included in a declaration or further declaration under Rule 126-I : *Rajmal Vs. Superintendent, Central Excise, Jabalpur*, I.L.R. (1966) M.P. 718 (D.B.)

– **Rule 126(D)** – Word “Person” in, includes a dealer as envisaged in the rules : *Rajmal Vs. Superintendent, Central Excise, Jabalpur*, I.L.R. (1966) M.P. 718 (D.B.)

– **Rule 126(F)** – Scope of: *Rajmal Vs. Superintendent, Central Excise, Jabalpur*, I.L.R. (1966) M.P. 718 (D.B.)

– **Section 37** – Provision in Rules framed under the Act to prevail over any other enactment other than the Act : *State of M.P. Vs. Shantilal*, I.L.R. (1977) M.P. 281 (D.B.)

Defence of India Act (XXXV of 1939)

– **Section 17** – Scope of : *State of MP Vs. The Circle Auditor & Liquidator*, I.L.R. (1958) M.P. 82 (D.B.)

Defence of India Rules 1962

– **And Penal Code, Indian (XLV of 1860) – Section 124** – Difference between two provisions : *The State of Madhya Pradesh Vs. Baleshwardayal*, I.L.R. (1970) M.P. 149 (D.B.)

– **Rule 2(3)** – Word “notified” in – Meaning of : *State of Madhya Pradesh Vs. Fazal Hussain*, I.L.R. (1969) M.P. 485 (D.B.)

– **Rule 30 (as amended)** – Notification dated 28-12-62 issued under old rule 30 – State Government delegating powers under rule 30 (Amended) by notification dated 28-12-62 – District Magistrate, (invested with powers under un-amended rule 30), jurisdiction of, to exercise powers of State Government conferred by amended rule 30 – Words and Phrases “Public order” – Meaning of : *Sardar Amarsingh Vs. The State of M.P.*, I.L.R. (1967) M.P. 173 (D.B.)

– **Rule 41(G)** – Truth no defence in a case of prejudicial act or report : *The State of Madhya Pradesh Vs. Baleshwardayal*, I.L.R. (1970) M.P. 149 (D.B.)

– **Rule 41(G)** – Some allegations true regarding some officers – Still publication is prejudicial : *The State of Madhya Pradesh Vs. Baleshwardayal*, I.L.R. (1970) M.P. 149 (D.B.)

– **Rule 41 (G)** – Prosecution under for prejudicial act or report – Only tendency of likelihood of particular act or report on the mind of the public to be seen – Defence of India Rules and Penal Code, Indian, Section 124 – Difference between two provisions – Some allegations true regarding some officers – Still publication is prejudicial – Truth no defence in a case of prejudicial act or report : *The State of Madhya Pradesh Vs. Baleshwardayal*, I.L.R. (1970) M.P. 149 (D.B.)

– **Rule 114, Sub-rule (4)** – Does not cover commodities Price Display Order, M.P., 1971 : *State Vs. Chainkaran*, I.L.R. (1976) M.P. 870 (D.B.)

– **Rule 114, Sub-rule (4)** – Expression “such food Stuff’s refers to regulation of movement of food stuffs : *State Vs. Chainkaran*, I.L.R. (1976) M.P. 870 (D.B.)

– **Rule 114, Sub-rule (4)** – Does not authorise Government to fix prices or rates of food stuffs including edible oils seeds or edible oils: *State Vs. Chainkaran*, I.L.R. (1976) M.P. 870 (D.B.)

– **Rule 114, Sub-rule (4)** – Word “such in second Part – Refers to “Food stuffs” in first Part : *State Vs. Chainkaran*, I.L.R. (1976) M.P. 870 (D.B.)

– **Rule 114, Sub-rule (4)** – Movement of Food stuffs and fixation of rates or rates or prices are independent – Expression “such food stuffs” refer to regulation of movement of food stuffs – Word “such” in second part – Refers to “Food stuffs” in first part - Does not authorise Government to fix prices or rates of food stuffs including edible oils seeds or edible oils – Commodities Price Display Order, Madhya Pradesh, 1971 – Clause 5 – Requirements of – Interpretation of Statute – Non-obstante clause – To be strictly construed – Defence of India Rules – Rules 114(4) - Does not cover commodities Price Display Order, M.P. 1971 : *State Vs. Chainkaran*, I.L.R. (1976) M.P. 870 (D.B.)

– **Rule 126-P(2)(ii) and 126(1)(10)** – Accused in possession of 100 Tolas of Gold – Status of accused not such as to acquire that much gold – Presumption that accused is the owner of gold not available – Evidence Act – Section 27 – Confessional statement of accused – To be read as a whole or rejected as a whole unless exculpatory part is shown to be false : *Abdul Aziz Vs. Union of India*, I.L.R. (1976) M.P. 886

– **Rule 141(2)** – Notification of order – Conclusive proof that it is known to all concerned – Knowledge to the person or order – Not justiciable : *State of Madhya Pradesh Vs. Fazal Hussain*, I.L.R. (1969) M.P. 485 (D.B.)

Defence of India Rules, 1971

– **Rule 184** – Notification No. 40(C) – 3(i)-73-X-I dated 14.11.73 issued under rule 184 – Validity : *State of M.P. Vs. Shantilal, I.L.R. (1977) M.P. 281 (D.B.)*

– **Rule 184** – Suspends general provisions regarding bail in Criminal Procedure Code : *State of M.P. Vs. Shantilal, I.L.R. (1977) M.P. 281 (D.B.)*

– **Rule 184** – Clause (b) – Casts burden on person detained unlike other provisions in Code – Scheme of the rule 184 : *State of M.P. Vs. Shantilal, I.L.R. (1977) M.P. 281 (D.B.)*

Defence Services (Classification, Control and Appeal) Rules, 1952

– **Invalid Pension** – Disease which has led to an individuals discharge or death will ordinary be deemed to have arisen in service if no note of it was made at the time of acceptance in military service – No note of disease made at the time of petitioner's acceptance in service – Must be deemed that the disease has arisen in service – No reason : *Raj Kumar Sharma Vs. Union of India, I.L.R. (2003) M.P. 387*

– **Civilian in** – Rule 15 – Lays down procedure for enquiry : *Kailaschand Vs. The General Manager, Ordnance Factory, Khamaria, Jabalpur, I.L.R. (1967) M.P. 891 (D.B.)*

Delegated Legislation

– **Includes “Conditional Legislation”** : *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601 (F.B.)*

– **Essential legislative functions cannot be delegated** : *The Collective Farming Society, Ltd. Lilakheri Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 187 (F.B.)*

– **Made by executive** – Qualifies the description of Law – Delegated legislation – Includes “Conditional Legislation” – Order or Notification issued in exercise of non-statutory power or in exercise of statutory power which is purely executive – Does not amount to law – Law – Includes Rules, Orders and notifications issued by Government or subordinate authority in exercise of delegated Legislative power – Notification issued under statutory power exempting from general provisions of statute – Has force of law – Telegraph Wires (Unlawful Possession) Act, 1950 – Section 7(1) Notification issued by Central Government under – Is legislative in nature – Evidence Act, 1872 – Section 57(1) Judicial notice can be taken of such notification – Price fixation – Is in nature of legislative measure : *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601 (F.B.)*

Delegation

– **Committee delegating power of punishing servant by a resolution** – Resolution is bad : *Bhagwandas vs. The Municipal Committee, Damoh*, I.L.R. (1964) M.P. 492 (D.B.)

– **legislature conferring power on subordinate agency to make rules and regulations** – Legislature does not efface itself : *M/s. Chhotabhai Jethabhai Patel and Co. Rajnandgaon Vs. The State of MP*, I.L.R. (1967) M.P. 721 (D.B.)

– **Power conferred on authority to make delegated legislation** – That power cannot be sub-delegated : *Nagar Nigam Harijan Karamchari Sangh, Jabalpur Vs. The Municipal Corporation, Jabalpur*, I.L.R. (1977) M.P. 883 (D.B.)

– Non-essential legislative function can be delegation : *The Collective Farming Society, Ltd. Lilakheri Vs. State of Madhya Pradesh*, I.L.R. (1975) M.P. 187 (F.B.)

– **Delegation of power to authority** – Authority cannot exercise power with retrospective effect : *The Collective Farming Society, Ltd. Lilakheri Vs. State of Madhya Pradesh*, I.L.R. (1975) M.P. 187 (F.B.)

– **Types of delegation** – Essentials of each type of delegation – Legislature laying down policy and guidance – Legislature delegating powers to subordinate body to work the legislation – Delegation not excessive : *Munnalal Lachhiram & Sons Vs. The Gram Panchayat, Susari*, I.L.R. (1964) M.P. 199 (D.B.)

Department of Defence Procedure (Directorate General of Inspection)

– **Class III-** Non-Gazetted (Technical Scientific and other Non-ministerial) Posts Recruitment Rules , 1964-S.R.O. 109 as amended by S.R.O. No. 320-Quota of appointments in the proportion of 33 ½ % by direct recruitment and 66 2/3% by promotion – Deviation from quota when permissible- Words ‘failing which’-Meaning of-Rule of “carry forward”-Applicability of : *Association of Scientific Workers, Jabalpur Vs. Union of India*, I.L.R. (1982) M.P. 314 (D.B.)

Departmental Enquiry

– No statutory bar to institute departmental enquiry for misconduct which is subject matter of criminal charge : *Administrator, Municipal Corporation, Bhopal, Vs. Rafique Ahmad*, I.L.R. (1976) M.P. 1076

– Proceedings in – Do not amount to prosecution for commission or omission of act made punishable by any law for the time being in force – Article 20 (2) – Servant punished under departmental enquiry – Government serving show cause notice why higher punishment as a result of single departmental enquiry : *Sundarpyaribai*

Shrivastava of Morar Vs. The Chief Secretary, M.B. Govt., Gwalior, I.L.R. (1957) M.P. 243 (D.B.)

Departmental Examination Rules, 1965

– **Do not confer interpretation or relaxation on Government** : *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

– **Empowers Government to waive conditions of passing of departmental examination in the matter of promotion** : *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

– **Passing of Departmental examination** – Does not make promotion compulsory
– Factors on which promotion depends : *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

– **Passing of Examination Rules, 1965** – Passing of Examination – Necessary condition for confirmation : *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

– **Rules 1 and 7(3)** - and State Industries (Gazetted Service) Recruitment Rules, M.P., 1967 – Rule 22 – Departmental Examination Rules, Rules 1 and 7(3) – Not repealed by Rule 22 of Recruitment Rules, 1967 either expressly or by implication – *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

– **Rule 7(3)** - and State Industries (Gazetted Service) Recruitment Rules, M.P., 1967 – Rules 14, 21 and 22 – Passing Departmental Examination – Whether condition precedent for promotion even after putting 10 years' service : *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

– **Rule 7(3)** - and State Industries (Gazetted Service) Recruitment Rules, M.P., 1967, Rules 14, 21 and 22 – Provision regarding passing of departmental examination is directory and not mandatory – Does not fetter power of Government to promote officers not passing Departmental Examination : *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

Deputy Commissioner

– **Power of, to settle lands with ex-proprietor or any other person** : *The State of M.P. Vs. Ramrijhawan, I.L.R. (1960) M.P. 481*

– **Deputy Commissioner mentioned in Section 13(3)** – A Revenue Officer and not a persons designate : *Ram Milan Vs. Bansilal, I.L.R. (1958) M.P. 131 (F.B.)*

– **Power of, to dispossess a person whose entry has a lawful origin** – Section 87 not attracted : *The State of M.P. Vs. Yakinuddin, I.L.R. (1958) M.P. 706 (D.B.)*

Detention Order, Madhya Pradesh, 1971

– **Is self contained Code regulating place and conditions of detention of persons not governed by Prisons Act, 1894** : *Shri Nirmal Chand Jain Vs. State of M.P., I.L.R. (1978) M.P. 322 (D.B.)*

– **Rule 4(3)** – Detenues in class I – Entitled to same facilities and amenities of prisoners in Class B or superior class : *Shri Nirmal Chand Jain Vs. State of MP, I.L.R. (1978) M.P. 322 (D.B.)*

– **Rule 4(3)** – “Superior class” – Means Class A – Confers discretions on authority – Discretion to be used in favour of detainee : *Shri Nirmal Chand Jain Vs. State of MP, I.L.R. (1978) M.P. 322 (D.B.)*

– **Rule 4(3)** – Word “ordinarily” in – Means without exception generally : *Shri Nirmal Chand Jain Vs. State of M.P., I.L.R. (1978) M.P. 322 (D.B.)*

– **Rule 4(3)** – Detenues of Class I Not equated with Class ‘B’ – So also Detenues of Class II with those in class ‘C’ or ordinary class – Detention Order, Madhya Pradesh, 1971 – Is self contained Code regulating place and conditions of detention of persons not governed by Prisons Act, 1894 – Detention Order, Madhya Pradesh, 1971 – Rule 4(3) – Word “ordinarily” in – Means without exception generally – Detenues in Class I – Entitled to same facilities and amenities of prisoners in Class B or superior class – “Superior class” – Means Class A – Confers discretion on authority – Discretion to be used in favour of detainee – Rule 27 – Confers wide discretion on Government to relax conditions or issue special order regarding conditions of detention – Jail Manual Rules – Rule 431(2) – Permits detainee to have his own mosquito-net and his own bed –stead and mattress – Facility regarding mosquito-net – Is subject to condition of sanction by Medical Officer : *Shri Nirmal Chand Jain Vs. State of MP, I.L.R. (1978) M.P. 322 (D.B.)*

– **Rule 27** – Confers wide discretion on Government to relax conditions or issue special Order regarding conditions of detention : *Shri Nirmal Chand Jain Vs. State of M.P., I.L.R. (1978) M.P. 322 (D.B.)*

Devi Ahilya Vishwavidyalaya, Indore

- **Statute No. 28, Para 17(1)** - and Constitution of India, Article 30(1)-Minority Institution-Appointment of Teachers-Para 17 of Statute 28 of the Statutes provides that Selection Committee shall consist of the Kulpati or his nominees as Chairman-Infringes the right of minority institution-Minority institution entitled to have a Chairman of Selection

Committee of its own choice : *The Islamia Karimia Society, Indore Vs. Devi Ahilya Vishwavidyalaya, Indore, I.L.R. (1989) M.P. 445 (D.B.)*

Dewas State Inam Rules, 1916

– **Rule 3** – Imposes duty on government to decide rights in judicial manner : *Shri Chinta Man Wajinath Pandit Vs. The State Government of M.P., I.L.R. (1968) M.P. 742 (D.B.)*

– **Rule 3** – Matter referred by Commissioner to Government – Government to decide matter after hearing parties : *Shri Chinta Man Wajinath Pandit Vs. The State Government of M.P., I.L.R. (1968) M.P. 742 (D.B.)*

– **Rules 3 and 11** – Question relating to Inam Property in Senior Dewas State – Question to be decided by Government or Officer authorised – No jurisdiction in Civil Court unless directed by Government – Rule 11 – Authorises Government to pass general order conferring jurisdiction on civil Court – Matter referred by Commissioner to Government – Government to decide matter after hearing parties – Rule 11 – Does not authorise Government to refer petitioner to civil Court – Rule 3 – Imposes duty on Government to decide rights in judicial manner – Review – Filing of application for review – Does not reopen questions decided by order or decision south to be reviewed – Whether review to be accepted or rejected – To be decided with reference to grounds on which review is permissible and not on merits of claim : *Shri Chinta Man Wajinath Pandit Vs. The State Government of M.P., I.L.R. (1968) M.P. 742 (D.B.)*

– **Rule 11** – Authorises Government to pass general order conferring jurisdiction on Civil Court : *Shri Chinta Man Wajinath Pandit Vs. The State Government of M.P., I.L.R. (1968) M.P. 742 (D.B.)*

– **Rule 11** – Does not authorise Government to refer petitioner to civil court : *Shri Chinta Man Wajinath Pandit Vs. The State Government of M.P., I.L.R. (1968) M.P. 742 (D.B.)*

– **Rules 11 and 3** – Question relating to Inam Property in Senior Dewas State – Question to be decided by Government or Officer authorised – No jurisdiction in Civil Court unless directed by Government – Rule 11 – Authorises Government to pass general order conferring jurisdiction on Civil Court – Matter referred by Commissioner to Government – Government to decide matter after hearing parties – Rule 11 – Does not authorise Government to refer petitioner to Civil Court – Rule 3 – Imposes duty on Government to decide rights in judicial manner – Review – Filing of application for review – Does not reopen questions decided by order or decision south to be reviewed – Whether review to be accepted or rejected – To be decided with reference to grounds on which review is permissible and not on merits of claim : *Shri Chinta Man Wajinath Pandit Vs. The State Government of M.P., I.L.R. (1968) M.P. 742 (D.B.)*

Dhan Parichalan Skeem (Pratishedh) Adhiniyam, Madhya Pradesh (XIX of 1975)

– **Is reasonable and in public interest** : *M/s. Sudarshan Finance Corporation, Madras Vs. State of M.P., I.L.R. (1979) M.P. 205 (D.B.)*

– **Vires of** – Business of Chit fund – Is not a banking – Covered by State List, Entry No. 30 of List II of Constitution – Concurrent List (List III) Entry 7 – Dhan Parichalan Skeem (Pratishedh) Adhiniyam, Madhya Pradesh – Falls under Entry 7 of the List III – Is hence intra-vires – Constitution of India – Article 301 – Scheme does not involve skill – Does not constitute trade, commerce or intercourse – Article 304 (b) – Requirements of – Dhan Parichalan Skeem, Madhya Pradesh – Is reasonable and in public interest : *M/s. Sudarshan Finance Corporation, Madras Vs. State of M.P., I.L.R. (1979) M.P. 205 (D.B.)*

Directory Provisions and Mandatory Provisions how to be construed

– **The provisions may be directory one or mandatory one but in case of directory provision, substantial compliance would be enough** – Unless it is established that violation of a directory provisions has resulting in loss and/or prejudice to the parties, no interference is warranted – Even in case of violation of a mandatory provisions, interference does not follow as a matter of course. The mandatory provisions conceded in the interest of parties can be waived by that party whereas a mandatory provision conceded to the interest of public cannot be waived by him : *Rajendra Singh Vs. State of M.P., I.L.R. (1996) M.P. 278 (D.B.)*

Discharge

– **Theory of implied discharge** – Applicable only in cases where no order of commitment is made: *Bhagwandas Vs. State of Madhya Pradesh, I.L.R. (1975) MP 738*

Discipline and Appeal Rules (South-Eastern Railway) – Rule 1706

– **Servant placed under suspension pending enquiry** – Enquiry subsequently withdrawn – Servant entitled to full pay and allowances for the period of suspension- Payment of Wages Act – Section 7, Explanation II – Loss of wages on ground of suspension – Is not deduction from wages – Payment of wages delayed – Servant entitled to interest at 9% per month progressive : *District Mechanical Engineer and Financial Advisor and Chief Accounts Officer of The South-Eastern Railway, Bilaspur Vs. Kartarsingh, I.L.R. (1967) M.P. 988*

Dismissal

– **Assistance of legal practitioner when permitted** – It depends upon facts of each case and if there would be violation of the principles of natural justice : *Mahendra Kumar Jain Vs. Bank of Baroda, I.L.R. (1998) M.P. 412 (D.B.)*

– **Charge leveled against the appellant was within the knowledge of the appellant it shows that the charge was not aided by trained mind in legal profession** – Refusal of appellant's request to defend the case through a legal practitioner is rightly rejected : *Mahendra Kumar Jain Vs. Bank of Baroda, I.L.R. (1998) M.P. 412 (D.B.)*

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)

- **Section 12** – House not an acquired property – Notice by Managing Officer, Evacuee Property for delivery of possession of the house – Validity : *Ramchand Batra Vs. Managing Officer & Assistant Custodian of Evacuee Property, I.L.R. (1959) M.P. 713 (D.B.)*

– **Sections 19, 20, 29 and 30** – suit for ejectment from evacuee property by a persons to whom provisional possession transferred by Managing Officer-Cum-Assistant Custodian – Maintainability – Title to such claim when accrues – Jurisdiction – Civil Court, Jurisdiction of, to entertain suit at the instance of person who is not still legal owner – Tenant entitled to protection for a period of two years from date of sale certificate – Civil Procedure Code – Order 6, Rule 17 – Amendment of written statement – Amendment seeking to withdraw admission or setting up a new plea – Amendment can be allowed – Transfer of Property Act – Section 116 – No estoppel against tenant who withdraws admission and denies title of landlord – Transfer of Property Act – Section 106 – Issue of quit notice by a person in possession when legal title vested in Managing Officer – Validity : *Sadashiv Vs. Jagdishchandra, I.L.R. (1966) M.P. 954*

– **Section 29** – Transfer contemplated by – Takes place when sale certificate is issued and not on date of auction – Period of two years for which displaced person-tenant cannot be ejected – To be counted from date of certificate- Section 65, Civil Procedure Code not applicable to sales under this Act : *Motandas Vs. Gopaladas, I.L.R. (1961) M.P. 1045*

– **Sections 29, Proviso** – Tenant entitled to protection for a period of two years from date of sale certificate: *Sadashiv Vs. Jagdishchandra, I.L.R. (1966) M.P. 954*

Displaced Persons (Compensation and Rehabilitation) Rules

– **The Act or Rules** – Contain provision laying down manner in which value of property is to be assessed and to determine whether property is allotable or saleable : *Rameshwar Datta Mehta Vs. Union of India, I.L.R. (1974) M.P. 938 (D.B.)*

– **Rules 23, 24 and 25 of the Rules framed there under** – Circumstance in which property in occupation of displaced person can be allotted to him – The Act or Rules - Contain no provision laying down manner in which value of property is to be assessed and determine whether property is allotable or saleable – Natural Justice – Requirements – No inflexible rule of universal application : *Rameshwar Datta Mehta Vs. Union of India, I.L.R. (1974) M.P. 938 (D.B.)*

– **Rules 29** – Institution of suit not barred : *B.K. Pradhan Vs. Smt. Kalawati Devi, I.L.R. (1968) M.P. 440*

– **Rule 90(15)** – Appendices XXII and XXIII – Transfer of title – Does not pass till certificate issued – Relates back to date of sale : *B.K. Pradhan Vs. Smt. Kalawati Devi, I.L.R. (1968) M.P. 440*

– **Rule 90(15)** – Appendices XXII and XXIII – Transfer of title – Does not pass till certificate issued – Relates back to date of sale – Section 20 – Institution of suit not barred – Practice – Subsequent even – Can be considered if necessary to shorten litigation : *B.K. Pradhan Vs. Smt. Kalawati Devi, I.L.R. (1968) M.P. 440*

– **Rule 102 (Framed thereunder)** – Words “Any other sufficient reasons” in clause (d) thereof – To be analogous to those mentioned in Clauses (a),(b) and (c) of the said Rule – Notice not satisfying conditions in clauses (a),(b) and (c) – Simple mention that property allotted to displaced person – Not a purpose analogous to those mentioned in clauses (a), (b) and (c) – Notice terminating lease not valid – Constitution of India – Article 226 – High Court – Power of interference – No rule that certiorari to issue when there is no equally efficacious remedy : *Kaniram Vs. Regional Settlement Commissioner, Indore, I.L.R. (1961) M.P. 938 (D.B.)*

Displaced Persons (Debts Adjustment) Act (LXX of 1951)

– **Section 2 (6)(c)** – The word “Debt” in – Does not include pecuniary liability the proof of which depends upon oral agreement – Pecuniary liability supported by documentary evidence, evidentiary value apart, falls under the said provision – Constitution of India, Article 226 – Questions of fact – Not permissible to be disputed in petition under this article : *Babulal Vs. Basantilal, I.L.R. (1960) M.P. 262 (D.B.)*

– **Section 4** – Civil Procedure Code, Section 115 – Tribunal constituted under Section 4, Displaced Persons (Debts Adjustment) Act – It is a ‘Civil Court’ subordinate

to the High Court – Presiding Officer a Court and not ‘persona designata’ – Revision against the order of the Tribunal – Maintainable – Test to be applied to determine whether the Tribunal is a Civil Court : *Maghanmal Vs. Mulchand, I.L.R. (1962) M.P. 476*

- **Section 5** – Limitation Act, Indian, Article 116 – Creditor (displaced person) suing another displaced person treating the debt as an unsecured debts – Suit governed by Article 116 and not Article 132 – Section 10 – Both parties displaced persons – Application by creditor lies under that provision – Section 16 – Procedure to be followed in case option to sue as unsecured creditor not exercised or having exercised the same has been rejected : *Radhomal Vs. Bhagwandas, I.L.R. (1969) M.P. 624 (D.B.)*

– **Section 10** – Both parties displaced persons – Application by creditor lies under that provision : *Radhomal Vs. Bhagwandas, I.L.R. (1969) M.P. 624 (D.B.)*

– **Section 16** – Procedure to be followed in case option to sue as unsecured creditor not exercised or having exercised the same has been rejected : *Radhomal Vs. Bhagwandas, I.L.R. (1969) M.P. 624 (D.B.)*

– **Section 25** – Proceedings under – Civil Procedure Code applies – Civil Procedure Code – Order IX, Rule 8 – Party engaging a counsel – Counsel absent – Case dismissed – Absence of counsel – Sufficient cause for restoration : *Meharchand Vs. Vasharam, I.L.R. (1958) M.P. 377 (D.B.)*

Displaced Persons (Institution of Suits) Act, 1948

– **Person in the employ of Government opting for India before setting up of the two dominions** – Falls under the definition of displaced person – Evidence Act, Indian (I of 1872) – Section 35 – Documents received in official correspondence – Admissibility : *V. P. Desa Vs. The Union of India, I.L.R. (1957) M.P. 434 (D.B.)*

Dissolution of Muslim Marriages Act, (VIII of 1993)

– **Section 2(vii)** – Plaintiff claiming herself to be below 15 years of age at the time of marriage – Stayed in her matrimonial house and did not return back after attaining majority- Plaintiff repudiated her marriage by filing suit for divorce-Since plaintiff was below 15 years of age it is irrelevant that whether marriage was consummated or not – Plaintiff entitled for decree of divorce : *Akila W/o Shafi Mohammed Vs. Shafi Mohammed S/o Deen Mohammed, I.L.R. (1993) M.P. 162*

District Judge

– **Power to transfer election petition from one Court to another** : *Ramchander Vs. The Second Additional District Judge, Raigarh, I.L.R. (1959) M.P. 863 (D.B.)*

District Office (Collectorate) Manual, Madhya Pradesh

– **Chapter XIII, para 2** – Confers power on Superintendent in Collector's office to receive application for Mining lease and to note time, date and place of receipt : *Sou. Jayanti Mishra, Vs. The Union of India, I.L.R. (1977) M.P. 645 (D.B.)*

Divorce Act, Indian (IV of 1869)

– Proceedings under – Nature of : *Lalit Lazarus Vs. Smt. Lavina Lazarus, I.L.R. (1980) M.P. 1099 (F.B.)*

- **Section 3(3)**-Words 'Reside or last resided together'- Meaning of –Spouses having no common permanent home-Wife visiting husband's place during holidays and residing together and also cohabiting-Inference of last resided together at the place where husband lived can be drawn-Adultery-Charge of, by husband against wife-Husband's testimony not controverted by wife by sworn testimony-Inference : *Poster J.S. Singh Vs. Smt. Jyotsana Singh, I.L.R. (1982) M.P. 389 (F.B.)*

– **Section 7** – Standard of proof recommended in Blyth v. Blyth Should be applied – High Standard of proof needed for proving adultery in Divorce case : *Prem Masih Vs. Smt. Kumudanibai, I.L.R. (1975) M.P. 565 (F.B.)*

– **Section 7** – High Court or District Court to give relief on the similar principles and rules as nearly as may be conformable to the principles and rules on which Court of Divorce and Matrimonial Causes in England acts and gives relief : *Prem Masih Vs. Smt. Kumudanibai, I.L.R. (1975) M.P. 565 (F.B.)*

- **Section 10**-Adultery – Charges of, by husband against wife-Husband's testimony not controverted by wife by sworn testimony- Inference : *Poster J.S. Singh Vs. Smt. Jyotsana Singh, I.L.R. (1982) M.P. 389 (F.B.)*

– **Section 10** – Application by petitioner – Wife - Respondent got one daughter and one son out of the wedlock – Adultery – Allegation of adultery remained un-controverted – Ex. P-1 photograph of Second marriage – One daughter born out of that wedlock – View taken by the Trial Court is justified decree confirmed : *Filomina Anthony Vs. Robert Anthony, I.L.R. (1999) M.P. 818 (F.B.)*

– **Section 10** – Husband seeking divorce on the ground that living with wife was unsafe and humanly impossible – During pendency of the petition husband gains knowledge that his wife is living in adultery – Amendment raising adultery as a ground for Divorce – Amendment when can be allowed – Order allowing such amendments – Validity and effect of Divorce – Proceedings under – Nature of – Section 11 – Charge of adultery – Requisites for proof thereof : *Lalit Lazarus Vs. Smt. Lavina Lazarus, I.L.R. (1980) M.P. 1099 (F.B.)*

– **Section 10** – Petition for divorce on ground of adultery – Adultery to be proved to the satisfaction of Court beyond reasonable doubt – Adultery to be inferred from certain definite facts unless there is evidence to negate that inference – Sections 17 and 34 – Award of damages – High Court, Power to determine questions even when appeal not filed by aggrieved party – Compensatory and not exemplary or punitive damages can be granted – Things to be taken into consideration in determining damages – Adultery not itself sufficient to grant damages – Section 17 – Power of High Court to examine petitioner to obtain further information and to give opportunity to explain certain parts of his deposition : *Samuel Bahadur Singh Vs. Smt. Roshni Singh, I.L.R. (1959) M.P. 487 (F.B.)*

– **Sections 10 and 14** – Delay – Presumption of acquiescence in adultery arises from long delay : *Promod Kumar Anand Vs. Daisy Bai, I.L.R. (1967) M.P. 255 (D.B.)*

– **Sections 10 and 14** – Lapse of time in applying for divorce – No bar to grant of divorce – Circumstances when delay will or will not be a bar to the relief of divorce – Delay – Presumption of acquiescence in adultery arises from long delay : *Promod Kumar Anand Vs. Daisy Bai, I.L.R. (1967) M.P. 255 (D.B.)*

– **Sections 10 and 17** – Reference for confirmation of decree of divorce – Divorce is a Civil Proceeding – Case is to be proved by preponderance of probabilities depending upon the nature of gravity of act alleged – Wife keeping extra marital affairs despite objection of husband – Roaming in public with paramour and going to Gurudwara instead of attending Church – Travelling various places and spending nights together with paramour – Case of adultery proved - No collusion nor acquiescence or condonation on part of husband – Decree of Divorce conformed : *Sunil Masih Vs. Smt. Elizabeth Daisy Masih, I.L.R. (2001) M.P. 430 (F.B.)*

- **Sections 10, 17 and 22** – Ex-parte decree of divorce – Confirmation – After amendment confirmation by High Court not necessary – District Judge can pass decree for dissolution of marriage : *Mary G. Sunny Vs. Sunny George, I.L.R. (2002) M.P. 414 (F.B.)*

– **Sections 10, 17, 34, 35 and 55** – Petition for divorce by husband on ground of adultery – Decree of divorce alongwith award of damages – Sections 10 and 17 – Reference for conformation of decree of divorce – Divorce is a civil proceeding – Case is to be proved by preponderance of probabilities depending upon the nature of gravity of act alleged – Wife keeping extra marital affairs despite objection of husband – Roaming public with paramour and going to Gurudwara instead of attending Church – Travelling various places and spending nights together with paramour – Case of adultery proved – No collusion nor acquiescence or condonation on part of husband –

Decree of Divorce confirmed – Section 34 and 55 – Award of damages against adulteror – Independent cause of action – Adulteror has no right to challenge confirmation proceeding under Section 17 but can avail remedy of appeal under Section 55 of the Act – Decree of dissolution of marriage made absolute : *Sunil Masih Vs. Smt. Elizabeth Daisy Masih, I.L.R. (2001) M.P. 430 (F.B.)*

– **Sections 10(1)(ix), 10(1)(x), 23 and 55**–Appeal–Suit for judicial separation– On ground cruelty–Cruelty–May be physical or mental–As to cause a reasonable apprehension that it would be harmful or injurious to live with the other spouse–During pendency of appeal amending Act came in force–Appellate Court can take into consideration the effect of amendment–Plaintiff and his parents arrested on complaint of wife–Wife opposing bail–Complaint found false by criminal Court–Humiliation and agony suffered were too much–Cruelty by defendant established–Defendant refused to live with plaintiff when attempt made to bring reconciliation–Argument that she is willing to live with her husband–Hollow expression bereft of any sincerity–Ground of desertion also established–Marriage between the parties dissolved by decree of divorce : *Johnson M. Joseph Vs. Smt. Aneeta Johnson; I.L.R. (2003) M.P. 317*

– **Sections 10(1)(x)**–By amendment “Cruelty” made a ground for dissolution of marriage–Cruelty on part of wife proved–Marriage between the parties dissolved : *Peter Messias Vs. Mrs. Jennifer Messias; I.L.R.. (2003) M.P. 1092*

- **Sections 10(1)(x), 22, 23 and 55**–Appeal–Suit for judicial separation– Amendment came in force during pendency of appeal–Relief to be granted could be moulded in view of the amended provision–Wife developing intimacy with another male causing embarrassment and humiliation to the husband–Lodging police complaint against husband alleging theft of articles which she could retrieve in a decent way–Conduct of wife falls within the ambit of cruel treatment–By amendment “cruelty” made a ground for dissolution of marriage–Cruelty on part of wife proved–Marriage between the parties dissolved–Judgment and decree of trial Court set aside : *Peter Messias Vs. Mrs. Jennifer Messias; I.L.R.. (2003) M.P. 1092*

– **Section 10(1)(x) & Section 55**–Amendment came in force during pendency of appeal–Relief to be granted could be moulded in view of the amended provision : *Peter Messias Vs. Mrs. Jennifer Messias; I.L.R.. (2003) M.P. 1092*

– **Section 11** – Charge of adultery – Requisites for proof thereof : *Lalit Lazarus Vs. Smt. Lavina Lazarus, I.L.R. (1980) M.P. 1099 (F.B.)*

– **Section 14, Proviso** – Does not bar jurisdiction of Court to grant decree for dissolution of marriage at the instance of a spouse who is also guilty of adultery – Discretion – When to be exercised – Social consideration – Relevancy of : *Smt. Nalini Vs. C.H. Issac, I.L.R. (1978) M.P. 400 (F.B.)*

– **Section 14** – Petition for divorce on ground of adultery – Direct evidence hardly possible – Proof can be by circumstantial evidence – Section 7 – High Court or District Court to give relief on the similar principles and rules as nearly as may be conformable to the principles and rules on which Court of Divorce and Matrimonial Causes in England acts and gives relief – Standard of proof recommended in *Blyth v. Blyth* should be applied – High standard of proof needed for proving adultery in divorce case : *Prem Masih Vs. Smt. Kumudanibai*, I.L.R. (1975) M.P. 565 (F.B.)

– **Section 17** – Confirmation of a decree Nisi for dissolution of marriage – Wife living in adultery – No connivance on the part of husband – No condonation of adultery by husband – Offence repeated and semblance of future repetition is present - Original guilt of erring partner will revive – Husband entitled to a decree of divorce : *The State of M.P. Vs. Sharad Kumar Phillips*, I.L.R. (1979) M.P. 771 (F.B.)

– **Section 17** – Divorce – Application for divorce on the ground of adultery of wife – Wife found in compromising position in non-applicant's house-wife remained ex-party – Held – Trial court rightly passed decree of divorce in favour of husband – Reference Disposed of : *Shailendra Kumar Vs. Smt. Chandra Prabha*, I.L.R. (1997) M.P. 45 (F.B.)

– **Section 17** – Confirmation of decree for dissolution of marriage – Petition under Section 10 by husband on ground of adultery – Trial Court recording categorical finding that respondent was not living in adultery yet granted the decree on the ground that she has left the petitioner for last two years – Without jurisdiction : *Sebestain Vs. Smt. Kunti Divya*, I.L.R. (1999) M.P. 1008 (F.B.)

– **Section 17** – Reference for confirmation of decree of dissolution of marriage – Ground of impotency – Petition under Section 10 is misconceived – Wife should have moved application under Section 18 on ground of impotency or under Section 22 on ground of cruelty – Decree set aside – Case remanded to trial Court to permit amendment in the petition and proceed according to law : *Jenet Mary James Vs. Vinod Kumar James*, I.L.R. (1999) M.P. 910 (F.B.)

– **Section 17** – Reference to confirmation of decree for dissolution of marriage – Section 10 – Application by petitioner wife – Respondent got one daughter and one son out of wedlock – Adultery – Allegation of adultery remained un-controverted – Ex.P-1 photograph of Second marriage – One daughter born out of that wedlock – View taken by the Trial Court is justified Decree confirmed : *Filomina Anthony Vs. Robert Anthony*, I.L.R. (1999) M.P. 818 (F.B.)

– **Section 17** – Reference for confirmation of decree of dissolution of marriage – Special Marriage Act, 1954 – Section 28 – Joint Petition for mutual divorce – Sections 15, 18 of the Act – Registration of marriage and effect – Since the marriage has not

been registered – Section 28 – Does not come into play – Decree granted by the Trial Court is without application of mind – Decree set aside : *Smt. Susmita Joesph Vs. Limson*, I.L.R. (1999) M.P. 722 (F.B.)

- **Section 17, 10 and 22** – Ex-parte decree of divorce – Confirmation – After amendment confirmation by High Court not necessary – District Judge can pass decree for dissolution of marriage : *Mary G. Sunny Vs. Sunny George*, I.L.R. (2002) M.P. 414 (F.B.)

-**Sections 17, 20, 22 and 23**-Decree passed by District Judge for dissolution of marriage or for declaring marriage to be null & void requires confirmation by High Court- No confirmation required for decree for judicial separation-Such decree comes into effect from the date on which it is passed-Reference to High Court in case of decree for judicial separation, wholly in competent & misconceived: *Benzamin Vs. Smt. Rundhbai*, I.L.R. (1988) M.P. 471, (F.B.)

- **Sections 17 and 34** – Award of damages – High Court, power to determine questions even when appeal not filed by aggrieved party – Compensatory and not exemplary or punitive damages can be granted : *Samuel Bahadur Singh Vs. Smt. Roshni Singh*, I.L.R. (1959) M.P. 487 (F.B.)

- **Section 17, 34 and 55** - Award of damages against adulteror - Independent cause of action – Adulteror has no right to challenge confirmation proceeding under Section 17 but can avail remedy of appeal under Section 55 of the Act – Decree of dissolution of marriage made absolute : *Sunil Masih Vs. Smt. Elizabeth Daisy Masih*, I.L.R. (2001) M.P. 430 (F.B.)

- **Section 22** – Decree of Judicial Separation does not require for confirmation by the High Court it comes into force from the very day it is passed : *Rajesh Dass Vs. Usha Dass*, I.L.R. (1995) M.P. 472 (F.B.)

-**Section 22**-Accusation of cruelty-Burden of proof-Desertion –Proof of : *Prem Prakash Rubin Vs. Smt. Sarla Rubin*, I.L.R. (1990) M.P. 601 (F.B.)

-**Section 22**–Wife developing intimacy with another male causing embarrassment and humiliation to the husband–Lodging police complaint against husband alleging theft of articles which she could retrieve in a decent way–Conduct of wife falls within the ambit of cruel treatment : *Peter Messias Vs. Mrs. Jennifer Messias*; I.L.R.. (2003) M.P. 1092

-**Section 22**-Cruelty-Includes mental cruelty also-Conduct of husband or wife rendering continuance of cohabitation and performance of conjugal rights impossible amounts to such cruelty-Accusation of cruelty- Burden of proof-Desertion-Proof of : *Prem Prakash Rubin Vs. Smt. Sarla Rubin*, (1990) I.L.R. M.P. 601 (F.B.)

– **Section 22** – Grant of decree of judicial separation – Desertion without reasonable excuse for a period of two years or upwards & animus deserendi – An intent not to return or not to resume cohabitation – Intent to abandon is largely matter of inference or presumption- Subsequent conduct of wife – Animus deserendi on the part of wife apparent – After leaving the husband during long statutory period – She never expressed any desire to resume cohabitation – Inference drawn against wife of intention to desert the husband to end the matrimonial relationship – Decree of judicial separation in favour of husband and against wife passed – Appeal allowed with the hope that parties would reunite and approach the court under Section 26 of the Act forgetting the past and joint living with renewed love and hope – “What God hath jointed together, let not man put as under” : *Angel Valentine D’souza Vs. Mrs. Blanche Angela Piedade D’souza*, I.L.R. (1999) M.P. 227

- **Section 22, 10 and 17** – Ex-parte decree of divorce – Confirmation – After amendment confirmation by High Court not necessary – District Judge can pass decree for dissolution of marriage : *Mary G. Sunny Vs. Sunny George*, I.L.R. (2002) M.P. 414 (F.B)

-**Sections 22 and 23**-No confirmation required for decree for judicial separation-Such decree comes into effect from the date on which it is passed-Reference to High Court in case of decree for judicial separation, wholly in-competent and misconceived: *Benzamin Vs. Smt. Rundhbai*, I.L.R. (1988) M.P. 471 (F.B.)

– **Section 26** – Forgetting the past and joint living with renewed love and hope – “What God hath joint together, let not man put asunder” : *Angel Valentine D’souza Vs. Mrs. Blanche Angela Piedade D’souza*, I.L.R. (1999) M.P. 227

– **Sections 34 and 17** – Award of damages – High Court, power to determine questions even when appeal not filed by aggrieved party – Compensatory and not exemplary or punitive damages can be granted : *Samuel Bahadur Singh Vs. Smt. Roshni Singh*, I.L.R. (1959) M.P. 487 (FB)

Doctrines

- **Doctrine of mutuality** – Not applicable to completed contract : *Rajendra Kumar Vs. The State of M.P.*, I.L.R. (1965) M.P. 498

– **Doctrine res ipsa loquitur** – Not a rule of law – Is no more than a rule or evidence : *Madhya Pradesh State Road Transport Corporation, Bairagarh Vs. Sudhakar*, I.L.R. (1969) M.P. 631 (D.B.)

– **“Ejesdum Generis”** – Is not a rule of Law – Is merely rule of construction to aid in finding out intention of legislature : *Rajaram Vs. Nandkishore*, I.L.R. (1980) M.P. 149 (D.B.)

- **Doctrine of ejusdem generis** – Is not inviolable rule of law – Is to be applied with caution : *Sayebal Vs. State of M.P., I.L.R. (1978) M.P. 1103 (D.B.)*

- **Doctrine of stare decisis** – Implication of : *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660 (F.B.)*

Doctrine of Merger

- **Applicable to Income Tax proceedings as well** – Extent of its applicability : *The Commissioner of Income Tax, M.P., Bhopal Vs. K.L. Rajput, I.L.R. (1986) M.P. 618 (F.B.)*

Doctrine of Promissory Estoppel

- **When can a party invoke the doctrine** : *Gajanan Saw Mill, Sagar Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 123 (D.B.)*

- **Not applicable to legislative or quasi-legislative functions** : *Gajanan Saw Mill, Sagar Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 123 (D.B.)*

- **Doctrine of Promissory Estoppel** – Doctrine limited to the actions of private parties or purely executive actions of the State and cannot be extended further : *Gajanan Saw Mill, Sagar Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 123 (D.B.)*

- **Existence of contract initially or in the alternative some obligation which a party is required to discharge is necessary** – One party resiling from its obligation – Other party can invoke the doctrine although there is no concluded contract – When can a party invoke the doctrine – Doctrine limited to the actions of private parties or purely executive actions of the State and cannot be extended further – Not applicable to legislative or quasi-legislative functions – Contract – Communication to other side or putting communication in transit – A necessary ingredient for creation of any right in favour of party sought to be communicated to – Contract when can be inferred : *Gajanan Saw Mill, Sagar Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 123 (D.B.)*

Document

- **Writers Licensing Rules, 1955, Madhya Pradesh** – Rule 16 – Licensing authority – Jurisdiction of, to base order on confidential report not disclosed – Opportunity to licensee necessary : *K.G. Mangrulkar Vs. District Registrar & Licensing Authority, Chhindwara, I.L.R. (1966) M.P. 65 (D.B.)*

- **Writers Licensing Rules, 1955, Madhya Pradesh** – Rule 16 – Permanent license – Suspension or Cancellation can only be under the Rule - Licensing authority – Jurisdiction of, to base order on confidential report not disclosed – Opportunity to licensee

necessary : *K.G. Mangrulkar Vs. District Registrar & Licensing Authority, Chhindwara, I.L.R. (1966) M.P. 65 (D.B.)*

- **Donation to a party fund prior to the date of publication of the notification calling the election** – Does not amount to corrupt practice : *Krishnachandra Sharma Vs. Rishab Kumar, I.L.R. (1959) M.P. 31 (D.B.)*

Domicile

Domicile cannot be confined to any Tahsil or block of a District : *Ku. Gayatri Pancholi Vs. Government of India & ors., I.L.R. (1986) M.P. 356*

Dowry

– **Parties Governed by Sunni law** – Court, Power of, to fix reasonable part as prompt : *Rasool Mohammed Vs. Mst. Kulsumbi, I.L.R.(1958) M.P. 173*

Dowry Prohibition Act (28 of 1961)

- **Sections 3/4– Section 503, IPC – Criminal intimidation- Ingredients** –Threat must be with intent to cause alarm or cause the person to do or omit to do an act : *Shri Mohan Raikwar Vs. State, I.L.R. (2000) M.P. 522*

-**Sections 6(1), 6(2), 7** - and Criminal Procedure Code, 1973 (II of 1974), Sections 178 (b), 482 and Dowry Prohibition (Amendment) Act, (LX of 1984)-Failure to transfer dowry to woman within 1 year –Court, within whose jurisdiction the dowry to be transferred, can take cognizance-Obligation u/s. 6 of Act could be discharged either by sending dowry articles by recognized mode or by giving the same to her where she resides-Cause of action-Only arises on the expiry of one year when the person fails to transfer-Limitation u/s. 7 of the Act starts from the date on which one year expires-Provisions regarding limitation deleted by amending Act : *Harbhajan Singh Vs. Smt. Manpreet Kaur, I.L.R. (1988) M.P. 404*

– **Section 7** – Limitation u/s 7 of the Act starts from the date on which one year expires – Provisions regarding limitation deleted by amending Act : *Harbhajan Singh Vs. Smt. Manjit Kaur, I.L.R. (1988) M.P. 404*

Drugs and Cosmetics Act (23 of 1940)

– **A Pre-constitution Act** – Can in no sense be construed to be made under Article 252 by Parliament : *Dr. Prakash Chandra Tiwari Vs. State of M.P., I.L.R. (1980) M.P. 628 (D.B.)*

– **Chapter IV** – Appointment of Inspectors – Different qualifications for Inspectors for different purposes – Permissibility – Appointment for some purposes – Permissibility : *State of Madhya Pradesh Vs. Hakim Arjundas, I.L.R. (1965) M.P. 992 (D.B.)*

– **Section 17 (1)** – Statement on container of drug that water for injection being kept along with drug – Found false – Amounts to misbranding within meaning of Section 17(c) – Accused liable to be prosecuted for offences under Act : *M/s. Ranbaxy Laboratories Limited Vs. State of M.P., I.L.R. (1995) M.P. 720*

– **Sections 17(c), 18 and 27** - Misbranded Drugs – Meaning – Held - A plain reading of 17(c) of the Act that a drug shall be deemed to be misbranded, in case, its label or container or anything accompanying the drug, bears any statement which is false or misleading in any particular – Revision dismissed : *Ranbaxy Laboratories Ltd. Vs. State of M.P., I.L.R. (1996) M.P. 547*

– **Section 18(a)(1), read with Section 27(b)** and Criminal Procedure Code, 1973 (II of 1974), Section 313 and Drugs -Conviction under-Section 25-Provisions are mandatory in nature-Report of Government Analyst suffering from infirmities- Detailed report of Government analyst not brought to the notice of accused-It has caused prejudice to his defence and also snatched evidentiary value or report of the Govt. analyst-Conviction set aside : *M/s. Vishal Pharmaceuticals Vs. State, I.L.R. (1999) M.P. 704*

– **Section 18** – Article kept in a shop – Presumption that it is for sale : *State of Madhya Pradesh Vs. Hakim Arjundas, I.L.R. (1965) M.P. 992 (D.B.)*

– **Section 18** – Offence under – Essentials to be proved – Essentials provable by circumstantial evidence – Article kept in a shop – Presumption that it is for sale – Chapter IV – Appointment of Inspectors – Different qualifications for Inspectors for different purposes – Permissibility – Appointment for some purposes – Permissibility – Drugs Rules – Rule 2(ii) (ee) – Persons who can be registered as registered medical practitioners under Drugs Rules – Definition of ‘Registered Medical Practitioner’ in Drugs Rules and Definition in C.P. and Berar Medical Registration Act – Difference between the two : *State of Madhya Pradesh Vs. Hakim Arjundas, I.L.R. (1965) M.P. 992 (D.B.)*

– **Sections 22(1)(c), 23(5)(b) and 31** – No action taken under the provisions thereof – Collector has no power to seal the articles or to seal the premises : *M/s. Agrawal Medical and General Stores, Jabalpur Vs. State of M.P., I.L.R. (1977) M.P. 618 (D.B.)*

– **Sections 23(4) (iii) and 18-A** – Non-supply of portion of purchased sample by Drug Inspector to the licensee amounts to breach of these provisions – Principal of Natural Justice – No show cause notice why licence should not be cancelled for supplying

spurious drugs given to Licensee – This amounts to denial of opportunity – Amounts to violation of principle of natural justice – Drugs and Cosmetics Rules, 1945 – Rule 66 – Confers discretion on Collector – Discretion has to be according to rules of reason and justice – Rule 65(c) – Non-compliance with the provision – Action of Collector is without jurisdiction – Sections 22(1)(c), 23(5)(b) and 31 – No action taken under the Provisions thereof – Collector has no power to seal the articles or to seal the premises – Constitution of India – Article 226 – High Courts Jurisdiction conferred by provisions – Power of doing such acts or employing such means as are necessary for its execution are available – Confers power on High Court to issue directions, orders or writs, other than prerogative writs – Discretion is wider than in England regarding issue of prerogative writs – Directions given : *M/s. Agrawal Medical and General Stores, Jabalpur Vs. State of M.P.*, I.L.R. (1977) M.P. 618 (D.B.)

– **Section 25** – Provisions are mandatory in nature – Report of Government Analyst suffering from infirmities – Detailed report of Government analyst not brought to the notice of accused – It has caused prejudice to his defence and also snatched evidentiary value of report of the Govt. analyst – Conviction set aside : *M/s. Vishal Pharamceutical's Vs. State*, I.L.R. (1999) M.P. 704

- **Section 34** – Offences by companies – At the time of commission of offence – Person in-charge of and responsible to the company for the conduct of business of the Company – Can be prosecuted for the offence with the aid of Section 34 of the Act : *M/s. Ranbaxy Laboratories Limited Vs. State of M.P.*, I.L.R. (1995) MP 720

- **Section 34** – Offences by the Companies – Section 34 – There is specific allegation in the complaint that Managing Director of the Company that he was conducting the business of the Company under the direction of the Board of Directors and thus AIR 1983 SC 67 is clearly distinguishable : *Ranbaxy Laboratories Ltd. Vs. State of M.P.*, I.L.R. (1996) M.P. 547

Drugs and Cosmetics Rules, 1940

– **Rules 17(6), 18(a)(iii), 18(a)(vi)** – Manufacture and Sale of drugs not mentioning batch number and date of manufacture on the carton – Person from whose possession article taken is duty bound to disclose name of manufacturer – Non furnishing information – Manufacturer cannot be arrayed as accused on basis of presumption as the cosmetic or drug in question may be spuriously manufactured by a person other s then the known manufacturer – Prosecution quashed : *Mehli Pestonji Poncha Sea Kist Vs. State*, I.L.R. (2002) M.P. 176

Drugs Rules, 1945 and C.P. and Berar Medical Registration Act (I of 1916)

– **Rules exclude persons practicing Biochemic system of medicine** : *Dr. Prakash Chandra Tiwari Vs. State of M.P., I.L.R. (1980) M.P. 628 (D.B.)*

– **Definition of ‘Registered Medical Practitioner’ in Drugs Rules and Definition in C.P. and Berar Medical Registration Act** – Difference between the two : *State of Madhya Pradesh Vs. Hakim Arjundas, I.L.R. (1965) M.P. 992 (D.B.)*

– **Rule 2(ii) (ee)** – Persons who can be registered as medical practitioner under – Drugs Rules: *State of Madhya Pradesh Vs. Hakim Arjundas, I.L.R. (1965) M.P. 992 (D.B.)*

– **Rule 65(c)** – Non-compliance with the provision – Action of Collector is without jurisdiction : *M/s. Agrawal Medical and General Stores, Jabalpur Vs. State of M.P., I.L.R. (1977) M.P. 618 (D.B.)*

– **Rule 65(9)** – Medicines not falling under Schedules H and L – Can be sold even without prescription of a registered medical practitioner : *Dr. Prakash Chandra Tiwari Vs. State of M.P., I.L.R. (1980) M.P. 628 (D.B.)*

– **Rule 65(9)** – “Registered Medical Practitioner” in – Does not include a Homoeopathic and Biochemic Practitioner Registered under Homoeopathic and Biochemic Practitioners Act in M.P. : *Dr. Prakash Chandra Tiwari Vs. State of M.P., I.L.R. (1980) M.P. 628 (D.B.)*

– **Rule 66** – Confers discretion on Collector – Discretion has to be according to rules or reason and justice : *M/s. Agrawal Medical and General Stores, Jabalpur Vs. State of M.P., I.L.R. (1977) M.P. 618 (D.B.)*

Easements Act, Indian (V of 1882)

– **Easements**-Artificial Channels for flow of water-right of owner of upper land to overflow water into the lower land-Mode of acquisition: *Chandrabhansingh Vs. Shitalprasad, I.L.R. (1983) M.P. 447*

– **Easements**-Owner of lower land putting embankment in his land and thereby preventing overflow of water from upper land-Resulting damage to crops in upper land : *Chandrabhansingh Vs. Shitalprasad, I.L.R. (1983) M.P. 447*

– **Easements**-Owner of upper land not pleading or proving acquisition of right to flow of water from his land into the lower land for further draining it out-Not entitled to claim damages from owner of lower land : *Chandrabhansingh Vs. Shitalprasad, I.L.R. (1983) M.P. 447.*

– **Section 4** – Both servient and dominant tenements owned by same person – Easement right cannot be acquired – Sixty years user necessary to acquire easement right against Government: *Diwan Duragsingh Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 270, (D.B.)*

– **Section 7, Illustration (i) and section 13(f)** – Common property, subsequently partitioned – The owner of the portion of land on higher level has a natural right and right of easement under section 13(f) to discharge rain and drain water over the defendant's land on a lower level : *Jugabai Vs. Laxman, I.L.R. (1960) M.P. 312*

– **Section 7 Illustration (1)** – Adjacent land – Suit for declaration and permanent injunction – The plaintiff has a right to unobstructed flow of water from his field to the field of defendant which is at a lower level – Fields of plaintiff and defendant separated by common path – Adjacent or contiguous mean adjoining or near to and not actually touching each other – Owner of an adjacent higher field has a right to free and uninterrupted passage of water from his field to the lower adjacent field – Illustration (1) of Section 7 of Easements Act applies : *Veniram Vs. Karam Singh; I.L.R. (1993) M.P. 179*

– **Section 15** – Easement ceased to be enjoyed for more than two years prior to the institution of suit for its enforcement – Easement is extinguished and suit for its enforcement is barred : *Phulchand Vs. Nagjiram, I.L.R. (1963) M.P. 295*

– **Section 15** – Easement to drop rain water from a certain height – Height increased but other things remained the same – Burden on servient tenement cannot necessarily be said to have been increased : *Mannalal Vs. Dalchand, I.L.R. (1961) M.P. 117*

– **Sections 15** – Predecessor of plaintiff constructed house encroaching upon four feet wide conservancy lane – Purchase by appellants in 1969 and suit in 1984 – Plaintiff failed to prove right of easement perfected by prescription for continuous period of 20 years: *Maman Chandra Agrawal Vs. Smt. Ramdulari, I.L.R. (2004) M.P. 964*

– **Section 15** – Sixty years user necessary to acquire easement right against Government: *Diwan Duragsingh Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 270, (D.B.)*

– **Section 17** – Easement of dropping eaves water – Height of eaves raised – Eaves water not discharged through spouts – No additional burden thrown on servient tenement – Right of easement not lost: *Noor Bux Vs. Abdul Samad, I.L.R. (1957) M.P. 106, (D.B.)*

– **Section 17, 15 and 18** – Section 17 controls section 15 – Does not control section 18:., *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 17(c)** – Answers to the question – When flowing water assumes character of a stream – Surface water not flowing in any defined channel – Does not lose its

character when it flows from upper land to lower land: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 17(c)** – Enacts prescriptive easement – Cannot be acquired in respect of right to surface water – Water not flowing in stream or permanently collected in a pool, tank or otherwise – Allowing user for 20 years to plaintiff – Defendant has no right to interrupt that water – Defendant cannot restrict the easement or to render its exercise less convenient – Land Revenue Code, Madhya Pradesh, 1954 – Section 225 – Finality and exclusiveness attaches to entry in Wazib-ul-arz – Can be questioned only as provided in sub-section (3) of Section 225 – Remains good till set aside by Civil Court – Entry does not create title – Raises a strong presumption in its support – Burden shifts on person challenging the entry to prove non-existence of custom – Easements Act – Sections 17, 15 and 18 – Section 17 – Controls section 15 – Does not control Section 18 – Right under Section 18 protected by Section 32 – Water flowing as a body of water continuously in one direction – It is a stream – Not necessary that it must be a confined channel – Kinds of stream – Meaning of artificial stream – Stream does not lose its character because it spreads over a large area provided it remains identifiable as water of that stream – Flow of water as a body of water in one direction – Is a stream water coming from Hillock and Abadi – Is a water flowing in a stream – Answers to the question – When flowing water assumes character of stream – Surface water not flowing in any defined channel – Does not lose its character when it flows from upper lands to lower land – Rain water coming from upper lands to lower lands – Is a surface water till it flows in defined channel – Surface water is owned by a person over whose land it flows – He can deal with it – Person has no natural or prescriptive right to surface water – Land Revenue Code, Madhya Pradesh, 1954 – Section 253 – Proceedings under, are quasi criminal – Orders in such proceedings – Not binding on civil Court – Easements Act – Sections 27 and 32 – Not to be construed in such a way as to indirectly confer a right which cannot be acquired under section 17 – Section 27 – Applicability – Section 32 – Condition for its applicability – Words and phrases – “Stream” – Description of: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 17(c)** – Flow of water as a body of water in one direction – Is a stream – Water coming from Hillock and Abadi – Is a water flowing in a stream: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 17 (c)** – Kinds of Stream – Meaning of artificial stream – Stream does not lose its character because it spreads over a large area provided it remains identifiable as water of this stream: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 17(c)** – Rain water coming from upper lands to lower lands – Is a surface water till it flows in defined channel: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 17(c)** – Surface water is owned by a person over whose land it flows – He can deal with it – Person has no natural or prescriptive right to surface water: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 17(c)** – Water flowing as a body of water continuously in one direction – It is a stream - Not necessary that it must be a confined channel: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 17(c)** – Water not flowing in stream or permanently collected in a pool, tank or otherwise – Allowing user for 20 years to plaintiff – Defendant has no right to interrupt that water – Defendant cannot restrict the easement or to render its exercise less convenient: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 18 and 22** – Right under Section 18 protected by Section 32: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 27** – Applicability: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Sections 27 and 32** – Not to be construed in such a way as to indirectly confer a right which cannot be acquired under section 17: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 32** – Conditions for its applicability: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843, (D.B.)*

– **Section 33** – Unless what is done amounts to nuisance there is no infringement of right – There must be invasion of legal right – Passage of sufficient light and air through the existing window and ventilators on each floor – Suit rightly dismissed by Lower Appellate Court: *Maman Chandra Agrawal Vs. Smt. Ramdulari, I.L.R. (2004) M.P. 964*

Section 54 – Suit by licensees for injunction against servient owner restraining him from interfering with their right – Maintainability: *S.C. Mukerji Vs. Smt. Gangabai, I.L.R. (1957) M.P. 1*

– **Section 60(b)** – Agreement of licence reserving power to terminate licence – Section no bar to terminate licence: *State of Madhya Pradesh Vs. Abdul Rahim Khan, I.L.R. (1979) M.P. 910, (D.B.)*

Section 60(b) – Licensee creating permanent structure in pursuance of licence – Licence irrevocable – Agreement of licence reserving power to terminate licence – Section no bar to terminate licence – Licence – Clauses (iv)(a) – Licence not terminable at the will of licensor – Can be terminated if land needed by grantor or for public

purpose – Grantor sole judge of determining whether land is so required – His opinion not liable to interference if honestly formed – Power conferred by statute – Power to be exercised in good faith for furtherance of the object for which it is conferred – If power not exercised honestly – Exercise of power would be invalid: *State of Madhya Pradesh Vs. Abdul Rahim Khan, I.L.R. (1979) M.P. 910, (D.B.)*

Educational Service (Collegiate Branch) Recruitment Rules, M.P., 1967

Education Department Technical Branch Class III (Non-Ministerial) Recruitment Rules, M.P., 1980 – Promotion – Legal Principles Stated – Rules hampering the chances of the promotion of some persons who were entitled consideration prior to coming into force of Rules – Rules held not ultra vires on this Court: *Madhya Pradesh Class III Employees Association, Jabalpur Vs. The Director of Technical Education Board, Satpula Bhavan, Bhopal, I.L.R. (1989) M.P. 151, (D.B.)*

Rules 12(5)(3) and (2), 8(ii) - and 11 and Schedule III and Constitution of India, Article 309 – Candidates with III Class Bachelor Degree not called for interview by Public Service Commission – Commission does not exceed its powers: *Dalpratap Singh Vs. State of M.P., I.L.R. (1981) M.P. 547, (D.B.)*

Rules 12(5)(3) - and (2), 8(ii) and 11 and Schedule III and Constitution of India, Article 309 – Emergency appointments, when may be made – Person so appointed has no right to the post – Liable to be removed on receipt of Commission's panel of selected candidates – No rules on a particular subject framed under Article 309 of the Constitution – State Govt. Has powers to issue executive instructions laying down reasonable guide lines – Govt. laying down qualification of 2nd class Bachelor Degree as criterion for screening of candidates – Object of – Candidates with III Class Bachelor Degree not called for interview by Public Service Commission – Commission does not exceed its powers: *Dalpratap Singh Vs. State of M.P., I.L.R. (1981) M.P. 547, (D.B.)*

-Rules 12(5)(3) - and (2), 8(ii) and 11 and Schedule III and Constitution of Indian, Article 309 – Govt. laying down qualification of 2nd class Bachelor Degree as criterion for screening of candidates – Object of: *Dalpratap Singh Vs. State of M.P., I.L.R. (1981) M.P. 547, (D.B.)*

– **Rule 15, Schedule IV** – Employee to fulfil minimum experience qualification and academic qualification for being promoted: *Dr. Girish Chandra Verma Vs. State of M.P., I.L.R. (1978) M.P. 631, (D.B.)*

– **Rule 15, Schedule IV** – Note to Schedule IV to last but one item – Note to be read with Rule 15 – Note has to be read as proviso to rule 15 with respect to teaching posts - Employee to fulfil minimum experience, qualification and academic qualification

for being promoted – Word “Promotee” in - Used for persons eligible for promotion i.e. prospective promotee – Promotee not fulfilling educational qualification till the meeting of department Committee – Promotee cannot be included in select list: *Dr. Girish Chandra Verma Vs. State of M.P., I.L.R. (1978) M.P. 631, (D.B.)*

– **Rule 15, Schedule IV** – Promotee not fulfilling educational qualification till the meeting of departmental Committee – Promotee cannot be included in select list: *Dr. Girish Chandra Verma Vs. State of M.P., I.L.R. (1978) MP 631, (D.B.)*

–**Rule 15, Schedule IV**-Word “Promotee” in-Used for persons eligible for promotion i.e. prospective promotee : *Dr. Girish Chandra Verma Vs. State of M.P., I.L.R. (1978) M.P. 631, (D.B.)*

Election

– **Candidate withdrawing from contest** – Such candidate need not be joined as a party: *Sheo Dayal Vs. K.P. Rawat, Returning Officer and Tahsildar, Narsinghpur, I.L.R. (1977) M.P. 653, (D.B.)*

–**Columns (2) and (3) of nomination form** – Heading of these columns vague, ambiguous and likely to mislead – No one misled to be deprived of valuable right to contest election because of mistake in filing these columns – Constitution of India- Article 226 – Nomination paper wrongly and arbitrarily rejected – Remedy by election petition not an efficacious remedy – Interference under this article if justified: *Vinodkumar Vs. K.L. Jain (Block Development Officer) Returning Officer, Majhooli, I.L.R. (1967) M.P. 327,(D.B.)*

–**Contravention of law or any rule**-Can form subject-matter of challenge in election petition : *Sheo Kumar Vs. Shri M.A. Khan, Deputy Commissioner, Bilaspur, I.L.R. (1959) M.P. 527, (D.B.)*

–**Declaration of result** – Is a step in process of election – Sthaniya Pradhikaran (Nirvachan Sthagan) Adhiniyam, Madhya Pradesh, 1966 – Section 5 – Order No. 5861/634 – XVIII – Urban/1, dated 18-6-1969 – Vires of – Res-judicata – Direct and substantial adjudication – Necessary for operation of res-judicata – Municipalities Act, Madhya Pradesh, 1961 – Section 2(2)(i) – Deemed bodies – Not bodies under the Act – Have been fictionally treated as bodies so constituted – Municipal Committee constituted under repealed Act – Deemed to be Municipal Committee under the Act of 1961 – Section 2(2) (iv) - Terms fixed under the repealed Act – That is “Normal term” – Section 2(2)(i) and (ii) – To be construed together with the provisos – Proviso (b) – Does not extend the term of the Councillors: *Sayebal Vs. State of Madhya Pradesh, I.L.R. (1978) M.P. 1003, (D.B.)*

-Election agent can be appointed at any time – Can be appointed even prior to the scrutiny of nominations: *Her Highness Maharani Vijaya Raje Scindia Vs. Motilal, I.L.R. (1958) M.P. 193, (D.B.)*

-Election Tribunal – Inherent power to restore the petition dismissed for default: *Sunderlal Vs. Nandram Das, I.L.R. (1957) M.P. 627, (D.B.)*

-Election Tribunal-Power of, to allow particulars of corrupt practices to be supplied: *Krishnachandra Sharma Vs. Rishab Kumar, I.L.R. (1959) M.P. 31, (D.B.)*

-Election Tribunal, - Power of, to call for supply of particulars: *Nirbhaydas Vs. Smt. Gulab Bai, I.L.R. (1958) M.P. 46, (D.B.)*

-Election Tribunal-Whether a Court and is subordinate to High Court : *Nirbhayadas Vs. Rameshwar Agnihoj, I.L.R. (1959) M.P. 312, (D.B.)*

- Meaning of – Power of High Court to interfere with order of Returning Officer: *Lal Chandra Bhan Shah Vs. The Returning Officer, (D.C.), Seoni, I.L.R. (1957) M.P. 150, (D.B.)*

–Power of High Court – Natural Justice – The High Court in an election petition, does not sit in appeal against administrative decisions of the Election Commission in the course of superintendence, direction, control and conduct of election and to maintain free and fair play in election as per the provisions of Article 324 of the Constitution – If a particular decision is taken in violation of the rules of natural justice, this Court may take an appropriate inference and pass an appropriate order as the jurisdiction of the Court in respect of election, the process for which has started, arises after completion of the election – This Court will not say that, under the peculiar circumstances, it would have taken decision different from that taken by the Election Commission of that a different decision would be appropriate – Facts and circumstances of each case are the relevant factors, as observed by the Supreme Court. : *Sayed Ahmed Vs. Brijendra Nath Pathak, I.L.R. (1997) M.P. 124*

-Right to stand for election when conferred by a statute-Becomes a civil right-Disposal of dispute entrusted to Civil Court-Procedure of that Court to apply unless prohibited: *Babulal Vs. Dattatraya, I.L.R. (1971) M.P. 412 (F.B.)*

Election Rules, 1961

Election Rules-Strict compliance essential: *Gopalsingh Vs. Collector, Morena, I.L.R. (1964) M.P. 195, (D.B.)*

-Rules, 1961, Rule 56(3) – Grounds for setting aside election – Inadequate facility to the counting agents at the time of counting votes – Adverse effect in counting due to

disruption of electricity – Not substantiated by proper evidence – Secrecy of the ballot papers cannot be permitted to be tinkered lightly – No case made out for recounting: *Balram Singh Vs. Jagjeet Singh Makkad*, I.L.R. (2001) M.P. 1851

Electricity Act, Indian (IX of 1910)

- and Electricity (Supply) Act (LIV of 1948) – Fatal accident due to negligence – Burden to prove absence of negligence on Electricity Board – Standard of care required is high – Presence of live broken wires of high tension found in public place, street or road – Prima facie inference is of carelessness on part of Board in transmitting electric energy – Electricity Rules, 1956 – Rule 91 – Imposes duty to provide a device rendering in line electrically harmless in case it breaks – Fatal Accidents Act – Section 1-A – Loss not limited to cash payment which deceased may be expected to make – Includes loss of service – Principle of assessing damages: *Manoharlal Gupta Vs. The Madhya Pradesh Electricity Board, Jabalpur*, I.L.R. (1979) M.P. 817, (D.B.)

- and Electricity (Supply) Act (LIV of 1948) – Presence of live broken wires of high tension found in public place, street or road – Prima facie inference is of carelessness on part of Board in transmitting electric energy: *Manoharlal Gupta Vs. The Madhya Pradesh Electricity Board, Jabalpur*, I.L.R. (1979) M.P. 817, (D.B.)

– Clause VI(3) – Board issuing Bill on estimate basis alleging meter to be incorrect without reference to or decision of Electrical Inspector – Demand invalid – Board not authorised to discontinue energy: *Hamidullah Khan Vs. The Chairman, M.P. Electricity Board, Jabalpur*, I.L.R. (1982) M.P. 797, (D.B.)

- Clause VI(3) – Not applicable to a dispute to which section 26(6) applies: *Hamidullah Khan Vs. The Chairman, M.P. Electricity Board, Jabalpur*, I.L.R. (1982) M.P. 797, (D.B.)

– Clause VI(3) – Reference to the Electrical Inspector has to be made by a party disputing the meter reading: *Hamidullah Khan Vs. The Chairman, M.P. Electricity Board, Jabalpur*, I.L.R. (1982) MP 797, (D.B.)

– Distinction regarding method of valuation between a case where undertaking is taken over after revoking licence and where it is one after expiry of the period: *Madhya Pradesh Electricity Board, Jabalpur Vs. The Central India Electric Supply Co., Ltd, Bilaspur*, I.L.R. (1976) M.P. 57, (D.B.)

– Does not permit grant of interest where franchise for a public utility is granted to private undertakers for limited period with a condition of handing over concern to public authority at the end of period: *Madhya Pradesh Electricity Board, Jabalpur Vs. The Central India Electric Supply co., Ltd, Bilaspur*, I.L.R. (1976) M.P. 57, (D.B.)

-Section 4-Clauses (a) to (e)-Conditions therein-To be satisfied before exercising power of revocation-Government's opinion regarding cancellation of licence after forming subjective opinion about fulfillment of conditions in clause (a) or (d)-Court cannot enquire into grounds on which Government's opinion formed-Condition precedent in clause (b)-Is an objective fact-Not left open to subjective opinion of Government-Not required to be determined judicially by Government : *Barnagar Electric Supply And Industrial Company Ltd., Barnagar Vs. The State of M.P., I.L.R. (1963) M.P. 1021, (D.B.)*

-Section 4-Government exercising function under-Government not required to act in a judicial manner-Cancellation of licence justified if in public interest-Opinion of Government is a subjective matter-Not open to objective test-Conditions in clauses (a) to (a) to be Satisfied before exercising power or revocation-Government's opinion regarding cancellation of licence after forming subjective opinion about fulfillment of conditions in clause (a) or (d)-Court cannot enquire into grounds on which Government's opinion formed-Condition precedent in clause (b)-Is an objective fact-Not left open to subjective opinion of Government-Not required to be determined judicially by Government –Government's duty under sub-section (1) of section 4-Purely administrative-Sub section(3) prescribes method in the discharge of that duty-Tests to be applied to see whether a body is exercising administrative or judicial authority –Order of revocation of licence is administrative order-Words and Phrases-"To show cause"-Means both to allege cause and to prove it –Principles of natural justice-Principles vary according to constitution of statutory bodies-Contravention of the rule to be determined according to provisions of relevant Act: *Barnagar Electric Supply And Industrial Company Ltd., Barnagar Vs. The State of M.P., I.L.R. (1963) M.P. 1021, (D.B.)*

-Section 4, sub section 1-Government's duty thereunder-Purely administrative : *Barnagar Electric Supply And Industrial Company Ltd., Barnagar Vs. The State of M.P., I.L.R. (1963) M.P. 1021, (D.B.)*

-Section 4, sub section (3)-Prescribes method in the discharge of that duty : *Barnagar Electric Supply And Industrial Company Ltd., Barnagar Vs. The State of M.P., I.L.R. (1963) M.P. 1021, (D.B.)*

-Section 4-Tests to be applied to see whether a body is exercising administrative or judicial authority-Order of revocation of licence is administrative order : *Barnagar Electric Supply And Industrial Company Ltd., Barnagar Vs. The State of M.P., I.L.R. (1963) M.P. 1021, (D.B.)*

-Section 6(4)-Intimation by Board to Government necessary regarding its intention of purchasing the undertaking-Intimation to be given 18 months before expiry of relevant period mentioned in sub-section (1)- Exercise of option when valid : *The Gwalior and Malwa Industries and Electric Supply Co. Ltd., Neemuch Vs. The M.P. Electricity Board, Jabalpur, I.L.R. (1963) M.P. 1039, (D.B.)*

– **Section 7-A(I)** – Decree in terms of award under Section 7-A(1) of Electricity Act – Cannot be only declaratory decree: *Madhya Pradesh Electricity Board, Jabalpur Vs. The Central India Electric Supply Co., Ltd, Bilaspur, I.L.R. (1976) M.P. 57, (D.B.)*

– **Section 12(2)** – Some position of under section 12(2) – Electricity Act, 1910, if matter not covered by a sanctioned scheme – Practice – Court's duty to do justice according to law as well as social justice: *M.P. Electricity Board, Jabalpur Vs. Nathoolal, I.L.R. (1989) M.P. 536,*

– **Section 24** - and General Conditions for Supply of Electrical Energy and Scale of Miscellaneous and General Charges, Condition 22-A-Empowers Electricity Board to out off supply of Electricity or not to re-commence the supply unless outstanding dues in respect of such supply in the premises are paid by the transferee allottee or acquiree of those premises – Suit by the Board for recovery of such outstanding dues – Defendant may plead in it that he is not liable for such outstanding dues : *Sanjay Dhingra Vs. M.P. Electricity Board, I.L.R. (1990) M.P. 204 (D.B.)*

- **Section 24(1)** - Agreement between Company and MPEB - Bank guarantee furnished not honoured by Bank - Notice to Bank threatening disconnection - Bank not a consumer - Notice to Bank unauthorized and without jurisdiction. Electricity Act (IX of 1910), Section 24(1) - Agreement between Company and MPEB - Bank guarantee furnished not honoured by Bank - Notice to Bank threatening disconnection - Bank not a consumer - Notice to Bank unauthorized and without jurisdiction : *Allahabad Bank, Katni Vs. M.P.E.B. Jabalpur; I.L.R..(2002) M.P. 561*

– **Sections 24(1), 26(4), 26(6)** - and clause VI (3) of the Schedule to the Act – Meter reading – Is conclusive proof of the amount of quantity of Electrical energy consumed in the absence of contrary decision by the Electrical Inspector: *Hamidullah Khan Vs. The Chairmam, M.P. Electricity Board, Jabalpur, I.L.R. (1982) M.P. 797,(D.B.)*

– **Sections 24(1), 26(4), 26(6)** - and clause VI (3) of the Schedule to the Act – Powers of the Board to disconnect supply of electricity to the consumer in case of non-payment of charges – When can be exercised – Dispute as to whether meter is correct or incorrect – Has to be resolved by the Electrical Inspector – Meter reading – Is conclusive proof of the amount of quantity of Electrical energy consumed in the absence of contrary decision by the Electrical Inspector – Clause VI (3) – Not applicable to a dispute to which section 26(6) applies – Reference to the Electrical Inspector has to be made by a party disputing the meter reading – Board issuing Bill on estimate basis alleging meter to be incorrect without reference to or decision of Electrical Inspector – Demand invalid – Board not authorised to discontinue energy: *Hamidullah Khan Vs. The Chairmam, M.P. Electricity Board, Jabalpur, I.L.R. (1982) M.P. 797,(D.B.)*

–**Section 53** - and Civil Procedure Code, 1908, Section 96–First Appeal–Suit for recovery of minimum guarantee charges by the Electricity Board–Notice of availability of supply required to be proved–Service through affixation could be resorted after failure of service through registered post–Notice through affixation proved–Defendant liable to pay minimum charges as claimed by the Board : *M.P. Electricity Board, Jabalpur Vs. Laxmi Iron Industries Ltd. Neemuch*; *I.L.R. (2005) M.P. 962*

–**Rules under the Act**–Rule 136–No duty on Manager to supervise Electric installation in a residential accommodation–Accident occurring at private residence–Manager not liable : *The State of M.P. Vs. J.P. Cassed*, *I.L.R. (1963) M.P. 932, (D.B.)*

–**Rule 136**–Conditions under which Manager or Agent can be held liable: *The State of M.P. Vs. J.P. Cassed*, *I.L.R. (1963) M.P. 932, (D.B.)*

Electricity Act, Indian (LIV of 1948)

Escrow cover – Security for payment – Condition for providing financial coverage to IPPs in order to secure payment for sale of their energy to M.P.E.B.: *Bina Power, Supply Company Ltd. Vs. State*, *I.L.R. (2001) M.P. 658, (D.B.)*

– **Sections 43 and 43-A** – Contract for purchase or sale of electricity by the Board and terms & conditions therefore – Such contracts are statutory contracts – Yet enforceability and Principle of promissory estoppel can be denied by the Courts if larger public interest is achieved by doing so as public interest is paramount as against individual interest: *Bina Power, Supply Company Ltd. Vs. State*, *I.L.R. (2001) M.P. 658, (D.B.)*

Electricity Act (XXXVI of 2003)

–**Electricity Rules, 2005, Rule 12**–Though the Rules came later the same procedure was adopted–Act does not require that complaint should be made directly to the court–No illegality in the procedure adopted and cognizance taken by Special Judge: *Sheikh Mohd. Khalil Vs. State of M.P.*, *I.L.R. (2005) M.P. 1122*.

–**Sections 135, 151**– Electricity Rules, 2005, Rule 12 and Criminal Procedure Code, 1973, Section 482–Theft of electricity–Cognizance–Jurisdiction–Court can take cognizance because the person making complaint to police is one enumerated in Section 151 as competent to make a complaint–Though the Rules came later the same procedure was adopted–Act does not require that complaint should be made directly to the court–No illegality in the procedure adopted and cognizance taken by Special Judge. : *Sheikh Mohd. Khalil Vs. State of M.P.*, *I.L.R. (2005) M.P. 1122*,

– **Sections 153, 154** - and Criminal Procedure Code 1973, Sections 200, 204, 438–Application for anticipatory bail–Maintainability–It is the apprehension of arrest which

has to be given due consideration and weight—Bailable warrant issued by Magistrate in complaint case—Offence alleged triable by Special Court—Apprehension well founded—Application for anticipatory bail maintainable—Application filed before Special Judge should have been considered on merits : *Hariom Lokhande Vs. M.P. State Electricity Board*; *I.L.R. (2005) M.P. 1126* .

Electricity Duty Act, Madhya Pradesh (XLIX of 1949)

- as amended by the Electricity Duty (Amendment) Act, M.P., (XXI of 1978)
 – Section 3 – Table containing rate of Electricity duty in clauses (1) and (2) thereof – Crushing unit installed in mining area for crushing Dhokas into gitti to be used in factory premises for manufacture of cement – Consumption of electrical energy in that crushing unit liable to electrical duty at the rate provided in clause (2) of the table at the rate of 3 paise per unit and not under clause (1) thereof: *M/s. Birla Jute Manufacturing Company Ltd. Vs. State of M.P., I.L.R. (1982) M.P. 871, (D.B.)*

- as amended by the Electricity Duty (Amendment) Act, M.P. (XXI of 1978)
 – Section 3 – Table containing rate of Electricity duty in clauses (1) and (2) thereof – Rate of duty payable at the rate prevalent when duty is paid: *M/s. Birla Jute Manufacturing Company Ltd. Vs. State of M.P., I.L.R. (1982) M.P. 871, (D.B.)*

- as amended by the Electricity Duty (Amendment) Act, M.P. (XXI of 1978)
 – Section 3 – Table containing rate of Electricity duty in clauses (1) and (2), thereof and Explanation (c) – Word “Factory” used in explanation (c) – Meaning and connotation of – Premises used for industry falls within the definition of factory even though no manufacturing process is carried there – Crushing unit installed in mining area for crushing Dhokas into gitti to be used in factory premises for manufacture of cement—Consumption of electrical energy in that crushing unit liable to electrical duty at the rate provided in clause (2) of the table at the rate of 3 paise per unit and not under clause (1) thereof – Rate of duty payable at the rate prevalent when duty is paid : *M/s. Birla Jute Manufacturing Company Ltd. Vs. State of M.P., I.L.R. (1982) M.P. 871, (D.B.)*

-Section 3, - Explanation (c) as amended by M.P. Acts, Nos. 21 of 1978 and 46 of 1984. Electricity Duty Rules, M.P., 1949, Rule 4, Factories Act (LXIII of 1948), Section 4, Factories Rules, M.P., 1962, Rules 3, 4, 6, 8 and Constitution of India, Article 226- Petitioner—Company though registered as a ‘factory’ under the Factories Act but not covered by the definition of ‘factory’ in Section 3, Explanation (c) in 1949 Act-Not entitled to pay electricity duty at concessional rate-Petitioner-Company not shown to be a part of Satna Cement Works earlier-Holding separate factory licence not as a result of bifurcation under Section 4 of Factories Act- Cannot be presumed to be a part of Satna Cement Works- Not entitled to the benefit of concessional rate of electricity duty-Writ petition including points and reliefs covered under earlier writ petition pending

in Supreme Court-Even though such points not pressed during hearing when objection raised-Amounts to abuse of the process of Court : *Birla Jute Industries Ltd., Calcutta Vs. State . I.L.R. (1986) M.P. 447, (D.B.)*

-Section 3, - Explanation (c) Note - Declaration contained in the note has relevance to supply of electricity and the rate of duty - Validity - It is not arbitrary or discriminatory: *Harsingh Extraction and Allied Products Pvt. Ltd. Vs. State of M.P., I.L.R. (1995) M.P. 183, (D.B.)*

Electricity Rules, 1956

-Electricity Generation, Control and Consumption Order, M.P., 1975-Clause 3-Does not suffer from the vice of impermissible delegation of essential function by State Govt. in favour of Divisional Engineer-Not *ultra vires*: *Jiyajeerao Cotton Mills Ltd., Gwalior Vs. M.P. Electricity Board, Jabalpur, I.L.R. (1983) M.P. 193,(D.B.)*

-Electricity Generation, Control and Consumption Order, M.P., 1975-Clause 3-Expression “technically feasible” in clause 3 and requirement of consultation with Engineer in charge of generating set-Provides sufficient guidelines and excludes element of arbitrariness-Not violative of Articles 14 and 19(1)(G) : *Jiyajeerao Cotton Mills Ltd., Gwalior Vs. M.P. Electricity Board, Jabalpur, I.L.R. (1983) M.P. 193, (D.B.)*

-Rule 91 – Imposes duty to provide a device rendering the line electrically harmless in case it breaks: *Manoharlal Gupta Vs. The Madhya Pradesh Electricity Board, Jabalpur, I.L.R. (1979) M.P. 817, (D.B.)*

Electricity (Supply) Act (LIV of 1948)

- and Electric Supply Rules, 1956 – Negligence of M.P.E.B. in safe keeping of live wires carrying energy – Claimants not required to prove beyond res ipsa liquitur – Burden to disprove negligence is on the M.P.E.B. – Evidence revealing the knowledge about pilfering electricity line – Case proved against M.P.E.B. – Liable to compensate the claimants: *Smt. Shail Kumari Vs. M.P. Electricity Board, I.L.R. (2001) M.P. 1214, (D.B.)*

– M.P. Electricity Board engaged in generation and supply of electricity – Obligated to see that the same is transmitted in a manner not dangerous to life: *Smt. Shail Kumari Vs. M.P. Electricity Board, I.L.R. (2001) M.P. 1214, (D.B.)*

– Regulation 7(c) – Circulars issued by Board amount to an executive order – Board not competent to call upon employees to pass departmental examination before coming eligible for promotion – Mere passing of resolution by Board for holding

departmental examinations not sufficient – Amendment of regulation necessary: *Madhya Pradesh Electricity Board, Jabalpur Vs. The M.P. Vidyut Karmachari Sangh, Jabalpur*, I.L.R. (1972) M.P. 439, (D.B.)

-**Schedule 6**-Clauses II(3), V(2) and V A(4)-Casts duty on licensee to hand over certain reserves to the Board who has taken over the concern : *Madhya Pradesh Electricity Board, Jabalpur Vs. The Central India Electric Supply Co., Ltd, Bilaspur*, I.L.R. (1976) M.P. 57, (D.B.)

– **Section 5** – Power of appointment carries with it the power to determine period unless power is restricted by Act or the rules: *S.S. Dausage Vs. State of M.P.*, I.L.R. (1978) M.P. 726, (D.B.)

– **Sections 8 and 78** – Does not cast duty on Government to frame rules regarding terms of office of members of the Board: *S.S. Dausage Vs. State of M.P.*, I.L.R. (1978) M.P. 726, (D.B.)

– **Sections 8 and 78** – Word “May” in – Gives discretion to Government to frame rules: *S.S. Dausage Vs. State of M.P.*, I.L.R. (1978) M.P. 726 (D.B.)

– **Section 10** – Order stating that appointment is till further order – Question of removal does not arise: *S.S. Dausage Vs. State of M.P.*, I.L.R. (1978) M.P. 726, (D.B.)

– **Section 10** – Removal from office in this provision – To be construed in the same sense as in Art. 311 of the Constitution – Term of office coming to an end – Quitting of office – Does not amount to removal – Section 5 – Power of appointment carries with it the power to determine period unless power is restricted by Act or the rules – Sections 8 and 78 – Does not cast duty on Government to frame rules regarding terms of office of member of the Board – Word “May” in – Gives discretion to Government to frame rules – Section 10 – Order stating that appointment is till further order – Question of removal does not arise – Constitution of India – Article 311 – Form of order of termination – Not decisive, Court can look to surrounding circumstances – Motive behind reversion not relevant – Practice – Adverse inference for not filing affidavit by person against whom allegations made – Can be drawn only if that person has personal knowledge: *S.S. Dausage Vs. State of M.P.*, I.L.R. (1978) M.P. 726, (D.B.)

– **Section 10** – Term of office coming to an end – Quitting of office – Does not amount to removal: *S.S. Dausage Vs. State of M.P.*, I.L.R. (1978) M.P. 726, (D.B.)

- **Sections 13, 43, Contract Act, 1872, Sections 2, 70** – Concluded Contract – Correspondence between Executive Director (Commercial) of Board and appellant, a power generating company, for establishment of captive plant and supply of excess

electricity generated by company to Board – Only board is competent to enter into an agreement for purchase on sale of electricity and fixation of tariff-No authorization in favour of Executive Director (Commercial) to enter into such agreement with appellant company –Held – There is no concluded contract-Act of Executive Director (commercial) can not find the board – Power was supplied to the said of board by appellant company – Compensation can not be determined in extra ordinary jurisdiction – Appellant company can claim compensation by civil suit or arbitration – Appeal dismissed. : *M/s. Jindal Strips Limited Vs. M.P. Electricity Board, I.L.R. (1997) M.P. 373, (D.B.)*

–**Section 26(1) and (6)**– Expression “whether any meter referred to in sub-section (I) is or is not correct” – Interpretation of : *M.P. Electricity Board, Jabalpur Vs. Chhaganlal, I.L.R. (1981) M.P. 702,*

–**Section 26(1) and (6)** – Use of word “correct” in-meaning of – Expression “whether any meter referred to in sub-section (I) is or is not correct” – Interpretation of – Section 26(6) – Not attracted in case of fixing responsibility for defective wiring: *M.P. Electricity Board, Jabalpur Vs. Chhaganlal, I.L.R. (1981) M.P. 702,*

–**Section 26(6)** – Not attracted in case of fixing responsibility for defective wiring: *M.P. Electricity Board, Jabalpur Vs. Chhaganlal, I.L.R. (1981) M.P. 702,*

–**Section 26(6)**-Preparation of supplementary or revised bill on the ground that meter was not recording the actual energy supplied and consumed-Can be done by the Electrical Inspector only-Board preparing such supplementary bill and insisting for its payment before restoring electric supply-Acts beyond the scope of authority-Order and supplementary bill quashed and directions issued : *Smt. Basantibai Agrawal Vs. M.P. Electricity Board, I.L.R. (1985) M.P. 735, (D.B.)*

– **Section 42** – Brings into operation whole framework of part III of Telegraph Act: *Shri Ghanshyamdas Binnani Vs. The M.P. Electricity Board, Rampur, Jabalpur, through its Secretary, I.L.R. (1972) M.P. 191,*

– **Section 42** –Scope of: *Shri Ghanshyamdas Binnani Vs. The M.P. Electricity Board, Rampur, Jabalpur, through its Secretary, I.L.R. (1972) M.P. 191,*

– **Section 42** – Section 42, Electricity (Supply) Act, empowers Electricity Authorities to exercise same powers as Telegraph Authorities in the matter of sanctioned scheme: *M.P. Electricity Board, Jabalpur Vs. Nathoolal, I.L.R. (1989) M.P. 536,*

-Section 49 - Tariff fixation - Purpose for power requirement - Relevant - Considering financial abilities of consumers, Notification provides different tariffs for distinct class of cloth manufacturing and processing units - Not outside scope of Section 49 or Article 14 of Constitution : *M/s. S.K.M. Fabrics Vs. M.P. Electricity Board, I.L.R. (1995) M.P. 218, (D.B.)*

-Section 49-Classification of Advocates in legal profession as commercial activity :*Shiv Narayan Vs. M.P. Electricity Board, I.L.R. (2000) M.P. 796 (D.B.)*

-Sections 49, 79 - Disconnection - *Prima facie*, theft of electricity found established - Opportunity of hearing before disconnection - Not necessary in view of agreed conditions of supply and prima facie conclusion of theft - Notice U/s 24 Indian Electricity Act, 1910 – Not - required in cases of pilferage of electricity - Order of disconnection not violative of Articles 20, 14 of Constitution: *M.P. Electricity Board, Jabalpur Vs. Harsh Wood Products, I.L.R. (1996) M.P. 48, (D.B.)*

-Section 79 and Civil Services (Commutation of Pension) Rules, M.P., 1976 – Voluntary retirement – By notification State Government amended provisions contained in rules – Number of years in respect of which pension could be commuted significantly reduced – Board adopted State Govt. Notification with retrospective effect Arbitrary & Unreasonable : *N.L. Mandhan Vs. M.P. State Electricity Board, I.L.R. (2003) M.P. 112, (D.B.)*

-Section 79 – Notification cannot be made retrospectively applicable – Pension was to be computed in accordance with the rules that was in vogue at the time of retirement – Employee already retired would be entitled to all the benefit as per unamended Rules: *Mandhan Vs. M.P. State Electricity Board, I.L.R.(2003) M.P. 112, (D.B.)*

Electricity (Supply) Amendment Act (XXX of 1966)

– **Section 24** – Permits imposition of surcharge as if Section 49 was in force at the time of imposition: *Nandlal Bhandari Mills Ltd., Indore Vs. Madhya Pradesh, Electricity Board, Jabalpur, I.L.R. (1973) M.P. 574, (D.B.)*

– **Section 49, amended** – Power of Board to fix uniform tariffs – Power to fix tariffs – Includes power to make uniform increase in tariffs – Section 24 – Permits imposition of surcharge as if section 49 was in force at the time of imposition: *Nandlal Bhandari Mills Ltd., Indore Vs. Madhya Pradesh, Electricity Board, Jabalpur, I.L.R.(1973) M.P. 574, (D.B.)*

Electricity Tariff

-Fixation-Whenever contracted supply falls short of 40% of Contract load, then the Board shall be entitled to charge for the reduced energy (actually supplied) and will

not be entitled to charge 40% of the Contract load-Reference by Division Bench-Openion-Given by Full Bench-Present interpretation will be prospective in nature and not retrospective : *Raymond Limited Vs. M.P.E.B., I.L.R. (1998) M.P. 905 (F.B.)*

Employment Exchange (Compulsory Notification of Vacancies) Act (XXXI of 1959)

-Section 4-Does not oblige an employer to employ only those candidates sponsored by Employment Exchange-Action of Employer in not considering candidacy of petitioner on ground of place of Birth-Violative of Articles 14 and 16 of the Constitution :*Shrawan Kumar Vs. South Eastern Coalfields Ltd., Bilaspur, I.L.R. (2000) M.P. 1066*

Employees Insurance Courts Rules, Madhya Pradesh, 1953

-Rule 17-Vires of-Employees State Insurance Act, 1948-Section 78-Insurance Court-Not Court for purposes of Limitation Act-Sections 95 and 96- Authority given power to frame rules-Authority cannot exceed powers and frame rules inconsistent with the Act or rules neutralizing or contradicting provisions or abridging rights conferred by a statute-Section 96(1) clause (b)-Confers power on State Government to frame rules consistent with Act in regard to procedure before Employees Insurance Court-Does not authorize framing rule prescribing limitation-Test to be applied for determining validity of the rule: *Employees State Insurance Corporation Vs. M.P. Government, I.L.R. (1964) M.P. 554, (D.B.)*

-Rule 17-Vires of : *Employees State Insurance Corporation Vs. M.P. Government, I.L.R. (1964) M.P. 554, (D.B.)*

Employees Insurance Court Rules, Madhya Pradesh, 1963

– **Rule 24** – Vires of Res judicata – Dismissal of suit or proceeding – Does not operate as res judicate – Civil Procedure Code – Order 9, Rule 8 – Date fixed for framing of issues –Is a date of hearing – Suit liable to dismissal for non-appearance: *Employees State Insurance Corporation Vs. Harcharan Singh I.L.R. (1970) M.P. 324,*

Employees' Provident Funds and Miscellaneous Provisions Act, (XIX of 1952)

-Section 1(3)(a) - Manufacturing process carried on in several industries specified in Schedule 1 in any premises including precincts-Would amount to a factory: *The Regional Provident Fund Commissioner, M.P., Indore Vs. Singhai Moujilal and Sons, Jabalpur, I.L.R. (1960) M.P. 790, (D.B.)*

Section 1(3)(b) – Expression “Any other establishment” in – Meaning of – Does not confer on Central Government power to extend applicability of Act to factory establishments not specified in Schedule 1 – Enables Central Government to apply Act to non-factory establishments – Section 7-A – Does not speak of provisional assessment – Notice asking to show cause why final order in regard to amount payable should not be made – Legality – Proceeding for recovery on basis of provisional assessment – Validity: *M/s. Radhakishan Narayandas, Jawaharganj, Jabalpur Vs. The Regional Provident Fund Commissioner, Madhya Pradesh, I.L.R. (1970) M.P. 266, (D.B.)*

– **Section 1(3)(b)** - and Government Notification dated 7-3-1962 – Word “Establishment” – Meaning of – Organization run on no profit basis is also covered – Words “Trading and Commercial establishment” – Connotation of – Regard must be had to nature of activity – Establishment though run on no profit no loss basis, sending specialized service to churches by selling books and pictures and renting out films – Is a trading and commercial establishment – Provisions of Employees Provident Funds Act applicable: *Christian Association for Radio and Audio Visual Service (Caravs) Vs. The Regional Commissioner, Employees Provident Fund, M.P., Indore, I.L.R. (1981) M.P. 721, (D.B.)*

– **Section 1(3)(b)** - and Government Notification dated 7-3-1962 – Word “Trading and Commercial establishment” – Connotation of – Regard must be had to nature of activity – Establishment though run on no profit no loss basis, sending specialized service to churches by selling books and pictures and renting out films – Is a trading and commercial establishment – Provisions of Employees Provident Funds Act applicable: *Christian Association for Radio and Audio Visual Service (Caravs) Vs. The Regional Commissioner, Employees Provident Fund, M.P., Indore, I.L.R. (1981) M.P. 721, (D.B.)*

– **Section 1(3)(b)** – Does not confer on Central Government power to extend applicability of Act to factory establishments not specified in Schedule 1: *M/s. Radhakishan Narayandas, Jawaharganj, Jabalpur Vs. The Regional Provident Fund Commissioner, Madhya Pradesh, I.L.R. (1970) M.P. 266, (D.B.)*

– **Section 1(3)(b)** – Enables Central Government to apply Act to non-factory establishments: *M/s. Radhakishan Narayandas, Jawaharganj, Jabalpur Vs. The Regional Provident Fund Commissioner, Madhya Pradesh, I.L.R. (1970) M.P. 266, (D.B.)*

-Section 2-A and 16-Corresponding to Section 16(1)(d)-Sections 7-A(2), E.P.F. and Misc. Provisions Act-Commissioner can exercise powers to direct party to produce and discover document and enforce attendance of witnesses-Section 16(1)(d)-Functional integrality-Meaning absolute independence-In absence of one other cannot survive-Brand name given for use on royalty-Does not mean dependence of person taking the

brand name on the person giving the name : *M/s Varanasi Fan Industries Pvt. Ltd. Rewa Vs. Regional Provident Fund Commissioner, Jabalpur. I.L.R. (1998) M.P. 21*

-Section 2(e)(f)-Society registered under the Societies Registration Act, 1860 and also under Bombay Public Trusts Act-Members of Society working for wages and also not having any control over management-Cannot be termed as employer-Such members are employees under section 2(f) and entitled for benefits of the Act: *Shri Mahila Griha Udyog Lijjat Papad Wright Town, Jabalpur Vs. Union of India, Ministry of Labour & Social Welfare, New Delhi; I.L.R. (1993) M.P. 129*

- Sections 5 and 6 – Scheme thereunder – Nomination of wife made by member of fund scheme – Cancellation of variation to be made in accordance with provisions of law – Notice to Commissioner under Act necessary for such cancellation of variation – Mere endorsement subsequently at foot of nomination column at the back of certificate of membership mentioning some other person not enough–Endorsement does not amount to will : *Bachwanbai Vs. Ramkali Bai, I.L.R. (1966) M.P. 782.*

-Section 6 and Scheme, paragraph 29-No option to employee to opt out of the scheme-Imposes obligation to pay contribution to the fund-Paragraph 30-Not inconsistent with section 6(2) and item of schedule II-Schedule II-Item 2-Words “on behalf of employees” in-Confers power on Government to frame scheme containing provision for payment on behalf of employees by some other person-Employer can be asked to pay on behalf of employee- Liability not limited to only one payment: *Solanki Workshop Vs. The Regional Provident Fund Commissioner, M.P., Indore, I.L.R. (1963) M.P. 1014, (D.B.)*

- Section 7-A – Also include power to enquire and determine whether Act is applicable to the establishment: *Younus Mohammad Vs. The Regional Provident Fund Commissioner, Madhya Pradesh, Indore, I.L.R. (1987) M.P. 533, (D.B.)*

- Section 7-A – Does not speak of provisional assessment – Notices asking to show cause why final order in regard to amount payable should not be made – legality: *M/s. Radhakishan Narayandas, Jawaharganj, Jabalpur Vs. The Regional Provident Fund Commissioner, Madhya Pradesh, I.L.R. (1970) M.P. 266, (D.B.)*

- Section 7-A – Imposes quasi-judicial function on the authority in the matter of enquiry – Authority has to conform to rules of natural justice: *Gunvantrai Vs. The Regional Provident Fund Commissioner Employees' Provident Funds, Indore, I.L.R. (1975) M.P. 438, (D.B.)*

- Section 7-A – Powers of Provident Fund Commissioner under Section 7-A – Are wide: *Younus Mohammad Vs. The Regional Provident Fund Commissioner, Madhya Pradesh, Indore, I.L.R. (1987) M.P. 533, (D.B.)*

– **Section 7-A** – Proceeding for recovery on basis of provisional assessment – Validity: *M/s. Radhakishan Narayandas, Jawaharganj, Jabalpur Vs. The Regional Provident Fund Commissioner, Madhya Pradesh, I.L.R. (1970) M.P. 266, (D.B.)*

– **Section 7-A and 19-A** – Are intra vires – Powers of Provident Fund Commissioner under Section 7-A – Are wide – Also include power to enquire and determine whether Act is applicable to the establishment – Giving of notice to the employer amounts to giving of reasonable opportunity to represent his case: *Younus Mohammad Vs. The Regional Provident Fund Commissioner, Madhya Pradesh, Indore, I.L.R. (1987) M.P. 533, (D.B.)*

– **Sections 7-A and 19-A** – Giving of notice to the employer amounts to giving of reasonable opportunity to represent his case: *Younus Mohammad Vs. The Regional Provident Fund Commissioner, Madhya Pradesh, Indore, I.L.R. (1987) M.P. 533, (D.B.)*

Section 7 – A and Section 1 (3) and Notification No. G. S. R. 346, dated 7-3-1962 issued thereunder – Petitioner, under Excise licences granted by State Govt. engaged in commercial activities of transportation of country liquor from Govt. distillery to Govt. warehouses, diluting and flavouring it and filling the same in bottles, corking and labeling them and stocking them for issuance to retailers and whole -sellers and not engaged in purchase and sale of country liquor or any other goods – Not covered under the said Notification – The expression “Establishment” – Meaning of – Interpretation of Statute – Cardinal principles of – Absence of internal aid – External aid can be taken – Social welfare legislation imposing penal consequences – To be strictly construed : *The Central India Excise Traders, Mount Road Extension, Nagpur Vs. The Regional Provident Fund Commissioner, M. P. Indore I.L.R. , (1990) M.P. 70.(D.B.)*

– **Section 8** – Does not say that amount due to be recovered as arrears of land revenue – Provides only manner or recovery – Procedure does not convert the arrears as land revenue – Does not create any charge or give priority in the matter of payment of the amount – Does not give priority over secured or unsecured debts – Land Revenue Code, Madhya Pradesh, 1959 – Section 137 – Not applicable to amount due from employer under Section 8 of the employees Provident Funds Act – Land Revenue Code, Madhya Pradesh, 1959 – Sections 137 and 152 – The words “the land sold for arrears of land revenue” and qualify words “due in respect thereof” – Show that sale for recovery of land revenue conveys land free of all encumbrances: *State Bank of Indore Vs. Regional Provident Fund Commissioner, Indore, I.L.R. (1966) M.P. 559, (D.B.)*

– **Section 14-B** – Order passed thereunder for delay in deposit of contribution to the fund must be a speaking order containing reasons for imposing maximum damages – Impugned order not being a speaking order quashed with directions to Regional

Provident Fund Commissioner to hear the petitioner afresh and dispose of the matter in accordance with law: *The Gwalior Rayon Silk MFG (WVG) Co. Ltd., Birlanagar, Gwalior Vs. Regional Provident Fund Commissioner Shiv Vilas Palace Rajwada, Chowk, Indore, I.L.R. (1987) M.P. 347, (D.B.)*

– **Section 16(1)** – Decision regarding applicability of this provision is not of an administrative nature – Quasi-judicial functions performed – Principles of natural justice have to be followed: *The Binod Mills Company Limited, Ujjain Vs. The Regional Provident Funds Commissioner, Indore, I.L.R. (1976) M.P. 699, (D.B.)*

-**Section 16(1)(d)**-Functional integrity-Meaning absolute independence-In absence of one other can not survive-Brand name given for use of royalty-Does not mean dependence of person taking the brand name on the person giving the name : *M/s Varanasi Fan Industries Pvt. Ltd. Rewa Vs. Regional Provident Fund Commissioner, Jabalpur. I.L.R. (1998) M.P. 21*

-**Distinction to be made between ‘similar establishment’ and ‘same establishment’**-Subsequent establishment similar-One cannot be said to be continuation of the other-Section 19-A-Power of Central Government to remove difficulty or doubt in the working of the Act-This can be done by making provision not inconsistent with the Act or by giving directions : *Sambhudayal Tiwari Vs. Regional Provident Fund Commissioner, Indore, I.L.R. (1979) M.P. 953, (D.B.)*

-**Schedule II, Item 2**-Words “on behalf of employees” in –Confers power on Government to frame scheme containing provision for payment on behalf of employees by some other person-Employer can be asked to pay on behalf of employee-Liability not limited to only one payment : *Solanki Workshop Vs. The Regional Provident Fund, Commissioner, M.P., Indore, I.L.R. (1963) M.P. 1014, (D.B.)*

-**Scheme-Paragraph 76(a) and (c)**-Failure to pay employees’ contribution and administration charges-Amounts to offence-Penal provision in scheme-Not retrospective-Failure to pay contribution by employee to provident fund and of administration charges are continuing offences and become punishable under this paragraph from the date when notification is issued: *Provident Fund Inspector Vs. Mohammad Hussien, I.L.R. (1960) M.P. 341,*

Employees State Insurance Act (XXXIV of 1948)

- **as amended by Act of 1968, Section 2 (9)** – Persons working in the show Room sales officer of the company are “employees” within the meaning of section 2(9)

and are entitled to the benefit of the Act: *Bhopal Motors Pvt. Ltd., Bhopal Vs. Employees State Insurance Corporation, Indore, I.L.R. (1982) M.P. 954 (DB)*

- as amended by Act of 1968 - Section 2 (9) – The term “employee” in – Connotation of – Expression “in or in-connection with the work of a factory or establishment” – Meaning and scope of - Persons working in the show Room sales officer of the company are “employees” within the meaning of section 2(9) and are entitled to the benefit of the Act: *Bhopal Motors Pvt. Ltd., Bhopal Vs. Employees State Insurance Corporation, Indore, I.L.R. (1982) M.P. 954 (DB)*

–Applicability of–Change in boundary of Municipal Corporation–Respondent–concern going out of Municipal limits by such change–Respondent concern ceases to be governed by the Act: *The Regional Director, Karmachari Rajya Bima Nigam, Indore Vs. Partner, M/s. M.P. Steel Fabricators Tatibandh, Raipur, I.L.R. (1986) M.P. 463,*

–Section 2(17)–Definition of “principal employer”–Includes owner, : *Inayat Hussain Vs. The Employees State Insurance Corporation, I.L.R. (1964) M.P. 292, (D.B.)*

–Sections 39, 75 (1)(b) and 85-B – and Employees’ State Insurance (General) Regulations, 1950, Regulations 29 and 31 – Payment of contribution by Employer – Mode and time limit of – Pay of contribution by Employer and submission of contribution cards – Two different processes – Non-compliance of one does not necessarily result in non-compliance of the other – Section 85-B and 75(1)(g) – Corporation’s view that late submission of contribution cards amounts to late payment of contribution – Is a question “in respect of any contribution” falling under Section 75(1)(g) within jurisdiction of Employees’ State Insurance Court for adjudication: *Employees State Insurance Corporation, Indore Vs. Raigarh Jute Mills Ltd, Raigarh, I.L.R. (1987) M.P. 770,*

– Sections 39, 75 (1)(b) and 85-B – and Employees’ State Insurance (General) Regulations, 1950, Regulations 29 and 31 – Payment of contribution by Employee – Mode and time limit of - payment of contribution employer and submission of contribution cards — Two different processes – Non-compliance of one does not necessarily result in non-compliance of the other : *Employees State Insurance Corporation, Indore Vs. Raigarh Jute Mills Ltd, Raigarh, I.L.R. (1987) M.P. 770,*

– Section 45-A – Determination of contributions by Corporation thereunder – Requirement and basis of – Employers neither furnishing returns nor giving required information – Corporation entitled to determine quantum of contribution on ad-hoc basis – Aggrieved party may move Insurance Court under Section 75 – Section 82 – Substantial question of law – Insurance Court ignoring material on record and refusing compliance of Supreme Court Order – Raises substantial question of law – Interpretation of Statute – Welfare legislation – Interpretation advancing object and purpose of statute

has to be adopted: *Employees State Insurance Corporation, Bhopal Vs. Dwarka Prasad Agarwal, I.L.R. (1988) M.P. 26,*

-Section 51(a) - Temporary disablement benefit-Payable in addition to permanent partial or total disablement benefit whenever either is admissible : *M/s. J.B. Mangharam and Co., Gwalior Vs. Employees State Insurance Corporation, Gwalior, I.L.R. (1964) M.P. 128,*

-Section 66-Question of reimbursement of Corporation- Depends upon negligence of employer or wrongful act of employer and where no effective steps to protect injury to employee were taken : *M/s. J.B. Mangharam and Co., Gwalior Vs. Employees State Insurance Corporation, Gwalior, I.L.R.(1964) M.P. 128,*

– **Section 66** – Right to recover amount because of liability to make payment regarding employment injury – Such a right is related to the payment: *S.P. Nanawaty Vs. Employees State Insurance Corporation, Jabalpur, I.L.R. (1973) M.P. 620, (D.B.)*

– **Sections 66 and 82** – Additional risk arising from omission of employer's to comply with safety laws not under – written – Accident occurring to employee Insurance Corporation paying weekly to employee – Corporation entitled to re-imburement from employer – Section 82 – Test to determine whether question of law is substantial question of law: *Purshottam Vs. The Regional Director, Employee State, Insurance Corporation, Ministry of Labour, New Delhi, I.L.R. (1961) M.P. 1018,*

– **Section 73** – Debars employer from dismissing, discharging or otherwise punishing an employee when he is under medical treatment for sickness – Employer however can taken action for misconduct antecedent to sickness after expiry of said period – Evidence Act – Section 41 to 43 – Findings of Criminal Court – Not binding on Civil Court though subject-matter is same – Criminal Procedure Code, 1898, Section 403 and Constitution of India, Article 20 (2) – Disciplinary action – Not within purview of section 403 – Criminal Procedure Code – Constitution of India – Article 20 – Contemplates punishment for a criminal offence and not departmental punishment – No departmental enquiry where employee honourably acquitted of the same offence – This does preclude enquiry where parties are not the same – Question regarding re-instatement – Evidence relating to misconduct – Allowable for limited purpose of determining the question of re-instatement: *Factory Manager, Central India Machinery and Manufacturing Co. Ltd., Birlanagar, Gwalior Vs. Abdul Rehman, I.L.R. (1976) M.P. 19, (D.B.)*

– **Section 73** – Employer however can take action for misconduct antecedent to sickness after expiry of said period: *Factory Manager, Central India Machinery and Manufacturing Co. Ltd., Birlanagar, Gwalior Vs. Abdul Rehman, I.L.R. (1976) M.P. 19, (D.B.)*

–**Sections 74 and 96**–Does not impose on Government duty to constitute Courts first and then to appoint officers for these Courts–Rule making power and exercise of power vesting in the same authority –No prohibition to exercise power till rules are framed–Powers conferred by section 74 not subject to any rules to be framed–General Clauses Act–Section 22–Appointment made before commencement of the Act–Appointment takes effect after commencement of the Act : *Jiyajirao Cotton Mills Ltd., Birlanagar, Gwalior Vs. The Employees State Insurance Corporation, Gwalior, I.L.R. (1963) M.P. 179.*

–**Sections 76 and 82**–Appeal to High Court from order of Employees Insurance Court and not from Appeal Tribunal–Appeal to High Court lies when order involves substantial question of law–Appellate tribunal distinct from Employees Insurance Court: *Badri Vs. Regional Director, Employees State Insurance Corporation, Indore, I.L.R. (1963) M.P. 303,*

– **Section 75** – Employers neither furnishing returns nor giving required information – Corporation entitled to determine quantum of contribution on ad-hoc basis – Aggrieved party may move Insurance Court under the section: *Employees State Insurance Corporation, Bhopal Vs. Dwarka Prasad Agarwal, I.L.R. (1988) M.P. 26,*

– **Sections 75(1)(f) and 2(c)** – Provisions connected with claim under section 66 – Gives jurisdiction to tribunal to investigate in the matters – Tribunal has no jurisdiction to give right to Corporation – Has power to decide whether such right existed: *S.P. Nanawaty Vs. Employees State Insurance Corporation, Jabalpur, I.L.R. (1973) M.P. 620, (D.B.)*

–**Sections 75, 82**–Order of E.I. Court and Appeal against–Employee’s State Insurance (General) Regulations, 1950, Regulation 40–Dispute–A dispute for invoking jurisdiction of the Tribunal can be said to exist where there is order rightly or wrongly passed by the Corporation–Earlier order passed that management of employer not liable under the act–Claim of refund of the contribution made–Management is a trustee as long as the amount of employee’s contribution as deducted are not deposited with the corporation–After such deposit only employee can raise a dispute and not the employer–Impugned order for refund at the instance of Management–Illegal and set aside: *The Employees State Insurance Corporation, Regional Office, Indore Vs. “Swadesh” Daily News Paper, I.L.R. (1992) M.P. 778,*

-Section 78-Insurance Court-Not Court for purposes of Limitation Act : *Employees State Insurance Corporation Vs. M.P. Government, I.L.R. (1964) M.P. 554, (D.B.)*

– **Section 82** – Test to determine whether question of Law is substantial question of law: *Purshottam Vs. The Regional Director, Employee State, Insurance Corporation, Ministry of Labour, New Delhi, I.L.R. (1961) M.P. 1018,*

– **Section 82** – Substantial question of Law – Insurance Court ignoring material on record and refusing compliance of Supreme Court order – Raises substantial question of law: *Employees State Insurance Corporation, Bhopal Vs. Dwarka Prasad Agarwal, I.L.R. (1988) M.P. 26,*

-Section 85-B(1)-Order levying maximum penalty thereunder not showing rational basis for doing so-Order not satisfying essential requirements of the provision-Liable to be quashed :, *M/s Singh Engineering Co., Jabalpur Vs. The Regional Director, E.S.I. Corpn., Indore, I.L.R. (1983) M.P. 361 (D.B.)*

-Section 85-B(1)-The words “damages not exceeding the amount of arrears”-Connotation of –Order levying maximum penalty thereunder not showing rational basis for doing so- Order not satisfying essential requirements of the provision-Liable to be quashed : *M/s Singh Engineering Co., Jabalpur Vs. The Regional Director, E.S.I. Corpn., Indore, I.L.R. (1983) M.P. 361 (D.B.)*

– **Sections 85-B and 75(1) (g)** – Corporation’s view that late submission of contribution cards amounts to late payment of contribution – Is a question “in respect of any contribution” falling under Section 75(1)(g) within jurisdiction of Employees State Insurance Court for adjudication: *Employees State Insurance Corporation, Indore Vs. Raigarh Jute Mills Ltd, Raigarh, I.L.R. (1987) M.P. 770,*

-Sections 95 and 96-Authority given power to frame rules-Authority cannot exceed powers and frame rules inconsistent with the Act or rules neutralizing or contradicting provisions or abridging right conferred by statute : *Employees State Insurance Corporation Vs. M.P. Government, I.L.R. (1964) M.P. 554, (D.B.)*

-Section 96(1), Clause (b)-Confers power on State Government to frame rules consistent with Act in regard to procedure before Employees Insurance Court-Does not authorise framing rule prescribing limitation : *Employees State Insurance Corporation Vs. M.P. Government, I.L.R. (1964) M.P. 554, (D.B.)*

-Section 96(1)-Test to be applied for determining validity of the rule : *Employees State Insurance Corporation Vs. M.P. Government, I.L.R. (1964) M.P. 554, (D.B.)*

Employees State Insurance Amendment Act (XLIV of 1966)

– **Section 43** – Saves applicability of repealed provisions if they have any relation to any payment in respect of an employment injury sustained before repeal – Employees State Insurance Act – Section 66 – Right to recover amount because of liability to make payment regarding employment injury – Such a right is related to the payment – Section 75(1)(f) and 2(c) – Provisions connected with claim under Section 66 – Gives jurisdiction to tribunal to investigate in the matters – Tribunal has no jurisdiction to give right to Corporation – Has power to decide whether such right existed: *S.P. Nanawaty Vs. Employees State Insurance Corporation, Jabalpur, I.L.R. (1973) M.P. 620, (D.B.)*

Employee's State Insurance (General) Regulations, 1950

– **Regulation 40** – Dispute – A dispute for invoking jurisdiction of the Tribunal can be said to exist where there is order rightly or wrongly passed by the Corporation: *The Employees State Insurance Corporation, Regional Office, Indore Vs. "Swadesh" Daily News Paper, I.L.R. (1992) M.P. 778,*

Employment Service (Gazetted) Recruitment Rules, M.P., 1966

– **Separate gradation lists maintained** – Incumbents of one list cannot claim superiority over incumbents of other list – Junior Employment Officers and statistical Assistants – Are two separate categories having different qualifications – Government to decide how best, their services to be utilized – The Rules make three sources available for appointment by promotion to post of Employment Officer – Government are the only authority to decide from which source post should be filled – Court cannot substitute its judgment for that of Government – The Rules operate prospectively – Criterion for selection – Is merit and suitability with due regard to seniority – Three classes cannot be merged into an integrated cadre – Rule 14 read with Schedule IV – Three years' service in either of the 3 posts essential for being promoted as Employment Officer – Junior statistical Officer – Cannot be equated with junior Employment Officer for purposes of promotion – Statistical Assistant in Sch. IV – Means Senior Statistical Officer – Instructions – Relate only to ad-hoc promotions – Not to be struck down – Promotion – Not to be claimed as of right – Candidate eligible for the purpose – Is entitled to be so considered by Selection Committee constituted under the Rule – Three different categories claiming promotion to higher post – Not to be put in one single gradation list: *D.R. Jhirad Vs. State of M.P., I.L.R. (1981) M.P. 927, (D.B.)*

– **The Rules make three sources available for appointment by promotion to post of Employment Officer** – Government are the only authority to decide from

which source post should be filled – Court cannot substitute its judgment for that of Government – The Rules operate prospectively – Criterion for selection – Is merit and suitability with due regard to seniority – Three classes cannot be merged into an integrated cadre: *D.R. Jhirad Vs. State of M.P., I.L.R. (1981) M.P. 927, (D.B.)*

– **Rule 14** – Junior Statistical Officer – Cannot be equated with Junior Employment Officer for purposes of promotion: *D.R. Jhirad Vs. State of M.P., I.L.R. (1981) M.P. 927, (D.B.)*

– **Rule 14 read with Schedule IV** – Three years service in either of the 3 posts essential for being promoted as Employment Officer: *D.R. Jhirad Vs. State of M.P., I.L.R. (1981) M.P. 927, (D.B.)*

– **Rule 14** – Statistical Assistant in Sch. IV – Means Senior Statistical Officer: *D.R. Jhirad Vs. State of M.P., I.L.R. (1981) M.P. 927, (D.B.)*

Enactment

– **Retrospective** – Sovereign legislature enacts law with retrospective operation: *The Collective Farming Society, Ltd. Lilakheri Vs. State of M.P., I.L.R. (1975) M.P. 187, (F.B.)*

Endowment

– **Elements which determine whether a person is a Pujari or trustee** – Distinction between ideal beneficiary and beneficiaries in practice: *Balaram Vs. Durgalal, I.L.R. (1970) M.P. 624, (D.B.)*

English Law of Property Act, 1925

– **Section 140 and Transfer of Property Act (IV of 1882), Section 109** – Effect of section 140 of English Law of Property Act and section 109 of Transfer of Property Act is similar: *P.B. Pathak Vs. Dr. Riyazuddin, I.L.R. (1980) M.P. 49, (D.B.)*

Entertainment Duty and Advertisement Tax Act, M.P. (XXX of 1936)

– **Sections 2(b)** – “Entertainment” in – Must be some exhibition, performance, amusement, game or sport for amusement or gratification for persons who see or hear it – “Exhibition” in – Meaning of – Token obtained by payment for admission to the place – Is not payment for admission to an entertainment: *The Calico Mills Ltd., Ahmedabad Vs. The State of Madhya Pradesh, I.L.R. (1961) M.P. 67, (D.B.)*

– **Sections 2 (b) and 3** – Exhibition of films with the held of VCR and TV in restaurants – Question of fact – Relevant consideration for determination of – Charging any amount for tea, coffee or snacks and not separately charging for viewing film in restaurants – Provisions of the Act cannot be evaded : *Restaurant Lee, Jagdalpur Vs. State of M.P., I.L.R. (1983) M.P. 606, (D.B.)*

– **Sections 2(cc) and 4(2)(D)** – Population of a colony in a non-municipal area cannot be clubbed with population of Municipal area for purpose of Section 4(2)(d) of the Act: *Bharat Bhushan Vyas Vs. State*, I.L.R. (2001) M.P. 1446,

– **Sections 2(cc), 4(2)(D), 29(1)(b)** – Levy of entertainment tax on the basis of higher slab of population – For determining Municipal area it is necessary to refer to the meaning given in Section 2(cc) of the Act: *Bharat Bhushan Vyas Vs. State*, I.L.R. (2001) M.P. 1446,

– **as amended by Entertainments Duties and Advertisements Tax - (Amendment Act), M. P., 1983, Section 3 and 3-B**—Exhibition of Films through Video Cassette Recorder is cinema—Levy of licence fee on basis of population of town and availability of cinema—For levy of tax duty petitioner at liberty to approach the concerned authority—No interference in writ proceedings: *Madanlal Vs. State*, I.L.R. (1992) M.P. 711, (D.B.)

– **as amended by M.P. Act (XXXIV of 1983)** – Section 3 – Petitioner’s having licence for exhibition on television playing pre-recorded cassette on Video Cassette Recorder – Petitioners liable to pay duty as prescribed under Section 3 of the Act – Duty on admission of each person to exhibition is illegal and wholly unjustified: *Anand Jaiswal Vs. State of M.P.*, I.L.R. (1988) M.P. 4, (D.B.)

Section 3 – Term – “Payment for admission” to entertainment in Section 3 does not include entertainment duty – Such amount cannot be included for calculating duty payable under the Act: *Cine Pradarshak Sangh Vs. State of M.P.*, I.L.R. (1991) M.P. 259, (D.B.)

– **Section 3(2)** – Members of group pay Rs. 12/- as admission fee and subscription for period of 10 years - Members given facility of entertainment as added incentive – No duty is payable on the entertainment given – Constitution of India – Article 226 – High Court, Power of, to issue direction regarding refund of tax illegally recovered: *Home Decorators and Finance (Private) Ltd., Jabalpur Vs. State of Madhya Pradesh*, I.L.R. (1978) M.P. 750, (D.B.)

– **Sections 4, 4-A and 5** – Liability of proprietor under Section 4 – Absolute but not so under section 4-A – Proprietor conniving or admitting a person without payment – Proprietor liable to conviction: *Rambharose Awasthi Vs. The State of Madhya Pradesh*, I.L.R. (1961) M.P. 919

– **Section 4-C** – Settled law for calculation of tax on border line has to be drawn to provide a guideline – Operation of the provisions u/s. 4-C and 5-A and mode of determinations of the amount of tax: *Rajkumar Sogani Vs. Assistant Commissioner Excise, Flying squad, Ujjain*, I.L.R. (1991) M.P. 334, (D.B.)

– **Section 4-C** – Who may impose the penalty – Section 4-C is not ultra vires: *Rajkumar Sogani Vs. Assistant Commissioner Excise, Flying squad, Ujjain, I.L.R. (1991) M.P. 334, (D.B.)*

-Section 4-C and 4-D Imposition of penalty and appeal against before the Revenue Commissioner-Revision against appellate order to the Board of Revenue-Not barred-What is barred is a further appeal : *State Vs. M/s. Triyug Talkies, Khandwa, I.L.R. (2000) M.P. 786*

- Section 4-C, 5 and 5-A – Power to impose penalty under – Best judgment has to be made for the assessment – Such judgment should be based on the matter available on record – If the matter is not available then the judgment shall be based on other evidence as may be gathered by the authorities – Settled law – For calculation of tax on border line has to be drawn to provide a guideline – Operation of the provisions u/s. 4-C and 5-A and mode of determinations of the amount of tax – Who may impose the penalty – Section 4-C is not ultra-vires – Appeal may be preferred within 30 days from the date of order and heard on merits: *Rajkumar Sogani Vs. Assistant Commissioner Excise, Flying Squad, Ujjain, I.L.R. (1991) M.P. 334 (D.B.)*

- Section 4-C and Constitution of India, Article 226 – Inspection of Cinema – Hall by Collector himself – Not necessary for passing an order under Section 4-C – Order thereunder can be passed on the basis of records referred to in Section 4-C – Determination of Entertainment Duty – Basis of – Imposition of penalty by Collector – Is discretionary – No interference by Court unless shown to be arbitrary: *Ashok Jain Vs. State of M.P., I.L.R. (1987) M.P. 133, (D.B.)*

Section 4-C –as amended by (Amending) Act (XIV of 1960) - Determination of Entertainment Duty – Basis of: *Ashok Jain Vs. State of M.P., I.L.R. (1987) M.P. 133, (D.B.)*

-Section 4-D(1) and (2) of the Act-Barring of further appeal does not bestow finality to the appellate order-In absence of specific bar to revision appellate order is always susceptible to revision by the higher Courts-Board finding scope held imposition of penalty excessive as no intention to evade tax is there in the lapse of maintenance accounts-No interference called for in writ jurisdiction : *State Vs. M/s. Triyug Talkies, Khandwa, I.L.R. (2000) M.P. 786*

Section 4-D – Appeal may be preferred within 30 days from the date of order and heard on merits: *Rajkumar Sogani Vs. Assistant Commissioner Excise, Flying squad, Ujjain, I.L.R. (1991) M.P. 334, (D.B.)*

Equity

-Justice – Refund of consideration – Actual benefit not received by the minors – Minors not liable to refund the amount: *Laxminarayan Vs. Kumari Mangibai, I.L.R. (1991) M.P. 301,*

– **Suit barred by time** – Equity cannot be invoked to grant decree pertaining to time – Barred debt: *Mandas Vs. Manbai*, I.L.R. (1977) M.P. 661, (D.B.)

Equality

– **Legitimate Expectation** – Adhoc Basis – The People who come within the Zone of consideration have legitimate expectation to put in an application and compete to qualify to obtain the license – The authorities cannot be allowed to indulge in granting permission on ad hoc basis – There has to be a fair competition and objective assessment – The State or its authorities cannot enter into a contractual relationship as per their desire – Grant of permission in favour of the respondents without taking steps to engage a licensee on a regular basis mars the legitimate expectation of the other persons who can compete. : *Mahendra Kumar Tiwari Vs. Union of India*, I.L.R. (1997) M.P. 418, (D.B.)

Essential Articles (Exhibition of Prices and Distribution) Order, Madhya Pradesh, 1966

– **Clause 4(b)** – Does not vest State Government with power to sub-delegate its functions: *P.L. Agrawal Vs. State of M.P.*, I.L.R. (1976) M.P. 650, (D.B.)

Essential Commodities Act (X of 1955)

- **and Criminal Procedure Code**-Section 32-Government empowering First Class Magistrate under this provision-The extent of fine which can be imposed under Section 32, Criminal Procedure Code-Such sentences necessary to have deterrent effect :*The State of M.P. Vs. Jogilal*, I.L.R. (1964) M.P. 782, (D.B.)

-**as amended by Amendment Act, 1974**-Section 4-Prospective and not retrospective : *Rameshwar Rathod Vs. State of M.P.*, I.L.R. (1981) M.P. 1008, (D.B.)

- **as amended by the Essential Commodities (Special Provisions) Act, 1981**-Sections 11, 12A and 12AA(1)-Cognizance of the offence under the Act on the report in writing of Food Inspector-Is competent-Sessions Judge alone being the ‘Special Court’, trial of case by Additional Sessions Judge is void-Defect of jurisdiction not curable: *Jasbir Singh Vs. State of M.P.*, I.L.R. (1985) M.P. 304,

- **as amended by the Essential Commodities (Special Provisions) Act, 1981**-Sections 12A- Sessions Judge alone being the ‘Special Court’, trial of case by Additional Sessions Judge is void : *Jasbir Singh Vs. State of M.P.*, I.L.R. (1985) M.P. 304

- **Iron and Steel Control Order, 1956**-Paras 4, 5 and 15(3)-Para 15 *intra vires* –Controller competent to fix price-Sale for price higher than that fixed by Controller-Act amounts to an offence-“Any other person” in para 15(3)-Wide enough to include anybody contravening the provisions of the order and includes any person who is neither producer nor stock holder, : *Fidahussain Vs. State*, I.L.R. (1960) M.P. 911,

– **Section 3** – Jurisdiction – Exercisable only in respect of foodstuffs meant for human consumption and public distribution : *Satyapal Anand Vs. State of M.P., I.L.R. (1981) M.P. 102, (D.B.)*

Section 3 – M.P. Rice Procurement (Levy) Order (1970), Clause 3 (Notification No. 5-20/96/29/1 dated 02-11-1996 – The State Government imposed Levy from licensed miller and demanded a particular type of rice which was not manufactured by him – Held – The State Government cannot force or compel any licensed Miller to produce or manufacture a particular quality or type of rice under the Levy Order, 1970 - The rice procurement levy order, 1970 authorises the State to purchase and obliges the licensed miller to sell a particular percentage of the rice produced or manufactured by him in his rice mill or of the total quantity of rice got milled by any person in his rice mill every day out of such person's stock of paddy – The notification No. 5-20/96/29/1 dated 02-11-1996 when it compels the licensed miller to pay the levy in form of Arwa Rice is certainly illegal and so far as it concerned to the demand of 50% of Arwa Rice out of the total levy paid it is patently illegal and is contrary to the provisions of clause 3 of M.P. Rice Procurement (Levy) Order 1970 – *Petition Allowed: Santosh Kumar Agrawal Vs. State of M.P., I.L.R. (1997) M.P. 74,*

–**Sections 3, 7** - and Criminal Procedure Code, 1973 Section 482–Seizure of Diesel being illegally transported–Division on the point whether alleged act amounts to preparation only or attempt–Appreciation of evidence required–Not permissible in exercise of inherent powers–No interference in impugned charge : *Ajij Khan Vs. State; I.L.R. (2002) M.P. 411,*

–**Sections 3 And 7**- Prosecution and conviction for breach of any provision of scheme not sustainable : *Mohan Vs. State of M. P., I.L.R. (1990) M.P. 337*

–**Section 3 read with Section 7** – M.P. Motor Sprit and High Speed Diesel Oil (Regulation & Control) Order (1980) Clause 10 – Framing of charge – Breach could not be assumed simply on the basis of oral assertions – There must be some material available on record to *prima facie* indicate that breach of any provisions of the Control Order or any of the provisions of the Act has been committed : *Vinod Kumar Sanghai Vs. State of M.P., I.L.R. (1996) M.P. 216*

–**Sections 3, 7 and 10-A** and Kerosene (Restriction on Use and Fixation of Ceiling Price) Order 1993, Clause 4(c)–Offence punishable with imprisonment for seven years–Offence not bailable–Applicant found selling Kerosene oil in excess of the price fixed under Control Order–Does not deserve anticipatory bail: *Balwant Vs. State, I.L.R.. (2002) M.P. 183*

– **Section 3/7** - and Pulses, Edible Oil Seeds and Edible Oil Dealers Licensing Order, M.P., 1977, Clauses 3(2) – Definition of 'Edible Oil' – Definition includes Soyabean

– Conviction under Section 3/7 Mens rea – Essential ingredient – Conviction set aside as mens rea not proved: *Mathuralal Vs. State, I.L.R. (1989) M.P. 556*

– **Section 3/7 Mens rea** – Essential ingredient – Conviction set aside as mens rea not proved: *Mathuralal Vs. State, I.L.R. (1989) M.P. 556*,

– **Sections 3 and 7** – Till contravention of any order under Section 3, Criminal Court not competent to levy any of the Penalties mentioned in Section 7: *Rameshwar Rathod Vs. State of M.P., I.L.R. (1981) M.P. 1008, (D.B.)*

– **Section 3(3-C)** - and Sugar (Price Determination for 1980-81 Production) Order, 1980 – Matters to be considered in fixing price of Levy Sugar – Price has to be fixed at the beginning of the year on the basis of minimum price of sugar-cane and on Zonal basis – Section 3(3-C) – Expression “having regard to” in – Meaning of – Sugar (Price Determination for 1980-81 Production) Order, 1980 – Validity of: *The Bhopal Sugar Industries Ltd., Sehore Vs. The Union of India, I.L.R. (1982) M.P. 615,(D.B.)*

– **Section 3(3-C)** – Expression “having regard to” in-Meaning of: *The Bhopal Sugar Industries Ltd., Sehore Vs. The Union of India, I.L.R. (1982) M.P. 615,(D.B.)*

–**Section 3/7** - and Essential Commodities (Special Provision) Act (XVIII of 1981), Section 12-A and M.P. Kerosene Dealers’ Licensing Order, M.P., 1979, Clauses 3,9 – Semi-wholesale dealer can only sell Kerosene to retailers – Appellant sold Kerosene to Semi-Wholesale dealer – Did not maintain stock register as required – Kerosene is an essential commodity – Bare necessity of lower income group and middle classes – Only sentence of fine will be fly bite the punishment – Conviction maintained – Appeal partly allowed reducing R.I. for 1 year to 4 months with fine of Rs. 2,000/-: *Chandulal Vs. State, I.L.R. (1991) M.P. 669*,

– **Section 3/7** – Conviction of appellant for violation of clause 3(a)(1) of the M.P. Food grains Dealers Licensing Order, 1965 – Appellant found in possession of wheat exceeding the maximum limit which he could legally possess – Case is covered under Section 7(1)(b)(ii) of the Act – Sentence of imprisonment cannot be less than three months – Power of Court taken away by the parliament – Minimum sentence prescribed by law cannot be reduced: *Ram Das Vs. State, I.L.R. (1999) M.P. 777*,

–**Section 3/7**- No charge or conviction u/s 7 of the Act unless it is shown that there is an ‘Order’ u/s. 3 of the Act which has been violated-The Scheme is framed by taking recourse to the statutory power conferred u/s. 3 of the Essential Commodities Act and the Order, 1960 made thereunder-It is statutory ‘Order’ within the meaning of Section 3 of the Essential Commodities Act the contravention of which would be an offence u/s. 7 of the Act-Cognizance of the offence u/s. 3/7 rightly taken-Section 5-Notification amending the M.P. Order, 1960 - Prior concurrence of the Central Government was obtained for amendment although it was not required :*Jeevanlal Vs. State of M.P., I.L.R. (1998) M.P. 620*

– **Sections 3 and 7** – Conviction thereunder for contravention of provisions of Rice (Movement) Control Order, M.P., 1957 and Food grains (Restriction on Border Movement) Order, M.P., 1959 – Plea of accused regarding search by an officer not authorised by law – Tenability of – Penal Code, Indian – Section 379 – Accused attempting to transport paddy to another State in a truck without permit – After seizure of paddy accused fleeing away with the truck – Truck pursued and caught – Conviction of accused under the section – Justification of: *State of M.P. Vs. Kale Khan, I.L.R. (1980) M.P. 892*,

– **Section 3 and 7** – Plea of accused regarding search by an officer not authorised by law – Tenability of: *State of M.P. Vs. Kale Khan, I.L.R. (1980) M.P. 892*,

– **Section 5** – Notification amending the M.P. Order, 1960 – Prior concurrence of the Central Government was obtained for amendment although it was not required : *Jeevanlal Vs. State of M.P. I.L.R. (1998) M.P. 620*

Sections 6 – A, 6 – B – and Constitution of India, Articles 226 & 227 Clauses of section 6 – B complied – No violation of natural justice – Scope of interference under Article 227 limited – Explained – Mistakes of facts and law cannot be corrected under it : *Baijnath Kathal V M. K. Qureshi I.L.R. (1990) M.P. 670 (D.B.)*

– **Sections 6-A, 6-C** – and Essential Commodities (Special Provisions) Act (XVIII of 1981) – Right of Appeal – Substantive Right vested in party no sooner lis commences – Such right or remedy not affected by repealing enactment unless expressly or by necessary implication taken away – Repealing Act providing different forum of appeal – Matter of procedure – Appeal will lie in accordance with forum in repealing Act: *Hukumchand Agarwal Vs. State of M.P., I.L.R. (1989) M.P. 612, (D.B.)*

– **Section 6-A, as amended** – Confiscated when can be ordered: *Rameshwar Rathod Vs. State of M.P., I.L.R. (1981) M.P. 1008, (D.B.)*

– **Section 6-A, as amendment** – Not applicable to offences committed prior to Amendment Act: *Rameshwar Rathod Vs. State of M.P., I.L.R. (1981) M.P. 1008, (D.B.)*

– **Section 6-A, before amendment** – Collector had no power to confiscate the vehicle or other conveyance carrying essential commodity : *Rameshwar Rathod Vs. State of M.P., I.L.R.. (1981) M.P. 1008, (D.B.)*

– **Section 6-A – Word “May” in** – Indicates Power to be discretionary – Not necessary to confiscate essential Commodity in every case – Collector has to act fairly, reasonably and judiciously: *Rameshwar Rathod Vs. State of M.P., I.L.R. (1981) M.P. 1008, (D.B.)*

– **Sections 6-A and 7** - and Criminal Procedure Code, 1973 (II of 1974), Sections 451 and 452 – Combined effect of these provisions – Under Sections 6-A and 7, Essential Commodities Act and Criminal Procedure Code, Sections 451 and 452 – Concurrent jurisdiction of the Collector and Criminal Court regarding disposal of property – General provision regarding disposal of property under Criminal Procedure Code – Cannot be exercised by Criminal Courts in matter of confiscation of food-grain: *Rameshwar Rathod Vs. State of M.P., I.L.R. (1981) M.P. 1008, (D.B.)*

– **Section 6-C** - and Criminal Procedure Code, 1973 (II of 1974), Section 401 – District and Sessions Judge – Acts as Criminal Court inferior to High Court – Revision would lie under Section 401 of the Code of Criminal Procedure, 1973: *Harbhajansingh Vs. State of M.P., I.L.R. (1978) M.P. 1097, (F.B.)*

– **Section 6-C** – Appointment of District and Sessions Judge as “Judicial Authority” – Is a Judicial Court in hierarchy of Court: *Harbhajansingh Vs. State of M.P., I.L.R. (1978) M.P. 1097, (F.B.)*

– **Section 6-C** – Words ‘Judicial Authority’ under – Import of – Is not persona designata while hearing appeals from orders under section 6-A – Appointment of District and Sessions Judge as “Judicial Authority” – Is a Judicial Court in hierarchy of Court – Acts as Criminal Court inferior to High Court – Revision would lie under section 401 of the Code of Criminal Procedure, 1973: *Harbhajansingh Vs. State of M.P., I.L.R. (1978) M.P. 1097, (F.B.)*

– **Section 6-C (1)** – Appeal against order of confiscation – Entertainable by District and Sessions Judge as judicial authority and not as Sessions Judge of the Court of Sessions: *Sitaram Heda Vs. State of M.P., I.L.R. (1976) M.P. 982, (D.B.)*

– **Section 6-C(1)** – Judicial authority appointed by State under – Not an inferior criminal Court – No revision against the order entertainable by High Court: *Sitaram Heda Vs. State of M.P., I.L.R. (1976) M.P. 982, (D.B.)*

– **Section 6-C(2)** – Power to award interest on price of goods confiscated – Vests in Collector under Section 6-C(2) – Judicial Magistrate recording acquittal has no power to direct payment of interest: *State of Madhya Pradesh Vs. Deena Nath; I.L.R. (1993) M.P. 681.*

– **Section 7** – Court to consider all relevant facts before ordering the custody or disposal of property pending trial or enquiry before it: *Rameshwar Rathod Vs. State of M.P., I.L.R. (1981) M.P. 1008, (D.B.)*

– **Section 7** – Empowers criminal court to pass appropriate order: *Rameshwar Rathod Vs. State of M.P., I.L.R. (1981) M.P. 1008, (D.B.)*

-Section 7- Order granting license mentioning the grains in which business can be carried-Licence omitting particular grain-Business in that particular grain carried on-No breach is committed-Dealer not liable to punishment-Mens rea necessary ingredient of offence: *Ramprasad Vs. R.K. Dube, Assistant Food & Civil Supply Inspector, Jabalpur, I.L.R. (1968) M.P. 825*

– **Section 7(1)(b) and (e)** – scope of: *Rameshwar Rathod Vs. State of M.P., I.L.R. (1981) M.P. 1008, (D.B.)*

-Section 11 – Charge-sheet filed before Magistrate –Amounts to report by a public servant – magistrate, Jurisdiction of, to take cognizance of on such charge-sheet – Criminal procedure code – Section 251-A and 252 –Case triable according to section 252-Case tried under section , 251-A – Trial vitiated: *State of Madhya Pradesh Vs. Baital, I.L.R. (1965) M.P. 830, (D.B.)*

-Section 11 – Does not prescribe any procedure for taking cognizance of any offence – Its purpose – Contemplates a Public Officer to apply his mind to the facts of the case: *State of Madhya Pradesh Vs. Mojilal, I.L.R. (1976) M.P. 70, (D.B.)*

– **Section 12-A** – Empowers magistrate to try offence in regular manner instead of trying summarily: *Prem Sahu, Vs. State of M.P., I.L.R. (1977) M.P. 712,*

-Section 12-A(2)-Prescribes the manner and the Court by which offence regarding contravention of special order can be tried-Interpretation of institute-Headings of section-Can be read with enacting part of the sections while construing it-Enacting words of the section clear and can not bear the construction suggested with the aid of heading-Construction so suggested not acceptable –Heading has no controlling effect in such circumstances-Criminal Procedure Code-Section 537-Cures defect in the trial concluded by competent Court: *Sonelal Vs. State of M.P., I.L.R. (1973) M.P. 925*

– **Section 16-** and Colliery Control Order 1945 – By virtue of Sub-section (2) of Section 16 of the Act – The Colliery Control Order remains in force – Notification under control order imposing 10% premium on specific quality of coal which has something extra to offer to its consumers – Such premium is additional price: *Gujrat Ambuja Cement Vs. Union of India, I.L.R. (2001) M.P. 593, (D.B.)*

Essential Commodities (Amendment) Act (XXV of 1966)

– **Section 6-A** – Collector does not act as Magistrate as defined by Section 6, Criminal Procedure Code – Not subordinate to Court of Session: *Sitaram Heda Vs. State of M.P., I.L.R. (1976) M.P. 982, (D.B.)*

Essential Commodities (Amendment) Act, (XXX of 1974)

-Is not procedural, nor pertains to evidence-No indication in the Amending Act to show that it is retrospective : *Rameshwar Rathod Vs. State of M.P., I.L.R. (1981) M.P. 1008 (D.B.)*

Essential Commodities (Exhibition of Prices and Price Control) Order, Madhya Pradesh, 1977

-and Essential Commodities Act (X of 1955), Sections 3 and 5-G.S.R. - No. 800, dated 9th June, 1978-Insertion of item No. 13 'MILK' in the Order of 1977-Prior concurrence of Central Govt. is essential- Such insertion without prior concurrence of Central Govt. is invalid-Notification dated 23-6-1984 issued by State Govt. and order dated 4-8-1984 passed by Collector, Jabalpur are quashed being without lawful authority: *Dugdh Utpadak Evam Vikreta Sangh, Jabalpur Vs. State of M.P., I.L.R. (1985) M.P. 638, (D.B.)*

Essential Commodities (Special Provisions) Act, Indian (XVIII of 1981)

– Proviso to section 2 – Amendments in section 7 to 11 shall not apply to any offence committed before the amendment came into force – Court of Sessions had no jurisdiction to try the offence: *Santulal Vs. State of M.P., I.L.R. (1989) M.P. 172*

Essential Supplies (Temporary Powers) Act, 1946

- Section 1, Sub-section (3)-Constitution of India, Article 369-Words "Except as respect things done or omitted to be done before expiration thereof"-Implication and meaning of-Prosecution for offence under Essential Supplies (Temporary Powers) Act started before expiration-If can be continued after Act expired : *The State of Madhya Pradesh Vs. Hiralal Sutwala, I.L.R. (1959) M.P. 97,*

– Section 11 – Charge-Sheet not mentioning all particulars given in First Information Report – Does Not amount to defeat – Magistrate can take cognizance: *The State Vs. Gokulchand, Son of Bhanwar lal of Miana, I.L.R. (1957) M.P. 168, (D.B.)*

Estate Duty (Controlled Companies) Rules, 1953

– Rule 5 – Excessive remuneration – Is a benefit accruing to the deceased: *Miss Mamie Bhagwandas Ahuja Vs. The Controller of Estate Duty, Madhya Pradesh and Nagpur, Nagpur, I.L.R. (1974) M.P. 162, (D.B.)*

– Rule 11 – Intended to give relief from a double charge: *Miss Mamie Bhagwandas Ahuja Vs. The Controller of Estate Duty, Madhya Pradesh and Nagpur, Nagpur, I.L.R. (1974) M.P. 162, (D.B.)*

– **Rule 11 (3)** – Permits reduction of slice under Section 17 of Estate Duty Act: *Miss Mamie Bhagwandas Ahuja Vs. The Controller of Estate Duty, Madhya Pradesh and Nagpur, Nagpur, I.L.R. (1974) M.P. 162, (D.B.)*

– **Rule 11 (3) and (9)** – Slice relating to share benefits and non-share benefits to be calculated separately: *Miss Mamie Bhagwandas Ahuja Vs. The Controller of Estate Duty, Madhya Pradesh and Nagpur, Nagpur, I.L.R. (1974) M.P. 162, (D.B.)*

– **Rule 11 (8) – Purpose Of :** *Miss Mamie Bhagwandas Ahuja Vs. The Controller Of Estate Duty, Madhya Pradesh And Nagpur, Nagpur, I.L.R. (1974) M.P. 162, (D.B.)*

– **Rule 11 (9)** – Contemplates two kinds of benefit's being inter se related: *Miss Mamie Bhagwandas Ahuja Vs. The Controller of Estate Duty, Madhya Pradesh and Nagpur, Nagpur, I.L.R. (1974) M.P. 162, (D.B.)*

– **Rule 11 (9) (b) and Rule 11(3)(a)** – Permits excessive remuneration to be reduced by the value of the shares: *Miss Mamie Bhagwandas Ahuja Vs. The Controller of Estate Duty, Madhya Pradesh and Nagpur, Nagpur, I.L.R. (1974) M.P. 162, (D.B.)*

Estate Duty Act (XXXIV of 1953)

–**Hindu Undivided Family**-Partition effected-One member gets less than what he is entitled to-Does not amount to disposition or gift-Cannot be added while determining the value of estate passing on death- Section 14 -Premiums Paid on Insurance policies out of Hindu Undivided Family – Policy nominated in favour of a particular person – Value of such policy will be property of that person and not of Hindu Undivided Family– Section 44 – Allowance for tax liabilities of deceased has to be made– Section 36 – Valuation of Jewellery – Price on the date of death of deceased – Relevancy and determination of: *Maharaja Bahadur Singh Kasliwal Vs. Controller of Estate Duty, Bhopal, I.L.R. (1982) M.P. 553, (D.B.)*

–**Section 2(15) and 5-**“Property” includes goodwill of a firm-Deceased's share in the goodwill of the firm is “Property” passing on death and liable to Estate Duty:*Premchand Jain Vs. The Controller of Estate Duty, M.P. II, Bhopal, I.L.R. (1983) M.P. 352 (D.B.)*

– **Section 5 (1)** – Cash Maufi – Whether property – Grant for maintenance – Grant is not heritable – Is normally for life but usually renewed – Burden on revenue to prove that it was heritable – Maufi lapses on death of holder – Does not pass on his death to his successor: *The Controller of State Duty, MP, Nagpur Vs. Smt. Usha Devi Patankar, I.L.R. (1976) M.P. 795, (D.B.)*

– **Sections 5 and 6** – Death of sole coparcener – Entire properties passes on his death for purposes of Entire Duty: *Ramratan Vs. The Controller of Estate Duty, I, Bhopal, M.P., I.L.R. (1982) M.P. 1008, (F.B.)*

– **Sections 5 and 6** – Hindu undivided family properties – Partition – Sole coparcener receiving properties in his share – Nature of – Death of sole coparcener – Entire Property passes on his death for purposes of Estate Duty: *Ramratan Vs. The Controller of Estate Duty, I, Bhopal, M.P., I.L.R. (1982) M.P. 1008, (F.B.)*

– **Sections 5, 7 and 39** - and Hindu Succession Act (XXX of 1956), Section 14 – Female Hindu Possessed of right amounting to property in generic sense – Vests in her as full owner – Her share not liable for Estate Duty – Hindu Succession Act, 1956 – Section 14 – Is retrospective – Immaterial whether right of a female accrues before or after commencement of the Act – Partition – A female entitled to a share on partition – Not deprived of her right simply because parties there to not assigning any share – Her act of standing by or failure to raise objection to partition – Does not take away her right to get a share – Such conduct does not amount to acquiescence or relinquishment – Hindu Law – Family consisting of deceased and his wife – Entire property and not half of it passes on the death of deceased in case the deceased being the only coparcener and owner of entire coparcener interest – Estate Duty Act, 1953 – Section 10 – Gifts in favour of grand-sons of cash amounts – Donees depositing amounts with a firm of which donor not partner – Donor becoming partner subsequently on reconstitution of firm – After some time donees withdrawing amounts from that firm and reinvested in another firm – Section 10 not attracted: *The Controller of Estate Duty, Madhya Pradesh, Bhopal Vs. Smt. Rani Bahu, I.L.R. (1982) M.P. 300, (F.B.)*

– **Section 7 and Insurance Act (IV of 1938), Section 39** – Nomination of Insurance policies of deceased – Effect – Sum representing value of such insurance policies passes on death of the deceased – Includable in the principal value of estate of deceased – Assignment of policy and nomination of policy – Distinction between : *The Controller of Estate Duty, M. P. Jabalpur Vs. Kewalram, I.L.R. (1990) M.P. 1 (F.B.)*

– **Section 10** – Conditions necessary for taking out gifts from the operation of this provision – Donor remaining in possession and enjoyment of gifted property – Gift cannot be excluded – Donor retaining and excluding certain rights and interest from the gift – Possession and enjoyment by donor of such rights and interests does not amount to non-exclusion of donor of what is given under gift of which possession and enjoyment is assumed by donee – Amount deposited with bank, firm etc. – Depositee becomes owner – Depositor owns only a debt also known as obligation or actionable claim – Such right is proprietary right – This amounts to actionable claim – Possession and enjoyment of property gifted – Retained by donee to entire exclusion of deceased or

otherwise – Interpretation of Statutes – Taxing statute to be construed in favour of subject – Estate Duty Act – Section 10 – Lays down two conditions and unless both conditions are satisfied, property would be liable to estate duty – Gift – For a valid gift donee must immediately begin to enjoy the gift to the exclusion of the donor – Passive attitude of donee, cannot be construed as possession and enjoyment – Mere inaction on part of donee will not amount to donor continuing in possession. : *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376, (F.B.)*

– **Section 10** – Donor remaining in possession and enjoyment of gifted property – Gift cannot be excluded: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376, (F.B.)*

– **Section 10** – Donor retaining and excluding certain rights and interests from the gift – Possession and enjoyment by donor of such rights and interest does not amount to non-exclusion of donor of what is given under gift of which possession and enjoyment is assumed by donee: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376, (F.B.)*

– **Section 10** – Gift – For a valid gift donee must immediately begin to enjoy the gift to the exclusion of the donor: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376, (F.B.)*

– **Section 10** – Gifts in favour of grandsons of cash amounts – Donees depositing amounts with a firm of which donor not partner – Donor becoming partner subsequently on reconstitution of firm – After some time donees withdrawing amounts from that firm and reinvested in another firm – Section 10 and attracted: *The Controller of Estate Duty, Madhya Pradesh, Bhopal Vs. Smt. Rani Bahu, I.L.R. (1982) M.P. 300, (F.B.)*

– **Section 10** - Lays down two conditions and unless both conditions are satisfied, property would be liable to estate duty: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376, (F.B.)*

– **Section 10** – Passive attitude of donee, cannot be construed as possession and enjoyment – Mere inaction on part of donee will not amount to donor continuing in possession: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376, (F.B.)*

– **Section 10** – Possession and enjoyment of property gifted – Retained by donee to entire exclusion of deceased or otherwise: *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P., Nagpur, I.L.R. (1974) M.P. 376, (F.B.)*

– **Section 13** – Conditions necessary for its applicability – Section 14 – Policy kept alive for benefit of assignee – Policy – Money deemed to pass on death of assured – Words “to keep up” in – Meaning of – Burden of proof about policy-money not passing

on death of assured to assignee – Lies on person claiming the exclusion of that money from the property of deceased passing on his death – C.P.C. – Section 100 – Finding that debt is a bad debt – Is a finding of fact: *Smt. Bimla Devi Sud Vs. The Controller of Estate Duty, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1974) M.P. 868, (D.B.)*

– **Section 14** – Policy kept alive for benefit of assignee – Police-money deemed to pass on death of assured: *Smt. Bimla Devi Sud Vs. The Controller of Estate Duty, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1974) M.P. 868, (D.B.)*

– **Section 14** – Premiums paid on Insurance policies out of Hindu Undivided Family – Policy nominated in favour of a particular person – Value of such policy will be property of that person and not of Hindu Undivided Family: *Maharaja Bahadur Singh Kasliwal Vs. Controller of Estate Duty, Bhopal, I.L.R. (1982) M.P. 553 (D.B.)*

– **Section 17** – “Slice” – Mode of determining it: *Miss Mamie Bhagwandas Ahuja Vs. The Controller of Estate Duty, Madhya Pradesh and Nagpur, Nagpur, I.L.R. (1974) M.P. 162, (D.B.)*

– **Section 17(1)** – Imposes three conditions for levying estate duty – Estate duty (Controlled Companies) Rules, 1953 – Rule 11(8) – Purpose of – Rule 5 – Excessive remuneration – Is a benefit accruing to the deceased – Section 17 – “Slice” – Mode of determining it – Rule 11 – Intended to give relief from a double charge – Rule 11(3) – Permits reduction of slice under Section 17 of Estate Duty Act – Rules 11(3) and (9) – Slice relating to share benefits and non-share benefits to be calculated separately – Rule 11(9) – Contemplates two kinds of benefits being inter-se related – Rule 11(9)(b) and Rule 11(3)(a) – Permits excessive remuneration to be reduced by the value of the share: *Miss Mamie Bhagwandas Ahuja Vs. The Controller of Estate Duty, Madhya Pradesh and Nagpur, Nagpur, I.L.R. (1974) M.P. 162, (D.B.)*

– **Section 36** – Valuation of Jewellery – Price on the date of death of deceased – Relevancy and determination of: *Maharaja Bahadur Singh Kasliwal Vs. Controller of Estate Duty, Bhopal, I.L.R. (1982) M.P. 553, (D.B.)*

– **Section 44** – Allowance for tax liabilities of deceased has to be made: *Maharaja Bahadur Singh Kasliwal Vs. Controller of Estate Duty, Bhopal, I.L.R. (1982) M.P. 553, (D.B.)*

– **Section 61** – Rectification of order imposing Estate Duty – Working trustee of Seth Mannulal Jagannath Das Hospital Trust filing estate duty return as required under the Act – Property worth Rs. 15,45,388/- determined as assessable to duty – Suit filed by adopted son for declaring the trust created by Seth Jagannath as null and void and also claiming share in estate as coparcener – Suit decreed by Supreme Court in S.L.P. –

Supreme Court declared the trust as null and void—Basis for assessment and levy of tax knocked out because of verdict of Supreme Court in civil litigation—Rectification under Section 61 justified. : *The Controller of Estate Duty M.P. Jabalpur Vs. Shri Madhusudandas Malpani, Jabalpur, I.L.R. (1993) M.P 689*

Estoppel

- **Basic principle of estoppel:** *Balaram Vs. Durgalal I.L.R. (1970) MP 624 (D.B.)*

- **Board challenging jurisdiction of arbitrator and taking part in arbitration proceedings, submitting reply and counter claim but without prejudice to its rights challenge existence of arbitration agreement** – Board not estopped from challenging existence of arbitration agreement: *M/s. Chitram Company Pvt. Ltd. Main Road Foyapuram, Madras Vs. Madhya Pradesh Electricity Board, Rampur, Jabalpur, I.L.R. (1983) M.P. 572*

-**Contract or issuing false certificate and securing benefit for themselves** – Estoppel from urging that certificate was not genuine : *Hindustan Steel Ltd., Bhilai Vs. M/s. Ram Dayal Dau and Company Durg. I.L.R. (1976) M.P. 371*

-**Dealing with plaintiff as owner**-Deriving benefit of contract-This conduct amounts to estoppel : *M/s Mishra Bandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P. 88 (D.B.)*

-**Defendant challenging maintainability of suit on the ground of subsequent composition scheme**-Defendant cannot turn round and challenge that the decree is not liable to be passed as suit not framed in that form : *Mahadulal Vs. Chironjilal, I.L.R. (1964) M.P. 721, (D.B.)*

-**Estoppel by negligence**-Circumstance in which it comes into operation-Pre-medical Examination Rules, Madhya Pradesh, 1970-Does not contain a rule for ousting a candidate admitted to medical course-Principle of natural justice-No notice given to a candidate to show cause before being ousted-Action is against principles of natural justice- Pre-medical Examination Rules, Madhya Pradesh, 1970-Rule 9-Empowers removal of candidate from college if he gives false or incorrect statement: *Dinkar Prabhakar Mahajan, Vs. Shri S.L. Agrawal, I.L.R. (1978) M.P. 213 (D.B.)*

-**Estoppel by negligence when arises** : *Makardhwaj Singh Vs. State of M.P. I.L.R. (1978) M.P. 654 (D.B.)*

-**Estoppel** – Promissory estoppel – petitioner aware exemption not available to his unit and unit not established because of exemption – No question of promissory estoppel: *M/s. Jagdamba Industries, Kumbhraj Vs. State of M.P., I.L.R. (1989) M.P. 502 (FB)*

-For applicability, taking of advantage by other party necessary : *Hindustan Steel Ltd. , Bhilai Steel Plant Bhilai Vs. The District Judge, Durg, I.L.R. (1980) M.P. 639 (D.B.)*

-Government keeping quiet when grantee was making construction on granted property-Government is estopped from repudiating title of the grantee : *The State of M.P. Vs. Ikram Ahmad, I.L.R. (1977) M.P. 900 (D.B.)*

-Mere mechanical receipt of costs without conscious decision to abandon right-Will not create estoppel : *Hindustan Steel Ltd , Bhilai Steel Plant Bhilai Vs. The District Judge, Durg, I.L.R. (1980) M.P. 639 (D.B.)*

- No estoppel against law – Agricultural Produce Market Act, 1935, Section 15 – Provision of – Applicable to Municipality also – M.P. Agricultural Produce Market Act, 1960, Section 43 – Notification issued under Old Act, - Saved and continues in force – Markets established prior to 1960 – Continue as market under Act of 1960 – Resolution of Municipal Committee establishing market within 3 miles of existing market – Resolution ultra vires – Municipal Byelaws – Bye-law regarding grant of licence for practicing profession of trade – Bye-law enures for benefit of all persons irrespective of public place where they practise within municipal limits – C.P. and Berar Municipalities Act, Section 179 (b-1) – Does not relate to the establishment of a market but to inspection and regulation of use of markets which arises only after markets are established: *Ramanlal Vs. The Municipal Committee, Piparia, I.L.R. (1962) M.P. 351, (D.B.)*

- No estoppel against statute: *Firm Gappulal Jaiswal, Murar Vs. State of M.P. I.L.R. (1975) M.P. 280,*

- No estoppel against statute: *Gokulram Vs. Bhagwandas, I.L.R. (1962) M.P. 607,*

-No estoppel against statute : *Municipal Committee, Pandhurna Vs. M/s. Shah Raisi Hirji & Co., I.L.R. (1959) M.P. 734, (D.B.)*

-Party consenting to construction of canal-Party estopped from claiming compensation : *State of M.P. Vs. Raman Shah Byramji. I.L.R. (1978) M.P. 768 (D.B.)*

-Principles of-Applicability :*Jagnoo Vs. Rameshwar Narayan Singh , I.L.R. (1981) M.P. 231*

- Promissory Estoppel – Invalid appointment cannot give rise to promissory estoppel – Instructions not being inconsistent with any statutory provisions – Are binding and enforceable even if not having statutory force: *Director General of Police, M.P., Bhopal Vs. Ravi Shankar, I.L.R. (1988) M.P. 374 (DB)*

-Reference first made under section 10-Workers by compromise withdrawing reference-Workmen estopped from relying on reference : *Nowrozabad colliery Mazdoor Sangh Vs. F. Jeejeebhoy, I.L.R. (1974) M.P. 208 (D.B.)*

-Sections 115, 116 and 117 of Evidence Act-Not exhaustive-Illustration of such relations-Where one man going into possession of property on the acceptance of another's title-Principle embodied in section 116, Evidence Act-Applicable to cases of guardian and ward, principal and agent and master and servant-Guardian estopped from questioning his ward's title during currency of guardianship or management until he discharges fiduciary capacity : *Fattu Vs. Bhawaniram, I.L.R. (1960) M.P. 686,*

Evacuee Interest (Separation) Act (LXIV of 1951)

-Action of competent authority for separating interest of evacuee-Validity : *Union of India Through its Secretary, Ministry of Rehabilitation, New Delhi Vs. Shri Ismail Abdul Shakoor, I.L.R. (1970) M.P. 968 (D.B.)*

-Section 6 and 20- Jurisdiction of Competent Officer-Dependent on issue of general and individual notice –Absence of general or individual notice-Jurisdiction of Civil Court to determine claim not barred : *Mohammad Abdul Latif Vs. Mohammad Abdul Rashid, 1959, I.L.R. M.P. 387, (D.B.)*

Evidence

– **Appreciation** – Evidence of mother – Cannot be dubbed as un-reliable – In certain circumstances can be regarded as corroborative evidence: *The State of Madhya Pradesh Vs. Surendra Prasad Dave, I.L.R. (1971) M.P. 726 (D.B.)*

– **Burden of proof about policy** – Money not passing on death of assured to assignee – Lies on person claiming the exclusion of that money from the property of deceased passing on his death: : *Smt. Bimla Devi Sud Vs. The Controller of Estate Duty, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1974) M.P. 868, (D.B.)*

– **Burden of proof** – Both parties leading evidence – Burden of proof immaterial: *Ziaul Hasan Vs. M/s Pannalal Nanoomal Jain, Bhopal, I.L.R. (1975) M.P. 911,*

– **Burden of proof** – Making of Hundi and consideration denied – Burden on plaintiff to establish both facts – Moment the execution of Hundi proved – Burden of proving want of consideration shifts on defendant – Burden can be discharged by producing account books: *Ali Hussain Vs. Pessumal, I.L.R. (1973) M.P. 1081,*

– **Blood stains on garments of accused** – Size, shape and location should be given: *State of M.P. Vs. Gangabai, I.L.R. (1969) M.P. 1014, (D.B.)*

– **Circumstantial evidence for conviction of an accused** – Nature of : *Mst. Piyajo Vs. The State, I.L.R. (1957) M.P. 142, (D.B.)*

– **Circumstantial evidence** – Nature if required for basing conviction on it: *Surajpalsingh Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 708, (D.B.)*

– **Distinction between circumstantial evidence and circumstances of the transaction:** *Onkar Vs. State of M.P., I.L.R. (1977) M.P. 246, (D.B.)*

– **Evidence revealing cordial relation between accused husband and the deceased** – No evidence to suggest accused ill-treating deceased or demanding dowry – Conviction and sentence set aside : *Harish Chandra Vs. State, I.L.R. (2000) M.P. 276*

– **Evidence of child witness** – Can be accepted under certain circumstances without corroboration: *The State of Madhya Pradesh Vs. Surendra Prasad Dave, I.L.R. (1971) M.P. 726, (D.B.)*

– **Evidence of title of lessor** – Relevant fact for proof or disproof of contract of tenancy – Averment of existence or non-existence of title – Not a material fact that can be tried in suit: *Lekhraj Diddi Vs. Sardar Sawansingh, I.L.R. (1977) M.P. 1204, (D.B.)*

– **Evidence of investigating Officer found to be trustworthy** – Corroboration not necessary : *Dayalsingh Vs. State of M.P., I.L.R. (1986) M.P. 532,.*

– **Expert evidence** – When acceptable: *Onkarnath Vs. State of M.P., I.L.R. (1980) M.P. 1053, (D.B.)*

– **Extra** – Judicial confession – Admissibility – To be examined with prudence and caution: *State of M.P. Vs. Gangabai, I.L.R. (1969) M.P. 1014, (D.B.)*

– **Fraud to be proved beyond reasonable doubt** – Nature of circumstantial evidence to prove fraud – Burden on person alleging fraud: *Krishnadas Vs. Saravankumar, I.L.R. (1980) M.P. 329, (D.B.)*

– **Hearsay evidence for what purposes admissible** – Extra judicial confession – Admissibility – To be examined with prudence and caution – Evidence Act – Section 27 – Indicating dead body lying in open place by accused before arrest – Does not amount to discovery – Criminal Trial – Non-examination of accused regarding piece of evidence filed after his first examination – Amounts to irregularity which is curable – Evidence – Blood stains on garments of accused – Size, shape and location should be given: *State of M.P. Vs. Gangabai, I.L.R. (1969) M.P. 1014, (D.B.)*

– **Medical evidence and the evidence of eye** – Witnesses – Contradiction between the two – Effect of – Evidence of eye-witnesses not to be rejected: *Onkarnath Vs. State of M.P.*, I.L.R. (1980) M.P. 1053, (D.B.)

– **Maxim “res ipsa loquitur”** – Not a rule of law – Not applicable where cause of accident is known: *Ramdulare Shukla Vs. Madhya Pradesh State Road Transport Corporation, Gwalior*, I.L.R. (1973) M.P. 509, (D.B.)

– **Nature of Evidence necessary to prove defence of insanity**: *State of M.P. Vs. Godhe*, I.L.R. (1976) M.P. 361, (D.B.)

– **Nature of evidence required in Matrimonial Cause** - Hindu Marriage Act – Section 10(1)(d) – Proof regarding suffering from syphilis for 3 years prior to the petition wanting – Judicial separation cannot be granted – Section 12(1)(c) – Obtaining of consent of husband by concealment – Does not arise if fact regarding which concealment is alleged is not known to the party – Definition of fraud in Section 17 of Contract Act – Cannot be incorporated in this provision – “Fraud” in matrimonial law – Has technical meaning – Meaning of fraud in the context of annulment of marriage – Wife concealing her ailment of venereal disease – Does not amount to fraud within this provision: *Madhusudan Vs. Smt. Chandrika*, I.L.R. (1980) M.P. 249, (D.B.)

– **Non-production of primary evidence** – Warrants adverse inference against party not producing primary evidence – Burden of proof-Both parties leading evidence-Burden of proof immaterial – Landlord and Tenant – Suit for ejectment on ground of unlawful sub-letting – Circumstance in which inference of sub-letting can be drawn: *Ziaul Hasan Vs. M/s. Pannalal Nanoomal Jain*, Bhopal, I.L.R. (1975) M.P. 911,

– **Not possible to be proved by direct evidence** – Can be inferred from conduct of authorities in the light of facts and circumstances: *Pt. Girjashanker Sharma Vs. Collector, Hoshangabad*, I.L.R. (1978) M.P. 466, (D.B.)

– **Oral evidence in maintenance cases**-Appreciation of-Interference by revisional Court in appreciation evidence by the trial court-When can be made : *Smt. Radhamani Vs. Sonu*, I.L.R. (1985) M.P. 443,

– **Oral evidence unsupported by documentary evidence** – No weight can be attached:, *The Collector, Jabalpur Vs. Nawab Ahmad Yar Jahangir Khan*, I.L.R. (1973) M.P. 1061, (D.B.)

– **Proof** – Surmise of conjecture – Cannot take place of proof – Constitution of India – Article 226 – Writ of certiorari – Can issue against arbitrator functioning under Section 10 of Industrial Disputes Act – Article 227 – Industrial Court is tribunal – Amenable to direction of High Court: *The Hindusthan Steel Ltd., Bhilai Vs. The Presiding Officer, Industrial Tribunal-Cum-Labour Court, Jabalpur*, I.L.R. (1974) M.P. 43, (D.B.)

– **Question regarding re-instatement** – Evidence relating to misconduct – Allowable for limited purpose of determining the question of re-instatement: *Factory Manager, Central India Machinery and Manufacturing Co. Ltd., Birlanagar, Gwalior Vs. Abdul Rehman*, I.L.R. (1976) M.P. 19, (D.B.)

– **Statement of accused** – Part of it can be relied upon to corroborate prosecution evidence : *Jamnadas Vs. The State of M.P.*, I.L.R. (1963) M.P. 730, (D.B.)

– **Sub-tenancy** – Not provable by direct evidence – Inference to be drawn from circumstances and facts on record: *Narayan Vs. M/s. Indian Mill Stores, Raipur*, I.L.R. (1978) M.P. 280,

– **Testimony of child** – Not inadmissible – Prudence requires that there should be corroboration: *Dilli Vs. State*, I.L.R. (1974) M.P. 831, (D.B.)

Evidence Act, Indian (I of 1872)

– **Appreciation of Evidence** – Witness not cross-examined on material point deposed in examination in chief – Version to be accepted: *K.K. Jain Vs. Smt. Masroor Anwar*, I.L.R. (1989) M.P. 643, (D.B.)

– **Burden of proof regarding intentional disobedience on the part of such worker** – Rests on employer claiming benefit of the proviso Act- Procedure technicalities in – Not to be permitted to defeat justice : *Chitram Vs Steel Authority of India Ltd. Bhilai Steel Plant, Hirri Dolomite Mines, Bilaspur*. I.L.R. (1990) M.P. 332

– **Cross examination** – Failure to challenge part of evidence – Acceptance of that part can be inferred: *Jagdish Singh Vs. State of M.P.*, I.L.R. (1989) M.P. 664, (D.B.)

– **Evidence** – Non-examination of one important witness must not necessarily result in rejecting the testimony of other witnesses: *Narayansingh Vs. State of M.P.*, I.L.R. (1991) M.P. 58, (D.B.)

– **Law of evidence** – Nature and effect of : *Ashok Kuamr Vs. The State of M. P.* I.L.R.. (1990) M.P. 280

– **Non** – Cross Examination of P.W.s. on certain facts - Inference : *Motilal Vs. State of M.P.* I.L.R., (1990) M.P. 436 (D.B.)

– **Not applicable to departmental enquiry**: *Rameshchandra Vs. The Union of India*, I.L.R. (1969) M.P. 955, (D.B.)

– **Rules of evidence** – Not applicable to domestic enquiry: *Vidyanath Vs. The Madhya Pradesh State Road Transport Corporation, Bhopal*, I.L.R. (1978) M.P. 229, (D.B.)

-Section 3—Appreciation of Evidence—Accused allegedly put the gun on back of the deceased and fired—Sat on his body and strangled him to death—Eye witnesses no other than forest officer—Seeing ghastly crime started running and did not stop or inform villagers—No blackening or charring of skin around the wound nor any mark of injury on neck of deceased found by the doctor—Conduct of witness highly unnatural, doubtful and not believable—Serious doubt about their presence at the time of occurrence: *Badam Singh Vs. State of M.P.*, I.L.R.(2004) M.P. 91, (S.C.)

-Section 3 – Appreciation of evidence –Accused kept pending with him the application of complainant : Shyamlal (Since Deceased) Through : *His L.R. Arun Kumar Pandey Vs. State* , I.L.R. (2000) M.P. 870

-Section 3- Appreciation of evidence - Allegations that accused persons murdered deceased with sharp edged weapons - Eye-witness, in the deposition, fully corroborated FIR and medical evidence - Non-production of independent witness cannot be a ground to discard it - Inability of eye-witness to specify particular weapon used by each assailants - Does not render his testimony doubtful - Injuries sustained by accused persons explained - Acquittal of co-accused for lack of incriminating evidence against him - Cannot be ground for setting aside conviction of accused persons - Their conviction proper. : *Shyam Vs. State*, I.L.R. (1995) M.P. 323, (D.B.)

-Section 3 – Appreciation of evidence – Attempt to rape on minor girl - Evidence of prosecutrix found sufficient and reliable - Other witnesses fully corroborated her version – Moreover, F. I. R was lodged immediately by her - Prosecution proved its case beyond reasonable doubt - Minor variation in evidence of prosecutrix led into acquittal of accused – Held, illegal. : *State of M.P. Vs. Udhe Lal*, I.L.R. (1995) M.P. 348, (D.B.)

– **Section 3** – Appreciation of evidence – Circumstantial evidence – Nature of – In the absence of direct evidence, conviction can be based on circumstantial evidence provided it complete the chain of circumstances connecting the offence – Necessary conditions required for proving the guilt of accused dismissed – Explanation not offered by the persons present at the time of incident – This is an additional link to complete the chain of circumstances: *Smt. Phuleshwaribai Vs. State of M.P.*, I.L.R.(1991) M.P. 405, (D.B.)

-Section 3 – Appreciation of evidence –Credibility-Evidence of a witness cannot be brushed aside merely because he is close relative of the deceased-What the Court has to do is to be cautious and sift the chaff from grain-Conviction of accused can safely be based on evidence of a relative of deceased if inspiring confidence : *Anantilal Vs. State*, I.L.R. (2000) M.P. 397 (D.B.)

-Section 3—Appreciation of Evidence—Deceased a history sheeter—Had many enemies—May have been murdered by one of them—Appellant falsely implicated—

Acquitted giving benefit of doubt: *Badam Singh Vs. State of M.P., I.L.R. (2004) M.P. 91, (S.C.)*

-Section 3 – Appreciation of evidence – Prosecution witnesses showing ignorance of material facts–Unsafe to base conviction in case of serious offences–Conviction and sentence set aside : *Kunwarji Vs. State , I.L.R. (2000) M.P. 749 (D.B.)*

-Section 3–Appreciation of evidence– Three of the injuries referred to by the autopsy surgeon and as stated by the eye witnesses are common and sufficient to cause death–Non-mention of two injuries by autopsy surgeon cannot lead to rejection of prosecution case: *Yunis @ Kariya Vs. State of M.P., I.L.R. (2003) M.P. 362, (S.C.)*

–Section 3–Appreciation of evidence–Two of the alleged eye witnesses are not residents of village of occurrence–How there happened to come to the place of occurrence not satisfactorily explained–Did not disclose the fact of having seen the incident–Rightly disbelieved by Trial Court: *Jagdish Vs. State, I.L.R. (1992) M.P., 931, (D.B.)*

-Section 3 – Appreciation of evidence – Witnesses developing their version in the Court–Tendency of pick and choose makes the witnesses unreliable and unbelievable–Not safe to base conviction on such evidence in case of serious charge of murder : *State Vs. Balu, I.L.R. (2000) M.P. 613 (D.B.)*

– **Section 3** – Benefit of doubt – Investigation Officer admitted in examination in chief that another dying declaration was recorded by Executive Magistrate but the same was withheld by prosecution – Adverse influence drawn against prosecution – Accused entitled to benefit of doubt – Conviction and sentence set aside: *Manohar Vs. State, I.L.R. (2001) M.P. 100, (D.B.)*

-Section 3–Broad day-light murder in a market place–Oil Mill shop, Medical Store and Watch repairing shop happen to be in the same market place–Different references of landmarks made by different eye witnesses do not really change the place of occurrence–No scope of confusion: *Yunis @ Kariya Vs. State of M.P., I.L.R. (2003) M.P. 362, (S.C.)*

– **Section 3** – Circumstantial evidence – Investigation Officer not deposing that he found blood in the courtyard of the accused – Also no evidence to show that whatever was collected from the spot were found to contain blood on chemical examination – Only two circumstances that the accused and the deceased left house together and that dead body was found in courtyard of accused – Not sufficient to convict appellant for murder – Conviction and sentence set aside: *Dewan Gond Vs. State, I.L.R. (2001) M.P. 106, (D.B.)*

-Section 3—Circumstantial evidence—Piece of accused shirt removed from fist of deceased—Clinching evidence though circumstantial: *Kundan Lal S/o Nanhelal Vs. State of M.P., I.L.R. (2005) M.P. 540, (D.B.)*

- Section 3 - Conviction based on testimony of sole eye witness—As many as fourteen injuries including one stab injury found on deceased—Witness deposing in the Court not naming other accused persons already named by herself in FIR—Attributing only the stab injury to appellant—Not a truthfull witness— Cannot be relied upon—Conviction & sentence set aside: *Pappu Alias Man Singh Vs. State, I.L.R. (2004) M.P. 508, (D.B.)*

-Section 3 -Currency notes smeared with phenolphthalein powder—Handwash found pink—Offence successfully brought home by prosecution—Conviction and sentence maintained : Shyamlal (Since Deceased) Through : *His L.R. Arun Kumar Pandey Vs. State, I.L.R. (2000) M.P., 870*

—Section 3—Custodial death—Ocular evidence of police personnel alone can explain the circumstances but bound by ties of brotherhood they remain silent and feign ignorance—Courts must deal with such cases in a realistic manner and with sensitivity they deserve: *Munshi Singh Gautam (D) Vs. State of M.P., I.L.R. (2004) M.P. 983, (S.C.)*

-Section 3—Evidence of eye witnesses corroborated by extra-judicial confession—No reason to take a different view then that of Trial Court—No interference in appeal: *Komal Singh Gond Vs. State of M.P., I.L.R. (2004) M.P. 678, (D.B.)*

—Section 3—Eye witness accused corroborated by ‘Court witness’ to the effect that in Dehati Nalishi recorded soon after the incident she named only two accused persons—Seizure of broken handle of ballam and axe used in Commission of offence proved: *Jagdish Vs. State, I.L.R. (1992) M.P., 931, (D.B.)*

—Section 3—Eye witness widow of deceased—Close relative—Categorically stated that appellant dealt lathi blows—No reason to spare real assailant and falsely implicate appellant—Can be safely relied upon: *Bhagat Singh Vs. State, I.L.R. (2004) M.P. 60, (D.B.)*

- Section 3—Eye witnesses—Mere fact that witnesses are consistent in what they say is not sure guarantee of their truthfulness: *Badam Singh Vs. State of M.P., I.L.R. (2004) M.P. 91, (S.C..)*

—Section 3—F. I. R. not showing only involvement of appellant—Variance in testimony of material witnesses—Conviction and sentence set aside: *Vijay Shankar Vs. State, I.L.R. (1992) M.P. 113, (D.B.)*

– **Section 3** – Inference favourable to accused has to be taken into account – No eye witnesses to show that the accused threw the child into the pond – Witnesses reasonable proved that there was a quarrel between husband and wife night before the incident and in the morning accused a snatched away the child from its mother – Inference favourable to accused is that he exposed the child to a place with intention to wholly abandoning it: *Pawan Vs. State, I.L.R. (2001) M.P. 549, (D.B.)*

–**Section 3**–Injured eye witness–Presence of injuries by itself not a guarantee of truthfulness of his evidence–FIR lodged within three hours but names of actual assailants not mentioned–Came out with the names of accused persons after 2½ months–In deposition before Trial Court took the stand that he neither lodged FIR nor made dying declaration–Evidence suffers from serious infirmities–Cannot be acted upon: *State Vs. Kishori @ Kishora, I.L.R. (2004) M.P. 65, (D.B.)*

–**Section 3**–Injuries by Lathis cannot be said to have been caused by hard and heavy articles–FIR not brought on record–Investigating officer not examined–Statements made by witnesses before the court not made in their Statements under Section 161 Cr. P.C.–Appellants seriously prejudiced: *Lakhan Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 928, (S.C.)*

–**Section 3** - Interested witnesses - Evidence of eye-witnesses - Younger brother of deceased knew them – Can not be a ground to discard their evidence. : *Girish Yadav Vs. State of M.P., I.L.R. (1996) M.P. 34, (S.C.)*

–**Section 3** - Interested witnesses—Not necessarily unreliable—Can be relied upon if the Court is satisfied after careful scrutiny that their evidence has a ring of truth: *Shahadat Noor Vs. State of M.P., I.L.R. (2004) M.P. 186, (D.B.)*

–**Section 3** – Murder–Conviction and sentence–Circumstantial evidence–Last seen together–More than one person last seen–Not sufficient to hold accused alone guilty: *Rajan Tripathi S/o Bhoop Narayan Tripathi Vs. State of M.P., I.L.R. (2005) M.P. 546, (D.B.)*

–**Section 3**–Murder–Rioting–Prosecution–Appreciation of evidence–Assailants six in numbers–Armed with lathis–Attacked deceased–Neither safe nor desirable for a witness to endanger his life–Witness not making efforts to save the deceased at the time of incident–Not unnatural–Evidence corroborated by other witnesses–High Court justified in reversing the order of acquittal: *Bharosi Vs. State of M.P., I.L.R.(2003) M.P. 163, (S.C.)*

–**Section 3**–No Evidence that on any of the seized articles human blood was found seizure does not connect the appellants with death of deceased–Conviction and sentence set aside: *Rekhlal Vs. State of M.P., I.L.R. (2003) M.P. 543, (D.B.)*

-Section 3 – Non-examination of material witness as to the fact of enquiry relating to bogus licence of Driver-On the basis of endorsement alone it cannot be held that the licence is bogus:*New India Assurance Company Ltd. Vs. Motilal, I.L.R. (2000) M.P. 1142 (D.B.)*

-Section 3–Only eye-witness also injured in the incident–Disbelieved by the Trial Court in respect of other co-accused person–Conduct being doubtful–Cannot be relied on in respect of only one accused while the Trial Court has disbelieved him in respect of four other co-accused persons: *Vijay Shankar Vs. State, I.L.R. (1992) M.P. 113, (D.B.)*

-Section 3–Rape on a mentally retarded girl–Discrepancies which do not shake evidence of witness shall not be attached undue importance particularly when all important probabilities–Factors echo in favour of prosecution case: *Raju @ Rajendra Kesharwani Vs. State of M.P., I.L.R. (2004) M.P. 799,*

-Section 3–Recovery of weapon at the instance of appellant–Prosecution story cannot be disbelieved merely on the ground of absence of report as to presence of human blood on the sword : *Hiralal Vs. State, I.L.R. (2003) M.P. 236, (D.B.)*

– **Section 3** – Server criticism of autopsy surgeon or a direction for an enquiry against them would not be a circumstance to infer that death was homicidal: *Shobhanlal Vs. State, I.L.R. (2001) M.P. 1052, (D.B.)*

-Section 3–Two views possible–Court is obliged to accept the view in favour of accused : *Pawan Kumar Vs. State of Chhattisgarh, I.L.R. (2005) M.P. 925, (S.C.)*

-Section 3–Witness substantially making improvement–Have to be dealt with cautiously but not liable to be rejected out right: *Jagdish Vs. State, I.L.R. (1992) M.P., 931, (D.B.)*

-Section 3 - and Criminal Procedure Code, 1973–Sections 161, 162, 164, 374(2)–Appeal–Murder–Circumstantial evidence–Prosecution witnesses not supported and declared hostile–Statement under Sections 161, 164 Cr.P.C. not admissible in inquiry or trial or for corroboration of a witness–Conviction on basis of circumstances existing in statement under section 164 Cr. P.C.–Provision of Section 164 Cr.P.C. over looked–Appellants acquitted: *Ashok Vs. State of M.P., I.L.R. (2005) M.P. 360, (D.B.)*

-Sections 3 & 114–Presumption–Possession of land–Absence of proof by reference to revenue record–Kotwarin of village had seen accused all though cultivating–Irresistible conclusion that deceased was not in possession–Once it is held that deceased was not possession there could be none else in possession except the accused: *Latel Vs. State, I.L.R. (2000) M.P. 72 (D.B.)*

-Section 3 - and Penal Code Indian, 1860, Section 300 - Murder - Credibility of evidence of child witness- - Accused persons surrounded victim- Alleged to have inflicted blows upon his back with a sharp edged weapon - Presence of child witness, son of deceased, at place of occurrence found proved - Discrepancies regarding number of blows inflicted and side of weapon used in first instance - Immaterial - Medical evidence not entirely in conflict with ocular version of child witness - Mere fact that child witness was produced by the police as a witness - Can not be a ground to come to the conclusion that he must have been tutored - Version given by the child witness appears to be quite natural and has a ring of truth in the same - Accused liable to be convicted. : *Mangoo Vs. State of M.P., I.L.R. (1995) M.P. 14, (D.B.) (S.C.)*

-Sections 3, 27-Recovery of sword—Could not be determined whether stains were of human blood—From mere recovery of sword no inference could be drawn attaching culpability to accused at whose instance recovery was made—Right of private defence: *State of M.P. Vs. Shrikrishna, I.L.R. (2005) M.P. 1004, (D.B.)*

-Sections 3, 9, 27 and 45—Identification of accused—Witness not able to see the stature nor hair nor the mole on his nose—Witness not reliable :*State of M.P. Vs. Ghudan, I.L.R. (2003) M.P. 1121, (S.C.)*

-Sections 3 and 8—Persons claiming to be eye witness knew arrival of police—Not making statement that they were eye witnesses—Delay in recording their statements not explained—Probative value of such evidence is extremely weak—Can not be relied upon: *State of M.P., Vs. Ramkripal, I.L.R. (2004) M.P. 875, (D.B.)*

-Sections 3, 9—Identification—Accused, deceased and the witnesses are resident of the same village—Total number of house is only 20—Difficult to believe that villagers did not know each other and witnesses had no occasion to see the accused and that test identification was necessary: *Komal Singh Gond Vs. State of M.P., I.L.R. (2004) M.P. 678, (D.B.)*

-Sections 3, 25—Rape on wife of deceased and murder—Two separate trial—Only eye witness wife of deceased retracting from her evidence in the other Session trial on which conviction for murder is based—Trial Court committed illegality in relying on such evidence: *Kallu Vs. State, I.L.R. (2004) M.P. 684, (D.B.)*

-Sections 3, 24, 27—Circumstantial evidence—Discovery statement—Allegedly made to the police officer leading to the discovery of dead body not bearing signature or thumb impression of the deceased making the statement—Detracts materially from authenticity—Appears to have been made after discovery of the body—Discovery statement not reliable: *Rekhlal Vs. State of M.P., I.L.R. (2003) M.P. 543, (D.B.)*

- Sections 3 and 32—Appreciation of evidence—Deceased making two dying declarations—Categorically making statement that appellant caused the injury on his head with a sword: *Hiralal Vs. State, I.L.R. (2003) M.P. 236, (D.B.)*

– **Sections 3, 59, 67, 74, 77, 79** – “Document” Means the original document – Section 293 Criminal Procedure Code – Intention legislature is to confine the provision only to primary document or original document – F.S.L. Report is an expert evidence – Its certified copy cannot be given in evidence as it is not a public document nor can be proved under Section 77 of the Act: *Govind Vs. State, I.L.R. (2001) M.P. 1088*,

– **Sections 3 and 145** – When a previous Statement is to be proved as an admission the statement as such should be put to the witness – Object is to give the witness a chance of explaining the discrepancy or inconsistencies – Witness not given opportunity to explain his previous statement – Not of any assistance to accused: *Karan Singh Vs. State of Madhya Pradesh, I.L.R. (2003) M.P. 1110, (S.C.)*

– **Section 4** – Nature of proof – Insurance Company producing only cover note of policy – Not enough to prove extent of liability – Insurance Company not proving its plea by leading proper evidence as required under the law – Cannot escape liability to pay whole amount of compensation: *Dhanraj Vs. Jeewan Singh, I.L.R. (2000) M.P. 998 (D.B.)*

– **Section 6** – Permits proof of collateral statements connected with fact in issue as to form part of same transaction – Dependent upon circumstances of each case – Statement made after a lapse of time after the incident – Cannot be treated either as spontaneous or part of the same transaction: *Pratap Singh Vs. The State of M.P., I.L.R. (1973) M.P. 682, (D.B.)*

– **Section 6** – Persons hearing statements made at the spot – Do not form part of res gestae and not admissible: *Mahendra Vs. State of M.P., I.L.R. (1976) M.P. 719, (D.B.)*

– **Section 6** – Spontaneous statements made in course of transaction – Admissible as being res gestae – Such statements must be connected with fact in issue as “part of the transaction” – Statement of by-stander – Admissibility – Persons hearing statements made at the spot – Do not form part of res gestae and not admissible: *Mahendra Vs. State of M.P., I.L.R. (1976) M.P. 719*,

Section 6 – Statement of by-stander – Admissibility: *Mahendra Vs. State of M.P., I.L.R. (1976) M.P. 719, (D.B.)*

– **Section 8** – Conduct of accused – When considered as material : *Dinesh S/o. Khemjibhai Vs. Union of India I.L.R. (1990) M.P. 450*

– **Section 8** – Conduct of maker of statement admissible but not the statement: *Kedarmal Vs. Gopaldas, I.L.R. (1962) M.P. 815, (D.B.)*

– **Section 8** – Evidence of solitary witness – Accused charged with murder of seven family members – Solitary testimony of village kotwar – Facts on record indicate that

kotwar could be made to be any statement whatsoever, prosecuting agency wanted him to give – Creates serious dent in the prosecution - Existence of motive alone cannot make accused guilty – Accused, being given benefit of doubt, acquitted. : *State of M. P. Vs. Budhram, I.L.R. (1995) M.P. 730, (D.B.)*

–**Section 8**–Eye witness named in F.I.R. not examined–Material witness relied on by prosecution remained silent for about a month–Conduct of witness unnatural: *State of M.P. Vs. Ramkripal, I.L.R. (2004) M.P. 875, (D.B.)*

–**Section 8** - Hearsay evidence - Site map prepared by police – Contents of map would remain purely hearsay and could not be read as evidence in the case: *Girish Yadav Vs. State of M.P., I.L.R. (1996) M.P. 34, (S.C.)*

–**Section 8**–Recovery of dead-body, severed arm and the axe from accused coupled with his conduct in lodging FIR, taking police to his house lead to the conclusion that accused caused the injuries on deceased: *Gouri Shankar Vs. State, I.L.R. (2004) M.P. 511, (D.B.)*

– **Section 8** -Subsequent statement – Is relevant subsequent conduct – Is admissible in evidence: *The State of Madhya Pradesh Vs. Surendra Prasad Dave, I.L.R. (1971) M.P. 726, (D.B.)*

–**Sections 8 and 24**–Self-incriminating conduct of accused–Admissible in evidence under Section 8, Evidence Act: *Gouri Shankar Vs. State, I.L.R. (2004) M.P. 511, (D.B.)*

– **Sections 8 and 27** – First Information Report made by Accused – Admissibility – Evidence Act –Section 25 – Statement in first Information Report of accused amounting to confession – Not admissible –Criminal Procedure Code–Section 162–Not applicable to statement of accused leading to investigation by police – Evidence Act – Section 21 – Statement in the First Information Report by a person who is subsequently made an accused – Relevancy: *Faddi Vs. The State of M.P., I.L.R. (1965) M.P. 657, (D.B.)*

–**Section 9**–Assailants unknown to victim–After arrest identification parade not held–Victim identifying appellants in the court after about one year of the incident–Impossible to believe that witness did not see the appellants in all this period–Such identification is hardly of any value: *Jagdish Vs. State, I.L.R. (2003) M.P. 147,*

–**Section 9**–Delay in holding Test Identification Parade–Test Identification Parade conducted after 30 days of arrest–Fair test of identification depends on promptitude in point of time–No explanation given by prosecution for delay in holding test identification parade–Delay fatal–Identification Parade cannot be relied upon. : *Deshraj Vs. State of MP, I.L.R. (1994) M.P. 431,*

– **Section 9** – Evidence of person holding identification – Admissibility: *Narayan Singh Vs. The State, I.L.R. (1968) M.P. 117, (D.B.)*

– **Section 9** – Fact of failure or fact of ability to identify – Are facts admissible in evidence: *Narayan Singh Vs. The State, I.L.R. (1968) M.P. 117, (D.B.)*

– **Section 9** – Gang rape – Appeal against conviction and sentence – Evidence of prosecutrix victim in sex offence is at par with the evidence of injured witness – Entitled to great weight – Corroboration – Not a *sin qua non* for conviction: *Vinod Kumar Vs. State, I.L.R. (1992) M.P. 356,*

– **Section 9** – Identification – Articles shown to witnesses before identification – Witness not identifying the same in the Court – Identification is of no value – Cannot be construed as substantive evidence – Not subjected to cross-examination – Cannot be used against the accused: *State of M.P. Vs. Nand Kishore Alias Nandu, I.L.R. (2003) M.P. 1231, (D.B.)*

– **Section 9** – Identification of accused in a murder case – Accused alleged to have fatally knifed the deceased – Wife of victim witnessed incident and soon after, fainted – Identifying accused as assailant for first time before Court during trial – Her evidence found trustworthy and question of mistaken identity ruled out as she was not likely to forget person who shattered her life – It is immaterial that no test identification parade was held – Conviction proper: *Pappu alias Sirajuddin Vs. State of M.P., I.L.R. (1995) M.P. 311, (D.B.)*

– **Section 9** – Identification parade – Prosecutrix saw the accused being taken to police station after arrest while she was sitting there after lodging the F.I.R. – Does not mean that accused were shown to her to be identified in the Test Parade: *Vinod Kumar Vs. State, I.L.R. (1992) M.P. 356,*

– **Section 9** – Identification – Sufficient light at the place of occurrence – Witnesses had opportunity to see the miscreants for sufficiently long time – Features and other particulars of miscreants described in the F.I.R. – Identification not doubtful: *Gomda Vs. State of M.P., I.L.R. (2004) M.P. 779, (D.B.)*

– **Section 9** – Magistrate holding identification – Empowered to record statements under section 164, Criminal Procedure Code – Condition to be fulfilled to make statements admissible : *Narayan Singh Vs. The State, I.L.R. (1968) M.P. 117, (D.B.)*

– **Section 9** – Ornaments seized not of any particular design – Available in the market and ladies of the village have similar ornaments – Some portion of paper had been stuck to the recovered ornaments and was visible at the time of identification – No proper identification: *Bharat Vs. State of M.P., I.L.R. (2003) M.P. 100, (S.C.)*

– **Section 9** – Test Identification Parade – Appellants tried and convicted for committing dacoity in the house of complainant – Accused residing in adjoining village which is two furlongs away from the place of occurrence – Prosecution witnesses admitting that they

had identified the appellants at the time of offence-Name of the appellants not mentioned in F.I.R. or police statements-No credence can be given to test identification parade in such a case. : *Deshraj Vs. State of M.P.*, I.L.R. (1994) M.P. 431,

–**Section 9**–Test identification parade–Does not constitute substantive piece of evidence–Failure to hold would not make inadmissible the evidence of Identification in Court–May be accepted even without corroboration: *Munshi Singh Gautam (D) Vs. State of M.P.*, I.L.R. (2004) M.P. 983, (S.C.)

–**Section 9** – Testimony of prosecutrix found reliable–She named the accused in the F.I.R., identified them in the identification parade as also in the dock–Accused rightly convicted: *Vinod Kumar Vs. State*, I.L.R. (1992) M.P. 356,

– **Section 9** – Trial for offences u/s. 364, 365, 395, I.P.C. – Two persons abducted and remained with accused for about 24 hours – Identification parade for one accused not conducted – Accused identified in dock during trial by two witnesses who were abducted – Identification parade was not necessary as accused known to witnesses having stayed with him: *State of M.P. Vs. Kailash*, I.L.R. (1988) M.P. 527, (D.B.)

– **Section 11** – Fact admissible but not statement: *Kedarmal Vs. Gopaldas*, I.L.R. (1962) M.P. 815, (D.B.)

–**Section 18**–Admission is relevant only if it is made during subsistence of right–Compromise after parting with the interest can not be said to be relevant–Joint Hindu Family property–Purchaser has right in joint family property though he may not claim and also enjoyment jointly–Purchaser has right to obtain partition of the property to the extent of share purchased: *Sunil Bajpai Vs. Vivek Bajpai*, I.L.R. (2002) M.P. 113

– **Section 18** – Railway receipt prepared on the representation of the consignor regarding number of packages or weight thereof without verification – Railway receipt cannot be treated as admission on the part of railway administration – Liability cannot be fastened on basis of such railway receipt: *Mahabir Kirana Bhandar, Ashoknagar Vs. Union of India, through General Manager, Southern Railway, Madras*, I.L.R. (1978) M.P. 294,

- **Section 20** - and Accommodation Control Act, M.P. 1961, Section 12(1)(a)(b) - Admission - Suit for eviction - Defendant agreed to vacate the premises by abandoning his defence - Cannot be allowed to revive dispute in Second appeal - Likely injustice to plaintiff by raising technical pleas should be avoided - Act of appellant attracts applicability of Section 20 of Evidence Act : *Ram Sahai Vs. Jai Prakash*, I.L.R. (1993) M.P. 153

– **Section 21** – Appreciation of Evidence – Statement of witness not relied upon against some accused persons – Can be relied against other accused - Requires close scrutiny: *Gotilal Vs. State of M.P.*, I.L.R. (1989) M.P. 127, (D.B.)

– **Section 21** – First Information Report lodged by accused himself – Admissible to prove his admission – Appreciation of Evidence – Statement of witness not relied upon against some accused persons – Can be relied against other accused – Requires close scrutiny: *Gotilal Vs. State of M.P.*, I.L.R. (1989) M.P. 127, (D.B.)

– **Section 21** – Statement by accused immediately after incident – Admissibility: *The State Vs. Darshansingh*, I.L.R. (1961) M.P. 403, (D.B.)

– **Section 21** – Statement in First Information Report by a person who is subsequently made an accused - Relevancy: *Faddi Vs. The State of M.P.*, I.L.R. (1965) M.P. 657, (D.B.)

– **Section 24** – Extra judicial confession – No reason why accused would take the witness into confidence and make confession – Not reliable : *Rekhlal Vs. State of M.P.*, I.L.R. (2003) M.P. 543, (D.B.)

– **Section 24** – Recovery of certain incriminating articles at the instance of the appellants under Section 27 of the Evidence Act, assuming it to be true, the same cannot form the basis of conviction in the present case: *Rambilas Vs. State of M.P.*, I.L.R. (1997) M.P. 356, (SC)

– **Section 24** – Term “Person in authority” in- Meaning of : *Nannhu Vs. The State of M.P.*, I.L.R. (1959) M.P. 300, (D.B.)

– **Sections 24 and 28** – Existence of improper inducement, threat, or promise proved – Presumption is about its continuance Burden on Prosecution to prove that the effect was nil at the time of confession – Confession otherwise inadmissible but facts discovered in pursuance of confession – Confession may be accepted without hesitation – Statement leading to the discovery to be proved like any other fact: *Bhagirath Vs. The State of M.P.*, I.L.R. (1958) M.P. 741,

– **Section 25** – and Land Revenue Code, M.P. (XX of 1959), Section 230 and rule 8 (vi) of Kotwari Rules-Kotwar is not a police officer- Confession made before kotwar- Admissible in evidence : *State of M.P. Vs. Premlal*, I.L.R. (1986) M.P. 554, (F.B.)

– **Section 25** – Confession made by accused to Police Officer of Railway Protection Force – Confession to such officer is admissible: *Badri Vishal Vs. State of Madhya Pradesh*, I.L.R. (1973) M.P. 172,

– **Section 25** – Food Inspector is not a police officer: *State of Madhya Pradesh Vs. Mohammad Abdul Rahman*, I.L.R. (1975) M.P. 547, (D.B.)

– **Section 25** – Inspector of Mines – Not a police officer for the purposes of this provision: *H.S. Sachdeo Vs. State of M.P.*, I.L.R. (1976) M.P. 172,

-Section 25—No confession made to Police Officer shall be proved as against the person accused but he can use it to support defence plea—These statements can be looked into to ascertain whether the defence set-up by accused at earliest stage in reasonable and probable—In trial defence of grave and sudden provocation not set up—In his statement to police he took defence that he saw deceased Suresh having sexual intercourse with his wife, he was enraged, he poured kerosene on his wife and Suresh and ignited: *State of M.P. Vs. Punaji Dhurve, I.L.R. (2004) M.P. 688, (D.B.)*

– **Section 25** – Officer of Railway Protection Force – Is not a police officer: *Ranjit Singh Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 1097, (D.B.)*

-Section 25 - Statement by accused made before Police Officer during investigation - Inadmissible - Merely because he is dead would not make it admissible - Moreover, said statement was signed by accused - Bar of inadmissibility under Section 162 Cr. P.C. also attracted : *Amarsingh Vs. State of M.P., I.L.R. (1995) M.P. 340, (D.B.)*

– **Section 25** – Statement in First Information Report of accused amounting to confession – Not admissible: *Faddi Vs. The State of M.P., I.L.R. (1965) M.P. 657, (D.B.)*

– **Section 25** – Test – Whether particular officer is police officer – Food Inspector is not a police officer: *State of Madhya Pradesh Vs. Mohammad Abdul Rahman, I.L.R. (1975) M.P. 547, (D.B.)*

– **Section 25** – Village chowkidar – Not a police officer – Extra – judicial confession made to village chowkidar or in his presence – Admissible in evidence: *Mahto Vs. State of M.P., I.L.R. (1981) M.P. 969, (D.B.)*

-Section 25—Witnesses deposed that the wife of accused disclosed to police that she and appellant had killed the deceased—Such statement of her is neither admissible nor can be used against appellant—Other witnesses also not deposing anything against appellant—Merely because appellant absconded from the village after the incident it cannot be held that he had killed the deceased—Conviction and sentence set aside: *Kallu Vs. State, I.L.R. (2004) M.P. 684, (D.B.)*

–**Section 26**—Extra Judicial Confession—Not supported by prosecution witness—Not reliable: *State of M.P., Vs. Ramkripal, I.L.R. (2004) M.P. 875, (D.B.)*

– **Section 27** – Accused giving information regarding person to whom incriminating article is given and agrees to point out that person – Amounts to naming the place where the article is kept – Such statement is admissible – Section 114 – Which presumption arises – Is a question of fact depending upon facts and circumstances found – Circumstance where the presumption about a person being a mere receiver of stolen property arises: *State of Madhya Pradesh Vs. Murarilal, I.L.R. (1976) M.P. 519, (D.B.)*

-Section 27 – Confessional statement – Held – The confession part of the F.I.R. is not admissible – The motive for commission of the crime and the relationship of the accused with the deceased do not amount to confession and can be used: *Sukka Vs. State of M.P., I.L.R. (1997) M.P. 244, (D.B.)*

– **Section 27** – Confessional statement of accused – To be read as a whole or rejected as a whole unless exculpatory part is shown to be false: *Abdul Aziz Vs. Union of India, I.L.R. (1976) M.P. 886,*

-Section 27—Disclosure statement got signed after the recovery—Witnesses were signing at the instance of dotted lines—Recovery statement and the recovery not admissible in evidence: *Bharat Vs. State of M.P., I.L.R. (2003) M.P. 100, (S.C.)*

-Section 27—First information report by accused containing information leading to discovery—Admissibility –Indian Penal Code—Section 300—Exception 1—Circumstances in which it is applicable : *Moharsai Vs. The State of M.P., I.L.R. (1964) M.P. 303, (D.B.)*

– **Section 27** – First Information Report lodged by accused containing confession Report leading to discovery of incriminating articles – Is admissible in evidence – Accused need not be under formal custody – Use of the word “Custody” – Meaning of: *Umed Vs. State of M.P., I.L.R. (1979) M.P. 535, (D.B.)*

– **Section 27** – Indicating dead body lying in open place by accused before arrest –Does not amount to discovery: *State of M.P., Vs. Gangabai, I.L.R. (1969) M.P. 1014, (D.B.)*

– **Section 27** – Memorandum of disclosure and of seizure –Court have to admit only that part of disclosure which is not confessional and which lead to discovery of a fact – Accused gave disclosure statement and also led to recovery of ornaments of deceased – Continuity of the word ‘I’ not broken – Disclosure memo and seizure memo cannot be doubted: *Sudesh Vs. State, I.L.R. (2001) M.P. 233, (D.B.)*

– **Section 27** – Memoranda of statement of accused – Not by themselves substantive evidence – Statement of witness about what accused said in evidence – Memorandum can be useful only for refreshing memory – Criminal Trial – Accused pointing out place where dead body was – Action not sufficient to hold that accused had thrown the dead body: *Dadulla Vs. The State of M.P., I.L.R. (1961) M.P. 1032,*

– **Section 27** – Offence of murder – Circumstantial evidence – Simultaneous discovery by several accused – Information which is given first is only admissible – More than one accused present together, each interrogated in presence of other accused all went together for recoveries – Not possible to give finding which particular accused

gave information first : *Bali Vs. State of Madhya Pradesh, I.L.R. (1990) M.P. 707 (D.B.)*

-Section 27–Recovery of weapon allegedly used in the crime–Place of recovery cannot be said to be in exclusive access of accused–Much importance cannot be placed on the recovery : *State of M.P. Vs. Ghudan, I.L.R. (2003) M.P. 1121, (S.C.)*

-Section 27–Seizure of blood stained dagger like knife and clothes at the instance of accused–Blood found on sweater was of blood group ‘O’–Not proved to belong to the same blood group of deceased–An incriminating circumstance–But can only be used as corroborative evidence : *State of M.P. Vs. Nandkishore @ Nandu, I.L.R. (2003) M.P. 1231, (D.B.)*

– **Section 27** – Statements to police leading to discovery – Admissibility – Discovery to be of physical fact, Which is partly or wholly concealed – Discovery should be the finding of something – There can be no discovery of shop or the person – Motive not of consequence when evidence sufficiently strong to base conviction or is altogether inconclusive: *The State of Madhya Pradesh Vs. Dhannalal Lodhwal, I.L.R. (1962) M.P. 314, (D.B.)*

– **Section 27** – Use of the word “Custody” – Meaning of: *Umed Vs. State of M.P., I.L.R. (1979) M.P. 535, (D.B.)*

– **Section 30** – Statement of co-accused – When can be considered: *Chhotelal Vs. State of M.P., I.L.R. (1982) M.P. 77, (D.B.)*

-Section 31-Admission amounting to estoppel – Can be used against a party making it-Open to a party making admission to explain it- Admission of both parties in their own favour-Effect is cancellation-Question in issue to be decided on evidence on record – Partnership- Act, Section 37-Partner retiring from partnership-Entitled to profits or 6% P.A. interest till accounts settled and cleared off-Choice residing with retiring partner-civil Procedure Code, Order 41,Rule 33-Non-appealing respondent-When can take advantage of the provision and claim relief : *Bhawarlal Vs. Seth Mathura Prasad, I.L.R. (1960) M.P. 458, (D.B.)*

– **Section 32** – Court holding that dying declaration is a truthful version – No corroboration is necessary: *Hari Vs. State of Madhya Pradesh, I.L.R. (1978) M.P. 873, (D.B.)*

-Section 32 – Credibility of dying declaration - Death occurred due to burn injuries - Dying declaration recorded by Tehsildar and Executive Magistrate - Neither certificate of fitness to make statement was obtained from doctor nor it was recorded in question and answer form - It creates suspicion about its veracity FIR and dying declaration both having same wordings and language - Conviction can not be based upon such dying

declaration without independent corroboration. : *Pamni Bai Vs. State of M.P., I.L.R. (1995) M.P. 657, (D.B.)*

–**Section 32** – Dying declaration – When the Court is to base the conviction on the dying declaration of the deceased, the Court has to get satisfied that the evidence in respect of dying declaration is free from infirmity and doubt : *State of M.P. Vs. Jahur Khan, I.L.R. (1998) M.P. 502 (D.B.)*

–**Section 32**–Dying declaration–Certificate of fitness not taken nor it is mentioned if deceased was conscious and fit to speak–Thumb impression of deceased and dying declaration not proved–Cannot be made basis of conviction: *Smt. Tara Bai Vs. State of M.P., I.L.R. (2004) M.P. 1161,*

–**Section 32**–Dying declaration certified by Doctor that deceased was conscious till statement was recorded–Nothing on record to disbelieve or discard the same–Conviction and sentence based on such dying declaration–Does not require interference: *Chhotelal Vs. State of M.P., I.L.R. (2004) M.P. 971, (D.B.)*

–**Section 32**–Dying Declaration- Evidence Act, Section 118–Child witness–Standard of Proof : *State of Madhya Pradesh Vs. Phattu Gond and Guddo Bai, I.L.R. (1998) M.P. 140 (D.B.)*

– **Section 32** – Dying declaration recorded by competent magistrate in words of maker – Stands on higher footing than a dying declaration which depends upon oral testimony – Has to be Subjected to a very close scrutiny – Court holding that dying declaration is a truthful version – No corroboration is necessary – First Information Report lodged by a deceased – Can be treated as dying declaration – Conviction can be based on dying declaration provided it is voluntary and truthful – Penal Code, Indian – Section 302 – Supervening causes attributable to injuries caused – Resulting in death – Person inflicting injuries – Liable for causing death even though it is not direct result of the injuries: *Hari Vs. State of Madhya Pradesh, I.L.R. (1978) M.P. 873, (D.B.)*

– **Section 32** – Dying declaration recorded in presence of Head Constable and daughter of deceased – She admitted in cross-examination that appellant had illicit relationship with the deceased which she did not like and she was angry with the appellant – Head constable also recorded statement of deceased under section 161, Cr.P.C. which remained unproved – Possibility of tutoring and prompting cannot be ruled out – Dying Declaration cannot be used for convicting the accused: *Manohar Vs. State, I.L.R. (2001) M.P. 100, (D.B.)*

–**Section 32**–Dying declaration recorded in view of injuries dangerous to life–Victim named accused appellant in the dying declaration–Part of evidence supported by FIR and earlier statement of witnesses–Conviction and sentence sustained: *Babla Vs. State, I.L.R. (1992) M.P. 208,*

–**Section 32**–Dying declaration—Oral declaration corroborated by one recorded by Nayab Tehsildar–Witness stood firm to depose that deceased was able to speak–Doctor also testified that she was in a fit condition to speak–Evidence of child witness who saw appellants beating the deceased is also on record–Trial Court rightly believed dying declaration: *Kamal Vs. State of M.P., I.L.R. (2004) M.P. 773, (D.B.)*

– **Section 32** – First Information Report lodged by deceased – Can be treated as dying declaration – Conviction can be based on dying declaration provided it is voluntary and truthful: *Hari Vs. State of Madhya Pradesh, I.L.R. (1978) M.P. 873, (D.B.)*

-**Section 32**-Indian Penal Code, 1860, Section 302-Dying Declaration-Appellant pouring kerosene oil on her daughter-in-law and setting her on fire-Deceased with 95% burns shifted to Hospital-ADM recorded dying declaration in presence of Doctor who had certified that deceased is conscious and is in condition to give statement-Dying Declaration recorded immediately after the incident-Relatives of deceased not present at the time of recording of dying declaration-Recording in question and answer form is not the universal rule-Statement of Doctor that thumbs of the deceased had superficial burns cannot be accepted as it is not based on any documentary evidence-Insertion of words during the recording of dying declaration does not mean interpolation-Dying Declaration can be relied for conviction-Appeal dismissed-Conviction maintained: *Smt. Surjeet Kaur Vs. State of M.P., I.L.R. (1993) M.P. 265 (D.B.)*

- **Section 32**- Penal Code, Indian, 1860, Section 302-Dying Declaration-Appellant poured kerosene oil and set his wife ablaze as she had not cooked the meals-Deceased was taken to hospital in conscious condition-Deceased disclosed to Doctor that she was burnt by her husband-Dying declaration challenged as cryptic-Held-Cryptic means concealing its meaning in a puzzling way - Disclosure by deceased as to cause of her burn injuries to Doctor appears to be candid and full disclosure of circumstances-Doctor not examined or cross-examined on his aspect-Dying Declaration admissible under Section 32 of Evidence Act. : *Ramesh Kumar Vs. State of M.P., I.L.R.(1994) M.P. 466, (D.B.)*

-**Section 32** - and Penal Code, Indian (XIV of 1860), Section 302 read with section 34, section 320, 325 and 201 and Rules and Orders (Criminal), Rule 241 – Section 32 – Dying – Declaration under – Admissibility and evidentiary value of – Section 32 (1) – Expression “any of the circumstances of the transaction which resulted in his death” – Scope of – The words ‘resulted in his death’ in – Meaning of – Section 320, Clause 8 – the term ‘grievous hurt’ in – Interpretation of – conviction for causing injury mentioned therein – Can be made under section 325 – Section 201 – What action of the person tantamounts to screen the offender under – Rules and Orders (Criminal), Rule 241 – Adverse remarks by Trial Court regarding inaction and negligence of some Police Officers conducting investigation of the case – Requirements – Proper enquiry under,

before taking suitable action against such officers : *Ghurriya @ Rohini Baiswar Vs. State of M.P., I.L.R. (1990) M.P. 218 (D.B.)*

– **Section 32** – Opinion regarding relationship – Opinions of persons having special means of knowledge or members of family admissible – Evidence regarding general reputation not admissible: *Draboo Vs. Bansilal, I.L.R. (1961) M.P. 143,*

– **Section 32** – Three dying declarations – Name of assailants and their numbers are different in respective dying declaration – Dying declarations suspicious – Criminal Trial – Standard of proof – Suspicion however strong can not take place of proof : *Arjun Singh Vs. State of M.P., I.L.R. (1998) M.P. 780 (D.B.)*

– **Section 32 (1)** – Dying declaration – Coherent and trustworthy – Conviction can be based on sole testimony of dying declaration: *Ramakant Vs. State of M.P., I.L.R. (1988) M.P. 446, (D.B.)*

– **Section 32 (1)** – Expression ‘any of the circumstances of the transaction which resulted in his death’ – Scope of : *Ghurriya @ Rohini Biaswar Vs. State of M.P., I.L.R.. (1990) M.P. 218 (D.B.)*

– **Section 32(1)** – Statement regarding cause of death or any circumstance resulting in death – Admissibility: *Onkar Vs. State of M.P., I.L.R. (1977) M.P. 246, (D.B.)*

– **Section 32(1)** – Words “circumstances of the transaction which resulted in his death” in-meaning of: *Onkar Vs. State of M.P., I.L.R. (1977) M.P. 246, (D.B.)*

– **Sections 32(1) and 8** – Sign made by the deceased pointing finger towards the accused – Amounts to verbal statement – Relates to cause of his death: *Shantigir Vs. State of Madhya Pradesh, I.L.R. (1991) M.P. 228, (D.B.)*

– **Sections 32(1) and 45** – Dying declaration – No evidence to show that maker of declaration died due to injuries received in the incident in issue – Such declaration cannot be used as dying declaration: *Rajalal Vs. State of M.P., I.L.R. (2003) M.P. 461, (D.B.)*

– **Section 32(1), 113-A** – Two dying declarations – Facts very but not inconsistent – Can be considered – No rule of law or prudence for corroboration of dying declaration: *Sampatlal Vs. State of M.P., I.L.R. (1988) M.P. 697,*

– **Section 32(2)** – Statement made in due course of business admissible: *Kedarmal Vs. Gopaldas, I.L.R. (1962) M.P. 815, (D.B.)*

– **Section 33** – Applicable to evidence given by a witness in a judicial proceeding – Witness died before he could be examined – Section 33 not attracted – Second wife of original holder executed sale deed in favour of vendee – Sale-deed not binding on

plaintiff – Suit decreed to the extent of plaintiff's share in suit Property: *Shreechand Vs. Dhannalal*, I.L.R. (2001) M.P. 537,

– **Section 33** – Conditions laid down by section 33 not satisfied – Statement of witness in committing Magistrate's Court not admissible at trial – Criminal Practice – Witness – Testimony of witness implicating also persons not found guilty – Need not be discredited if it proves guilt of accused – Statement of witness recorded at late stage of investigation – No question asked to investigating officer regarding delay – No ground to disbelieve the witness: *Bhagwantsingh Vs. The State of M.P.*, I.L.R. (1961) M.P. 873, (D.B.)

– **Section 33** – Not attracted unless there is identity of parties: *Ramdulare Shukla Vs. Madhya Pradesh State Road Transport Corporation, Gwalior*, I.L.R. (1973) M.P. 509, (D.B.)

-**Section 33**-Wide powers there under must be exercised with caution- Mere non-service of summons no ground to admit evidence under this section-Fact of genuine attempt made and witness not found must be proved-Persons who attempted service of summonses must be examined- Confession-Extra-judicial confession-Can be used as corroboration to oral evidence : *Mana Vs. State*, I.L.R. (1960) M.P. 1082,

– **Section 34** – Finding based on entries in books of account – Contractor not availing opportunity to contradict by filing his own statement of account or by cross examining witnesses – Findings not contrary to Section 34 – Order of Tribunal upheld: *P.K. Pande Vs. State*, I.L.R. (2001) M.P. 1244, (D.B.)

-**Section 34**-First Appeal-Suit for recovery of amount-Plaintiff's failure to prove that account books were kept in regular course of business-Entries in account book also not proved by calling scribe in evidence-Defendant could not be fastened with liability : *Mahavir Prasad Vs. Vasudeva Prasad*, I.L.R. (2003) M.P. 58,

– **Section 34 and 114** – Section 34 – Account Books by themselves not sufficient evidence- Section 114-Non Production of Account Books— Circumstances under which adverse inference can be drawn: *Ahemad Ali Vs. Mohammad Hanif*, I.L.R. (1957) M.P. 616, (D.B.)

– **Section 35** – Documents received in official correspondence – Admissibility: *V.P. Desa Vs. The Union of India*, I.L.R. (1957) M.P. 434, (D.B.)

-**Section 35**-Interpolated entry as to age cannot be relied upon-Prosecution failed to prove age of prosecutrix below 18 years of age-Offence under Section 363, I.P.C. demolished :*Rafique Khan Vs. State*, I.L.R. (2000) M.P. 1006

– **Sections 41 to 43** – Findings of criminal Court – Not binding on civil Court though subject-matter is same: *Factiory Manager, Central India Machinery and*

Manufacturing Co. Ltd., Birlanagar, Gwalior Vs. Abdul Rehman, I.L.R. (1976) M.P. 19, (D.B.)

– **Section 45** – Difference between the evidence of handwriting expert and of other experts on poison, blood or finger prints – Evidence of handwriting experts is comparatively of weaker type than that of other experts: *The State of Madhya Pradesh Vs. Dhannalal Lodhwal, I.L.R. (1962) M.P. 314, (D.B.)*

– **Section 45** – Director of Finger Print Bureau not examined to prove his report – Expert's evidence found to be unsatisfactory by the Sessions Judge – Accused persons acquitted – Acquittal not liable to be interfered with even if another view of evidence is reasonably possible: *State of M.P. Vs. Sitaram Rajput I.L.R. (1981) M.P. 862, (D.B.)*

– **Section 45** – Expert – Not necessary for a witness to be expert to acquire knowledge professionally – Acquisition by Special experience is sufficient: *The Collector, Jabalpur Vs. Nawab Ahmad Yar Jahangir Khan, I.L.R. (1973) M.P. 1061, (D.B.)*

– **Section 45** – Foot Prints comparison – When can weight be attached to that evidence – Criminal Trial – Motive When becomes relevant – Circumstantial evidence – Nature if required for basing conviction on it: *Surajpalsingh Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 708, (D.B.)*

–**Section 45**–Medical Evidence–Mainly opinion evidence–Testimony of eye witness cannot be thrown out unless it goes so far as to loosing out probabilities of injuries taking place in the manner alleged by eye witness : *Rajalal Vs. State of M.P., I.L.R. (2003) M.P. 461, (D.B.)*

–**Section 45**–Medical opinion that cattle were electrocuted–No reason given for such opinion–Bald opinion cannot be accepted as expert opinion–Trial Court rightly disbelieved the evidence of expert opinion: *Brajlal Vs. Madhya Pradesh Electricity Board, I.L.R. (2004) M.P. 668,*

–**Section 45**–No corresponding hurt/damage beneath head injury–Dr. has not assigned any reason for the conclusion that injury on head was sufficient to cause death–To act on such a bald statement would be perilous: *Ramjag Vs. State of M.P., I.L.R. (2005) M.P. 349, (D.B.)*

– **Section 45** – Opinion of expert – Not conclusive – Does not take the place of substantive evidence – Is evidence of general tendencies exhibited in handwriting which can e affected by several factors – Specific Relief Act, 1963 – Section 16 –Formal tender – Not necessary to party who would have refused to accept money – Section 20(2)(b) – Money spent over repairs and improvement with knowledge that property will have to be reconveyed – Not a case of hardship which was not foreseen at the time of contract – Party brings upon himself the hardship with full knowledge of contract –

Court will not refuse specific performance of agreement to reconvey: *Smt. Sushila Devi Vs. Smt. Laxmi Bai, I.L.R. (1972) M.P. 1034, (D.B.)*

–**Section 45**–Petition for divorce by husband alleging pregnancy of wife by third person–Defence is of denial in toto while husband’s allegations are in close proximity–Evidence of expert can be an important corroborating evidence–Trial Court acted with material irregularity in rejecting the application : *Vishambhar Vs. Smt. Buta Devi, I.L.R. (2003) M.P. 84,*

–**Section 45**–Report of ballistic expert–Empties recovered were not sealed at the time of seizure–Sent to ballistic expert after six months–Identity of empties seized and those tested by the expert cannot be tallied–No merit in state appeal against setting aside of conviction and sentence by the High Court : *State Vs. Ghudan, I.L.R. (2003) M.P. 1121, (S.C.)*

– **Section 45** – Thumb impressions – Identity of – No definite rule for fixing number of points of similarity can be laid down – Prosecution case fully depending on the evidence of Finger Print Expert: *State of M.P. Vs. Sitaram Rajput, I.L.R. (1981) M.P. 862, (D.B.)*

– **Section 45 and Criminal Procedure Code, (V of 1898), Section 510** – Prosecution of accused person for entering into conspiracy to commit criminal breach of trust by preparing false muster-rolls and showing payment to fictitious labourers – Prosecution case mainly based on evidence of Finger Print Expert examining thumb impressions on muster-roll – Opinion of Finger Print Expert – Evidentiary value of – Court has to satisfy itself as to value to be given as any other evidence – Thumb impressions – Identity of – No-definite rule for fixing number of points of similarity can be laid down – Prosecution case fully depending on the evidence of Finger Print Expert – Director of Finger Print Bureau not examined to prove his report – Expert’s evidence found to be unsatisfactory by the Sessions Judge – Accused persons acquitted – Acquittal not liable to be interfered with even if another view of evidence is reasonably possible: *State of M.P. Vs. Sitaram Rajput, I.L.R. (1981) M.P. 862, (D.B.)*

–**Section 45** - and Penal code, Indian (XLV of 1860). Sections 302, 326 and 148 – Doctor’s evidence not specific as to which particular injury resulting in death was antemortem or post – mortem – Accused cannot be held guilty under Section 302, Indian Penal Code but are guilty under Section 326 read with Section 148, Indian Penal Code : *Teja Alias Tejram Vs. State of M.P., I.L.R.. (1990) M.P. 47 (D.B.)*

– **Sections 45 and 47** – Opinion of hand–writing experts – Value of: *Govind Das Vs. Madanlal, I.L.R. (1987) M.P. 496*

–**Section 45 and Indian Penal Code, Section 302**–Ocular version corroborated by dying declaration–Expert evidence silent if the injury was sufficient in the ordinary course of nature to cause death–Absence of any other circumstances–Not possible to hold the accused guilty under Section 302 IPC: *Hemraj S/o Tikaram Gwara Vs. State of M.P. I.L.R. (2005) M.P. 439, (D.B.)*

– **Section 50** – Relationship of husband and wife in issue – Presumption under first part of the section about relationship is excluded: *Bhunda Vs. Chetram, I.L.R. (1976) M.P. 804*

– **Section 57** – Court can take judicial notice of general and public facts: *M/s. Rajadhiraj Industries Pvt. Ltd., Seoni Vs. Nanhelal Baghel, I.L.R. (1987) M.P. 176*

– **Section 57** – Notification being law in force–Needs no proof – Court can take judicial notice: *The State Vs. Gokulchand, Son of Bhanwar Lal of Miana, I.L.R. 1957 M.P. 168, (D.B.)*

– **Section 57(1)** – Judicial notice can be taken of such notification: *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601, (F.B.)*

–**Sections 62, 65, 66** - and Succession Act, Indian, 1925, Section 63–Will–Original not filed–Certified copy sought to be admitted as secondary evidence–Rule of proving execution–At least one of the attesting witnesses is required to be examined–If both witnesses are dead execution may be proved by examining the scribe or any person acquainted with handwriting and signature of the testator–If the copy with the Sub-Registrar is a carbon copy the same may be presumed to be original and then proof of execution can be given as envisaged in Section 63 of Succession Act Indian : *Chhatrapratap Singh Vs. Tulsi Prasad, I.L.R. (2002) M.P. 360*

Sections 63 and 71, - Succession Act, 1925, Section 63 and Transfer of Property Act, 1882, Section 3 – Will – Requirement of roof – To be signed by testator and attested by two witnesses – Execution of first will, attesting witnesses denying execution – Will being registered and scribe of the will testified scribing and attestation – Execution proved – The second will, contain thumb impression of executants while he was literate person – No explanation for the same – In subsequent mutation proceeding also second will not disclosed – Attestation also not proved – Second will forged documents. : *Ku. Chandan Vs. Longa Bai, I.L.R. (1997) M.P. 440*

–**Sections 63, 65**–Original document of family Settlement not duly stamped–On payment of duty chargeable may be certified to be duly stamped–Procedure not applicable to photocopy of a document–Document cannot be rectified–Cannot be received in secondary evidence:*Sugreeva Prasad Dubey Vs. Sitaram Dubey, I.L.R. (2004) M.P. 265*

– **Sections 63, 65 and 66** – Secondary evidence – Nature of – Photocopy of original obtained through mechanical process insures authenticity hence can be produced in evidence as secondary evidence with permission of the Court – Sections 65 and 66 – Secondary evidence – Leading of – Conditions precedent – Party desirous to lead secondary evidence by producing photo copy has to prove to the satisfaction of the Court that possession of original is obtained by opposite party by fraud or force: *Ram Singh Sahu Vs. Ramdayal*, I.L.R. (2001) M.P. 258,

–**Section 65**–Writ Petition–Secondary Evidence–Admissibility of: *Chandrabhan Brahman Vs. Vijay Kumar Brahman*, I.L.R. (2005) M.P. 302,

–**Section 65(G)**–Conditions necessary to attract the provisions in the section–Sale statement prepared by an official–Not of any value–Not admissible : *Shamsher Ali Vs. Smt. Shirin Bai*, I.L.R. (1963) M.P. 887, (D.B.)

–**Section 66** – Evidence of serving officer –Best evidence – In case of in-availability – Other evidence can be considered – Income-tax Act, 1922 – Section 22(2) – Circumstances in which finding of tribunal is binding and when the same can be challenged – Income-tax Act, 1961 – Section 274 – Proper opportunity to be given before imposing penalty on assessee: *Messrs Hajarilal Kishorilal, Dhar Vs. The Commissioner of Income-tax, M.P., Nagpur and Bhandara, Nagpur*, I.L.R. (1970) M.P. 186, (D.B.)

–**Section 67**–Will–Execution by illiterate–Mere putting signature or thumb impression does not amount execution of will–Deceased living with his daughter till his death and naturally she was serving him–Deceased would not give anything to his daughter does not stand to reason–Scribe not examined–Propounder was required to prove that the will was read and explained and after understanding the contents executor put signature or thumb impression–Circumstances lead to inference that will was not read over to deceased–Execution of will not proved : *Ram Kunwar Bai Vs. Ramlal*, I.L.R. (2002) M.P. 85, (D.B.)

–**Section 67**–Agreement for sale–Death of executor–Fact of execution–Can be proved in one of the modes provided in Section 67 of the Evidence Act: *Mahendra Kumar Vs. Amar Singh*, I.L.R. (2004) M.P. 378,

–**Section 67** - and Civil Procedure Code, 1908–Section 96–Signature of Scribe not obtained on the document–Attesting witness not examined–Signature of executor disputed–Incumbent upon plaintiff to examine Hand writing Expert–Handwriting Expert not examined–Document not proved–Hazardous to accept bald statement plaintiff–No error in dismissal of the suit: *Mahendra Kumar Vs. Amar Singh*, I.L.R. (2004) M.P. 378,

– **Sections 67 and 73** - Normally the Court should not embark on the exercise of comparison of hand writing or signature, but the Court is not precluded from doing so – Trial Court justified in disbelieving promissory note: *Kuber Prasad Vs. Mst. Sukharajua*, I.L.R. (2001) M.P. 1013,

-Section 68 –Proof of valid execution-Atleast one attesting witness has to be examined for proving execution of such document-Plaintiff discharging the burden satisfactorily-Trial Court rightly relied on the Will and decreed the suit: *Ravi Shankar Vs. Rajendra Kumar Dubey, I.L.R. (2000) M.P. 163*

– **Section 74** – Document envisaged in Section 293, Cr.P.C. does not fall within meaning of public document under Section 74 of the Evidence Act – Hence certified copy thereof not admissible – Order impugned set aside – Prosecution directed to examine the person marking such report to prove its contents or produce the originals for proving the documents: *Govind Vs. State, I.L.R. (2001) M.P. 1088*,

-Section 74–Public document–Certified copy of registered sale-deed–Sought to be brought as additional evidence–Document essential to put the controversy at rest– Document can be accepted as evidence: *Nawab Saheb Vs. Firoz Ahmed, I.L.R. (2003) M.P. 222*,

– **Section 74** – Public document – Memo of RTO not a public document – Has to be proved in accordance with provisions of Evidence Act – Memo of RTO that licence was not issued to driver – Neither the RTO nor any person in whose presence the endorsement was signed examined – Memo not admissible – Insurance company failed to prove that driver was not having valid licence – Insurance company liable to pay compensation: *National Insurance Co. Ltd. Vs. Mainabai, I.L.R. (2001) M.P. 1736, (D.B.)*

– **Section 76** – Certified copy of Entry in Assessment List Register – Admissibility: *Damumal Vs. Smt. Shevantibai, I.L.R. (1966) M.P. 689, (F.B.)*

-Section-76-Income Tax Act, Section 54(i)-Declarations and statements made in course of Income Tax proceedings-Defendant's objection to their admissibility under section 76, Evidence Act and to certified copies given by Income Tax Authorities-Privilege given to assessee by section 54(i) of the Income tax Act cannot avail against a person, who is a legal representative of assessee-Statements admissible-Not barred under section-76, Evidence Act-Question of public policy should not be imported-Admissibility to be decided on the face of the document : *Narbada Shankar Vs. Jamnabai, I.L.R. (1960) M.P. 722*

-Section-76-Statements admissible-Not barred thereunder –Question of public policy should not be imported-Admissibility to be decided on the face of the document: *Narbada Shankar Vs. Jamnabai, I.L.R. (1960) M.P. 722*,

–**Section 90**–Defence raised on basis of sale deed 30 years old–Document not containing details of the land nor read over to the executants who were illiterate– Name of purchaser also not mutated in revenue record–Document doubtful: *Sukhsen Vs. Kamtaiya, I.L.R. (2004) M.P. 863*,

-Section 90-Document more than 30 years old-When need not be proved-Identity of executant not established-Document not coming from proper custody- Document has to be discarded : *Smt. Ramkunwarbai Vs. Ranibahu, I.L.R. (1985) M.P. 100, (D.B.)*

-Section 90-Presumption as to execution of a document 30 years old-Defendants themselves lead evidence as to its execution and attestation-Question of presumption would not arise-Document not proved-Rightly held that document did not convey right or title-Appeal dismissed: *Sukhsen Vs. Kamtaiya, I.L.R. (2004) M.P. 863,*

- Section 91 – Excludes oral evidence regarding terms of documents, but not evidence regarding relationship of landlord and tenant: *Sardar Amar Singh Vs. Smt. Surinder Kaur, I.L.R. (1976) M.P. 809, (F.B.)*

- Sections 91 and 92 – Defendants not discrediting the document as a whole – Conditions of the document to be ascertained by the document itself – Sections 91 and 92, Evidence Act attracted – Document prevents oral evidence to be adduced for varying the contract: *Sawai Singhai Sunderlal Vs. Kishandas, I.L.R. (1989) M.P. 225*

- Sections 91 and 92 – No ambiguity in the deed-Extrinsic evidence not admissible to show such an ambiguity – Arbitration – For operation of arbitration clause, Existence of contract is necessary – Circumstances in which arbitration clause will come into play – Power of arbitrator to enquire into the fact that contract was put end to under duress, pressure and out of fear – Estoppel –Contractors issuing false certificate and securing benefit for them selves – Estopped from urging that certificate was not genuine – Civil Procedure Code – Section 115 – High Court not to interfere if lower Court has acted within jurisdiction – Illegal decision conferring jurisdiction on some other person – Decision liable to be set aside in revision : *Hindustan Steel Limited Bhilai Vs. M/s. Ramdayal Dau And Co., Durg, I.L.R. (1976) M.P. 371*

-Sections 91, 92 –Prohibition for contradicting or varying term of such document-Labour Court and Industrial court misdirected themselves in considering justification of respondents-No evidence could be led to prove misconduct of the petitioner-Impugned order set aside-Petitioner reinstated: *Karan Singh Vs. State, I.L.R. (2000), M.P., 472*

-Sections 91, 92 - and Civil Procedure Code (V of 1908), Order 22 – Death of a respondent – Legal representatives of deceased not brought on record – Disputed estate sufficiently represented by other respondents – Death of that respondent is of no consequence – Defendants not discrediting the document as a whole – Conditions of the document to be ascertained by the document itself – Sections 91 and 92, Evidence Act attracted – Document prevents oral evidence to be adduced for varying the contract: *Sawai Singhai Sunderlal Vs. Kishandas, I.L.R. (1989) M.P. 225*

– **Sections 91 and 92** – Circumstances in which evidence is admissible regarding terms of agreement or that there was no agreement at all: *Mandas Vs. Manbai, I.L.R. (1997) M.P. 661, (D.B.)*

– **Sections 91 and 92** – Condition that sale-deed was never agreed to be acted upon – Evidence regarding the same is admissible: *Mandas Vs. Manbai, I.L.R. (1997) M.P. 661, (D.B.)*

– **Sections 91 and 92** – Oral evidence when and how far admissible: *Rikhiram Vs. Ghasiram, I.L.R. (1979) M.P. 653,*

– **Sections 91 and 92** - and Transfer of Property Act (IV of 1882), Section 58 (c) – Power of Court to enter into the real nature of the transaction- Plea that sale was fictitious – Oral evidence not barred by Section 58 (c) of Transfer of Property Act and Sections 91 and 92 of Evidence Act: *Mandas Vs. Manbai, I.L.R. (1997) M.P. 661, (D.B.)*

– **Section 92** - and Accommodation Control Act, 1961–Section 12(1)(c), (f) and Exclusion of oral Evidence as to contents of a written document–Claim of set-off for the amount spent in alteration and modification of building–Contention contrary to written agreement–Agreement provides adjustment of such less amount than claimed–Tenant not entitled to set off as claims–Decree of eviction under Section 12(1)(c) and (f) confirmed: *Dr. Sudhir Tiwari Vs. Smt. Bhagwanti Devi Issrani, I.L.R. (2002) M.P. 289, (D.B.)*

– **Section 92** – Circumstance in which oral evidence concerning the deed can be given: *Lekhraj Diddi Vs. Sardar Sawansingh, I.L.R. (1977) M.P. 1204, (D.B.)*

– **Section 92** – Consideration – No term of the document – Oral evidence to prove want of consideration or different form of consideration – Admissibility: *Ram Ratan Prasad Vs. Ramtapeswar Dube, I.L.R. (1968) M.P. 640*

– **Section 92** – Proving or recital of a deed – When there is dispute as to real character of the document evidence dehors can be led to show that document was executed with an intention other than that contained in the document: *Sajan Kumar Rasia Vs. Roopsingh, I.L.R. (2001) M.P. 822*

– **Section 92, Proviso 1** – Admissibility of oral evidence to prove mistake – Strong evidence necessary to make out a case of mistake: *Shanker Singh Vs. Sanstha Sonabai Sharvkashram, Khurai, I.L.R. (1980) M.P. 568, (D.B.)*

– **Section 92, Proviso 4** – Proof of subsequent oral agreement to rescind and modify it – Admissibility – Proof of a conduct of waiver – Not barred: *Smt. Shantabai Vs. James Edward Peters, I.L.R. (1974) M.P. 313*

– **Section 92** – Proviso 6 – Enables Court to ascertain the nature of the instrument i.e. identify persons and things to which instrument refers – Does not permit addition to terms – Cantonments Act – Section 273 – Does not refer to a contract entered by Cantonment Board because of a duty or power conferred – Distinction between an act done under the act or rules and that done in exercise of the power granted to the Board under the Act – Not applicable to a suit for recovery of price for the work done – Limitation Act – Article 56 – Governs suits for price of work done – Time to be computed from the date when work is done – Contract Act – Ratification – Person who can ratify the act done – Civil Procedure Code – Order 7, Rule 7 – No specific claim under section 70, Contract Act made – No amendment – Decree on the basis of section 70, can be granted: *The Cantonment Board, Mhow Vs. Chhajumal and Sons, Mhow*, I.L.R. (1968) M.P. 245, (D.B.)

– **Section 92** – Provision that parties are precluded from leading any evidence other than the recital of the Sale-deed – Not attracted to a case of Sale-deed executed for securing loan – Decree confirmed with modification: *Madhav Prasad Vs. Munnibai*, I.L.R. (2000) M.P. 1440

– **Sections 101 and 104** – Burden of proof - Plea of partition — Scope for drawing reasonable inferences where evidence obliterated by passage of time: *Jhangloo Vs. Tularam*, I.L.R. (1985) M.P. 550 (DB)

– **Section 102** – Burden of Proof – Party not producing material evidence – Adverse inference when can be drawn: *Firm Jagannath Bhagwandas Vs. Firm M/s Khemraj Madanlal*, I.L.R. (1958) M.P. 257, (D.B.)

– **Section 102** - and Transfer of property Act, (IV of 1882), Section 44 – Section 102 – Burden of proof – Suit based on title – Plaintiff to succeed on proof of his subsisting title and not on weakness of defence – Section 44 – Right of purchaser of a portion of undivided property from a Co-owner thereunder – Not entitled to possession of any particular portion of joint property : *Smt. Lalita James Vs. Shri Ajit Kumar*, I L.R. (1990) M.P. 419

– **Section 103** – Burden of proving that plaintiff is a money-lender was on the defendant: *Banshilal Kharakwar Vs. Narbada Prasad Chourasia*, I.L.R. (2004) M.P. 763,

– **Sections 103** – Claim for permanent employment – Burden of proving the fact of continuous employment for 240 days in a year rests with employee: *M.P. Electricity Board Vs. Hariram*, I.L.R. (2004) M.P. 887, (S.C.)

– **Section 105** – Antecedent and subsequent mental condition of mind relevant to determine insanity of accused: *Shivraj Singh Vs. State of M.P.*, I.L.R (1977) M.P. 582, (D.B.)

– **Section 105** – Burden of proof on prosecution to prove guilt – Accused pleading exception – Nature of proof required – Burden how can be discharged: *Balaprasad Vs. The State of Madhya Pradesh, I.L.R. (1961) M.P. 149, (D.B.)*

-**Section 105**-Burden of proofing that the case falls under exception-Burden is on accused : *Abdul Majid Vs. The State of M.P., I.L.R. (1964) M.P. 609, (D.B.)*

– **Section 105** – Burden of proving circumstances justifying the inference that case is within exception – Burden is on accused – Court not to presume existence of circumstances establishing plea: *Victor @ Kalloo Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 601, (D.B.)*

– **Section 105** – Nature of burden of proof of insanity on accused: *Shivraj Singh Vs. State of M.P., I.L.R. (1977) M.P. 582, (D.B.)*

– **Section 105** – Sheer abnormalities in behaviour – Does not prove insanity – Totality of circumstances and evidence – To be considered to determine the plea: *Shivraj Singh Vs. State of M.P., I.L.R. (1977) M.P. 582, (D.B.)*

– **Section 105 and Section 4** – Burden on accused to prove circumstances bringing his case within exception – Court entitled to presume absence of any such circumstances : *Bhansingh Vs. State of M. P. I.L.R. (1990) M.P. 517 (D.B.)*

–**Section 105** - and Penal Code, Indian, 1860–Sections 96,300 Exception I and II, Sections 302, 304-Part-I–Burden of proving plea of self-defence is on accused–Not necessarily required to call evidence–Can establish his plea by reference to circumstances–In absence, Courts shall presume absence of such circumstances–Trial Court rightly convicted accused in terms of Section 302 IPC: *State of Madhya Pradesh Vs. Ramesh, I.L.R. (2004) M.P. 1001, (S.C.)*

-**Sections 105 and 114 and Penal Code, Indian 1860–Sections 96,300–Murder**–Right of private defence–Whether legitimately exercised–Is a question of fact–Courts must consider surrounding circumstances: *State of Madhya Pradesh Vs. Ramesh, I.L.R. (2004) M.P. 1001, (S.C.)*

-**Section 106**-Minority-Burden of proof of minority on person who alleges it-Civil Procedure Code-Section 115-Burden of proof wrongly placed-Interference in revision permissible : *Gurba Vs. Umrao, I.L.R. (1964) M.P. 313*

– **Section 108** – Does not permit presumption regarding date of death: *Mst. Rajulabai Vs. Suka, I.L.R. (1976) M.P. 760, (D.B.)*

– **Sections 108, 114** – Husband of defendant renounced the world and not heard of for more than 10 years – Presumed to be dead since not heard of for more then 7

years by those who would have normally heard him – Deceased and defendant No. 1 living together for long time as husband and wife and children having been born to them legal presumption regarding valid marriage would arise – Children born of a valid marriage are entitled to receive payment due – Plaintiffs rightly non-suited: *Bhagwat Prasad Shrivastava Vs. Smt. Pranbai*, I.L.R. (2001) M.P. 1024,

– **Sections 109, 115, 116** - and Accommodation Control Act, M.P., 1961 – Sections 12(1)(a), 12(1)(c) and 12(1)(f) – Arrears of rent, denial of landlord's title and bona fide need – Tenanted premises self acquired by original tenant – Plaintiffs suit based on alleged partition in the joint Hindu Family – No evidence to show that father had thrown his property into common stock of the joint family – Share of property to other sons not allotted – Deed of partition held sham transaction to evict tenant: *Sardar Harbans Singh Vs. Shailesh Chand Gupta*, I.L.R. (2001) M.P. 1887,

– **Section 112** – Long co-habitation – Children born of such union and treated by community as legal children – Presumption of valid marriage arises – Woman previously married to another man – Marriage taken as dissolved if permitted by custom: *Rajaram Vs. Deepabai*, I.L.R. (1978) M.P. 1120, (D.B.)

– **Section 112** – Presumption regarding legitimacy of child during subsistence of marriage – Presumption rebuttable – burden on husband to rebut presumption – Nature of evidence needed for rebutting presumption: *State of Madhya Pradesh Vs. Mst. Somti*, I.L.R. (1971) M.P. 173

– **Section 112-A** – Abetment of suicide and presumption unless husband is held guilty of treating wife with cruelty no presumption of abetting the suicide by deceased is available: *Nandlal Vs. State*, I.L.R.(2001) M.P. 1386

– **Section 113-A** – Abetment of suicide – Death within two years of marriage – Death due to 100% burn injuries – Dying declaration recorded by Executive Magistrate proved – Accused in habit of beating the deceased – On the date of incident also she was beaten – Because of presumption under Section 113-A of Indian Evidence Act, 1872, trial court rightly recorded conviction: *Vijay @ Baijnath Vs. State of M.P.*, I.L.R. (2005) M.P. 989,

– **Section 113** – A as amended by Criminal Law (Second Amendment) Act (XLVI of 1983) – whether retrospective in operation – applicability of – Penal Code, Indian – Section 498 – A, as amended – Word 'cruelty' in – Meaning of – To be ascertained for purposes of Section 113 – A of the Act – Law of evidence – Nature and effect of : *Ashok Kumar Vs State, of M .P.*, I.L.R. (1990) M.P. 280

– **Section 113-A** – In absence of presumption inference of abetment against wife can not be raised – Charges set-aside: *Alka Grewal Vs. State*, I.L.R. (2001) M.P. 414,

– **Section 113-A** – Not applicable when the person concerned is neither the husband nor related to the deceased in any manner – In absence of any presumption petitioner cannot be roped in – Petitioner discharged: *Anurudh Prasad Tiwari Vs. State of M.P.*, I.L.R. (1999) M.P. 163,

– **Section 113-A** – Petitioner cannot be roped in – Petitioner discharged: *Anurudh Prasad Tiwari Vs. State of M.P.*, I.L.R. (1999) M.P. 163,

-**Section 113-A**-Presumption as to abatement of suicide by married women-Marriage took place anterior to 7 years from the date of committing suicide-No presumption can be drawn-Provision not attracted. : *Devi Singh Vs. State of M.P.*, I.L.R. (1994) M.P. 450,

– **Section 113-A** – Presumption as to abetment of suicide – Victim constantly ill-treated and beaten, target of taunts and utterance meaning ‘better she is dead’ – Studied and systematic course or conduct resulting in commission of suicide: *Sampatlal Vs. State of M.P.*, I.L.R. (1988) M.P. 697,

-**Section 113-A**-Presumption-Husband or his relative can be said to have abetted the commission of suicide by wife by fiction created by law-This fiction will not apply in any other case. : *Vedprakash Tarachand Bhaiji Vs. State of M.P.*, I.L.R. (1994) M.P. 224,

– **Section 113-A** – Victim husband committed suicide – Prosecution case rested on suicide note written by deceased to his sister – Note narrated that wife behaving in immoral manner having sexual relation with other – Mental cruelty by wife – Not covered u/s. 113-A of Evidence Act : *Alka Grewal Vs. State*, I.L.R. (2001) M.P. 414,

– **Sections 113-A and 114** – Presumption under the former can be drawn only in case of suicide by a married women and not a male while presumption under Section 114 can create some circumstances which becomes occasion for an act but not the same thing as abetting the act – Charge quashed: *Ram Sewak Vs. State*, I.L.R. (2001) M.P. 273,

-**Section 114** – Court can presume that man who is in possession of stolen goods soon after the theft is thief or has received goods knowing them to be stolen, unless he can account for his possession: *Rameshkumar Soni Vs. State of M.P.*, I.L.R. (1996) M.P. 462,

-**Section 114**—FIR lodged but not produced in evidence—Lead to an adverse inference that if filed the document would have been unfavourable to plaintiff: *Brajlal Vs. Madhya Pradesh Electricity Board*, I.L.R. (2004) M.P. 668,

-**Section 114, Illustration (a)** – Evidence regarding murder and robbery - Presumption as to commission of murder and robbery by accused – Accused sold some

of ornaments of deceased immediately on next day of murder and at his instance, recovery of stolen articles from house of accused within 4 days of murder - Accused gave no plausible explanation for lawful possession of ornaments of deceased immediately after murder – Such close proximity of recovery can not be lost sight of — Presumption under Illustration (a) of Section 114 Evidence Act is that accused not only committed murder but also committed robbery of ornaments. : *Gulab Chand Vs. State of M.P.*, I.L.R. (1995) M.P. 79, (D.B.) (S.C.)

-Section 114 – Illustration (a) – Principle in – Applies to offences such as dacoity and robbery – Necessary facts established – Presumption pertaining to and following from those facts can be drawn: *Shobha Vs. The State of MP*, I.L.R. (1958) M.P. 892,

– Section 114 – Illustration (a) – When possession and robbery are not separable inference would be that the person in possession of looted property is a looter – Inference of offence under Section 411, I.P.C. alone cannot be drawn: *Sudesh Vs. State*, I.L.R. (2001) M.P. 233, (D.B.)

– Section 114 – Illustration (b) – Applicability of principle underlying in – Not dependable upon nature of tribunal which is required to consider it but upon nature of issue involved: *Surajmal Tugnawat Vs. Sundarlal Patwa*, I.L.R. (1965) M.P. 800, (D.B.)

– Section 114 – Illustration (e) – Applies to the report of the public analyst – Presumption is rebuttable: *The State of Madhya Pradesh Vs. Chhotekhan*, I.L.R. (1971) M.P. 197, (F.B.)

– Section 114 – Illustration E – Does not empower the drawing of presumption that all acts have been performed – Implies only that act has been done with care and attention: *Ramkishan Vs. State of M.P.*, I.L.R. (1970) M.P. 510,

– Section 114 – Illustration (e) – Nature of presumption to be drawn under – Regulation of Government Act (I of 1948) – Sections 3 and 4 and Article VI of the Covenant – Constitution of India – Article 295 (2) – Order of Sovereign – Force of law – Saved because of Section 3 of the Act – Rights and liabilities created by the said Act – Enforceable under Section 4 in Municipal Courts: *The State of Madhya Bharat (MP) Vs. Messrs Bhramji Dungaji & Co., Ratlam*, I.L.R. (1957) M.P. 556, (D.B.)

– Section 114 – Illustration(e) – The principle underlying the provision – Presumption that judicial and official acts are done in manner substantially regular – Pre-requisites for its validity are complied with – When statute or rules provide regulation and formalities before report of public Analyst is accepted – In that contingency it is necessary to establish the compliance with those regulations and formalities – In its absence report of Public Analyst is admissible – Presumption is however rebuttable:

The Administrator, City of Jabalpur Corporation, Jabalpur Vs. Lakhanlal, I.L.R. (1974) M.P. 689, (D.B.)

– **Section 114 – Illustration (e)**- When statute or rules provide regulation and formalities before report of Public Analyst is accepted – In that contingency it is necessary to establish the compliance with those regulations and formalities – In its absence report of Public Analyst is admissible – Presumption is however rebuttable: *The Administrator, City of Jabalpur Corporation, Jabalpur Vs. Lakhanlal, I.L.R. (1974) M.P. 689, (D.B.)*

-**Section 114, - Illustration (g)**-Party to suit in possession of document material for decision-Documents withheld-Presumption that document if produced would go against party can be drawn-Limitation Act, Article 148-Mortgagee in possession of mortgaged property for over 12 years under unregistered mortgage deed-Mortgagee acquires rights of mortgagee by prescription- Suit for redemption falls within the article and is maintainable, : *Bherulal Vs. Dhapubai, I.L.R. (1963) (M.P.)121.*

– **Section 114** –Making of order under Defence of Indian Rules proved – Presumption that it has been promulgated in accordance with prescribed manner arises – Defence of India Rules – Rule 2(3) –Word “notified” in – Meaning of – Rule 141(2) – Notification of order – Conclusive proof that it is known to all concerned – Knowledge to the person of order – Not justiciable: *State of M.P. Vs. Fazal Hussain, I.L.R. (1969) M.P. 485, (D.B.)*

– **Section 114** – Office endorsement and office objections – Have presumptive value – Representation of the People Act – Sections 81 and 87 – The Act or rules framed thereunder – Making no procedural provision – Provision of Civil Procedure Code apply – Civil Procedure Code – Governs presentations of Election Petition-Presentation of petition is integral party or trial – Requirement of election law – To be strictly complied – Civil Procedure Code – Operation of – Subject to election law – Presentation of election petition – To be made by candidate himself: *Ramanlal Premy Vs. Shiv Pratap Singh, I.L.R. (1978) M.P. 569,*

-**Section 114**-Order issued by under-Secretary or Secretary in the name of Governor –Presumption about legality : *Narmada Prasad Vs. The State of M.P., I.L.R. (1959) M.P. 8, (D.B.)*

– **Section 114** – Order for issue of certificate – Presumption that it must have been carried out: *Choudhari Raja Bhaiya Vs. Choudhari Daulat Singh, I.L.R. (1962) M.P. 246, (D.B.)*

– **Section 114** – Presumption arising from notification – Not rebutted by showing that instrument also used in a trade or calling other than agriculture: *The Commissioner*

of Sales Tax, M.P., Vs. M/s. Narang Industries of Indore, I.L.R. (1973) M.P. 183, (F.B.)

– **Section 114** – Presumption arising from registration of deed-Presumption weakened where transaction taking place in unusual circumstances: *Jagatsingh Vs. Ganpat, I.L.R. (1969) M.P. 800, (D.B.)*

– **Section 114** – Presumption from certificate of posting – Contract Act – Section 4 – Communication of revocation of resignation – Complete when received by the authority addressed – Constitution of India – Article 226 – No reasonable explanation for delay – Petition liable to be dismissed on ground of delay: *B.L. Shrivastava Vs. M.M.L. Shridhar, I.L.R. (1977) M.P. 751, (D.B.)*

– **Section 114** – Presumption regarding personal character of Candidate: *Bhagirath Bilgaiya Vs. Rishabh Kumar, I.L.R. (1965) M.P. 964, (D.B.)*

– **Section 114** – Presumption that statutory power validity exercised – Excess of jurisdiction in exercise of statutory power not to be assumed: *The Commissioner of Sales Tax, M.P., Vs. M/s. Narang Industries of Indore, I.L.R. (1973) M.P. 183, (F.B.)*

– **Section 114** – Which presumption arises – Is a question of fact depending upon facts and circumstances found – Circumstance where the presumption about a persons being a mere receiver of stolen property arises: *State of Madhya Pradesh Vs. Murarilal, I.L.R. (1976) M.P. 519, (D.B.)*

– **Section 114** - and Land Revenue Code, M.P. (XX of 1959), Section 117– Presumption–Correctness of these entry can be presumed which are required to be made under the Law–Unless the law required an entry to be made presumption as to correctness of such entry cannot be made–Defendant can only seek injunction in an independent suit–Impugned order set aside to extent: *Churamani Vs. Ramadhar, I.L.R. (1992) M.P. 267, (D.B.)*

– **Section 114-A** – Presumption as to absence of consent in rape case – Victim of rape stands on a different footing: *Miyani Lal Vs. State, I.L.R. (2001) M.P. 715,*

– **Section 114-A** – Provision enables court to raise presumption that the victim was raped against her will – Legislature has brought in the aforesaid provision because of the obtaining social back drop – Version of prosecutrix inspires confidence – Conviction can be recorded even if her version is not corroborated by medical evidence – Conviction up held: *Miyani Lal Vs. State, I.L.R. (2001) M.P. 715*

– **Sections 114(b) and 133** – Court must remain alive to the danger of accepting un-corroborated evidence of an accomplice: *Neeraj Jain Vs. State of M.P., I.L.R. (1989) M.P. 377*

– **Section 114(g)** – Eye-witnesses of actual incident inside house examined, some witnesses present outside the house not examined – No adverse inference: *Jagdish Singh Vs. State of M.P., I.L.R. (1989) M.P. 664, (D.B.)*

– **Section 114 (9)** – Presumption Except two victims nobody else present at the time of incident – Held – Presumption of withholding witness can not be drawn. : *Sunil Kumar Vs. State of M.P., I.L.R. (1997) M.P. 5 (SC)*

– **Sections 114, 111. (g)**–Non production of muster rolls by the employer–Drawing of adverse inference–Not obligatory but optional–Other circumstances may exist upon which such non-production may be found justifiable: *M.P. Electricity Board Vs. Hariram, I.L.R. (2004) M.P. 887, (S.C.)*

– **Section 115** - and Constitution of India, Articles 226 and 227 – Estoppel – Petitioners in writ petition impleading Janapada Panchayats as successor in interest of dissolved Janapada Sabha: *The Amalgamated Coalfields Ltd., Calcutta Vs. The Janapada Panchayat, Chhindwara, I.L.R. (1981) M.P. 8 (D.B.)*

– **Section 115** - Constitution of India, Article 226–Promissory estoppel–Petitioner set up an industry allured by scheme framed by Govt. of India for subsidy to industrial units set up in selected backward Districts Areas–Company started commercial production from 13.4.1988–Petitioner applied for grant of subsidy on 25.6.1988–Govt. of India issued a circular that applications which could not be decided by State Level Committee before Sept. 1988 not entitled to subsidy–Held–Govt. of India bound by principles of promissory estoppel–Application cannot be rejected on the ground that it was not processed by State Level Committee before expiry of scheme–Respondents directed to consider application for grant of subsidy on the basis of eligibility qualifications–Petition allowed.: *Shri Bajrang Extraction Pvt. Ltd. Vs. The Secretary to the Government of M.P.; I.L.R. (1993) M.P. 400 (D.B.)*

– **Section 115** – Doctrine of estoppel – There should be distinct pleadings – Party by his or her conduct induced the other to enter into a contract – Person aware of the true position – Cannot plead he was induced to hold erroneous belief: *Gunendra Nath Banerjee Vs. Smt. Sarojani Bai, I.L.R. (1988) M.P. 549,*

– **Section 115**–Equitable estoppel–Petitioner gets admission in Polytechnic on the basis of a declaration that he belonged to Scheduled Caste–Also allowed to pursue his studies in first year–Subsequently petitioner found guilty of fraud in seeking such admission–Admission in second year cancelled–Equity not in favour of the petitioner–Principles of equitable estoppel not applicable–Respondents not debarred from cancelling admission : *Israr Ahmad Mansuri Vs. State of M.P., I.L.R. (1983) M.P. 31 (D.B.)*

– **Section 115**–Estoppel by conduct–Tenant failing to deliver possession within time–After reconstruction, landlord offering tenant to reoccupy it on enhanced rent–Tenant

claiming re-entry by an application under section 18(3) of the Accommodation Control Act, 1961-Landlord not raising objection about non-delivery of possession by tenant within time fixed in the decree- Such an objection cannot be permitted in High Court-Landlord estopped from questioning right of re-entry : *Subhaniya Anjuman Islamiya, Bilaspur Vs. Manrakhanlal Nai, I.L.R. (1986) M.P. 720,*

– **Section 115** – Estoppel – Circumstances in which minor is estopped – Compromise between parties in earlier suit – Earlier suit dismissed without passing decree in terms of compromise – Plaintiffs of this suit were defendants in the earlier suit – Subsequent suit not barred by res judicata – Plaintiffs estopped from filing present suit – Civil Procedure Code, Order 32, Rule 7 – Plaintiffs in subsequent suit, were minor defendants in earlier suit represented by Karta of family – Compromise effected outside resulting in dismissal of suit – Permission of Court for compromise not necessary – Compromise binding on minor defendants: *Gulabchand Vs. Chhatar Singh, I.L.R. (1961) M.P. 867,*

– **Section 115**-Estoppel-Party alleging transaction to be normal one and without consideration, not entering witness-box to prove it- Effect : *Jainendra Kumar Vs. Kailashchand, I.L.R. (1984) M.P. 325,*

– **Section 115**-Estoppel-Whether operates against the Corporation : *Krishan Gopal Dixit Vs. M.P. State Road Transport Corporation, Bhopal, I.L.R. (1985) M.P. 215, (D.B.)*

– **Section 115**-Not applicable where rent accepted under mistake : *Singhai Komalchand Vs. The State of M.P., I.L.R. (1963) M.P. 454, (D.B.)*

– **Section 115** – Petitioner neither guilty of fraud nor misstatement or suppression of facts nor patently ineligible – Promissory estoppel operative against the University respondent: *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University, I.L.R. (1979) M.P. 289, (F.B.)*

– **Section 115** – Promissory estoppel – Doctrine of Promissory Estoppel – Explained: *Brij Bihari Vs. State of M.P., I.L.R. (1988) M.P. 596, (D.B.)*

– **Section 115**-Promissory estoppel- Exercise of option by the Board to defer scheduled supplies of conductors by the petitioners in pursuance of clause 4(b) of the Contract-Principle of promissory estoppel not applicable : *Smita Conductors Private Limited, Bombay Vs. M.P. State Electricity Board, Jabalpur, I.L.R. (1984) M.P. 8, (D.B.)*

– **Section 115** – Promissory Estoppel – Principles of: *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University, I.L.R. (1979) M.P. 289, (F.B.)*

– **Section 115** – Promissory Estoppel – When operates: *Bherusingh Vs. State of M.P.*, I.L.R. (1987) M.P. 549, (D.B.)

– **Sections 115, 116 and 117**–Estoppel–Sections 115, 116 and 117–Not exhaustive–Illustration of such relations–Where one man going into possession of property on the acceptance of another’s title–Principle embodied in section 116, Evidence Act–Applicable to cases of guardian and ward, principal and agent and master and servant–Guardian estopped from questioning his ward’s title during currency of guardianship or management until he discharges fiduciary capacity, : *Fattu Vs. Bhawaniram*, I.L.R. (1960) M.P. 686

– **Section 116**–Case in which tenant can validly deny the title of the landlord: *Smt. Sugg Bai Vs. Smt. Takuribai*, I.L.R. (1969) M.P. 70

– **Section 116**–Estopped having taken the plea of agreement to sell the suit house to him by plaintiff, defendant is estopped from denying plaintiff’s ownership: *Ram Pukar Singh Vs. Bhimsen*, I.L.R. (2005) M.P. 1176

– **Section 116** – Estoppel – Tenant not let into possession by the landlord – Tenant not estopped from challenging derivative title claimed by the landlord: *Meerkhan Vs. Kutub Ali*, I.L.R. (1980) M.P. 977, (D.B.)

– **Section 116** – Person entering into possession as tenant and continuing in possession in that capacity – Estopped from saying that his possession was in pursuance of the agreement to sell: *Bhagwandas Vs. Surajmal*, I.L.R. (1962) M.P. 443

– **Section 116** – Tenant attorning to new landlord – Tenant estopped from denying title of new landlord: *Motilal Bhatia Vs. Yusuf Ali*, I.L.R. (1975) M.P. 121

– **Section 116** – Tenant estopped even when he was or was not in possession at the time of contract of tenancy: *Munnalal Vs. Balchand*, I.L.R. (1961) M.P. 262, (D.B.)

– **Sections 116 and 117** – Do not give exhaustive list, but are merely illustrative: *Balaram Vs. Durgalal*, I.L.R. (1970) M.P. 624, (D.B.)

– **Section 117** – Bailee if can question the authority of bailor to make bailment: *Radheshyam Vs. Jagat Narain*, I.L.R. (1962) M.P. 404, (D.B.)

– **Section 118**–Child witness– Merely because oath was not administered her evidence does not become inadmissible–Duty of Sessions Court is to record such evidence in the form of question and answers: *Santosh @ Lal Singh Vs. State of M.P.*, I.L.R. (2004) M.P. 792

-Section 118–Child witness : *State of M.P. Vs. Pattu Gond and Guddo Bai*, I.L.R. (1998) M.P. 140 (D.B.)

-Section 118–Further corroborated by Medical evidence suggesting number of assailants–Accused have been rightly convicted: *Bharat Singh Vs. State*, I.L.R. (2000), M.P., 188 (D.B.)

– **Sections 123, 124-C**, - B.I. report on which sanction was given is not privileged documents: *Loknath Gupta Vs. State*, I.L.R. (1999) M.P. 714,

– **Section 132** – Scope and implication of – Section achieves two ends: *Gayaram Vs. Smt. Shanti Kunwar*, I.L.R. (1971) M.P. 373,

– **Section 132, Proviso** – Does not come into play when witness voluntarily gives answer: *Gayaram Vs. Smt. Shanti Kunwar*, I.L.R. (1971) M.P. 373,

-Section 138–Ascertainment not disputed in cross-examination–Should be taken as correct, truthful : *Badrilal Dubey Vs. Chandra Prakash*, I.L.R. (1998) M.P. 869

-Section 145–Scope and applicability of–Constitution, Article 311(2)–Copies of statement of witnesses not supplied–Amounts to not giving adequate opportunity to defend the charge–Officer charged entitled to copies of statements in pre-enquiry of those persons who have been subsequently examined during departmental enquiry : *Sharmanand Vs. Superintendent Gun Carriage Factory, Jabalpur*, I.L.R. (1959) M.P. 500, (D.B.)

– **Section 148** – Admission by party – Stands on different footing than the admission of a witness – Not necessary to put admission to a party – Party's duty to explain admission: *Choudhari Raja Bhaiya Vs. Choudhari Daulat Singh*, I.L.R. (1962) M.P. 246, (D.B.)

-Section 155–Impeaching Credit of Witness–One criminal case is pending against witness–Not liable to be termed as branded criminal : *State of M.P. Vs. Vishal Singh*, I.L.R. (1994) M.P. 250, (D.B.)

– **Section 155** – Lays down mode of impeaching the credit of a witness: *Krishnachand Pal Vs. Bhondu*, I.L.R (1970) M.P. 811,

– **Section 155** – Provision to be strictly construed and narrowly interpreted – Lays down mode of impeaching the credit of a witness: *Krishnachand Pal Vs. Bhondu*, I.L.R. (1970) M.P. 811,

-Section 157–Certified copy of deposition–Does not prove identity of witness–Independent evidence to prove identity necessary –Criminal Procedure Code, Section 145–Proceedings under–Certified Copies of documents by themselves not admissible

unless proved-Criminal Procedure Code, Section 439-Revision-Finding of fact regarding possession-No interference with finding of trial Court : *State of M.P. Vs. Swami, Prasad, I.L.R. (1963) M.P. 360*

– **Section 157** – Witness turning hostile – Previous statement not usable as corroboration under section 157 – Section 6 – Permits proof of collateral statements connected with fact in issue as to form part of same transaction – Whether it forms part of same transaction – Dependent upon circumstances of each case – Statement made after a lapse of time after the incident – Cannot be treated either as spontaneous or part of the same transaction: *Pratapsingh Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 682, (D.B.)*

–**Section 165**–Court power to examine witness not an absolute power: *Nanka Vs. State, I.L.R. (1992) M.P. 286,*

-**Wife did not choose to enter the witness-box**, on the contrary she chose the examine her father who was not having personal knowledge of delicate talks between the husband and wife for which only husband and wife would speak-Inference can be drawn against wife for non-appearance in witness-box, particularly in matrimonial cases: *Smt. Meenaxi Vs. Anil Kumar, I.L.R. (1998) M.P. 949*

Excise Act, M.P. (II of 1915)

– **Annual contract for supply of country spirit – Sealed tenders invited** – Later on price settled through negotiation – Whether permissible – Rule 22 framed under M.P. Excise Act – Administrative Law – Distribution of State Large through negotiations – Transparency in action and public Interest supreme: *Som Distilleries Limited Vs. State, I.L.R. (1999) M.P. 19*

-**Confers regulatory power on State Government in respect of manufacture and sale of foreign liquor**: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

– **Contains no provision regarding execution of formal deed of contract** – Contract comes into existence by virtue of statutory provision and the rules – Acceptance of bid – Does not involve any judicial or quasi-judicial process – Constitution of India – Article 299(1) – Operation of, depends on question whether power exercised is executive – Not applicable to cases of excise contracts – Excise Act, Central Provinces and Berar – Section 18 – Liability of bidder arises when bid accepted – Deposit is not condition precedent – Constitution of India – Article 299 – Conditions to be satisfied for requirements of the provision – These also apply to a contract by tender and acceptance – Bid list signed by Bidder and Collector – Does not fulfill requirement of this provision – Law empowering State Government to enter into Contract – Exercise of that power

amounts to exercise of executive power – Includes contracts made by State under statutory authority – Article 154 – Statutory functions conferred on authority subordinate to the Governor – Functions not performed in the name of Governor – Such functions to be performed in accordance with statute conferring the functions- Such power does not become executive power of the Governor – Contract by such authority does not fall under Article 299 – Excise Act, Central Provinces and Berar – Section 18 – Auction of excise contract – Is a sale under statutory power – Auction by Collector – Is in exercise of statutory power – Constitution of India – Articles 298 and 299 – Executive power in – Is the non-statutory executive power and not the statutory one – Interpretation of Statute – Principle of construction – No part or statute should be rendered devoid of any meaning – Constitution of India – Article 299 – Executive power – Wide enough to include power derived from Statute: *Ram Ratan Gupta Vs. State of Madhya Pradesh*, I.L.R. (1975) M.P. 377, (F.B.)

- **Does not contain provisions for delegation of power to impose excise duty** – Duty can be imposed by order of State Government – Order to be made in the name of Governor – No order of Government in existence – Letter of under Secretary signed “By order and in the name of the Governor of Madhya Pradesh” – Order is without sanction and not as contemplated by the provision – Requirements of a valid order: *Baboolal And Balgovind Company, Mhow Vs. The State of M.P.*, I.L.R. (1971) M.P. 261, (D.B.)

- **Fee realized in respect of Excise Contract** – Cannot be justified as a fee: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P.*, I.L.R. (1976) M.P. 207, (F.B.)

- **Grant of licence is a grant of privilege exclusively belonging to the State:** *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P.*, I.L.R. (1976) M.P. 207, (F.B.)

- **Licence for selling liquor and Constitution of India, Article 14** – Remission of licence fee – Absence of clause in contract for supply of any quantity – State not entitled to demand licence fee without supply of any liquor – State obliged to supply fair and reasonable quantity – Shops remaining closed due to non-supply – Excise Commissioner’s circular for remission in licence fee – Benefit granted to some contractors but not to appellant – Violation of Article 14 – State bound to grant remission for the periods shops remained closed: *Smt. Kalawati Bai Vs. State of M.P.*, I.L.R. (1988) M.P. 386,

- **No provision in the Act authorising Magistrate to order disposal of seized property:** *State of M.P. Vs. Narayan Singh*, I.L.R. (1972) M.P. 782,

- **Notification dated 4-7-59 issued thereunder** – No provisions in rules, Act or notification for not issuing permit to Ganja addict: *Sampatrao Vs. Collector, East-Nimar, Khandwa*, I.L.R. (1967) M.P. 31, (D.B.)

– **Rule framed under the Act authorizing levy of duty on liquor not lifted by contractor** – Is ultra vires – Compensation for loss of such duty – Is also not authorised by law: *Firm Gappulal Jaiswal, Morar Vs. State of M.P., I.L.R. (1975) M.P. 280, (D.B.)*

– **Tax on Luxuries** – Must be co-related to the value, quality and quantity of luxuries – Not imposed for enjoying the privilege of carrying on trade in articles of Luxury: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

– **Section 2(b) and (13)** – Medicinal or toilet preparation containing alcohol – Liable to pay excise duty – Exemption however by Act of 55 of Parliament containing a provision of repeal – Scope and effect of repealing provision: *M/s. Alembic Distributors Ltd., Jabalpur Vs. Assistant Commissioner of Sales Tax, Jabalpur, I.L.R. (1962) M.P. 219, (D.B.)*

– **Section 2 (11-A)** – Denatured spirit is an intoxicant – Tax, fee or duty – Is really price or consideration charged by state government for parting with privileges and granting them to licensees: *M/s. Suneeta, Laboratories Pvt. Ltd., Indore Vs. State of M.P., I.L.R. (1979) M.P. 139, (D.B.)*

– **Sections 8 to 17** – Confer power on State Alone to deal in intoxicants: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

– **Sections 8 (c), 62 (d-1)**, - M.P. Mahua Rules, 1959, Rules 13, 14, Constitution of India, Schedule VII, List II, Entry 8-Legislative competence to regulate movement or trade of Mahua flowers under provisions of Sections 8 (c), 62 (d-1) and Mahua Rules challenged-Held-While interpreting legislative entry and its scope, widest possible amplitude must be given to words used-Words that is to say in Entry 8 List II of Seventh Schedule are merely illustrative and not words of limitation—Manufacture of intoxicating liquors provided in Entry 8 must necessarily include power to regulate raw material used in manufacture of intoxicating liquor-Constitutional validity of provisions of Sections 8(c), 62 (d-1) of Excise Act and M.P. Mahua Rules within legislative competence-Petition dismissed : *Motilal Jain Vs. State of M.P., I.L.R. (1994) M.P. 53, (D.B.)*

– **Sections 13, 17 and 18**-Rules of general application framed under Section 62(2) (e), (f) and (b)-Rule IV-Condition to be satisfied before a license to manufacture or sale of country liquor or intoxicating drug can be granted-Transfer of right to manufacture and sell intoxicating drug-Amounts to lease-Entitles a person to a license to manufacture and sell intoxicating drug- Notification delegating power to Excise Commissioner and empowering Excise Commissioner to delegate power to Collector-Excise Commissioner issuing notification delegating power to Collector to hold auction subject to confirmation of certain bids-Collector's power to accept bid in those circumstances: *Smt. Nanhibai Vs. The Excise Commissioner, M.P., Gwalior, I.L.R. (1964) M.P. 858, (D.B.)*

-Sections 13, 17 and 18-Transfer of right to manufacture and sell intoxicating drug-Amounts to lease-Entitles a person to a license to manufacture and sell intoxicating drug : *Smt. Nanhibai Vs. The Excise Commissioner, M.P., Gwalior, I.L.R. (1964) M.P. 858, (D.B.)*

- Sections 15, 25(2) - and Constitution of India, Articles 14 and 47 – Excise duty can be levied even at the stage excisable article reaches the retailer – Plea of differential treatment by itself not sufficient – Burden on the person who assails the legislation discriminatory to establish discriminatory not based on valid classification – No discrimination in treating contractors who obtain excisable article to sell and persons who obtain it for medicinal purposes on separate classes for payment of excise duty – Directive principle envisaged under Article 47 no bar for imposition of excise duty on intoxicant obtained for medicinal purposes: *Ganesh Prasad Jaiswal Vs. State of M.P., I.L.R. (1988) M.P. 243, (D.B.)*

– Section 17 – Grant of licence – In only to control and regulate the exercise of the right: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

– Section 17 – Licence does not transfer right to carry on trade: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

– Section 17 – Right to carry on trade in intoxicating liquor – Is subject to a licence granted under Section 17: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

– Section 18, - as amended – Applicable to foreign liquor – Power of State Government to charge consideration for transfer of privilege or right to sale foreign liquor : *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

– Section 18 – Grant of lease under – Person acquires a sort of limited monopoly: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

– Section 18 – Grant of privilege – Does not involve transfer of right to trade: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

– Section 18 – Right to regulate trade – Does not imply that right vested in controlling authority: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

- Section 18 – Right to trade – Is a kind of right enjoyed by a person – State has no exclusive right or privilege to carry on trade itself though it has power to regulate it:

M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)

- **Section 18-** and Constitution of India, Article 19 (6) – Consideration received is for grant of lease of trading rights – Provisions valid under first part of Art. 19(6) of the Constitution: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

- **Section 18** – Auction by Collector – Is in exercise of statutory power: *Ram Ratan Gupta Vs. State of M.P., I.L.R. (1975) M.P.377, (F.B.)*

- **Section 18** – Auction of excise contract – Is a sale under statutory power: *Ram Ratan Gupta Vs. State of M.P., I.L.R. (1975) M.P. 377, (F.B.)*

- **Section 18** – Liability of bidder arises when bid accepted – Deposit is not condition precedent: *Ram Ratan Gupta Vs. State of M.P., I.L.R. (1975) M.P. 377, (F.B.)*

- **Section 18**-Notification delegating power to Excise Commissioner and empowering Excise Commissioner to delegate power to Collector-Excise Commissioner issuing notification delegating power to Collector to hold auction subject to confirmation of certain bids-Collector's power to accept bid in those circumstances : *Smt. Nanhibai Vs. The Excise Commissioner, M.P., Gwalior, I.L.R. (1964) M.P. 858, (D.B.)*

- **Sections 18 and 27** – Payment receivable under – Is different from duty and fees: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

- **Sections 18 and 27** – To be read along with Section 27: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

- **Sections 18, 27, 62(2)(e), (g) & (h),** - Breweries Rules, M. P. 1970, Rule 22–D-2–Licence for manufacture of IMFL by blending, reducing and compounding IMFL concentrate–Licence issued under the Distillery & Warehouse Rules–Breweries Rules not applicable as the unit is not brewery: *State of M.P. Vs. M/s. K.C.T. Drinks Ltd, I.L.R. (2003) M.P. 478, (S.C.)*

- **Sections 18, 27, 62(2)(e), (g) & (h),** - State Government entitled to accept payment in addition to duty leviable on terms and conditions of the licence deed–Condition 8 empowering State Government to recover the actual cost of supervisory staff posted at the premises of licensee–Levy constitutes price for consideration for parting with the privilege and granting licence–Recovery not illegal–Condition 8 not ultra vires–Order of High Court set aside : *State of M.P. Vs. M/s. K.C.T. Drinks Ltd, I.L.R. (2003) M.P. 478, (S.C.)*

-Section 25 -and Brewery Rules, M.P., 1970-Foreign liquor Rules-The words 'Import' and 'export' used in section 25-Not mean import from overseas in India or export outside India-Real nature of duty thereunder is excise duty-Not falling under Entry 83 of List I of the Constitution of India-State Govt. entitled to levy such a duty under the Excise Act-Not conflict between the two Rule XXII(e) of Foreign Liquor Rules and Rule 41 of M.P. Brewery Rules, 1970-Constitution of India-Articles 301, 304(b) and 305-Notification of State Govt. enhancing duty by amending Foreign Liquor Rules-Not an existing law within Article 305-Also not covered under Article 304(b)-Still such enhancement of duty not offending Article 301-Scope of Article 301 and its applicability pointed out: *Lilasons Breweries (P) Ltd., Bhopal Vs. State of M.P., I.L.R. (1984) M.P. 19 (D.B.)*

-Section 25 - No order of Government in existence – Letter of Under Secretary signed “By order and in the name of the Governor of Madhya Pradesh” - Order is without sanction and not as contemplated by the provision: *Baboolal And Balgovind Company, Mhow Vs. The State of M.P., I.L.R. (1971) M.P. 261, (D.B.)*

- Section 25 – Requirements of a valid order: *Baboolal And Balgovind Company, Mhow Vs. The State of M.P., I.L.R. (1971) M.P. 261, (D.B.)*

Sections 25, 26 and 27 – Contemplate three kind of levies – These three cannot be conferred: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

- Sections 25, 26 and 62 – Levy of duty on liquor not lifted by contractor not permissible – Rule framed under the Act authorizing levy of duty on liquor not lifted by contractor – Is ultra-vires – Compensation for loss of such duty – Is also not authorised by law – Estoppel – No estoppel against statute: *Firm Gappulal Jaiswal, Morar Vs. State of M.P., I.L.R. (1975) M.P. 280, (D.B.)*

- Section 27 – Authorises State Government to accept payment in consideration of grant of lease under Section 18 – Payment of consideration need not be equated with fees but can be charged in addition to fee: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207, (F.B.)*

-Section 31 (1-A)(4)(b) – Cancellation of license – Natural justice – Held – It is true that before cancelling the license, an opportunity of hearing should be given as provided by sub-section 1(a) – While opportunity to be given, should be reasonable, the reasonableness or otherwise of the opportunity given must be just keeping in view the time frame available: *Rajendra Singh Vs. State of M.P., I.L.R. (1996) M.P. 278, (S.C.)*

- Section 31(1)(b) – Action of licensing authority in cancelling licence – Licensing authority performs quasi-judicial function – Principles of natural justice have to be

followed in making enquiry regarding cancellation of licence – Constitution of India – Article 226 – Existence of alternative remedy – Not always a bar for issuance of writ of certiorari – Rule regarding exhausting alternative remedy – Is not a rule of law, but is a rule of policy, convenience and discretion: *Sukhlal Vs. The Collector, Satna*, I.L.R. (1973) M.P. 271, (D.B.)

-Section 32-Remission of licence fee-Permissible only when the Govt. itself withdraw licence during its currency-Trial Court's decree for proportionate remission of licence fee only on the basis of mistake in licence-Not proper-Damages-Grant of decree for-No evidence led by State as to periodical inspection showing that contractors did not close the shop half an hour before-Presumption has to be drawn in favour of plaintiff-Damages part of the decree upheld: *State Vs. Harishchand*, I.L.R. (2000), M.P. 1432 (D.B.)

-Section 32- Scope of-Non-issuance of license in pursuance of order granting a license-Amounts to withdrawal of license-Person not granted license not to complain of non-issuance of license-Remedy is to claim monetary compensation: *Dinshaw Framroz Bhapuna Vs. The State of M.P.*, I.L.R. (1959) M.P. 335, (D.B.)

– **Section 32, 62** - and General Licence Conditions framed thereunder and Foreign Liquor Rules, M.P., 1996, Rule 8, Clause 12 – General Licence Conditions amended prior to auction – Therefore the statutory condition of purchasing left over stock of outgoing licences is binding both on the State and the licence – State Government not under obligation to grant rebate or adjustment: *State Vs. M/s. Swami Traders*, I.L.R. (2001) M.P. 1495, (D.B.)

– **Section 33** – Surrender of licence – Notice given stating reasons for surrender – Excise Commissioner has to decide the question whether licensee entitled to remittance of licence fee after giving him opportunity – Collector cannot ask the licensee to pay the licence-fee of the remaining period unless the question of remittance referred to and decided by Excise Commissioner: *S. Avtar Singh Vs. State of M.P.*, I.L.R. (1989) M.P. 518, (D.B.)

– **Section 33** – Validity of the section – Held not ultra vires – Surrender of licence – Notice given stating reasons for surrender – Excise Commissioner has to decide the question whether licensee entitled to remittance of licence-fee after giving him opportunity – Collector cannot ask the licensee to pay the licence-fee of remaining period unless the question of remittance referred to and decided by Excise Commissioner: *S. Avtar Singh Vs. State of M.P.*, I.L.R. (1989) M.P. 518, (D.B.)

– **Section 46, 47 (1) and M. P. Mahua Rules, 1959, Rule 4** – Notification under Rule 4, dated 25-4-86 – Mahua possessed in 'belt area' without licence – Conviction under section 37 of the Act- Confiscation is discretionary – Fine in lieu of confiscation could be ordered : *Mohanlal Vs State of M. P.*, I L.R.. (1990) M.P. 648

– **Sections 46 and 47** – Provide for liability to confiscation and power to order confiscation: *State of M.P. Vs. Narayan Singh, I.L.R. (1972) M.P. 782*,

– **Section 47 (1)** – Confiscation is discretionary – Fine in lieu of confiscation could be ordered : *Mohanlal Vs State of M.P., I.L.R.. (1990) M.P. 648*

– **Section 48** – Scope of: *State of M.P. Vs. Narayan Singh, I.L.R. (1972) M.P. 782*

– **Section 48(b)** – Merely confers power to substitute money value for property which is liable to confiscation and is applicable where offence is sought to be compounded – Language not analogous to that of section 523 of Criminal Procedure Code: *State of M.P. Vs. Narayan Singh, I.L.R. (1972) M.P. 782*

– **Section 48(b)** – Word “release” in – Section 48(b) of the Excise Act – Refers to final release in lieu of paym.ent of the value of the property: *State of M.P. Vs. Narayan Singh, I.L.R. (1972) M.P. 782*

– **Section 49A** - Bail - Grant of, in offences under-Scope and considerations for : *Sheikh Salim vs. State of M.P., I.L.R.(1985) M.P. 324*

– **Section 61** – No bar to the exercise of powers under section 523 Criminal Procedure Code: *State of M.P. Vs. Narayan Singh, I.L.R. (1972) M.P. 782*

– **Section 62** - and Mahua Rules, M.P., 1959-Power of the State Government to regulate transit of Mahua within the State-A person desiring to transit Mahua from one State to another via State of Madhya Pradesh-No objection Certificate from the competent authority in terms of Circular dated 18.2.1991 issued by the Excise Commissioner, M.P. in exercise of powers conferred by Section 12 is a must :*M/s Mahesh Kumar Ramniklal & Co. Vs. District Excise Officer, Rajnandgaon, I.L.R. (1998) M.P. 165*

–**Section 62**–Foreign liquor Rules 1996–New excise policy–Scope of interference–Court would be slow to interfere with policy for grant of licences for manufacture and sale of liquor: *Mahesh Lavvanshi Vs. State, I.L.R. (2004) M.P. 737*

–**Section 62(e)(b) and (h)** - and rules framed under and Constitution of India, Articles 226 and 227 – Licence for opening of Liquor Bars – Rules framed under Section 62(e) (b), (h) – Are mandatory in so far as Excise Commissioner and Excise Collector are concerned – Grant of licences by Excise Commissioner and by Excise Collector without obtaining prior approval of State Govt. and in violation of rules – Liable to be cancelled – Suitable directions for closure of liquor Bars issued: *Tilak Raj Yadav Vs. State of M.P., I.L.R. (1987) M.P. 542, (D.B.)*

– **Section 62(1)(c)** – Rules framed under – Rule 11(c) Appeal to Revenue Authority to whom powers delegated by State Government – Not an appeal to Government – Petition by State Government for writ of certiorari – Maintainability: *The State of Madhya Pradesh Vs. The Board of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1965) M.P. 425, (D.B.)*

– **Section 62(2) (e), (f) and (b)** – Rules of general application framed there under- Rule IV- Condition to be satisfied before a license to manufacture or sale of country liquor or intoxicating drug can be granted : *Smt. Nanhibai Vs. The Excise Commissioner, M.P., Gwalior, I.L.R. (1964) M.P. 858, (D.B.)*

– **Section 62(f)** – Conditions of auction published in the official Gazette dated 6-1-1984 – Firm depositing earnest money but not producing registration certificate – Firm not entitled to offer bids – Deposit in the name of firm – Individual partner not entitled to offer bids – Instructions for auction published in the Gazette dated 6-1-1984 though administrative and not statutory rules – Authorities are bound to follow them: *S.S. Bhatia and Company, Rajnandgaon Vs. State of M.P., I.L.R. (1984) M.P. 425, (D.B.)*

– **Section 62(f)** – Instructions for auction published in the Gazette dated 6-1-1984 though administrative and not statutory rules – Authorities are bound to follow them : *S.S. Bhatia and Company, Rajnandgaon Vs. State of M.P., I.L.R. (1984) M.P. 425, (D.B.)*

– **Section 68** – Conditions for applicability – Things necessary to be seen whether an act is done in pursuance of the Act – Cause of action – Absence of cause of action different from plaint not disclosing cause of action – Distinction between two positions has to be drawn – Court-fees Act – Section 13 – Applies to a case where the plaintiff is called upon to pay Court-fees when the order of the trial Court dismissing the suit is set aside – Words “appellate Court” in – Refer to the Court in which court-fee was paid and which court-fee is to be refunded – Inherent power of the Court to refund Court-fee – Amount of refunded Court-fees cannot be included in schedule of costs: *State of Madhya Pradesh Vs. Gangacharan, I.L.R. (1976) M.P. 355,*

Excise Act, Madhya Pradesh (XII of 1950)

– **Section 34** – Does not compel levy of sentence less than the minimum on first offender: *Bisahulal Vs. State of M.P., I.L.R. (1969) M.P. 683,*

Excise Act, M.P. (II of 1960)

– **Section 62**, - M.P. Excise Rules, 1961, Rule-C, Sub-Rule VIII – Power of Collector to declare closed days – Petitioners vending liquor in specified shops by offering highest bid at auctions – On account of general elections, petitioners were required by Collectors

to close the shops and refrain from vending liquor-Held-Power of Collector to declare closed days is plenary-Licensee not entitled to relief in minimum stock guarantee nor to remission in license fee proportionate with days declared closed by Collector-Petition dismissed: *Ashok Kumar Sahu Vs. State of M.P.*, I.L.R. (1994) M.P. 85 (D.B.)

Excise (Amendment) Act, Madhya Pradesh (IV of 1961)

– **Section 34** - zSecond Proviso as amended –Award of sentence dependent upon gravity of offence and not upon plea of accused: *The State of M.P. Vs. Sarman*, I.L.R. (1965) M.P. 529,

– **Section 34** -Second Proviso as amended –Being “first offender” – Both a special and adequate reason – Things to be considered in awarding punishment: *The State of M.P. Vs. Sarman*, I.L.R. (1965) M.P. 529,

– **Section 34** - Second Proviso as amended – Requirements of – Award of sentence dependent upon gravity of offence and not upon plea of accused – Being “first offender” – Both a special and adequate reason – Things to be considered in awarding punishment, *The State of M.P. Vs. Sarman*, I.L.R. (1965) M.P. 529,

Excise (Amendment and Validation) Act, MP (XX of 1964)

– Excise Act became applicable to foreign liquor after amendment: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P.*, I.L.R. (1976) M.P. 207, (F.B.)

– **Grant of license regarding foreign liquor** – Does not involve any transfer of a right of sale from Government to licensee – State Government can only charge fee: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P.*, I.L.R. (1976) M.P. 207, (F.B.)

– **Section 5**, - as amended and Sections 18 and 21 – Enable grant of license in F.L.1: *M/s. N.K. Doongaji and Company, Katni Vs. State of M.P.*, I.L.R. (1976) M.P. 207, (F.B.)

Excise Licence

– **Clause 6** – Circumstances in which it comes into operation – Determination of cost price by Commissioner – Rules out fixation of price after inviting tenders – Expression “determined” and “such price shall be binding on the licensee” in – Implies fixation of cost price by Commissioner – “Cost price” in – Not cost of manufacture of 100% Mahua-based spirit – Includes profits of licensee – Fixing of cost price – Cannot be said to be done by State under “police powers” – Constitution of India – Article 226 – Directions not issued for enforcing or preventing breach of rights or obligations contractual in character: *M/s. United Excise, Ujjain Vs. State of Madhya Pradesh*, I.L.R. (1972) M.P. 32, (D.B.)

– **Clause 6** – “Cost price” in – Not cost of manufacture of 100% Mahua-based spirit – Includes profits of licensee: *M/s. United Excise, Ujjain Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 32, (D.B.)*

Clause 6 – Determination of cost price by Commissioner – Rules out fixation of price after inviting tenders: *M/s. United Excise, Ujjain Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 32, (D.B.)*

Clause 6 – Expression “determined” and “such price shall be binding on the licensee” in – Implies fixation of cost price by Commissioner: *M/s. United Excise, Ujjain Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 32, (D.B.)*

Clause 6 – Fixing of cost price – Cannot be said to be done by State under “police powers: *M/s. United Excise, Ujjain Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 32, (D.B.)*

Execution

-Decree-holder asked to produce Dakhla from compensation case to show what steps were being take in compensation proceedings-Production of *Dakhla* not necessary for further progress-Decree holder failing to produce such *Dakhla*-Execution case dismissed-Dismissal is only for statistical purpose-Fresh execution application-Amounts to continuation of the original execution petition-No question of limitation arises : *Ganpat Vs. Gendalal, I.L.R. (1964) M.P. 938*

-Executing Court, power of, to go behind the decree-Distinction between a decree which is a nullity and a decree which is not according to law-Decree which is passed on an unregistered Award-Decree not without jurisdiction-*Decree though valid not according to law* : *Moolchand Vs. Maganlal, I.L.R. (1964) M.P. 481, (F.B.)*

– **Executing court,** - Power of, to refuse execution on ground that decree became in executable: *Ramsingh Vs. Ramkaran, I.L.R. (1965) M.P. 897, (D.B.)*

– **Execution application filed without satisfying condition precedent** – Execution got dismissed – Limitation saved : *Chhatarsingh Vs. Jalamsingh, I.L.R. (1967) M.P. 596,*

– **Power of executing Court to go behind decree:** *Birdichand Vs. Punamchand, I.L.R. (1971) M.P. 932,*

-Whether particular execution is continuation of earlier execution-Question is one to be decided having regard to entire circumstances in which previous execution was dismissed : *Ganpat Vs. Gendalal, I.L.R. (1964) M.P. 938*

Executive Instructions

– **Not to be framed in such a way as to override provisions of laws:** *Messrs Phoolchand Narendra Kumar, Jabalpur Vs. State of M.P., I.L.R. (1974) M.P. 249, (D.B.)*

Ex-Parte Decree

– **No application under Order 9, rule 13, Civil Procedure Code** filed – Appeal against it under section 96(2), Civil Procedure Code – Cannot be converted into proceedings for setting aside ex-parte decree on grounds envisaged under Order 9, rule 13, Civil Procedure Code – Special remedy under Order 9, rule 13, Civil Procedure Code- Must be restored to for seeking setting aside of ex-parte decree – Practice – Ex-parte proceedings against defendant – Plaintiff must adduce evidence to prove his case to the satisfaction of the Court – Absence of defendant does not lighten the burden of proof upon him – No duty cast upon the Court to tell the plaintiff about sufficiency or otherwise of the evidence to prove his case: *Nagar Palika Nigam, Gwalior, through Commissioner, Nagar Palika Nigam Vs. Motilal, I.L.R. (1980) M.P. 39, (D.B.)*

Expenditure Tax, Act (XXIX of 1957)

– **Section 2(g), as amended** – Includes only spouse or minor child wholly or mainly depending on assessee for support of maintenance: *Rajkumarsinghi Vs. The Commissioner of Expenditure-Tax, M.P. and Nagpur, I.L.R. (1971) M.P. 384, (D.B.)*

– **Section 2(g), as amended** – Spouse or minor child not dependent for support or maintenance – Not included in the definition- Includes only spouse or minor child wholly or mainly depending on assessee for support of maintenance -Section 4(ii) – Expenditure incurred by spouse or minor child out of their independent income – Not liable to be included in the expenditure of assessee – Words “any expenditure incurred by any dependent from or out of any income or property transferred directly or indirectly to the dependent by the assessee” – Apply to individual assessee as well as Hindu undivided family – Latter part applicable to both – Interpretation of Statute – Use of comma in statute – Not a determining factor in construing statute – Statements of objects and reasons and speeches of members - Not admissible as extrinsic aid to interpretation of statutory provision: *Rajkumarsinghi Vs. The Commissioner of Expenditure-Tax, M.P. and Nagpur, I.L.R. (1971) M.P. 384, (D.B.)*

– **Section 4(ii)** – Expenditure incurred by spouse or minor child out of their independent income – Not liable to be included in the expenditure of assessee: *Rajkumarsinghi Vs. The Commissioner of Expenditure-Tax, M.P. and Nagpur, I.L.R. (1971) M.P. 384, (D.B.)*

– **Section 4(ii)** – Words “any expenditure incurred by any dependent from or out of any income or property transferred directly or indirectly to the dependent by the assessee” – Apply to individual assessee as well as Hindu undivided family – Latter part applicable to both: *Rajkumarsinghi Vs. The Commissioner of Expenditure-Tax, M.P. and Nagpur, I.L.R. (1971) M.P. 384, (D.B.)*

Explanation

– **Explanation II to Section 2 (g)** - of Sales Tax Act, C.P. and Berar, 1947 prior to 1950- *Vires of: M/s. Mohanlal Hargovinddas Vs. The State of M. P., I.L.R. (1959) M.P. 1035, (D.B.)*

Explosive Act, Indian (IV of 1884)

– **and Explosive Rules, 1940, Rule 93(1)** – Action for suspending licence, not supportable by Rule 93(1) – Illegal and unjustified act – Loss caused due to seizure of fire – Crackers and sealing of shop – No exercise of sovereign powers – State liable for damages – Actual loss not proved – Appellant entitled to nominal damages to vindicate his claim and to enforce legal right: *Sunderlal Vs. District Magistrate, Sagar, I.L.R. (1989) M.P. 422,*

Explosive Rules, 1940

– **Rule 93(1)** – Actual loss not proved – Appellant entitled to nominal damages to vindicate his claim and to enforce legal right: *Sunderlal Vs. District Magistrate, Sagar, I.L.R. (1989) M.P. 422,*

– **Rule 93(1)** – Loss caused due to seizure of fire – crackers and sealing of shop – No exercise of sovereign powers – State liable for damages: *Sunderlal Vs. District Magistrate, Sagar, I.L.R. (1989) M.P. 422,*

Extension of Laws Act, M.P. (XXIII of 1958)

– **Item No. 4 - of Part B of Schedule of Extension of Laws Act, Madhya Pradesh** – Not extended to whole of the State: *Bisahulal Vs. State of M.P., I.L.R. (1969) M.P. 683,*

– **Section 3(2)** – Does not extend that part of the law to the whole State after appointed day: *Bisahulal Vs. State of M.P., I.L.R. (1969) M.P. 683,*

– **Section 3(2)** – Opium (Amendment) Act, Madhya Bharat, 1955 – Section 9 – Section 9 becoming void from before appointed day i.e. 1.1.59: *Bisahulal Vs. State of M.P.*, I.L.R. (1969) M.P. 683

– **Section 3(3)** – Suits Valuation Act Extended to the Madhya Bharat Region: *Lachhoo Vs. Keshavlal*, I.L.R. (1976) M.P. 879,

– **Section 6** - Second Proviso – Rules in force in Mahakoshal Region on 31.12.58 – Made applicable to Madhya Bharat Region to which Act was extended: *Lachhoo Vs. Keshavlal*, I.L.R. (1976) M.P. 879,

-**Section 6**-Question of keeping alive old rights and liabilities by new Act to be decided by provisions of new Act, *Miss Jarbai Vs. Phirojsha*, I.L.R. (1960) M.P. 124, (D.B.)

F.O.R. Contract

- **Implication** – Does not necessarily throw an obligation on buyer to secure wagons – No analogy with F.O.B. contract: *Firm Jagannath Bhagwandas Vs. Firm M/s Khemraj Madanlal*, I.L.R. (1958) M.P. 257 (DB)

Factories Act (LXIII of 1948)

– **Section 4** – Petitioner Company not shown to be a part of Satna Cement works earlier – Holding separate factory licence not as a result of bifurcation under section 4 of Factories Act – Cannot be presumed to be part of Satna Cement Works – Not entitled to the benefit of concessional rate of electricity duty: *Birla Jute Industries Ltd., Calcutta Vs State*, I.L.R. (1986) M.P. 447 (DB)

– **Section 21** – Absolute character of obligation – Not to be water down by Importing consideration about practicability of requirement etc.: *Superintendent M/s Nandlal Bhandari Mills Ltd., Indore Vs. Employees State Insurance Corporation, Indore*, I.L.R. (1966) M.P. 611 (DB)

– **Section 21** – Die of punching machine – Whether dangerous part of machinery and needs safe-guarding – “Dangerous part of machinery” – Meaning of – Part of machine whether dangerous – Not to be judged on scientific principle requiring expert knowledge – Employees State Insurance Act, 1948 – Section 66 – Question of reimbursement of Corporation – Depends upon negligence of employer or wrongful act of employer and where no effective steps to protect injury to employee were taken – Section 51(a) – Temporary disablement benefit – Payable in addition to permanent partial or total disablement benefit whenever either is admissible: *M/s J.B. Mangharam and Co., Gwalior Vs. Employees State Insurance Corporation, Gwalior*, I.L.R. (1964) M.P. 128

– **Section 21** – Obligations imposed upon the factory under-obligations are absolute subject to what section exceptis – Absolute character of obligation – Not to be water down by importing consideration about practicability of requirement etc. – Printing machine consisting of calendar drum and copper design roller with a nip in between – That part is dangerous part of machine – Workman working on such machine – Workman cannot be said to expose himself to the risk unconnected with his employment: *Superintendent M/s Nandlal Bhandari Mills Ltd., Indore Vs. Employees State Insurance Corporation, Indore, I.L.R. (1966) M.P. 611(DB)*

– **Section 21** – Printing machine consisting of calendar drum and copper design roller with a nip between – That part is dangerous part of machine – Workman working on such machine – Workman cannot be said to expose himself to the risk unconnected with his employment: *Superintendent M/s Nandlal Bhandari Mills Ltd., Indore Vs. Employees State Insurance Corporation, Indore, I.L.R. (1966) M.P. 611(DB)*

– **Section 21(iv)(c)** – Which dangerous part of machinery needs to be fenced – Fencing of machinery not done – Part of machinery dangerous – Unsafe to persons working there-employer’s negligence in not fencing it proved – Liability of Employer for injury caused to worker: *Jiwaji Rao Cotton Mills Ltd., Gwalior Vs. The Employees State Insurance Corporation, Gwalior, I.L.R. (1965) M.P. 148*

– **Section 29 (1)(a)(ii)** – Tackle workable by two diagonally opposite chains – Fourth chain which was extra allowed to remain in state of disrepair – There is no contravention of provision – Accused did not commit any offence: *The State of M.P. Vs. N.K. Bhattacharya, I.L.R. (1971) M.P. 350 (DB)*

– **Section 79 and 25 F** – Liability for holiday wages – Liability for compensation for retrenchment – Are contingent liability: *The Chhaganlal Textile Mills Private Ltd., Bhopal Vs. The Commissioner of Income Tax, Madhya Pradesh Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 145 (DB)*

– **Sections 92 and 106** – Words “continuing offence” – Meaning of – Section 106 – Scope of – Limitation Act – Section 23 – Applicability of principle to continuing offence: *The State of M.P. Vs. Uma Shankar, I.L.R. (1963) M.P. 518 (DB)*

– **Section 105** – Personal presentation of complaint by District Magistrate not required – District Magistrate forwarding complaint to Magistrate authorized to try the offence is sufficient compliance of requirement: *State Vs. S.P. Mathur, I.L.R. (1972) M.P. 589 (DB)*

- **Section 106** – Scope of: *The State of MP Vs. Uma Shankar, I.L.R. (1963) M.P. 518 (DB)*

Family Courts Act (LXVI of 1984)

– **Sections 3, 4 and 8** – Presumption as to Establishments of Family court – Section 8 – Operates only after the appointment Judges to preside over the family courts and start of their effective proceedings – Till Then jurisdiction of District Court or any subordinate Civil Court does not cease: *Shanker Kanojia Vs. Maya Bai, I.L.R. (1990) M.P. 262 (DB)*

– **Section 8** – Operates only after the appointment of Judges to preside over the family Courts and start of their effective proceedings – Till then jurisdiction of District Court or any subordinate Civil Court does not cease: *Shanker Kanojia Vs. Maya Bai, I.L.R. (1990) M.P. 262 (DB)*

– **Sections 19(1), 19(4), 19(5)** - Hindu Marriage Act, 1955–Sections 24, 25 and Criminal Procedure Code, 1973 – Section 125 – Matrimonial case – Order of maintenance passed by Family Court under Section 125 Cr.P.C. – One of Civil nature – Revision alone could be maintainable – Neither criminal revision nor civil revision – Only a Revision Petition simpliciter – To be heard by Single Bench of the High Court – No limitation prescribed – Limitation would be same as for Civil Revision under Section 115 C.P.C. – Hindu Marriage Act, Sections 24 and 25 – Order of interim maintenance – Interlocutory order – No appeal or revision provided – Remedy available to aggrieved party could be only under Article 227 of the Constitution: *Aruna Choudhary Vs. Sudhakar Choudhary, I.L.R. (2004) M.P. 834 (DB)*

– **Section 19, -** Hindu Marriage Act, 1955, as amended by Marriage Law (Amendment) Act, 2003, Section 13–B and 19 – Joint petition for divorce by mutual consent – Jurisdiction – When wife is petitioner, petition can be filed in the Court having jurisdiction over the place of her residence – Order of Family Court set aside and case remanded: *Smt. Uma Tiwari Vs. Vikrant Tiwari, I.L.R. (2005) M.P. 604 (DB)*

– **Section 19(4)** – Order of maintenance passed by Family Court under Section 125 Cr. P. C. – One of Civil nature – Revision alone could be maintainable – Neither criminal revision nor civil revision – Only a Revision Petition simpliciter – To be heard by Single Bench of the High Court: *Aruna Choudhary Vs. Sudhakar Choudhary, I.L.R. (2004) M.P. 834 (DB)*

– **Section 19(4)** – Revision – No limitation prescribed – Limitation would be same as for Civil Revision under Section 115 C.P.C: *Aruna Choudhary Vs. Sudhakar Choudhary; I.L.R. (2004) M.P. .834 (DB)*

Family Pension Scheme, 1971

– **Sections 6-A, 17, 31-A** – Even if exemption is there M.P.E.B. not barred from enrolling its employees as member of Family Pension Fund – The only embargo is age bar – ‘Option’ to be exercised is not independent – The acquiescence of employee in continued deduction made from wages would be deemed exercise of option by employee to be a member of the Fund – Petitioner’s deceased husband was member of the fund and had reckonable service – Petitioner poor illiterate lady – Accepted the refund – Would not disentitle her from receiving pension: *Smt. Kamlabai Vs. The Secretary, M. P. Electricity Board, I.L.R. (1992) M.P. 618 (DB)*

Fatal Accidents Act, Indian (XIII of 1855)

– **Governs determination of liability as substantive law:** *Mst. Kamladevi Vs. Kishanchand, I.L.R. (1974) M.P. 325 (DB)*

– **Section 1-A** – Compensation is not limited to the cash payment which the deceased may be expected to make for support of the claimants – Multiplier – Out moded rule – Common Law of equity, Justice and good conscience should be applied in awarding compensation – Award enhanced suit decreed in toto: *Smt. Gindia Bai Vs. Chairman, M.P.E.B., I.L.R. (1992) M.P. 278*

– **Section 1-A** – Loss not limited to cash payment which deceased may be expected to make – Includes loss of service – Principle of assessing damages: *Manoharlal Gupta Vs. The M.P. Electricity Board, Jabalpur, I.L.R. (1979) M.P. 817 (DB)*

– **Sections 1-A and 2** – Distinction between sections 1-A and 2 – Section 1-A permits award of compensation for pecuniary loss to relatives specified therein – Brother of the deceased not include – Compensation for economic loss to the estate of the deceased – Can be claimed by brother of the deceased also – Determination of compensation for economic loss to the estate – Consideration of: *Shanker Rao Vs. M/s Babulal Fouzdar, Hoshangabad, I.L.R. (1983) M.P. 634 (DB)*

– **Section 2** – Contemplates filing of one suit though Legal Representatives of deceased have distinct interest: *The Amalgamated Coal Fields Ltd. Parasias Vs. Mst. Chhotibai, I.L.R. (1978) M.P. .60 (DB)*

Finance Act (XXV of 1950)

– **Section 12** – System of accounting not cash basis but one of adjustment – Deduction of bonus to be given in that accounting year in which liability to pay arose – Mercantile system of accounting – Deduction not to be given for liability which has not arisen or incurred – Deduction not to be given for contingent or future liability: *The Swadeshi Cotton & Flour Mills Private Ltd, Indore, Vs. The Commissioner of Income-Tax, Nagpur, I.L.R. (1961) M.P. 434 (DB)*

Finance Act (XVIII of 1956)

– **Section 18** – Removes bar of 8 years – Amended provisos provide safeguard to assesses-Nature of safeguard: *Rustomji Vs. Income-Tax Officer, Special Investigation Circle, Indore, I.L.R. (1965) M.P. 555 (DB)*

Finance (No.2) Act (XX of 1962)

– **Section 2(5)** - and Income-tax (Determination of Export Profits) Rules, 1962, Rule 2(1) and 2(3) – Calculation of tax deductions allowance under section 2(5) – The word ‘turnover’ occurring in Rule 2(3) – Includes amounts received by assessee company as drawback of customs duty and refund of Excise duty in connection with its export business but not the value of import entitlements: *The Gwalior Rayon Silk Mfg.(WVG.) Co. Ltd., Birlagram Vs. The Commissioner of Income-Tax, M.P. I, Bhopal, I.L.R. (1983) M.P. 466 (DB)*

– **Section 2(5)** - and Income-tax (Determination of Export Profits) Rules, 1962, Rule 2(1) and 2(3) – The word ‘turnover’ occurring in rule 2(3) – Includes amounts received by assessee company as drawback of customs duty and refund of excise duty in connection with its export business but not the value of import entitlements: *The Gwalior Rayon Silk Mfg. (WVG.) Co. Ltd., Birlagram Vs. The Commissioner of Income-Tax, M.P. I, Bhopal, I.L.R. (1983) M.P. 466 (DB)*

Finance Act, 1982

– **Section 51** - and Excise Rules, 1944, Rules 9 and 49 – Giving retrospective effect to Rules–Is not violative of Article 19(1)(g) of the Constitution of India: *Tata Exports Limited, Dewas Vs. Union of India, I.L.R. (1986) M.P. 425 (DB)*

Finance Act, Central Provinces and Berar (XIII of 1938)

– **Validity of – Section 7(1)** – Mentions authority Competent to determine liability of person and procedure to be followed – Profession, Trade, Calling and Employment Taxation Rules, C.P. and Berar, 1942 – Rules 4, 6 and 7 – Provide machinery for assessment and for raising objections – Section 9(2) – Provides for appeals: *Shankar Krishna Nirkhe Vs. The Taxing Officer, District Treasury, Indore, I.L.R. (1970) M.P. 87 (DB)*

– **Section 7(1)** – Mentions authority competent to determine liability of person and procedure to be followed: *Shankar Krishna Nirkhe Vs. The Taxing Officer, District Treasury, Indore, I.L.R. (1970) M.P. 87 (DB)*

– **Section 9(2)** – Provides for appeals: *Shankar Krishna Nirkhe Vs. The Taxing Officer, District Treasury, Indore, I.L.R. (1970) M.P. 87 (DB)*

Finance Act, Indian (XXVI of 1997)

– **Sections 62, 64 and 65** – Voluntary Disclosure of Income Scheme, 1997 – Power of IT department – Actual investment not disclosed voluntarily – Lessor amount of income shown in the declaration under VDIS – Income tax Department within the jurisdiction to conduct investigation and issue notice therefore: *Smt. Shashi Devi Vs. Income Tax Officer, Chhindwara, I.L.R. (2001) M.P. 310*

Finance Act (II of 1998)

– **Section 88** – Declaration under – Pendency of appeal pre-requisite – Appeal dismissed for want of prosecution but recalled subsequent to filing declaration – Order recalling dismissal relates back to the date of original Appeal – Appeal deemed to be pending on the date of declaration: *Union of India Vs. Shri Radhika Prakashan (Raipur) Private Limited Bhopal; I.L.R. (2004) M.P. 162 (DB)*

Financial Code

– **Volume I, Rule 84** – Makes record of date of birth in service book conclusive – No Alteration possible – Servant has to disclose date of birth along with confirmatory evidence – Estoppel – Estoppel by negligence when arises: *Makradhwaj Sing Vs. State of M.P., I.L.R. (1978) M.P. 654 (DB)*

– **Rule 84** – Has to be given purposive and acceptable interpretation – Once the employee gives declaration and is signatory to it the same is binding on him – It cannot be said that if the entry is vitiated employer would be estopped to rectify the same: *Baldeo Prasad Vs. State of M.P., I.L.R. (2004) M.P. 731*

– **And Constitution of India, Article 16** – Equality guaranteed under Article 16 also extends to affording protection against arbitrary and discriminatory nature of termination of services – Natural Justice – Principles of – Applies also to cases of termination of appointment already made – Termination of appointment without affording reasonable opportunity to represent against it violates principles of natural justice – Termination order liable to be quashed – Constitution of Selection Committee for selection of Assistant Food and Civil Supplies Inspectors – Legality of – No provision for necessary quorum for holding meeting of Committee – Absence of any member of Committee in any particular meeting – Effect of – Appointment of Under-Secretary as a member of Selection Committee not by name – Any under-Secretary may attend the meeting – Two Under-Secretaries attending the meeting – Effect of – Select list maintained by individual members of Committee – Overwriting or changes in it – Effect of – Some persons from select list not appointed – Whether appointment of petitioners and other vitiated: *M.P. Khadya Avam Nagrikpurti (Karyapalik) Karmachari Sangh, South T.T. Nagar, Bhopal Vs State of M.P., I.L.R. (1985) M.P. 602*

Food Corporation of India (Staff) Regulations, 1971

– **Regulation 32 A** – Absence without leave – Misconduct – Name of petitioner no. 2 struck off from the rolls of employer on account of long absence from duty and failure to report back to work inspite of notice – Long absence is misconduct – Employee can be punished only by way of disciplinary action – Name could not be struck off from the rolls of employer by treating absence as abandonment of service – Departmental Enquiry cannot be dispensed with by issuing departmental instructions – Circular to the extent authorizing employer to treat absence from duty as deemed abandonment is invalid as statutory regulations cannot be nullified by executive instructions: *All India Trade Union of Food Corporation Employees and Workers Vs. Food Corporation of India: I.L.R. (1994) M.P. 58 (DB)*

– **Regulation and 58,74 (1) (d)** - Constitution of India, Article 14 and Central Civil Services (Classification, Control and Appeal Rules, 1965, Rule 29(1)(v) – Review – Exercise of power for enhancing penalty for misconduct of the employee – Misconduct admitted by the employee – No enquiry is needed under Regulation 58 – Regulation 74 – No period of limitation prescribed for exercise of powers of review – Period of limitation prescribed for an appeal under Regulation 70 – Not applicable to powers of review under Regulation 74 – Limitation for exercise of powers of review under Civil Services (Classification, Control and Appeal) Rules, 1965 also not applicable – However, powers of review under Regulation 74 can be exercised only within a reasonable time – Exercise of power of review after the date on which the penalty was to be served out or at any rate, after the date on which the petitioner was considered and found fit for promotion by the reviewing authority itself is arbitrary and liable to be set aside: *Mahadeo Prasad Vs. Regional Manager, Food Corporation of India, Bhopal, I.L.R. (1986) M.P. 74 (DB)*

Food-grains Dealer's Licensing Order, Madhya Pradesh, 1958

– **Clause 3** – Essential Commodities Act Section 7 – Order granting license mentioning the grains in which business can be carried – License omitting particular grain – Business in that particular grain carried on – No breach is committed – Dealer not liable to punishment – Mens-rea necessary ingredient of offence: *Ram Prasad Vs. R.K.Dube, Assistant Food and Civil Supply Inspector, Jabalpur, I.L.R.(1968) M.P. 825*

– **Clause 3(1)** – Breach of – Involves a guilty mind-Mens rea I is essential ingredient of an offence – “Dealer” in – Includes a person who purchases bulk quantity and endorses railway receipt in course of business dealings: *State of Madhya Pradesh Vs. Laxminarayan, I.L.R. (1972) M.P.185 (DB)*

– **Clause 3(1)** – “Dealer” in – Includes a person who purchases bulk quantity and endorses railway receipt in course of business dealings: *State of Madhya Pradesh Vs. Laxminarayan, I.L.R. (1972) M.P. 185 (DB)*

Food-grains Dealer's Licensing Order, Madhya Pradesh, 1965

– **Definition of Dealer** – Excludes agriculturist and persons not engaged in the business of purchase and sale of food-grains – A rebuttable presumption can be drawn from storage of food grains of 10 quintals or more is for purpose of sale: *Prem Sahu Vs. State of Madhya Pradesh, I.L.R. (1977) M.P. 712*

– **Does not indicate grounds for refusing renewal of licence or grant of licence** – Grant of renewal of licence – Should be normal rule – Clause 3 – Does not confer absolute power – Power to be exercised in reasonable manner – Executive instructions – Not to be framed in such a way as to over-ride provisions of law – Clause 5(4) – Does not lay down that separate licences are not to be granted to different firms when some partners are common – Clause 7 – Does not indicate nature of reasons for grant or refusal to grant licence or its renewal – Provision to be read in context of other provisions – Reasons for grant or refusal of licence to be judged from point of public interest – Order issuing licence must have *nexus* to main object i.e. control of production, supply etc. essential to the life of the community in general – Order refusing licence – Bad if no opportunity given to the licence-holder to have his say and reasons recorded in writing for the Same – Rules of natural justice – Rules vary according to varying constitutions of statutory bodies and rules under which they have to act – Clause 7 – Licensing authority acts *quasi-judicially* – Matter not resting on subjective satisfaction of collector: *M/s Phoolchand Narendra Kumar, Jabalpur Vs. State of M.P., I.L.R. (1974) M.P. 249 (DB)*

– **Grant or renewal of licence** – Should be normal rule: *M/s Phoolchand Narendra Kumar, Jabalpur Vs. State of M.P., I.L.R. (1974) M.P. 249 (DB)*

– **Form B** – Conditions of license-constitute part of Order itself – Breach of conditions thereof – Amounts to contravention of order – Expression “complete his counts for each day on the date on which they relate” in clause 3(ii) of license in form B – Interpretation of- clauses (ii) and (iii) of para 3 of Licence in form B – Meaning of – The word ‘elsewhere’ in clause (iii) thereof – Of wider connotation and includes any premises – Section 11(1) (D) – Power to search, seize and remove hereunder – Not restricted to food grains in the process of transport and removal – Interpretation of statutes – rules of: *Laxminarayan Rice Mill, Lanji Vs. State of M.P., I.L.R. (1983) M.P.393*

– **Clauses 2(a), 3(1), 3(2) and 11** - and Essential Commodities Act (X of 1955), Section 3/7(1)(a)(ii) – The word “Dealer” in clause 2(a) – Connotation of – Notification

of State Govt. prescribing limit of 4 quintals only not requiring any licence – Accused found to be in possession of ‘*dhan*’ more than the prescribed limit – Provision of clause 3(1) of the Licensing order attracted – Presumption under clause 3(2) – Not rebutted by accused – Accused is deemed to have stored “*dhan*” for the purpose of sale – Requirement to record “reason to believe” for effecting entry, search and seizure etc. under clause 11 – When necessary: *Dindayal Vs. State of Madhya Pradesh, I.L.R. (1985) M.P. 51*

Food Grains (Restriction on Border Movement) Order, Madhya Pradesh, 1959

– **Section 3, - Proviso** – Word “Market” in – Meaning of: *Chhagan Vs. State of M.P., I.L.R. (1965) M.P. 846*

Food Regulations

– **Imply vicarious liability on absentee principal:** *Ramdayal Vs. The State, I.L.R. (1967) M.P. 831*

(Foodstuffs) Civil Supply Distribution Scheme, M.P. Foodstuffs (Distribution) Control Order, M.P. 1960

– **Essential Commodities Act, 1955, Sections 3, 7** – Question under Reference that whether breach of scheme framed in exercise of executive powers of State Govt. under Article 162 of Constitution of India can be inferred as part of Control Order – Held – Principle of incorporation by reference permissible when two enactments are *pari materia* whether contemporary or not – No indication that by virtue of such principle scheme framed under executive power can be treated as part of order having force of law – View taken in *Mohan’s case* correct – Reference answered accordingly: *Darwarilal Dubey Vs. State of M.P., I.L.R. (1994) M.P. 480 (DB)*

Food Stuffs (Distribution) Control Order, M.P., 1960

– **And Essential Commodities Act (X of 1955)** – Section 3 read with section 7 – Contravention of provisions of order of 1960 – Prosecution for – Material necessary for entering conviction – Transport of sugar by dealer from place of issue of stock to his shop – Checking during transit – Stock Register not seized – Accountability of stock on road during transit – Whether offence made out: *Narayandas Alias Narayanpuri Vs. State of M.P., I.L.R. (1987) M.P. 461*

– **Clauses 14 and 15** - and Essential Commodities Act (X of 1955), Section 3 and 7 – Conviction of accused under Section 7 read with Section 3 for breach of clauses 14 and 15 – Illegal and not sustainable consequent on the omission of these clauses w.e.f.

30.10.1980 by clause 4 of amending order: *Smt. Kiran Jain Vs. State of M.P., I.L.R. (1990) M.P. 235*

– **Published in M.P. Rajpatra**, - Part I, dated 5-11-1960 at page 1396 – Clause 2(d) – Definition of expression ‘Government Scheme’ In – Postulates the ‘Scheme’ made in exercise of its executive power of State – Does not confer any power to make scheme – The ‘Scheme’ not deemed to be made in exercise of the power conferred by the Food Stuffs (Distribution Control) Order, 1960: *Mohan Vs. State of M.P., I.L.R. (1990) M.P. 337*

Foreign Liquor Rules

– **Application for renewal of licence in form FL-3** – Suit for declaration and mandatory injunction – Permission of the Court to dispute with notice: *Municipal Corporation, Murwara-Katni, Katni Vs. Lalchand Jaiswal, I.L.R. (2001) M.P. 555*

– **Election Commission accorded its approval to implement the policy** – Policy not arbitrary, discriminatory or malafide: *Mahesh Lavvanshi Vs. State, I.L.R. (2004) M.P. 737*

- **Mere presumption of Excise Commissioner under the Rules to use such labels on the product** – Inconsequential – Because Excise Commissioner not concerned with the rights of the parties – Injunction order rightly granted – No interference in appeal: *Cox Distillery Vs. McDowell & Company Ltd., I.L.R. (2001) M.P. 79*

– **Rule II(iii) and IV** – Fee payable in respect of license – Basis – Change of rate of fee after 31-3-64 – Changed rate not applicable to foreign liquors already brought on premises but remaining unsold – Rule IV – Not applicable to licenses issued before 1-4-64 – Construction of amendment incorporated in Rule IV – Interpretation of Statute – Principle for determining retrospectivity of statute – Rule IV – Words “Balance of stock” in – Implication of – Meaning of word “enhancement” in – Means enhancement made subsequent to 1-4-64 – General License Conditions Part C, Rule 25(a) – Purpose of the clause – Words and Phrases – “Retain” – Meaning of : *Tikamdas Vs. State of M.P., I.L.R. (1967) M.P. 668 (DB)*

– **Rule 41-** and Brewery rules, M.P., 1970, Rule 41 – No conflict between the two: *Lilasons reweries (P) Ltd., Bhopal Vs. State of M.P., I.L.R. (1984) M.P.19 (DB)*

Foreigners Act (XXXI of 1946)

– **Section 3 (2)(c)** – State Government authorized to order a foreigner to quit India by virtue of authority delegated by the president under Article 258 of the Constitution – Notification under the Foreigners Order 1948 – District Superintendent of Police as

civil authority has no power thereunder to call upon a foreigner not to remain in India – Power only in Central Government or State Government – Accused committed no offence in not complying with the said order for quitting India: *The State of M.P. Vs. Mumtazali*, I.L.R. (1959) M.P. 427 (DB)

– **Section 5** – Agreement of partnership in the circumstances – Not against public policy: *M/s Bachomal Sadoromal, Raipur Vs. Milkiram*, I.L.R. (1979) M.P. 162

– **Section 5** – Partnership does not mean assumption of a different name: *M/s Bachomal Sadoromal, Raipur Vs. Milkiram*, I.L.R. (1979) M.P. 162

– **Section 5** – Prohibits changing of name or assume a different name without permission of Central Government: *M/s Bachomal Sadoromal, Raipur Vs. Milkiram*, I.L.R. (1979) M.P. 162

– **Section 9** – Onus of proof that a person is not a foreigner – Onus on person against whom order is made – Constitution – Article 5 – Domicile of a dependent – Changes according to domicile of person on whom he is dependent – Cannot acquire domicile of his choice by his own act – Remains unchanged till changed by his own act – Domicile of minor – Determined and changed with that of his father: *Usman Ali Vs. The State of M.P.*, I.L.R. (1963) M.P. 1049 (DB)

Forest Act, Indian (XVI of 1927)

– **Rules made thereunder** – Does not contain provision regarding the sale of forest produce or goods by public auction: *Sardar Ajitsingh Vs. The Chief Conservator of Forests*, M.P. Rewa, I.L.R. (1967) M.P. 850 (DB)

– **The expression specified local limit in** – Connotation of: *Itarsi Timber Merchants Association, Itarsi Vs. State of M.P.*, I.L.R. (1986) M.P. 1 (DB)

– **Section 25** – Rules 55, 56, 6(1) (4) – Forest roads not public highways – Persons have no unrestricted right of user – State Government or Forest Department has right to impose levy for the use: *Anand Transport Company Private Ltd. Raipur Vs. The Divisional Forest Officer Raipur*, I.L.R. (1958) M.P. 640 (DB)

– **Sections 26(1)(ga)(Cha), 41(2)(Kha)(Ga)(Gha), 42 and 69** - and Criminal Procedure Code, 1973 (II of 1974), Section 438 – Application for grant of anticipatory bail – Maintainability: *Arun Kumar Vs. State*, I.L.R. (2000) M.P. 1323

– **Section 32** – Rules framed there under – Do not authorize general levy of royalty – Rules – Not applicable to liquor contractors who have not agreed to avail of privileges of removing forest produce – Words and phrases “royalty” – Meaning of –

Important feature of royalty: *Surajdin Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 202 (DB)*

– **Section 52** - (As amended by M.P. Amendment Act, 1983 – Seizure and confiscation of the Truck without notice to owner of property – Held – It would always be the duty of the Forest Department before proceedings to confiscate the property to issue notice to all concerned – It would also be the duty of the Authority to inquire about ownership of the property so that the person having interest or interested in the property is issued a notice and is heard in accordance with the spirit of the Act – When the law provides that notice has to be issued, so that the person whose property is under the threat of confiscation may prove that the property was used without his knowledge or connivance, then non-issuance of notice and non-grant of an opportunity to such person would certainly vitiate the order of confiscation - Petition Partly allowed. : *Mitthanlal Mishra Vs. State Government of M.P., I.L.R.(1997) M.P. 71*

– **Section 52** - (before its Amendment by Indian Forest M.P. Amendment) Act, 1983 and Section 55 – Confiscation of vehicle used for committing forest offence – Whether forest officers are authorized to confiscate – M.P. Amendment Act cannot be applied retrospectively: *Ahmadji Vs. State of M.P., I.L.R.(1985) M.P. 135 (DB)*

– **Section 52-A** – Confers Power on the Appellate authority to initiate suo motu action within 30 days from the date of receipt of the copy of order – Order of confiscation should be understood to convey the meaning of the order passed in the confiscation proceeding – Appellate Authority called for the records and notices were issued within 30 days of receipt of records – Appellate authority complied with the provision: *Sohan Lal Kesari Vs. State, I.L.R. (2001) M.P. 919*

– **Section 68** – Term “Value” in – Comprehensive and includes market value – The mode of valuation – Entirely within the discretion of Forest Officer: *Birsingh Vs. M.P. Government, I.L.R. (1957) M.P. 423 (DB)*

– **Section 82** - and C.P. Land Revenue Act – Section 225 (c) – Forest in malguzari villages vesting in State – Governed by Forest Act – Recovery of sale price of forest produce – Recovery can be as arrears of land revenue – Deputy commissioner – Power to manage and dispose of the forests – Constitution, Article 299(1) – Provision mandatory – Meant to safeguard interest of Government – Acceptance of bid by Government or its authorized servants – Binding contract with person offering bid is created – Power of Government to ratify contract: *Mulamchand Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 513 (DB)*

– **Section 82** – Confers power to recover defaulted installment as arrears of land revenue: *Gopaldas Vs. The State of Madhya Pradesh, Through Collector, Betul, I.L.R. (1978) M.P. 474 (DB)*

– **Section 82** – The amount of deficiency on holding second auction – Amounts to a loss and does not come within the meaning of price of forest produce – Not recoverable as arrears of Land Revenue: *The State of Madhya Pradesh Vs. Nagarmal*, I.L.R. (1962) M.P. 555 (DB)

– **Section 83** – Contemplates two stages – Where there is power of seizure, there is power of stoppage of work also: *State of M.P. Vs. Sardar Bootasingh*, I.L.R. (1977) M.P. 317 (DB)

– **Rules 3 and 4** – Constitution of India – Article 19(1) (f) and (g) – Rules 3 and 4 not contrary to fundamental rights guaranteed under Article 19(1) (f) and (g) – Article 301 – Preconstitutional statutory provision continued as existing law – Rules and Bye – Laws framed under that provision not affected: *Virji Lalji Patel and Co., Jabalpur Vs. State of M.P.*, I.L.R. (1965) M.P. 540 (DB)

Forest (Conservation) Act (LXIX of 1980)

– **Forest Act, Indian (XVI of 1927)** - and Mines & Minerals (Regulation and Development) Act, (LXVII of 1957) – Applicability of in forest matters: *Hindustan Aluminum Co. Ltd. Bombay Vs. State of M.P.*, I.L.R.(1987) M.P. 595 (DB)

– **Forest Act, Indian (XVI of 1927)** - and Mines & Minerals (Regulation and Development) Act, (LXVII of 1957) – Lease of forest Land/Reserved forest land for mining/surface operation after coming into force of forest (Conservation) Act, 1980 – State Govt. has no powers to grant permission – Even in leases granted before the Act came into force and mining/Surface operations not commenced and area of the lease yet to be broken out – Sanction of Central Govt. necessary – Interpretation of statute – Different enactments to be construed to avoid repugnancy to each other – Forest Conservation Act, Forest Act, Indian and Mines and Minerals (Regulation and Development Act) – Applicability of in forest matters: *Hindustan Aluminum Co. Ltd. Bombay Vs. State of M.P.*, I.L.R. (1987) M.P. 595 (DB)

Forest Contract Rules

– **Rules 8 and 29**, - Forest Act, Indian (XVI of 1927), Section 83 and Contract Act, Indian (IX of 1872), Section 73 – Consideration of contract payable in installments – plaintiff defaulted in paying installment – Breach committed – Government within its right to stop working of contract - Interest on damages cannot be awarded: *Jugal Kishore Asati Vs. State of M.P.*, I.L.R. (1981) M.P. 307 (DB)

– **Rule 21 (1)** – Provides for section-wise working- Section-wise working has two fold purpose – Does not clothe contractor with any kind of right to work only one Section leaving others untouched: *State of M.P. Vs. Sardar Bootasingh, I.L.R. (1977) M.P. 317 (DB)*

– **Rules 28 and 29** – Deal with failure of purchaser after contract in writing is executed – Offer of bid accepted subject to condition of auction – Implied contract comes into operation such contract not governed by Article 299 of the Constitution: *K.P. Choudhary Vs. The State of Madhya Pradesh, I.L.R. (1962) M.P. 29 (FB)*

– **Rule 29(1)** – Divisional Forest officer – Power of, to terminate contract – Rule 29(2) – Relinquished material after termination of contract becomes property of government – Rule 29(2) – Gives discretion either to recover defaulted installment as arrears of land revenue or to re-sell the contract – Sale of Goods Act, 1930 – Section 54 – Provision in , is subject to contract to contrary – Forest Act, 1927 – Section 82 – Confers power to recover defaulted installment as arrears of land revenue – Sale of goods Act – Section 54 (4) – Gives right to unpaid seller to claim damages for rescission of contract – Rescission does not result in total annulment of contract: *Gopaldas Vs. The State of Madhya Pradesh, Through Collector, Betul, I.L.R. (1978) M.P. 474 (DB)*

– **Rule 29 (2)** – Confers discretion on officer either to recover the balance of money or to treat contract as cancelled: *State of M.P. Vs. Sardar Bootasingh, I.L.R. (1977) M.P. 317 (DB)*

– **Rule 29 (2)** – In case of default of payment of installment – Conservator of forests can terminate contract: *State of M.P. Vs. Sardar Bootasingh, I.L.R. (1977) M.P. 317 (DB)*

– **Rule 29 (3)-(e)** – Power to resell when can be exercised: *State of M.P. Vs. Sardar Bootasingh, I.L.R. (1977) M.P. 317 (DB)*

Forest Financial Rules

– **Rule 125** – Power of Chief Conservator of Forests to step in when interests of Government are discovered to be suffering: *State of M.P. Vs. Firm Gopichand Sarju Prasad, Rewa, I.L.R. (1974) M.P. 103 (DB)*

Forest Rules, Indian

– **Rule 33** – Contract between forest contractor and his assignee to work forest – Contract not void – Contract binding on parties though not on Government: *Harkaran Vs. Champalal, I.L.R. (1961) M.P. 741*

Forum

– **Suit based on Tort** – Term in contract regarding forum cannot be enforced: *Messrs Thakurdas Bhudarsao, Balaghat Vs. The Industrial Stores Company, Bombay, I.L.R. (1975) M.P. 1093*

Freedom Fighter's Pension Scheme, 1972

– **Column 'DURATION' Note (i)** – Recipient entitled for pension from date of application – Petitioner entitled for pension from the date of her application and also to the pension for the period her husband was deprived of – Delay on the part of Respondent – Once entitlement is established the amount has to carry interest till payment is made: *Smt. Kamla Bai Vs. Union of India, I.L.R. (2000) M.P. 489 (DB)*

Function of Government

– **Executive function** – May include legislative and judicial powers – *Quasi-judicial* decision – Implications of Motor Vehicles Act, 1939 – Section 68-D – Functions performed under – Are administrative functions, Though the process is *Quasi-judicial* – Functions under Section 68-D are executive, *Quasi-Judicial* and also legislative – Functions can be regulated by rules of business – Delegations of *Quasi-Judicial* and *Quasi-legislative* functions – Validity – Section 68-D and State Road Transport Services (Development) Rules, Madhya Pradesh, 1959, Rule 6 – Confer no power on Governor – Functions of State Government – Can be discharged according to rules of business – Can be performed by a person duly authorized under rules of business – Section 68-D (2) and Supplementary Instructions, Para 3 – Minister, Power of, to interfere with the order of Special Secretary – Rules of Business – Cannot override statutory provisions regarding particular functions or business – Rules of Business – Rule 13 – Supplementary instructions, para 2 – Delegations of power of State Government under Section 68-D (2) without reference to particular scheme – Validity – Authority in general terms on special Secretary sufficient – Not necessary to make an order of allocation with reference to any existing scheme before delegating power to Special Secretary – Things necessary to be shown to prove *mala fides* of the scheme – Nature of objections which can be raised to the draft scheme – Enquiry under Section 68-D(2) – Cannot be regarding conclusion or otherwise of the requisite opinion formed under Section 68-C – State Road Transport Services (Development) Rules, Madhya Pradesh 1959 – Rule 3(1)(j) – Contemplates making of provision for transfer of permits if proposals are made – Motor Vehicles Act, 1939 – Section 43(i)(iii) – Scope of – Section 68-D(2) – Non-specification in a scheme of a permit proposed to be cancelled-Permit cannot be cancelled and hence scheme vitiated – Section 68-B – Chapter IV-A overrides Chapter IV – Scheme framed under chapter IV-A – Scheme conflicting with ceiling order – Scheme does not become invalid: *Raipur Transport Company Private Ltd., Raipur Vs. The State of M.P., I.L.R. (1972) M.P. 822 (DB)*

Fundamental Rules

– **Rules 14 and 14-A(c)** – Lien on substantive post – Circumstances in which it could be terminated – Could not be terminated even with the employee's consent: *B.S. Birthare Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 902 (DB)*

– **Rules 22-A and 22-B are applicable** – Testing on the anvil of legal position there is no difficulty in holding that Chief Municipal Officers are the servants of the State Government – Such master & servant relationship is not affected merely because salaries and allowances of such members are a charge on the Municipal funds – Reference answered accordingly: *Suresh Chandra Sharma Vs. State, I.L.R. (2000) M.P. 645 (FB)*

– **Rule 54** – Appellate authority while setting aside punishment totally exonerated the employee – Direction to treat the period as leave – Not justified – All benefits including salary component should be extended: *P. S. Deo Vs. State of M.P., I.L.R. (2005) M.P. 239 (DB)*

– **Rule 54-A**, - Central Civil Services (Classification, Control and Appeal) Rule 1965, Rule 11: *Battilal Vs. Union of India: I.L.R. (2005) M.P. 580 (DB)*

– **Rule 56** – No conflict between New Pension Rules, 1957 and various Acts passed by legislature: *Parmeshwar Dayal Pandey Vs. State of M.P., I.L.R. (1981) M.P. 307 (DB)*

– **Rules 56(3)** – Payment contemplated by-Need not be forthwith or simultaneous with notice Rule 25 – Sanction to cross efficiency bar – Could be given or withheld even after retirement: *U.K. Narayanan Vs. State of M.P., Through Collector, Betul, I.L.R. (1978) M.P. 740 (DB)*

– **Rule 73 - S.R. 18** – Government servant – No right to insist upon continuance of departmental enquiry – Enquiry can be dropped at any time – Leave preparatory to retirement not available after superannuation: *S.S. Pande Vs. The State of Madhya Pradesh, I.L.R. (1960) M.P. 1 (DB)*

– **Rule 74 and Service Rule 17(b)** – Do not permit State Government to refer a case of civil servant to Medical Board for purposes of invalidation – Does not permit Government to retire a servant on invalid pension: *S.P. Shrivastava Vs State of Madhya Pradesh, I.L.R. (1975) M.P. 969 (DB)*

Fundamental Rules (as amended by M.P. Shaskiya Seva (Adhivarshiki Aayu) Sanshodhan Adhiniyam 1993)

– **Rule 56(3), Constitution, Articles 14, 226, 235** – Compulsory retirement in public interest on attaining 55 years of age – Natural Justice – Challenged – Held – It

is now well settled that while considering the entire record, uncommunicated adverse remarks can be taken into consideration. The principles of Natural Justice do not apply to order of compulsory retirement – The High Court or the Supreme Court would not examine the matter as an appellate court – The inference can only be made if on satisfaction it is found that the order passed is (a) *malafide* (b) or that it is without any reasons (c) or it is arbitrary on the ground that no reasonable person would draw such an opinion if it is found to be perverse – *A bonafide* decision of the Competent Authority to compulsory retire a government servant in public interest on the basis of the opinion framed on the service record not subject judicial interference merely on the ground of solitary good entry at the end of the year – Petition dismissed: *Rameshwar Prasad Purushottamlal Gupta Vs. High Court of Madhya Pradesh, Jabalpur, I.L.R. (1996) M.P. 295*

General Clauses Act (X of 1897)

– **Law when comes into force** – Order or Notification published in Gazette – Date of commencement not specified nor it is provided that date of commencement shall be notified by specified authority Order or Notification comes into force from the date of publication in Gazette: *State of M.P. Vs. Abdul Khalil, I.L.R. (1976) M.P. 645 (DB)*

– **Section 3(25)** – Registration Act, Section 2(6) – Fruit not in existence but deriving nourishment from soil – Not a growing crop: *Manoharlal Vs. The State of M.P., I.L.R. (1958) M.P. 864 (DB)*

– **Sections 3(26), 3(36)**, - Civil Procedure Code, (V of 1908), Section 2(13) and Sale of Goods Act, Indian (III of 1930), Section 2(7) – Definition Clauses – Immovable property, movable property and ‘Goods’ – Agreement for licence to transmit signals issued in the form of energy containing information in coded form after decoding by cable operators – Is an agreement for sale of movable property: *Jabalpur Cable Network Pvt. Ltd., Jabalpur Vs. E.S.P.N. Software India Pvt. Ltd., New Delhi, I.L.R. (2001) M.P. 846*

– **Section 6** – Effect of Repeal - Duty cast upon the Court to find out from the text and object if there is an intention not to apply provision of Section 6: *Oriental Insurance Company Vs. Balwant Singh, I.L.R. (2001) M.P. 725*

– **Section 6** – Rules of Construction – Notification issued in supersession of earlier one – Will not wipe out the steps taken in already pending Special Cases under the N.D.P.S. Act: *Barji Vs. State, I.L.R. (2000) M.P. 1018 (DB)*

– **Section 8** – Words ‘repeals’ “re-enacts” and “provisions so repealed” – Limit operation of rule of “construction of references” only when former enactment repealed

and re-enacted – Does not authorize substitution of the repealing enactment for the provision repealed of former enactment: *M/s Vino Chemical and Pharmaceutical Works, Nagpur Vs. The Sales Tax Officer, Raipur, I.L.R. (1967) M.P. 54 (DB)*

– **Section 8** – Permits reading of – re-enacted provision if the same did not evidence different intention: *The State of M.P. Vs. Ramesh Nai, I.L.R. (1976) M.P. 386 (FB)*

– **Section 8** – Reference to old Code of Criminal Procedure – To be construed as reference to new code: *State of M.P. Vs. Shantilal, I.L.R. (1977) M.P. 281 (DB)*

– **Section 8 (1)** – New Act repealing old Act and re-enacting one in its place – Additions made by new Act – Fall within the ambit of the word “modification”: *State of M.P. Vs. Shantilal, I.L.R. (1977) M.P. 281 (DB)*

– **Section 10** – Applicability: *Pt. Krishna Chandra Sharma Vs. Pt. Ramgulam, I.L.R. (1957) M.P. 330 (DB)*

– **Section 13** – Principal of – Applicable for interpretation of Advocates Act unless context otherwise requires – Constitution of India – Article 226 – Efficacious remedy available to petitioner – High Court not ordinarily entertain a petition under this provision – Rule of alternative remedy in writ jurisdiction – Is a rule of convenience – Remedy under this provision convenient to all – Petition not to be thrown out – Bar Council Election Rules – Entire election challenged – Election petition not proper remedy – Bar Council Proper but not necessary party to the petition – Rules 23 to 30 – Mention functions to be performed by Returning Officer – Rules framed by Bar Council of India – Empowers Secretary to perform functions of Returning Officer in his absence – These functions can be performed by persons in charge of election – Rule 32 – Expression – “Except otherwise provided in these rules” in – Capable of two Interpretations – Interpretation of Statutes – Principle of harmonious construction to be applied in construing different provisions of statute – Bar Council Election Rules – Rule 32 – Returning Officer not appointed – Secretary can perform all functions of Returning Officer – Advocates Act, 1961 – Section 8(2) – Member of Bar Council continues to hold office till successor appointed though term may have expired – Bar Council Election Rules – Rule 31(8) – Election not challengeable on ground of rejection of nomination paper or omission of voter’s name from voters list – Result not materially affected – Rule 21 – Voting paper to be scrutinized as a whole and not to be led away by the figure – Provision not mandatory and strict compliance necessary – Rule 30(1) – “Completion of the Count in” – Meaning of: *B.K. Jain Vs. Y.S. Dharmadhikari, I.L.R. (1978) M.P. 103 (DB)*

– **Section 13(1)** – Words importing the masculine gender, shall be taken to include female as well unless repugnant to the context: *Madhuri Bai Vs. Minor Surendra Kumar, I.L.R. (2000) M.P. 289*

– **Section 21** – Is merely a rule of Construction: *Sahdeo Sahu Vs. State of M.P.*, I.L.R. (1990) M.P. 18 (DB)

– **Section 22** – Appointment made before commencement of the Act – Appointment takes effect after commencement of the Act: *Jiyajirao Cotton Mills Ltd., Birla Nagar, Gwalior Vs. The Employees State Insurance Corporation*, I.L.R. (1963) M.P. 179

– **Section 27** - and Evidence Act, Indian (I of 1872), Section 114(e) and (f) – Service of Report of Public Analyst sent to accused through Regd. Post – Returned back with endorsement “Refused” – Report presumed to be duly served: *Gattu Vs. State*, I.L.R. (2000) M.P. 286

General Clauses Act, 1914

– **Section 5** – Repeal of Tenancy Act by the Code of 1954 – Does not affect the right or remedy in respect of that right: *Govindrao Vs. Board of Revenue, M.P., Gwalior* I.L.R. (1965) M.P. 206 (DB)

General Clauses Act, M.P. 1957 (III of 1958)

– **Section 2(6)** - and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 26 – Function of presiding over the meeting according to Section 55(3) of Municipalities Act, M.P., 1961 – Is of an officer empowered to perform duties of Collector of district: *Girja Shanker Shukla Vs. Sub Divisional Officer, Harda*, I.L.R. (1974) M.P. 885 (FB)

– **Section 2(6)** - and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 26 – Function of Collector can be performed by additional Collector or Sub-Divisional Officer in the absence of prohibition: *Girja Shanker Shukla Vs. Sub Divisional Officer, Harda*, I.L.R. (1974) M.P. 885 (FB)

– **Section 2(6)** - and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 26 – Officer holding the current charge of post and person holding a particular post and officer not vested with powers attached to that post-difference: *Girja Shanker Shukla Vs. Sub Divisional Officer, Harda*, I.L.R. (1974) M.P. 885 (FB)

– **Section 2(6)** - and Land Revenue Code, Madhya Pradesh (XX of 1959), Section 26 – Person holding current charge of post – Person can do only administrative functions: *Girja Shanker Shukla Vs. Sub Divisional Officer, Harda*, I.L.R. (1974) M.P. 885 (FB)

– **Section 2(25) and 2(32)** – Notification means a notification published in the Gazette – Section 2(32) – ‘Prescribed’ means prescribed by the Rules made under an enactment : *Ashok Kumar Kaurav Vs. State*, I.L.R. (2000) M.P. 1057

– **Section 3(20)** – Life insurance Corporation not a Local Authority – Tests to determine whether particular institution is Local Authority: *Daudayal Vs. Gulabchand I.L.R. (1962) M.P. 490 (DB)*

– **Section 7** – Applicable to enactments where act allowed to be done in Court is not the only manner of doing it: *Bhagwandas Tiwari Vs. Gaya Prasad, I.L.R. (1978) M.P. 961*

– **Section 7** – Confers benefit if by any Madhya Pradesh Act, any act or proceeding is allowed to be done or taken on a certain day or within specified time: *Bhagwandas Tiwari Vs. Gaya Prasad, I.L.R. (1978) M.P. 961*

– **Section 7** – Does not apply for construing agreements or compromise decrees: *Bhagwandas Tiwari Vs. Gaya Prasad, I.L.R. (1978) M.P. 961*

– **Section 7** – Word “allowed” – Implication of: *Bhagwandas Tiwari Vs. Gaya Prasad, I.L.R. (1978) M.P. 961*

– **Section 10** – Does not save remedial right: *State of M.P. Vs. Shantilal, I.L.R. (1977) M.P. 281 (DB)*

– **Section 10** – Right cannot be said to have been acquired or accrued till a decree is passed: *State of M.P. Vs. Shantilal, I.L.R. (1977) M.P. 281 (DB)*

– **Section 10** – Right of Pre-emption is in nature of right which can be perfected in accordance with procedure laid down in statute – Not saved by Section 10: *Krishna Dass Agarwal Vs. Kanhaiyalal, I.L.R. (1996) M.P. 255 (SC)*

– **Section 10** – Word ‘unless’ different intention appears – Clear intention expressed by the legislature expressed by the Repeal Act – Suspension of petitioner cannot continue – Order of suspension of quashed: *Smt. Asha Dwivedi Vs. Sub-Divisional Officer, Sidhi, I.L.R. (2000) MP 1033*

– **Sections 10 and 10-A** – Old Act expiring by efflux of time before coming into force of new Act – Matter governed by section 10 by force of Section 10-A of General Clauses (Amendment) Act, 1960: *Seth Vishnudatta Vs. Abdul Nabi, I.L.R. (1964) M.P. 583 (DB)*

– **Section 10** – Applicable when repeal followed by fresh enactment unless different intention expressed in new enactment – Different intention to be inferred from provisions of the new enactment: *Seth Vishnudatta Vs. Abdul Nabi, I.L.R. (1964) M.P. 583 (DB)*

-Section 13 – Applicable when M.P. Act repeals in M.P. any Central Act – Certificate of Registration under Societies Registration Act, 1860 – Is an instrument within the meaning of this provision: *Shanker Singh Vs. Sanstha Sonabai Bhavkashram, Khurai, I.L.R. (1980) M.P. 568 (DB)*

– **Section 16** – Enacts the rule of general law: *Dr. Umashankar Shukla Vs. B.R. Anand, chairman, Governing Body, Arts & Commerce College, Harda, I.L.R. (1972) M.P. 249 (DB)*

– **Section 16** – Expression ‘Power to appoint’ – Includes power to dismiss: *Ramkishan Vs. State of M.P. Through The Secretary Revenue Department, Bhopal, I.L.R. (1981) M.P. 124 (DB)*

– **Section 16** – Not available for construing University of Sagar Act or Ordinance made by University under the Act: *Dr. Umashankar Shukla Vs. B.R. Anand, Chairman, Governing Body, Arts & Commerce College, Harda, I.L.R. (1972) M.P. 249 (DB)*

– **Section 16** – Such power does not belong to Vice-Chancellor unless expressly delegated to him – Power to compulsorily retire is distinct from power to terminate simpliciter – Such power to compulsorily retire is quasi judicial having civil consequences: *Dr. P.G. Najpande Vs. The Jawaharlal Nehru Krishi Vishwavidyalaya, I.L.R. (1999) M.P. 200*

– **Section 17** – Substitution of functionaries: *Kaushal Prasad Kashyap Vs. State I.L.R. (1999) M.P. 650*

– **Section 24(e)** – Publication of rules in official Gazette – Presumption – Publication of draft rules in Newspaper not necessary: *Rajendra Singh Vs. State of M.P., I.L.R. (1980) M.P. 115 (DB)*

General Insurance Business (Nationalisation) Act (No. LVII of 1972)

– **General Insurance (Rationalisation and Revision of Pay** – Scales And other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974, Clause 5 and Constitution of India, Article 226 – Nationalisation of General Insurance Business – Govt. of India framing scheme of 1974 for categorization of employees of different companies taken over under the Scheme – Petitioner claiming categorization as Superintendent on the basis of his mere designation as such in his parent company – Substantive position and nature of function as that of Senior Assistant only – Petitioner not entitled to be categorized as Superintendent – State claims not to be entertained: *Manoharlal Vs. General Insurance Corporation through Chairman, Industrial Assurance Building Opp. Churchgate, Bombay, I.L.R. (1987) M.P. 485*

General License Conditions

– **Part C Rule 25(a)** – Purpose of the clause: *Tikamdas Vs. State of M.P., I.L.R. (1967) M.P. 668 (DB)*

General Rules of Goods Tariff

– **Rule 33** – Prescribed manner of making a claim – Rule made in order to provide some sort of check against fraudulent claim: *Balmukund Lakani Vs. The Union of India, I.L.R. (1973) M.P. 650*

General Sales Tax Act, Madhya Pradesh, 1958 (II of 1959)

– **Act does not contain provision enabling seller to collect sales** – tax from customer: *The Commissioner of Sales Tax, M.P. Vs. M/s Associated Cement Company Ltd., Nowrozabad Colliery, Shahdol, I.L.R. (1978) M.P. 898 (DB)*

– **And Amendment Act (XIII of 1964)** – Section 44(2) – Reference by the Board – Turmeric Toothpaste, Powder and Cream already classified as drugs and medicines by the competent authorities – Manufactured, distributed and sold under licence passed by the prescribed authorities – Such products may be commonly named or sold in whatever form but cannot be declassified – Would fall within the category of ‘Drugs & Medicines’ so long as they are classified so and hence taxable under Entry 16 of Para IV of Schedule II of the Act – Would not be cosmetics or toilet items – Reference answered accordingly: *Commissioner of Commercial Tax Vs. M/s. Dawar Brothers, Indore, I.L.R. (2000) M.P. 98 (DB)*

– **And General Sales tax (Amendment) Act Madhya Pradesh (XIII of 1965), sections 7 and 2 (bb)** – Word “Business”- Meaning of - Continued course of dealing with profit motive- Members club purchasing liquor for supplying to its members is not “business”- Club not liable to pay purchase Tax: *M/s Wainganga Club, Balaghat Vs. State of M.P., I.L.R. (1981) M.P. 271 (DB)*

– **And General Sales tax (Amendment and Validation Act, M.P. (XIII of 1971) Sections 9 and 10** – Retrospective effect of amendments – Hessian cloth – Falls outside entry No. 6 of Schedule I – Liable to Sales Tax, State and Central both even before amendments – Sales of Bidis by assessee duly packed in crates – Price of packing materials included in price of Bidis – Packing material form part of bargain – Implied sale of packing materials can be presumed – implied contract of sale of packing material – Question of fact – Effect of Amendment – Hessian cloth liable to State as well as Central Sales Tax: *M/s Bhagwandas Shobhalal Jain, Sagar Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1980) M.P. 278 (DB)*

– **Appellate Tribunal performs quasi-judicial function** – Must follow principles of natural justice – Must record reasons for refusing permission: *The Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. M/s Mangilal Rameshwar Dayal, Morena, I.L.R. (1964) M.P. 460 (DB)*

– **As amended by (Amendment) Act (XVI of 1965) Sections 2(bb), 4 and 10** - and Schedule 1, Entry 6 – Assessee carrying on business of manufacture of cloth and yarn – Cloth manufactured was tax free – Sale of unserviceable items of stores like discarded machineries, colours, chemicals, iron hoops, coal ash etc – Such Sales of goods liable to tax: *M/s Hukumchand Mills Ltd. Indore Vs. Commissioner of Sales Tax, M.P., I.L.R. (1990) M.P. 7 (FB)*

– **As amended by General Sales Tax (Amending Act XIII of 1971) – Section 17 (3) and 44** – Delay in filing return – Imposition of penalty Whether delay in filing return is on account of any sufficient or good cause – Is a finding of fact – Not to be gone into in a reference case – Section 17(3) as amended by Amending Act of 1971 – Imposition of penalty – Validity and effect : *M/s Bhilai Motors, Raipur Vs. Commissioner of Sales Tax, M.P. Indore, I.L.R. (1987) M.P.395 (DB)*

– **Conditions under which sales tax can be levied on the value of packing material** – Burden of proof – lies on the department, Part II, Entry 2 – ‘Coal’ in – Includes coal ash: *M/s Binod Mills Co. Ltd., Ujjain Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1978) M.P. 703(DB)*

– **Contract of sale F.O.R., Khandwa** – Price payable against Railway receipt – Turnover regarding sales – Not liable to sales-tax – Expression “F.O.R.” – Meaning of: *M/s Mansingh-Ka-Oil Mills Ltd., Khandwa Vs. Commissioner of Sales-Tax, M.P., Indore, I.L.R. (1974) M.P. 722 (DB)*

– **Determination of meaning of sugar in** – Definition given in Central Excise and Salt act, 1944 can be taken into consideration – Four purposes of Sales tax on declared goods – Definition of sugar given in Central Sales Tax Act. 1956 and also additional duties of excise (Goods of special Importance) Act, 1957 – Can be taken into consideration in interpreting it as occurring in M.P. General Sales Tax Act – General Sales Tax Act, M.P., 1958 – Schedule 1, Entry No. 41 "Sugar" in – Has meaning understood in common parlance – Includes sugar in whatever shape it may be – Best judgment assessment – Can be made when account – books are rejected on sound ground – Assessment made cannot be regarded as best judgment assessment – Interpretation of statute – Words to be construed in natural and popular sense – Presumption – Central and state Legislatures – Presumed to act in harmony – Words in entry 41 of schedule 1 – Include all forms of sugar – Includes mishri, Batasa and chironji – Schedule III entry I – Sweetmeats – Does not include Mishri, Batasa and

Chironji: *M/s Channulal Motilal, Jabalpur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 577 (FB)*

– **Distinction between contract of hire** – Purchase and contract of sale – hire-purchase agreement – Not a contract of sale but a bailment – Effect of the agreement – No contract of sale or agreement to sale comes into existence so long as bailment contract lasts – Contract of sale when constituted – Section 2(n) – Explanation – Vires of – Sections 17, 18(6) and 29 – Scope of – Government of India Act, 1935, List 2, Entry 48 and Constitution of India, Seventh Schedule, List II, Entry 54 – “Sale of goods” in – Has same meaning as in Sale of Goods Act: *M/s Indian Finances Private Ltd., Allahabad Vs. Sales Tax Officer, Jabalpur, I.L.R. (1965) M.P. 700 (DB)*

– **Does not prohibit dealer from recovering sales-tax from customers:** *The Commissioner of Sales Tax, M.P. Vs. M/s Associated cement company Ltd., Nowrozabad Colliery, Shahdol, I.L.R. (1978) M.P. 898 (DB)*

– **Explanation to sub-section (2-A) of Section 8** – Expression “exempt only in specified circumstances or under specified conditions” in – Meaning of: *The Commissioner of sale tax M.P., Vs. Kapoor Dori Niwar and co. Gwalior, I.L.R. (1973) M.P. 364 (DB)*

– **Exemption** – Sale of Motor Vehicles, refrigerators and their spare parts of CARE India which furnished requisite Form B to the assessee selling dealer – Denial on the ground that the CARE India violated terms and conditions of the exemption notification – Not justified as after the sale on the declaration in Form B, the selling dealer has no control over the activities of CARE India – Taxable turnover – Vehicle sold under the Hire Purchase Scheme by assessee – Initial payment is to be included in the amount on which depreciation is to be allowed – Inclusion of Registration fee and Insurance charges for a vehicle sold under hire purchases scheme for determination of basis price of the vehicle sold by the assessee – Depends upon the nature of hire purchase agreement: *Sales Tax Commissioner, M.P. Vs. M/s. Bhopal Motors Pvt. Ltd., I.L.R. (1999) M.P. 68 (DB)*

– **Incidental Goods** – Petitioner a registered dealer engaged in manufacture of News Print – Sought amendment of Registration Certificate to include Truck, Tractor, Jeep, their spares, tyres tubes etc. as incidental goods – Interpretation of “Incidental Goods”: *National Newsprint and Paper Mills Ltd, Nepanagar Vs. Sales-Tax Officer, Burhanpur, I.L.R. (1998) M.P. 455*

– **Kinds of dealers to whom exemption is granted regarding sale of cooked food** – Terms “Dhabawalas”, “Tandurwalas” – Refer to small businessmen who themselves cooke good and serve it – Answer to reference: *M/s Purohit Lodge, Jawahar Chowk, Burg Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1978) M.P. 397(DB)*

– **Mens rea has not been either expressly or by necessary implication excluded:** *State of M.P. Vs. Ramswaroop, I.L.R. (1978) MP 787 (DB)*

– **Notification about prices issued by central government** – Fixes prices exclusive of taxes – Dealer can recover prices mentioned in chart plus taxes: *The Commissioner of Sales Tax, M.P. Vs. M/s Associated cement company Ltd., Nowrozabad Colliery, Shahdol, I.L.R. (1978) M.P. 898 (DB)*

– **Notification dated 11-10-1977 issued under the General sales Tax Act, M.P. 1958** – Exemption from payment of tax under – Can be claimed by assessee only after compliance of condition contained therein: *Birendra Singh and Company, New Delhi Vs. Regional Assistant Commissioner of Sales Tax, Bhopal, I.L.R. (1990) M.P. 189 (DB)*

– **Notification dated 1-4-1959, Serial no. 1** – “Phawa- das Fall within description of” “Hoes” (all kinds) – Evidence Act – Section 114 – Presumption that statutory power validly exercised – Excess of jurisdiction in exercise of statutory power not to be assumed – Presumption arising from notification – Not rebutted by showing that instrument also used in a trade or calling other than agriculture: *The Commissioner of Sales Tax, M.P. Vs. M/s Narang Industries of Indore, I.L.R. (1973) M.P. 183 (FB)*

– **Nuwud Medium Density Fibreboard** – Is distinct from laminated products like Sunmica & Formica – Sales Tax is exisible under residuary clause of Item 1 of Part IV of Schedule II and not under Entry 31 of Part II of Schedule: *Chaturbhuj Das Ballabh Das Vs. State of M.P., I.L.R. (1998) M.P. 275*

– **Provision contemplate delivery of copy to assessee:** *Messrs Sheojiram Parmanand Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore I.L.R. (1964) M.P. 54 (DB)*

– **Processing of raw cotton into marketable cotton** – Is process of manufacture: *M/S Girdharilal Nanhelal, Burhanpur Vs. Commissioner of Sales Tax, M.P., I.L.R. (1977) M.P. 934 (DB)*

– **Sales of Gum extracted and appropriated to the purchaser** – Liable to be taxed under the Act: *M/s Anandilal Naraindas, Bagh Vs The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1971) M.P. 646 (DB)*

– **Sale for purposes of Sales Tax Act** – Is as defined in the Sale of Goods Act – Sale comprises of four essential elements – Transaction by title passes by compulsion – Transaction by which title to goods passes is not sale contemplated by Sale of Goods Act: *The Commissioner of Sales Tax, M.P. Vs. M/s Mohammad Rasul, Panna, I.L.R. (1977) M.P. 612 (DB)*

– **Sum of money in account-book of business** – No reasonable explanation by assessee – Inference that it reflects profits of business – Processing of raw cotton into marketable cotton – Is a process of manufacture – Constitution of India – Article 286(1) – Explanation – Things necessary to be determined for application of explanation: *M/s Girdharilal Nanhelal, Burhanpur Vs. Commissioner of Sales Tax, M.P., I.L.R. (1977) M.P. 934 (DB)*

– **Term “Return” in-Meaning of – Section 18** – Words “assessment” and assess” in – meaning of – Advance amount if paid into Treasury – Not integral part of assessment order – Integral part is amount of tax liable to pay on taxable turn-over – Section 22(4) (a) and Rule 37 – Circumstance in which Sales Tax Authority can issue notice under the provision – Issue of notice – Has not effect of modifying or rectifying assessment order – Notice issued under – Not invalid because authority has not arrived at a conclusion that assessee has not in fact paid amount in treasury now claimed from them – Section 45(1), proviso – Notice to assessee when necessary in the rectification proceedings – Interpretation of Statute – Rule – Meaning of the Act not to be ascertained from the forms prescribed by Rules framed under the Act – Constitution of India – Articles 226 and 227 – High Court, Power of, to enquire into question of fact: *Firm Harpaldas Jairamdas, Bilaspur Vs. The Sales Tax Officer, Bilaspur, I.L.R. (1965) M.P. 402 (DB)*

– **Use of packing material in – Works contract** – Question whether there is sale of packing material – Dependent on circumstances of each case: *The Nimar Cotton Press Factory, Khadwa Vs. Commissioner of sales Tax, M.P., Indore, I.L.R. (1971) M.P. 180 (DB)*

– **Section 2** – Word “Sale” in – Connotation of – Second point of sale – Not liable to tax Government selling forest produce before notification dated 1-6-63, under section 12 – Is a dealer – Liable to pay sales-tax – Subsequent sales by the purchaser – Sales not liable to tax – Grant of exemption retrospectively – Does not fasten liability on purchaser who had purchased before exemption – Constitution of India – Article 226 – Alternative remedy of appeal onerous – High Court has power to pass appropriate order: *Timber And Fuel Corporation, Orchha Vs. The Sales Tax Officer, Nowgong, I.L.R. (1974) M.P. 572 (DB)*

– **Sections 2(1), 2(h) and 2(j)** – The Words ‘raw material’ and ‘Manufacture’ – Definition of – ‘Extraction’ is ‘manufacture’ in mining – Explosives consumed in the process of mining fall within the definition of ‘raw material’ – Sales Tax Officer not justified in deleting these articles and explosives from the registration certificate of the petitioner – Order quashed: *Western Coal Fields Ltd. Parasias Vs. Sales Tax Officer, Chhindwara, I.L.R. (1985) M.P. 397 (DB)*

– **Section 2(bb) and 2(f)** – The term ‘business’ in – Meaning of – Sale of old car by the assessee connected with the business of the assessee is exigible to tax even if

assessee is not a dealer in cars: *Commissioner of Sales Tax, M.P. Vs. M/s Sanghai Finance Corporation, Indore, I.L.R. (1984) M.P. 285 (DB)*

– **Section 2 (bb)** – Word ‘Business’ – Definition of under – Concept of – Section 2 (r) (ii) – Taxable Turnover – Assessee purchasing motor chassis for its business from registered dealer – Building of wooden body on it does not alter the identity of chassis – Resale of vehicle by assessee – Assessee entitled to deduction of price of chassis only from taxable turnover – Value of body with depreciation liable to be included in taxable turnover: *M/s Bharat Saw Mills, Ghamapur, Jabalpur Vs. Commissioner of Sales Tax, M.P., I.L.R. (1987) M.P. 580 (DB)*

– **Sections 2(bb), 2(d) and Factories Act (63 of 1948), Section 46** – For its workers, canteen as required by section 46, Factories Act run by assessee – Textile Mill in its premises – Dominant object of canteen was to render service to its workers – Mill is not a dealer as its intention not being sale of food it would not be the business of the Mill – Under such circumstances, canteen sales cannot be called dealer’s turnover – Canteen sales were not exigible to tax – *Commissioner of Sales Tax Vs. Gwalior Rayon Silk Mfg. Co. Ltd. Nagda* overruled: *Commissioner of Sales Tax, M.P. Vs. Hukumchand Mills Ltd., Indore, I.L.R. (1995) M.P. 538 (FB)*

– **Section 2(d) Government of Forest Department** – Not dealer in respect of forest produce: *M/s Shri Ganesh Trading Co. Sagar, Vs. State of M.P., I.L.R. (1973) M.P. 735 (FB)*

– **Section 2(d)** – Goods bought for sale or use to make profit in the integrated activity buying and disposal – Transaction amounts to business of buying: *Ganesh Prasad Dixit, Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1968) M.P. 839 (DB)*

– **Section 2(d)** – Lessee finding a diamond – Not covered by the definition of dealer – Words “carries on the business” in – Implication of – Sale for purposes of Sales-tax Act – Is as defined in the Sale of Goods Act – Sale comprises of four essential elements – Transaction by title passes by compulsion – Transaction by which title to goods passes is not sale contemplated by Sale of Goods Act: *The Commissioner of Sales Tax, M.P. Vs. M/s Mohammad Rasul, Panna, I.L.R. (1977) M.P. 612 (DB)*

– **Section 2(d)** – Words “carries on the business” in – Implication of: *The Commissioner of Sales Tax, M.P. Vs. M/s Mohammad Rasul, Panna, I.L.R. (1977) M.P. 612 (DB)*

– **Section 2(d), 4, 7, 29 (1), 38** - and Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, M.P. 1976 (LII of 1976), Sections 3(1) (b), 2(m), 2(bb) – Person not supplying any goods or consuming them for executing the work, Diesel, oil spare parts consumed only for operating and maintaining machines used in the work – Person not a

dealer within the meaning of Sales Tax Act – Contract only for excavation and removal of earth and rock – Labour contract – Use of machinery for facilitating the work will not alter the situation – Contract, not works contract under Entry Tax Act – Not liable for taxation under both Acts – Petition maintainable though no final order passed and provision of appeal under Section 38 of the Sales Tax Act: *M/s Mulay Bros., Malajkhand Vs. State of M.P., I.L.R. (1990) M.P. 609 (DB)*

– **Section 2(g)** – Definition of “Goods” in – Does not cover electricity: *Madhya Pradesh Electricity Board, Jabalpur, Vs. The Commissioner of Sales-Tax, M.P. Gwalior, I.L.R. (1971) M.P. 967 (DB)*

– **Section 2(g)** – Does not include the right to take away Gum from the trees – Right to take gum from trees – Is an interest in immoveable property – Sales of Gum extracted and appropriated to the purchaser – Liable to be taxed under the Act: *M/s Anandilal Naraindas, Bagh Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1971) M.P. 646 (DB)*

– **Section 2(g)** – Word “Goods” in – Includes machinery to be severed by the purchaser from lands to which it is attached – Sale of machinery by the assessee not in regular course of business – Not liable to tax sections 17(3) and 43 (1) – Imposition of penalty, when can be made: *M/s Bachhraj Factory Pvt. Ltd., Bad-Nagar Vs. Commissioner of Sales Tax, I.L.R. (1981) M.P. 1078 (DB)*

– **Section 2(h) and (J)** – Any amount received by dealer as consideration for sale – To be included in the turnover of the dealer – Burden of proof – Burden of dealer to prove that particular charge did not form part of the consideration of sale – Charges for Adat, Dalali, Bank Commission, Charity and insurance – Liable to be included in sale price and consequently in the turn over in the instant case – Assessee charging composite price for compressed cotton and packing material- Property in packing material passes to the purchaser: *M/s Vimal Chandra Prakash Chandra Srapha Ujjain Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1973) M.P. 935 (DB)*

– **Section 2 (j)** - and General Sales Tax Rules, M.P., 1959 – Rule 2-A “Manufacturer” – Meaning of – Drying of tendu leaves and packing them in bundles – Not a Manufacturing process – Assessee doing so is not a “Manufacturer”: *Commissioner of Sales Tax, M.P., Vs. M/s Jugal Kishore Badriprasad, Bankat Nagar, I.L.R. (1979) M.P. 480 (DB)*

– **Sections 2(j), 7(1) and 8(1)** – Turning paddy into rice or grain into Dal – Amount to manufacture – Section 44(1) or (2) – Only questions of law are referable to High Court – Question raised and decided by tribunal – That question only can be said to arise out of the order of tribunal – High Court, Power of, to consider other line of reasoning not advanced before tribunal – Section 2(n) – Definition of sale – Mortgage,

hypothecation, charge or pledge not included – Section 7(1) – Circumstance in which exemption can be granted – Applies to cases of marketing society purchasing goods through primary service society from individual agriculturist: *M/s Raipur Vikas Khand Sahakari Vipnan Sanstha Samiti, Raipur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1979) M.P. 664 (DB)*

– **Section 2(n)** – Sale – What is – Sale of automobile vehicle – Replacement of parts of the customers during warranty period by the dealer assessee and dealer assessee either getting those parts from the manufacturer or gets it reimbursed – Does not amount to ‘Sale’ of those parts by the dealer to customer or to manufacturer – Similarly pre-delivery charges do no amount to ‘sale’ – Not liable to tax: *M/s Prem Motors Station Road, Gwalior Vs. Commissioner of Sales Tax, Gwalior, I.L.R. (1986) M.P. 420 (DB)*

– **Section 2(n)** – Explanation – Vires of: *M/s Indian Finances Private Ltd., Allahabad Vs. Sales Tax Officer, Jabalpur, I.L.R. (1965) M.P. 700 (DB)*

– **Sections 2(n) and 4** – Sale or work contract - Test to determine - Transaction involving transfer of chattle qua chattel for price is a sale if no transfer of chattel qua chattel, the contract is one of work and labour taxability - Contract divisible into two parts - part involving sale of material qua material alone is taxable - Sale of particular rubber stamp made specially for the customer – Does not involve sale of rubber stamp but task is to carry out work contract – Not liable to sales tax – Sale of rubber stamp prepared generally – Amounts to sale of material and liable to sales tax: *M/s Rubber Stamp Works, Raipur Vs. The Deputy Commissioner of Sales Tax Raipur, I.L.R. (1981) M.P. 445 (DB)*

– **Sections 2(p) and 3** – Posting of a sales tax officer to a particular circle – Implies that state Government has also specified the area over which he can exercise jurisdiction section 30 – Words “any of his powers and duties” in-refer to powers and duties of office and not powers and duties of the individual holding the office – Sales tax Officer and additional Sales-tax officer of the same circle – Have jurisdiction throughout the circle – Not necessary to divide further the jurisdiction area: *M/s Seth Sunderdas Contractor Raipur, Vs. The Commissioner of Sales Tax M.P. Indore, I.L.R. (1978) M.P. 261(DB)*

– **Section 2(r) ii, unamended** – Requires two conditions to be satisfied – To claim benefit both conditions are necessary to be satisfied: *Shrigopal Rameshwardas, Gandhiganj, Jabalpur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1973) M.P. 176 (DB)*

– **Section 2(r) (ii) and 12** – Notification no. 1065 – 537 V.S.T. dated 7-4-67 – Certificate prescribed under – Value of: *Commissioner of Sales Tax Vs. M/s Vijay Motors, Gwalior, I.L.R. (1986) M.P. 103 (DB)*

– **Section 2(r) (ii) and 12** – Notification no. 1065-537 – V. S.T. dated 7-4-67 – Purpose of: *Commissioner of Sales Tax Vs. M/s Vijay Motors, Gwalior, I.L.R. (1986) M.P. 103 (DB)*

– **Section (2) (o), Explanation and Section 2(r)** – Expression “Sale price” – Definition of Interpretation of Statutes – Tax Statute – How to be construed-Packing material – Sale of – When amounts to sale: *M/s K.P. Sons, Katni Vs. Sales Tax Officer, Katni, I.L.R. (1987) M.P. 10 (DB)*

– **Section 2(r),(t) and (o)** – Whatever is charged for goods is price of the goods – Consequently included in the turnover – Act does not contain provision enabling seller to collect sales-tax from customers – Does not prohibit dealer from recovering sales-tax from customers – Notification about prices issued by Central government – Fixes prices exclusive of taxes – Dealer can recover prices mentioned in chart plus taxes: *The Commissioner of Sales Tax, M.P. Vs. M/s Associated Cement Company Ltd., Nowrozabad Colliery, Shahdol, I.L.R. (1978) M.P. 898 (DB)*

– **Section (2) (r) (ii)** – Resale of vehicle by assessee – Assessee entitled to deduction of price of chasis only from taxable turnover – Value of body with depreciation liable to be included in taxable turnover: *M/s Bharat Saw Mills, Ghamapur, Jabalpur Vs. Commissioner of Sales- Tax, M.P., I.L.R. (1987) M.P. 580 (DB)*

– **Section (2) (r) (ii)** – Taxable Turnover – Turnover – Assessee purchasing motor chasis for its business from registered dealer – Building of wooden body on it – Does not alter the identity of chasis: *M/s Bharat Saw Mills, Ghamapur, Jabalpur Vs. Commissioner of Sales- Tax, M.P., I.L.R. (1987) M.P. 580 (DB)*

– **Section 2(t)** – Turnover refers to price which dealer receives or is receivable on sale of goods – General sales-tax rules. Madhya Pradesh – Rule 68, Entry No. 7(c) – Assistant Sales-tax Officer – Exercises only those powers which are delegated to him – Possesses power to assess dealers whose turnover is less than 4 lakhs – Dealers not covered by clauses (b) and (c) of entry No. 7 – Commissioner has power to make their assessment: *Messrs Manji Bhimji Parmar, Railway Contractors, Moghalsarai Vs. The Assistant Sales Tax Officer, Rewa, I.L.R. (1975) M.P. 982 (DB)*

– **Section 2(u)** – “year” in means twelve months ending on 31st March: *The Commissioner of Sales Tax, M.P. Vs. M/s Rameshlal Keshavlal, Morena, I.L.R. (1976) M.P. 489 (FB)*

– **Section 3** – Deputy Commissioner of Sales Tax – Is an authority appointed to assist the commissioner – Section 39(2) – Appellate order of Deputy commissioner of Sales-tax – Revisable by the commissioner – Section 39(2) – Proviso – Point from which limitation of 3 years to be counted: *Asbestos Cement Ltd., Kymore, M.P. Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1978) M.P. 333 (DB)*

– **Section 4** – Printing of Bill Books, vouchers etc – When such articles printed and sold – Amounts to sale of finished articles – Liable for assessment for purpose of Sales-tax – Printing of annual audit-reports and financial statements in book- form falls under category of printing of manuscript or judgment – Not liable for assessment: *M/s M.P. State Co-operative Press Ltd. Wright Town Jabalpur Vs. Additional Commissioner of Sales Tax, Jabalpur, I.L.R. (1989) M.P. 583 (DB)*

– **Sections 4 and 13** – Make “powdered bones” taxable – Section 10 and Entry 22 of schedule I- Exempt sales of fertilizer except oil cakes – Interpretation of Statute – Rule of harmonious construction – Meaning – Entry 22, Schedule I – “Fertilizer” – General than the expression “powdered bones” – “Fertilizer” to be construed to mean manures other than powdered bones – If construed in the above manner – Effect can be given to words “powdered bones” in schedules II and III and also to word “fertilizer” in Schedule I – Legislature – Power of, in enacting fiscal measure – Very wide – Hostile discrimination to be established before Act is struck down under Article 14 of Constitution of India – Interpretation of Statute – Two Provisions contradictory – Leading provision will override subordinate one – Earlier Act ambiguous – Later Act can be seen to clarify ambiguity: *The Ratlam Bone and Fertilizer Company, Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216 (FB)*

– **Sections 4-A, 18, 39(1)** – Second Proviso – Enquiry initiated against assessee under Section 4-A of the Act terminated beyond Limitation prescribed – Order in question is beyond jurisdiction as barred by time – Has to be quashed – Validity of second proviso of Section 39(1) – No opinion expressed as not necessary in the present case: *M/s. Bhagwati Construction Company, Neemuch Vs. State I.L.R. (1999) M.P. 453 (DB)*

– **Section 6** – Building contracts – Building contracts not always exempted from payment of Sales Tax: *Sardar Lachhman Singh Vs. The State of Madhya Pradesh I.L.R. (1964) M.P. 40 (DB)*

– **Section 6** - and Entry no. 5, Section (VIII) and (XIV) of Part I of Schedule II – Bicycle rims, axles and wheels of bullock carts are covered thereunder: *Commissioner of Sales Tax, M.P. Vs. M/s Dunlop India Ltd. Jabalpur, M.P., I.L.R. (1987) M.P. 122 (DB)*

– **Section 6, 7, 12, 42-B, 61-B** – Notification issued exempting Niwars from payment of Sales-tax – Claim for refund of tax paid in excess: *Ibrahim Haji Vs. Commissioner of Sales Tax, I.L.R. (2001) M.P. 1139*

– **Section 7** – Essential condition – Is purchase of goods for manufacture of goods for sale or other wise, or disposal of goods other than by way of sale in State or dispatch to outside State in course of inter – State trade or commerce: *Ganesh Prasad Dixit, Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1968) M.P. 839 (DB)*

– **Section 7** – Provision wide – Includes purchases even from P.W.D. – Sales- tax not recoverable for purchase from P.W.D. – Iron and cement supplied by P.W.D. to contractor for P.W.D. – Sale liable to purchase – tax: *The Commissioner of Sales Tax, M.P. Vs. Mohammad Zahoor, Sidhi, I.L.R.(1979) M.P. 86 (DB)*

– **Section 7** – Applicable to enactments where act allowed to be done in Court is not the only manner of doing it: *Bhagwandas Tiwari, Vs. Gaya Prasad, I.L.R. (1978) M.P. 961*

– **Section 7** – Confers benefit if by any M.P. Act, any act or proceeding is allowed to be done or taken on a certain day or within specified time: *Bhagwandas Tiwari, Vs. Gaya Prasad, I.L.R. (1978) M.P. 961*

– **Section 7** – Does not apply for construing agreements or compromise decrees: *Bhagwandas Tiwari, Vs. Gaya Prasad, I.L.R. (1978) MP 961*

– **Section 7** – Word “allowed” – Implication of: *Bhagwandas Tiwari, Vs. Gaya Prasad, I.L.R. (1978) M.P. 961*

– **Section 7(1)** – Applies to cases of marketing society purchasing goods through primary service society from individual agriculturist: *M/s Raipur Vikas Khand Sahakari Vipnan Sanstha Samiti, Raipur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1979) M.P. 664 (DB)*

– **Section 7(1)** – Circumstances in which exemption can be granted: *M/s Raipur Vikas Khand Sahakari Vipnan Sanstha Samiti, Raipur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1979) M.P. 664 (DB)*

– **Section 7(1)** – Iron and cement supplied by P.W.D. to contractor for P.W.D. – Sale liable to purchase-tax: *The Commissioner of Sales Tax, M.P. Vs. Mohammad Zahoor, Sidhi, I.L.R. (1979) M.P. 86 (DB)*

– **Section 7(1)** – Condition to be satisfied for claiming exemption: *Manganese ore (India) Ltd., Nagpur-1 Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1978) MP 8 (DB)*

– **Section 7 (1)** – Dealer purchasing taxable goods in circumstances in which no tax under section 6 leviable – Other circumstances mentioned in section 7 (1) existing – Assessee liable to pay purchase tax: *Ganesh Prasad Dixit, Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1968) M.P. 839 (DB)*

– **Section 7(2)** – Creates new category of registered dealers – Does not say that the person liable to pay purchase tax should be registered or make Section 15 applicable to persons deemed to be registered dealers under that provision: *Sardar Lachhman Singh Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 40 (DB)*

– **Section 7(4)** – Deemed Registered Dealer – Can not be invoked to cover a unregistered dealer for the purposes of M.P. Entry Tax Act when Section 13 thereof has not adopted Section 7 of the General Sales Tax Act for the purpose of Entry Tax Act – Reference answered against Revenue and in favour of assessee: *Commissioner of Sales-Tax Vs. Uttam Construction Co., Khairagarh, I.L.R. (1998) M.P. 709 (DB)*

– **Section 8(1)** - and General Sales tax rules, M.P., 1959 Rule 20(4) – Relation between the two: *The Commissioner of Sales Tax M.P. Vs. Lalloobhai B. Patel & Co. Ltd., Sagar, I.L.R. (1980) M.P. 910 (FB)*

– **Section 8(1)** – Concessional rate of tax – When can be claimed by selling dealer – Selling dealer has to obtain declaration in form XII-A of rules – Has also to satisfy himself about inclusion of goods in the registration certificate of the purchasing dealer: *The Commissioner of Sales Tax, M.P. Vs. M/s Kashi Prasad Keshrilal, Katni, I.L.R. (1981) M.P. 352 (DB)*

– **Section 8(1)** – Felling of standing timber trees, cutting them and converting some of them into ballis – Character as timber is not altered – Sale of timber not liable to pay tax under Section 8(1): *Mohanlal Vishram Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore, I.L.R. (1972) M.P. 618 (DB)*

– **Sections 8(1) and 2(r)** – Judicial discretion – Exercise of, while considering question of imposition of further penalty: *Commissioner of Sales Tax, M.P. Vs. M/s Dilip Oil Mills, Sagar, I.L.R. (1984) M.P. 288 (DB)*

– **Sections 8(1) and 2(r)** – Sales tax Tribunal holding that no case for imposition of further penalty exists – Not arbitrary – Tribunal Also holding that acts of assessee in selling oil-seeds under form XII was only trivial or venial breach and penalty not liable to be imposed – Discretion cannot be said to be erroneous: *Commissioner of Sales Tax, M.P. Vs. M/s Dilip Oil Mills, Sagar, I.L.R. (1984) M.P. 288 (DB)*

– **Section 8(1) and (2)** – Raw material utilized for manufacture of specified goods outside the State of M.P. but manufactured goods are sold within the State of M.P. – Dealer liable to pay Sales- tax at concessional rate under section 8(1) on sale or purchase price of such raw material – Penalty provisions of section 8(2) not attracted: *M/s Sushil Kumar Sarad Kumar, Rewa Vs. Commissioner of Sales Tax, M.P., I.L.R. (1986) M.P. 605 (DB)*

– **Section 8(1) and (2)** – Words “in the State of Madhya Pradesh” qualify only the word ‘Sale’ and not also ‘manufacture of other goods – Raw material utilized for manufacture of specified goods outside the State of M.P. but manufactured goods are sold within the State of M.P. – Dealer liable to pay Sales tax at concessional rate under

section 8(1) on sale or purchase price of such raw material – Penalty provision of section 8(2) not attracted – Interpretation of Statutes – Taxing statutes – Rules of construction: *M/s Sushil Kumar Sarad Kumar Vs. Commissioner of Sales Tax, I.L.R. (1986) M.P. 605 (DB)*

– **Section 8(2)** – Also provides for imposition of penalty – Imposition of penalty under this provision – Discretionary: *M/s Jaswantlal Prahlad Bhai & Co. Damoh Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1978) M.P. 1157(DB)*

– **Section 8(2)** – Discretion exercised on judicial Principal – High Court not to interfere with that discretion: *M/s Jaswantlal Prahlad Bhai & co. Damoh Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1978), 1157(DB)*

– **Section 8(2)** – Even bona fide dealer can be saddled with penalty, though it may vary according to circumstance: *M/s Jaswantlal Prahlad Bhai & co. Damoh Vs. The commissioner of sales Tax, M.P., I.L.R. (1978) M.P. 1157(DB)*

– **Section 8(2)** – Paper used in the process of manufacture though an ingredient in the manufacture – Is covered by raw material – Selling dealer entitled to be charged at concessional rate: *The Commissioner of Sales Tax, M.P., Vs. M/s Samaj Paper Mart, Indor, I.L.R. (1971) M.P. 772 (DB)*

– **Section 8(2)** – Provides for imposition of proper sales tax – Also provides for imposition of penalty – Imposition of penalty under this provision – Discretionary – Even bona fide dealer can be saddled with penalty, Though it may vary according to circumstances – Discretion exercised on Judicial principle – High Court not to interfere with that discretion – Section 44(2) – No improvement of case can be made in the statement of facts Submitted to High Court: *M/s Jaswantlal Prahlad Bhai & co. Damoh Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1978) M.P. 1157(DB)*

– **Section 8(2)** – Rate of penalty imposable thereunder for violating conditions of declaration – Forest contract – Mixed forest consisting of timber trees and firewood trees - Passing of title when trees are felled – Classification of felled trees into firewood and timber – Rate of tax as provided in Entry 8 of part III of Schedule II for firewood and for timber as provided in residuary entry relevant for fixing rate of penalty: *The Commissioner of Sales Tax, M.P. Vs. M/s Harishchandra Mehrotra, Damoh, I.L.R. (1983) M.P. 650 (DB)*

– **Section 8 (2)** – Selling dealer obtaining declaration from purchasing dealer that article will be used as raw material – Paper used in the process of manufacture though an ingredient in the manufacture – Is covered by raw material – Selling dealer entitled to be charged at concessional rate: *The Commissioner of Sales Tax, M.P. Vs. M/s Samaj Paper Mart, Indore, I.L.R. (1971) M.P. 772 (DB)*

– **Sections 8, 12, 44 (2) and 50** – Application for calling statement of fact – Sale in the course of inter – state trade or commerce set-off claimed under section 8(1) (b) (i) read with section 50(1) (ii) of the Act – Rejection of prayer – Assessee claims that Section 50 does not debar set off while submission of Revenue is that transaction is not complete within the State hence Section 50 not attracted – In view of controversy, statement of fact should be called for – Revenue directed to transmit statement of facts in three months: *M/s. Punjabhai & Sons, Jabalpur Vs. The Commissioner of Commercial Tax, M.P., Indore, I.L.R. (2004) M.P. 400 (DB)*

– **Section 10, Schedule 1, Entry 6** – Exemption – “Cloth” in phrase – “All Varieties of cloth manufactured in the mills” – Meaning of – Stitched pillow cover – Is not cloth – Not exempt from tax – Interpretation of statute – Taxing statute – Word requiring interpretation for grant of exemption from tax – Rules of interpretation: *M/s Shreeram Vastra Bhandar, Raipur Vs. Sales Tax Officer, Raipur, I.L.R. (1982) M.P. 487(DB)*

– **Section 10 and Entry 22, Schedule I** – Exempt sales of fertilizer except oil cakes: *The Ratlam Bone and Fertilizer Company, Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216 (FB)*

– **Section 10 and Entry 22, Schedule I** – “Fertilizer” – General than the expression “powdered bones”: *The Ratlam Bone and Fertilizer Company, Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216 (FB)*

– **Section 10 and Entry 22, Schedule I, II and III** – “Fertilizer” to be construed to mean manures other than powdered bones – If construed in the above manner – Effect can be given to words “powdered bones” in Schedules II and III and also to word “fertilizer” in schedule I: *The Ratlam Bone and Fertilizer company, Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216 (FB)*

– **Section 10(1) and item 9 of schedule 1** – “Cooked food” – Circumstances when it is exempt from tax word “meal” – Meaning of sale of different articles in restaurant – Does not constitute sale of any “meal”: *The Commissioner of Sales Tax, M.P. Vs. Indian Coffee Workers Co-Operative Society, Ltd., Jabalpur, I.L.R. (1976) M.P. 992 (DB)*

– **Section 10 (1), - Entry 1, Schedule 1 and Item No. 12 of Notification No. 736-3694-V-SR dated 1-4-59** – Do not include “chaff cutter” or *ḍāqVz~Vh ḍh e'khu* – “Mower” – “Meaning of: *The Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. M/s Agricultural Implements Dealers' Syndicate, Morena., I.L.R. (1968) M.P. 676 (DB)*

– **Section 12** – Notification No. 2044/1885/V-SI, as amended by notification No. 500/136/V/57, issued under – Does not make production of certificate as condition

precedent for claiming benefit of reduced rate – Section 38(5) – Gives power to appellate authority to admit additional evidence: *The Commissioner of sales Tax, M.P. Vs. M/s Dinesh kumar Pradeep Kumar, Rewa, I.L.R. (1976) M.P. 1 (FB)*

– **Section 12** – Notification dated 1-4-1967 issued under – ‘Konda’ (paddy husk) exempt from Sales Tax: *M/s Shri Kishan Satyanarain, Rajnandgaon Vs. State of M.P., I.L.R. (1983) M.P. 630 (DB)*

– **Section 12** - and Entry 25(iv) of the notification issued thereunder – Niwars either made up of cotton yarn or any other yarn including mono filament exempted – Word ‘Niwar’ used in plural sense – Intention of legislature clear to exempt all kinds of Niwars whatever be the raw material – Niwar made of mono filament – Not liable to tax: *Ibrahim Haji Vs. Commissioner of Sales Tax, I.L.R. (2001) M.P. 1139*

– **Section 12 and 17** – Exemption in Sales Tax to dealers setting up industrial units for manufacture of goods in backward districts – Subsequent withdrawal of exemption – Illegal: *Jagdish Bhai Patel Vs. State, I.L.R. (2001) M.P. 1821*

– **Section 12 (1)**, - Notification dated 23-10-1981 and 3-7-87 – Interpretation of – Interpretation of 1981 notification in the light of executive instructions – Traditional Industries excluded to claim exemption of sale tax: *M/s Jagdamba Industries, Kumbhraj Vs. State of M.P., I.L.R. (1989) M.P. 502 (FB)*

– **Section 12(1)**, - Notification dated 23-10-1981 and 3-7-87 and Instructions of State Govt. by order dated 12-1-88, Clause 5 and Constitution of India, Article 162 – For claim of exemption from Sales Tax under 1981 Notification eligible certificate required from authorized Officer – No guide lines and procedure provided in the notification for grant or refusal of certificate State Govt. is competent to issue executive instructions for guide – lines and procedure in exercise of powers conferred under Article 162 of Constitution – Executive powers of the State are co-extensive with legislative powers – Interpretation of 1981 notification in the light of executive instructions – Traditional industries excluded to claim exemption of sale tax – Promissory Estoppel – Petitioner aware exemption not available to his unit and unit not established because of exemption – No question of promissory estoppel: *M/s Jagdamba Industries, Kumbhraj Vs. State of M.P., I.L.R. (1989) M.P. 502 (FB)*

– **Section 13(1)** – “Turn over” in – Has extended meaning – Covers only sales of goods specified in schedule 3 – Interpretation of Statute – Meaning of words ambiguous – Meaning to be understood in the sense in which they best harmonies – Meaning to be considered taking into consideration subject, occasion and object to be attained: *Hiranand Tejmal Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore, I.L.R. (1962) M.P. 674 (DB)*

– **Section 15** – Question of registration of a dealer or continuance of Registration Certificate to be decided with reference to turnover of sale transaction and not of purchase transaction: *Sardar Lachhman Singh Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 40 (DB)*

– **Sections 15 (3), 16 (B)**, – Permanent registration- – Application has to be made after obtaining – Provisional registration – No such application filed by depositing requisite fees – Authorities justified in rejecting application: *Smt. Lata Paprewar Vs. The Deputy Commissioner of Sales Tax, Chhindwara: I.L.R. (2005) M.P. 1159*

– **Sections 15(5) and 18(6)** – Difference between – Finding about intentional avoidance of registration to avoid payment is necessary – Section 18 (6) – Pre-existing condition for exercising jurisdiction regarding imposing of penalty – Constitution of India – Article 226 – Tribunal deciding jurisdictional fact erroneously and assuming jurisdiction – High Court can interfere – Existence of alternative remedy is no bar: *Sardar Mahinder Singh Vs. The Deputy Commissioner of Sales Tax, Raipur, I.L.R. (1975) M.P. 624 (DB)*

– **Section 15 (10) and Rule 13** – Words “application in Form No.5” in – Means that application must be strictly and literally in the prescribed form No. 5 – Commissioner of Sales Tax alone has power to cancel registration certificate – Section 6 – Building contracts – Building contracts not always exempted from payment of Sales Tax – Section 15 – Question of registration of a dealer or continuance of registration certificate to be decided with reference to turnover of sale transaction and not of purchase transaction – Section 7(2) – Creates new category of registered dealers – Does not say that the person liable to pay purchase tax should be registered or make Section 15 applicable to persons deemed to be registered dealers under this provision: *Sardar Lachhman Singh Vs. The State of Madhya Pradesh I.L.R. (1964) M.P. 40 (DB)*

– **Section 16** – Object of its enactment – Competence of legislature to make incidental and ancillary provisions while levying a tax – Section 16 is not invalid – Constitution of India – Article 14 – Classification of dealers into those who had collected turnover tax or surcharge and those who had not – Is reasonable – Not violative of Article 14: *M/s Mahesh Medical & General Agencies, Sagar Vs. The Commissioner of sales Tax, M.P., Indore, I.L.R. (1983) M.P. 486 (DB)*

– **Section 17, 18(1) and 29** – Scope of: *M/s Indian Finances Private Ltd., Allahabad Vs. Sales Tax Officer, Jabalpur, I.L.R. (1965) M.P. 700 (DB)*

– **Section 17(2)** – Whether benefit available to an assessee filling false return previously: *M/s Jawaharlal Ramcharan, Bhopal Vs. Sales Tax Officer, Bhopal, I.L.R. (1981) M.P. 81 (DB)*

– **Section 17(3), as amended** – Even if power given to impose penalty at the time when penalty was imposed – Deeming provision cannot make act of assessee either deliberate flouting of law or action can be said to be contumacious: *M/s Premier Refractories of India(P) Ltd, Katni Etc. Vs. Sales Tax Officer, Jabalpur, I.L.R. (1977) M.P. 955 (DB)*

– **Section 17(3)** – Circumstances when penalty can be imposed: *M/s Premier Refractories of India(P) Ltd, Katni Etc. Vs. Sales Tax Officer, Jabalpur, I.L.R. (1977) M.P. 955 (DB)*

– **Section 17(3)** – Does not authorize imposition of drastic penalty for late filing of return – Return allowed to be filed – Authority has to make assessment on material available on record: *Rai Saheb Seth Gopikisan Agrawal and Sons, Tumsar Vs. Shri C.L. Sharma, Assistant Commissioner of Sales Tax, Jabalpur, I.L.R. (1977) M.P. 1170 (DB)*

– **Section 17(3)** – Imposition of penalty not ratified by Central Government – It is liable to judicial scrutiny: *M/s Premier Refractories of India(P) Ltd, Katni Etc. Vs. Sales Tax Officer, Jabalpur, I.L.R. (1977) M.P. 955 (DB)*

– **Section 17(3)** – Scope and effect of: *M/s Premier Refractories of India(P) Ltd, Katni Etc. Vs. Sales Tax Officer, Jabalpur, I.L.R. (1977) M.P. 955 (DB)*

– **Section 17(3)** – Plastic mono filament – Neither made of any fibre nor a thread prepared after spinning – Does not stand the test of ingredients of yarns envisaged in Entry 5, Part V, Schedule II – But covered within Entry No. 1, Part VI, Schedule II of the Act – Petitioner rightly held liable to pay tax @ 10% and not 4%: *M.M. Plastics Industries, Bhopal Vs. Additional Sales-Tax Officer, Bhopal, Circle II, Bhopal, I.L.R. (2000) M.P. 1049*

– **Section 17(3) and Rule 15** – Return as required by Rule 7-A of the Central Sales Tax Rules not filed in time in the manner provided by the General Sales Tax Rules, Madhya Pradesh – Breach punishable under Section 17(3) of the General Sales Tax Act, and not by Rule 12 of Central Sales Tax Rule: *The Commissioner of Sales Tax, M.P. Indore Vs. M/s Kantilal Mohanlal and Brothers Morena, I.L.R. (1970) M.P. 700 (DB)*

– **Sections 17(3), 17(2), 43(1) and 38(5)** – Return filed by assessee showing turnover at low figure – Assessee filing revised return showing turnover at much higher figure after its detection by Inspector – Assessment finalized and penalty imposed for deliberate concealment and late filing of return – Appellate authority setting aside assessment and remanding case for fresh assessment of turnover order of penalty maintained Whether appellate authority bound to set it aside while setting aside order of

assessment and remanding case for re-assessment section 38(5) clauses (a) and (b) – expressions “confirm, reduce, enhance or annual the assessment or the penalty or both” and set aside the assessment or the penalty or both” in connotation of – Mens rea – Difference in turnover shown in previous return and revised return by rupees two lacs- presumption under – Section 17(2) – Whether benefit available to an assessee filing false return previously: *M/s Jawaharlal Ramcharan, Bhopal Vs. Sales Tax Officer, Bhopal, I.L.R. (1981) M.P. 81 (DB)*

– **Section 17(3) and 43(1)** – Imposition of penalty, when can be made: *M/s Bachhraj Factory Pvt. Ltd., Bad-Nagar Vs. Commissioner of Sales Tax, I.L.R. (1981) M.P. 1078 (DB)*

– **Section 17(3) (b)** – Non payment of tax or non-furnishing of proof of deposit – Penalty can be imposed: *M/s Premier Refractories of India(P) Ltd, Katni Etc. Vs. Sales Tax Officer, Jabalpur, I.L.R. (1977) M.P. 955 (DB)*

– **Sections 17(3) (c), 18 (4) and 43(1)** - and Constitution of India, Article 226 – Non filing of return by petitioner dealer – Best judgment assessment – Total turnover found to be taxable – Element of Concealment – Penalty under section 17(3)(c) and section 48 (1) could independently be imposed – Section 38 – Provision for appeal – Entertainement of revision – Propriety of – Article 226 – Fundamentals for invoking writ jurisdiction: *M/s Babulal Agrawal, Barpali Vs. Commissioner of Sales Tax, M.P. Indore, I.L.R. (1986) M.P. 636 (DB)*

– **Section 18** – Advance amount if paid into Treasury – Not Integral part of assessment order – Integral part is amount of tax liable to pay on taxable turnover: *Azad Hind Motor Transport Co – Operative Society, Burhanpur Vs. The Regional Transport Authority Indore I.L.R. (1965) M.P. 420 (DB)*

– **Section 18** – Best judgment assessment – Can be made when account- books are rejected on sound ground – Account-books not rejected – Assessment made can not be regarded as best judgment assessment: *M/s Channulal Motilal, Jabalpur Vs. The Commissioner of sales Tax, M.P., I.L.R. (1976) M.P. 577 (FB)*

– **Section 18 and Rule 15(4)** – Provision of rule 15(4) – Accompaniment of certificates and list of certificates as per rule 24 with return – Not mandatory: *M/s National Traders (India), Indore Vs. Additional Commissioner of sales Tax, M.P., Indore, I.L.R. (1972) M.P. 89 (DB)*

– **Section 18(4)** – Assessing authority making a bonafide estimate on rational basis – High Court cannot interfere even though it may not be most appropriate basis: *M/s Jain Trading Co., Durg Vs. State of M.P., I.L.R. (1983) M.P. 567 (DB)*

– **Section 18(4)** – Assessee not bound to maintain day to day manufacturing account – Account books found to be reliable – Assessment to be made according to turnover mentioned in the account books: *Commissioner of Sales Tax, M.P. Vs. M/s Dilip Oil Mills, Sagar, I.L.R. (1984) M.P. 288 (DB)*

– **Section 18(4)** – Best judgment assessment – Scope of: *M/s Jain Trading Co., Durg Vs. State of M.P., I.L.R. (1983) M.P. 567 (DB)*

– **Section 18(4)** – Does not prevent assessee from furnishing evidence – Ex parte best judgment when can be made: *Rai Saheb Seth Gopikisan Agrawal and Sons, Tumsar Vs. Shri C.L. Sharma, Assistant Commissioner of Sales Tax, Jabalpur, I.L.R. (1977) M.P. 1170 (DB)*

– **Section 18(4)(d)** – Assessment cannot be based on suspicion or guess work: *The Commissioner of Sales Tax M.P. Vs. M/s Sardar House, Jabalpur, I.L.R. (1974) M.P. 524 (DB)*

– **Section 18(4)(d)** – Enhancement of assessment – Not justified without material or circumstances to support it – No presumption that dealer indulged in criminal practice: *The Commissioner of Sales Tax M.P. Vs. M/s Sardar House, Jabalpur, I.L.R. (1974) M.P. 524 (DB)*

– **Section 18(4)(d)** – Finding “there was likelihood of errors and omission” in the accounts produced by the dealer – Not a finding that method of accounting employed was such that the assessment could not properly be made – Absence of such finding – Best judgment assessment can-not be made – Enhancement of assessment – Not justified without material or circumstance to support it – No presumption that dealer indulged in criminal practice – Assessment cannot be based on suspicion or guess work – Section 38(5) and Rule 20 – Power of, appellate authority to admit documents which are relevant and which could not be produced by dealer in spite of best efforts before assessing authority: *The Commissioner of Sales Tax M.P. Vs. M/s Sardar House, Jabalpur, I.L.R. (1974) M.P. 524 (DB)*

– **Section 18(6)** – Lease to extract sand in favour of one person – Agreement between lessee and another person to take out sand and supply it to lessee – Royalty and ground rent payable by person supplying sand – Supplier does not become owner – Supply of sand does not constitute sale – Constitution of India – Article 226 – Statement of new facts in return to support orders – Not permissible – Misconstruction of deed – Amounts to error of law apparent on face of record – Filing of revision and not an appeal – Does not amount to non-availing of remedy provided by the Act – Section 39 – Revisional order not enhancing, modifying or canceling assessment – Does not give right of appeal to assessee – Consequently not right of reference under Section 44: *Calcutta Co., Ltd., Calcutta Vs. Commissioner of Sales Tax, MP, Indore, I.L.R. (1965) M.P. 370 (DB)*

– **Section 18(6)** – Notice to an unregistered dealer to show cause and demanding tax for 10 years – Validity of – Limitation – Starting point of limitation for determination of the tax liability of unregistered dealer – Commencement of – Section 18(8) (a), proviso – When attracted: *M/s Joshi Iron And Steel Corporation, Polo Ground, Indore Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1981) M.P. 112 (DB)*

– **Section 18(6)** – Pre-existing condition for exercising jurisdiction regarding imposing of penalty: *Sardar Mahinder Singh Vs. The Deputy Commissioner of Sales Tax, Raipur, I.L.R. (1975) M.P. 624 (DB)*

– **Section 18(6)(a)** – Quantum of penalty payable under, by the assessee willfully failing to apply for registration: *Birendra Singh and Company, New Delhi Vs. Regional Assistant Commissioner of Sales Tax, Bhopal I.L.R. (1990) M.P. 189 (DB)*

– **Section 18(8) and constitution of India, Article 226** – Order of assessment bearing dated 30-09-80 – Order passed falls within prescribed period of limitation – No averment in writ petition that revisional Court did not consider the question of limitation though raised – That question of fact cannot be considered in writ petition – Held, assessment proceedings not barred by time: *M/s Khanna Scooters, Peer Gate, Bhopal Vs. Assistant Sales Tax Officer, Bhopal, I.L.R. (1989) M.P. 468 (DB)*

– **Section 18(8) (a)**, - Proviso when attracted: *M/s Joshi Iron And Steel Corporation, Polo Ground, Indore Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1981) M.P. 112 (DB)*

– **Section 19, as amended** – Enlarges period of limitation for re-assessment and widens grounds on which re-assessment can be made: *The commissioner of Sales Tax, M.P. Vs. M/s Rameshlal Keshavlal, Morena, I.L.R. (1976) M.P. 489 (FB)*

– **Section 19** - and General Sales Tax Rules, M.P. 1959, Rules 33(1) and (2) Notice in Form XVI – Extent of escaped turn-over necessary to be specified procedure which has to be followed in case of escaped assessment – What is the escaped turnover – Things to be considered in making best judgment assessment – Section 19(1) and provisions for imposition of penalty – Applicable for imposition of penalty of escaped assessment under the Central Act: *M/s H.M. Esufali H.M. Abdulali, Indore Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 87 (DB)*

– **Section 19** - and General Sales tax rules, M.P. 1959, Rule 33(1) and (2) – Procedure which has to be followed in case of escaped assessment – What is the escaped turnover – Things to be considered in making best judgment assessment: *M/s H.M. Esufali H.M. Abdulali, Indore Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 87 (DB)*

– **Section 19** – Assessing authority only has power to start proceedings regarding reassessment: *The Commissioner of Sales Tax, M.P., Indore Vs. M/s Ganesh Oil Mills, Raipur, I.L.R. (1975) M.P. 940 (DB)*

– **Section 19 (before amendment)** – Assessment year will be from April to end of March – five years to be computed from the end of financial year: *The Commissioner of Sales Tax, M.P. Vs. M/s Rameshlal Keshavlal, Morena, I.L.R. (1976) M.P. 489 (FB)*

– **Section 19 (before amendment)** – “Year” – would mean financial year: *The Commissioner of Sales Tax, M.P. Vs. M/s Rameshlal Keshavlal, Morena, I.L.R. (1976) M.P. 489 (FB)*

– **Section 19** – Defect in notice not fatal to assessment proceedings where prejudice not caused: *Kunjilal Devidayal Vs. The Assistant Sales Tax Officer Jabalpur, I.L.R. (1974) M.P. 428 (DB)*

– **Section 19** – Exact amount of turnover escaping assessment not necessary to be mentioned: *Kunjilal Devidayal Vs. The Assistant Sales Tax Officer Jabalpur, I.L.R. (1974) M.P. 428 (DB)*

– **Section 19** – Except for change of opinion no material to initiate proceedings – Authorities acted beyond jurisdiction – Re-assessment proceedings and order of reassessment quashed : *M/s Eisher Motor Ltd. Vs. State of M.P., I.L.R. (2005) M.P.) 233*

– **Section 19** – First assessment best judgment assessment – No prohibition for issuing notice for re-assessment on the ground that assessee did not maintain accounts: *Kunjilal Devidayal Vs. The Assistant Sales Tax Officer Jabalpur, I.L.R. (1974) M.P. 428 (DB)*

– **Section 19** – Issue of notice not a condition for exercise of jurisdiction – Reasonable opportunity to be given to dealer – Defect in notice not fatal to assessment proceedings where prejudice not caused – Exact amount of turnover escaping assessment not necessary to be mentioned – First assessment best judgment assessment – No prohibition for issuing notice for re-assessment on the ground that assessee did not maintain accounts: *Kunjilal Devidayal Vs. The Assistant Sales Tax Officer Jabalpur, I.L.R. (1974) M.P. 428 (DB)*

– **Section 19** – Notice not giving reason for reopening assessment – Notice not according to law – Does not give necessary protection to assessee: *Naraindas Sindhvani Vs. Commissioner of Sales Tax, M.P., Indore, I.L.R. (1974) M.P. 774 (DB)*

– **Section 19(1)** - as amended – Applicability of – Order of assessment mentioned in – Does not include order of re-assessment – Limitation commences from order of assessment and not from order of re-assessment: *Firm Jeewakhan Musabhai, Ujjain Vs. State of M.P., I.L.R. (1975) M.P. 39 (DB)*

– **Section 19(1)** – Assessing Officer can re-open assessment in relation to the turnover which had escaped from assessment: *M/s Kailash Automobiles, Jabalpur Vs. Additional Commissioner of Commercial Tax, Jabalpur, I.L.R. (2001) M.P. 644*

– **Section 19(1)** – Assessment re-opened thereunder – Assessee obtaining a declaration in form XII-A from the purchasing dealer claiming the concession rate of tax under section 8(1) of the Act, because the goods were not specified in the registration certificate of the purchasing dealer – Tenability of – General Sales Tax rules, M.P., 1959 – Rule 20(4) – Compliance of provisions there of – Mandatory – General Sale tax Act, Section 8(1) and General Sales tax Rules, 1959, Rule 20(4) – Relation between the two: *The Commissioner of Sales Tax M.P. Vs. Lalloobhai B. Patel & Co. Ltd., Sagar, I.L.R. (1980) M.P. 910 (FB)*

– **Section 19(I)** – Causative and rational connection between reason stated and the consequence of under assessment or escaped assessment or of an assessment at a lower rate or a wrong deduction necessary under amended section 19(I): *Janta Hardwares Stores Vs. B.S. Parihar, I.L.R. (1963) M.P. 840 (DB)*

– **Section 19(I)** – Issue of notice condition precedent for assessment under that section: *Janta Hardwares Stores Vs. B.S. Parihar, I.L.R. (1963) M.P. 840 (DB)*

– **Section 19(1)** – Notice for re-assessment – Provision does not contemplate re-initiation of re-assessment – Notice quashed: *M/s. Prem Chand Deep Chand Jain, Jabalpur Vs P. K. Shrivastava, Addl. Sales-Tax Officer, Jabalpur, I.L.R. (1992) M.P. 451 (DB)*

– **Section 19(I)** – Requisite conditions for applicability of: *Janta Hardwares Stores Vs. B.S. Parihar, I.L.R. (1963) M.P. 840 (DB)*

– **Section 19(1)** – and 30 and Rule 68 – Commissioner, Right of, delegate the duty of being satisfied – The requirement of being satisfied about turnover escaping assessment – Not a separate duty separable from the exercise of the power to make an assessment – Exercise of power to make assessment – Dependent upon satisfaction being previously reached – Satisfaction and making re-assessment – Not separate and distinct attributes – Former integral part of latter – Section 19(1) – Does not impose duty which can be commanded to be performed by issue of writ – Does not even confer power with a duty to exercise it – Delegation of power to make assessment – Duty of being satisfied automatically becomes delegated – Essential requisite for application of the section –

When turnover can be said to have escaped assessment – Unnecessary words in the notice not scored out – Assessee knowing the case he had to meet – Notice not rendered invalid – Issue of notice-A condition precedent to the validity of assessment: *M/s Daluram Pannalal Modi Vs. The Assistant Commissioner of Sales-Tax Indore*, I.L.R. (1963) M.P. 822 (DB)

– **Section 19(I)** – as amended and Rule 33 – Section 19(1) – Requisite conditions for applicability of – Causative and rational connection between reason stated and the consequence of under – Assessment or escaped assessment or of an assessment at a lower rate of or a wrong deduction necessary under amended section 19(1) – Issue of notice condition precedent for assessment under that section – Rule 33 – Distinction between “in accordance with form XVI” and “in form XVI” – Form XVI inconsistent with amended section 19(1) – Notice in Form No. XVI invalid because of amended section 19(1) – Constitution – Article 226 – Proceedings patently defective and without jurisdiction – Existence of alternative remedy, no bar to grant of relief: *Janta Hardwares Stores Vs. B.S. Parihar*, I.L.R. (1963) M.P. 840 (DB)

– **Section 19 (1)** - and provision for imposition of penalty – Applicable for imposition of penalty of escaped assessment under the Central Act: *M/s H.M. Esufali H.M. Abdulali, Indore Vs. The Commissioner of Sales Tax*, M.P., I.L.R. (1976) M.P. 87 (DB)

– **Section 19(1), Proviso** – Assessment made under the repealed Act – Period for re-assessment also governed by the repealed Act – Section 52(1)-Proviso – Fiction introduced in later part of proviso – Is subject to, and without any effect on right, obligation or liability under the repealed Act – Proceeding commencing before the New Act – Assessee’s Liability preserved – Tax leviable at old rate – Rights regarding appeal, revision and reference preserved unless expressly taken away – Fiction in proviso not to be construed as overriding either the proviso to Section 19(1) or earlier part of proviso to Section 52(1) of New Act: *Hanuman Prasad Vs. The Sales-Tax Officer, Circle No.1, Jabalpur*, I.L.R. (1964) M.P. 838 (DB)

– **Section 19(1) and 39(2)** – Closure of proceedings initiated under Section 19(1) is an order against the interest of revenue – Order revisable under Section 39(2): *M/s Kailash Automobiles, Jabalpur Vs. Additional Commissioner of Commercial Tax, Jabalpur*, I.L.R. (2001) M.P. 644

– **Sections 19(1) and 43(1)** – Penalty – Can be imposed at the time of reassessment under section 19(1) – Penalty imposed under section 19(1) of the Act – Separate penalty cannot be imposed under section 43(1): *The Commissioner of Sales Tax, M.P. Vs. M/s. Sohanlal Sureshchandra, Dhamtari*, I.L.R. (1981) M.P. 800 (DB)

– **Sections 19(1) and 43(1)** – Penalty imposed under section 19(1) of the Act – Separate penalty cannot be imposed under section 43(1): *The Commissioner of Sales Tax, M.P. Vs. M/s. Sohanlal Sureshchandra, Dhamtari, I.L.R. (1981) M.P. 800 (DB)*

– **Section 20(i)** – Saves limitation when order of assessment of reassessment set aside by appellate authority and case remanded – Fresh assessment or re-assessment in the circumstances not subject to any limitation – Constitution of India Article 226 – Alternative remedy when not a bar to exercise of jurisdiction under this provision: *Naraindas sindhwani Vs. Sales Tax, Indore, I.L.R. (1974) M.P. 770 (DB)*

– **Section 21(1)** - and General Sales- Tax Rules, M.P. 1960, Rule 59(4) – Regular employee of the company dealer authorized in writing can appear in appeal before Board of Revenue – Appeal dismissed in default of appearance of such employee can be restored on showing sufficient cause for his absence: *M/s Avery India Ltd., Bhopal Vs. Commissioner of Sales Tax, M.P., Indore, I.L.R. (1985) M.P. 613 (DB)*

– **Section 22** – Non payment of tax along with return for which no notice of demand issued – Not sufficient to impose penalty – Section 17(3)(b) – Non-payment of tax or non-furnishing of proof of deposit – Penalty can be imposed – Section 17(3) – Scope and effect of – Central Sales Tax Act, 1956 – Section 9(2) – Penalty could not be imposed at the time it was imposed – Invalidity of penalty not validated by retrospective amendment – General Sales tax Act, Madhya Pradesh, 1958 – Section 17(3) – Circumstances when penalty can be imposed – Central Sales Tax Act – Section 9(2) – Words “For the time being” in – Implication of – Sales Tax Rules (Central), Madhya Pradesh 1957 – Rules 7-A and 12 and Sales Tax Act, M.P., Section 17(3) – Rules create Criminal offence while Section 17(3) does not – Rules do not forbid imposition of penalty – Central Sales Tax Act – Section 9(2) – Blends power to collect penalties and power to assess and collect Central Sales Tax – Adopts State law relating to imposition of penalties while exercising power regarding assessment and recovery of Central Sales Tax – Sales Tax Act, M.P. – Section 17(3) – As amended – Even if power given to impose penalty at the time when penalty was imposed – Deeming provision can not make act of assess either deliberate flouting of law or action can be set to be contumacious – Imposition of penalty not retified by Central Government – It is liable to judicial scrutiny: *M/s Premier Fefractories of India (P) Ltd, Katni Vs. Sales Tax Officer, Jabalpur, I.L.R. (1977) M.P. 955 (DB)*

– **Section 22(4)** – Notice issued under – Not invalid because authority has not arrived at a conclusion that assessee has not in face paid amount in treasury now claimed from him: *Firm Harpaldas Jairamdas, Bilaspur Vs. The Sales Tax Officer, Bilaspur, I.L.R. (1965) M.P. 402 (DB)*

– **Section 22(4) (a)** – Issue of notice – Has not effect of modifying or rectifying assessment order: *Firm Harpaldas Jairamdas, Bilaspur Vs. The Sales Tax Officer, Bilaspur, I.L.R. (1965) M.P. 402 (DB)*

– **Section 22(4) (a) and Rule 37** – Circumstance in which Sales Tax Authority can issue notice under this provision: *Firm Harpaldas Jairamdas, Bilaspur Vs. The Sales Tax Officer, Bilaspur, I.L.R. (1965) M.P. 402 (DB)*

– **Section 23 (1) and (5)** – Conditions which must be satisfied before recovery proceedings are started Section 23 (5) – Contemplates hearing of objection - Section 33 (4) – Joint family discontinued business Family can still be assessed – After assessment is made Every member liable separately and jointly – Such tax can be recovered from the transferee of the family: *Mangalchand Vs. The Sales Tax Officer, Narsimhapur, I.L.R. (1968) M.P. 1 (DB)*

– **Section 23 (5)** – Contemplates hearing of objection of the person: *Mangalchand Vs. The Sales Tax Officer, Narsimhapur, I.L.R. (1968) M.P. 1 (DB)*

– **Section 24(5)** – Notification dated 29-10-63 – Not applicable to taxes levied before 29-10-63 – Talk of refund arises when tax is paid – Liability to pay tax not affected – Refund claimable only when goods are proved to have been exported: *Shyama Charan Shukla Vs. State of M.P., I.L.R. (1975) M.P. 945 (FB)*

– **Section 30** – Sales tax officer and additional sales tax officer the same circle have jurisdiction throughout the circle – Not necessary to divide further the jurisdictional area: *M/s Seth Sunderdas, Contractor, Raipur Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1978) M.P. 261(DB)*

– **Section 30** – Words “any of his powers and duties” in – Refer to powers and duties of the individual holding the office: *M/s Seth sunderdas, Contractor, Raipur Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1978) M.P. 261 (DB)*

– **Section 31(1) and 43(1)** – Assessee filing return and disclosing sales to electrical undertakings and claiming exemption from tax thereon – Act not providing for any exemption in respect of such sales – Return cannot be held as false – Assessee not liable to any penalty: *M/s. Dababhoy's New Chirimiri Ponri Hill Colliery Company Pvt. Ltd., Chirimiri Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1981) M.P. 530 (DB)*

– **Section 33-C** – Charge created on the property of the dealer thereunder – Scope of – Dealer Mortgaging or pawning his property before the charge started operating – Effect of – Property mortgaged or pawned before 15th March, 1976 – Not affected by section 33-C: *State Bank of Indore Vs. The Additional Tahsildar-Cum-Sales-Tax Officer, Dewas, I.L.R. (1983) M.P. 76 (DB)*

– **Section 33-C** – Dealer mortgaging or pawning his property before the charge started operating – Effect of: *State Bank of Indore Vs. The Additional Tahsildar-Cum-Sales-Tax Officer, Dewas, I.L.R. (1983) M.P. 76 (DB)*

– **Section 33-C** – Property mortgaged or pawned before 15th March, 1976 – Not affected by section: *State Bank of Indore Vs. The Additional Tahsildar-Cum-Sales-Tax Officer, Dewas, I.L.R. (1983) M.P. 76 (DB)*

– **Section 33(1)** – Burden of proof – Burden on department to prove all conditions mentioned in the section: *Bajranglal Vs. The State of M.P., I.L.R. (1967) M.P. 246 (DB)*

– **Section 33(1)** – “Business” and “Transfer of the ownership of business” in – Meaning and implications of – “Good will” of business – A part and incident to a business cannot be sold apart from business – Sale of business – Means sale of its good – will – Burden of proof – Burden on department to prove all conditions mentioned in the section: *Bajranglal Vs. The State of M.P., I.L.R. (1967) M.P. 246 (DB)*

– **Section 33 (4), First proviso** – Amount of tax can be recovered from the transferor firm or its members or partners – If unrecoverable from them – Then from the members or partners of the transferee firm: *M/s Chhotelal Keshavram, Rajnandgaon Vs. Additional Assistant Commissioner of Sales Tax, Raipur, I.L.R. (1979) M.P. 123 (DB)*

– **Section 33(4)** – Liability for payment of tax is joint and several – Recovery of tax from transferee firm in first instance – Is contrary to section 33(4): *M/s Chhotelal Keshavram, Rajnandgaon Vs. Additional Assistant Commissioner of Sales Tax, Raipur, I.L.R. (1979) M.P. 123 (DB)*

– **Section 33(4)** – Courts or officers who have to decide a case judicially or quasi-judicially – Courts or officers have to entertain objections to their jurisdiction – Have to observe rules of natural justice: *Matadin Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1967) M.P. 885 (DB)*

– **Section 33 (4)** – Joint family discontinued business – Family can still be assessed – After assessment is made – Every member liable separately and jointly – Such tax can be recovered from the transferee of the family: *Mangalchand Vs. The Sales Tax Officer, Narsimhapur, I.L.R. (1968) M.P. 1 (DB)*

– **Section 33-B** – Deeming provision in – Not available in a case when notice is issued to a dead person and assessment also made against dead person: *Gopalkishan Vs. The Sales-Tax Officer, Circle No. 2, Jabalpur, I.L.R. (1971) M.P. 37 (DB)*

– **Section 35(1)(a)(ii)** – Account-book ceased by Central Excise Authority – Sales-tax Authority has power to get them produced – Sales-tax Authority has no power to

pass ex parte best judgment assessment – Section 17(3) – Does not authorize imposition of drastic penalty for late filing of return – Return allowed to be filed – Authority has to make assessment on material available on record – Does not prevent assessee from furnishing evidence – Ex parte best judgment when can be made: *Rai Saheb Seth Gopikisan Agrawal and Sons, Tumsar Vs. Shri C.L. Sharma, Assistant Commissioner of Sales Tax, Jabalpur, I.L.R. (1977) M.P. 1170 (DB)*

– **Section 37** – Suit filed by assessee for permanent injunction restraining state from realizing the amount of sales tax and penalty on the allegations that assessments were made in absence and unawareness of plaintiff – Suit not maintainable as expressly barred by the section – Exclusive jurisdiction of Civil Court – When can be inferred – Statute imposing liability and creating an effective machinery for deciding questions of law and fact involved therein – Remedy of civil suit is barred: *Sirajuddin Vs. State of M.P., I.L.R. (1981) M.P. 486 (DB)*

– **Section 37** – Suit against recovery of tax assessed under the Act – Maintainability: *The State of M.P. Vs. Laxman Ganesh Dewangan I.L.R. (1970) M.P. 665*

– **Section 38** – Provision for appeal – Entertaining of revision – Propriety of: *M/s Babulal Agrawal, Barpali Vs. Commissioner of Sales Tax, M.P. Indore, I.L.R. (1986) M.P. 636 (DB)*

– **Section 38(1), 38 (2), 44(1)** - and General Sales Tax Rules M.P., 1958, Rule 57 – Application to tribunal for reference – Neither the Act nor Rules framed there under require filing of authenticated copy, impugned order – Application for reference without copy maintainable: *M/s. Hari Prasad Nand Kumar, Durg Vs. The Board of Revenue, Gwalior, I.L.R. (1989) M.P. 276 (DB)*

– **Section 38 (5)** – Gives power to appellate authority to admit additional evidence: *The Commissioner of Sales Tax, M.P. Vs. M/s Dinesh Kumar Pradeep Kumar, Rewa, I.L.R. (1976) M.P. 1 (FB)*

– **Sections 38(5), 43 and 18(8)** – Jurisdiction of the appellate authority to enhance penalty under section 38(5) – Whether includes power to impose penalty for the first time when no penalty was levied by the assessing authority – Sections 43 and 18(8) – Appellate authority while hearing appeal under section 38, finalizing assessment and finding it to be a fit case falling within the ambit of section 43 issuing notice to the assessee and after hearing imposing penalty thereunder – Bar of limitation provided in section 18(8) not attracted: *M/s Food Corporation of India, Bhopal Vs. Commissioner of Sales Tax, M.P., Indore, I.L.R. (1984) M.P. 273 (DB)*

– **Section-38 (5) and rule 20** – Power of appellate authority to admit documents which are relevant and which could not be produced by dealer in spite of best efforts before assessing authority: *The Commissioner of Sales Tax M.P. Vs. M/s Sardar House, Jabalpur, I.L.R. (1974) M.P. 524 (DB)*

– **Section 38(5)(a)** - and General Sales Tax Rules, M.P., 1959, Rule 60 – Assessee's appeal before the tribunal against the assessment order – Whether appellate Authority can exercise jurisdiction to consider the question of enhancement at the request of the revenue: *Commissioner of Sales Tax, M.P., Indore Vs. M/s Tansukhdas Madanlal, Rajnandgaon, I.L.R. (1983) M.P. 522 (DB)*

– **Section 38(3), Proviso** – Appellant claiming benefit of proviso to sub-section 3 – Appellant praying for permission to file appeal on payment of lesser amount of tax – Appellant to be given opportunity of being heard – Appellate Tribunal performs *quasi* judicial function – Must follow principles of natural justice – Must record reasons for refusing permission: *The Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. M/s Mangilal Rameshwar Dayal, Morena, I.L.R. (1964) M.P. 460 (DB)*

– **Section 38 (5)** – Power to dispose of appeal – Includes the power to enhance assessment – Power to dispose of appeal – Is coupled with duty to ascertain true assessment – Provision imposes a Public duty – Appeal withdrawn – Application for enhancement cannot be dismissed: *The Commissioner of Sales Tax, Madhya Pradesh, Indore, Vs. Messrs Mohanlal Har Prasad, Bidi Merchants, Sihora, I.L.R. (1968) M.P. 670 (DB)*

– **Section 38(5), Clauses (a) and(b)** – Expressions “confirm reduce enhance or annul the assessment or the penalty or both” and “set aside the assessment or the penalty or both” in – Connotation of: *M/s Jawaharlal Ramcharan, Bhopal Vs. Sales Tax Officer, Bhopal, I.L.R. (1981) M.P. 81 (DB)*

– **Section 38(5), Clauses (a) and (b)** – Mens rea – Difference in turnover shown in previous return and revised return by rupees two lacs – Presumption under: *M/s Jawaharlal Ramcharan, Bhopal Vs. Sales Tax Officer, Bhopal, I.L.R. (1981) M.P. 81 (DB)*

– **Sections 38 (5) and 29 (7)** – Reference by appellate Tribunal that whether Appellate Dy. Commissioner had jurisdiction to initiate action to enhance assessment or penalty on the basis of material collected after assessment – Applicant a trading company engaged in sale of oil seeds, pulses etc. – Assistant Commissioner of Sales Tax passed orders of assessment – Applicant filed an appeal – In the meanwhile premises of applicant was raided and certain irregularities in books of account were pointed out in report – Appellate Dy. Commissioner after perusing report issued notice to assessee under Section 38 (5) of M.P. General Sales Tax Act and remanded case back to assessing authority for fresh disposal – Held – Appellate Authority has jurisdiction to look into new or additional material placed before it and to issue notice for enhancement of assessment under Section 38 (5)(a) of M.P. General Sales Tax Act.: *M/s Trilok Chand Swarup Chand Jain, Burhanpur Vs. Commissioner of Sales Tax, M.P., I.L.R. (1994) M.P. 509 (DB)*

– **Section 38, 38(5)(a) and 43(1)** – Appellate authority has jurisdiction to issue show-cause notice u/s 38 (5) (a) – Factual consideration cannot be investigated in writ jurisdiction – Deposit of amount a condition precedent to file appeal – Cannot be circumvented by coming to High Court in writ jurisdiction – Court should be slow in entertaining the matter and staying proceedings when Revenue Recovery involved: *S.A.E. (India Limited) Vs. Union of India, I.L.R. (1988) M.P. 535*

– **Section 38 and 44(1)** – Appeal u/s 38 – Two stages, first stage admission of appeal second stage, hearing on merits – Appeal not admitted on ground of non-payment of tax – Scope in second appeal – Confined to question whether the first appellate authority was right in not admitting appeal – Position different in first appeal being dismissed in default – In such case merits of various pleas shall be considered in second appeal: *Gulshan Rai Johar Vs. Commissioner of Sales Tax, M.P., I.L.R. (1988) M.P. 345 (DB)*

– **Section 38(5)** - and General Sales Tax Rules M.P. 1959 Rule 20 – Tribunal was not justified in disallowing the filing the documents at the appellate stage – Tribunal had jurisdiction to accept the documents: *M/s Bharat Heavy Electricals Ltd. Bhopal Vs. Commissioner of Sales, M.P., Tax, I.L.R. (1989) M.P. 622 (DB)*

– **Section 39** – Revisional order not enhancing, modifying or cancelling assessment – Does not give right of appeal to assessee: *Calcutta Company Limited, Calcutta Vs. Commissioner of Sales Tax, M.P., Indore, I.L.R. (1965) M.P. 370 (DB)*

– **Section 39(1)** – Cash credit entries in the account books of the petitioner not in the name of any person – Petitioner failing to disclose the name of the alleged depositors – Presumption of such cash credits representing the sale proceeds of undisclosed sales reasonable: *M/s Jain Trading Co., Durg Vs. State of M.P., I.L.R. (1983) M.P. 567 (DB)*

– **Section 39(1)** – The words “may pass such order thereon, not being an order prejudicial to the dealer” – Refers to the final order and not to the steps leading to the final order – Commissioner in revision not enhancing the tax assessed by the assessing authority – Order cannot be said to be prejudicial to the dealer – Cash credit entries in the account books of the petitioner not in the name of any person – Petitioner failing to disclose the names of the alleged depositors – Presumption of such cash credits representing the sale proceeds of undisclosed sales reasonable – Section 18(4) – Best judgment assessment – Scope of – Assessing authority making a bona fide estimate on rational basis – High court cannot interfere even though it may not be most appropriate basis: *M/s Jain Trading Co., Durg Vs. State of M.P., I.L.R. (1983) M.P. 567 (DB)*

– **Sections 39, and 43**– Power to impose penalty for alleged Concealment of turn over– Provision relates to additional power and confers jurisdiction on the commissioner

for imposition of penalty—Proceeding can be initiated in suo-motu power of revision by the Commissioner—Order of Single Judge set aside: *Addl. Commissioner of Sales Tax, Jabalpur Vs. M/s. Moujilal Das Singh; I.L.R. (2004) M.P. 240 (FB)*

– **Section 39 (1)** – No opinion expressed as not necessary in the present case: *M/s. Bhagwati Construction Company, Neemuch Vs. State I.L.R. (1999) M.P. 453 (DB)*

– **Section 39(1)** – Revision – Approach of the revisional authority proper – Given the stamp of approval: *M.M. Plastics Industries, Bhopal Vs. Additional Sales-Tax Officer, Bhopal, Circle II, Bhopal, I.L.R. (2000) M.P. 1049*

– **Section 39(2)** – Assessment made under old Act – Revision can be under Section 22 B of old Act and the period of limitation would be governed by old Act – Section 19 – Assessing authority only has power to start proceedings regarding reassessment – Proceedings taken by Additional Commissioner who is not assessing authority – Cannot be related either to Section 11-A of old Act or Section 19(1) of the new Act: *The Commissioner of Sales Tax, M.P., Indore Vs. M/s Ganesh Oil Mills, Raipur; I.L.R. (1975) M.P. 940 (DB)*

– **Section 39(2)** – Appellate order of Deputy Commissioner of Sales Tax – Revisable by the commissioner: *Asbestos Cement Limited, Kymore Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1978) M.P. 333 (DB)*

– **Section 39(2)** – Commissioner authorized to examine records of any proceedings when he receives an information that some order against the interest of revenue is made: *M/s Kailash Automobiles, Jabalpur Vs. Additional Commissioner of Commercial Tax, Jabalpur, I.L.R. (2001) M.P. 644*

– **Section 39(2)** – Proviso – Point from which limitation of 3 years to be counted: *Asbestos Cement Limited, Kymore Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1978) M.P. 333(DB)*

– **Section 39(2)** – Power under, Section 22(5) of old Act – Exercisable only if case falls within four corners of section 39(2): *Gain Chand Mehta, Vs. Commissioner of Sales Tax, M.P., Indore, I.L.R. (1971) M.P. 610 (DB)*

– **Section 39(2)** – Revision – Revisional authority remitting the case – Not justified in issuing mandatory direction against assessing Officer affecting his discretion adversely – Impugned order modified: *M/s Kailash Automobiles, Jabalpur Vs. Additional Commissioner of Commercial Tax, Jabalpur, I.L.R. (2001) M.P. 644*

– **Section 43(1)** – Proceedings under – Are of penal nature – Burden of proving essentials for imposition of penalty – Burden on Department – Findings given in

assessment proceedings – Findings are relevant and admissible in penalty-proceedings – Findings in assessment proceedings that return is false and it has been concealed – not to be sole basis in an order of penalty – Constitution of India – Article 226 – Order imposing penalty both arbitrary and capricious – Writ of *certiorari* cannot be refused because remedy against the order not followed: *M/s S.R Kalani & Co., Indore, Vs. Shri C.L. Sharma, Additional Assistant Commissioner of Sales Tax, Indore, I.L.R. (1965) M.P. 591 (DB)*

– **Sections 43 and 18(8)** – Appellate authority while hearing appeal under section 38 finalising assessment and finding it to be a fit case falling within the ambit of section 43 issuing notice to the assessee and after hearing imposing penalty there under – Bar of Limitation provided in section 18(8) Not attracted: *M/s Food Corporation of India, Bhopal Vs. Commissioner of Sales Tax, M.P., Indore, I.L.R. (1984) M.P. 273 (DB)*

– **Section 43(1), 18(4), 8(1) and 2(r)** – No concealment of turnover by the assessee – Assessee not guilty of filing false returns – Penalty cannot be imposed – Section 18(4) – Assessee not bound to maintain day to day manufacturing account – Account books found to be reliable – Assessment to be made according to turnover mentioned in the account books – Section 8(1) and 2(r) – Judicial discretion – Exercise of, while considering question of imposition of further penalty – Sales tax tribunal holding that no case for imposition of further penalty exists – Not arbitrary – Tribunal also holding that acts of assessee in selling oil – seeds under form XII was only trivial or venial breach and penalty not liable to be imposed – Discretion cannot be said to be erroneous: *Commissioner of Sales Tax, M.P. Vs. M/s Dilip Oil Mills, Sagar, I.L.R. (1984) M.P. 288 (DB)*

– **Section 44** – High Court, Power of, to consider other line of reasoning not advanced before tribunal: *M/s Raipur Vikas Khand Sahakari Vipnan Sanstha Samiti, Raipur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1979), 664 (DB)*

– **Section 44** – Reference – Contract of sale of standing trees agreed to be severed – Would be sale of timber even though it is still standing as the property passes when they are felled – Reference answered in the affirmative: *Commissioner of Sales Tax, M. P. Vs. M/s. Durga Shellac Factory, Katghora, I.L.R. (1992) M.P. 374 (DB)*

– **Section 44** – Revisional order not enhancing, modifying or cancelling assessment – Does not give right of appeal to assessee – Consequently no right of reference under section 44: *Calcutta Company Limited, Calcutta Vs. Commissioner of Sales Tax, MP, Indore, I.L.R. (1965) M.P. 370 (DB)*

– **Section 44(1)** – Question arising from the order of the Tribunal alone can be referred for decision by High Court – Sections 2(r)(ii) and 12 – Notification No. 1065 – 537 – V.S.S.T. dated 7-4-67 – Purpose of – Certificate Prescribed under – Value of –

Interpretation of Statute – Tax Statute requires purposive approach – Harmonious construction – Requirements of – Inconsistency and repugnancy to be avoided: *Commissioner of Sales Tax, M.P. Vs. M/s Vijay Motors, Gwalior, I.L.R. (1986) M.P. 103 (DB)*

– **Section 44(1) or (2)** – Only questions of law are referable to High Court: *M/s Raipur Vikas Khand Sahakari Vipnan Sanstha Samiti, Raipur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1979) M.P. 664 (DB)*

– **Section 44(1) or (2)** – Question raised and decided by Tribunal – That question only can be said to arise out of the order of Tribunal: *M/s Raipur Vikas Khand Sahakari Vipnan Sanstha Samiti, Raipur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1979) M.P. 664 (DB)*

– **Section 44(1)** – Time for appeal does not run till order is communicated: *Messrs Sheojiram Parmanand Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore I.L.R. (1964) M.P. 54 (DB)*

– **Section 44(1) and Rule 63(4)** – Word “Communication” in-means actual and not imputed or constructive communication – Time for appeal does not run till order is communicated – Provision contemplate delivery of copy to assessee – Rule 61 – Contemplates supply of copy to the appellant or applicant: *Messrs Sheojiram Parmanand Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore I.L.R. (1964) M.P. 54 (DB)*

– **Section 44 (2)** – Assessee claims that Section 50 does not debar set off while submission of Revenue is that transaction is not complete within the State hence Section 50 not attracted – In view of controversy, statement of fact should be called for – Revenue directed to transmit statement of facts in three months: *M/s.Punjabhai & Sons, Jabalpur Vs. The Commissioner of Commercial Tax, M.P., Indore; I.L.R. (2004) M.P. 400 (DB)*

– **Section 44(2)** – No improvement of case can be made in the statement of facts submitted to High court: *M/s Jaswantlal Prahlad Bhai & Co. Damoh Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1978) M.P. 1157 (DB)*

– **Section 45(1), Proviso** – Notice to assessee when necessary in the rectification proceedings: *Firm Harpaldas Jairamdas, Bilaspur Vs. The Sales Tax Officer, Bilaspur, I.L.R. (1965) M.P. 402 (DB)*

– **Section 48** – Protection under – Claim of – Protection is available only when the act is *bona fide* and in good faith – Alleged evasion of commercial tax – Attachment of perishable goods – Directed to be released in revision – Not obeyed by appellant – Commercial Tax Officer Goods released only after direction in Writ Petition – Loss

caused to assessee – Protection not available to appellant – High Court taking serious view imposed personal cost and also directed the State Government to initiate proceedings – Concurred with by the Division Bench in Letters Patent Appeal – Appellant young civil servant – Realised gravity of his act and consequences thereof – Direction to initiate proceedings quashed – Imposition of cost on appellant confirmed: *Narayan Mishra Vs. Pramod Kumar Gupta: I.L.R.. (2003) M.P. 97(SC)*

– **Section 52, - Proviso** – Rights, obligations and liabilities saved by first part – Its effect – Correct and proper return not filed - Penalty incurred at the moment – Has nothing to do with liability having been incurred: *M/s. Ratanlal Hukumchand, Ujjain Vs. The Additional Commissioner of Sales Tax, M.P., Indore I.L.R.(1970) M.P. 63 (DB)*

– **Section 52** – Original notices under C.P. and Berar Sales Tax Act – Ultimate notices issued under General Sales Tax Act, Madhya Pradesh, 1958 though not in force then – Assessment not rendered invalid – States Reorganisation Act – Section 78 – Amount of Tax – When it becomes arrears – Indicates that the place of assessment of tax or duty must be included in the territories of successor state: *Shyama Charan Shukla Vs. The State of M.P., I.L.R. (1971) M.P. 206 (DB)*

– **Section 52(1), - Proviso** – Preserves right or liability to be assessed according to the provisions of the repealed act, in respect of turnovers effected during the time of repealed act – Repealed Act not providing for second appeal – Second appeal not maintainable – Sections 52 (1-A), and 18-A, Amending Act – Give retrospective effect: *M/s Gopaldas Khimji Trading Co., Ujjain Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1976) M.P. 1082 (DB)*

– **Section 52(1)** – Fiction in proviso not to be construed as overriding either the proviso to Section 19(1) or earlier part of proviso to Section 52(1) of new Act: *Hanuman Prasad Vs. The Sales-Tax Officer, Circle No.1, Jabalpur, I.L.R. (1964) M.P. 838 (DB)*

– **Section 52(1)** – Preserves right of appeal granted by section 22 of the Act of 1947: *The Commissioner of Sales Tax, M.P., Vs. M/s Caltex (India) Ltd., Satna, I.L.R. (1971) M.P. 579 (DB)*

– **Section 52(1), - Proviso** – Fiction introduced in later part of proviso – Is subject to, and without any effect on right, obligation or liability under the repealed Act: *Hanuman Prasad Vs. The Sales-Tax Officer, Circle No.1, Jabalpur, I.L.R.(1964) M.P. 838 (DB)*

– **Section 52(1-a)** – Assessment proceedings in respect of period when repealed act was in force – assessment governed in all matters by repealed provision except in

the matter of time limit: *M/s Amarnath Ajit Kumar, Bhind Vs. Commissioner of Sales Tax, M.P., I.L.R. (1975) M.P. 554 (DB)*

– **Section 52(2)** – Scope and applicability: *Nathulal Chootelal Sellac Factory, Dhamtari Vs. The Deputy Commissioner of Sales Tax, Jabalpur, I.L.R. (1963) M.P. 405 (DB)*

– **Section 62, - Proviso 1** – Preserves previous operation of repealed acts in all matters governed by it: *M/s Amarnath Ajit Kumar, Bhind Vs. Commissioner of sales Tax, M.P., I.L.R. (1975) M.P. 554 (DB)*

– **Schedule 1, - Entry 14** – “Examination answer book” – Not included in “Exercise book” – Does not fall under the entry: *The Commissioner of sales Tax, MP Vs. M/s Lok Chetan Prakashan, Jabalpur, I.L.R. (1971) M.P. 780 (DB)*

– **Schedule 1, - Entry No. 21** – Exemption granted by – To be construed strictly – The word “Khowa” in – Meaning of – Khowa not exempt from Tax – Interpretation of Statute – Exemption from tax given by statute – To be given free scope and amplitude – Not to be whittled down by limitations not inserted by legislature – Exemption must fall within language granting exemption: *The Commissioner of Sales Tax, M.P., Indore, Vs. Shri Harichand Chandulal, I.L.R. (1967) M.P. 308 (DB)*

– **Schedule 1, - Entry No. 41** – “Sugar” in – Has meaning understood in common parlance – Includes sugar in whatever shape it may be: *M/s Channulal Motilal, Jabalpur Vs. The Commissioner of sales Tax, M.P., I.L.R. (1976) M.P. 577 (FB)*

– **Schedule 1, -Entry No. 41** – Words in – Include all forms of sugar – Include Mishri, batasa and Chironji: *M/s Channulal Motilal, Jabalpur Vs. The Commissioner of sales Tax, M.P., I.L.R. (1976) M.P. 577 (DB)*

– **Schedule 1, - Entry No. 41** – “Sugar” in – To be understood in the popular sense – Does not include “Batasa” “Chironji”, “Mishri” – Interpretation of statute – Construction – Words in Statute – To be construed in the popular sense: *Chhannulal Motilal Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1967) M.P. 451 (DB)*

– **Schedule I, Item 6, as amended** – Hessian not exempted from sales-tax: *The Commissioner of Sales Tax, M.P. Vs. Bharat Kala Bhandar, Khandwa, I.L.R. (1978) M.P. 298 (DB)*

– **Schedule 1, Part II, Item 3** – Cocoanuts, ground-nuts and jira – Do not fall in the provision – Sales Tax on cocoanut, ground nut and jira – Leviable at six pies in a rupee: *The Commissioner of Sales Tax, M.P. Indore Vs. M/s Bakhat Rai and Co., Katni I.L.R. (1970) M.P. 1020 (DB)*

– **Schedule 1, Part II, Item 3** – Word “oil-seeds” in – To be construed in its popular meaning as understood in common language – Meaning of – Every seed which yields oil-Is not oilseed – Cocoanuts, ground – nuts and jira – Do not fall in the provision – Sales Tax on cocoanut, ground-nut and jira – Leviable at six pies in a rupee: *The Commissioner of Sales Tax, M.P., Indore Vs. M/s Bakhat Rai and Co., Katni, I.L.R. (1970) M.P. 1020 (DB)*

– **Schedule II, Item 38 and Notification dated 12-12-60** – “Rexine” – Is a leather cloth – Liable to sales-tax under Item 38, Schedule II – Words “All varieties” in notification – Widens categories of canvas cloth, water proof cloth, tarpaulins specified in notification – Words “similar products manufactured with cloth as base in textile mills, powerloom factories or processing factories” in notification – Widens scope of exemption – Word “Similar” – Meaning of Rule of ejusdem generic – Conditions necessary for its applicability: *M/s S.R. Calcuttawala, Indore Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1970) M.P. 348 (DB)*

– **Schedule II, Item 41** – Expression “Cooked food” in-to be understood in popular meaning – Exemption under Item 41 – Exemption to be construed strictly – Claim for exemption – Burden to prove that his case comes under exemption is on person claiming exemption – Expression “cooked food” – Meaning of: *The Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. Shri Ballabhdas Ishwardas, Khandwa I.L.R. (1969) M.P. 704 (DB)*

– **Schedule II, Part I, Entry No. 9** – “Bone sinews” are different from bone-powder and do not fall under Entry 9 – Liable to be taxed under residuary Entry @ 7%: *M/s Shaw Leiner Limited Vs. the Sales-Tax Officer, Jabalpur, I.L.R. (1982) M.P. 689 (DB)*

– **Schedule II, Part-II, Entry No. 30 and part VI, Entry No. 1 and part II, Entry No.1-A**, inserted w.e.f. 1-9-1967 – Sales Tax on batteries – Prior to 1-9-67 batteries taxable in accordance with Entry No.1: *Commissioner of Sales Tax, M.P. Vs. M/s Dawar Brothers, Bhopal, I.L.R. (1987) M.P. 126 (DB)*

– **Schedule II, Part II and Entry 31** – Razor blade – Neither an item of cosmetic, nor an article of toilet – Not include in this provision – Can be taxed under Entry 1 of Schedule II, Part VI: *The Commissioner of Sales tax, M.P. Vs. Subhas Stores, Ranipura Indore, I.L.R. (1971) M.P. 398 (DB)*

– **Schedule II, Part II, Entry 25** – Article or commodity mentioned in – To be categorized according to common use – “Neel” – Does not fall under category of dye – Schedule II, Part II, Entry 25 – “Dye” in – Denotes that type of material which is more or less similar to other goods described – “Neel” – Not taxable under this entry: *M/s N. Ganu Bhai, Raipur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1978) M.P. 589(DB)*

– **Schedule II, Part II, Entry 44** – Tractor – Not agricultural machinery or implement: *M/s Agrawal Brothers, Satna Vs. The Commissioner of Sales Tax, Madhya Pradesh, I.L.R. (1968) M.P. 836 (DB)*

– **Schedule II-Part II, Entry No. 49** – Word “Drinks” in – Does not include aerated waters – Cannot be regarded as *ejusdem generic* with syrups, or distilled juices, or jams, or fruit juices, or essences and *gulkand* – Aerated waters taxable according to item no. I of Part VI, Schedule II – Words and Phrases – Words “such as” and “etc.” – Words of limitation in regard to the meaning of the general words “all kinds of eatables and drinks” – Words ‘such as’ – Mean having that particular quality or characteristic specified: *The Commissioner of Sales Tax, MP, Indore, Vs. M/s Jabalpur Aerated Water Factory, Jabalpur, I.L.R. (1967) M.P. 304 (DB)*

– **Schedule II, Part III, Entry 11** – Schedule III, Entry 2 – Bone Meal and crushed bone – Taxable under Schedule II, Part III, Entry 11 – Sales Tax Act, C.P. and Berar, 1947 – Crushed Bone and Bone Meal – Are fertilizers – Are exempt from tax: *Commissioner of Sales Tax, M.P. Vs. M/s Sagar Bone Mills, Sagar, I.L.R. (1969) M.P. 154 (DB)*

– **Schedule II, Part III, Entry I and Part VI, Entry I** – Characoal whether covered by Entry I, Part 3 of Schedule 2 or Entry I, Part 6 of Schedule II – Words and Phrases – “Coal” – Includes charcoal Word in fiscal statute to be understood in popular and commercial sense: *The Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. M/s Jaswatsingh Charansingh, Ujjain, I.L.R. (1968) M.P. 990 (DB)*

– **Schedule II, Part IV, Entry 2** – “Hosiery goods” not included in “ready – made garments” Not liable to be taxed at the rates provided for ready made garments – Words “Ready – made garments” and “Hosiery goods”—To be understood as in common commercial parlance and in their popular meaning – Words and Phrases—”Garments” and “Hosiery goods” – Meaning of: *Commissioner of Sales Tax, MP, Indore, Vs. M/s Mahajan Brothers Indore, I.L.R. (1965) M.P. 181 (DB)*

– **Schedule II, Part IV, Entry 12, 15 and Commercial Tax Act, M.P., 1994 (V of 1995) Section 70(1)** – Reference – Question referred whether PVC covered insulated Winding Wire was spare part of submersible pump sets and thus chargeable under entry 12 – Wire used is an essential part of pump and can always be kept in use as a spare for emergency or replacement – Wire is neither a raw material used in manufacture or preparation of pump nor an article of general use – Has a distinct commercial identity and distinguishable part of pump – It is a spare part – Would fall in entry 12: *Commissioner of Commercial Tax, Madhya Pradesh Vs. M/s. Patidar Trading Corporation, Indore, I.L.R. (2001) M.P. 416 (DB)*

– **Schedule II-Part VI, Item No. 1** – Aerated waters taxable according to item No. I of Part VI, Schedule II: *The Commissioner of Sales Tax, M.P., Indore, Vs. M/s Jabalpur Aerated Water Factory, Jabalpur, I.L.R. (1967) M.P. 304 (DB)*

– **Schedule III, Entry 1** – Sweetmeats – Do not include Mishri, Batasa and Chironji: *M/s Channulal Motilal, Jabalpur Vs. The Commissioner of sales Tax, M.P., I.L.R. (1976) M.P. 577 (FB)*

– **Schedule III, Entry 2** – Bone Meal and crushed bone – Taxable, under Schedule II, Part III, Entry 11: *Commissioner of Sales Tax, M.P. Vs. M/s Sagar Bone Mills, Sagar, I.L.R. (1969) M.P. 154 (DB)*

– **Entry 1(i), Part V, - Schedule II and Central Sales Tax Act (LXXIV of 1956), Section 14(1)(ii)** – ‘Rice’ includes puffed and beaten rice known as murmura, Lai and poha and liable to sales tax at the rate of 3% under entry 1(i), Part V, Schedule II – ‘Konda’ (Paddy husk) exempt from sales Tax under notification dated 1-4-1967 under section 12 of M.P. General Sales Tax Act, 1958: *M/s Shri Kishan satyanarain, Rajnandgaon Vs. State of M.P., I.L.R. (1983) M.P. 630 (DB)*

– **Entry No. 25 of Part – II of Schedule II** – Red Oxide of Iron is liable to be taxed there under: *The Commissioner of Sales Tax M. Vs. Olpheris Private Ltd., Katni, I.L.R. (1986) M.P. 679 (DB)*

– **Entry No. 25 of Schedule II, Part II** – Word “Dyes” – Whether includes “colour powders” – Words and Expressions in entries in Schedule to be construed in popular commercial sense and not on scientific, technical or rigid dictionary meaning – Doctoring of ejusdem generic – Is not inviolable rule of law – Is to be applied with caution: *M/s Sukhu Ram Tamrakar, Durg Vs. State of M.P. I.L.R. (1978) M.P. 1103 (FB)*

– **Entry 26 of part II of schedule II** – Applicability of in respect of ceramic sold by an assessee – Word “Crockery” – Meaning of – Includes ‘jar’ also: *The Commissioner of Sales Tax M.P. Vs. M/s Blue Spot, Civil Lines, Raipur, I.L.R. (1981) M.P. 889 (DB)*

– **Entry 44, Part-II- Schedule II** – When tractor can be said to be agricultural implement – Determining consideration is “Principal and primary use” – Exegibility to tax and exemption from it – Attracted at the point of sale and not subsequent use – Determination of the nature of machinery – Dependent upon general use – Taxing statute – Principle of construction – Case of ambiguity – Statute to be liberally construed in favour of subject – Test to be applied to determine whether machinery is agricultural machinery: *M/s R.M.E. Works, Raipur Vs. The Commissioner of Sales Tax M.P., I.L.R. (1977) M.P. 1039 (FB)*

– **Item 44, Schedule IV** – Notifications under Section 5 – Word “Kirana” in-A compendious expression – Includes in its ambit goods of all sorts commonly vended by grocer – Word used in Taxing Statute – Word to be interpreted in popular sense as known in general usage and known in trade and commerce – Includes turmeric: *Commissioner of Sales Tax, Madhya Pradesh, Indore, Vs. M/s Laddumal Jangilal, Ujjain, I.L.R. (1964) M.P. 824 (DB)*

– **Part II, Entry 2** – Coal in – Includes coal ash: *M/s Binod Mills Co. Ltd., Ujjain Vs. The Commissioner of sales tax, I.L.R. (1978) M.P. 703(DB)*

– **Rule 13** – Words “application in Form No.5” in – Means that application must be strictly and literally in the prescribed form No. 5: *Sardar Lachhman Singh Vs. The State of Madhya Pradesh I.L.R. (1964) M.P. 40 (DB)*

– **Rule 13(3)** – Commissioner of Sales Tax alone has power to cancel registration certificate: *Sardar Lachhman Singh Vs. The State of Madhya Pradesh I.L.R. (1964) M.P. 40 (DB)*

– **Rule 33** – Distinction between “in accordance with form XVI” and “in form XVI” – Form XVI inconsistent with amended section 19(1): *Janta Hardwares Stores Vs. B.S. Parihar, I.L.R. (1963) M.P. 840 (DB)*

– **Rule 33 and Section 19(1) as amended** – Notice in Form No. XVI invalid because of amended section 19(1): *Janta Hardwares Stores Vs. B.S. Parihar, I.L.R. (1963) M.P. 840 (DB)*

– **Rule 33(2) of the rules framed thereunder** – Notice to show cause against imposition of penalty even when waived – Assessing officer has to given opportunity to assessee for hearing the objections: *Naraindas Sindhwani Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1974) M.P. 922 (DB)*

– **Rule 61** – Contemplates supply of copy to the appellant or applicant: *Messrs Sheojiram Parmanand Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore, I.L.R. (1964) M.P. 54 (DB)*

– **Rule 68, Entry No. 7 (C)** – Assistant Sales-tax Officer – Exercises only those powers which are delegated to him: *M/s Manji Bhimji Parmar, Railway Contractors, Moghalsarai Vs. The Assistant Sales Tax Officer, Rewa, I.L.R. (1975) M.P. 982 (DB)*

– **Rule 68, Entry No. 7 (C)** – Assistant Sales-Tax Officer – Possesses power to assess dealers whose turnover is less than 4 Lakhs: *M/s Manji Bhimji Parmar, Railway Contractors, Moghalsarai Vs. The Assistant Sales Tax Officer, Rewa, I.L.R. (1975) M.P. 982 (DB)*

– **Rule 68, Entry No. 7 (C)** – Dealers not covered by clauses (b) and (c) of Entry No. 7 – Commissioner has power to make their assessment: *M/s Manji Bhimji Parmar, Railway Contractors, Moghalsarai Vs. The Assistant Sales Tax Officer, Rewa, I.L.R. (1975) M.P. 982 (DB)*

General Sales Tax, Rules, M.P., 1959

– **Rule 20 (4)** – Compliance of provisions thereof – Mandatory: *The Commissioner of Sales Tax M.P. Vs. Lalloobhai B. Patel & Co. Ltd., Sagar, I.L.R. (1980) M.P. 910 (FB)*

– **Rule 33** – Notice giving less than 15 days time – Proceedings not invalid – Giving of 15 days' notice – Not a rigid rule – General Sales Tax Act, Madhya Pradesh, 1958 – Section 2 (d) – Goods bought for sale or use to make profit in the integrated activity of buying and disposal – Transaction amounts to business of buying – Dealer purchasing taxable goods in circumstances in which no tax under section 6 leviable – Other circumstances mentioned in section 7 (1) existing – Assessee liable to pay purchase tax – Section 7 – Essential condition in is purchase of goods for manufacture of goods for sale or otherwise, or disposal of goods other than by way of sale in State or dispatch to outside State in course of inter State trade or commerce: *Ganesh Prasad Dixit Vs. The Commissioner of Sales Tax, M.P. I.L.R. (1968) M.P. 839 (DB)*

– **Rule 33** – Question regarding the validity of the period of notice – Question cannot be agitated in Civil Court: *State of M.P. Vs. Bhagwati Prasad Omprakash, J.H.F. Firm, Naila, I.L.R. (1975) M.P. 697*

General Sales Tax (Amendment and Validation) Act, Madhya Pradesh (XIII of 1962)

– **Section 7 and 9** – Appeals presented to Deputy Commissioner, Sales Tax before Amendment – Appeals returned for presentation to proper Court after Amendment Act – Filing of appeals before Board of Revenue – Amounts to transfer – No question of limitation arises: *Smt. Sarjoodevi Vs. Commissioner of Sales Tax, M.P. Indore, I.L.R. (1966) M.P. 889 (DB)*

General Sales Tax (Amendment and Validation) Act, M.P. (XXIII of 1967)

– **Agreement** – Taxing authorities not bound by the agreement between parties but by statutory provision: *M/s Chhotelal Keshavram, Rajnandgaon Vs. Additional Assistant Commissioner of Sales Tax, Raipur, I.L.R. (1979) M.P. 123 (DB)*

– **Validity**: *M/s Chhotelal Keshavram, Rajnandgaon Vs. Additional Assistant Commissioner of Sales Tax, Raipur, I.L.R. (1979) M.P. 123 (DB)*

General Sales Tax (Amendment) Act, M.P. (XX of 1964)

– **Section 8** – Prescribes limitation and the mode of counting it – The amendment by section 8 – Is not retrospective – General sales Tax Act, M.P., 1958 – Section 2(u) – “Year” in – Means Twelve months ending on 31st March – Section 19-(before amendment) – “Year” – Would mean financial year – Assessment year will be from April to end of March – Five years to be computed from the end of financial year – Section 19, as amended – Enlarges period of limitation for re-assessment and widens grounds on which re-assessment can be made: *The Commissioner of Sales Tax, M.P. Vs. M/s Rameshlal Keshavlal, Morena, I.L.R. (1976) M.P. 489 (FB)*

– **Sections 52 (1-A) and 18-A** – Give retrospective effect: *M/s Gopaldas Khimji Trading Co., Ujjain Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1976) M.P. 1082 (DB)*

General Sales Tax (Second Amendment) Act, M.P. (XX of 1969)

– **Not challengeable** – Is not contrary to Article 141 of the Constitution of India: *M/S Chhotelal Keshavram, Rajnandgaon Vs. Additional Assistant Commissioner of Sales Tax, Raipur, I.L.R. (1979) M.P. 123 (DB)*

Gift

– Implies animus of giving away: *Hussain Banu Vs. Shivnarayan, I.L.R. (1967) M.P. 408*

Gift – Tax Act (XVIII of 1958)

– **Sections 2(ix), 5(1)(viii) and Section 26** – Reference – Exemption in respect of gift by Karta of HUF – What is material is the maximum amount and if ‘karta’ can be a donor – ‘Donor’ means any person who makes a gift – Not necessary that he should be the owner of the property but he must be competent to transfer – ‘Karta’ of HUF – Can make out a gift within reasonable limits – Power vested is in individual capacity – Gift made out of affection within limit – No reason to throw the claim and deny benefit of exemption: *Commissioner of Gift Tax, Bhopal Vs. Banshilal Narsidas, I.L.R. (2004) M.P. 85(DB)*

– **Section 5(i) (vii)** – As regards gift made by assessee to his daughter-in-law it will fall within the definition of gift as there was no moral obligation – Assessee is not entitled to any exemption under this Section of the Act: *Smt. Savita Devi, Raigarh Vs. Commissioner of Gift Tax, Jabalpur, I.L.R. (1999) M.P. 269 (DB)*

– **Sections 24(2) and 15(3)** – Order under section 15(3) passed by the Gift Tax Officer not communicated to the assessee – Commissioner of Gift Tax cannot invoke

its jurisdiction under section 14(2) to set aside that order: *Smt. Jijeebai Shinde Vs. Commissioner of Gift Tax, Bhopal, I.L.R. (1985) M.P. 259 (DB)*

– **Section 24(2)** – Suo Motu powers of revision of Commissioner – Assessment order passed by the assessing authority not communicated to the assessee – Commissioner not entitled to invoke its jurisdiction of suo motu revision – Reference answered accordingly: *Smt. Jijee Bai Shinde Indore Vs. Commissioner of Gift Tax, Bhopal, I.L.R. (1986) M.P. 169 (DB)*

– **Section 26(1)** – “Gift” – Definition under Section 2(xii)-15 tolas of gold each given to daughter and daughter-in-law on the occasion of marriage – 15 tolas of gold given by assessee to his daughter in the marriage cannot be treated as gift under Section 2(xii) as it is in discharge of social and moral obligation – It will not be subjected to any provision of the Gift Tax Act – As regards gift made by assessee to his daughter-in-law it will fall within the definition of gift as there was no moral obligation – Assessee is not entitled to any exemption under Section 5(1)(vii) of the Act: *Smt. Savita Devi, Raigarh Vs. Commissioner of Gift Tax, Jabalpur, I.L.R. (1999) M.P. 269 (DB)*

Gold Bonds (Immunities and Exemptions) Ordinance 1993

– **Section 4** – Conversion of Gold into Gold Bonds – Pre-requisites – Gold has to be tendered – Though the seized coins were in the bank but they were in custody of Income-tax Authorities – Cannot be said to have been validly tendered by petitioner to the bank: *Smt. Pushpavati Vs. Collector, Customs & Central Excise, I.L.R. (2001) M.P. 909*

Gold Control Rules, 1963

– **Rule 126 L (16)** – Proceeding before competent authority – Does not constitute prosecution: *Benechand, Vs. State of M.P., I.L.R. (1968) M.P. 662*

– **Rule 126-M (8) (a)** – Word “prosecution” in – Meaning of – Constitution of India – Article 20 (2) – Every penalty – Not a punishment – Contemplates punishments awardable by a Court of law – Proceeding for adjudging confiscation – Does not amount to prosecution – Constitution of India – Article 20(2) – Contemplates prosecution and punishment by criminal Court – Gold Control Rules, 1963 – Rule 126 L (16) – Proceedings before competent authority – Does not constitute prosecution: *Benechand Vs. State of Madhya Pradesh, I.L.R. (1968) M.P. 662*

Goods Tariff General Rules, 1959

– **Classification of Item 2** – “Tamakoo bidi patti” falls under item No. 2: *The Union of India, Ministry of Railways, New Delhi Vs. Messrs Allauddin Aulia Sahib I.L.R. (1962) M.P. 697 (DB)*

Goodwill

– **Is a self created and self-generated asset of a firm** – Concept of “profits and gains” inapplicable to it: *Commissioner of Income Tax, M.P. Vs. Jaswantlal Dayabhai*, I.L.R. (1982) M.P. 104 (DB)

Government

– **Power of, to appoint Panchayat for a particular temple or Math:** *Pramodhan Bihari Saran Ju Vs. The State of M.P.*, I.L.R. (1960) M.P. 70 (DB)

Government Electrical Undertakings (Dues Recovery) Act, M.P. (36 of 1961)

– **Section 5** – Suit challenging validity of bill raised – Dispute as to amount of bill not decided by Electrical Inspector – Suit maintainable: *M/s Harish Minerals Supply Co. Vs. M.P. Electricity Board, Rampur, Jabalpur*; I.L.R. (2002) M.P. 719

– **Section 8** — Proceedings under Act for recovery of due for electricity consumed no proceedings were maintainable unless the amount sought to be recovered was deposited – Further, no stay could be granted regarding the recovery of demanded amount – Unless the said amount was deposited in the Court – Stay of recovery cannot be granted: *Divisional Engineer (G and M), M.P. Electricity Board, Katni Vs. Daltak Carbide Chemicals Pvt. Ltd.*, I.L.R. (1995) M.P. 599

Government Electrical Undertaking (Dues Recovery) Amendment and Validation Act, M.P. (XXXI of 1976)

– **Section 3, -** Clause (b) and Government Electrical Undertakings (Dues Recovery) Act (XXXVI of 1961) MP Section 5 – The words dues so paid in Section 3, clause (b) of Validation Act means dues already paid – Suit under section 5 of Act of 1961 – Not barred in respect of dues claimed and paid under protest in future: *M/s Feroz Sethana Industries, Burhanpur Vs. M.P. Electricity Board, Jabalpur*, I.L.R. (1987) M.P. 247

Government of India Act, 1915

– **Section 96-B** – Rules framed under – Rules framed under Section 96-B, Government of India Act. 1915 – Rules are laws in force – Are kept alive under Article 313 of Constitution: *B.S. Birthare Vs. State of Madhya Pradesh*, I.L.R. (1972) M.P. 902 (DB)

Government of India Act, 1935

– **List 2, Entry 48 -** and Constitution of India, Seventh Schedule List II, Entry 54 – “Sale of Goods” in—Has same meaning as in Sale of Goods Act: *M/s Indian Finances*

Private Ltd., Allahabad Vs. Sales Tax Officer, Jabalpur, I.L.R. (1965) M.P. 700 (DB)

– **Section 103** – Law made by Central Legislature – Could be amended or repealed by legislature of province in its application to that province: *Dr. Prakash Chandra Tiwari, Vs. State of M.P., I.L.R. (1980), 628 (DB)*

– **Section 142-A(2) and Proviso** – Combined effect of: *Manoharrao, Vs. The Municipal Council, Pandhurna, I.L.R. (1968) M.P. 725 (DB)*

– **Section 142-A(2) and Proviso** – Construction and effect of: *Manoharrao, Vs. The Municipal Council, Pandhurna, I.L.R. (1968) M.P. 725 (DB)*

– **Section 142-A(2) and Proviso** – Deal with rating per annum of the tax: *Manoharrao, Vs. The Municipal Council, Pandhurna, I.L.R. (1968) M.P. 725 (DB)*

– **Section 142 – A(2) and Proviso** – “The rate or the maximum rate of tax” – Meaning in – Normal nature sense – Not the same thing as the amount calculated at that rate payable by a person within a certain period – Meaning of words “that rate or the maximum rate of which exceeded fifty rupees per annum” – To be determined in the context of substantive sub-section (2) of section 142-A: *Manoharrao, Vs. The Municipal Council, Pandhurna, I.L.R. (1968) M.P. 725 (DB)*

– **Section 143(2) and Constitution of India** – Article 277 – Do not bar abolition of tax already imposed: *Gourishankar Vs. The Municipal Council, Narsinghpur, I.L.R. (1970) M.P. 727 (DB)*

– **Section 143(2) and Constitution of India** – Article 277 – Tax imposed in 1916 – Continued by virtue of Article 277 and not by virtue of section 127(4) of the Municipalities Act, 1961: *Gourishankar Vs. The Municipal Council, Narsinghpur, I.L.R. (1970) M.P. 727 (DB)*

– **Section 240** – Order dismissing Government servant in violation of this provision – Order is void from the very beginning and has no effect – Servant continues to be in service – No necessity to cancel the order of to re-instate the servant – The decision of Court declaring order of dismissal as bad – Does not furnish cause of action for wages – Cause of action accrues every month – Railway Establishment Code – Para 2044 – Limited to cases where order of dismissal of removal set aside in departmental appeal – Interest – Cannot be granted in the absence of usage or contract express or implied or by any provision of Law: *Union of India Vs. P.V. Jagannath Rao, I.L.R. (1971) M.P. 681 (DB)*

Government Order

– **Dated 21-12-67** - Regarding absorption of staff of schools run by Janpad Sabha in Govt. service – Clause 3(b) – Expression “Should have worked on the post for a

minimum period of 7 years in the same institution” – Interpretation of: *Maheshkumar Verma Vs. State of M.P., I.L.R. (1980) M.P. 443 (DB)*

- **Dated 21-12-67** - Regarding absorption of staff of schools run by Janpad Sabha in Govt. service – Clause 3(b) – period of 7 years need not be continuous nor in same institution – Total period of 7 years in similar institution is sufficient compliance: *Maheshkumar Verma Vs. State of M.P., I.L.R. (1980) M.P. 443 (DB)*

- **Letter No. 11548/8760/20-1/72 dated 6-12-1972 – Rule 2** – Degree of Bachelor of Teaching – Not a Post – Graduate degree – Rule 4, Proviso (b) – Whether it is independent proviso to rule 4 or is a sub-proviso to proviso (a) of Rule 4 – Consequences which follow in two cases – Rule 4 – Provision generous and benevolent to teachers – Rule 4, Provisos (a) and (b) – Word “And” between two provisos – Effect of – Rule 4, Proviso (a) – Principal absorbed as lecturer – Entitled to be absorbed as principal provided he obtains post-Graduate degree within 3 years of date of absorption: *Rameshchandra Vs. State of M.P., I.L.R. (1980) M.P. 1016 (DB)*

Government of Part C States Act (XLIX of 1951)

– **Section 22** – Distinction between the effect of laws made on topics in Concurrent List by Part A and B States and those made by Part C States – Part C States have no exclusive power to legislate on items in State List – Law made by Legislature of Part C State repugnant to Central Law – That law would be void – In case of repugnancy between the Act of the State and the Centre – Infirmary attaches to State Act – Removal of shadow cast – State Act revives –Part C states Laws Act – Not a Law made by Parliament within meaning of explanation to Section 22 – Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 – Section 6, Clause (g), sub-clause (ii) – Words “shall be deemed to have substituted” in – Implies creation of legal fiction – State Government exonerated from liability because of fiction – Mortgagor becomes personally liable: *Guru Narayan Prasad Vs. Pt. Kedarnath, I.L.R. (1960) M.P. 1029 (DB)*

Government Premises (Eviction) Act, Madhya Pradesh (XVI of 1952)

– **Section 3** – Provision not contravening Article 14 of Constitution – Not ultra-vires: *George Slolmon Vs. The Competent Authority, I.L.R. (1957) M.P. 613 (DB)*

Government Servants (Temporary and Quasi – Permanent Service) Rules, M.P., 1960

– **Rules, 2(d), 12** – No Right to hold post – Services temporary – Salary of one months given in lieu of notice – Services validly terminated: *Director General of Police, M.P. Bhopal Vs. Ravishankar, I.L.R. (1988) M.P. 374 (DB)*

– **Rule 3, as amended by Notification of 22-12-75** – Amendments made by Notification of 22-12-75 – Is hit by article 311 of Constitution – Amendment is hence invalid: *A.D. Tannirwar Vs. State of M.P., I.L.R. (1981) M.P. 730 (DB)*

– **Rule 3, Clause (III) and rule 4** – Declaration under Rule 4 not necessary when temporary servant served for five years – Servant becomes quasi-permanent automatically – Rule 6 – Quasi-permanent servant – Service can be terminated in the same manner as of permanent servant – Exception is where reduction occurred in number of posts – Constitution of India Articles 311 – Rule providing for termination of permanent government servant is violative of this Article – Quasi permanent servant acquires security of tenure like a permanent government servant and premature termination of his service offends this provision – Government servants (Temporary and quasi permanent service) Rules M.P. 1960 – Rule 3, as amended by notification of 22-12-75 – Amendments made by notification of 22-12-75 – Is hit by Article 311 of Constitution Amendment is hence invalid: *A.D. Tannirwar Vs. State of M.P., I.L.R. (1981) M.P. 730 (DB)*

– **Rule 6** – Quasi-permanent servant – Service can be terminated in the same manner as of permanent servant – Exception is where reduction occurred in number of posts: *A.D. Tannirwar Vs. State of M.P., I.L.R. (1981) M.P. 730 (DB)*

– **Rule 12 and Constitution of India, Articles 14 and 16** – Termination of service of a temporary Govt. Servant on the Ground of unsuitability – Retention of persons junior to him does not infringe articles 14 and 16 – Appointment temporary and liable to be terminated without notice – Rule 12 not attracted: *Gulab Singh Chauhan Vs. State of M.P., Through The Chief Secretary, Govt. of M.P., Bhopal, I.L.R. (1984) M.P. 634*

– **Rule 12** – Government servant intimating termination of service by giving notice during pendency of departmental enquiry – Services not terminable by such notice – Constitution of India – Article 191 – Essentials necessary to constitute an office as office of profit – Office of Honorary Family Planning District Education Leader – Not an Office of profit – Article 213 – Satisfaction of Governor about existence of necessity – Not justiciable in Court of law – Representation of the People Act, 1951 – Sections 123 and 124 – Deriving benefit under an enactment – Does not amount to corrupt practice – Does not amount to undue influence or bribery unless *vires* of act challenged: *Upendralal Vs. Shrimati Narainee Devi Jha, I.L.R. (1967) M.P. 740*

Gramin Rin Vimukti Adhiniyam, M.P. 1982 (V of 1983)

– **Section 7** – Objection regarding bar of jurisdiction of Civil Court in execution proceedings – Plaintiff does not show any admission of transaction being with holder of agricultural land – Executing Court can not go behind the decree – Order of Executing Court upheld: *Waman Vs. Baldevdas; I.L.R. (2002) M.P. 364*

Gramin Rin Vimukti Tatha Rin Sthagan Adhiniyam, M.P. (XXXII of 1975)

– **Section 5-A** – Also intra vires – Does not confer power on Collector or S.D.O. to institute proceedings before them: *Ramkishan Agrawal Vs. Collector, Jabalpur, I.L.R. (1982) M.P. 120 (DB)*

Gram Panchayats Act, 1947

– **Section 26** – Gram Panchayat, Right of, to enter into contract for collection of tax – Contract not void: *Gram Panchayat, Kaudia Vs. Dattoolal I.L.R. (1962) M.P. 734*

– **Section 46** – M.P. Land Revenue Code, 1954, section 143(c) and Section 236 – Civil Court – Jurisdiction of, to entertain proceedings for recovering purchase price from auction purchaser who purchased right to collect tax – Gram Panchayats Act, Section 26 – Gram Panchayat – Right of, to enter in to contract for collection of tax – Contract not void – Civil Procedure Code, section 9 – Special Act providing for summary remedy for collection of money Jurisdiction of civil Court not barred unless specifically ousted: *Gram Panchayat, Kaudia Vs. Dattoolal, I.L.R. (1962) M.P. 734*

Gram Panchayats Act, Madhya Pradesh, 1962 (VII of 1962)

– **And M.P. Gram Panchayat Election and Co-option Rules, 1963** – No provision in, for determination of the question regarding valid election of Chairmen of society – The proper course to be followed in such a case – Co-operative Societies Act, Madhya Pradesh, 1960 – Section 64 – Authority which can decide dispute arising in connection with election of officers of society – No jurisdiction in presiding officer or election tribunal to decide the dispute: *Narbada Prasad Tiwari Vs. Brijlal, I.L.R. (1969) M.P. 949 (DB)*

– **Sections 20 and 357(1) and Rule 80** – Remedy by election petition available only when election notified – Rejection of all nomination papers – Remedy by election petition not available: *Tundilal Vs. Returning Officer, Block Lalabarra, I.L.R. (1967) M.P. 342 (DB)*

Gram Panchayat Election and Co-option Rules, Madhya Pradesh, 1963

– **and Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, Madhya Pradesh, 1962** – Do not affect jurisdiction of High Court under Articles 226 and 227: *Thakur Prasad Vs. Mehta, Block Development Officer and Returning Officer, Gram Panchayats Elections, Block Lanji, I.L.R. (1967) M.P. 356 (DB)*

– **And Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, Madhya Pradesh, 1962** – Give a sort of finality to different stages of election – Provides for adjudication of disputes after election is over and has been notified: *Thakur Prasad Vs. Mehta, Block Development Officer and Returning Officer, Gram Panchayats Elections, Block Lanji, I.L.R. (1967) M.P. 356 (DB)*

– **President** – Nominee appointed but written order followed next-day – There is no breach of any rule: *Tejraj Vs. A.K.Saraswat, Block Development Officer, Pansemal, I.L.R. (1969) M.P. 736 (DB)*

– **Rules 5 and 11(2)** – Grounds not raised for challenging elections in election petitions – Election cannot be set aside on that ground – Petitioner not asking for inspection of ballot paper – Officer not justified in inspecting ballot-paper and setting aside election for defects in ballot paper – Rule 18(17) – Does not require serial marking of ballot paper: *Rohini Prasad Vs. Sub-Divisional Officer, Maihar, I.L.R. (1970) M.P. 69 (DB)*

– **Rules 6,7, 8 and 11** – Preparation of proper electoral roll – Important for election in democratic body – Addition of some names or exclusion of some names from electoral roll – Roll still substantially remaining intact even after alteration – Election cannot be held to be materially imperfect and defective – Alteration made after expiry of limitation – Alteration affecting a particular Panch – Remedy is to challenge the election of particular Panch by Election Petition – Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualifications for Membership) Rules 1962 – Rule 22 (1) (d) (iii) – Covers illegalities or irregularities committed antecedent to or in preparation of electoral roll – Gram Panchayats Election and Co-option Rules, Madhya Pradesh, 1963 – Rule 11 (6) – Enjoins Collector or authorised officer to refrain from making alteration after limitation – Order passed contrary to rule 11 (6) – It amounts to non-compliance with that rule – Constitution of India – Articles 226 and 227 – Remedy by election petition open – High Court not to exercise powers under these articles – Circumstances in which election can be set aside – Does not absolutely debar interference with election even when alternative remedy open – Panchayats Act, Madhya Pradesh, 1962 – Sections 11 and 19 and Rules 77 and 78 of the Gram Panchayats Election and Co-option Rules, Madhya Pradesh, 1963 – Right of only elected members to co-opt co-opted members – Not entitled to participate in the co-option of other members – Section 11 (3)-Clauses (i) and (ii) – Words “the Gram Panchayat shall co-opt” in – Meaning of – Does not include members to be co-opted of appointed: *Idandas Vs. The Election Officer (Gram Panchayat Election, East Nimar, Khandawa, I.L.R. (1968) M.P. 48 (DB)*

– **Rule 11 (6)** – “Election” in – Not used in a restricted sense as meaning actual polling but in the sense embracing the whole procedure – Expression “the date fixed for a general election or a by-election” – Means the date fixed for the filling of a nomination

paper when election commences – Panchayats Act, Madhya Pradesh, 1962 – Section 27(2) and Rule 24(3) – Disqualification for rejecting nomination paper contemplated in – Does not mean disqualification arising from subsequent deletion on the name from voters' list: *Nemichand Vs. Block Development Officer (Returning Officer), Jabera, I.L.R. (1967) M.P. 502 (DB)*

– **Rule 11 (6)** – Word “Election” in – Embraces whole process by which a person is elected – “Date fixed for a general election or a bye-election” means date on which election commences which itself commences from date when nomination paper is filed – Application for exclusion of person's name from voters' list – Not to be made within one month of the date fixed for filing nomination paper: *Babulal Bajaj Vs. Collector, Damoh, I.L.R. (1967) M.P. 497 (DB)*

– **Rule 11 (6)** – Enjoins Collector or authorised officer to refrain from making alteration after limitation – Order passed contrary to rule 11 (6) – It amounts to non compliance with that rule: *Idandas Vs. The Election Officer (Gram Panchayat Election, East Nimar, Khandawa, I.L.R. (1968) M.P. 48 (DB)*

– **Rules 18 (17)** – Does not require serial marking of ballot paper: *Rohini Prasad Vs. Sub-Divisional Officer, Maihar, I.L.R. (1970) M.P. 69 (DB)*

– **Rule 24(2)** – Prohibits person from subscribing as proposer more than one candidate in case of only one vacancy – Voter subscribing as proposer more than one candidate – First proposal valid and subsequent invalid – Gram Panchayats Act, Madhya Pradesh, 1962 – Sections 20 and 357(1) and Rule 80 – Remedy by election petition available only when election notified – Rejection of all nomination papers – Remedy by election petition not available: *Tundilal Vs. Returning Officer, Block Lalabarra, I.L.R. (1967) M.P. 342 (DB)*

– **Rule 24(2) and 27(2)(b)** – Proposer subscribing as proposer more than one nomination form – Nomination form becomes nomination paper when same submitted to Returning Officer – Crucial time for determining validity of nomination paper – In case of proposer signing more than one nomination paper as proposer – First nomination paper submitted to the Returning Officer valid – Rule 27(6) – Finality to the order of Returning Officer – No bar to take recourse to the remedy of election petition – Act – New right created by statute or special law – Statute or special law providing for machinery for redress in case of violation or right – Party must resort to that remedy when right is violated – Gram Panchayats Election and Co-option Rules, Madhya Pradesh, 1963 and Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, Madhya Pradesh, 1962 – Give a sort of finality to different stages of election – Provides for adjudication of disputes after election is over and has been notified – Do not affect jurisdiction of High Court under Articles 226 and 227 – Constitution of India – Articles 226 and 227 – Alternative and equally efficacious remedy

open to a litigant – Discretionary power to issue writ not to be exercised – High Court – Exercise of discretion by, to issue writ for quashing the order of Returning Officer rejecting a nomination paper – Words and Phrases – Term “Election” connotes entire process of election beginning from state of nomination and culminating in candidate being declared elected – Includes rejection or acceptance of nomination paper: *Thakur Prasad Vs. Mehta, Block Development Officer and Returning Officer, Gram Panchayats Elections, Block Lanji, I.L.R. (1967) M.P. 356 (DB)*

– **Rule 27(6)** – Finality to the order of Returning Officer – No bar to take recourse to the remedy of election petition: *Thakur Prasad Vs. Mehta, Block Development Officer and Returning Officer, Gram Panchayats Elections, Block Lanji, I.L.R. (1967) M.P. 356 (DB)*

– **Rule 78** – Confers power on Collector to appoint president of the meeting to be held for election of Sarpanch or Up-Sarpanch: *Tejraj Vs. A.K.Saraswat, Block Development Officer, Pansemal, I.L.R. (1969) M.P. 736 (DB)*

Gram Panchayat (No Confidence motion against Sar-Panch or Up-Sarpanch) Rules, M.P., 1964 –

– **Rule 3(2)** – Non-mention of hour of receipt of notice – Is not of consequence – Non-giving of acknowledgment of notice – Proceedings not affected – Substantial compliance with rules only is necessary – Rule 7 – Non-recording of minutes of proceedings – Does not affect validity of proceedings of the meeting: *Balwantsingh Vs. Collector, Shivpuri., I.L.R. (1978) M.P. 54 (DB)*

Gram Panchayat Act, M.P., 1993

– **Section 122** – Election petition – Recounting of votes – Power of Election Tribunal to direct recount of votes – Not dependant on an application for recounting to the Returning Officer – Order of High Court in Writ Petition and LPA set aside – Order of SDO restored: *Dukku Singh Vs. Rai Singh, I.L.R. (2004) M.P. 535 (SC)*

Gram Panchayats Nirwahan Tatha Sahyojan Niyam, 1978

– **Absence of provision of appeal in** – Does not invalidate them: *Rajendra Singh Vs. State of M.P., I.L.R. (1980) M.P. 115 (DB)*

– **Preamble thereto** – Validity of – Rules mention section 5(2) in preamble – Whether sufficient: *Rajendra Singh Vs. State of M.P., I.L.R. (1980) M.P. 115 (DB)*

Gram Panchayat Ordinance, Vindhya Pradesh, 1949

– **Section 85** – Order of Nyaya Panchayat a nullity – Tehsildar has no jurisdiction to revise order: *Jugal Kishore, Vs. The Tahsildar, Nagod, I.L.R. (1970) M.P. 707 (DB)*

– **Section 85(1)** – Revisional powers exercisable only within sixty days from decree or order – Order of Nyaya Panchayat a nullity – Tahsildar has no jurisdiction to revise order: *Jugal Kishore, Vs. The Tahsildar, Nagod, I.L.R. (1970) M.P. 707 (DB)*

Grant

– **Construction** – Grant to Hindu Female – No presumption that she gets limited estate – Express words necessary to indicate life estate: *Seth Narsinghdas Kanhaiyalal, Hanumantal, Jabalpur Vs. The Commissioner of Wealth-Tax, M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1970) M.P. 845 (DB)*

– **Grant for maintenance** – Grant is not heritable: *The Controller of estate Duty, M.P., Nagpur Vs. Smt. Usha Devi Patankar, I.L.R. (1976) M.P. 795 (DB)*

– **Grant for ascertaining the object of grant, previous recommendation and order can be looked into** – Grant of valuable consideration – Grant to be construed in favour of grantee – Rule of interpretation – Where two constructions, one valid and the other void, possible – Valid one to be preferred – Kanoon Registry Riasat – Section 88(d) – Grant from Government – Grant was exempt from Registration – Estoppel – Government keeping quiet when grantee was making construction on granted property – Government is estopped from repudiating title of the grantee: *The State of M.P. Vs. Ikram Ahmad, I.L.R. (1977) M.P. 900 (DB)*

– **Grant of valuable consideration** – Grant to be constructed in favour of grantee: *The State of M.P. Vs. Ikram Ahmad, I.L.R. (1977) M.P. 900 (DB)*

– **Rule that grantor cannot derogate from his grant applies:** *S.N. Sunderson and Co., Katni, Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 516 (DB)*

Griha Nirman Mandal Adhiniyam, M.P., 1972 (III of 1973)

– **Section 2(7)** - and General Clauses Act, 1957 (III of 1958), Section 15 – Appointment of executive Engineer of the Housing Board by office – Satisfies the requirement of the Adhiniyam: *M/s Suhas Hotels (Pvt.) Ltd., New Dehli Vs. M.P. Housing Board, Bhopal, I.L.R. (1984) M.P.129 (DB)*

– **Section 55(1)(a)(i)** – The word ‘rent’ in – Is of wide import – Includes Licence fee payable by the occupant of the Board’s premises: *M/s Suhas Hotels (Pvt.) Ltd., New Dehli Vs. M.P. Housing Board, Bhopal, I.L.R. (1984) M.P. 129 (DB)*

– **Sections 55, 2(7)**, - General Clauses Act, M.P., 1957 (III of 1958), Section 15 and Constitution of India, Articles 14 and 226 – Section 55 of the Adhiniyam does not suffer from the vice of discrimination on the ground of availability of two procedures – Not violative of Article 14 of the Constitution – Section 2(7) of the Adhiniyam and

Section 15 of General Clauses Act, M.P. – Appointment of executive engineer of the housing Board by office – Satisfies the requirement of the Adhiniyam – Section 55(1)(a) (i) – The word ‘rent’ in – Is of wide import – Includes licence fee payable by the occupant of the Board’s premises – Licence – Revocation of – Implied re-vocation may result even from acts and conduct of the parties – Waiver – Conduct of parties and correspondence between them negating any acts of waiver – Waiver cannot be inferred – Arbitration clause in the agreement – When can be invoked – No dispute about liability to pay license fee according to terms of the agreement – Arbitration clause not attracted – Constitution of India – Article 226 – Discretionary power under – Cannot be invoked on a mere technicality: *M/s Suhas Hotels (Pvt.) Ltd., New Dehli Vs. M.P. Housing Board, Bhopal*, I.L.R. (1984) M.P. 129(DB)

Guardians and Wards Act (VIII of 1890)

– **Natural Guardian** – In presence of parents – Grand-father has no legal right to custody of grand – child: *Smt. Usha Devi Vs. Kailash Narayan Dixit*, I.L.R. (1979) M.P. 41 (DB)

– **Sections 7,8,10,47** – Appeal – Custody of minor – Court shall not pass an order except on an application made by a person mentioned in this section – Prayer for custody of minor made in the reply filed – Amounts to an application – Preferential right to guardian – Ship under personal law – Cannot be ignored – Though paramount consideration is welfare the child guardian’s appointment should be as far as possible consistent with the personal law – Ward is a female child aged 4 years – Parties Mohamedan – Custody of minor given to mother: *Wazid Ali Vs. Rehana Anjum*, I.L.R. (2005) M.P. 743

– **Sections 7 and 10** – Application for custody of minor by second wife – Earlier a similar application ended in a compromise – Husband later married for third time but third wife died under suspicious circumstances – Married again for the fourth time – Application moved by second wife – Rejected by Trial Court holding principle of res-judicata applies – Not proper because earlier decision was not on merits also because the change in circumstances particularly welfare of the minor should be of paramount consideration – Impugned order set aside – Matter remanded to the trial Court: *Smt. Rehana Parveen Vs. Naimuddin*, I.L.R. (2001) M.P. 255

– **Section 7 and 10** – Custody of child – Now aged about 16-17 years – By reason of interim order or otherwise grand parents remained in care and control of the ward for his entire life – Granting custody to mother – Not appropriate – Order of High Court and trial Court set aside: *Keshav R. Thakur Vs. Suchhibai*, I.L.R. (2004) M.P. 896 (SC)

– **Section 7 and 25** – Not necessary for natural guardian to apply for appointment as guardian – Proper course is to apply for custody of minor – Repudiation by person

inchargee of minor of right of guardian – Amounts to removal – Section 19 – No jurisdiction in Court to appoint guardian of minor whose father is living and is not unfit to be guardian – Section 25 – Welfare of minor dominant consideration in giving custody of minor – Claim for custody – Is not in the nature of property – Is a right in the nature of trust for benefit of the minor – Section 17(1) – Personal law – To be subordinated to the welfare of minor – Words and phrases – “Welfare” – Meaning of: *Smt. Kalimunnisa Vs. Shah Salim Khan, I.L.R. (1977) M.P. 239*

– **Sections 9 and 25** – Words “ordinarily resides” in – Meaning of – Determination of jurisdiction of Court – Dependent upon residence of minor: *Mst. Bhagwati Vs. Shri Pyarelal, I.L.R. (1961) M.P. 968 (DB)*

– **Section 19** – No jurisdiction in court to appoint guardian of minor whose father is living and is not unfit to be guardian: *Smt. Kalimunnisa Vs. Shah Salim Khan, I.L.R. (1977) M.P. 239*

– **Section 25** – Father entrusting custody and education of Minor to another person – Authority conferred is revocable – Father can take back custody, if required – Disturbance of association or disappointment of expectation – A matter to be taken into consideration in determining whether authority should be revoked – Welfare of minor is the predominant factor – Minor girl approaching marriageable age – Natural that father should have custody: *Sheo Kumar Vs. Shiv Rani Bai, I.L.R. (1967) M.P. 912 (DB)*

– **Section 25** – Custody under, includes not only actual but also juridical or legal custody – Removal means not only physical taking away but includes refusal by unauthorized person to deliver back the minor: *Geeta Vs. Ratan, I.L.R. (1966) M.P. 786*

– **Section 25** – Removal of child voluntarily or involuntarily with or without consent of natural guardian – Remedy of guardian – Refusal by person to restore minor to natural guardian – Amounts to removal – Guardianship proceedings – Presumption that parents will exercise good care in the welfare of minor – Burden of proof – Adoption – Heavy burden on person who relies upon adoption – Evidence to satisfy a strict and severe scrutiny: *Shri Brijendra Narayan Ganguly Vs. Shri Chinta Haran Sarkar, I.L.R. (1961) M.P. 727*

Guardianship

– **Claim to Guardianship** – Not a right in the nature of property, but is in the nature of trust: *Smt. Veena Agarwal Vs. Prahlad das Agarwal, I.L.R. (1978) M.P. 1(DB)*

– **Custody of the minor** – When Custody of the minor cannot be given to the natural guardian father: *Budhulal Vs. An Infant Child, I.L.R. (1972) M.P. 621 (DB)*

– **Father guardian acquiring property for the minor son** – No permission necessary – Specific Relief Act, 1963 – Section 20(4) – Specific performance not to be refused merely because specific performance at the instance of other party cannot be enforced – Does not throw out the doctrine of mutuality completely – Word “Merely” Shown that specific performance cannot be refused merely on ground of mutuality: *Than Singh Vs. Barelal*, I.L.R. (1979) M.P. 56 (DB)

Gwalior Forest Act, 1950

– **Rules framed under the Act** – Sums which can be recovered under these provisions – Revenue Recovery Act – Section 4 – Scope and extent of – Specific Relief Act – Section 42 – Section 42 or other provision in Act – Does not debar plaintiff from claiming injunction against government restraining it from recovering amounts as arrears of land revenue – Civil Procedure Code – Section 9 – Jurisdiction of civil Court to entertain suit asking for relief of restraining defendant, from recovering amount by coercive process: *The Gwalior Forest Products Limited, Company, Shivpuri Vs. State of Madhya Pradesh*, I.L.R. (1968) M.P. 789 (DB)

Gwalior Pre-emption Act (Samvat 1992)

– **Section 23**, - M.P. Agra-Karya-Vidhi Nirsan Adhiniyam (14 of 1968), Section 1 – Right of Pre-emption – Suit claiming enforcement of right of Pre-emption – Decree by trial court – During pendency of first appeal Gwalior Pre-emption Act repealed – Held – Right of pre-emption is a weak right – In Section 23 words “at the time of decree” should mean the final and operative decree – Pre-emptor not entitled to enforce pre-emption – Appeal dismissed: *Krishna Dass Agarwal Vs. Kanhaiyalal*, I.L.R. (1996) M.P. 255 (SC)

Gwalior State Co-operative Societies Act

– **Section 65 and Rule 46 (3)** – Award made by Registrar under section 60 – Circumstances under which Civil Court can execute it as a decree: *Indore Paraspar Sahakari Pedhi Ltd. Krisnapura, Indore Vs. B.M. Thorat*, I.L.R. (1957) M.P. 684 (DB)

Gwalior State Municipalities Act, Samvat 1993

– **Section 52(j)** – Madhya Bharat Municipalities Act, 1954 – Section 2(c), Proviso 1, Madhya Pradesh Taxation Laws (Extension) Act, 1957 – Section 6 – C.P. and Berar Entertainment Duty Act, 1936 and Entertainment Tax bye – laws framed under section 58(j) of Gwalior State Municipalities Act – Validity – Suit for recovery of entertainment tax collected by Municipal Committee under repealed provision – Suit can be decreed –

Letters Patent – Clause 10 – Scope of appeal under – Restricted to terms of leave: *Nagar Palika, Sabalgarh Vs. Laxminarayan, I.L.R. (1966) M.P. 735 (DB)*

– **Section 52(j)** – Suit for recovery of entertainment tax collected by Municipal Committee under repealed provision – Suit can be decreed: *Nagar Palika, Sabalgarh Vs. Laxminarayan, I.L.R. (1966) M.P. 735 (DB)*

Gwalior State Protection of Children Act

– **Section 10** – Repugnant to provision of Indian Penal Code made applicable to Gwalior by Act 3 of 1951 – Section 10 void under Article 254 (1) of Constitution: *Lalla Vs. The State, I.L.R. (1959) M.P. 125 (FB)*

Haisiyat Tax

– **Is combination of the property tax and professional tax** – Principles of professional tax – Applicability: *Janardan Rao Vs. Municipal Council Sausar, I.L.R. (1977) M.P. 502*

Heading

– **Heading of Petition not conclusive** – Substance to be looked into: *Kheduram Vs Mst. Supetkaur, I.L.R. (1971) M.P. 80 (DB)*

High Court

- **Power to issue writ** – No power to issue writ to quash the order of the Central Government situated outside the jurisdiction of the High Court: *Seth Surajmal Vs. The State of Madhya Pradesh, I.L.R. (1957) M.P. 507 (FB)*

– **No power to go into disputed questions of fact** – Civil suit proper remedy: *Ramdayal purohit Vs. The State of M.P., I.L.R. (1959) M.P. 873 (DB)*

- **Power to issue writ to inferior tribunal**– When its order not interfered with by superior tribunal: *Masalkhan Vs. The Custodian of Evacuee Property, Madhya Pradesh, Nagpur, I.L.R. (1958) M.P. 805 (DB)*

-**Power to release detenu** – Power to go into merits of wrongful restraint after detenu released: *Haji Mohd. Ramzan Vs. The Station Officer, Ghamapur Police Station, Jabalpur, I.L.R. (1960) M.P. 191 (DB)*

– **Power under Article 226** – Limitations – Infringement of fundamental right of a person by a private individual – Remedy under ordinary law and not under Articles 32 and 226: *Tejraj – President, Jain Sangh, Ratlam Vs. State (M.B.) & Collector & Tahsildar of Ratlam, I.L.R. (1957) M.P. 658 (DB)*

– **Rule 20 (c)** – Chief Justice exercising appellate power under Rule 20(c) of the Rules acted not on administrative side but as a quasi judicial authority – Record of the appellate authority, if called for – Appellate authority not required to answer averments made in the writ petition - Joinder of Appellate authority i.e. the Chief Justice in writ petition challenging the disciplinary action – Not necessary: *Smt. K.F. Anjum Ali Vs. High Court of M.P., I.L.R. (2000) M.P. 32 (DB)*

High Court Recruitment and conditions of Service Rules, 1937

– **As amended on 22-12-1982** – Rule 16 and Constitution of India, Article 226 – Promotion of High Court Staff-Merit-cum-seniority basis Assessment of merit by Judges Committee and approved by Chief Justice – Not liable to be interfered with – However petitioner No.1 not found fit for promotion as section Officer on the basis of his confidential remarks of the years 1980 and 1981 written of 18-8-1981 and over-looking that petitioner No.1 was thereafter promoted as Head Translator on merit cum seniority- basis when respondents 4 and 5 were also considered – Petitioner No.1's suppression by respondents 4 and 5 not justified – High Court has power to interfere in such promotion – Hostile discrimination-what is-Judges committee giving personal hearing only to those whose names were recommended by the D.P.C. for promotion but not found fit by the Judges committee for promotion – Others not given personal hearing – No violation of principles of natural justice and no hostile discrimination: *R.S. Parashar Vs. High Court of M.P., Jabalpur, I.L.R. (1985) M.P. 354 (DB)*

High Court Rules

– **Rule 2** – Special procedure prescribed for presentation of Election Petition – Non-compliance of Rule – Fatal to maintainability of the Petition: *Jai Bhan Singh Pawaiya Vs. Shri Madhavrao, I.L.R. (2000) M.P. 1103*

– **Rules 3 and 4** – Review to be heard by Division Bench: *Manohar Lal Verma Vs. State of M.P., I.L.R. (1977) M.P. 86 (DB)*

– **Rule 4** – Word “Shall” – Denotes that requirements are mandatory: *Shyam Bihari Vs. State of M.P., I.L.R. (1974) M.P. 185*

– **Chapter IV, Rule 15** – Is a rule of practice-Observance of a rule of practice does not lie in its breach-Ordinarily High Court Should not directly entertain revision – Interpretation of Statutes – Negative words are prohibitory: *Ramlal Sharma Vs. State of M.P., I.L.R. (1975) M.P. 369*

High Court Rules and Orders (Civil)

– **Chapter I, Rule 12** – Reference to a larger bench – When can be made – Existence of two conflicting decisions not a condition precedent: *Balkishandas Vs. Harnarayan, I.L.R. (1982) M.P. 1 (FB)*

– **Rule 520** – Provides for supply of postal address by person applying for copy – Limitation Act, 1908 – Section 12 – Time which can be excluded as time requisite for copy – Limitation Act – Section 20 – Payment made by post-dated cheque – Acknowledgment becomes effective from the date mentioned on the cheque even though cheque handed over earlier: *Balchand Vs. M/s India Pictures, Indore, I.L.R. (1971) M.P. 529 (DB)*

Hind Cycles Limited and Sen – Raliegh Limited (Nationalization) Act (LXX of 1980)

– **Sections 18,19,20 (1), 21(1) and 23 (1) - and Constitution of India, Articles 14, 19(1) (g), 31-C, 39 (b)** – Provisions of Act 70 of 1980 are not ultra virus of Articles 14 and 19 (a) (g) of Constitution – Act is protected under Article 31-C of the constitution: *M/s Pilani Investment And Industries Corporation Ltd., Gwalior, M.P. Vs. Union of India, I.L.R. (1989) M.P. 630 (DB)*

– **Section 19** – Claim before commissioner for payments – Priority of claims categorised – Right of appeal if petitioner dissatisfied: *Kulbir Singh Vs. Union of India, I.L.R. (1989) M.P. 703 (DB)*

Hindu Adoption and Maintenance Act (LXXVIII of 1956)

– **Section 4** – The Section does not bar enforcement of rights already accrued under the Hindu Law: *Smt. Ramabai Vs. Meerabai, I.L.R. (1967) M.P. 756 (DB)*

– **Section 4** – Whether retrospective: *Tikaram Vs. Narayan Singh, I.L.R. (1958) M.P. 108 (DB)*

– **Section 4(a)** – Words “any text, rule or interpretation of Hindu Law” in – To be understood in a limited sense as excluding “any custom or usage as part of that law”: *Mulchand Vs. Smt. Amritbai, I.L.R. (1980) M.P. 838 (DB)*

– **Section 4, 21 and 22** – Do not effect pre-existing rights – Provisions not applicable where right claimed agreement : *Subhash Chandra Vs. Smt Narbada Bai, I.L.R. (1983) M.P. 153*

– **Section 11(vi)** – Relevant ceremonies of adoption – Section 7 – Consent of wife of adoptive father necessary – Consent need not be directly proved – Can be inferred from circumstances – Section 10 (iv) – Expression “any court, rule or interpretation of Hindu Law” in – Is capable of embracing any custom or usage forming part of that law – Section 4(a) – Words “any text, rule or interpretation of Hindu law” in – To be understood in a limited sense as excluding “any custom or usage as part of that law” – Hindu law – Migration of family from original place – Family carries personal law of

that place – Hindu law – “Vyavahara Mayukah – Rule of Does not put restriction on age of adoption permits adoption of married man-reflects the custom or usage of people belonging to western India – Rule not abrogated by section 10(iv) – Will – Burden of proof on profounder Nature of evidence necessary to be adduced—Practice – Evidence – Appreciation: *Mulchand Vs. Smt. Amritbai, I.L.R. (1980) M.P. 838 (DB)*

– **Section 12** – Adopted daughter – As much daughter of adoptive father or mother as natural born daughter “for” all purposes because of statutory fiction – Statutory fiction operates from date of adoption and not retrospectively – Workmen’s Compensation Act – Section 2(1)(d) – Adopted unmarried daughter Is unmarried legitimate daughter: *Ganga Devi Vs. M/s N.H.O. Jha and Co. Private Limited Palachori Colliery, I.L.R. (1973) M.P. 1127 (DB)*

– **Section 18** – Maintenance- – Suit filed by wife for grant of maintenance – Suit dismissed by Lower Appellate Court on the ground that wife is residing separately without any justification – Held – Hindu wife has a right to be maintained by husband – Husband can file a suit for restitution of conjugal rights if he considers that wife is residing separately without any justification – Wife entitled for decree of maintenance – Appeal allowed. : *Zumka Bai Vs. Santu, I.L.R. (1993) M.P. 544*

– **Sections 18 and 19** – Maintenance of a Hindu wife is secured even after death of her husband – Provision cannot be construed to put a bar on a Hindu male to bequeath his property by way of testamentary disposition: *Karumu Vs. Rafel, I.L.R. (2000) M.P. 1125*

– **Section 18 (2)(d)** – Second wife in existence at the time of coming into force of the Act – Other wife entitled to separate maintenance: *Padmalochan Vs. Smt. Sulochana Bai, I.L.R. (1958) M.P. 830 (DB)*

– **Sections 21 and 22** – Do not abridge pre existing rights of maintenance holders – Are prospective and applicable to estate of Hindu whose death occurs after commencement of the Act – Maintenance – Heir inheriting property of person who was under liability to provide maintenance – Heir liable to provide maintenance to maintenance holders – Section 4 – Does not bar enforcement of rights already accrued under the Hindu Law – Rights accrued under Hindu Law – Enforcement of those rights in future continue to be governed by that law – Relinquishment – Relinquishment by minor—Validity: *Smt. Ramabai Vs. Meerabai, I.L.R. (1967) M.P. 756 (DB)*

– **Sections 21 and 22** – Do not affect the general rule of Hindu Law: *Gowardhan Vs. Smt. Gangabai, I.L.R. (1964) M.P. 83 (DB)*

– **Sections 21 and 22 - and Hindu Succession Act, (XXX of 1956)** – Widow inheriting deceased husband’s share of interest in the joint family property – Name

mentioned in revenue record on the date of coming into force of Land Revenue Code, 1959 – She is a Bhumiswami: *Smt. Gulab Bai Vs. Badri, I.L.R. (1992) M.P. 392*

– **Sections 21 and 22** – Maintenance – Hindu widow’s right to maintenance from coparcenary property is a statutory right – Plaintiff entitled to maintenance – Suit decreed partly: *Smt Gulab Bai Vs. Badri, I.L.R. (1992) M.P. 392*

– **Section 21(iii)**, – Hindu Succession Act, Indian, 1956, Section 14 and Constitution of India, Article 15(3) – Indefeasible right of widow to receive her husband’s property – Remarriage by wife of deceased – Compensation in Motor accident case is not a maintenance – Legal representative entitled to receive compensation in the event of death of victim – By reason of remarriage widow not disentitled to get compensation – Else there would be violation of Article 15: *Smt. Pramila Vs. Sarvar Khan, I.L.R. (2002) M.P. 123 (DB)*

Hindu Law

– **Adoption** – Anti-adoption agreement – Test to be applied to test its validity: *Radhabai Vs. Kamalchand, I.L.R. (1965) M.P. 637*

– **Adoption** – Burden of proof – Nature of proof – Material evidence not produced – Adverse inference to be drawn: *Chhotibai Vs. Ganeshlal, I.L.R. (1964) M.P. 570 (DB)*

– **Adoption** – By widow – Presumption that it is to the Husband – Unequivocal evidence necessary to rebut that Presumption: *Babulal Vs. Sanat Kumar, I.L.R. (1957) M.P. 375 (DB)*

– **Adoption** – Datta Homan not essential ceremony – Mesne profits – House constructed by respondent on appellant’s land – Appellant held to have limited interest to the extent of contribution by way of land: *Seth Rameshwar Prasad Vs. Smt. Munnibai Alias Punia Bai, I.L.R. (1988) M.P. 203*

– **Adoption** – Effect of, on blood relationship – Land Revenue and Tenancy Act, Madhya Bharat – Section 82 – Word “sister” in – meaning of: *Kaveribai Vs. Rewabai, I.L.R. (1967) M.P. 574*

– **Adoption** – Proof of – Importance to be attached to conduct of Principal parties, their relations and attending circumstances – Burden heavy on persons who set up adoption – Civil Procedure Code – Section 80 – Notice mandatory in cases where State or public servant sued in official capacity: *Babulal Vs. Smt. Dwarkabai, I.L.R. (1964) M.P. 388 (DB)*

– **Adoption** – Prohibitory Rule – Adoption of husband’s brother invalid in the absence of custom to the contrary – Civil Procedure Code, 1908 – Section 100 – Lower Appellate

court's finding based on appreciation of oral evidence to the effect that adoption not proved – Binding in Second Appeal: *Tilokchand Vs. Bhagirath*, I.L.R. (1981) M.P. 694

– **Alienation** – By a limited owner for the marriage of daughter's daughter – Alienation not for legal necessity: *Lachan Vs. Mst. Fulkunwar*, I.L.R. (1959) M.P. 970 (DB)

– **Alienation** – *Karta* entitled to make alienation of joint family properties for benefit of estate: *Jagnoo Vs. Rameshwar Narayan Singh*, I.L.R. (1981) M.P. 231

– **Alienation** – Legal necessity – Recitals in deed – Do not by themselves prove legal necessity: *Ramkrishna Vs. Vithalrao*, I.L.R. (1981) M.P. 324

– **Alienation** – By widow – Alienation for charitable or religious purpose – Not necessary to prove benefit to estate or pressure on estate: *Mst. Ghasnin Vs. Mst. Kaushalaya*, I.L.R. (1961) M.P. 77 (DB)

– **Alienation** – Joint family dealing in money transactions – Family incurring antecedent liability – Manager alienating property to satisfy the liability – Alienation for legal necessity – Alienation binding on members of joint family: *Dayaram Vs. Kashiram*, I.L.R. (1964) M.P. 402 (DB)

– **Alienation** – Prior Mortgage debts by father and father's uncle – Coparcener challenging alienation – Subsequent mortgage by grandfather and mother for self and as guardian of minor son for satisfying earlier mortgage debts and for money needed for family firm – Prior mortgage debts became family debts – Subsequent mortgage binding on coparcener challenging alienation and also on executants: *Sunderlal Vs. Shri Krishandas*, I.L.R. (1966) M.P. 600 (DB)

– **Alienation** – Suit of coparcener for possession of transferred property – alienance can ask for general partition of coparcenary property in same suit – Rights of a purchaser from a coparcener regarding coparcenary property-Purchaser not in possession of property in excess of the share of transferring coparcener – Possession of purchaser cannot be said to be unjust or inequitable – Court can give direction for staying execution proceedings of decree of a coparcener in a suit for possession, to enable purchaser to file separate suit for general partition: *Ramdayal Vs. Manaklal*, I.L.R. (1975) M.P. 1(FB)

– **Ancestral business** – Junior member can be a manager of business – Tort – Conversion – What amounts to conversion – Essentials necessary for constituting conversion – Evidence Act, Section 117 – Bailee if can question the authority of bailor to make bailment – Civil Procedure Code, Order 1, Rule 2 – Action in tort – Right of one out of many persons of the family suffering injury to file suit without joining other

members of the family – Damages – Measure of – Date on the basis of which damages are to be assessed – Cause of action – Does not become inchoate because further efforts made to avoid litigation: *Radheshyam Vs. Jagatnarayan*, I.L.R. (1962) M.P. 404 (DB)

– **Ancestral or joint family member** – Presumption about nature of acquisition: *Jainendra Kumar Vs. Kailashchand*, I.L.R. (1984) M.P. 325

– **and Constitution of India** – Articles 35 (b) and 372 – Alienation by coparcener of Joint family property in erstwhile Vindhya Pradesh Region – Alienation even for value without consent of other coparceners void – Mitakshara Law as administered in Uttar Pradesh Applicable by virtue of Vindhya Pradesh High Court Constitution Ordinance 5 of 1948 – Ordinance continues even after merger with new M.P. In 1956 by virtue of Articles 35 (b) and 372 of the constitution: *Bhagwati Prasad Vs. Chandra Bhanu*, I.L.R. (1989) M.P. 473

– **and Evidence Act, Indian (I of 1872)** – Sections 101 and 104 – Plea of partition – Burden of proof – Scope for drawing reasonable inferences where evidence obliterated by passage of time: *Jhangloo Vs. Tularam*, I.L.R. (1985) M.P. 550 (DB)

– **and Hindu Succession Act (XXX of 1956 – Section 2 (1))** – Scheduled tribe – Not Hindus – Adopted Hindu Law as part of their customary Law and have become Hinduised Governed by the Hindu Succession Act: *Smt. Anokhi Bai Vs. Bhau*, I.L.R. (1991) M.P. 294

– **Applicability** – Gonds adopting Hindu Law – They do not become Hindus: *Smt. Mira Devi Vs. Smt. Aman Kumari*, I.L.R. (1962) M.P. 273 (DB)

– **Applicability** – Raj Gonds – Not Hindus – Presumption that they are governed by Hindu Law unless contrary is shown – Burden of proof – Party contending that property is joint family property – Burden of showing it is on that party – Civil Procedure Code – Section 100 – Grant of sanction – A mixed question of fact and law – Public Trusts Act, Madhya Pradesh, 1951 – Section 26 (2) – Speaks of Collector, which includes Additional Collector, but speaks also of Sub-Divisional Officer or Tahsildar – Power of Sub-Divisional Officer or Tahsildar to remit case to Naib-Tahsildar for enquiry and report – Land Revenue Code, Madhya Pradesh, 1955 – Section 236 – To be strictly construed – Prohibits institution of suit to obtain decision on matters which have to be decided by revenue officers – Does not prevent adjudication by Civil Court regarding sanction under Section 152 (2) of Code – Civil Procedure Code – Section 9 – Suit based on title – Defendant can plead its invalidity – Land Revenue Code, Madhya Pradesh, 1955 – Section 152(2) – Failure of Additional Collector to record reasons in writing – Grant of permission is nullity – Transfer void and legally unenforceable – Contract Act, Indian – Section 65 – Contract discovered to be void – Consideration has to be refunded: *Sukhsen Vs. Shravan Kumar*, I.L.R. (1975) M.P. 328

– **Coparcenary** – Death of a coparcener in 1921 without leaving any male heir – Succession: *Prem Bai Vs. Hukum Chand Surana*, I.L.R. (1988) M.P. 255

– **Coparcenary Property** – Question of applicability of particular school or branch of Mitakshara Hindu Law to particular party – Would depend upon pleadings and facts and circumstances of each case – There can not be any general statement of law on that subject with regard to particulars region: *Diwan Singh Vs. Bhaiya Lal*, I.L.R. (1997) M.P. 46(FB)

– **Coparcenary** – Incidents of – Death of a coparcener – Notional partition by legal fiction – Interest of the deceased is fixed and not fluctuating: *Raj Man Singh Vs. Ramvishal*, I.L.R. (1979) M.P. 935

– **Direction by Court** – Court can give direction for staying execution proceedings of the decree of a coparcener in a suit for possession, to enable purchaser to file separate suit for general partition: *Ramdayal Vs. Manaklal*, I.L.R. (1975) M.P. 1 (FB)

– **Death of a coparcener** – His legal representatives not brought on record – Abatement of suit – Right to sue – Whether survives to the remaining plaintiff or plaintiffs: *Raj Man Singh Vs. Ramvishal*, I.L.R. (1979) M.P. 935

– **Execution of will by ancestor** – A circumstance against any reunion and continuation joint family – Property not coparcenary property – Decree of partition set aside: *Purshottam Vs. Bhagwat Sharan*, I.L.R. (2003) M.P. 416 (DB)

– **Family consisting of deceased and his wife** – Entire property and not half of it passes on the death of deceased in case the deceased being the only coparcener and owner of entire coparcenary interest: *The Controller of Estate Duty, Madhyapradesh, Bhopal Vs. Smt. Rani Bahu*, I.L.R. (1982) M.P. 300 (FB)

– **Family arrangement of family settlement** – Concept brought from England – Made in the interest of family and with an intention to settle or avoid present or future disputed – Governed by special equity and if terms fair, court makes every effort to recognize and sustain it – Justice lies in not disturbing family arrangement: *Balram Vs. Mansai*, I.L.R. (1988) M.P. 214

– **Family arrangement** – Essential features of: *Santoshchandra Vs. Smt. Gyansundarbai*, I.L.R. (1979) M.P. 641 (DB)

– **Gift** – Transfer of property Act – Section 122 – Requirement of a valid gift – Transaction of give unconscionable – Burden of proof to establish its validity – Status of a legal person can be acquired only under a statute and not by affiliation with a registered body under a statute – Hindu widow alleged to have made gift of her only property at

her ripe age – Gift is unnatural: *Smt. Kalyani Metra Vs. Hindu Milan Mandir, Tikarapara, I.L.R. (1986) M.P. 657*

– **Hindu family** – Is not like a corporation – Has no legal entity apart from those who constitute it: *Shri Singhai Nathuram Shri Nandanlal Vs. The Commissioner of Wealth-Tax, M.P. & Nagpur, I.L.R. (1971) M.P. 1087 (DB)*

– **Idol** – Idol as representing the religious purpose of donor is the juristic person recognized by law and not the material image of Idol: *Idol of Shri Radhaji Vs. State of Madhya Pradesh, I.L.R. (1981) M.P. 814 (DB)*

– **Inheritance** – Separated son excludes widow from inheritance: *Smt. Mira Devi Vs. Smt. Aman Kumari, I.L.R. (1962) M.P. 273 (DB)*

– **Inheritance** – Remarriage of widow – Effect on her limited interest in husband's property – Son predeceased mother – Mother's right to inherit her son – Whether affected by her remarriage: *Mst. Ratni Bai Vs. Mst. Mankuwar Bai, I.L.R. (1980) M.P. 993*

– **Inheritance amongst daughters** – Priority – Hindu widow's remarriage Act, 1856 widow re-marrying – Effect on her right to her deceased husband's property – Adverse possession – Agent of minor managing property on behalf of minor and continuing in possession of the property for more than 12 years after attainment of majority by the minor – Agent cannot acquire title by adverse possession – Registration Act, Indian, 1908 – Section 17 – Payment of certain amount by transferee to the co-owners in lieu of their shares in the joint property evidenced by receipts only – Co-owner's title cannot be extinguished: *Birambai Vs. Bhojraj, I.L.R. (1985) M.P. 497*

– **Joint family** – No presumption of joint property-possession of nucleus – Presumption of law – Burden of proof – When Shifts – Transfer of property Act, 1882 – section 41 – ostensible title to be real title-presumption-Benami – Essence of – Burden of proof – Burden is on a party asserting transaction to be benami – Relevant consideration – Limitation Act, Indian, 1963 – Article 65 – Claim based on title by succession – Article 65 applies – Co-sharer's possession as constructive trustee of other co-sharers not in possession – absence of plea of ouster – Suit not barred by limitation – Evidence Act, 1872 – Section 90 – Document more than 30 years old – When need not be proved – Identity of executant not established – Document not coming from proper custody – Document has to be discarded: *Smt. Ramkunwarbai Vs. Ranibahu, I.L.R. (1985) M.P. 100 (DB)*

– **Joint Family** – Existence of joint family property – Not necessary for existence of joint Hindu family – Business carried on by a member by associating the name of his father or son in the name of the shop indicative of shops being joint family concern –

Assets of shops constitute joint family property - Burden of Showing that particular property is joint family property – Sufficiently discharged by showing that there was joint family property from which consideration could be paid – Partition – Entries in mutation register only a piece of evidence – Not conclusive: *Smt. Nanhibai Vs. Badriprasad*, I.L.R. (1959) M.P. 559 (DB)

– **Joint Family Property** – Family possessing sufficient agricultural property which could from nucleus from which property which could from nucleus from which property could be acquired – Burden shifts on party alleging self – acquisition to prove that property acquired without aid of funds of joint family – Alienation – Legal necessity – Recitals in deed – Do not by them-selves prove legal necessity: *Ramkrishna Vs. Vithalrao*, I.L.R. (1981) M.P. 324

– **Joint family status** – Presumption – Does not relate to property held Jointly: *Jainendra Kumar Vs. Kailashchand*, I.L.R. (1984) M.P. 325

– **Join Hindu Family** – Disruption – Un-communicated intention to separate – Does not constitute disruption – Suit filed by stranger purchaser from member of joint family for partition – Defendant's statement showing no objection to partition – Such statement showing no objection to partition – Such statement not an unequivocal declaration of intention to separate – More so when such statements were not served upon other members of the family or otherwise informed: *Narayan Vs. Mahadeo Rao*, I.L.R. (1973) M.P. 492

– **Joint Hindu family** – Head of each branch – Representative of that branch – Represents all members of that branch: *Keshrimal Vs. Basantilal*, I.L.R. (1966) M.P. 306 (DB)

– **Joint Hindu Family** – Strong presumption in favour of Hindu brothers constituting it – Burden of proving severance is on the party who alleges it: *Purshottam Vs. Bhagwat Sharan*, I.L.R. (2003) M.P. 416 (DB)

– **Joint Hindu Family** – Two brothers coming and settling at different place separate from their father and other brothers – Cannot be a case of continuation of joint Hindu Family – No presumption in favour of re-union – Burden to prove reunion is on the party who pleaded it: *Purshottam Vs. Bhagwat Sharan*, I.L.R. (2003) M.P. 416 (DB)

– **Joint Hindu Family property** – Alienation by father as Karta – Legal necessity – Vendee entered into agreement after through enquiry about legal necessity – Finding given by Trial Court as to legal necessity not intend with: *Babulal Agrawal Vs. Smt. Jyoti Shrivastava*, I.L.R. (2001) M.P. 192 (DB)

– **Legal representatives do not enter the coparcenary** – Karta cannot represent the legal representative coparcenary continues but excluding the heirs of the deceased and their shares: *Raj Man Singh Vs. Ramvishal*, I.L.R. (1979) M.P. 935

– **Limited owner** – Agreement between limited owners to sever joint status – Does not have effect on the line of devolution – Agreement is binding on them during their life time – Cannot prejudice reversioners – Cannot convert life estate into absolute estate and form fresh stock of descent like estates in hands of limited owners forms one unit – Reversioner can come in only when whole unit ends – In the intervening period limited owners can come to any agreement destroying survivorship – Agreement valid only till last limited owner dies: *Tukaram Vs. Smt. Anjani Bai, I.L.R. (1959) M.P. 573 (DB)*

– **Limited owner** – Property inherited by limited owner and sold and other property purchased – The new property partakes of the same character as the old one: *Todsingh Vs. Begambai, I.L.R. (1959) M.P. 250 (DB)*

– **Maintenance** – Illegitimate son – Whether entitled to maintenance – Quantum of maintenance to which he is entitled – Hindu Adoptions and Maintenance Act (LXXVIII of 1956) – Section 4 – whether retrospective: *Tikaram Vs. Narayan Singh, I.L.R. (1958) M.P. 108 (DB)*

– **Manager** – Different members managing different businesses of the joint family – Their acts have same effect as the acts of the manager of the family and binding on members of the family to the extent of their share and interest in the joint family properties – Such member borrowing money for business – Lender not required to make enquiry whether debts borrowed for benefit to joint family business: *Kaluram Vs. Digrilal, I.L.R. (1967) M.P. 800*

– **Marriage** – Marriage brought about by force or fraud – Validity – Representation by a person or another person as his “son” – Amounts to representation as legitimate natural or adopted son – son found to be illegitimate – Representation amounts to fraudulent misrepresentation – Marriage liable to be set aside: *Bimla bai Vs. Shankar Lal, I.L.R. (1958) M.P. 368*

– **Marriage** – Woman acquires gotra of her husband by marriage – Widow is sapinda and sagotra of her deceased husband fictionally – Widow deciding to re-marry ceases to be sapinda and sagotra – Re-marriage between the widow and her husband’s sapinda and sagotra is invalid: *Smt. Rewa Vs. Gulharsingh, I.L.R. (1960) M.P. 490*

– **Migration** – Mahars originally migrated from Bombay – Presumption about migration of Mahars: *Hirabai Vs. Bhagirathibai, I.L.R. (1969) M.P. 842*

– **Migration of family from original place** – Family carries personal law of that place: *Mulchand Vs. Smt. Amritbai, I.L.R. (1980) M.P. 838 (DB)*

– **Migration** – Presumption that family carries the law applicable at the place from which migration has taken place – Presumption rebuttable – Leva Patidar Kulmees

migrated from Gujrat – Migration of community proved to be from particular State – Not necessary to prove migration of particular family – Vyavahar Mayukh – Does not lay down new law: *Sitabai Vs. Tuljabai*, I.L.R. (1963) M.P. 75 (DB)

– **Migration** – School of Law – Presumption that parties governed by the law of place where they have settled – Burden on party pleading migration – Speaking a particular language not sufficient to prove migration from the place where that language is spoken – Speaking of particular language and wearing a particular dress is very strong evidence in proof of migration – Marathas living in Chhatisgarh Speaking Marathi language governed by Bombay School: *Mst. Anjubai Vs. Hemchandra Rao*, I.L.R. (1960) M.P.621(DB)

– **Minority** – Age of 15 years not to be rigidly adhered to – Test to be applied is sufficient maturity of understanding to comprehend nature of the Act: *Smt. Premanbai Vs. Channoolal*, I.L.R. (1964) M.P. 75 (DB)

– **Natural guardian** – Compromise by – Reducing the amount of debt Supportable on ground of legal necessity and conferring benefit on minor – Compromise binding on Minor: *S.S. Nirmalchand Vs. Shrimati Parmeshwari Devi*, I.L.R. (1957) M.P. 396 (DB)

– **Nature of right of Karta to alienate property** – Minor coparcener suing for declaration that his right not affected by sale-deed – Not necessary to ask for cancellation of sale-deed: *Baldeo Singh Vs. Gopal Singh*, I.L.R. (1969) M.P. 264 (DB)

– **Particular branch of Hindu Law (Banaras School)** – As administered and applicable to integrating unit(Madhya Bharat) continues to govern the right of a coparcener of Hindu Joint family despite the formation of the new State of Madhya Pradesh: *Diwan Singh Vs. Bhaiya Lal* , I.L.R. (1998) M.P.157 (FB)

– **Partition** – Appointment of arbitrators to divide property by member of family-causes severance of joint Status – Re-union – Agreement on the part of members express or implied – Necessary to constitute re-union – Agreement to re-unite-can be inferred from subsequent conduct of parties in the absence of registered document – Things from which agreement to re-unite can be inferred: *Ramadin Vs. Gokulprasad* I.L.R. (1958) M.P. 674 (DB)

– **Partition** – Separation from father of five sons from the first wife and two sons from the second wife – Does not bring disruption of joint status of father and two sons – They continue as joint tenants and not as tenants-in-common – Father continues to be the *Karta* – On the death of father, elder becomes *Karta* – Alienation – *Karta* entitled to make alienation of joint family properties for benefit of estate – Estoppel – Principles of – Applicability – Contract act – Section 197 – Principle of ratification – Nature and scope of: *Jagnoo Vs. Rameshwar Narayan Singh*, I.L.R. (1981) M.P. 231

– **Partition** – Suit for partition – General rule that it must embrace all joint family properties and all parties – In cases of various branches – Only managers of branches should be joined: *Santoshchandra Vs. Smt. Gyansundarbai*, I.L.R. (1979) M.P. 641 (DB)

– **Partition** – Partition between son and grand-sons – Paternal Grand – mother entitled to share – Hindu Succession Act, 1956 – Section 14(1) – Property obtained by female at partition – Amounts to acquisition of property for purposes of Sub-section (1) of Section 14 – Female gets absolute title – Wealth Tax Act, 1957 – Section 2(m) – Contingent liability for payment – Does not amount to debt owed by assessee – Grant – Construction – Grant to Hindu female – No presumption that she gets limited estate – Express words necessary to indicate life estate: *Seth Narsinghdas Kanhaiyalal, Hanumantal, Jabalpur Vs. The Commissioner of Wealth-Tax*, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1970) M.P. 845 (DB)

– **Partition** – Mother entitled to a share equal to that of a son where actual distribution is made between sons – Mother not consenting or acquiescing in the partition – Mother not bound by partition: *Mst. Laltabai Vs. KrishnaRao*, I.L.R. (1958) M.P. 669 (DB)

– **Partition** – Statement in will that testator is entitled to a Particular share – No indication of intention to separate from family – Portion of property excluded from partition – Liable to partition amongst members of joint family – Partition unequal due to impact of fraud – Partition liable to be reopened – Partition between father and sons – Cannot bring about partition between grandsons – No power in father to effect partition amongst grandsons – Partition between father and sons – Partition resulting in allotment of property to a grandson – partition cannot be defeated – Specific Relief Act(I of 1877) – Section 39 – Document not binding on party – No need to sue for cancellation – Relief of cancellation redundant: *Mulamchand Vs. Kanchhedilal*, I.L.R. (1957) M.P. 308 (DB)

– **Partition** – Suit for partition – Heads of different branches made parties – Presumption That they represent all members of their branch – Burden on person challenging the right to plead and prove facts showing adversity of interest or otherwise – Civil Procedure Code – Section 11, Explanation VI – Is a deeming provision – To bring case within purview of the provision, it is not necessary to prove that son's claim through their father – Partition decree against father – Son cannot get it set aside merely on ground that it is prejudicial apart from fraud: *Harcharan Vs. Deokinandan*, I.L.R. (1960) M.P. 644 (DB)

– **Partition** – Parties not giving share to a woman – Woman can sue for her share – Right to share not to wait till property is actually divided: *Bhawarsingh Vs. Pilabai*, I.L.R. (1977) M.P. 457

– **Partition of joint family Property** – Coparcenary property devolved by survivorship and other property by inheritance both to be include – Adverse possession – No question of adverse possession or estoppel in prospect of ancestral property unless ouster established – Accounts – Karta to give account from the date of demand of partition – Will – Widow was not competent to execute in the year 1922 as she had only right to maintenance in property – Partial partition wrong to dismiss the suit, opportunity to be given to include entire property: *Munnulal Vs. Munnialal*, I.L.R. (1990) M.P. 681

– **Pious obligation of son to pay debt of father** – Liability restricted to assets inherited – No personal liability arises: *Parmanand Jain Vs. Firm Babulal Rajendara Kumar Jain*, I.L.R. (1980) M.P. 743 (DB)

– **Possession of property passing out of joint family** – Consequential relief necessary to be asked – Party to a deed asking for declaration that deed not binding on him – Implies consequential relief of cancellation: *Baldeo Singh Vs. Gopal Singh*, I.L.R. (1969) M.P. 264 (DB)

– **Property acquired without the aid of joint family property** – May also be joint family property depending upon facts of each case: *Jainendra Kumar Vs. Kailashchand*, I.L.R. (1984) M.P. 325

– **Property jointly acquired but not partaking the nature of joint family property** – Inheritance of – After born son of the deceased – whether acquires any interest in such property: *Jainendra Kumar Vs. Kailashchand*, I.L.R. (1984) M.P. 325

– **Re-union** – Can be between separated coparceners – Can be inferred from surrounding circumstances and conduct of parties – Partition – Reference to arbitrator for division of property amounts to disruption of status – Award – Inclusion of agreement in; between parties regarding devolution – Does not amount to bona fide compromise or family settlement – Compromise between widow and other members – When binding on reversioners: *Motisingh Vs. Fatehsingh*, I.L.R. (1960) M.P. 815 (DB)

– **Reversioner** – Alienation by widow – Remote reversioner when can file declaratory suit – Complaint stating circumstances under which remote reversioner is filing suit – Refusal of nearer reversioners not necessary to be established as a positive fact: *Lala Bhagatram Vs. Bhakluram*, I.L.R. (1963) M.P. 669 (DB)

– **Right of a purchaser from a coparcener regarding coparcenary property** – Purchaser not in possession of property in excess of the share of transferring coparcener – Possession of purchaser cannot be said to be unjust or inequitable: *Ramdayal Vs. Manaklal*, I.L.R. (1975) M.P. 1 (FB)

– **Rights accrued under Hindu Law** – Enforcement of those rights in future continue to be governed by that law: *Smt. Ramabai Vs. Meerabai, I.L.R. (1967) M.P. 756 (DB)*

– **School of Law** – Benaras School of Law, Applicability of, to Malvi Brahmins: *Sheshrao Vs. Sheshrao, I.L.R. (1957) M.P. 157*

– **Shebait** – Position and rights of – Corollaries flowing from the position of shebait – Person dedicating property to the deity after it is founded – Property becomes an accretion – Appointment of a person made by a shebait having limited interest ceases after life interest comes to an end : *Mahant Goelal Vs. Naga Ramkhilawan Das, I.L.R. (1962) M.P. .956*

– **Suit filed by stranger-purchaser** from member of joint family for partition – Defendants statement showing no objection to partition – Such statement not an unequivocal declaration of intention to separate – More so when such statements were not served upon other members of the family or otherwise informed: *Narayan Vs. Mahadeo Rao, I.L.R. (1973) M.P. 492*

– **Unchastity, Hindu Succession Act (XX of 1956)** – Sections 14, 28 – Hindu widow cannot be divested of the property by unchastity subsequent to her husband's death – Became absolute owner on coming into force of Hindu Succession Act, Section 28 removes all disqualifications of Hindu female: *Tatu Vs. Fulbai And Lallu Nai, I.L.R. (1991) M.P. 582*

– **“Vyavahara Mayukha”** – Rule of – Does not put restriction on age of adoption – Permits adoption of married man – Reflects the custom or usage of people belonging to Western India – Rule not abrogated by section 10(iv): *Mulchand Vs. Smt. Amritbai, I.L.R. (1980) M.P. 838 (DB)*

– **Who are Hindus** – Hindu by birth not renouncing or adopting other religion – Does not cease to be Hindu under Hindu law: *State of M.P. Vs. Swami Rishikumar, I.L.R. (1988) M.P. 556*

– **Widow** – Grant to – No Presumption that she does not get absolute or alienable interest unless power expressly conferred in that respect: *Suklal Vs. Ramgopal, I.L.R. (1957) M.P. 155*

– **Widow** – Maintenance – Arises because of interest of her husband in the property – Property acquired after death of husband with aid of joint family property can be taken into consideration in fixing maintenance – Method of fixing maintenance – Widow not bound to reside with relatives of her husband – Entitled to separate residence – Hindu Adoptions and Maintenance Act – Sections 21 and 22 – Do not affect the general rule of Hindu Law: *Gowardhan Vs. Smt. Gangabai, I.L.R. (1964) M.P. 83 (DB)*

– **Will** – By sole coparcener – Adoption by the widow of another coparcener – Right of adopted son to challenge the disposition made by will – Will executed prior to coming into force of Indian Succession Act – No attestation necessary – No proof of attestation required can be proved like any other document – Partition – Mutation entries – Relevant evidence – Possession – Nature of – Depends upon intention of parties and overt acts which follow – Admission – Raises only a presumption – Presumption rebuttable – Unless satisfactorily explained it is to be considered like any other evidence: *Mst. Jhunkari Bahu Vs. Phool Chand, I.L.R. (1957) M.P. 531 (DB)*

Hindu Marriage Act (XXV of 1955)

– **(Amending Act 1976) – Section 16,** - Sub-section (1) and (2) make it abundantly clear that even in case of a marriage void or voidable – Children of any such marriage would be regarded in law as legitimate children for all purposes including succession under the Hindu Succession Act, 1956, subject to rule contained in sub-section(3) – Civil Procedure Code, 1908 – Order 20, Rules 12 and 18 – Partition Suit – Profits to be accounted for are not mense profits – Rule 12 cannot at all apply – Partition Suit is covered by Order 20, Rule 18 – Plaintiff is entitled to profit or rendition of income of his property right up to the delivery of possession and not upto 3 years: *Mishrilal Vs. Nathu, I.L.R. (1999) M.P. 362*

– **and Hindu Marriage Laws Amendment Act (LXVIII of 1976),** - As amended, Section 28 – Appeal – Decree of Divorce on ground of adultery and cruelty – Sections 13(1)(i), 13(1)(ia) and 23 – Evidence showing appellant’s admission of her illicit relationship with another person and filing false complaint against husband and threatening to falsely implicate him in dowry case – Ingredients for grant of decree of divorce satisfied as required under Section 23 of the Act – Decree of divorce confirmed – Section 25 – Alimony – Application for not filed in the trial Court but filed in the appellate Court at the fag end of argument – Application not entertained by appellate Court, however, with liberty to approach the Trial Court for appropriate orders – Word – “Adultery” – After amendment in the Act, even a single act of consumption with a person other than the spouse would amount to adultery – “Cruelty” – Filing of false complaint against the spouse amount to cruelty – “Satisfied” – The word satisfied in Section 23 of the Act must mean satisfied on preponderance of probabilities where human relationship is involved: *Smt. Amita Vs. A.K. Rathore, I.L.R. (2000) M.P. 380*

– **Divorce**– Divorce among Patwas – Can be by mutual consent – Question of age of discretion according to Mitakshara School of Hindu Law – Not applicable to the case – Age 14 or 15 sufficient for allowing maturity of understanding – Consent of father for divorce in case of minor daughter – Consent not valid – Indian Majority Act – Section 2 – Does not apply to act of person on specified matters – Hindu Law – Minority – Age of 15 years not to be rigidly adhered to – Test to be applied is sufficient

maturity of understanding to comprehend nature of the Act : *Smt. Premanbai Vs. Channolal*, I.L.R. (1964) M.P. 75 (D.B.)

– **Divorce – Cruelty** – Cruelty is a relative term – It depends on person to person, and the society in which the spouses reside – Both Husband and Wife are educated persons, therefore treatment of wife such as, not to permit the husband to even touch her body leave aside the sexual intercourse and improper association with another person – Amount to cruelty and therefore lower Court rightly granted decree divorce – Hindu Marriage Act, 1955 and Evidence Act – Wife did not choose to enter the witness-box on the contrary she choose to examine her father who was not having personal knowledge of delicate talks between the husband and wife for which only husband and wife could speak – Inference can be drawn against wife for non-appearance in witness-box, particularly in matrimonial cases: *Smt. Meenaxi Vs. Anil Kumar*, I.L.R. (1998) M.P. 949

– **Petition under** – Not plaints – to be treated as petitions for purposes on Court-fees: *Nandkishore Vs. Parwatibai*, I.L.R. (1967) M.P. 555

– **Proceedings under the Act** – Can be considered as suit, as term “suit” not defined under the Act – Such suit not referable to original civil jurisdiction: *Nandkishore Vs. Parwatibai*, I.L.R. (1967) M.P. 555

– **Section 2(ii) and Hindu Succession Act, 1956, Section 2** – Provision not applicable to Gond Community – Constitution of India, Article 23 – Customary divorce by a male Gond receiving money – Divorced wife married by another man – Custom not violative of public policy – First wife of deceased living separately – Second marriage of deceased with plaintiff in customary rights proved – Children also born out of the wedlock – Plaintiff entitled to get share with children equal to that of first wife: *Smt. Shakun Bai Vs. Smt. Siya Bai*, I.L.R (2002) M.P. 300

– **Section 3(b)** – Civil Courts Act, Madhya Pradesh, 1958 – Section 7(2) – Power conferred by section 7(2), Civil Courts Act – Is in addition to power conferred on State Government under Section 3(b) of Hindu Marriage Act – Additional District Judge – Can be empowered to perform functions of principal civil Court of original jurisdiction if empowered by District Judge – Hindu Marriage Act – Section 9 – Husband suing for restitution of conjugal rights – Burden of proving valid marriage – Burden on husband: *Laxmansingh Vs. Kesharbai* I.L.R. (1966) M.P. 115 (DB)

– **Sections 4 and 9** – Suit for restitution of conjugal rights under Hindu Law read with section 9, Civil Procedure Code – Jurisdiction of Civil Court to entertain the suit taken away by this Act: *Smt. Bootan Bai Vs. Durga Prasad*, I.L.R. (1959) M.P. 94

– **Section 5(III) and Section 18** – Marriage of Girls being of age below then that prescribed by Act – Marriage neither void nor voidable – Contravention of the provision

– Contravention punishable under Section 18 – Marriage solemnized in contravention of age mentioned in Section 5(iii) – Cannot be declared ab initio void or voidable – Section 10(b) – Non-payment of interim maintenance during pendency of appeal – Is not an act of cruelty – Does not constitute revival of earlier acts of condoned cruelty: *Gindan Vs. Barelal, I.L.R. (1978) M.P. 1042 (DB)*

– **Sections 5 and 11** – Victim was the second wife of the applicant/accused – First wife still living and has also been examined by the police and cited as witness – The marriage with the victim was thus void in view of the provision of Sections 5 and 11 of the Hindu Marriage Act – Accused cannot be treated as husband of the deceased woman for the purpose of Sections 304-B and 498-A: *Ramnarayan Vs. State of M.P., I.L.R. (1998) M.P. 887*

– **Sections 5, 9, 11, 24 and 25** – Suit for restitution of conjugal rights – Prayer for maintenance *pendente lite* – Even if the marriage is void or voidable by reason of husband's subsisting first marriage interim alimony cannot be denied to second wife – Order of Trial Court set aside – Interim alimony granted: *Laxmi Bai Vs. Ayodhya Prasad, I.L.R.(1992) M.P. 684*

– **Section 9** – Restitution of conjugal rights – Marriage solemnized when wife was 10 to 12 years old – Marriage neither ab initio void nor voidable – Wife coming and living with her husband after becoming major – Marriage validated and defect condoned – Relief of restitution of conjugal rights cannot be refused to husband: *Sukhram Vs. Smt. Mishri Bai, I.L.R. (1980) M.P. 989 (DB)*

– **Section 9** – Burden of Proof on husband to show reasonable excuse for withdrawing permanently from society of wife: *Rameshchandra Vs. Premlata Bai, I.L.R. (1981) M.P. 389 (DB)*

– **Section 9** – Daughters have grown up – Husband no longer in employment – Husband should leave his obdurate obstinate approach and think of living with his wife as per decree of restitution of conjugal rights: *Umesh Kumar Vs. Smt. Chandrakripa; I.L.R..(2003) M.P. 1208*

– **Section 9** – Gives discretion to Court not to grant decree for restitution even when conditions fulfilled – Conduct of parties can be considered – Restitution not to be granted when parties cannot live happily and non-granting of decree of restitution is in the interest of happiness, health and safety of wife – Section 24 – Petitioner and Respondent in – Mean petitioner and respondent of the petition under that section and not of original petition: *Baburao Vs. Mst. Sushilabai, I.L.R. (1963) M.P. 462 (DB)*

– **Section 9** – Husband suing for restitution of conjugal rights – Burden of proving valid marriage – Burden on husband: *Laxmansingh Vs. Kesharbai I.L.R. (1966) M.P. 115 (DB)*

– **Section 9** – Restitution of Conjugal Rights – Decree – Restitution of conjugal rights – Decree for – Challenge by husband that adequate opportunity of cross examination was not given – Held – The husband adopted all dilatory tactics to postpone the hearing of the case – Critics say that the judicial system is suffering from the malady of delay and has questioned the justice delivery system on this score – The maxim justice delayed is justice denied applied with more vigor in matrimonial matter – The husband was not given sufficient opportunity to cross examine the witnesses is without any substance – It is his own creation and he has to bear for the same: *Lalit Gurubaxani Vs. Smt. Usha Gurubaxani*, I.L.R. (1997) M.P. 511

– **Section 9** – Suit for restitution of conjugal rights – Validity of marriage disputed – Not only fact of marriage but performance of rights and ceremonies for valid marriage to be proved: *Ayodhya Prasad Nai Vs. Mst. Shanti*, I.L.R. (1963) M.P. 917(DB)

– **Section 9** – Suit for restitution of conjugal rights decreed – Question as to which of the parties is not complying with the decree – Can only be decided finally by the Trial Court – No case for inference in interim award of maintenance on ground of decree under Section 9 of Hindu Marriage Act: *Madhu @ Sanjeev Kumar Vs. Smt. Lalita Bai*, I.L.R. (2001) M.P. 905

– **Section 9** – Suit for Restitution of Conjugal rights – Decreed in favour of wife – L.P.A. pending arising out of First appeal: *Lalit Gurubaxani Vs. Smt. Usha Gurubaxani* I.L.R. (2000) M.P. 1153

– **Section 9** – Suit for restitution of conjugal rights – Suit undefended – *Ex-parte* decree cannot be passed – Human approach essential – Court to be satisfied that statements made by petitioners are true – Absence of legal grounds for refusing application – Even when conditions are satisfied Court has discretion to pass decree for restitution – Discretion to pass decree to be exercised cautiously and after deliberation – In marital matters an attitude of mind and feelings that counts – Section 23(1) and (2) – Scope of – Duties of Court under: *Smt. Alopai Vs. Ramphal*, I.L.R. (1962) M.P. 398 (DB)

– **Section 9** – Suit under – Second marriage by husband during subsistence of first Marriage – Reprehensible – Even if marriage between the parties rendered irretrievable yet the husband cannot be given benefit of his own wrong – Judgment impugned affirmed: *Lalit Gurubaxani Vs. Smt. Usha Gurubaxani*, I.L.R. (2001) M.P. 809 (DB)

– **Section 9** – Temporary withdrawal of society by wife from husband – Whether a ground for refusal of decree for restitution of conjugal rights – Burden of proof on husband to show reasonable excuse for withdrawing permanently from society of wife – Section 23(3), as amended by (Amendment) Act, 1976 – Subsequent events – Powers of Court to consider conduct of parties during conciliation proceedings: *Rameshchandra Vs. Smt. Premlata Bai*, I.L.R. (1981) M.P. 389 (DB)

– **Sections 9,13,28 and Civil Procedure Code 1908, Order 22 Rule 4** – Decree of divorce – Appeal by wife – Death of husband during pendency of appeal – Proceedings would not abate – Husband obtained decree of restitution of conjugal right – Earlier divorce petition dismissed for default – No case for divorce made out during husband’s life time on ground of cruelty – Decree of divorce set aside: *Hindu Marriage Act (XXV of 1955)–Sections 9,13,28 and Civil Procedure Code 1908, Order 22 Rule 4–Decree of divorce–Appeal by wife–Death of husband during pendency of appeal–Proceedings would not abate–Husband obtained decree of restitution of conjugal right–Earlier divorce petition dismissed for default–No case for divorce made out during husband’s life time on ground of cruelty–Decree of divorce set aside. Smt. : Uma Devi Vs. Beni Prasad (Dead) Through Lrs., I.L.R. (2005) M.P. 499*

– **Sections 9, 13(1)(1-b) and 28** – Appeal – Petition for divorce dismissed and decree of restitution of conjugal rights passed – Husband alleging desertion and cruelty – ‘Desertion’ is a withdrawal not from a place but from a state of thing – Essence of desertion is the forsaking and abandonment of one spouse by the other without reasonable cause and without consent or against the wish of the other – Wife living separately for continuing to practice as an advocate as the husband insisted – Absence of consent on part of husband not proved – Wife cannot be held guilty for deserting the husband – Daughters have grown up – Husband no longer in employment – Husband should leave his obdurate obstinate approach and think of living with his wife as per decree of restitution of conjugal rights: *Umesh Kumar Vs. Smt. Chandrakripa, I.L.R..(2003) M.P. 1208*

– **Section 9, 13(1)(a), 13(1)(b) 23 and 28** – Appeal – Suit for divorce on ground of cruelty and desertion – Civil Procedure Code, 1908 – Order VI, Rule 2 – Pleadings – Must contain a concise statement of material facts – Vague and general averment – Ground of cruelty not established – Desertion – Proof of separation alone not sufficient – Intention to bring cohabitation permanently to an end has also to be proved – Decree of divorce can only be granted if there exists grounds for such relief and the Court is satisfied that petitioner is not taking advantage of his/her own wrong – Wife forced to live separately by conduct of husband – Wife also obtained decree of restitution of conjugal rights – Her separation in the facts would not constitute desertion within the provision of Section 13(1)(b) of the Act – Decree of divorce rightly refused: *Shrikant Vs. Smt. Saroj , I.L.R. (2001) M.P. 12022 (DB)*

– **Section 10** – Suit for judicial separation – Terms of Section must be complied with – Allowance of irritating idiosyncrasies to be made – Defiance or disrespect to mother-in-law – No sufficient ground for separation – Decision regarding desertion – Conduct of both parties to be taken into consideration – Desertion is matter of inference from facts and circumstances – Deserted wife willing to come and live with her husband before proceedings for divorce have started – Offer refused by husband – husband becomes deserter – Not entitled to claim separation: *Narayan Prasad Vs. Smt. Prabha Devi, I.L.R. (1965) M.P. 957 (DB)*

– **Section 10(b)** – Non-payment of interim maintenance during pendency of appeal – Is not an act of cruelty – Does not constitute revival of earlier acts of condoned cruelty: *Gindan Vs. Barelal, I.L.R. (1978) M.P. 1042 (DB)*

– **Section 10(1)(b)** – “Cruelty” in – Means such cruelty as to cause reasonable apprehension about harm or injury – Does not mean only physical cruelty – Applies to mental cruelty so as to create such apprehension as is contemplated in the section – Existence of cruelty – Dependable upon consequences of matrimonial offence of cruelty – Duty of Court in a petition based on cruelty: *Smt. Umribai Vs. Chittar, I.L.R. (1967) M.P. 766 (DB)*

– **Section 10(1)(b)** – Existence of cruelty – Dependable upon consequences of matrimonial offence of cruelty – Duty of Court in a petition based on cruelty: *Smt. Umribai Vs. Chittar, I.L.R. (1967) M.P. 766 (DB)*

– **Section 10(1)(d)** – Proof regarding suffering from syphilis for 3 years prior to the petition wanting – Judicial separation cannot be granted: *Madhusudan Vs. Smt. Chandrika, I.L.R. (1980) M.P. 249 (DB)*

– **Section 11** – Advantage under – Can be availed of by parties to marriage and not by stranger: *Amarlal Vs. Vijaya Bai, I.L.R. (1959) M.P. 254*

– **Section 11** – Law prohibiting marriage – Marriage is void – Marriage a mere form and does not confer the status of husband or wife – Religious character of sacrament separated from secular character – In secular aspect essential object of marriage is free physical union of two persons as husband and wife for procreation – Impotency, idiocy or lunacy at the marriage permits avoidance of marriage – Marriage valid-cannot be avoided – Can be dissolved by decree of divorce subject to provision of section 14 on any ground in section 13 – Difference and distinction between Matrimonial Causes Act, 1950 and Hindu Marriage Act – Hindu Marriage Act – Section 15 – Operates only in case of marriage dissolved by decree of divorce – Limitation to re-marriage-not applicable to a decree for nullity – Re-marriage after a decree for nullity – Neither void nor voidable – Not liable to be annulled or dissolved because it was contracted during pendency of appeal nor by ultimate decision of appeal: *Mohanmurari Vs. Smt. Kusumkumari, I.L.R. (1967) M.P. 394 (DB)*

– **Section 12** – Incapacity to consummate marriage – May be due to various causes – For avoiding marriage – Not necessary to show universal impotency – Legal position regarding impotency: *Smt. Shantibai Vs. Tarachand, I.L.R. (1968) M.P. 929 (DB)*

– **Section 12** – Impotency, idiocy or lunacy at the marriage permits avoidance of marriage: *Mohanmurari Vs. Smt. Kusumkumari, I.L.R. (1967) M.P. 394(DB)*

– **Section 12** – Infirmary of the petitioner herself or himself – Not sufficient for grant of a decree for nullity of marriage – Infirmary to be established in that other party – No minimum standard of proof prescribed to make out case of impotency – Incapacity to consummate marriage – May be due to various causes – For avoiding marriage – Not necessary to show universal impotency – Legal position regarding impotency: *Smt. Shantibai Vs. Tarachand*, I.L.R. (1968) M.P. 929 (DB)

– **Section 12** – Petition for divorce by husband alleging pregnancy of wife by third person – Defence is of denial in toto while husband's allegations are in close proximity – Evidence of expert can be an important corroborating evidence – Trial Court acted with material irregularity in rejecting the application: *Vishambhar Vs. Smt. Buta Devi*; I.L.R. (2003) M.P. 84

– **Section 12** – Elements of free consent – Concealment of the fact of previous marriage – Cannot be a ground for annulment of marriage: *Rajaram Vs. Deepabai*, I.L.R. (1978) M.P. 1120 (DB)

– **Section 12** – Word 'Fraud' in – Connotation of: *Nandkishore Vs. Smt. Munnibai*, I.L.R. (1981) M.P. 583 (DB)

– **Sections 12, 13, 14, 15, 23, and 28**, - Civil Procedure Code (V of 1908), Section 96(3) and Order 23, Rule 3 and the Rules framed by the High Court under the Hindu Marriage Act, 1955, Rule 3 – Petition by husband for divorce within one year of marriage on ground of pregnancy at the time of marriage and illicit relationship with another person – Compromise decree passed annulling marriage between the parties – Illegal – Appeal under Section 28 – Provision of Section 14 mandatory – Not followed – Entertaining Divorce petition within one year of marriage without passing any order under Section 14 – Illegal – Impugned judgment shows husband relinquished claim for direction of marriage by a decree of divorce – Compromise decree passed annulling the marriage between the parties – Without jurisdiction for want of compliance of S. 14 and Rule 13 – Decree set aside – No satisfaction recorded by Trial Court also existence of conditions laid down in section 12(1)(d) or S. 12(2)(b) – Compromise decree under order 23, C.P.C. contrary to Law – No bar under section 96(3), C. P. C. to challenge such decree in Appeal Reconciliation proceeding not necessary – Appeal under Section 15 is of limited jurisdiction but one under Section 28 is unlimited unqualified and unrestricted – Decree set aside matter remanded to trial Court. *Smt. Rekha Jain Vs. Rajendra Jain*, I.L.R. (1992) M.P. 179

– **Section 12 (1)(a)** – Word "impotency" in – Does not bring in the idea of sterility or incapability of conception – Signifies incapacity to consummate marriage – Sterility no ground for holding the marriage a nullity: *Mst. Shewanti Vs. Bhaurao*, I.L.R. (1975) M.P. 509 (DB)

– **Section 12(1)(c)** – “Fraud” in matrimonial law – Has technical meaning – Meaning of fraud in the context of annulment of marriage – Wife concealing her ailment of venereal disease – Does not amount to fraud within this provision: *Madhusudan Vs. Smt. Chandrika, I.L.R. (1980) M.P. 249 (DB)*

– **Section 12(1)(c)** – Obtaining of consent of husband by concealment by – Does not arise if fact regarding which concealment is alleged is not known to the party – Definition of fraud in section 17 of contract Act – Cannot be incorporated in this provision: *Madhusudan Vs. Smt. Chandrika, I.L.R. (1980) M.P. 249 (DB)*

– **Section 12(1)(c)** – “Fraud” in – Does not mean every misrepresentation or concealment – The word “Fraud” has limited meaning – “Fraud” refers to consent of petitioner to solemnization of marriage – Elements of free consent – Concealment of the fact of previous marriage – Cannot be a ground for annulment of marriage – Evidence Act, Indian – Section 112 – Long co-habitation – Children born of such union and treated by community as legal children – Presumption of valid marriage arises – Woman previously married to another man – Marriage taken as dissolved if permitted by custom: *Rajaram Vs. Deepabai, I.L.R. (1978) M.P. 1120 (DB)*

– **Sections 12 (1)(c)** – Suit for annulment of marriage on the ground of suppression of fact – Wife a divorce – Parties known to each other prior to marriage – Suppression of fact of prior marriage of wife can not be believed – Even in reply to notice husband not raised this ground – Trial Court rightly dismissed the application for decree of nullity of marriage: *Prakash Singh Thakur Vs. Smt. Bharti, I.L.R. (2001) M.P. 1530*

– **Section 12 (1) (c)** – Spouse living as husband and wife even for a short period after knowledge of the alleged pregnancy – Husband disentitled for nullity of marriage: *Nandkishore Vs. Smt. Munnibai, I.L.R. (1981) M.P. 583 (DB)*

– **Sections 12(1)(d), 12(2)(b), 15, 28 - and Civil Procedure Code (V of 1908), Section 96(3)** – No satisfaction recorded by Trial Court also existence of conditions laid down in Section 12(1)(d) or S. 12(2)(b) – Compromise Decree under Order 23, C.P.C. contrary to Law – No bar under Section 96(3), C. P. C. to challenge such Decree in Appeal Reconciliation proceeding not necessary – Appeal under Section 15 is of limited jurisdiction but one under Section 28 is unlimited unqualified and unrestricted – Decree set aside matter remanded to trial Court: *Smt. Rekha Jain Vs. Rajendra Jain, I.L.R. (1992) M.P. 179*

– **Section 12(1)(d)** – Husband seeking nullity of marriage thereunder – Charge of unchastity of a women – Should be proved beyond reasonable doubt – Proof of facts necessary to succeed in such a petition – Limitation Act, Indian – Section 5 – Not applicable to petition under section 12 of Hindu Marriage Act – Section 12 (1) (c) – Spouse living as husband and wife even for a short period after knowledge of the

alleged pregnancy – Husband disentitled for nullity of marriage – Section 12 – Word ‘Fraud’ in – Connotation of: *Nandkishore Vs. Smt. Munnibai, I.L.R. (1981) M.P. 583 (DB)*

– **Section 13** – Circumstances under which delay can be a ground for non-suiting: *Bannu Bai Vs. Ratna, I.L.R. (1970) M.P. 110 (DB)*

– **Section 13** – Desertion by the non-applicant wife not proved – Decree u/s. 13(1)(1-b) of the Act for divorce – Cannot be granted – Section 13 – Petition for divorce – Petitioner having love affair with another women and living with her – The respondent wife totally repudiating the obligation of marriage – No possibility of reconciliation between the parties – Marriage irretrievably broken – Ground for dissolution u/s. 13(1) of Hindu Marriage Act not established by petitioner husband – Cannot take advantage of his own wrong – Cannot succeed in petition for divorce – Desertion meaning of – Respondent wife living separately since long – Justification for wife to live separately – Would not constitute desertion: *Suresh Prasad Sharma Vs. Smt. Ram Bai Sharma, I.L.R. (1998) M.P. 75*

– **Section 13** – Divorce petition by husband – Decreed ex parte – Application for setting aside exparte decree – Rejection of – In case of village Ladies Court has to be considerate: *Tibabai Vs. Kadwa, I.L.R. (2000) M.P. 747*

– **Section 13** – No general rule for non-suiting plaintiff on ground of delay possible – Circumstances under which delay can be a ground for non-suiting – Wife leading life of adultery because of husband’s own conduct – Such wrong has to be treated with leniency: *Bannu Bai Vs. Ratna, I.L.R. (1970) M.P. 110 (DB)*

– **Section 13** – Proceedings for nullity of marriage – Existence of first wife at the time of second marriage by husband sought to be annulled – Not required to be proved by direct evidence – Can be inferred from other proved facts in the case evidence Act – section 108 – Does not permit presumption regarding date of death: *Mst. Rajulabai Vs. Suka, I.L.R. (1976) M.P. 760 (DB)*

– **Section 13 - and Civil Procedure Code, 1908, Section 11 and Order 14, Rule 2(1)** – Earlier petition for divorce on ground of desertion dismissal as desertion not proved, petition premature – Subsequent suit on ground of desertion not maintainable as barred by res-judicata: *Anand Prakash Dixit Vs. Smt. Malti Dixit, I.L.R. (1988) M.P. 75 (DB)*

– **Section 13 and 14** – Marriage valid – Cannot be avoided – Can be dissolved by decree of divorce subject to provision of section 14 on any ground in section 13: *Mohanmurari Vs. Smt. Kusumkumari, I.L.R. (1967) M.P. 394(DB)*

– **Section 13(1)** – Divorce – Cruelty – Husband filing a suit for divorce alleging cruelty on various issues – Held – Jealousy is the name of women – It may be a normal phenomenon in the married life of many persons – Does it amount to making the allegations against the husband charging him of unchastity – Does it amount to making the allegation against him of unchastity – No, unless it is baseless, malignant and disgusting – While assessing the evidence in respect of such averments, the Court has to be cautious about it because by such allegations and loose statements, some other person is likely to be maligned so far as his or her character is concerned – Cruelty is a relative term – It varies from person to person and case to case – The allegations and conduct does not amount to cruelty in every case – It depends on the status of spouses, atmosphere in which they live – That has to be understood by seeing neatly the back ground behind it and effect which is likely to be caused by such allegations and conduct – Thus, learned trial Judge had without appreciating the evidence on record properly jumped to the conclusion of mental cruelty from appellant to respondent: *Smt. Archana Mahajan Vs. Vinod Mahajan, I.L.R. (1997) M.P. 524*

– **Section 13(1)(i)** – Divorce on the ground of pregnancy per alium – Impregnation during menstruation – Medically possible – Presumption of Legitimacy of child – Can be dislodged by proof of non-access during the time of conception – Appeal dismissed – Paternity of child – Blood Test – Has no legal sanction as evidence – Approach of the Matrimonial Courts in this regards should be cautious and careful: *Devesh Pratap Singh Vs. Smt. Sunita Singh, I.L.R. (1998) M.P. 474*

– **Section 13(1)(i)** – Appeal pending when amending Act came in to force – Appellant entitled to benefit of the amended provision: *N.C. Dass Vs. Smt. Chinmayee Das, I.L.R. (1982) M.P. 637 (DB)*

– **Section 13 (1)(i)**, - Civil Procedure Code, 1908, Order 8 Rule 5(1) – Adultery – Husband/Respondent filed suit for divorce on the ground of adultery – Appellant/wife admitted in written statement that she did not have marital relations with husband from January, 1989 and has given birth to child on 18th June, 1990 – Decree of divorce granted on this admission without recording evidence – Held – Wife/appellant did not admit that she is having illicit relations with another voluntarily – In absence of evidence Court could not have accepted wild allegations of illicit relations with others when Order 8 Rule 5(1) Proviso gives discretion to Court to require any fact to be proved – Appeal allowed. : *Smt. Leela Pande Vs. Shri Sachendra Kumar Pande, I.L.R. (1994) M.P. 173*

– **Section 13(1)(i)**, - Civil Procedure Code, 1908, Order 12 Rule 6 – Judgment on admission – Order 12 Rule 6 empowers Court to only grant partial decree in pending case on the basis of admission – Court not empowered to dispose of entire suit. *Smt. : Leela Pande Vs. Shri Sachendra Kumar Pande, I.L.R. (1994) M.P. 173*

– **Section 13(1)(i)**, - Civil Procedure Code, 1908, Order 15 Rule 1 – Parties not at issue – Complaint containing vague allegation of continuous act of adultery – No specific allegation that wife had voluntary sexual intercourse – Wife admitting that she had no marital relations with her husband from January, 1989 and has given birth to child on 18.6.1990 – It could not be said that parties were not at issue – Court can not pronounce judgment on the basis of alleged admission by wife. : *Smt. Leela Pande Vs. Shri Sachendra Kumar Pande*; I.L.R. (1994) M.P. 173

– **Section 13(1) (1a)** – Cruelty – What constitutes – Decree of divorce granted by Trial Court to husband on the ground of cruelty – Held – There must be treatment causing apprehension as to render cohabitation harmful or injurious – Refusal by wife to perform household work by saying that she is not maid servant – Allegation that her behaviour was indecent not explained by furnishing necessary details – Cruelty not made out – Respondent not entitled for decree on the ground of cruelty. : *Smt. Asha Soni Vs. Ram Swarup Soni*; I.L.R. (1994) M.P. 382

– **Sections 13(1)(1b), 23 (1)(a)** – Desertion – Marriage performed on 9-4-80 – Parties residing separately from 1-2-83 – Husband alleged that wife left matrimonial house with 20 tolas of gold and 1 Kg of Silver Ornaments – Wife alleged that she was turned out of house – Both parties tried to create evidence by relying on proceedings by Panchayats – Held – Proceedings of panchayats are not reliable – During reconciliation proceedings wife expressed her willingness to come back unconditionally – Husband insisted that she should come back with 20 tolas of gold and 1 Kg. of Silver Ornaments – Father in law of wife admitted that only mangal sutra of 2 tolas and one per patti of Silver was given to her – Conduct of husband show that wife was turned out of house for demand of dowry – Husband not entitled for decree on the ground of desertion – Appeal allowed. : *Smt. Asha Soni Vs. Ram Swarup Soni*; I.L.R. (1994) M.P. 382

– **Section 13(1)(iii)** – Decree of Divorce under – When can be passed – Wife suffering from Epilepsy – Nature of disease – Not incurable – Husband can reasonably expected to live with ailing wife – Obligation of husband in case of his ailing wife – Decree u/s 13(1)(iii) cannot be passed – Section 23 – Burden of proof as to existence of ground u/s 13(1)(iii) – Rests on petitioner – Absence of wife from witness-box – No adverse inference liable to be drawn – Section 15 – Appeal against decree of Divorce filed within limitation – Second marriage by husband rendered illegal: *Kadambani Vs. Reshamlal Sahu*, I.L.R. (1990) M.P. 502

– **Section 13(1)(iii)** – Divorce – Parties lived together for five years after marriage – Two children were born out of wedlock and appellant looking after them – Appellant wife also improved her education qualification after marriage – There is no finding recorded by the Trial Court that when she was examined as witness, there was lack of understanding – Inability to manage her affair is an essential attribute of incurable unsound mind – Held – Respondent husband failed to establish that wife was suffering

disease which was incurable and it was not safe to live with her – Decree of divorce reversed – Appeal allowed: *Usha Gupta Vs. Santosh Kumar Pahadiya, I.L.R. (1996) M.P. 381*

– **Section 13 (iii)** – Mental Disorder – Husband filed suit for divorce on the ground that wife suffering from Psychopathic Disorder – Appeal by wife against decree granting divorce – Magnitude of Mental disorder important – Wife could not examine herself at AIIMS as offered by her in Court due to nonpayment of expenses by husband – No adverse inference can be drawn – Burden lies on plaintiff to prove mental disorder on the date of filing of suit as well as on the date of grant of decree – Appeal Allowed. Hindu Marriage Act (XXV of 1955)-Section 13 (iii)-Mental Disorder-Husband filed suit for divorce on the ground that wife suffering from Psychopathic Disorder-Appeal by wife against decree granting divorce-Magnitude of Mental disorder important-Wife could not examine herself at AIIMS as offered by her in Court due to nonpayment of expenses by husband-No adverse inference can be drawn-Burden lies on plaintiff to prove mental disorder on the date of filing of suit as well as on the date of grant of decree-Appeal Allowed : *Rekha Ravindra Kumar Vs. Ravindra Kumar Ramchandra; I.L.R. (1993) M.P. 230*

– **Sections 13(1), 13-B - and Matrimonial dispute** – Divorce – Reconciliation in pending petition failed – Joint petition for divorce and dissolution of marriage by mutual consent – Waiting period of six months – Not mandatory but directory in nature – Can be reduced when a divorce on mutual consent is sought in a divorce petition already pending for more than six months and all efforts for reconciliation failed: *Dinesh Kumar Shukla Vs. Smt. Neeta; I.L.R. (2005) M.P. 78 (DB)*

– **Section 13(1)(a)(ii)** – Petition for Divorce dismissed by trial Court – Appeal preferred by husband – Since 1976 there is no-reunion between the parties – Wife respondent obtained decree of restitution of conjugal rights in 1982 but not pursuing execution thereof – Such spouse has to be blamed – At the time of hearing of appeal appellant is 57 years of age and wife above 50 years – Spouses have gone to such an end from where there is no return – No point in keeping the matrimonial tie alive – Trial Judge committed error in not passing a decree of dissolution of the marriage – Decree of divorce granted dissolving the marriage of parties: *Rajendra Singh Bias Vs. Smt. Durga Devi Bias, I.L.R. (1999) M.P. 346*

– **Sections 13 (1) (i-a) , 13 (1) (i-b) and 28** – Appeal against – Petition for divorce on ground of cruelty and desertion – Wife's persuasion to husband's leading simple life and take to vegetarian food cannot be said to be cruelty – Wife went to parents house with permission of husband- – Filed petition for restitution of conjugal rights – Cannot be said that she had animus deserendi – Trial Court rightly rejected the petition for divorce: *Rajendra Vs. Smt. Meena, I.L.R. (2004) M.P. 1146*

– **Sections 13(i)(i-a), (i-b) and 28** – Matrimonial suit – Decree of divorce – Appeal – Decree for divorce can only be granted on one of the grounds under Section 13(1) of the Act – Husband not found entitled to decree of divorce on ground of desertion and cruelty – Decree of divorce on ground that there appeared to be no chance of improvement in the strained relationship of the parties – Could not be granted – Decree of divorce set aside: *Mst. Butti Vs. Gulab Chand Pandey*; *I.L.R. (2003) M.P. 130*

– **Sections 13(1)(1-b)** – ‘Desertion’ is a withdrawal not from a place but from a state of thing – Essence of desertion is the forsaking and abandonment of one spouse by the other without reasonable cause and without consent or against the wish of the other: *Umesh Kumar Vs. Smt. Chandrakripa*; *I.L.R.(2003) M.P. 1208*

– **Sections 13(1)(1-b)** – ‘Wife living separately for continuing to practice as an advocate as the husband insisted – Absence of consent on part of husband not proved – Wife cannot be held guilty for deserting the husband: *Umesh Kumar Vs. Smt. Chandrakripa*; *I.L.R.(2003) M.P. 1208*

– **Section 13(1)(i-a)** – Cruelty – Not defined in the Act – Needs to be construed on various considerations in individual cases: *Smt. Bhagwanti Vs. Laxmandas Panjwani* *I.L.R. (2000) M.P. 371*

– **Section 13(1)(i-a)** – Habitual constant use of abusive languages, physical assault, threats to implicate in false case and lodging false police complaint by wife against husband – Husband also arrested by police and later released on bail – Wife not fulfilling obligation of marriage – Evidence of obnoxious behaviour with husband corroborated and proved by independent reliable witnesses – Would certainly amount to ‘Cruelty’ by the wife: *Smt. Bhagwanti Vs. Laxmandas Panjwani* , *I.L.R. (2000) M.P. 371*

– **Section 13(1)(i), 13(1)(ia), and 23** – Evidence showing appellant’s admission of her illicit relationship with another person and filing false complaint against husband to falsely implicate him in dowry case – Ingredients for grant of decree of divorce satisfied as required under Section 23 of the Act – Decree of divorce confirmed: *Smt. Amita Vs. A.K. Rathore*, *I.L.R. (2000) M.P. 380*

– **Sections 13(1)(i-a), 13(1)(i-b) and 28** – Appeal – Suit for divorce on ground of cruelty and desertion – Petitioner persuaded by in-laws to stay with his wife as ‘Ghar Jamaee’ – On refusal wife stayed in her parent’s house – Allegation though denied no documentary evidence led in support nor any notice served on petitioner – No effort made to reconcile – *Animus Deserendi* proved – Continuous pressure on petitioner to live as ‘Ghar Jamaee’ – Wife not joining husband’s company for no justifiable cause – Petitioner suffering from Asthama left alone to suffer in his misery and ailment – Had to live a lonely life for seventeen years after marriage – Cause of cruelty made out – Husband entitled for a decree of divorce – Suit decreed. : *Gajendra Vs. Smt. Madhu Mati*, *I.L.R. (2002) M.P. 132*

– **Section 13(1)(b)** – Decree of divorce can only be granted if there exists grounds for such relief and the Court is satisfied that petitioner is not taking advantage of his/her own wrong – Wife forced to live separately by conduct of husband – Wife also obtained decree of restitution of conjugal rights – Her separation in the facts would not constitute desertion within the provision of Section 13(1)(b) of the Act – Decree of divorce rightly refused: *Shrikant Vs. Smt. Saroj*, I.L.R. (2001) M.P. 1202

– **Sections 13, 24, 25 and 28** – Appeal – Divorce – Interim alimony and permanent alimony – Controversy to be determined is quite different in each case – Jurisdiction is attracted only when an application is filed for permanent alimony – No application filed – Trial Court erred in granting permanent alimony while passing the decree of divorce – Decree modified – Respondent at liberty to move the Court by an independent application. : *Mahesh Prasad Vs. Smt. Chhoti bai*; I.L.R.(2003) M. P. 683

– **Sections 13, 25, 25(1), 23-A and 26** – Application for divorce was rejected by the Trial Court against the respondent/wife – Trial Court granted maintenance to the wife and the minor child-jurisdiction of the Court to grant such maintenance challenged – Held, Court and jurisdiction to grant such maintenance – Obligation on the Court while deciding or interpreting any meaning of word of statute or enactment – The words “at the time of passing of the decree” – Meaning of – Court’s duty stated: *Surendra Singh Chauhan Vs. Smt. Mamta Chauhan*, I.L.R. (1991) M.P. 379

– **Sections 13, 25 and 28** – Appeal – Dismissal of suit for divorce – Grant of permanent alimony to wife – Provision intended to secure maintenance and support on disruption of marital status – Dismissal of husband’s divorce petition does not amount to disrupting marital status – Grant of permanent alimony under Section 25 not envisaged in such a case: *Badri Prasad Vs. Smt. Urmila Mahobiya*, I.L.R. (2001) M.P. 1363

– **Section 13, 13-A, 23** – Petition for divorce by husband – Trial Court granted decree of separation as decree of divorce could not be granted – Appeal – Section 23 – Court has to be satisfied that grounds for granting relief exist and petitioner is not taking advantage of his own wrong – Cruelty not proved – Petitioner husband living in a separate house and himself leading a life of adultery – Even if there is irretrievable break down of marriage he is not entitled to get relief of judicial separation – Decree set aside – Cross objection of husband, for decree of divorce dismissed: *Smt. Swapna Chakrawarti Vs. Dr. Viplav Chakrawarti*, I.L.R (1999) M.P. 760

– **Section 13(1)(ib)** – Desertion – Party who asserts has to prove it – The question cannot be decided by merely ascertaining which party left the matrimonial home – Wife demanding husband to live separately with her – Husband not willing to leave his mother – Wife living separately cannot be said to be without reasonable cause – Her conduct is natural – She cannot be said to have deserted the husband – Plea of desertion not established – Decree of divorce set aside: *Smt. Urmila Devi Vs. Deepak Kumar Vyas*, I.L.R. (1999) M.P. 670

– **Section 13-B and 19** – Jurisdiction – When wife is petitioner, petition can be filed in the Court having jurisdiction over the place of her residence – Order of Family Court set aside and case remanded: *Smt. Uma Tiwari Vs. Vikrant Tiwari*; *I.L.R. (2005) M.P. 604 (DB)*

– **Section 14** – Mandatory – Not followed – Entertaining Divorce petition within one year of marriage without passing any order under Section 14 – Illegal: *Smt. Rekha Jain Vs. Rajendra Jain*, *I.L.R. (1992) M.P. 179*

– **Section 15** – Appeal against decree of Divorce filed within limitation – Second marriage by husband rendered illegal: *Kadambani Vs. Reshamlal Sahu*, *I.L.R. (1990) M.P. 502*

– **Section 15** – Operates only in case of marriage dissolved decree of divorce – Limitation to re-marriage – Not applicable to a decree for nullity: *Mohanmurari Vs. Smt. Kusumkumari*, *I.L.R. (1967) M.P. 394(DB)*

– **Section 15** – Remarriage after a decree for nullity – Neither void nor voidable – Not liable to be annulled or dissolved because it was contracted during pendency of appeal nor by ultimate decision of appeal: *Mohanmurari Vs. Smt. Kusumkumari*, *I.L.R. (1967) M.P. 394 (DB)*

– **Sections 15, 28** – Decree of divorce granted against wife – Appeal filed by wife against the decree – Husband contracting second marriage – Appeal not infructuous: *Rekha Ravindra Kumar Vs. Ravindra Kumar Ramchandra*, *I.L.R. (1993) M.P. 230*

– **Section 19 - and Civil Procedure Code (V of 1908), Section 21** – Para amount consideration would be whether there has been failure of justice – Number of opportunities given to husband to lead evidence and cross-examine witnesses of wife – Husband not availing such opportunities – No failure of Justice occasioned: *Lalit Gurubaxani Vs. Smt. Usha Gurubaxani*, *I.L.R. (2001) M.P. 809 (DB)*

– **Section 19 – Civil Procedure Code, 1908, Section 21** – Divorce – Jurisdiction of Court – Petition for divorce – Place where parties last resided together is relevant for conferring jurisdiction on court and not place where marital home is situated – The provisions of CPC is subject to other provisions contained in the Hindu Marriage Act – Section 19 of the Hindu Marriage Act provides for the place where the petition is to be presented – In that view of the matter provisions of CPC cannot be pressed into service: *Smt. Kishori Bari Vs. Arun Kumar Varma*, *I.L.R. (1997) M.P. 497*

– **Section 19 and 25** – Jurisdiction – By virtue of opening words of Section 25 – ‘Any Court exercising jurisdiction’ would decide jurisdiction to entertain the application for permanent alimony – Trial Court entertaining application for permanent alimony subsequent to grant of decree under Section 9 of the Act – Does not suffer from

jurisdictional error: *Lalit Gurubaxani Vs. Smt. Usha Gurubaxani* , I.L.R. (2000) M.P. 1153

– **Section 21 and 28** - and Civil Procedure Code (V of 1908) – Order 9 , Rule 13 – Ex parte decree under the act – Remedy – Application under order 9, Rule 13 of the code for setting aside ex parte decree maintainable: *Ravindra Vs. Pratibha*, I.L.R. (1986) M.P. 591

– **Section 23** – Burden of proof as to existence of ground u/s 13(1)(iii) – Rests on petitioner – Absence of wife from witness-box – No adverse inference liable to be drawn: *Kadambani Vs. Reshamlal Sahu*, I.L.R. (1990) M.P. 502

– **Section 23** – Husband seeking divorce – Conduct of husband forcing wife to seek Judicial Separation – Despite non-resumption of marital ties, husband can not take advantage of this to obtain decree for divorce: *Sanat Kumar Deshmukh Vs. Smt. Chitrlekha*, I.L.R. (1998) M.P. 851

– **Section 23** – Plea that there is no possibility of reunion and it is a broken marriage therefore decree should be granted – Not acceptable – Appellant cannot take advantage of his own wrong – Courts below rightly dismissed the case of appellant: *Rajesh Vs. Smt. Rukmani* , I.L.R. (2001) M.P. 357 (DB)

- **Section 23, - as amended by (Amendment) Act, 1976** – Subsequent events – Powers of Court to consider conduct of parties during conciliation proceedings: *Rameshchandra Vs. Smt. Premalata Bai*, I.L.R. (1981) M.P. 389 (DB)

– **Section 23** – Court has to be satisfied that grounds for granting relief exist and petitioner is not taking advantage of his own wrong – Cruelty not proved – Petitioner husband living in a separate house and himself leading a life of adultery: *Smt. Swapna Chakrawarti Vs. Dr. Viplav Chakrawarti* , I.L.R. (1999) M.P. 760

– **Section 23 (1)(b)** – Condonation of cruelty by the spouse – Revival of misbehaviour in the same manner leading to filing the petition for divorce – Plea of condonation – Not available to wife – Decree of Divorce granted by trial Court confirmed: *Smt. Bhagwanti Vs. Laxmandas Panjwani*, I.L.R. (2000) M.P. 371

– **Section 23(1) and (2)** – Scope of – Duties of court under: *Smt. Alopai Vs. Ramphal*, I.L.R. (1962) M.P. 398 (DB)

– **Section 23 (2)** – Endavour for reconciliation by court mandatory – Decree passed without complying section 23 (2) is nullity: *Shrimati Rajni Pachori Vs. Kamlesh Pachori*, I.L.R. (1989) M.P. 115

– **Section 24** – Application for interim alimony – Provision made for the benefit of poor spouse who is unable to maintain herself and contest the case – Delay in disposing the application not attributable to the applicant – She cannot be deprived of her right to get alimony from the date of application: *Smt. Indira Gangele Vs. Shailendra Kumar Gangele*, I.L.R. (1992) M.P. 808

– **Section 24** – Interim maintenance – Can be granted from the date of filing of the main petition – Interpretation of statute – Heading prefixed to section – Use of: *Smt. Tripta Chhabra Vs. Ajit Kumar Chhabra*, I.L.R. (1986) M.P. 475

– **Section 24** – Maintenance pendent lite husband filed application for restitution of conjugal right – Despite decree of restitution of conjugal right no restitution for a period of more than one year – Wife claimed maintenance in husband’s petition for dissolution of marriage by decree of divorce – Refused – Held – Trial court rightly refused to grant maintenance on the ground that decree of restitution of conjugal right is operating. Revision dismissed: *Smt. Kiran Vs. Chandra Shekar*, I.L.R. (1997) M.P. 606

– **Section 24** – Order passed under – Court, Power of, to stay proceedings – The purpose of staying expenses of proceedings – “Order the respondent to pay the petitioner and monthly during the proceeding” – Meaning of: *Bhuneshwar Prasad Vs. Dropta Bai*, I.L.R. (1963) M.P. 554

– **Section 24** – Petitioner and Respondent in – Mean petitioner and Respondent in – Mean petitioner and respondent of the petition under that section and, not of original petition: *Baburao Vs. Mst. Sushilabai*, I.L.R. (1963) M.P. 462 (DB)

– **Section 24** – Possession of some ornaments on the body of wife – No ground for refusing maintenance so also potential capacity of wife to earn a living – No ground for refusing maintenance: *Radhikabai Vs. Sadhuram*, I.L.R. (1968) M.P. 949 (DB)

– **Section 24** – Test to be applied in determining the question whether wife is entitled to costs of proceedings – Charity of relations or friends not to be considered – Possession of some ornaments on the body of wife – No ground for refusing maintenance – So also potential capacity of wife to earn a living – No ground for refusing maintenance: *Radhikabai Vs. Sadhuram*, I.L.R. (1968) M.P. 949 (DB)

– **Section 24** – Words “under any law for the time being in force” in – Implication of: *Madanlal Vs. Poonibai*, I.L.R. (1973) M.P. 158 (DB)

– **Section 24 - and Civil Procedure Code (V of 1908), Order 19, Rule 1** – Maintenance Pendente lite – Fixation – Parties not seeking opportunity to cross-examine deponent or for adducing evidence – Affidavit may be acted upon – Order fixing maintenance amount – Not liable to be interfered with in revision: *Kailash Narayan Vs. Sharda Bai*, I.L.R. (1987) M.P. 62

– **Sections 24, 25 - and Family Courts Act, 1984, Sections 19(1), 19(4) and 19(5)** – Interlocutory order – No appeal or revision provided – Remedy available to aggrieved party could be only under Article 227 of the Constitution: *Aruna Choudhary Vs. Sudhakar Choudhary*, I.L.R. (2004) M.P. 834 (DB)

– **Section 24 and 28** – Order under Section 24 – Appeal against such order lies – Words “under any law for the time being in force” in – Implication of: *Madanlal Vs. Poonibai*, I.L.R. (1973) M.P. 158 (DB)

– **Section 25** – Obligation on the Court while deciding or interpreting any meaning of word of statute or enactment: *Surendra Singh Chauhan Vs. Smt. Mamta Chauhan*, I.L.R. (1991) MP 379

– **Section 25** – Alimony – Application for, not filed in the trial Court but filed in the appellate Court at the fag end of argument – Application not entertained by appellate Court, however, with liberty to approach the Trial Court for appropriate orders: *Smt. Amita Vs. A.K. Rathore*, I.L.R. (2000) M.P. 380

– **Section 25** – Application for permanent alimony by wife to the Court granting substantial relief: *Lalit Gurubaxani Vs. Smt. Usha Gurubaxani*, I.L.R. (2000) M.P. 1153

– **Section 25** – Dismissal of husband’s divorce petition does not amount to disrupting marital status – Grant of permanent alimony under Section 25 not envisaged in such a case: *Badri Prasad Vs. Smt. Urmila Mahobiya*, I.L.R. (2001) M.P. 1363

– **Section 25 (1)** – The words “at the time of passing of the decree” – Meaning of – Court’s duty stated: *Surendra Singh Chauhan Vs. Smt. Mamta Chauhan*, I.L.R. (1991) M.P. 379

– **Sections 25, 26** – Technically, major daughters are not entitled for maintenance but they are certainly entitled for maintenance under section 20(3) of Hindu Maintenance and Adoption Act, 1956 – It would be futile exercise to direct them to file fresh application – Enhanced amount awarded by Court below cannot be said to be unsustainable: *Aditya Shrivastava Vs. Asha*, I.L.R. (2004) M.P. 500

– **Sections 25(2), 26, 28** – Appeal against enhancement of alimony payable for unmarried daughter – Technically, major daughter are not entitled for maintenance but they are certainly entitled for maintenance under section 20(3) of Hindu Maintenance and Adoption Act, 1956 – It would be futile exercise to direct them to file fresh application – Enhanced amount awarded by Court below cannot be said to be unsustainable: *Aditya Shrivastava Vs. Asha*, I.L.R. (2004) M.P. 500

– **Section 28** – Appeal – Ground – Cruelty – The fulcrum is the resistance to sexual intercourse – This allegation has been categorically controverted in written

statement – Notice Ex. P/4, is conspicuously silent in this behalf – Notice is primarily concerned with the plea of desertion only – An effort had been made to explain Ex. P/6 – It contained nothing to suggest the ground of cruelty even remotely – Held – Trial Court rightly negated the ground of cruelty: *Sunil Kumar Motilal Jain Vs. Usha Sunil Kumar Jain, I.L.R. (1993) M.P. 569*

– **Section 28** – Appeal – Ground – Desertion – Wife categorically stated that she opted to live with appellant – It is settled law that without “animus deserendi” there can be no desertion – In present case, there is demonstration of surge of an urge to live together and thus to resume cohabitation – There is luculent indication of “animus revertendi” to the matrimonial home – Appeal devoid of merit and liable to be dismissed: *Sunil Kumar Motilal Jain Vs. Usha Sunil Kumar Jain, I.L.R. (1993) M.P. 569*

– **Section 28** – Appeal – Decree of divorce – Section 13(1)(ia) – Cruelty – Not defined in the Act – Needs to be construed on various considerations in individual cases – Habitual constant use of abusive languages, Physical assault, threats to implicate in false case and lodging false police complaint by wife against husband – Husband also arrested by police and later released on bail – Wife not fulfilling obligation of marriage – Evidence of obnoxious behaviour with husband corroborated and proved by independent reliable witnesses – Would certainly amount to ‘Cruelty’ by the wife – Section 23(1)(b) of the Act – Condonation of cruelty by the spouse – Revival of misbehaviour in the same manner leading to filing the petition for divorce – Plea of condonation – Not available to wife – Decree of Divorce granted by trial Court confirmed: *Smt. Bhagwanti Vs. Laxman Das Panjwani, I.L.R. (2000) M.P. 371*

– **Section 28** – First Appeal – Appeal dismissed and also finding on desertion reversed by first appellate Court though there was no cross objection: *Rajesh Vs. Smt. Rukmani, I.L.R. (2001) M.P. 357 (DB)*

- **Section 28** – Provides for appeal against every order of district Judge – Section 24, Scope of – Sections 24 and 25 – The Term “Respondent” in – Has the same meaning: *Rukmani Bai Vs. KishanLal, I.L.R. (1958) M.P. 227*

- **Sections 28(4), 23(4) - and Limitation Act, Indian (XXXVI of 1963), Sections 12 and 29 (2)** – Limitation of 30 days for filing appeal against decree of divorce – Time required for obtaining copy of decree as contemplated by section 12 (2) of Limitation Act to be excluded in view of section 23(2) of the Act – No difference in obtaining copy free of cost as contemplated by section 23(4) of Hindu Marriage Act and copy applied on payment of cost for application of section 12(2) of Limitation Act – Hindu Marriage Act, 1955 – Section 13 and Civil Procedure Code, 1908, Section 11 and Order 14, Rule 2(1) – Earlier petition for divorce on ground of desertion dismissal as desertion not proved, petition premature – Subsequent suit on ground of desertion not maintainable as

barred by res-judicata: *Anand Prakash Dixit Vs. Smt. Malti Dixit, I.L.R. (1988) M.P. 75 (DB)*

– **As amended** – Section 28 – Does not provide appeal against order under section 24 of the Act – Appeal – Right of appeal accrues on the date of institution of original proceedings – Not affected by subsequent change in law unless contrary intention is expressed – Section 39(1) – Mandate under this provision – Is directed by the Court when proceeding is pending – When Matter taken in appeal – Appellate court to decide appeal by applying the same law which the trial court was bound to apply: *Radheyshyam Gupta Vs. Smt. Laxmi Bai, I.L.R. (1978) M.P. 1057 (DB)*

– **As amended, Section 28(4) - and Limitation Act, Indian (XXXVI of 1963), Sections 29 and 5** – Applicability of Section 5 to appeals under section 28, Hindu Marriage Act: *Kantibai Vs. Kamal Singh Thakur, I.L.R. (1981) M.P. 950 (DB)*

– **As amended** – Section 39(1) – Mandate under this provision – Is directed by the court when proceeding is pending: *Radheyshyam Gupta Vs. Smt. Laxmi Bai, I.L.R. (1978) M.P. 1057 (DB)*

– **As amended** – Section 39(1) – When matter taken in appeal – Appellate court to decide appeal by applying the same law which the trial court was bound to apply: *Radheyshyam Gupta Vs. Smt. Laxmi Bai, I.L.R. (1978) M.P. 1057 (DB)*

Hindu Married Women' Right to Separate Residence and Maintenance Act (XIX of 1946)

– **Made applicable to Merged States including Raigarh on 19-6-1948** – Re-applied on 1-1-50 – Not applicable to cases where second marriage took place before the Act – Hindu Adoption and Maintenance Act Section 18(2) (d) – Second wife in existence at the time of coming into force of the Act – Other wife entitled to separate Maintenance: *Padmalochan Vs. Smt. Sulochana Bai, I.L.R. (1958) M.P. 830 (DB)*

Hindu Minority and Guardianship Act (XXXII of 1956)

– **Scope and object of section 6 of the Act and Section 25 of the Guardian and Wards Act, 1890** – Test to be applied and circumstances to be considered in the matter of handing over of the custody of minors from mother to the father: *Rajkumar Mahant Vs. Smt. Indra Kumari, I.L.R. (1975) M.P. 342*

– **Section 6(a)** – Recognises the father to be natural guardian of minor child and entitled to custody – In appointing guardian and giving custody of minor – Paramount consideration is welfare of minor – Minor of tender age – Mother best guardian and entitled to its custody – Section 6(a) – Father in a position to look after minor child – No reason to derive mother of the custody of child – Looking after the minor child by

mother – Cannot be equated with other arrangement – Habeas Corpus – Comes into operation in exceptional cases – In cases of guardianship or custody of child – claim to Guardianship – Not a right in the nature of property, but is in the nature of trust: *Smt. Veena Agarwal Vs. Prahlad Das Agarwal*, I.L.R. (1978) M.P. 1 (DB)

– **Section 8** – Not applicable to the joint interest of a minor in the joint family property when alienation is made by Manager for minor's benefit or family need – Leeting of Houses and Rent Control Order, C.P. and Berar 1949 – Suit or notice without permission of rent controlling authority – Suit did not become untenable and notice not invalid – Landlord became liable to prosecution – Accommodation Control Act, Madhya Pradesh, 1955 – Section 4(f) and Transfer of Property Act – Section 111(g) – Second part of Clause (g) of Section 111 is in conflict with Section 4(f) – Former stands abrogated – Evidence Act – Section 116 – Case in which tenant can validly deny the title of the landlord – Transfer of Property Act – Section 111(g) – Provision penal – To be restricted to the restricted wording of the section: *Smt. Sugga Bai Vs. Smt. Takuribai*, I.L.R. (1969) M.P. 70

Hindu Succession Act (XXX of 1956)

– **and Hindu Widow's Re-marriage Act, 1856, Section 2-A**, - Hindu widow after Re-marriage forfeits her rights to her deceased husband's property – Sale deed by widow in respect of half share untainable in law: *Khumna Vs. Govind Das*, I.L.R. (2002) M.P. 314

– **Applicability** – Land Revenue Code, M.P., 1954 – Section 151 – “Personal Law” in – Meaning of – Hindu Succession Act, 1956 – Section 4(2) – Does not save Section 151 of the Code and make Section 14(2) inapplicable to agricultural holdings – Land Revenue Code, Madhya Pradesh, 1954 – *Bhumiswami* and *Bhumidharis* are not tenancy holdings – Section 151 – Not a provision regarding fragmentation of holdings etc. – Precedent – Single Judge differing from decision of another Single Judge – Matter to be referred to larger Bench: *Kumari Ramlali Vs. Mst. Bhagunti Bai*, I.L.R. (1971) M.P. 279 (DB)

– **Special mode of succession provided in State law** – Provision of Hindu Succession Act would not prevail over the state law: *Dalchand Vs. Kamalabai*, I.L.R. (1987) M.P. 374

– **Section 2(1)(c) and 2(2)** – Plaintiff claiming right through a ‘Gond’ widow alleging full ownership – ‘Gond’ – A Scheduled Tribe – Provision of Hindu Succession Act do not protanto apply to Scheduled Tribes: *Kailash Singh Vs. Mewalal Singh Gond*; I.L.R. (2003) M.P. 138

– **Section 4** – Bhuinhars – Have been absorbed in Hindu faith – Governed by Hindu succession Act – Section 4 overrides any text, rule of interpretation of Hindu

Law or any custom or usage: *Smt. Dhaneshwaridevi Vs. Rampyare, I.L.R. (1991) M.P. 105*

– **Section 4(2)** – Does not save Section 151 of the Land Revenue Code, 1954 and make Section 14(2) inapplicable to agricultural holdings: *Kumari Ramlali Vs Mst. Bhagunti Bai, I.L.R. (1971) M.P. 279 (DB)*

– **Section 4(2)** – Act not applicable when tenure rights are concerned: *RajaRam Vs. Deendayal, I.L.R. (1969) M.P. 80*

– **Section 4(2)** – Devolution of tenancy rights in agricultural lands – Applicability of the provisions of the Act: *Dalchand Vs. Kamalabai, I.L.R. (1987) M.P. 374*

– **Section 4(2)** – Words – “Tenancy rights” – Whether includes Bhumiswami or Bhumidhari tenure-holders: *Nahar Vs. Mst. Dukalhin, I.L.R. (1975) M.P. 753 (FB)*

– **Sections 4(2) and 14** – *Bhumiswami* and *Bhumidhari* rights – Not tenancy rights – Land Revenue Code, M.P., 1954 – Section 151 – Not a provision dealing with devolution of tenancy rights – Hindu Succession Act – Section 4(2) – Does not save Section 151, Land Revenue Code, M.P., 1954 – Succession governed by section 14 of Succession Act and not by Section 151 of Land Revenue Code, M.P., 1954 – Section 15(2) (b) – Succession to the husband to be determined according to this provision and not by old law even though husband died before Succession Act, 1956: *Smt. Gopikabai Vs. Bajya, I.L.R. (1974) M.P. 115*

– **Section 6** – Explanation I – Notional partition does not bring about disruption of coparcenary so as to deprive *karta* of the representative capacity – Notional partition is only for purpose of computation of shares to be allotted to heirs of deceased coparcener: *Mukundilal Vs. State Bank of India, I.L.R. (1974) M.P. 475 (DB)*

– **Section 6, - Madhya Bharat Land Revenue and Tanancy Act, 1950, Section 82** – Succession – Male Hindu died in the year 1952 – His interest in his holding shall devolve in accordance with order of succession given in section 82 of Act of 1950 – Other male Hindu dying after commencement of Act of 1956 – Leaving behind daughters, son and widow – Proviso to section 6 of the Act of 1956 comes into play – Daughter would take equal share along with others in share of deceased had in the property of his father – Daughter married prior to commencement of Act of 1956 – Will not make any difference as succession opened after commencement of Act of 1956: *Ramesh Verma Vs. Smt. Lajesh Saxena, I.L.R. (1997) M.P. 472*

– **Section 6, - Proviso and explanation 1 and Civil Procedure Code (V of 1908), Order 22, rules 2 and 3** – Hindu Law – Coparcenary Incidents of – Death of a coparcener – Notional partition by legal fiction Interest of the deceased is fixed and not fluctuating – Legal representatives do not enter the coparcenary – *Karta* cannot represent the

legal representative – Coparcenary continues but excluding the heirs of the deceased and their shares death of a coparcener – His legal representatives not brought on record – Abatement of suit – Right to sue – Whether survives to the remaining plaintiff or plaintiffs – Order 22, rules 2 and 3, Civil Procedure Code – Word “alone” in – Meaning of – Whole suit does not abate – Remaining plaintiffs can continue the suit: *Raj Man Singh Vs. Ramvishal*, I.L.R. (1979) M.P. 935

– **Sections 6 and 15** – Male Hindu dying, having an interest in coparcenary property with female relative specified in Class – I of the Schedule – Inheritance under Section 15 and not under Section 6: *Laxmi Prasad Vs. Madan Mohan*, I.L.R. (1981) M.P. 58

– **Section 8, Schedule** – Illegitimate son – Is not a son – Not a heir to the deceased: *Reshamlal Vs. Balwant Singh*, I.L.R. (1989) M.P. 606

– **Section 8** – Is prospective in operation and not retrospective: *Sheoraj Singh Vs. Mst. Munia*, I.L.R. (1963) M.P. 401 (DB)

– **Section 8 - and Hindu Law** - Kanwar though not Hindus are governed by Hindu Law having adopted the same – Kanwar adopted the Hindu Law as it may be amended from time to time – Hindu Succession Act, 1956 deemed to be governing the Kanwars – Sister entitled to succeed as an heir of class II: *Lachhan Kanwar Vs. Budhwar*, I.L.R. (1991) M.P. 172

– **Section 8** – Married or unmarried daughter’s share is equal to that of a son – Section 23 – Daughter a co-owner – Has no right of residence in family dwelling house – Married daughter has no right of residence in family dwelling house – Section 23 – Scope of: *Bishal Vs Gourishanker*, I.L.R. (1971) M.P. 541

– **Section 10** – Defendant adopted by plaintiff after death of her husband – Oral adoption proved but that would not make the adoptee/defendant a co-owner of the property inherited by plaintiff – Possession of defendant permissive – Plaintiff entitled to decree of possession: *Smt. Chandrani Bai Vs. Pradeep Kumar*, I.L.R. (1992) M.P. 856

– **Sections 10, 12, 14** – On death of her husband plaintiff inherited the property – Being Class I heir she has indefeasible right of full ownership – She will not be divested of her right by adoption subsequently: *Smt. Chandrani Bai Vs. Pradeep Kumar*, I.L.R. (1992) M.P. 856

– **Section 14** – Widow inheriting under section 3(2) of the Hindu Women’s Right to Property Act, 1937 as limited owner – Effect of Section 14: *Laxmi Prasad Vs. Madan Mohan*, I.L.R. (1981) M.P. 58

– **Section 14** – Applicability to a case where a person is in possession and has perfected his title by prescription – Practice – New ground – New ground of pure law

– Can be raised in Second Appeal – Section 4(2) – Act not applicable when tenure rights are concerned – Section 14 – Both possession and right – Not necessary to co-exist – May come into existence at different points of time – Section 14 – Applicable to agricultural holdings – Possession of widow as against real owner or against person entitled to immediate possession – Widow acquires prescriptive title – Land Revenue Code, Madhya Pradesh, 1959 – Section 164 before amendment – Succession to be governed by unamended Section 164 and not by Hindu Succession Act: *RajaRam Vs. Deendayal*, I.L.R. (1969) M.P. 80

– **Section 14** – Conditions to be fulfilled for acquiring absolute title in the property by the limited owner – Both conditions must co-exist – Not necessary that they must exist simultaneously: *Anandibai Vs. Sundarbai*, I.L.R. (1965) M.P. 125

– **Section 14** – Effect and scope of – Widow – Right of, to the property in her possession in lieu of right of maintenance – On coming into force of section 14, such limited right mature into absolute right – On her death, her heirs entitled to succeed to it – Hindu Law Coparcenary death of a coparcener in 1921 without leaving any male heir – Succession – Civil Procedure Code, 1908 – Section 11 – Res-Judicata – Competency of the former Court to decide subsequent suit – Determining factors – Decision of former Courts – Whether operated as res-Judicata in subsequent suit based on secession under Hindu Secession Act: *Prema Bai Vs. Hukum Chand Surana*, I.L.R. (1988) M.P. 255

– **Section 14** – Partly retrospective and partly prospective: *Anandibai Vs. Sundarbai*, I.L.R. (1965) M.P. 125

– **Section 14, Provisions in** – Retrospective – Reversioners – Suit by – For setting aside alienation by Widow – Maintainability – Provisions of the Act – Applicable at the stage of appeal: *Dhirajkuar Vs. Lakhansingh*, I.L.R. (1957) M.P. 17 (DB)

– **Section 14** – Suit for declaration on basis of title to a right to property after coming into force of Hindu Succession Act – Maintainability: *Mankuwar @ Bhuri Vs. Mt. Bodhi*, I.L.R. (1957) M.P. 270

– **Section 14** – Suit by reversioners to set aside alienations made by a widow before coming into force of the Act – widow does not get absolute interest in the property already transferred – Suit maintainable: *Mst. Lukai Vs. Niranjan*, I.L.R. (1958) M.P. 9 (FB)

– **Section 14** – “Whether acquired before or after the commencement of this Act” in – Qualifies phrase “any property: *Anandibai Vs. Sundarbai*, I.L.R. (1965) M.P. 125

– **Section 14** – Widow in possession of estate – Widow re-marrying but continuing in possession of the same – Such possession of estate is not as Hindu widow – Rights

in the estate not enlarged – Reversioners entitled to possession: *Mst. Bisarti Vs. Mst. Sukarti*, I.L.R. (1959) M.P. 540 (DB)

– **Section 14** – Is retrospective – Immaterial whether right of a female accrues before or after commencement of the act: *The Controller of Estate Duty, M.P. Bhopal Vs. Smt. Rani Bahu*, I.L.R. (1982) M.P. 300 (FB)

– **Section 14** – Partition – A female entitled to a share on partition – Not deprived of her right simply because parties there to not assigning any share – Her act of standing by or failure to raise objection to partition – Does not take away her right to get a share – Such conduct does not amount to acquiescence or relinquishment: *The Controller of Estate Duty, M.P. Bhopal Vs. Smt. Rani Bahu*, I.L.R. (1982) M.P. 300 (FB)

– **Section 14** – Words “Shall be held by her as full owner thereof and not as a limited owner” – Import of – Mere right to possession acquired in the property belonging to someone else – Is not property acquired to which sub-section or explanation is attracted: *Imrat Vs. Mst. Pyaribahu*, I.L.R. (1977) M.P. 787

– **Section 14** – Woman out of possession for more than 12 years prior to coming into force of the Act – Women not in possession when Act came into force – Woman has no right to maintain suit for possession – Specific Relief Act, 1963 – Section 34 – Kinds of suits for declaration – Case in which suit for declaration when not maintainable – Civil procedure Code, Order 6, rule 17 – Amendment seeking introduction of a new cause of action – Allowing of amendment resulting in fresh trial – Amendment not to be allowed – Adverse possession – Adverse possession against limited owner – Does not affect right of next reversioner: *Shyamlal Vs. Smt. Bhagwanti Bai (deceased) through L.Rs. Mangli*, I.L.R. (1979) M.P. 1020

– **Sections 14 and 15** – Share allotted to a widow in preliminary decree – Becomes here absolute property – Devolves- under section 15 of the Act – Hindu law – Partition – Parties not giving share to a woman – Woman can sue for her share – Right to share not to wait till property is actually divided: *Bhawarsingh Vs. Pilabai*, I.L.R. (1977) M.P. 457

– **Section 14(1)** – Property obtained by female at partition – Amounts to acquisition of property for purposes of Sub-section (1) of Section 14 – Female gets absolute title: *Seth Narsinghdas Kanhaiyalal, Hanumantal, Jabalpur Vs. The Commissioner of Wealth-Tax, M.P., Nagpur and Bhandara, Nagpur*, I.L.R. (1970) M.P. 845 (DB)

– **Section 14(1)(2)** – Right of female Hindu – It is found that holding of the persons in the agreement, other than that of deceased, was not given to the petitioners in their pre-existing right to maintenance and as such the petitioner has the limited interest in the property of the persons other than deceased guided by the terms and conditions under the agreement – The limited interest was given to the petitioners only up to the

point she remains unmarried: *Neerabai Vs. Board of Revenue, I.L.R. (1997) M.P. 412*

– **Section 14(2)** – Decree giving limited estate to a woman – Woman does not get absolute estate: *Imrat Vs. Mst. Pyaribahu, I.L.R. (1977) M.P. 787*

– **Section 14(2)** – Grant Giving restricted estate – The estate cannot be enlarged: *H.H. Maharaja Devendra Singh Ju Deo Vs. The State of M.P., I.L.R. (1978) M.P. 362 (DB)*

– **Section 14(2)** – Property held under grant – Property is acquired under an instrument – Nature of estate to be determined in terms of grant: *H.H. Maharaja Devendra Singh Ju Deo Vs. The State of M.P., I.L.R. (1978) M.P. 362 (DB)*

– **Sections 15(1)(D)** – Hindu female dying intestate – Mother predeceased – Succession – Heirs related by full blood shall be preferred to heirs related by half blood if the nature of relationship is the same in every other respect – Applicant real (full blood) sister – Would alone inherit: *Smt. Jhugli Tekam Vs. Assistant Commissioner, I.L.R. (2003) M.P. 453*

– **Section 15(2)(b)** – Succession to the husband to be determined according to this provision and not by old law even though husband died before Succession Act, 1956: *Smt. Gopikabai Vs. Bajya, I.L.R. (1974) M.P. 115*

– **Section 15(2)(b)** – Sons and Daughters of deceased female – Exclude husband's heirs from succession – Section 16, Rule 3 – Attracted only when succession opens in favour of husband's heirs – Fiction in – When comes into operation: *Keshri Vs Harprasad, I.L.R. (1971) M.P. 310*

– **Section 15(2)(g)** – Expression “Son” in–Includes son from former husband – Same principle applies to daughter – Son or daughter entitled to inherit the property of his or her mother dying intestate: *Mst. Bhagwanias Vs. Gilli, I.L.R. (1978) M.P. 484*

– **Section 15(2)(g)** – Scope of – Expression “Son” in–Includes son from former husband – Same principle applies to daughter – Son or daughter entitled to inherit the property of his or her mother dying intestate: *Mst. Bhagwanias Vs. Gilli, I.L.R. (1978) M.P. 484*

– **Section 16, Rule 3** – Attracted only When Succession opens in favour of husband's heirs – Fiction in – When comes into operation: *Keshri Vs. Harprasad, I.L.R. (1971) M.P. 310*

– **Section 22** – Right of preemption – Not a right to the thing sold but a right to offer of a thing about to be sold – Can be claimed by setting up counter-Claim in the written statement: *Smt. Shivkali Bai Vs. Smt. Meera Devi, I.L.R. (1992) M.P. 26*

– **Section 23** – Daughter a co-owner – Has no right of residence in family dwelling house: *Bishal Vs. Gourishankar, I.L.R. (1971) M.P. 541*

– **Section 23** – Married daughter has no right of residence in family dwelling house: *Bishal Vs. Gourishankar, I.L.R. (1971) M.P. 541*

– **Section 23** – Scope of: *Bishal Vs. Gourishankar, I.L.R. (1971) M.P. 541*

– **Section 23** – Right of female heir to claim partition in dwelling house – House not wholly occupied for residence purpose by family or family members – Female heir can claim partition of house also: *Ramesh Verma Vs. Smt. Lajesh Saxena, I.L.R. (1997) M.P. 472*

– **Section 24** – Mother succeeding to the estate of her son not as widow of the father but in her own right: *Mantorabai Vs. Paretanbai, I.L.R. (1975) M.P. 689*

– **Section 28** – Disqualifications mentioned in the Act – Are only disqualifications which disqualify a person from inheriting-Inheritance opening after 1956 – Unchastity of widow – No disqualification for inheriting the property of the husband: *Mst. Girja Bai Vs. Mst. Padmabai, I.L.R. (1978) M.P. 70*

– **Section 30** – A Hindu may dispose of by will any property which he is empowered to bequeath by testamentary right – Non-Provision of maintenance for wife by testator – Does not affect execution of will after the Act of 1956 came in to force: *Karumu Vs. Rafel, I.L.R. (2000) M.P. 1125*

– **Section 44** – Succession governed by section 14 of succession Act and not by Section 151 of Land Revenue Code, M.P., 1954: *Smt. Gopikabai Vs. Bajya, I.L.R. (1974) M.P. 115*

Hindu Temple

– **Mere presence of Shivalinga in Jain temple and use of temple by Hindu community** – Not sufficient to constitute it a Hindu temple: *Tejraj – President, Jain Sangh, Ratlam Vs. State (M.B.) & Collector & Tahsildar of Ratlam, I.L.R. (1957) M.P. 658 (DB)*

Hindu Widow's Re-Marriage Act (XV of 1856)

– **Widow re-marrying** – Effect on her right to her deceased husband's property: *Birambai Vs. Bhojraj, I.L.R. (1985) M.P. 497*

– **Section 2** – Not applicable to a case where widow inherits the property from her husband and becomes absolute owner under section 14, Hindu Succession Act – Hindu Succession Act, 1956 – **Section 24** – Mother Succeeding to the estate of her son not as

widow of the father but in her own right: *Mantorabai Vs. Paretanbai*, I.L.R. (1975) M.P. 689

Hindu Women's Rights to Property Act (XVIII of 1937)

– **Devolution of property on widow in absence of son, grand son, and great grand son** – Right to hold property inherited in exclusive Bhumiswami rights acquired under Section 253 of Gwalior Qanoon Mal – Not affected by 1937 Act as it was not adopted by erstwhile Gwalior State: *Smt. Gulab Bai Vs. Badri*, I.L.R. (1992) M.P. 392

– **Section 3** – Suit for partition by a widow of deceased co-parcener – Property obtained by her after partition – Does not become separate property of her deceased Husband – Widow dying – Property reverts to co-parcenary – Widow not created a co-parcener: *Bhagabai Vs. Bhaiyalal*, I.L.R. (1957) M.P. 114

– **Section 3** – Widow – Whether coparcener: *Laxmi Prasad Vs. Madan Mohan* I.L.R. (1981) M.P. 58

– **Section 3(1)** – Not applicable to divided share of a co-parcener – Section 3 (2) – Widows of members of joint family – Their interest in joint family property – Undivided share of widow declared by pre-decree – Is an interest held by her under this provision – Becomes absolute estate under Hindu Succession Act: *Jhangalu Vs. Pancho bai*, I.L.R. (1968) M.P. 293

– **Sections 3(1) and (4)** – Part C states (Laws) Act, 1950 – Section 3 – Extends Hindu Women's Rights to Property Act, 1937 to Vindhya Pradesh from 16-4-50 – Also applicable to agricultural land in Vindhya Pradesh – Nature of Property, Whether ancestral and joint family or separate – No presumption that joint family owns any coparcenary property – In absence of necessary plea, property held by last surviving coparcener to be regarded as his separate property – Inheritance – Last surviving coparcener dying in 1948 leaving behind his widow, two widows of predeceased sons and a daughter – Widow alone inherits as a limited owner – Death of limited owner in 1951 – Legal fiction – Section 4 – Destroys legal fiction – Daughter alone inherits as against widows of predeceased sons: *Mst. Bhagwan Kunwar Vs. Mst. Nanhi Dulaiya*, I.L.R. (1980) M.P. 490

– **Section 3(2)** – Widows of members of joint family – Their interest in joint family property – Undivided share of widow declared by pre decree – Is an interest held by her under this provision – Becomes absolute estate under Hindu Succession Act: *Jhangalu Vs. Pancho bai*, I.L.R. (1968) M.P. 293

– **Section 3(2)** – Widow inheriting the interest of her husband in joint Hindu family property – Right of, to challenge alienation made by sole surviving coparcener of the joint family property: *Bhagwant Vs. Mst. Manmati, I.L.R. (1958) M.P. 882 (DB)*

– **Section 3(2)** – Widow of a Coparcener inheriting under – Nature of such interest – Words “Surviving members of the Coparcenary” – Meaning of – Widow – Whether coparcener – Hindu Succession Act, 1956 – Section 14 – Widow inheriting under section 3(2) of the Hindu Women’s Rights to Property Act, 1937 as limited owner – Effect of Section 14 – Sections 6 and 15 – Male Hindu dying, having an interest in coparcenary property with female relative specified in Class – I of the Schedule – Inheritance under Section 15 and not under Section 6 – Civil Procedure Code – Section 100 – Sale Plea of fraud – Finding that there was no fraud – Finding of fact – Not open to interference in Second Appeal – Land Revenue Code, Madhya Pradesh, 1959 – Section 165(4)(b) – Prohibition against transfer of part of holding of bhumiswami – Proviso – Words ‘His entire holding’ in – Meaning and scope of: *Laxmi Prasad Vs. Madan Mohan, I.L.R. (1981) M.P. 58*

Home Guards Act, C.P. and Berar (XV of 1947)

– **Section 7(2) and (2-A) - and Home Guards Rules, 1947 (C.P. and Berar)** – Rules 4 and 5 – Home Guards appointed for limited period of six months and discharged on expiry of period of service or the extended period of service – Do not enjoy regular scale of pay nor Civil Service Rules of State apply to them – Incumbent do not hold civil posts under the State Tribunal has no jurisdiction to entertain petition of Home Guards: *Punpratap Singh Vs. State, I.L.R. (2000) M.P. 1090 (DB)*

Home Guards Rules, 1947

– **Rule 11(8)** – “Culpable negligence” in – Meaning of – Advice given by Public Service Commission – Not binding on Government – Government cannot abdicate its function of forming its own opinion on the charges and proper punishment to be awarded – Discussion of evidence or giving of reasons – Not necessary in show cause notice – Constitution of India, Article 311 (2) – Provision mandatory and for benefit of Civil servant – Article contemplates giving of reasonable opportunity – Natural justice – Does not contemplate personal hearing at every stage – Personal hearing before issue of show cause notice – Necessary – “Reasonable opportunity” in – Whether includes personal hearing before notice: *C.A. D’souza Vs. State of M.P., I.L.R. (1961) M.P. 202 (DB)*

Homoepathic and Biochemic Practitioners Act, M.P. (XXVI of 1951)

– **All definition sections** – To be read subject to contract to contrary – Such terms if not expressly mentioned – Are to be implied: *Dr. Prakash Chandra Tiwari Vs. State of M.P., I.L.R. (1980) M.P. 628 (DB)*

– **Amended definition of Registered medical Practitioner** – Shows that Drugs mentioned in Schedules H and L could be sold on prescription of a Homoeopathic Practitioner: *Dr. Prakash Chandra Tiwari Vs. State of M.P., I.L.R. (1980) M.P. 628 (DB)*

– **And Drugs Act (XXIII of 1940)** – Conflict between M.P. Act and Drugs Act, an existing law - Former will prevail: *Dr. Prakash Chandra Tiwari Vs. State of M.P., I.L.R. (1980) M.P. 628 (DB)*

– **Section 19** – Expression “Registered medical Practitioner” – Similar to expression “legally qualified medical practitioner” and “duly qualified medical Practitioner” – Denotes that he is recognized by law to practice medicine – Drugs and Cosmetics Rule, 1945 – Rules exclude persons practicing Biochemic system of medicine – All definition sections – To be read subject to contract to contrary – Such terms if not expressly mentioned – Are to be implied – Amended definition of Registered medical Practitioner – Shows that Drugs mentioned in schedules H and L could be sold on prescription of a Homeopathic practitioner – Drugs and Cosmetics Rules 1945 – Rule 65(9) – “Registered Medical Practitioner” in – Does not include a Homoeopathic and Biochemic Practitioner registered under Homoeopathic and Biochemic Practitioners Act in M.P. – Government of India Act, 1935 – Section 103 – Law made by central legislature – Could be amended or repealed by legislature of province in its application to that province – Government of India Act, 1935, Section 103 – Difference between the two – Drugs Act, 1940 – A pre – Constitution Act – Can in no sense be construed to be made under Article 252 by parliament – Conflict between M.P. Act and Drugs Act, an existing law, former will prevail – Drugs and Cosmetics Rules, 1945 – Rule 65(9) – Medicines not falling under schedules H and L – Can be sold even without prescription of a registered medical practitioner: *Dr. Prakash Chandra Tiwari Vs. State of M.P., I.L.R. (1980) M.P. 628 (DB)*

Housing Board Act, Madhya Pradesh (XIII of 1955)

– **Amended and Entry no. 42, List III, Seventh Schedule of Constitution** – Vires of the Act 13 of 1955 – Constitution of India – Articles 19(1)(f) and 31(2) – Acquisition and requisitioning of property under Article 31(2) – Article 19(1)(f) not applicable – Land Acquisition Act – Section 4 – Shortage of houses and accommodation – Acquisition for relieving shortage – Acquisition for public purpose: *Vasudeo Prasad Vs. The M.P. Housing Board, Bhopal, I.L.R. (1970) M.P. 943 (DB)*

Hydrogenated Vegetable Oil Dealers Licensing Order, M.P., 1968

– **Clauses 1 and 2** – Producer carrying on business as dealer – Licence necessary: *The Oudh Sugar Mills Ltd., Bombay Vs. State of M.P., I.L.R. (1978) M.P. 1022 (DB)*

– **Clauses 1 and 2** – Scope of: *The Oudh Sugar Mills Ltd., Bombay Vs. State of M.P., I.L.R. (1978) M.P. 1022 (DB)*

– **Clause 2** – Clause 2 is neither a proviso nor an exception to sub-clause (1): *The Oudh Sugar Mills Ltd., Bombay Vs. State of M.P., I.L.R. (1978) M.P. 1022 (DB)*

– **Clause 3, Sub – clause (2)** – Is supplementary to sub-clause (1) – Proviso can exist in the nature of substantive provision – Clauses 1 and 2 – Scope of – Producer carrying on business as dealer – Licence necessary – Interpretation of statutes – Interpretation to be in accordance with commonsense – Clause 2 is neither a proviso nor an exception to sub-clause (1): *The Oudh Sugar Mills Ltd., Bombay Vs. State of M.P., I.L.R. (1978) M.P. 1022 (DB)*

Identification

– **Not proper identification**– Accused persons objection that their Photographs were shown to the prosecution witnesses and hence identification not proper – Tenability of: *Onkarnath Vs. State of M.P., I.L.R. (1980) M.P. 1053 (DB)*

– **Evidence not to be struck down**– Evidence regarding identification not to be struck down as inadmissible because of absence of police officer: *Jamnadas Vs. The State of Madhya Pradesh, I.L.R. (1963) M.P. 730 (DB)*

Illegitimate Son

– **Whether entitled to maintenance** – Quantum of maintenance to which he is entitled: *Tikaram Vs. Narayan Singh, I.L.R. (1958) M.P. 108 (DB)*

Imperial Copy-right Act 1911

– **Section 6** – Remedy given under – Not alternative to those given by Section 7: *M/s Mishra Bandhu Karyalaya Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P. 88 (DB)*

– **Sections 6 & 7** – Damages recoverable under Sections 6 and 7 are cumulative and not alternative: *M/s Mishra Bandhu Karyalaya Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P. 88 (DB)*

– **Sections 6 & 7** – Damages under section 6 recovered – Nothing can be recovered under Section 7: *M/s Mishra Bandhu Karyalaya Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P. 88 (DB)*

Income Tax Act, Indian (XI of 1922)

– **Amount** – Amount of maintenance is not a part of total income of assessee: *Commissioner of Income Tax, Bhopal Vs. Sardar Virendra Singh, I.L.R. (1981) M.P. 711 (DB)*

– **As adopted by Sarguja State** – Amendments made in Income-tax Act after repeal of Sarguja Act – Cannot be read in the Sarguja Act – Purpose of saving clause – Purpose defeated if expression “amendments made from time to time” Interpreted literally to make subsequent amendments applicable – Taxation Laws (Extension to Merged States and Amendment) Act, 1949 – Section 7 – Saving in Section 7 – Effect is to continue Sarguja Act for purposes of earlier assessment and has to be read as referring to Income-tax Act as it stood at the commencement of that Act in 1949: *Shyam Sunder Govindram Vs. Shri R.R. Mishra, Income Tax Officer, Raigarh Circle, Raigarh, I.L.R. (1972) M.P. 69 (DB)*

– **Dividend income not exempt from charges** – Cannot be excluded from assessee’s total income – Taxation concessions order, 1950 – Paragraph 12 – Scope and applicability of – Income-tax Act, Sections 10 and 24 – Loss from one source can be set off from profits from another under the same head i.e. losses how can be set off – Section 24(I) restricted to set off of losses against profits under the same head: *The Commissioner of Income-Tax, M.P. Vs. M/s Trilokchand Kalyanmal, Indore, I.L.R. (1960) M.P. 182 (DB)*

– **Does not prohibit members of joint Hindu family to enter into partnership regarding partitioned business** – Section 26-A – Business assets divided – Business owning immovable property not divided – Not sufficient to reject application for registration of firm: *M/s. Kerodilal Premchand, Akaltara Vs. The Commissioner of Income Tax, M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1967) M.P. 1004 (DB)*

– **No rule that amount credited in business books amounts to income from business** – Depends upon evidence tendered and explanation given: *M/s Kaluram Tirasilal, Shahpura Vs. The Income Tax Officer, C-Ward, Jabalpur, I.L.R. (1965) M.P. 188 (DB)*

– **Reference** – Application for Registration of Partnership firm – Delay in filing – Mistake of Counsel on account of lapse of his memory – Whether delay liable to be condoned: *Commissioner of Income Tax, M.P., Bhopal Vs. M/s Khem Raj Laxmichand, Raipur, I.L.R. (1980) M.P. 511 (DB)*

– **Word “Specify” in** – Meaning of: *The Commissioner of Income Tax, Bhopal Vs. M/s R.S. Nikhera Construction Co. Bhilai, I.L.R. (1980) M.P. 777 (DB)*

– **Words “total income”** – Meaning of – Jagir Manual of the Holker State – Section 16 – Order passed by His highness fixing maintenance – Has force of law – Cannot be withdrawn or cancelled except by specific legislation – Abolition of Jagirs Act, Madhya Bharat, 1951 – Sections 9 and 5 – Right of maintenance not ceased – Conferral of jurisdiction on Jagir commissioner to fix maintenance – Exercisable only when maintenance payable out of compensation amount to Jagirdar as a result of

resumption under section 5 – Liability for maintenance – Is a legal obligation and has a overriding title – Amount of maintenance is not a part of total income of assessee: *Commissioner of Income Tax, Bhopal Vs. Sardar Virendra Singh, I.L.R. (1981) M.P. 711 (DB)*

– **Section 2(6-A)** – Definition of “Dividend” – Is inclusive of some categories of distribution and exclusive of some other items of distribution – Section 2(6-A) (a) – Extends meaning of “Divident” to accumulated profits appropriated to capital or not – “Profits” – Includes excess amount recovered by sale of capital asset and would be capital gain – Section 2(6-A), Proviso 2 – Excludes capital gain arising before 1-4-46 or after 31-3-48 from “accumulated profits” – Cannot be regarded as Dividend – Capital gain – Includes profits arising under compulsory acquisition by Government of assets: *The Commissioner of Income Tax MP, Nagpur and Bhandara, Nagpur Vs. M/s Shrikishan Chandmal, Indore, I.L.R. (1963) M.P. 568 (DB)*

– **Section 2(6-A)** – Shares given to assessee as dividend – The market value of shares prevailing of the date when dividend was declared to be taken as income of assessee for purposes of levying tax: *Ujjain General Trading Society (P) Ltd., Gwalior Vs. the Commissioner of income-tax, Nagpur, I.L.R. (1971) M.P. 188 (DB)*

– **Section 2(6-AA) and 16(1)(a) and 14(2) (aa) and Finance Act (XIII of 1960)** – Registered partnership firm – Whether special surcharge on the share of Income- tax paid by the registered firm falling to the share of the assessee is payable – Unearned income – Nature of – Whether any income of the partner which is exempted from tax is unearned Income or “Earned Income” – Income exempted from Income-Tax under section 14(2) – Excluded from the purview of “Earned Income” Under Section 2(6-AA) – Not liable to be treated as “Earned Income” of the assessee partner – Computation of the “Total Income” of the assessee partner – Sum exempted under section 14(2) (aa) from payment of tax included in it by virtue of Section 16(1)(a): *The Commissioner of Income Tax, Madhya Pradesh Vs. Parmanand Bhai Patel, I.L.R. (1979) M.P. 95 (FB)*

– **Section 4(1)(a)** – Instrument discounted by the Bank – Amount credited to the assessee after it is handed over to the Bank – Bank collecting the amount in taxable territories – Assessee not liable to tax on that amount – Question regarding character in which bank receives payment – Is one of fact – Question whether instrument taken by Bank from customer for collection or security or discounted for him – Question is again one of fact: *The Commissioner of Income Tax, M.P., Nagpur and Bhandara, Nagpur, Vs. M/s Laxmichand Muchhal, Indore , I.L.R. (1969) M.P. 514 (DB)*

– **Section 4(1)(a)** – Question regarding character in which bank receives payment – Is one of fact: *The Commissioner of Income Tax, M.P., Nagpur and Bhandara, Nagpur, Vs. M/s Laxmichand Muchhal, Indore, I.L.R. (1969) M.P. 514 (DB)*

– **Section 5 A (8)** – Rule 24 of the Appellate Tribunal Rules, 1946 promulgated thereunder – Vires of: *The Commissioner of Income Tax, Madhya Pradesh Nagpur and Bhandara, Nagpur, Vs. Messrs Harnandrai Shri Kishan Akodia, Shajapur, I.L.R. (1968) M.P. 993 (DB)*

– **Section 6** – Heads of income defined in and elaborated in subsequent sections – Not exclusive of sources of income – Indicated for computation of total income – Break up indicated in, not to be regarded as rigidly delimiting sources under different heads for purposes of other provisions of Act – Section 24 (2) – Divident income – Whether liable to be set off against business of earlier assessment year which had been carried forward: *The Commissioner of Income Tax, Madhya Pradesh Nagpur and Bhandara, Nagpur Vs. Messrs Shri Kishan Chandmal, Indore, I.L.R. (1968) M.P. 156 (DB)*

– **Section 10** – Burden of proof – Burden on assessee to prove that purchase and sale of shares was in course of business as dealer in shares and not by way of investment – Things to be noted in considering whether transaction was or was not on adventure in the nature of trade – Dealing in shares – Does not mean that transaction of particular shares was business transaction – Assessee dealer in shares – His every transaction not invested with character of trade in shares – Other circumstances along with it to be considered to find out real object of particular venture: *Shri Kailash Chandra Tejpal Vs. Commissioner of Income Tax, M.P., Nagpur and Bhandara, Nagpur I.L.R. (1967) M.P. 661(DB)*

– **Section 10** – Company's one of the objects being to carry on business as investor or financier – Not conclusive to determine nature and scope of activities: *Messrs Investment Ltd., Gwalior Vs. The Commissioner of Income Tax, Calcutta, I.L.R. (1969) M.P. 138 (DB)*

– **Section 10** – Investment in Government securities – Investment of enduring character – Loss resulting by sale of securities – Loss was capital loss – Company's one of the objects being to carry on business as investor or financier – Not conclusive to determine nature and scope of activities – Question whether securities were stock-in-trade of an adventure in the nature of trade – Established rule of commercial practice and accountancy is that anticipated loss to be taken into account by valuing closing stock at cost or market price which is lower: *Messrs Investment Ltd., Gwalior Vs. The Commissioner of Income Tax, Calcutta, I.L.R. (1969) M.P. 138 (DB)*

– **Section 10** – Question whether securities were stock-in-trade of an adventure in the nature of trade – Established rule of commercial practice and accountancy is that anticipated loss to be taken into account by valuing closing stock at cost or market price which is lower: *Messrs Investment Ltd., Gwalior Vs. The Commissioner of Income Tax, Calcutta, I.L.R. (1969) M.P. 138 (DB)*

– **Section 10(1)** – Partner of the firm bringing the amount for disbursement in connection with business affairs – Amount stolen during course of journey – Loss is incidental to the business – Deduction for loss from income- tax is permissible as bad debt – Section 66(1) – Statement of facts made by tribunal in the order of reference – Not challengeable in High Court: *The Commissioner of Income Tax M.P., Nagpur Vs. M/s Ganesh Rice Mills Kargi-road, Bilaspur, I.L.R. (1977) M.P. 183 (D.B.)*

– **Sections 10 and 24** – Loss from one source can be set off from profits from another under the same head that is losses how can be set off – Section 24(I) – Not restricted to set off of losses against profits under the same head: *The Commissioner of Income-Tax, MP Vs. M/s Trilokchand Kalyanmal, Indore, I.L.R. (1960) M.P. 182 (DB)*

– **Section 10(2), Clause (iii)** – Partner borrowing money – Money supplied to unregistered firms of which he is partner for its business – Unregistered firms taxable as units of assessment – Partner not liable to tax on shares of profits received by him – Not entitled to deduction in respect of interest paid by him on amounts borrowed: *The Commissioner of Income-Tax, M.P., Bhopal Vs. K.B. Sorabji Framji Kerawala, I.L.R. (1960) M.P. 176 (DB)*

– **Section 10(2) (iii)** – Borrowing of amount for business not illusory or colourable – Amount of interest paid on borrowed amount – Income-tax Officer has no jurisdiction to determine reasonable amount of interest as deduction – Section 10(2)(xv) – Allowance specifically dealt by any one of clauses of section 10(2) – Resort to clause (XV) not permissible – Question whether borrowing was capital borrowing – A question of law – Tribunal cannot be ordered to record fresh finding to enable party to put up a new case: *Birla Gwalior Private Ltd., Morar (Gwalior) Vs. The Commissioner of Income-Tax, M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1962) M.P. 987(DB)*

– **Section 10 (2)(iii)** – Interest paid to a member of the association for amount advanced a member of the association for amount advanced as loan – Amount is legitimate business expense – Section 35 – Mistake not gatherable from record as it stands – Is not a mistake apparent on face of record – Appellate Tribunal Rules, 1946 – Rule 24 – Vires of: *The Commissioner Of Income Tax, Madhya Pradesh, Nagpur And Bhandara, Nagpur, Vs. M/s Harnandrai Shri Kishan Akodia, Shajapur, I.L.R. (1968) M.P. 993 (DB)*

– **Section 10(2) (iii)** – Interest paid on capital borrowed for business – A permissible deduction – Section 34 – Issue of notice under – Not permissible because of change of his view or holding of a different opinion from that of his predecessor – Predecessor officer not applying his mind to the question but successor did – Does not amount to coming in possession of information justifying re-opening of assessment: *M/s Ram Kishan Oil Mills, Lashkar Vs. Commissioner Of Income-Tax, M.P., Nagpur And Bhandara, Nagpur, I.L.R. (1965) M.P. 1013 (DB)*

– **Section 10(2) (vi)** – For claiming depreciation, assessee must own property regarding which depreciation claimed – For calculating depreciation – Original cost and not written down value to be considered – Same principle applicable to development rebate under clause (vi-b) – Asset let out on hire – Assessee still continues to be owner and as such entitled to claim depreciation: *Sardar Tara Singh, Jabalpur Vs. The Commissioner of Income Tax, M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1963) M.P. 371 (DB)*

– **Section 10 (2)(vi)(b) and Taxation Laws (Amendment) Act (XL of 1960)** – Proviso – Given retrospective operation from 1-4-60 – Development rebate on costs of new Road Transport Vehicle purchased before 1-4-60 – Assessee not entitled to claim it w.e.f. 1-4-60 – Intention of Parliament – Assessee adopting different previous years – No discrimination amongst assessee: *Rajnandgaon Roadways (P) Ltd. Rajnandgaon Vs. The Commissioner of Income Tax, MP Bhopal, I.L.R. (1979) M.P. 1041 (DB)*

– **Section 10 (2) (vii), proviso II of Section 12(3) (4)** – Profits and gains in computing income – Proviso applicable when allowance granted under Section 10(2) (vii): *The Commissioner of Income Tax, MP Nagpur and Bhandara, Nagpur, Vs. M/s Nandlal Bhandari & Sons Private Ltd. Indore, I.L.R. (1963) M.P. 376 (DB)*

– **Section 10 (2) (vii), Second Proviso – Word “sale”** – Not defined in the Act – Used in its ordinary conception – Compulsory acquisition not a sale – Two partners taking two theatres brought into partnership as capital by each to whom one theatre belonged – Distribution of theatres after dissolution – Does not amount to sale, but at the most amounts to exchange: *M/s Dewas Cine Corporation, Dewas Vs. Commissioner of Income-Tax, MP., Nagpur and Bhandara, Nagpur, I.L.R. (1965) M.P. 849 (DB)*

– **Section 10(2) (x) – Finance Act – Section 12** – System of accounting not cash basis but one of adjustment – Deduction of bonus to be given in that accounting year in which liability to pay arose – Mercantile system of accounting – Deduction not to be given for liability which has not arisen or incurred – Deduction not to be given for contingent or future liability – Taxation Laws (Part B States) (Removal or difficulties) Order, 1950 – Para 2 – Validity of: *The Swadeshi Cotton & Flour Mills Private Ltd. Indore Vs. The Commissioner of Income Tax, Nagpur, I.L.R. (1961) M.P. 434 (DB)*

– **Section 10 (2) (xv)** – Allowance specifically dealt by any one of clauses of section 10(2) – Resort to clause (xv) not permissible – Question whether borrowing was capital borrowing: *Birla Gwalior Private Ltd., Morar (Gwalior) Vs. The Commissioner of Income-Tax, M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1962) M.P. 987 (DB)*

– **Section 10(2) (XV)** – Allowable business expenditure thereunder – Principles for determination of Existence of business expediency and reasonable nexus between the expenditure and business of the assessee necessary – Assessee acting as managing against on Commission at a certain percentage on the profits of the managed company – Assessee paying entertainment expenses to the director of the managed company – Tribunal finding that Director of the managed company did not do any work of promoting business of the managed company – Such entertainment expenses are not allowable business expenditure – Assessee company incurring expenses over brokerage for floating fresh issue of shares for raising fresh capital to set up a paper mill and traveling expenses incurred for going to Delhi and Bombay for opening of guarantee and letter of credit – Such expenditure are allowable business expenditure: *M/s J.K. Agents (P) Ltd., Bhopal Vs. Commissioner of Income Tax, Madhya Pradesh, Bhopal, I.L.R. (1983) M.P. 405 (DB)*

– **Section 10(2) (xv)** – Burden of proof of circumstances allowing a deduction – Circumstances when deduction can be given for gratuity paid: *M/s Lakhamichand Muchhal, Indore Vs. The Commissioner of Income-Tax M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1964) M.P. 331 (DB)*

– **Section 10 (2) (XV)**- Circumstances in which expenses cannot be apportioned between two activities provided the business was one and indivisible – Deduction has to be allowed for whole amount in computing the income of the assessee: *The Commissioner of Income Tax M.P., Nagpur and Bhandara, Nagpur Vs. The Bhopal Sugar Industries Ltd., Sehore, I.L.R. (1977) M.P. 834 (DB)*

– **Section 10(2)(XV)** – Contingent liability – Not an expenditure – Cannot be subject of deduction: *The Chhaganlal Textile Mills, Private Ltd., Bhopal Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 145 (DB)*

– **Section 10(2)(XV)** – Deduction for contingent liability – Deduction not permissible – Contingent liability – Not an expenditure – Cannot be subject of deduction – Mercantile system – Debit can be equated with actual expenditure provided liability is incurred – Factories Act, 1948 – Section 79 and Industrial Disputes Act, Section 25F – Liability for holiday – Wages – Liability for compensation for retrenchment are contingent liabilities: *The Chhaganlal Textile Mills, Private Ltd., Bhopal Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 145 (DB)*

– **Section 10(2)(xv)** – Interest awarded on the amount of compensation – A revenue receipt and not capital receipt – Interpretation of Statute – Doubt regarding meaning of words in section – Heading and Marginal notes to be used to resolve doubt – Placing of section at a particular place in Act – Not sufficient to place an interpretation on the

words which they do not justify: *The Commissioner of Income Tax, M.P., Nagpur and Bhandara, Nagpur Vs. Sardar C.S. Angre, I.L.R. (1967) M.P. 1012 (DB)*

– **Section 10(2) (xv)** – Payment made on non-commercial consideration – Not allowable as business expense: *Mohanlal Hargovind Vs. The Commissioner of Income-Tax, Madhya Pradesh, I.L.R. (1961) M.P. 188 (DB)*

– **Section 10(2) (xv)** – Test to be applied in determining whether certain expenditure is deductible – Fees paid to Income-tax advisor for persuading authorities in making reasonable legitimate assessment – Is expenditure for purpose of business – Expenditure can be deductible from taxable income: *M/s Binodiram Balchand, Indore Vs. The Commissioner of Income-Tax, MP. Nagpur and Bhandara, Nagpur, I.L.R. (1964) M.P. 646 (DB)*

– **Section 10 (2) (xv)** – Question whether amount is deductible allowance because laid out for assessee's business – Question is one of fact – Finding of fact must be based on evidence – Decision of Tribunal to be sustained if based on evidence – Amount given to employee for meritorious services out of generosity – Amount cannot be deducted as deductible allowance: *The Kalyanmal Mills Ltd., Indore Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1967) M.P. 315 (DB)*

– **Sections 10(2) (iii) and 23(5)(b)** – Partner assessed as partner of unregistered firm – Whether partner entitled to claim a deduction for amount of interest paid on borrowings for the firm – Section 66(1) – Consideration of a point of law involved in a question raised by the tribunal – Point neither taken before the tribunal nor considered by it – High Court not precluded from considering the point: *Seth Sorabji Framji Kerawala Vs. The Commissioner of Incometax, M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1962) M.P. 495 (DB)*

– **Section 10(2)(vi) and 10(5)(b)** – “Written down value” in – Meaning of – Method of determining it – Taxation Laws (Part B) States (Removal of Difficulties) Order, 1950 – Para 2, Proviso Explanation – Effect of substantive part of para 2 – Greater of the two depreciation allowances viz., allowable under Income-tax Act, under the State Rules or laws, only allowable to be taken in determining written down value – Explanation not to be invoked in construing “all depreciation actually allowed to him under this Act” used in Section 10(5) (b) – “Actually allowed” in Section 10(5)(b) – Meaning of: *M/s Nandlal Bhandari Mills Ltd., Indore Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1962) M.P. 651 (DB)*

– **Sections 10(2) (vii) and 12(b) – Section 12(B)** – Applies to completed sale or transfer and not to agreement to sell – Capital gains arising after 1-4-1948 – Not liable

to tax – Relinquishment of right and liability for profit and loss after 1-4-1947 – Not taxable under Section 12 (B) as it stood before 1-4-1947 – Section 66 (i) – Court has no power to investigate into facts raised for first time and enter on fresh enquiry – Section 34 – Change of opinion – No ground for taking action under the section – Officer cannot travel beyond contents of notice: *M/s D.B. Ballabhdas Mannoolal Kanhaiyalal, Jabalpur Vs. the Commissioner of Income Tax, MP., I.L.R. (1961) M.P. 649 (DB)*

– **Sections 10 and 9 and Income Tax Act, Indian (XLIII of 1961), Section 28 and 21** – Expression of – Business Income – Connotation of: *Commissioner of Income Tax Vs. The National News print and Paper Mills Ltd. Napanagar, I.L.R. (1982) M.P. 275 (DB)*

– **Section 12 – Jagir Converted into Mansab (cash annuity)** – Cash annuity liable to tax being not a capital asset: *Late Nawabzada Rasihduzzafar Khan, by Legal Representative Begum Suriya Rashid, Bhopal Vs. The Commissioner Income Tax, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1974) M.P. 361 (DB)*

– **Section 12 (B)** – Applies to completed sale or transfer and not to agreement to sell – Capital gains arising after 1-4-1948 – Not liable to tax – Relinquishment of right and liability for profit and loss after 1-4-1947 – Not taxable under Section 12 (B) as it stood before 1-4-1947: *M/s D.B. Ballabhdas Mannoolal Kanhaiyalal, Jabalpur Vs. The Commissioner of Income-Tax, M.P., I.L.R. (1961) M.P. 649 (DB)*

– **Section 14(2)(aa) and 16(1)(a)** – Computation of the “Total Income” of the assessee partner – Sum exempted under Section 14(2) (aa) from payment of tax included in it by virtue of Section 16(1)(a): *The Commissioner of Income Tax, Madhya Pradesh Vs. Parmanand Bhai Patel, I.L.R. (1979) M.P. 95 (FB)*

– **Section 14(3)(i)(c)** – “Agricultural produce” in – Includes rice when paddy is milled by the cultivator and brought to market – But is not included when paddy is milled by society and sold: *The Commissioner of Income Tax, Madhya Pradesh, Nagpur Vs. The Mahasamund Kisan Co-operative rice Mill and Marketing Society Ltd. Mahasumund, I.L.R. (1979) M.P. 944 (DB)*

– **Section 14(3)(i)(c)** – Income from sale of rice prepared from paddy supplied by members of the society to the society – Income liable to tax – “Agricultural produce” in – Includes rice when paddy is milled by the cultivator and brought to market – But is not included when paddy is milled by society and sold: *The Commissioner of Income Tax, Madhya Pradesh, Nagpur Vs. The Mahasamund Kisan Co-operative rice Mill and Marketing Society Ltd. Mahasumund, I.L.R. (1979) M.P. 944 (DB)*

– **Section 16, clause (c)** – Circumstances in which whole of the income in the hands of settler becomes taxable: *Smt. Gulabbai Vs. The Commissioner of Income Tax M.P. Nagpur & Bhandara, Nagpur, I.L.R. (1972) M.P. 389 (DB)*

– **Section 16, clause (c)** – Deals with two types of settlements – Section 16 clause (e) third proviso – Aims at conditional revocation of settlement – Is out of mischief of clause (c) so long as settler does not revoke – Purpose of the proviso – Circumstances in which whole of the income in the hands of settlor becomes taxable: *Smt. Gulabbai Vs. The Commissioner of Income Tax M.P. Nagpur & Bhandara, Nagpur, I.L.R. (1972) M.P. 389 (DB)*

– **Section 16, clause (c) third proviso** – Circumstances in which whole of the income in the hands of settlor becomes taxable: *Smt. Gulabbai Vs. The Commissioner of Income Tax M.P. Nagpur & Bhandara, Nagpur, I.L.R. (1972) M.P. 389 (DB)*

– **Section 16, clause (c), third proviso** – Aims at conditional revocation of settlement – Is out of mischief of clause (c) so long as settler does not revoke – Purpose of the proviso: *Smt. Gulabbai Vs. The Commissioner of Income Tax M.P. Nagpur & Bhandara, Nagpur, I.L.R. (1972) M.P. 389 (DB)*

– **Section 16(3)** – Assessee unable to prove how wife got the amount – No inference that it must have come to her by direct or indirect transfer from husband – Provision not attracted unless there is direct proof of transfer from circumstances from material on record can be drawn: *Prem Dutt Ahuja Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1978) M.P. 197 (DB)*

– **Section 16(3)** – Burden on department to show that certain amount is taxable – Burden that it is exempt is on assessee: *Prem Dutt Ahuja Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1978) M.P. 197 (DB)*

– **Section 16(3)** – To be construed strictly – Assessee unable to prove how wife got the amount – No inference that it must have come to her by direct or indirect transfer from husband – Provision not attracted unless there is direct proof of transfer or such transfer from circumstances from material on record can be drawn – Burden on department to show that certain amount is taxable – Burden that it is exempt is on assessee: *Prem Dutt Ahuja Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1978) M.P. 197 (DB)*

– **Section 16 (3) (a) (ii)** – Circumstances in which minor child income can be included in the income of individual for the purpose of tax – Minor child contributing capital to partnership firm – Income earned on that capital – Income falls under this provision – Distinction between capital contribution of a partner and advance made to firm: *The Commissioner of Income Tax M.P. Nagpur and Bhandara Nagpur Vs. Badrilal Bholaram, I.L.R. (1973) M.P. 542 (DB)*

– **Section 16 (3) (a) (ii)** – Distinction between capital contribution of a partner and advance made to firm: *The Commissioner of Income Tax M.P. Nagpur and Bhandara Vs. Badrilal Bholaram, I.L.R. (1973) M.P. 542 (DB)*

– **Section 16 (3) (a) (ii)** – Minor child contributing capital to partnership firm – Income earned on the capital – Income falls under this provision: *The Commissioner of Income Tax M.P. Nagpur and Bandra Vs. Badrilal Bholaram, I.L.R. (1973) M.P. 542 (DB)*

– **Section 18 (3B)** – Exception in Section 18 (3B) for the benefit of person – Burden on him to show that he has been made liable for tax as agent of non – resident assessee: *The Managing Director, National Newsprint, Nepanagar Vs. The Commissioner of Income Tax, M.P., Nagpur and Bhandara, Nagpur I.L.R. (1960) M.P. 169 (DB)*

– **Section 18 (3B)** – Expression “Unless he is himself liable to pay any income-tax and super-tax thereon as an agent” in Section 18 (3B) – Meaning of: *The Managing Director, National Newsprint & Paper Mill Ltd., Nepanagar Vs. The Commissioner of Income Tax, MP, Nagpur & Bhandara Nagpur, I.L.R. (1960) M.P. 169 (DB)*

– **Section 18 (3B), Second Proviso and Section 43** – First Proviso – Scope of Expression “unless he is himself liable to pay any income-tax and super-tax thereon as an agent” in Section 18(3B) – Meaning of – Exception in Section 18(3B) for the benefit of person – Burden on him to show that he has been made liable for tax as agent of non-resident assessee: *The Managing Director, National Newsprint & Paper Mill, Ltd. Nepanagar Vs. The Commissioner of Income Tax, M.P., Nagpur & Bhandara Nagpur, MP, I.L.R. (1960) M.P. 169 (DB)*

– **Section 22(2)** – Circumstances in which finding of tribunal is binding and when the same can be challenged: *Messrs Hajarilal Kishorilal Dhar Vs. The Commissioner of Income Tax, M.P., Nagur and Bhandara, Nagpur, I.L.R. (1970) M.P. 186 (DB)*

– **Sections 22 and 23** – Finding of income-tax officer that particular income is from undisclosed source – Officer not bound to show what other source the assessee has – The finding that income is from undisclosed source – Does not imply that the assessee has no other source: *Ratanchand Dipchand Vs. The Commissioner of Income Tax M.P. & Bhopal Nagpur, I.L.R. (1959) M.P. 629 (DB)*

– **Section 23-A** – Declaration of dividend amounts to distribution of dividend: *Central India Industrial Corporation Ltd., Lashkar Vs. The Commissioner of Income-Tax, MP. Nagpur and Bhandara, Nagpur, I.L.R. (1964) M.P. 455 (DB)*

– **Section 23-A** – Judging reasonableness or unreasonableness of payment of dividend – Actual profits from commercial point of view and not assessable profits to be taken into consideration – Determination of question whether managing agency commission income represents real or notional profits – Time of accrual or payment of it has no bearing – Inclusion of managing agency commission not questionable – Exclusion

of commission amounts from profits not to be allowed: *Sir J.P. Shrivastava & Sons Vs. The Commissioner of Income Tax, M.P. Nagpur, I.L.R. (1962) M.P. 157 (DB)*

– **Section 23-A** – Word “Distributed” in – Does not mean actual payment – Declaration of dividend amounts to distribution of dividend: *Central India Industrial Corporation Ltd., Lashkar Vs. The Commissioner of Income-Tax, MP. Nagpur and Bhandara, Nagpur, I.L.R. (1964) M.P. 455 (DB)*

– **Section 24, Proviso-I** – Losses sustained in speculative business – Not liable to be adjusted against profits under other items within that head – Interpretation of Statutes – Proviso to section operates within field of the subject – matter of main section: *The Commissioner of Income Tax, New Delhi Vs. Messrs Ramgopal Kanhaiyalal, I.L.R. (1959) M.P. 814 (DB)*

– **Sections 24-B and 41 (1)** – Income received by the receiver upto the period of taking possession by executor of will – Assessable as an income of association of persons – Succession Act, Indian – Section 269 and Administrator – General’s Act, 1913 – Section 54 (2) – Property vests in executors till he decides to distribute among beneficiaries – Receiver – Position of, is that of a persons who is to take and keep property till probate granted to executors – Estate does not vest in him – Receiver receives income on behalf of executors and not on behalf of beneficiaries: *Shri I.A.T. Warde, Bhorawari Kalan Collieries, Junnordeo Vs. The Commissioner of Income Tax, M.P. Nagpur And Bhandara, Nagpur. I.L.R. (1961) M.P. 772 (DB)*

– **Section 24(1) and (2) before amendment** – Right to carry forward losses of earlier years and to set off in relevant previous years – Is a substantive right – Cannot be claimed apart from the provision of the Act – Amended section not applicable to cases relating to accounting years 1948-49 and 49-50 – Section 35 – Assessment discovered to be erroneous by looking to previous record – Mistake is one apparent on record – Mistake can be rectified – Appeal to tribunal on certain points – Decision reversed on those points – Lower appellate Court, Power of, to correct order on points not involved in appeal – Theory of merger not applicable: *The Central India Insurance Co., Ltd., Indore Vs. The Income Tax Officer, “A” Ward, Indore, I.L.R. (1963) M.P. 848 (DB)*

– **Section 24 (2)** – Right to carry forward losses of earlier years and to set off in relevant previous years – Is a substantive right – Cannot be claimed apart from the provision of the Act – Amended section not applicable to cases relating to accounting years 1948-49 and 49-50: *The Central India Insurance Co., Ltd., Indore Vs. The Income Tax Officer, “A” Ward, Indore, I.L.R. (1963) M.P. 848 (DB)*

– **Sections 24(2)** – Business loss when and how to be set off: *M/s Kaluram Tirasilal, Shahpura Vs. The Income Tax Officer, C-Ward, Jabalpur, I.L.R. (1965) M.P. 188 (DB)*

– **Sections 24(2) and 35** – Mistake in applying provision of law and apparent on face of record – Mistake can be rectified – Business loss when and how to be set off – No rule that amount credited in business books amounts to income from business – Depends upon evidence tendered and explanation given – Income-tax Officer, Power of, to issue notice to rectify assessment—Power not taken away because of pendency of appeal in which that mistake is not involved: *M/s Kaluram Tirasilla, Shahpura Vs. The Income Tax Officer, C-Ward, Jabalpur, I.L.R. (1965) M.P. 188 (DB)*

– **Section 24(2)** – Divident income – Whether liable to be set off against business of earlier assessment year which had been carried forward: *The Commissioner of Income-Tax, Madhya Pradesh, Nagpur and Bhandara, Vs. Messrs Shri kishan, Chandmal, Indore, I.L.R. (1968) M.P. 156 (DB)*

– **Section 25-A(1)** – Income- Tax Officer assessing hindu family which had hitherto assessed as undivided notwithstanding partition – Omission to hold enquiry or non recording of order of partition – Assessment order no void – Not liable to be challenged in a Civil suit – Remedy provided under the Act has to be followed – Section 25-A(3) – Words – “For the purposes of this Act” used therein – Meaning and scope of – Recovery of tax is also included: *Om Prakash Vs. Union of India, I.L.R. (1982) M.P. 895 (DB)*

– **Section 25-A(3)** – Words “for the purposes of this Act” used therein – Meaning and scope of – Recovery of tax is also included: *Om Prakash Vs. Union of India I.L.R. (1982) M.P. 895 (DB)*

– **Section 25(4)** – Old business of 1918 and new business started thereafter – Both businesses keeping separate identity and integrity – No case of succession – New business not entitled to benefit of section 25(4): *Messras Saligram Nathani Vs. The Commissioner of Income Tax, Nagpur, I.L.R. (1962) M.P. 342 (DB)*

– **Sections 26-A and 66(2)** and the Rules made under the Act – Rules 2 to 6 -B framed thereunder – An assessee applying for registration of a partnership firm – Department’s refusal therefor – Validity of: *M/s Mukhi Mulchand Sitaldas, Partnership Firm At Chakarbhata Tah. & Distt., Bilaspur Vs. The Commissioner of Income Tax, Madhya Pradesh, Bhopal I.L.R. (1982) M.P. 479 (DB)*

– **Section 26 -A** – Applications for registration of firm of which members of joint family are partners – One partner entering into agreement to divide profits amongst several other persons – Application for registration not liable to be rejected: *The Commissioner of Income-Tax, M.P., Nagpur and Bhandara, Nagpur Vs. Sir Hukumchand Mannalal & Co., Indore, I.L.R. (1967) M.P. 457(DB)*

– **Section 26-A** – Business assets divided – Business owning immovable property not divided – Not sufficient to reject application for registration of firm: *M/s. Kerodilal*

Premchand, Akaltara Vs. The Commissioner of Income Tax, M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1967) M.P. 1004 (DB)

– **Section 26-A** – Conditions necessary for registration of the partnership under this provision – Income-tax Rules, 1922 – Rule 3 – Requires the partnership to disclose how losses are to be shared – Partnership Act – Section 30(3) – Minor admitted to benefits of partnership – Minor liable for acts and obligations – Liability however not unrestricted – Minor not personally liable – Liability extends to his share property and profits of firm – Words and Phrases – Word “Panti” – Meaning of: *Messrs Chimanlal Umaji and Sons, Indore Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 130 (DB)*

– **Section 26-A** – Partial Partition – Disruption of joint status – Whether ascertainment of capital assets necessary to effect valid partition – Partnership deed – Value of recitals about partition in it – Partnership is valid – Assessee entitled to registration under section 26-A: *M/s Ghewarchand Kewalchand, Durg Vs. The Commissioner of Income tax, M.P. Nagpur, I.L.R. (1981) M.P. 433 (DB)*

– **Section 26-A** – Partnership deed – Value of recitals about partition in it Partnership is valid – Assessee entitled to registration under the section: *M/s Ghewarchand Kewalchand, Durg Vs. The Commissioner of Income tax, MP Nagpur, I.L.R. (1981) M.P. 433 (DB)*

– **Section 26-A** – Partnership firm – Registration of – Partnership deed – Construction of – Deed not expressly mentioning individual shares of partnership of each group of partners – Could be ascertained by necessary implication by reading deed as a whole – Where requirements of section 26-A satisfied – Assessee firm entitled to registration – Word “Specify” in section 26-A – Meaning of: *The Commissioner of income Tax, Bhopal Vs. M/s R.S. Nikhera Construction Co. Bhilai, I.L.R. (1980) M.P. 777 (DB)*

– **Section 26-A** – Does not require that partnership must be registered under Partnership Act: *M/s Murlidhar Kishangopal (Firm), Indore Vs. The Commissioner of Income-Tax, MP. Nagpur and Bhandara, Nagpur, I.L.R. (1964) M.P. 466 (DB)*

– **Section 26-A** – Existence of firm established – Mere deviation from terms of partnership – Not sufficient ground for not registering the firm: *The Commissioner of Income-Tax, MP. Nagpur and Bhandara, Nagpur, Vs. Messrs Madanlal Chhaganlal, I.L.R. (1964) M.P. 327 (DB)*

– **Section 26 (A)** – Non-withdrawal of profits with consequences of accumulation thereof – Not sufficient to infer non-genuineness of partnership: *Messrs United Patel Construction Co., Jabalpur, Vs. The Commissioner of Income-Tax, M.P., Nagpur And Bhandara, Nagpur I.L.R. (1968) M.P. 515 (DB)*

– **Section 26(A)** – Profits received by partners – The fact whether they go to joint family or limited company – Relevant for purposes of assessment but not for registration purpose: *The Commissioner of Income-Tax, M.P., Nagpur and Bhandara, Nagpur Vs. Sir Hukumchand Mannalal & Co., Indore, I.L.R. (1967) M.P. 457(DB)*

– **Section 27** – Scope and applicability of – Appeal against order under this section – Question whether Income-tax Officer can make best judgment assessment – If can be raised: *Suganchand Rathie Vs. The Commissioner of Income Tax, M.P., I.L.R. (1957) M.P. 549 (DB)*

– **Section 28(1)** – Section 297(2)(a) of 1961 Act – Applicable to a case where return filed before 1-4-62 – These proceedings would be under 1922 Act: *Shri Kishanlal, Baghana, (Neemuch), Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 1051 (DB)*

– **Section 28(1)** – The expression “(the period) during which the default continued” – Means period commencing from a date prior to 1-4-62 on which assessee became defaulter and ending on a date on which he ceased to be so: *Shri Kishanlal, Baghana, (Neemuch), Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 1051 (DB)*

– **Section 28 (1) (c)** – Charge of concealment not proved – No penalty can be imposed – Section 28 (1)(c) – Provision when attracted – In conceivable cases mere inability to account for certain receipts which are regarded as income – Inference about concealment or deliberately furnishing inaccurate particulars can be drawn – Such inference however depends upon facts and circumstances of each case: *The Commissioner of Income Tax M.P. Vs. Navnitlal M. Mehta, Indore, I.L.R. (1977) M.P. 1032 (DB)*

– **Sections 33(4) and 66(1)** – For making a reference on a question of law – Not necessary that order must finally dispose of the appeal – Rule 22-A – Prescribes form for making reference – Must be strictly complied with: *M/s Singhai Mojilal and Sons Vs. The Commissioner of Income-Tax, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1965) M.P. 689 (DB)*

– **Section 34** – Production of Account Books before the Officer at the time of assessment – Irrelevant fact in determining whether any income had escaped assessment – Burden on assessee to prove items of cash credits – Explanation furnished not supported by evidence – Income-tax Department can reject explanation – If explanation supported by evidence – Burden on department to show some other material showing why explanation should not be accepted – Income from undisclosed source – Not liable to be deducted from the assessable income arrived at by applying mode of enhanced flat rate – Absence of satisfactory proof regarding source of credit - Inference of Tribunal

that credits are assessee's income from undisclosed source is a question of fact: *Seth Kalekhan Mohamed Hanif Vs. The Commissioner of IT, M.P. & Bhopal, I.L.R. (1957) M.P. 466 (DB)*

– **Section 34** – Notice under – Issued to a dead person-Taxing authority – No power to proceed against living person in whose hands notice goes and attribute notice to him – Notice under this section foundation of jurisdiction: *Shaikh Abdul Kadar Vs. The Income Tax Officer, Sagar, M.P. I.L.R. (1958) MP 156 (DB)*

– **Section 34** – Change of opinion – No ground for taking action under the section – Officer cannot travel beyond contents of notice: *M/s D.B. Ballabhdas Mannoolal Kanhaiyalal, Jabalpur Vs. The Commissioner of Income-Tax, M.P., I.L.R. (1961) M.P. 649 (DB)*

– **Sections 34** – Issue of notice under – Not permissible because of change of view or holding of a different opinion from that of his predecessor: *M/s Ram Kishan Oil Mills, Lashkar Vs. Commissioner Of Income-Tax, M.P., Nagpur And Bhandara, Nagpur, I.L.R. (1965) M.P. 1013 (DB)*

– **Section 34 (1)** as amended – Does not authorize re-opening of assessment for the period ending 31-3-41 and subsequent year covered by Section 34(1-A) when no notice issued there-under before 31-3-56: *Rustomji Vs. Income-Tax Officer, Special Investigation Circle, Indore I.L.R. (1965) M.P. 555 (DB)*

– **Section 34 (1-A)** – Extent and scope of – Nature and extent of power conferred on Income-tax Officer – Applicable to all cases of assessment or re-assessment of all persons evading payment of taxes – Section 34(1-A), Second Proviso – Prohibits issue of notice after 31-3-56 – Finance Act, 1956 – Section 18 – Removes bar of 8 years – Amended provisos provide safeguard to assesses-nature of safeguard – Interpretation of Statute—Principle of construction of general law – Statute containing general and specific provision—Specific provision to govern the case—Income-tax Act – Section 34(1-A) – Not repealed by implication – Income-tax Act, Section 34(4) and Income-tax (Amendment) Act, 1959, Section 4 – Do not authorize taking action regarding assessment for the period ending 31-3-41 or subsequent years falling under Section 34(1-A) – If no action taken prior to coming into force of Finance Act of 1956 – Income tax Act – Section 34 (1-A) –*Non-obstante* clause in – Enables Income-tax Officer to take action even though period of limitation in sub-section (1-A) of Section 34 (before amendment of 1956) expires – Does not prescribe condition precedent – Section 34(1) as amended – Does not authorize re-opening of assessment for the period ending 31-3-41 and subsequent years covered by Section 34(1-A) when no notice issued thereunder before 31-3-56: *Rustomji Vs. Income-Tax Officer, Special Investigation Circle, Indore I.L.R. (1965) M.P. 555 (DB)*

– **Section 34 (1-A)** – Nature and extent of power conferred on Income-tax Officer – Applicable to all cases of assessment or reassessment of all persons evading payment of taxes: *Rustomji Vs. Income-Tax Officer, Special Investigation Circle, Indore I.L.R. (1965) M.P. 555 (DB)*

– **Section 34 (1-A)** – *Non-obstante* clause in – Enables Income-tax Officer to take action even though period of limitation in sub-section (1-A) of Section 34 (before amendment of 1956) expires – Does not prescribe condition precedent: *Rustomji Vs. Income-Tax Officer, Special Investigation Circle, Indore I.L.R. (1965) M.P. 555 (DB)*

– **Section 34 (1-A)** – Not repealed by implication: *Rustomji Vs. Income-Tax Officer, Special Investigation Circle, Indore I.L.R. (1965) M.P. 555 (DB)*

– **Section 34 (1-A)**, Second Proviso – Prohibits issue of notice after 31-3-56: *Rustomji Vs. Income-Tax Officer, Special Investigation Circle, Indore I.L.R. (1965) M.P. 555 (DB)*

– **Section 34 (1) (b)** – Predecessor officer not applying his mind to the question but successor did – Does not amount to coming in possession of information justifying reopening of assessment: *M/s Ram Kishan Oil Mills, Lashkar Vs. Commissioner of Income-Tax, M.P., Nagpur And Bhandara, Nagpur, I.L.R. (1965) M.P. 1013 (DB)*

– **Section 34 (4)** and Income-tax (Amendment) Act (1 of 1959), Section 4 – Do not authorize taking action regarding assessment for the period ending 31-3-41 or subsequent years falling under Section 34(1-A) – If no action taken prior to coming into force of Finance Act of 1956: *Rustomji Vs. Income-Tax Officer, Special Investigation Circle, Indore I.L.R. (1965) M.P. 555 (DB)*

– **Section 35** – Appeal to tribunal on certain points – Decision reversed on those points – Lower appellate Court, power of, to correct order on points not involved in appeal – Theory of merger not applicable: *The Central India Insurance Co., Ltd., Indore Vs. The Income Tax Officer, “A” Ward, Indore, I.L.R. (1963) M.P. 848 (DB)*

– **Section 35** – Assessment discovered to be erroneous by looking to previous record – Mistake is one apparent on record – Mistake can be rectified: *The Central India Insurance Co., Ltd., Indore Vs. The Income Tax Officer, “A” Ward, Indore, I.L.R. (1963) M.P. 848 (DB)*

– **Section 35** – Income-tax Officer, Power of, to issue notice to rectify assessment – Power not taken away because of pendency of appeal in which that mistake is not involved: *M/s Kaluram Tirasilal Shahpura Vs. The Income Tax Officer, C-Ward, Jabalpur, I.L.R. (1965) M.P. 188 (DB)*

– **Section 35** – Income-tax Tribunal – Power of, to rectify an error of face of order – Action of Tribunal referable to a jurisdiction – Though tribunal not aware of its existence – Term “Rectification” – Meaning of: *Commissioner of Income-tax Vs. Sheolal Ramlal, I.L.R. (1957) M.P. 442 (DB)*

– **Section 35** – Mistake not gatherable from record as it stands – Is not a mistake apparent on face of record: *The Commissioner of Income Tax, Madhya Pradesh, Nagpur And Bhandara, Nagpur, Vs. M/s Harnandrai Shri Kishan Akodia, Shajapur, I.L.R. (1968) M.P. 993 (DB)*

– **Section 35** – Proviso is not rigid – Assessee had knowledge of the proceedings – Matter discussed with him Absence of notice not to vitiate proceeding: *Mulchand Vs. Commissioner of Income Tax, M.P. Bhopal, I.L.R. (1978) M.P. 203 (DB)*

– **Section 35** – Proviso – Object of the proviso – Proviso is not rigid – Assessee had knowledge of the proceedings – Matter discussed with him – Absence of notice not to vitiate proceedings: *Mulchand Vs. Commissioner of Income Tax, M.P. Bhopal, I.L.R. (1978) M.P. 203 (DB)*

– **Section 35(1)**, Proviso – Notice not necessary for initiation of rectification proceedings but necessary if intended rectification resulted in enhancing assessment or reducing refund: *Naraindas Vs. Income-Tax officer, A-ward, Satna, I.L.R. (1964) M.P. 538 (DB)*.

– **Section 35(5)** – Conditions necessary for applicability of the provision – Words “assessment or re-assessment of the firm” and “inclusion of the share in the assessment or the correction thereof” in – Implication of – Section 35(1), Proviso – Notice not necessary for initiation of rectification proceedings but necessary if intended rectification resulted in enhancing assessment or reducing refund: *Naraindas Vs. Income-Tax officer, A-ward, Satna, I.L.R. (1964) M.P. 538 (DB)*

– **Section 42** – Expression “Income profits of gains from any money lent on interest and brought into taxable territories in cash or in kind” – Implications – Difference between loan and debt – Amount whether loan or debt depends upon circumstances of each case – Sale price due from purchase – Not a loan – Amount received by way of interest on sale price – Cannot be regarded as interest on money lent – Source of interest received from purchaser is actual money payable to assessee at Indore and not retention of sale proceeds: *M/s Lakhmichand Muchhal, Indore Vs. The Commissioner of Income Tax, M.P. Nagpur, I.L.R. (1961) M.P. 1053 (DB)*

– **Section 45** – Assessee filing appeal against assessment order – Appeal not frivolous – Income-tax Officer ought to refrain from enforcing payment of tax and to grant extension of time till disposal of appeal: *M/s Badrilal Bholaram, Indore Vs. Shri B.K. Shrivastava, Income Tax officer, Special Investigation Circle, Indore, I.L.R. (1971) M.P. 835 (DB)*

– **Section 45** – The power of income-tax Officer to treat the assessee as not being in default – Power is coupled with duty – Power to be exercised fairly and reasonably

and not arbitrarily or capriciously: *M/s Badrilal Bholaram, Indore Vs. Shri B.K. Shrivastava, Income Tax officer, Special Investigation Circle, Indore, I.L.R. (1971) M.P. 835 (DB)*

– **Section 54(i)** – Declarations and statements made in course of Income-tax proceedings – Defendant's objection to their admissibility under section 76, Evidence Act and to certified copies given by Income Tax Authorities – Privilege given to assessee by section 54(i) of the income-tax Act cannot avail against a person, who is a legal representative of assessee: *Narbadashankar Vs. Jamnabai, I.L.R. (1960) M.P. 722*

– **Section 56** – Super-tax – Meaning of: *Smt. Anup Prabha Bai Sethi Vs. The Commissioner of Income Tax, Nagpur and Bhandara, Nagpur I.L.R. (1960) M.P. 1096 (DB)*

– **Section 59 read with Section 26-A and Rules regarding Registration of Firm** – Rules framed under Section 59 read with section 26-A – Not *ultra vires*: *The Commissioner of Income-Tax, M.P., Bhopal Vs. The Gopal Rice Mills, Kharsia, I.L.R. (1957) M.P. 371(DB)*

– **Section 66** – Question regarding existence and genuineness of partnership – A question of fact – Inference as regards legal effect of facts and circumstances found in light of Partnership Act and of personal law – Is a mixed question of law and fact: *M/s Murlidhar Kishangopal (Firm), Indore Vs. The Commissioner of Income-Tax, MP, Nagpur and Bhandara, Nagpur, I.L.R. (1964) M.P. 466 (DB)*

– **Section 66(1)** – Application for making reference – Deposit of money in post office and receipt sent with amount of deposit sent by M.O. within time – M.O. reaching after limitation – There is substantial compliance with requirements of act – Cross appeals filed against one assessment order – Cross appeals decided by one order – One application for reference sufficient – Exceptions: *J.K. Agents Private Ltd., Bhopal Vs. The Commissioner of Income-Tax, M.P., I.L.R. (1978) MP 800 (DB)*

– **Section 66(1)** – Cross appeals filed against one assessment order – Cross appeals decided by one order – One application for reference sufficient – Exceptions: *J.K. Agents Private Ltd., Bhopal Vs. The Commissioner of Income-Tax, M.P., I.L.R. (1978) M.P. 800 (DB)*

– **Section 66 (1)** – Court has no power to investigate into facts raised for first time and enter on fresh enquiry: *M/s D.B. Ballabhdas Mannoolal Kanhaiyalal, Jabalpur Vs. The Commissioner of Income-Tax M.P., I.L.R. (1961) M.P. 649 (DB)*

– **Section 66(1)** – Consideration of a point of law involved in a question raised by the tribunal – Point neither taken before the tribunal nor considered by it – High Court not precluded from considering the point: *Seth Sorabji Framji Kerawala Vs. The Commissioner of Income Tax, M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1962) M.P. 495 (DB)*

– **Section 66(I)** – Part B States (Taxation Concessions) Order, 1950 Debt owed to assessee – Satisfaction by assignment of claim by the debtor which was payable to the debtor by a person in Bombay – Assignment operates as satisfaction of the debt – Assessee liable to be taxed at the rates prevailing in part a State: *The Commissioner of Income Tax M.P. Vs. Badrinarayan Rameshwar*, I.L.R. (1960) M.P. 157 (DB)

– **Section 66 (1)** – Question whether admitted or proved facts provide evidence to support conclusion of fact – A question of Law – Burden not on assessee to prove how he got each high denomination note when reasonable explanation for amount is given – Section 10 (2) (xv) – Payment made on non-commercial consideration – Not allowable as business expense: *Mohanlal Hargovind Vs. The Commissioner of Income-Tax, Madhya Pradesh*, I.L.R. (1961) M.P. 188 (DB)

– **Section 66(1)** – Reference under – Matters raising disputed questions of facts – Not raised before the tribunal – Not allowable to be urged in reference – Taxation Laws (Merged States) (Removal of Difficulties) Order, 1950, clause 2 – Words “actually allowed” in – Connotation of – To be contra-distinguished from what is deemed to be allowed by explanation under clause (C) of Section 10(5) of Income-tax Act: *The Commissioner of Income Tax, Madhya Pradesh, Nagpur & Bhandara, Nagpur Vs. Messrs Straw Products Limited Bhopal*, I.L.R. (1962) M.P. 511 (DB)

– **Section 66(1)** – Statement of facts made by tribunal in the order of reference – Not challengeable in High Court: *The Commissioner of Income Tax M.P., Nagpur Vs. M/s Ganesh Rice Mills Kargi-road, Bilaspur*, I.L.R. (1977) M.P. 183 (D.B.)

– **Section 66 (2)** – Assessee from Bhopal filing second appeal before Income tax Tribunal after Indian Income tax Act was made applicable – Tribunal dismissing appeal as not maintainable – Application to the Tribunal for reference dismissed – Application to High Court for calling upon Tribunal to state the case - High Court Power of, to call upon Tribunal to state a case and refer questions of law to High Court: *Mulla Irshad Ali Vs. The Commissioner of Income-Tax*, I.L.R. (1957) M.P. 447 (DB)

– **Section 66(2)** – Contention that application for registration did not comply with rules – Cannot be allowed to be raised when relevant facts have not been found by the Tribunal or subordinate officers: *The Commissioner of Income-Tax, M.P., Nagpur and Bhandara, Nagpur Vs. Sir Hukumchand Mannalal & Co., Indore*, I.L.R. (1967) M.P. 457(DB)

– **Section 66(2)** – Finding that there is connection between profits withheld from account books and cash credit entries – The conclusion that the additions were made to book profits in excess of cash credits – The addition of cash credits is redundant – Findings are findings of fact giving rise to no question of law: *The Commissioner of Income Tax M.P., Nagpur and Bhandara, Nagpur Vs. Shri Chintamanrao Balaji Partner of M/s Vrajilal Mangilal Sagar*, I.L.R. (1977) M.P. 296 (DB)

– **Section 66 (2)** – Finding of tribunal – Not supportable if based on no evidence or upon irrelevant consideration or upon a view of facts not reasonably entertainable – Section 26-A – Non-withdrawal of profits with consequences of accumulation there of – Not sufficient to infer non-genuineness of partnership: *Messrs United Patel Construction Co, Jabalpur Vs. The Commissioner of Income-Tax, M.P., Nagpur And Bhandara, Nagpur, I.L.R. (1968) M.P. 515 (DB)*

– **Section 271(1)(a)** – Quantum of penalty under: *Amritlal Somanbhai Vs. Commissioner of Income Tax, Bhopal, I.L.R. (1982) M.P. 378 (DB)*

– **Sections 271(1)(a), 271(2), 14(2)(a) and 26(4)** – Assessee not filing return of his income within time or even after notice under section 22(2) – Pendency of application seeking renewal of registration of partnership firm – No ground to postpone filing of return by assessee – Section 271(2) – Partnership firm distinct entity from persons constituting it – Imposition of penalty on assessee validity of – Theory of double punishment inapplicable – Section 271(1)(a) – Quantum of penalty under : *Amritlal Somanbhai Vs. Commissioner of Income Tax, Bhopal, I.L.R. (1982) MP 378 (DB)*

– **Section 271(2)** Partnership firm distinct entity from persons constituting it – Imposition of penalty on assessee validity of – Theory of double punishment inapplicable: *Amritlal Somanbhai Vs. Commissioner of Income Tax, Bhopal, I.L.R. (1982) M.P. 378 (DB)*

– **Rules under Section 59** – Rules 3 and 4 – Rule 3 – Application under – Conditions under which it can be dismissed – Section 26-A – Existence of firm established – Mere deviation from terms of partnership – Not sufficient ground for not registering the firm: *The Commissioner of Income-Tax, MP. Nagpur and Bhandara, Nagpur, Vs. Messrs Madanlal Chhaganlal, I.L.R. (1964) M.P. 327 (DB)*

– **Rules 3 and 4 – Rule 3** – Application under – Conditions under which it can be dismissed: *The Commissioner of Income-Tax, M.P. Nagpur and Bhandara, Nagpur, Vs. Messrs Madanlal Chhaganlal, I.L.R. (1964) M.P. 327 (DB)*

– **Rule 6 of the Rules contained in the Schedule to the Act** – Amount not shown as an item of expenditure in arriving at the balance in the annual account – No question of adjustment under the Rule arises: *The Central India Insurance Co. Ltd., Indore Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 889 (DB)*

– **Rule 6 of the Rules contained in the Schedule to the Act** – Provides for adjustment of the balance of profits – Effect of the rule – Amount not shown as an item of expenditure in arriving at the balance in the annual account – No question of adjustment under the Rule arises: *The Central India Insurance Co. Ltd., Indore Vs. The*

Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 889 (DB)

Income Tax Act, Indian (XLIII of 1961)

– New Act creates liability for action under section 147 when escaped assessment amounts to Rs. 500,000/- or more – Section 297 provides for enforcement of the liability: *Balchand, Vs. The Income-Tax Officer, Sagar, I.L.R. (1968) M.P. 27 (DB)*

– **Proceeding for assessment under 1922 Act** – Is Proceeding under 1961 Act itself: *The Commissioner of Income Tax, M.P. Vs. Shri Champalal Sukhram, Harsud, I.L.R. (1974) M.P. 1026 (DB)*

– **and General Sales-Tax Act M.P. 1958 (II of 1959), Section 17(3)** – Amount of additional sales-tax-paid by assessee – Is allowable deduction: *Commissioner of Income-Tax Jabalpur Vs. M/s S.S. Ratanchand Bholanath, Jahangirabad, Jabalpur, I.L.R. (1986) M.P. 361 (DB)*

– **and General Sales-Tax Act M.P. 1958 (II of 1959), Section 17(3)** – Amount of penalty paid by assessee for not filing return within prescribed time – Is not a allowable deduction – Assessee's conduct not relevant: *Commissioner of Income-Tax Jabalpur Vs. M/s S.S. Ratanchand Bholanath, Jahangirabad, Jabalpur, I.L.R. (1986) M.P. 361 (DB)*

– **and General Sales-Tax Act M.P. 1958 (II of 1959), Section 17(3)** – Business expenditure – Allowable deduction – Amount of additional sales-tax paid by assessee – Is allowable deduction – Amount of penalty paid by assessee for not filing return within prescribed time – Is not a allowable deduction – Assessee's conduct not relevant : *Commissioner of Income-Tax Jabalpur Vs. M/s S.S. Ratanchand Bholanath, Jahangirabad, Jabalpur, I.L.R. (1986) M.P. 361 (DB)*

– **(as amended), Section 276-B** – Allegation of not deducting tax at source – Only penalty is provided and not prosecution – Complaint not tenable: Income Tax Act, Indian (XLIII of 1961) (as amended), Section 276-B - Allegation of not deducting tax at source - Only penalty is provided and not prosecution - Complaint not tenable: *Kaushal Kishore Ramkrishna Biyani Vs. Union of India, I.L.R. (2002) M.P. 770*

– **Deductions under Section 80-HH(I) and 80-I(1)** – Permissible after computation of Gross Total Income in accordance with provisions of Section 80-B(5) – Power subsidy – Whether Capital Receipts or Revenue Receipts – Subsidy is not paid to meet the cost of any asset of the assessee but it is given as an incentive for setting up industrial units in backward areas and formula contained for grant of subsidy is a measure for determining the amount of subsidy: *Commissioner of Income Tax Vs. M/s Raja Ram Maize Products, Rajnandgaon, I.L.R. (1998) M.P., 351 (D.B.)*

– **Minor incapable of entering into agreement for partition** – Documents evidencing partition not signed by guardian of minor – Minor cannot be held to be represented in the partition: *Madanlal Vs. Commissioner of Income Tax, Bhopal*, I.L.R. (1980) M.P. 691 (DB)

– **Partnership firm** – Continuance of registration – When can be refused in case of minor partner's becoming fullfledged partner on attaining majority: *The Commissioner of Income Tax, M.P. - II Bhopal, Vs. M/s. Durgaprasad Rajaram, Sagar*, I.L.R. (1983) M.P. 653 (DB)

– **H.U.F. Firm** – Partial partition between two brothers in respect of Hindu Undivided family funds – Minor son of one brother also given a share – Whether inference of partition between one brother and his minor son can be drawn – Minor incapable of entering into agreement for partition – Documents evidencing partition not signed by guardian of minor – Minor cannot be held to be represented in the partition – Partnership firm – Minor admitted to the benefits for partnership – Contribution by minor towards capital of partnership firm came from Hindu Undivided Family – Father looking after the interest of his minor son in the partnership – Inference whether share income of minor son from partnership firm could be included in the total income of assessee Hindu Undivided Family – Section 147(b) – Notice sent and served on right person though mentioning wrong file number and he acted upon it – Order of Income Tax Officer not vitiated: *Madanlal Vs. Commissioner of Income Tax, Bhopal*, I.L.R. (1980) M.P. 691 (DB)

– **“Salary”** – Is periodical payment for services other than mechanical – Word “Perquisite” – Signified additional benefit in addition to periodical payment – “Compensatory allowance” – Neither salary nor perquisite – Implication of ‘perquisite’ and “compensatory allowance” – “Compensatory allowance” – Is not an additional salary: *Shri Bishambhar Dayal, Retired Chief Justice, Madhya Pradesh High Court Vs. The Commissioner of Income-Tax, M.P. Bhopal*, I.L.R. (1980) M.P. 80 (DB)

– **Schedule II, Rule 16** – Suit under – Does not relate to property – Civil Procedure Code – Section 151 – Court has power to grant injunction even when order 39, rule 1, Civil procedure code does not apply: *Ramakant Gupta Vs. Union of India*, I.L.R. (1975) M.P. 527

– **Schedule II, Rule 56** – Power to adjourn sale – Tax Recovery Officer has such powers: *Anshiram Vs. The Tax recovery Commissioner (Inc.-Tax), Madhya Pradesh-II Bhopal*, I.L.R. (1982) M.P. 1047 (DB)

– **Schedule II, Rule 61** – Objection as to non-issue of notice to defaulter for drawing up proclamation of sale can be raised only by an application – Absence of such application – Confirmation of sale will be automatic: *Anshiram Vs. The Tax recovery Commissioner (Inc.-Tax) Madhya Pradesh-II Bhopal*, I.L.R. (1982) M.P. 1047 (DB)

– **Schedule II, Rule 60 to 63** – Recovery proceedings – Auction sale – Confirmation thereof – Sale taking place on 11-2-72 – Tribunal Granting interim stay on 1-3-72 for the disputed amount of tax only – Confirmation of sale cannot be refused – Rule 61 – Objection as to non-issue of notice to defaulter for drawing up proclamation of sale can be raised only by an application – Absence of such application – Confirmation of sale will be automatic – Rule 56 – Power to adjourn sale – Tax Recovery Officer has such powers: *Anshiram Vs. The Tax recovery Commissioner (Inc.-Tax) Madhya Pradesh-II Bhopal*, I.L.R. (1982) M.P. 1047 (DB)

– **Sub-Section (19-A)** of Section 10 and Merged States (Taxation Concession) order 1949, Sub Section 4(IV) to clause 13 – Entire Income from place declared to be official residence of former Ruler is exempted from Income-Tax and not the portion of it in occupation of the former Ruler – Interpretation of Statute – Provisions granting exemption from tax – Has to be construed liberally: *The Commissioner of Income-Tax, Jabalpur Vs. Shri Bharatchandra Bhanjdeo, Jagdalpur*, I.L.R. (1985) M.P. 375 (DB)

- **Subsidy**– Subsidy is not paid to meet the cost of any asset of the assessee but it is given as an incentive for setting up industrial units in backward areas and formula contained for grant of subsidy is a measure for determining the amount of subsidy: *Commissioner of Income Tax Vs. M/s Raja Ram Maize Products, Rajnandgaon*, I.L.R. (1998) M.P., 351 (D.B.)

– **Words “Agricultural produce” in the Act** – To have the meaning as commonly understood: *The Commissioner of Income Tax, Madhya Pradesh Vs. M/s Kisan Co-operative Rice Mills, Mahasumund* I.L.R. (1979) M.P. 382 (DB)

– **Sections 2(7), 2(45) and 5** – Total income as defined in Section 2(45) of the Assessee under Section 2(7) is the total amount referred in Section 5: *Commissioner of Income Tax, Jabalpur Vs. Shri Nanakram*, I.L.R. (1992) M. P. 151 (D.B.)

Sections 2(7), 2(45), 5, 64(i)(iii), 139, 256(1) and Taxation Laws (Amendment) Act (XLI of 1975) – Reference – Total income as defined in Section 2(45) of the Assessee under Section 2(7) is the total amount referred in Section 5 – An ‘assessee’ defined under Section 2(7) while filing return under Section 139 is bound to include income arising to his minor children on their admission to the benefit of partnership firm notwithstanding the fact that the assessee has less than minimum taxable income or no income at all other than the income included under Section 64(i) (iii) of the Act – Object of introducing by Taxation Laws Amendment Act, 1976 is to check tax avoidance by diverting income to the minor children by admitting them to the partnership in the firm – Interpretation of statute – Any interpretation that may defeat the intention of legislative should be avoided – Reference u/s 256(1) answered upholding the order of I. T. O. and that of the Appellate Assistant Commissioner: *Commissioner of Income Tax, Jabalpur Vs. Shri Nanakram*, I.L.R. (1992) M. P. 151 (D.B.)

– **Sections 2(7) and 139** – An ‘assessee’ defined under Section 2(7) while filing return under Section 139 is bound to include income arising to his minor children on their admission to the benefit of partnership firm notwithstanding the fact that the assessee has less than minimum taxable income or no income at all other than the income included under Section 64(1)(iii) of the Act: *Employers In Relation To M/s. Anand Cinema of M/s. Maheshwari And Bernard Vs. Mohan Tiwari I.L.R. (1992) M. P. 79(D.B.)*

– **Section 2 (13) – Definition is inclusive** – Words used are wide – Organised money – Lending activity would be business – Deposit of share capital in current account or in deposit in Bank – Would not be money-lending – Things to be considered in determining whether activity of the company is in the course of carrying on business – Deposit of share money in Bank – Not an investment according to the objects of the association – Income from the deposit in Bank – Not income from business, but is income from other sources – Chargeable to income tax under Section 56 of the Act: *The Madhya Pradesh State Industries Corporation Ltd. Indore Vs. The Commissioner of Income Tax M.P., I.L.R. (1973) M.P. 725 (DB)*

– **Section 2 (13)** – Deposit of share money in Bank – Not an investment according to the objects of the association: *The Madhya Pradesh State Industries Corporation Ltd. Indore Vs. The Commissioner of Income Tax M.P., I.L.R. (1973) M.P. 725 (DB)*

– **Section 2 (13)** – Organised money lending activity would be business – Deposit of share capital in current account or in deposit in Bank – Would not be money lending: *The Madhya Pradesh State Industries Corporation Ltd. Indore Vs. The Commissioner of Income Tax M.P., I.L.R. (1973) M.P. 725 (DB)*

– **Section 2 (13)** – Things to be considered in determining whether activity of the company is in the course of carrying on business: *The Madhya Pradesh State Industries Corporation Ltd. Indore Vs. The Commissioner of Income Tax M.P., I.L.R. (1973) M.P. 725 (DB)*

– **Section 2(15)** – Construction of memorial by trust with object of welfare, enlightenment and benefit of the beneficiary public – Object would be of “general public utility” and trust would be a charitable trust: *Mahakoshal Shaheed Smarak Trust Jabalpur Vs. The Commissioner of Income- Tax, Madhya Pradesh-II, I.L.R. (1983) M.P. 60 (DB)*

– **Section 2(15)** – The expression “charitable purpose” – Connotation of – The words “not involving the carrying on of any activity for profit” – Construction of – Construction of memorial by trust with object for welfare, enlightenment and benefit of the beneficiary public – Object would be of “general public utility” and trust would be a charitable trust: *Mahakoshal Shaheed Smarak Trust Jabalpur Vs. The Commissioner of Income- Tax, Madhya Pradesh-II, I.L.R. (1983) M.P. 60 (DB)*

– **Section 2-A, 153, 256(2) and 263** – Order of assessment remained as it is, so also the appellate order un-disturbed by the order passed under Section 263 – Bar of limitation would not come into effect – No question of law arises calling for statement of the case: *M.P. Rajya Van Vikas Nigam Ltd., Bhopal Vs. Commissioner of Income Tax, Bhopal, I.L.R.. (2003) M.P. 523 (DB)*

– **Section 11 – Trust** – Recitals in Trust deed demonstrating that trust is created for the religious benefit of its creators and their children – Trust does not become a public religious or charitable one – Its income not exempt from Income-tax: *Shri Gopal Lalji Ka Mandir Trust, Bhopal Vs. Commissioner of Income-Tax, M.P.-I, Bhopal, I.L.R..(1983) M.P. 413 (DB)*

– **Section 12-A and Income- tax Rules, 1962, Rule 17-A** – Petitioner claiming itself to be a public religious trust applying for registration under section 12-A and filing documents through not evidencing creation of trust but affording logical basis for inferring creation trust – Registration cannot be refused: *Shri Laxminarayan Maharaj Vs. Commissioner of Income Tax, M.P.-II, Bhopal, I.L.R. (1983) M.P. 684 (DB)*

– **Section 12-A and Income- tax Rules, 1962, Rule 17-A** – The Expression “documents evidencing the creation of the trust” in Rule 17-A – Cannot be limited to documents directly proving creation of trust – Also embrace without it documents affording logical basis of inferring creation of the trust – Petitioner claiming itself to be a public religious trust applying for registration under section 12-A and filing documents though not evidencing creation of trust but affording logical basis for inferring creation of trust – Registration cannot be refused: *Shri Laxminarayan Maharaj Vs. Commissioner of Income Tax, M.P.-II, Bhopal, I.L.R. (1983) M.P. 684 (DB)*

– **Sections 22 and 28** – Losses incurred by an assessee in the earlier year - When can be carried forward and set off: *M/s Rajkumar Oil Mills (P) Ltd. Damoh Vs. Commissioner of Income tax, M.P.-II, Bhopal, I.L.R. (1983) M.P. 290 (DB)*

– **Sections 22 and 28** – Rental income accruing to the assessee – Whether assessable as income from house property or income from business - Text for determination of – Revenue Expenditure – Expenses incurred for the upkeep of plant and machinery – When can be treated as Revenue Expenditure allowable as a deduction – Losses incurred by an assessee in the earlier year – When can be carried forward and set off: *M/s Rajkumar Oil Mills (P) Ltd. Damoh Vs. commissioner of Income tax, M.P.-II, Bhopal, I.L.R. (1983) M.P. 290 (DB)*

– **Sections 22 and 28** – Revenue Expenditure – Expenses incurred for the upkeep of plant and machinery – When can be treated as Revenue expenditure allowable as a deduction: *M/s Rajkumar Oil Mills (P) Ltd. Damoh Vs. commissioner of Income tax, M.P.-II, Bhopal, I.L.R. (1983) M.P. 290 (DB)*

– **Section 23(3)** – Benefit thereunder – When available to assessee: *Shikharchand Jain Vs. Commissioner of Income Tax, M.P. Bhopal, I.L.R., (1983) M.P. 295 (DB)*

– **Sections 28 and 2(3)** – Assessee carrying on business of exploitation of forest giving short term leases to other persons and recovering royalty from them – Constitutes business activity assessable under these sections: *The Commissioner of Income-Tax, M.P. II, Bhopal Vs. M/s Khairagarh Timber Traders Khairagarh, I.L.R. (1982) M.P. 1002 (DB)*

– **Sections 28 and 2(13)** – The term “Business” as defined in section 2(13) – Meaning and scope of – Series of transactions not essential to constitute ‘Business’ – Assessee carrying on business to exploitation of forest giving short term leases to other persons and recovering royalty from them – Constitutes business activity assessable under section 28: *The Commissioner of Income-Tax, M.P. II, Bhopal Vs. M/s Khairagarh Timber Traders Khairagarh, I.L.R. (1982) M.P. 1002 (DB)*

– **Sections 28, 22 and 56** – Business Income – Meaning of – Accommodation constructed by assessee and let out to various Govt. Departments for facilitating the assessee’s business – Furniture also let out for furnishing of such accommodation – Letting of furniture is subservient and incidental to lease of accommodation – Income derived from letting out of furniture – Is business Income – Not liable to be assessed as income from property or from other sources – But liable to be assessed as business income – Section 56 (2), clause (iii) – Word “inseparable” in – Connotation of: *Additional Commissioner of Income Tax, M.P. Bhopal Vs. The National Newsprint and Paper Mills Ltd., Nepalagar, I.L.R. (1980) M.P. 901 (DB)*

– **Sections 30 and 37** – Amount advanced for financing construction of building – Amount not deductible: *M/s Noshirwan And Co. Pvt. Ltd., Indore Vs. The Commissioner of Income Tax, MP., I.L.R. (1976) M.P. 892 (DB)*

– **Sections 30 and 37** – Building being made fit for use – Building cannot be said to be in use either actively or passively: *M/s Noshirwan And Co. Pvt. Ltd., Indore Vs. The Commissioner of Income Tax, M.P., I.L.R. (1976) M.P. 892 (DB)*

– **Sections 30 and 37** – Deduction of rent – Allowable if premises used for purposes of business – Amount advanced for financing construction of building – Amount not deductible – Building being made fit for use – Building cannot be said to be in use either actively or passively – Section 37 – Not applicable to expenditure of nature described in Section 30: *M/s Noshirwan And Co. Pvt. Ltd., Indore Vs. The Commissioner of Income Tax, M.P., I.L.R. (1976) M.P. 892 (DB)*

– **Sections 31, 37** – Capital Expenditure and Revenue Expenditure – What is *Commissioner of Income Tax Jabalpur Vs. Mohd. Ishaq, Mohd. Gulam, Katni, I.L.R. (1994) M.P. 500(D.B.)*

– **Sections 31, 37-Revenue Expenditure** – Petitioner carrying on business of manufacture and sale of bidis – Changed the petrol engine of jeep with that of diesel engine in order to reduce expenditure – Expenditure incurred by Assessee for replacement of petrol engine by diesel engine was revenue expenditure as it was for running business – Assessee entitled to claim benefit under Section 31: *Commissioner of Income Tax Jabalpur Vs. Mohd. Ishaq, Mohd. Gulam, Katni, I.L.R. (1994) M.P. 500 (D.B.)*

– **Section 32(5)** – Person proceeded against alone and not person claiming to be owner of seized articles are entitled to notice under the section: *Girjashanker Vs. Union of India, I.L.R. (1979) M.P. 1045 (DB)*

– **Section 36 (i) (ii)** – Allowable deductible expenditure – Commission paid to Manager of Assessee – Company not for his extra Service by virtue of any technical education of extra ordinary skill in business – Not deductible expenditure under Section 36 (i) (ii): *M/s Anand Jyoti Printers Pvt. Ltd., Jabalpur Vs. The Commissioner of Income Tax, Jabalpur, I.L.R. (1987) M.P. 328 (DB)*

– **Section 37** – Allowable Expenditure – Amount allowed as discount to subscribers of bonds issued by Assessee – Corporation is allowable expenditure – Such discount to be spread out proportionately over number of year for which bonds are issued – Section 125-A, Sub-Section(1) and Section 263 – Order passed by Inspecting Assistant Commissioner under Sub-Section (1) of Section 125-A – Are revisable by Commissioner of Income-tax under Section 263 of the Act: *M.P. Financial Corporation Indore Vs. Commissioner of Income Tax, Bhopal, I.L.R. (1987) M.P. 662 (DB)*

– **Section 37** – Not applicable to expenditure of nature described in Section 30: *M/s Noshirwan And Co. Pvt. Ltd., Indore Vs. The Commissioner of Income Tax, M.P., I.L.R. (1976) M.P. 892 (DB)*

– **Section 37** – Payment to a company for getting the services of its servant for the benefit of the business of the payer – Is capital expenditure – Not liable to deduction for ascertainment of Income-tax: *M/s New Precision (India) Private Ltd., Dewas Vs. The Commissioner of Income Tax, M.P., I.L.R. (1974) M.P. 534 (DB)*

– **Section 37(1)** – Business expenditure – Penalty imposable under Section 8(2) of General Sales Tax Act, Madhya Pradesh, 1958 or under section 10-A of Central sales Tax Act, 1956 when equal to the difference between tax payable at the full rate and concessional rate – Real nature of – Becomes business expenditure – Liable to be allowed as such under section 37 (1): *M/s Simplex structural works Jabalpur Vs. The Commissioner of Income-Tax, M.P.II, Bhopal, I.L.R. (1982) M.P. 742 (DB)*

– **Section 37 (1)** – Business expenditure – What amounts are excluded as goods supplied by the assessee to G.C.F. under a Contract for the purpose of earning profit –

G.C.F. rejecting some goods as not in accordance with specification and in accordance with term of the contract obtaining its supply from another source and recovered Rs. 7364/- as expenditure incurred over it – Assessee entitled to deduction of 7364/- as business expenditure: *M/s Mediwala & Co. Jabalpur Vs. Commissioner of Income Tax, Jabalpur, I.L.R. (1987) M.P. 66 (DB)*

– **Section 37(1)** – Extraction of compulsory donation – Opposed to public policy: *The Additional Commissioner of Income Tax, M.P. Bhopal Vs. M/s Badrinarayan Shrinarayan, Shajapur, I.L.R. (1979) M.P. 732 (DB)*

– **Section 37 (1)** – Nature of expenditure to fall within the Section: *The Additional Commissioner of Income-Tax, M.P. Bhopal Vs. M/s Kuber Singh Bhagwandas, Bhopal, I.L.R. (1980) M.P. 1000 (FB)*

– **Section 37(1)** – Requirements of the provision: *The Additional Commissioner of Income Tax, M.P. Bhopal Vs. M/s Badrinarayan Shrinarayan, Shajapur, I.L.R. (1979) M.P. 732 (DB)*

– **Section 37(1)** – Words “for the purposes of business” in – Have particular meaning – Do not include of voluntary donation made by assessee for purposes of charity: *The Additional Commissioner of Income Tax, M.P. Bhopal Vs. M/s Badrinarayan Shrinarayan, Shajapur, I.L.R. (1979) M.P. 732 (DB)*

– **Section 37, 256(1)** – Rs. 5000/- imposed as fine – Tribunal not justified in giving deduction – Theft of goods – Goods not recovered – Tribunal justified in giving deduction: *Commissioner of Income Tax, Jabalpur Vs. M/s Durga Jewellers, Bhilai, I.L.R. (1989) M.P. 561 (DB)*

– **Section 40-A(3)** and Rule 6 DD, Clause (J) and Circulars issued by the Central Board of Direct Taxes - Income Tax Officer and Commissioner of Income-Tax (Appeals) holding use of motor car for personal use of the partners of assessee firms and disallowing expenditure over it-Finding confirmed by the Tribunal – Is a pure finding of fact – No question of law involved for answer by the High court: *M/s Bhilai Motors, Raipur Vs. Commissioner of Income-Tax , M.P-II, Bhopal, I.L.R. (1984) M.P. 348 (DB)*

– **Section 40-A(3) and rule 6 - DD, Clause (J) and Circulars Issued by the Central Board of Direct taxes** – Income-tax Officer assessing estimated suppressed profit of the assessee on account of on money for out of turn supplies of vehicles to customers – Commissioner brushing aside that finding of the I.T.O. on wrong premises – Assessee filing relevant documents before Tribunal for the first time – Nature of order which ought to have been passed by the Tribunal under such Circumstances – However no question of law involved in it – High Court need not answer the question: *M/s Bhilai Motors, Raipur Vs. Commissioner of Income-Tax , I.L.R. (1984) M.P. . 348 (DB)*

– **Section 40-A(3) and rule 6** - DD, Clause (J) and Circulars issued by the Central Board of Direct Taxes – Payment of amount of expenditure exceeding Rs. 2500/- When can be made in cash – Whether such payment in cash is made in exceptional circumstances – Is a question of fact – No question of law arises for answer by the High Court Expenditure – Income Tax officer and Commissioner of Income-tax (Appeals) holding use of motor car for personal use of the partners of assessee firm and disallowing expenditure over it – Finding confirmed by the Tribunal – Is a pure finding of fact – No question of law involved for answer by the High Court Income Tax Officer assessing estimated suppressed profits of the assessee on account of on money for out of turn supplies of vehicles to customers – Commissioner brushing aside that finding of the I.T.O. on wrong Premises- Assessee filing relevant documents before Tribunal for the first time – Nature of order which ought to have been passed by the Tribunal under such circumstances – However no question of law involved in it – High Court need not answer the question: *M/s Bhilai Motors, Raipur Vs. Commissioner of Income-Tax*, I.L.R. (1984) M.P. 348 (DB)

– **Sections 40 A (3), 158** – BB and 256 (1) – Reference – Undisclosed income – Confined to the period for which tax liability is determined on basis of material found in search and seizure – Income found below tax liability in the block period – Tribunal justified in allowing deduction – Income assessed on estimate basis applying net profit rate – Whole amount of transaction below permissible limit – Addition rightly deleted – Reference on in favour of assessing: *Commissioner of Income Tax, Jabalpur Vs. Shri Purshottamlal Tamrakar, Uchehra, Satna*, I.L.R. (2003) M.P. 625(DB)

– **Section 40(b)** – Allowable deduction – Partnership firm – Partner in representative capacity lending monies belonging to him individually to such firm interest paid to him is allowable deduction and no liable to be added back under section 40 (b): *The Commissioner of Income Tax, Jabalpur Vs. M/s Narbharam Popatbhai & Sons, Raipur*, I.L.R. (1987) M.P. 202 (FB)

– **Section 41(1)** – Trading liability allowed as business expenditure – Liability remitted in subsequent year – Remitted amount not taxable as income of the year remission, no account for the year, in which liability was allowed be reopened – Section 41(1) supersedes general principle – Section 170(2) – When can successor be taxed – Section 159 – Nature of the liability of a legal representative – Section 159(3) – Scope of: *The Commissioner of Income Tax, M.P., Nagpur and Bhandara, Nagpur Vs. M/s Hukumchand Mohanlal, Proprietor, Hira Laxmi, Ujjain*, I.L.R. (1970) M.P. 690 (DB)

– **Section 41(2)** – Partnership property – Partner's right therein – Nature of – Transfer of assets and liabilities of an assessee firm to a new firm with five common partners – Whether constitutes 'Sale' by the assessee firm in favour of new firm: *The*

Addl. Commissioner of Income-Tax M.P. Bhopal Vs. M/s Ramchand Daryanomal, Rewa, I.L.R. (1982) M.P. 831 (DB)

– **Section 41(2)** – Transfer of assets and liabilities of an assessee firm to a new firm with five common partners – Whether constitutes ‘Sale’ by the assessee firm in favour of new firm: *The Addl. Commissioner of Income-Tax M.P. Bhopal Vs. M/s Ramchand Daryanomal, Rewa, I.L.R. (1982) M.P. 831 (DB)*

– **Sections 41(2), 32(1) and 2(47)** – Allocation of some assets of partnership firm to the retiring partners in satisfaction of their shares in the partnership firm- does not amount to sale or transfer of those assets by firm in favour of outgoing partners – Difference between written down value of the assets so allocated to outgoing partners and value of their shares in the firm – Does not constitute profit and not liable to be taxed as profit under section 41(2): *The Addl. Commissioner of Income- Tax M.P. Bhopal Vs. M/s Agrawal Timber and Bans Co., Satna I.L.R. (1983) M.P. 590 (DB)*

– **Section 44 AB and 271 B** – Existing provisions in the Act and impugned provisions – Are not mutually exclusive: *M/s Mohan Trading Co. Jabalpur Vs. Union of India, I.L.R. (1986) M.P. 133 (DB)*

– **Sections 44AB and 271B** – Requirement of compulsory audit – Not an unreasonable burden on the bigger assessee: *M/s Mohan Trading Co. Jabalpur Vs. Union of India, I.L.R. (1986) M.P. 133 (DB)*

– **Section 44-AB and 271-B** and Constitution of India, Article 14 – Classification of assessee on the basis of ‘total sales’ and ‘gross receipts in professions’ – Compulsory audit of accounts is not discriminatory – Mere possibility of ‘accountant’ being preferred to legal practitioner for representing the assessee before assessing authority – Does not violate Article 14: *M/s Mohan Trading Co. Jabalpur Vs. Union of India, I.L.R. (1986) M.P. 133 (DB)*

– **Sections 44AB and 271 B** and Constitution of India, Articles 14 – Impugned provisions, object of – Even if object is not likely to be fully achieved – Provisions cannot be held unconstitutional: *M/s Mohan Trading Co. Jabalpur Vs. Union of India, I.L.R. (1986) M.P. 133 (DB)*

– **Section 44 AB and 271 B and Constitution of India, Articles 14 and 19(1)(g)** – Provisions are not violative of either Article 14 or Article 19(1)(g) – Classification of assessee on the basis of ‘total sales’ and gross receipts in professions – Compulsory audit of accounts is not discriminatory – Mere possibility of ‘accountant’ being preferred to legal practitioner for representing the assessee before assessing authority – Does not Violate Article 14 – Requirement or compulsory audit – Not an unreasonable burden on the bigger assessee – Existing provisions in the Act and impugned provisions – Are not mutually exclusive – Delay in filing return for inability in getting audit report – Liability

for interest and penalty not automatic – Impugned provisions, object of – Even if object is not likely to be fully achieved – Provisions cannot be held unconstitutional: *M/s Mohan Trading Co. Jabalpur Vs. Union of India*, I.L.R. (1986) M.P. 133 (DB)

– **Section 45 and Town-Improvement Trusts Act, M.P., 1960 (XIV of 1961), Sections 71(1), 71(2) and 2(47)** – Compulsory acquisition of land under section 71 – Relevant date of transfer of such land is the date of publication of notification under section 71(1) – Title vests in the trust on such date – Capital gains are chargeable to tax in the year of transfer even though compensation is determined and becomes payable in subsequent year: *Smt. Jeejabai Shinde Vs. Commissioner of Income Tax, M.P.-I Bhopal*, I.L.R. (1983) M.P. 719 (DB)

– **Sections 45 and 48** – ‘Capital gains’ Assessee retiring from partnership firm – Goodwill of firm valued in terms of money – Transfer of assessee’s share with goodwill of the firm to his account – Does not amount to ‘Capital gains’ – Not liable to be taxed under section 45 – Goodwill – Is a self created and self – generated asset of a firm – Concept of “profit and gains” inapplicable to it – Capital gains – Mode of computation prescribed under section 48 – Interpretation of taxing Statute – Two constructions possible – One to the benefit of assessee should be preferred: *Commissioner of Income Tax, M.P. Vs. Jaswantlal Dayabhai*, I.L.R. (1982) M.P. 104 (DB)

– **Section 48** – Capital gains – Mode of computation prescribed under section 48: *Commissioner of Income Tax, M.P. Vs. Jaswantlal Dayabhai*, I.L.R. (1982) M.P. 104 (DB)

– **Section 49** – Not applicable when property is self acquired property of the assessee: *Parmanand Bhai Patel Vs. Commissioner of Income Tax, Jabalpur*, I.L.R. (1984) M.P. 269 (DB)

– **Sections 55(1)(b), 49 and 256(1) and (2)** – Capital gain – Computation of – Assessee a partner in a partnership firm – Expenses incurred by the firm – Only those expenses coming to the share of the assessee – Are liable to be considered while computing capital gains – Section 49 – Not applicable when property itself acquired property of the assessee – Section 256(1) – High Court can answer only the question referred to it by the Tribunal – section 256(2) – Remedy of the assessee in case of refusal by the Tribunal to refer a question of law arising out of its order – Available under: *Parmanand Bhai Patel Vs. Commissioner of Income Tax, Jabalpur*, I.L.R. (1984) M.P. 269 (DB)

– **Section 56** – Income from the deposit in Bank – Not income from business, but is income from other sources – Chargeable to income- tax under Section: *The Madhya Pradesh State Industries Corporation Ltd. Indore Vs. The Commissioner of Income Tax M.P.*, I.L.R. (1973) M.P. 725 (DB)

– **Section 56 (2) clause (iii)** – word “Inseparable” in – Connotation of: *Additional Commissioner of Income Tax, M.P. Bhopal Vs. The National Newsprint and Paper Mills Ltd., Nepanagar, I.L.R. (1980) M.P. 901 (DB)*

– **Section 64** – The wife in partnership with Husband – Word “Income” in – Connotation of – Loss suffered by wife in – Has to be deducted in computing total income of the husband – Interpretation of taxing laws – Principles of – Use of subsequent legislation as a Parliamentary exposition of an earlier statute – Permissibility of: *The Commissioner of Income Tax, M.P. I, Bhopal Vs. Shri Badri Prasad Agrawal, I.L.R. (1982) M.P. 1086 (DB)*

– **Section 64** – Wife in partnership with Husband – Word “Income” in connotation of – Loss suffered by wife in – Has to be deducted in computing total income of the husband: *The Commissioner of Income Tax, M.P. I, Bhopal Vs. Shri Badri Prasad Agrawal, I.L.R. (1982) M.P. 1086 (DB)*

– **Section 64(1)(iii)** – Object of introducing by Taxation Laws Amendment Act, 1976 is to check tax avoidance by diverting income to the minor children by admitting them to the partnership in the firm: *Commissioner of Income Tax, Jabalpur Vs. Shri Nanakram, I.L.R. (1992) M.P. 151 (D.B.)*

– **Section 80(G)** – Provides for deduction of donation to certain funds, charitable institutions etc – Also applied to donations to the Govt. or any local authority – Donations made by assessee to Chief Minister Drought Relief Fund – Governed by the section and admissible as deduction to some extent – Assessee entitled to the benefit of the section when donations are disallowed as expenditure under section 37(1) of the Act – Section 37 (1) – Nature of expenditure to fall within the section: *The Additional Commissioner of Income-Tax, M.P. Bhopal Vs. M/s Kuber Singh Bhagwandas, I.L.R. (1980) M.P. 1000 (FB)*

– **Sections 80-G and 37(1)** – Assessee entitled to the benefit of Section 80 when donations are disallowed as expenditure under section 37(1) of the Act: *The Additional Commissioner of Income-Tax, M.P. Bhopal Vs. M/s Kuber Singh Bhagwandas, I.L.R. (1980) M.P. 1000 (FB)*

– **Section 80-G(2), Clause (a), Clause (v)** – Donation falling under this provision – Donation is voluntary to earn good will of Government – Not a business necessity or commercial expediency – Such sum allowable as voluntary donation: *The Additional Commissioner of Income Tax, M.P. Bhopal Vs. M/s Badrinarayan Shrinarayan, Shajapur, I.L.R. (1979) M.P. 732 (DB)*

– **Section 81(1)(b)** – Registered Co-operative Society doing its business through its members only – No outside labour employed no motive power used – Business being carried on in the premises of the Society – Is a Cottage Industry of the Society – Is

exempt from liability of Income Tax – Words “Cottage Industry” – Concept of – Widened by Parliament: *The Additional Commissioner of Income Tax, M.P. Bhopal Vs. M/s Chichli Brass Metal Workers Co-operative Society Ltd. Chichli, M.P., I.L.R. (1979) M.P. 566 (DB)*

– **Section 81(i)(c)** – Activities of marketing the Agricultural produce of its members – Meaning of: *The Commissioner of Income Tax, M.P. Nagpur Vs. M/s Kisan Co-operative Rice Mills, Mahasamund, I.L.R. (1979) M.P. 382 (DB)*

– **Section 81(i)(c)** – Conditions necessary to be fulfilled for claiming exemption under: *The Commissioner of Income Tax, M.P. Nagpur Vs. M/s Kisan Co-operative Rice Mills, Mahasamund I.L.R. (1979) M.P. 382 (DB)*

– **Section 81(i)(c)** – Paddy converted into rice – Rice still falls under the class of “Agricultural produce” – Words “Agricultural produce in Income- Tax Act – To have the meaning as commonly understood – Section 81(i)(c) – Conditions necessary to be fulfilled for claiming exemption under – Activity of marketing the agricultural produce of its members - Meaning of – Construction of Taxing Statute – One has to look is what it clearly said and not to any intendment – No equity or presumption arises in tax matter – Legal effect of transaction – Not displaceable by probing into substance of matter equitable considerations are out of place: *The Commissioner of Income Tax, M.P. Nagpur Vs. M/s Kisan Co-operative Rice Mills, Mahasamund I.L.R. (1979) M.P. 382 (DB)*

– **Section 125-A**, Sub-Section (1) and Section 263 – Order passed by Inspecting Assistant Commissioner under Sub-Section (1) of Section 125-A – Are revisable by Commissioner of Income tax under Section 263 of the Act: *M.P. Financial Corporation, Indore Vs. Commissioner of Income Tax, Bhopal, I.L.R. (1987) M.P. 662 (DB)*

– **Section 131(1-A)** – Rule of last antecedent – The words in Section 131(1-A)”referred to in sub-section (1) of Section 132 before he takes action under clauses (i) to (v) of the sub-section” do not qualify the words, Director General, Director, Deputy Director, but only qualify the words “the authorized officer” – Order of Deputy Director of Income Tax authorizing DVO to conduct investigation – Justified – No interference in writ petition called for: *M/s. Classic Builder and Developers, Indore Vs. Union of India, Through Ministry of Finance, I.L.R. (2001) M.P., 346*

– **Section 131(1)(d)** – Notice under – Rightly issued to the assessee because Section 64 nowhere provides that declaration relating to explained income would also be taken correct: *Smt. Shashi Devi Vs. Income Tax Officer, Chhindwara, I.L.R. (2001) M.P., 310*

– **Section 131(1)(d)** – Powers under-Such power can be exercised by Dy. Director only in case of search and seizure u/s. 132: *M/s. Classic Builder and Developers, Indore Vs. Union of India, Through Ministry of Finance, I.L.R. (2001) M.P. , 346*

– **Sections 131(1), 131(1-A) 132, 133** – Information by petitioner in survey under Section 133 of the Act – Enquiry – Direction u/s. 131(1)(d) by Dy. Director to District Valuation Officer for investigation: *M/s. Classic Builder and Developers, Indore Vs. Union of India, Through Ministry of Finance, I.L.R. (2001) M.P., 346*

– **Section 132** – Object of provision of the section: *Pannalal Vs. Income tax Officer, Chhindwara, I.L.R..(1975) M.P. 486 (DB)*

– **Section 132 (1), Clauses (a) (b) and (c)** – Nothing in the provision to show that commissioner cannot issue authorization for search or seizure when he has knowledge about the things to be searched or seized – Object of provision of section 132 – Power under section 132(1)(a) can be exercised even if person in possession willing to part with possession – Section 132(1) (c) – Authorizes the seizure even when person in possession is unwilling to part with it – Not necessary that the thing must be discovered after search – Section 132 (1) (c) – Does not refer to possession of person who has not disclosed his income – But money, bullion etc, not disclosed must be wholly or partly of the income of property for purpose of income – tax – May be in possession of any persons – May be assessee himself or any other person: *Pannalal Vs. Income tax Officer, Chhindwara, I.L.R. (1975) M.P. 486 (DB)*

– **Section 132(1)(a)** – Power under section 132(1)(a) can be exercised even if person in possession willing to part with possession: *Pannalal Vs. Income tax Officer, Chhindwara, I.L.R. (1975) M.P. 486 (DB)*

– **Section 132(1)(b) and (c)** – Search and seizure – Irregularities in – Whether can vitiate search and seizure: *Naraindas Vs. Commissioner of Income Tax Jabalpur I.L.R. (1983) M.P. 479 (DB)*

– **Section 132(1)(b) and (c)** – The expression ‘has reason to believe’ occurring therein – Connotation of – On receipt of detailed report from Assistant Director (Inspection and Intelligence, Commissioner recording his reasons for holding it to be a fit case for search and signing Authorisation in Form No. 45 – Belief of Commissioner cannot be said to be not reasonable or based on irrelevant information – Warrants of Authorisation cannot be said to be not in conformity with law – Search and Seizure – Irregularities in – Whether can vitiate search and seizure: *Naraindas Vs. Commissioner of Income Tax Jabalpur I.L.R. (1983) M.P. 479 (DB)*

– **Section 132(1)(c)** – Authorises the seizure even when person in possession is unwilling to part with it – Not necessary that the thing must be discovered after search: *Pannalal Vs. Income tax Officer, Chhindwara, I.L.R. (1975) M.P. 486 (DB)*

– **Section 132(1)(c)** – Does not refer to possession of person who has not disclosed his income – But money, bullion etc, not disclosed must be wholly or partly of the income or property for purpose of income-tax-May be in possession of any person-may be assessee himself or any other person: *Pannalal Vs. Income tax Officer, Chhindwara, I.L.R. (1975) M.P. 486 (DB)*

– **Section 132(5)** and Income – tax Rules, 1962 – Rule 11 – Remedy of person claiming to be owner of assets retained by Income tax Officer and who is not proceeded against under section 132(5) lies under Rule 11: *Girijashankar Vs. Union of India I.L.R. (1979) M.P. 1045 (DB)*

– **Section 132(5), 132(4-A) and 226(5)** and Income tax Rules, 1962, Rule 112A – Expression “person concerned” – Connotation of – Person proceeded against alone and not person claiming to be owner of seized articles are entitled to notice under section 132(5) – Remedy of person claiming to be owner of assets retained by Income Tax Officer and who is not proceeded against under section 132(5) lies under Rule 11 – Remedy of suit under Rule 11(6) available in case of rejection of claim: *Girijashankar Vs. Union of India I.L.R. (1979) M.P. 1045 (DB)*

– **Section 132(8)** – Retention of books of account and other documents seized by authorized officer beyond 180 days – Reasons must be recorded by authorize officer and approval of commissioner obtained within 180 days – Ex-post-facto approval by commissioner cannot validate retention beyond 180 days – Section 132(10) – Communication of approval of commissioner to the person from whom seizure made – Necessity of – Construction of statute – Provision making serious invasion on rights, privacy and freedom of tax-payer must be strictly construed: *M/s Sampatlal And Sons, Katni Vs. Commissioner of Income-Tax, Jabalpur, I.L.R. (1984) M.P. 158 (DB)*

– **Section 132(10)** – Communication of approval of commissioner to the person from whom seizure made – Necessity of: *M/s Sampatlal And Sons, katni Vs. Commissioner of Income-Tax, Jabalpur, I.L.R. (1984) M.P. 158 (DB)*

– **Section 132-A** – Issuance of authorization for seizure of such Bank Draft and consequent seizure do not stand the test of ‘taken into custody’ as envisaged in Section 132-A of the Act – Authorization so issued and consequent proceedings–Without jurisdiction: *M.S. Samta Construction Vs. Director of Income Tax (Investigation), I.L.R. (2000) M.P. 1339*

– **Section 132-A** – Provision enacted to remove difficulties in adjudicating powers of seizure – Section 132 A(1)(c) – Tendering Bank Draft to the Bank for encashment is not a legal obligation of the assessee nor does the Bank take the same in custody in relation to any legal proceeding: *M.S. Samta Construction Vs. Director of Income Tax (Investigation), I.L.R. (2000) M.P., 1339*

– **Section 132 -A and 132-B** – Provision for adjustment or refund of excess amount of tax paid with advance tax – Applicable only when the tax is paid by assessee voluntarily – Seizure of amount made during search in the premises of assessee by Income-tax authorities – Amount for property so seized cannot be said to be voluntary tender of tax – Petitioner not entitled to adjustment as prayed for particularly when no final order has been passed by the Income-tax Officer: *M/s. Ramjilal Jagannath, Raigarh Vs. Asstt. Commissioner of Income Tax (Investigation), Circle II (1), Raipur, I.L.R. (2001) M.P. 474.*

– **Sections 132, 132-A, 132-B, 234-B, 234-E** – Search and seizure in the premises of assessee – Enquiry pending as to liability of assessee pending – Prayer for adjustment of the seized amount towards advance tax turned down: : *M/s. Ramjilal Jagannath, Raigarh Vs. Asstt. Commissioner of Income Tax (Investigation), Circle II(1), Raipur, I.L.R. (2001) M.P. 474.*

– **Sections 133-B, 144, 264 and Constitution of India, Article 226** – Writ Petition – Tax Laws – Income Tax – Computation of – Must be based on some relevant material – Accounts submitted by Petitioner not considered – Assessment of tax by merely observing that “generally computation of 9% is reasonable in medicine shop business” is arbitrary and is not sustainable: *M/s Ramdas Jugani Vs. Commissioner of Income Tax Madhya Pradesh; I.L.R. (2005) M.P. 1164*

– **Sections 139(2) and 147** – Notice under Section 139(2) - Necessary in proceedings under section 147: *Deepchand Daga Vs. The Income Tax Officer, 'C' Ward, Raipur, I.L.R. (1971) M.P. 813 (DB)*

– **Sections 139(1), 139(2), 139(4), 139(5) and 153(1)** – Return – Filed under Section 139(1) & 139(2), obligatory while filed u/s 139 (4) voluntary – Difference between application for correction of original return & filing of subsequent or revised return, explained – Subsequent return u/s 139(4) – Permissible provided filed within period of limitation – Computation of period of limitation under section 139(4) – Starting point is the date of filing of last such return provided filed within the period of limitation: *Commissioner of Income Tax, Bhopal Vs. Dr N. Shrivastava, Bhopal, I.L.R. (1988) M.P. 585 (DB)*

– **Sections 142(1), 142(2) and 256** – Appeal – Claim of depreciation of the Truck owned by assessee – Truck used for assessee’s own business and not run or given on hire – Assessee entitled for 25% depreciation of the truck : *M/s. Kailash Chand Bagaria, Katni Vs. Commissioner of Income Tax Jabalpur, I.L.R. (2002) M.P. 189 (DB)*

– **Sections 143(1)(a)(i), 143(2), 143(3), 156 and 246(1)(a)** – Proceedings under Section 143(2) are in the nature of regular assessment – Can be taken even after

intimation under Section 143(1)(a)(i) – Assessment under Section 143(2) would be deemed to be assessment under Section 143(3) – Hence appealable under Section 246(1)(a): *M/s Kamal Textiles Vs. Income Tax Officer, Khandwa, I.L.R. (1992) M. P. 722(D.B.)*

– **Sections 143(1)(a) Clause (ii) to the provision** – Deduction claimed by assessee in income-tax return – Somewhat controvertial – Cannot be treated prima-facie disallowable: *Commissioner of Income Tax Vs. Shikharchand Jain, I.L.R. (2003) M.P. 1104 (D.B.)*

– **Sections 143(1)(a) and 260-A** – Appeal – Deduction claimed by assessee in income-tax return – Somewhat controversial – Cannot be treated prima-facie disallowable – Debatable issue – Expression of divergent views by the High Courts – Claim made by the assessee treated not to be free from debate or argument – Bound to be treated as debatable issue – Adjustment could not have been made by the Assessing Officer while passing order under Section 143(1)(a): *Commissioner of Income Tax Vs. Shikharchand Jain; I.L.R. (2003) M.P. 1104 (D.B.)*

– **Sections 144 and 271(1)(a)(b) and explanation** – Assessee to place material on record to show want of fraud, gross or willful neglect in his failure to return the disputed amount as his income – Proof of charge of gross or willful neglect is a finding of fact – No question of law involved: *Hansraj Agrawal Vs. Addl. Commissioner of Income Tax, Bhopal, I.L.R. (1982) M.P. 170 (DB)*

– **Sections 144 and 271(1)(a), (b) and (c) and explanation** – Best judgment Assessment – Also attract penalty under section 271(1)(c) – Proceedings under section 271(1)(c) are of penal nature – Whether particular amount is income of the assessee – Burden is on the department to prove it – Explanation of the assessee with respect to disputed amount found false – Still no inference is liable to be drawn that disputed amount represents assessee's income – Assessee to place material on record to show want of fraud gross or willful neglect in his failure to return the disputed amount as his income – Proof of charge of gross or willful neglect is a finding of fact – No question of law involved – Honest maintenance of regular account by the assessee – Rejection of book version and application of flat rate to the turnover Penalty not leviable – Case falling under section 271(i)(c) – Penalty to be computed by reference to the amount of income concealed: *Hansraj Agrawal Vs. Addl. Commissioner of Income Tax, Bhopal, I.L.R. (1982) M.P. 170 (DB)*

– **Sections 144 and 271(1)(a), (b) and (c) and explanation** – Explanation of the assessee with respect to disputed amount found false – Still no inference is liable to be drawn that disputed amount represents assessee's income: *Hansraj Agrawal Vs. Addl. Commissioner of Income Tax, Bhopal, I.L.R. (1982) M.P. 170 (DB)*

– **Section 144 and 271(1)(a), (b) and (c) and explanation** – Honest maintenance of regular account by the assessee – Rejection of book version and application of flat rate to the turnover – Penalty not leviable: *Hansraj Agrawal Vs. Addl. Commissioner of Income Tax, Bhopal*, I.L.R. (1982) M.P. 170 (DB)

– **Section 144 and 271(i)(a) (b) and (c) and explanation** – Whether particular amount is income of the assessee – Burden is on the department to prove it: *Hansraj Agrawal Vs. Addl. Commissioner of Income Tax, Bhopal*, I.L.R. (1982) M.P. 170 (DB)

– **Section 145** – Assessee maintaining accounts according to mercantile system – Profits are to be taxed on accrual basis – Feature of maintaining accounts in mercantile system – Stay – Mere filing of appeal – Does not operate as stay of order, Judgment and decree against which appeal is filed: *The Commissioner of Income Tax, M.P. Bhopal Vs. M/s Somabhai Gelabhai Ujjain*, I.L.R. (1979) M.P. 850 (DB)

– **Section 145** – Feature of maintaining accounts in mercantile system: *The Commissioner of Income Tax, M.P. Bhopal Vs. M/s Somabhai Gelabhai Ujjain*, I.L.R. (1979) M.P. 850 (DB)

– **Section 145(2) and Section 271(1)(C)** – Provision of Section 145(2) when attracted – Section 271(1)(c) – Penalty – When can be imposed – Burden on the department to prove ingredients for imposition of penalty: *M/s J.A. Trivedi Brothers, Balaghat Vs. The Commissioner of Income-Tax, Bhopal*, I.L.R. (1985) M.P. 187 (DB)

– **Section 147** – Does not require notice to state under which clauses notice is issued – Notice under Section 139(2) necessary in proceedings under Section 147 – Section 147 and 148 – Confer authority on officer to issue notice – Notice not invalid for failure to mention clauses under which it is issued – Section 147(a) – No full and true disclosure made – Case falls under this provision – Constitution of India – Article 226 – Point regarding bar of limitation provided by section 149(1)(b) not raised before Income-tax Officer – Point cannot be agitated in writ petition – Decision regarding starting of proceedings under section 147 rests with Income-tax Officer – Not matter for High Court in writ Jurisdiction: *Deepchand Daga Vs. The Income Tax Officer, 'C' Ward, Raipur*, I.L.R.. (1971) M.P. 813 (DB)

– **Section 147** – Reassessment proceedings under – Not open to assessee to reagitate items for which assessment was concluded in original assessment: *Dr. Ravishankar Tapa Vs. The Commissioner of Income-Tax, Jabalpur*, I.L.R. (1986) M.P. 740 (DB)

– **Section 147** – The expression “such income” used in – Refers only to items of escaped income – Section 147 – Reassessment proceedings under – Not open to

assessee to re-agitate items for which assessment was concluded in original assessment: *Dr. Ravishankar Tapa Vs. The Commissioner of Income-Tax, Jabalpur, I.L.R. (1986) M.P. 740 (DB)*

Sections 147 and 297 (2)(d) (ii) and General Clauses Act (X of 1897)– Section 6 – Proceedings under Section 34 (1-A) of the old Act barred when New Act came into force – Income-tax officer can start proceedings under section 147 – Section 6, General Clauses Act not applicable: *Balchand, Vs. The Income-Tax Officer, Sagar, I.L.R. (1968) M.P. 27 (DB)* –

Sections 147 and 148 – Confer authority on officer to issue notice – Notice not invalid for failure to mention clauses under which it is issued: *Deepchand Daga Vs. The Income Tax Officer, 'C' Ward, Raipur, I.L.R. (1971) M.P. 813 (DB)*

– **Sections 147 and 148(2)** – Provisions do not vest uncontrolled and arbitrary powers in I.T.O. – Provisions also not idle formality but are mandatory requirements of the statute – I.T.O. obliged to record reasons for issuing notice for re-opening the assessment – Material collected subsequently may be justiciable but not sufficiency of reason – No valid reason recorded – Addition made by I.T.O. on re-opening of assessment not justified: *Commissioner of Income Tax, Bhopal Vs. M/s. S.R. Construction, Bhopal, I.L.R. (2001) M.P. 1274 (D.B.)*

– **Sections 147, 148 and 256(2)** – Reference – Re-opening of assessment by Income Tax Officer on the basis of material collected subsequently – Sections 147 and 148(2) – Provisions do not vest uncontrolled and arbitrary powers in I.T.O. – Provisions also not idle formality but are mandatory requirements of the statute – I.T.O. obliged to record reasons for issuing notice for re-opening the assessment – Material collected subsequently may be justiciable but not sufficiency of reason – No valid reason recorded – Addition made by I.T.O. on re-opening of assessment not justified – Reference answered accordingly: *Commissioner of Income Tax, Bhopal Vs. M/s. S.R. Construction, Bhopal, I.L.R. (2001) M.P. 1274 (D.B.)*

– **Section 147 (a)** – No full and true disclosure made – Case falls under this provision: *Deepchand Daga Vs. The Income Tax Officer, 'C' Ward, Raipur, I.L.R. (1971) M.P. 813 (DB)*

– **Section 147(b)** – Notice sent and served on right person through mentioning wrong file number and be acted upon it – Order of Income Tax Officer not vitiated: *Madanlal Vs. Commissioner of Income Tax Bhopal, I.L.R. (1980) M.P. 691 (DB)*

– **Section 147 (b)** – Includes decisions of superior authority under the Income-tax Act – Reassessment proceedings – Income tax Officer competent to start reassessment proceedings on the basis of order of appellate authority: *The Commissioner of Income*

Tax, M.P. II, Bhopal Vs. M/s Anand Transport Co. Pvt. Ltd. , Raipur I.L.R. (1983) M.P. 175 (DB)

– **Section 147 (b)** – Word ‘information’ – Meaning of – Includes decisions of superior authority under the Income- tax Act – Reassessment proceedings – Income-tax Officer competent to start reassessment proceedings on the basis of order of appellate authority: *The Commissioner of Income Tax, M.P.-II, Bhopal Vs. M/s Anand Transport Co. Pvt. Ltd. , Raipur I.L.R. (1983) M.P. 175 (DB)*

– **Section 147(b)** – Reassessment – When can be made – Expression ‘In consequence of information in his possession and reason to believe’ – Connotation of – Objection in audit report and direction of C.I.T. – Reassessment cannot be made’: *M/s Yashwant Talkies, Indore Vs. Commissioner of Income-Tax, Bhopal, I.L.R. (1985) M.P. 700 (DB)*

– **Section 148** – Service of notice under – Procedural irregularity cannot be held to invalidate the assessment: *Dr. H.R. Rai Vs. The Commissioner of Income-Tax, M.P., Bhopal I.L.R. (1983) M.P. 348 (DB)*

– **Sections 148 and 297** – No proceeding pending under Section 34 of the repealed Act at the time of commencement of New Act – Issue of notice under Section 148 – Validity – Sections 147 and 297 (2)(d)(ii) and General Clauses Act, 1897, Section 6 – Proceedings under section 34 (1-A) of the old Act barred when New Act came into force – Income-tax Officer can start proceedings under section 147 – Section 6, General Clauses Act not applicable – New Act creates liability for action under section 147 when escape assessment amounts to Rs, 50,000/- or more – Section 297 provides for enforcement of the liability: *Balchand Vs. The Income – Tax Officer, Sagar, I.L.R. (1968) M.P. 27 (DB)*

– **Section 154** – Rectification proceedings – Jurisdiction of income – tax officer thereunder – Omission of the assessee to claim allowance under Section 35-B in the return filed by him – Still relief can be granted to the assessee under Section 154 – Duty of Income-Tax officer indicated: *Commissioner of Income Tax M.P. II, Bhopal Vs. M/s K.N. Oil Industries Raipur, I.L.R. (1982) M.P. 915 (DB)*

– **Sections 154 and 35-B** – Omission of the assessee to claim allowance under Section 35-B in the return filed by him – Still relief can be granted to the assessee under Section 154 – Duty of Income Tax officer indicated: *Commissioner of Income Tax M.P. II, Bhopal Vs. M/s K.N. Oil Industries Raipur, I.L.R. (1982) M.P. 915 (DB)*

– **Sections 154 and 245-M** – Rectification of mistakes in case of errors apparent on the face of record – Assessee withdrawing appeal as not competent according to view of law prevailing then – Is not a withdrawal under section 245-M – Subsequent change in view of law – Does not make it an error apparent on the face of record –

Assessee cannot claim re-hearing of appeal on ground of rectification of mistake: *M/s Mahakoshal Ceramics, Jabalpur Vs. The Commissioner of Income-Tax M.P. II, Bhopal, I.L.R. (1983) M.P. 232 (DB)*

– **Sections 154 and 245-M** – Subsequent change in view of law – Does not make it an error apparent on the face of record – Assessee cannot claim re-hearing of appeal on ground of rectification of mistake: *M/s Mahakoshal Ceramics, Jabalpur Vs. The Commissioner of Income-Tax M.P. II, Bhopal, I.L.R. (1983) M.P. 232 (DB)*

– **Section 159** – Nature of the liability of a legal representative: *The Commissioner of Income Tax, MP, Nagpur and Bhandara, Nagpur Vs. M/s Hukumchand Mohanlal, Proprietor, Hira Laxmi, Ujjain, I.L.R. (1970) M.P. 690 (DB)*

– **Section 159(3)** – Scope of: *The Commissioner of Income Tax, MP, Nagpur and Bhandara, Nagpur Vs. M/s Hukumchand Mohanlal, Proprietor, Hira Laxmi, Ujjain, I.L.R. (1970) M.P. 690 (DB)*

– **Sections 160 and 161(1)** – Settler executed trust deed conveying certain movable and immovable properties to trustees named therein – Assessment on Trust cannot be made as association of persons – Separate assessment should be made on managing trustee under section 161(1) in respect of income of the share of each of the beneficiaries: *Commissioner of Income-Tax, Jabalpur Vs. M/s Karelal Kundanlal, I.L.R. (1984) M.P. 115 (DB)*

– **Section 170(2)** – When can successor be taxed: *The Commissioner of Income Tax, MP, Nagpur and Bhandara, Nagpur Vs. M/s Hukumchand Mohanlal, Proprietor, Hira Laxmi, Ujjain, I.L.R. (1970) M.P. 690 (DB)*

– **Sections 179 and 263** – Reopening assessment – Power of Commissioner – Unless the order is erroneous or causing prejudice to the Revenue it is not open to the Commissioner to invoke jurisdiction and power as indicated by Section 263(1) of the Act : *Kesharimal Bapulal (HUF) Vs. Commissioner of Income Tax, I.L.R. (2002) M.P. 774 (DB)*

– **Section 184 (7) and Form No.12** – Continuation of registration for part of year, only in case of dissolution of firm – No question of continuation of registration when firm continues after change in Constitution: *M/s Ayodhya Prasad Parmeshwaridas, Raigarh Vs. Commissioner of Income-Tax, Jabalpur, I.L.R. (1988) M.P. 353 (FB)*

– **Section 187** – Assessee firm filing two returns i.e. One for the period before the change in Constitution of the Firm and another for the period after change but during one accounting period – Single assessment for the entire accounting period is liable to be made: *M/s Girdharilal Nannelal, Burhanpur Vs. Commissioner of Income Tax, M.P., Bhopal, I.L.R. (1983) M.P. 657 (FB)*

– **Section 187** – Expression “change in the constitution of the firm” in – Covers dissolution of partnership under general law – Old firm dissolved and succeeded by another firm with one or more partners of the old firm – Amounts to change in Constitution of firm within section 187(1) – Assessee – Firm filling two returns i.e. One for the period before the change in constitution of the firm and another for the period after change but during one accounting period – Single assessment for the entire accounting period is liable to be made – Construction of Statute – Specific provision in Income Tax Act – Not governed by different or contrary provision in general law: *M/s Girdharilal Nannelal, Burhanpur Vs. Commissioner of Income Tax, M.P., Bhopal, I.L.R. (1983) M.P. 657 (FB)*

– **Section 187 (1)** – Old firm dissolved and succeeded by another firm with one or more partners of the old firm – Amounts to change in Constitution of Firm within section 187(1): *M/s Girdharilal Nannelal, Burhanpur Vs. Commissioner of Income Tax, M.P., Bhopal, I.L.R. (1983) M.P. 657 (FB)*

– **Sections 187 and 188** – Partnership firm – Death or partner – Firm stands automatically dissolved under general law in the absence of a contract to the contrary – Section 187 inapplicable to such a case – It is a case of succession of firm governed by section 188 – Two separate assessments to be framed for two different periods prior and subsequent to death of partner – Consolidated assessment for the entire period cannot be made: *The Commissioner of Income-Tax Jabalpur Vs. M/s Kheta Sons & Co. Jabalpur, I.L.R. (1986) M.P. 238 (DB)*

– **Section 187(2), Proviso and 188** – Proviso applies retrospectively to assessment year 1975-76 – Partnership firm – Death of partner – Firm stands automatically dissolved under general law in the absence of a contract to the contrary – Section 187 inapplicable to such a case – It is a case of succession of firm governed by section 188 – Two separate assessments to be framed for two different periods prior and subsequent to death of partner – consolidated assessment for the entire period cannot be made: *The Commissioner of Income-Tax Jabalpur Vs. M/s Kheta Sons & Co. Jabalpur, I.L.R. (1986) M.P. 238 (DB)*

– **Section 193 (1)(2) and (4)** – Return not filed within time – Filed late in pursuance of Section 139 (4) – Provisions of Section 139 (1) (iii) attracted – Assessee liable to pay interest to the Revenue: *M/s Jagdish Rice Mills, Dhamtari, Raipur Vs. Commissioner of Income- Tax M.P., Bhopal, I.L.R. (1981) M.P. 989 (DB)*

– **Section 194-A** – Complaint filed against assessee for failure to deduct Tax at source – Before launching such prosecution no notice necessary – Section 279(2) – Compounding of an offence – Permissible either before or after the institution of proceedings – Sections 278-B and 2(35)(b) – Prosecution of a firm and its partners for non-deduction of Tax at source – Absence of designation will not vitiate prosecution of

firm or its partner: *M/s. Laxman Das Pranchand Vs. Union of India, I.L.R. (1999) M.P., 63*

– **Sections 214, 2 (40)** – Interest – Reference by Income Tax Appellate Tribunal – Interest payable on refundable amount upto regular assessment – What is Regular Assessment – Assessee paid advance tax during two accounting years – Income Tax Officer completed assessment and found advance tax paid in excess of tax assessed – In appeal taxable income further reduced and further amount became liable to be refunded – Held – When order of assessing officer modified by first, second or Revisional authority, it becomes final order binding on all parties – Original Order merges in order of superior authority – Assessment continues to be regular within meaning of Section 2(40) of Income Tax Act – Reference answered accordingly : *Commissioner of Income Tax, Jabalpur Vs. M/s Udhoji Shri Kishan Das, Satna I.L.R. (1994) M.P. 504(D.B.)*

– **Sections 214, 244, (1-A)** – If after assessment any amount becomes refundable the assessee is entitled to interest on refund but interest is not payable under section 214 and 244 (1-A) simultaneously: *Commissioner of Income Tax, Jabalpur Vs. M/s Udhoji Shri Krishandas, Satna; I.L.R. (2004) M.P. 440 (FB)*

– **Sections 214, 244, and 256** – Reference – Interest payable by Government and Interest on refund where no claim is needed – ‘Regular assessment’ means the first or the original assessment by the Assessing Officer and not the revised assessment pursuant to appellate order – ‘Advance tax’ is a tax paid by assessee before regular assessment and on assessment the amount loses its character of advance tax – If after assessment any amount becomes refundable the assessee is entitled to interest on refund but interest is not payable under sections 214 and 244 (1-A) simultaneously: *Commissioner of Income Tax, Jabalpur Vs. M/s Udhoji Shri Krishandas, Satna; I.L.R. (2004) M.P. 440 (FB)*.

– **Section 217(1-A)** – Charging of interest under section 217(1-A) of the Act – No discretion with the authorities to waive or reduce the rate of interest – Assessee has no right of appeal against it: *M/s Vineet Talkies, Jabalpur Vs. Commissioner of Income-Tax, I.L.R. (1984) M.P . 233 (DB)*

– **Sections 217(1-A), 139 and 215** – Distinction between – Charging of interest under section 217(1-A) of the Act – No discretion is the authorities to waive or reduce the rate of interest – Assessee has no right of appeal against it: *M/s Vineet Talkies, Jabalpur Vs. Commissioner of Income-Tax, I.L.R. (1984) M.P . 233 (DB)*

– **Section 220 (2)** – Levy of higher rate of interest permissible: *Gwalior Rayon Silk Manufacturing (Weaving) Company Limited, Gwalior Vs. Income – Tax Officer, Indore, I.L.R. (1973) M.P. 49 (DB)*

– **Section 220 (2)** – No power in Income- tax officer to levy interest at a rate lower than that mentioned in sub-section: *Gwalior Rayon Silk Manufacturing*

(Weaving) Company Limited, Gwalior Vs. Income – Tax Officer, Indore, I.L.R. (1973) M.P. 49 (DB)

– **Section 220 (2) as amended by Finance Act (X of 1965)** – Applicability of – Section 220 (3) – Does not absolve assessee from payment of interest when time is extended or payment allowed to be made by installments – No power in Income tax officer to levy interest at a rate lower than that mentioned in sub section – Levy of higher rate of interest permissible: *Gwalior Rayon Silk Manufacturing (Weaving) Company Limited, Gwalior Vs. Income – Tax Officer, Indore, I.L.R. (1973) M.P. 49 (DB)*

– **Section 220 (3)** – Does not absolve assessee from payment of interest when time is extended or payment allowed to be made by installments: *Gwalior Rayon Silk Manufacturing (Weaving) Company Limited, Gwalior Vs. Income – Tax Officer, Indore, I.L.R. (1973) M.P. 49 (DB)*

– **Sections 234-B and 234-E** – Assessee liable to pay interest in the event of deferment in payment of tax irrespective of seizure of amount during search – Petitioner not entitled to any relief: *M/S. Ramjilal Jagannath, Raigarh Vs. Asstt. Commissioner of Income Tax (Investigation), Circle II (1), Raipur, I.L.R. (2001) M.P. 474.*

– **Section 240** – Claim for refund of tax – No assessment order within time limit provided under Section 153 – Claim unsustainable: *Chandra Mohan Vs. Union of India, I.L.R. (1998) M.P. 648*

– **Sections 246(n), 237, 239 and 240** – Order refusing refund of tax passed by Income Tax Officer – Appeal under Section 246(n) maintainable: *Smt. Shantibai Vs. Commissioner of Income-Tax, Jabalpur, I.L.R. (1984) M.P. 356 (DB)*

– **Sections 246(n), 237, 293 and 240** – Refund – Order passed by Income Tax Officer refusing refund of tax deposited under provisional assessment - On cancellation of regular assessment by the Tribunal and consequential order passed by Income Tax Officer holding revised income as nil – Order falls under section 237 – Income Tax Officer required to make refund of tax under Section 240 – Provisions of Section 239 not attracted – Order refusing refund of tax passed by Income tax Officer – Appeal under Section 246(n) Maintainable: *Smt. Shantibai Vs. Commissioner of Income-Tax, Jabalpur, I.L.R. (1984) M.P. 356 (DB)*

– **Section 256** – Allowable deductions from income – Assessee obtaining loan from Government – Rate of interest and terms of loan not settled when loan advanced – Government fixing rate of interest payable from 1949 to 1957 by assessee and

communicated to assessee on 28.2.52 – Assessee represented against terms of loan and rate of interest on 14.5.57 – Government decided to convert amount of interest accruing on loan into equity shares – Whether assessee was entitled to treat liability of interest as contingent liability till May 1957 – Assessee claiming whole amount of interest payable on loans in accounting years 1949-50 to 1956-57 as allowable deductions from income of financial year 1956-57 (Assessment year 1957-58) – Assessee entitled to show entire liability of interest in the financial year of 1957 even according to mercantile system of accounts – Principles of implied contract not applicable: *The National Newsprint and Paper Mills Ltd., Nepanagar Vs. The Commissioner of Income Tax, Bhopal*, I.L.R. (1981) M.P. 166 (D.B.)

– **Section 256** – Reference – Scope – Jurisdiction – The High Court exercises and advisory Jurisdiction and that is why section 259 (1) provides that the case, which has been referred shall be decided according to the opinion of the Judge of the High Court – The language of section 256 indicates that when there is one order which is passed by the tribunal even though it may be dealing with different assessment years and possibly different assesses, nevertheless one application for reference is maintainable: *Commissioner of Income Tax, Bhopal Vs. Income Tax Appellate Tribunal Indore Bench*, I.L.R. (1993) M.P. 472 (D.B.)

– **Section 256(1)** – Deduction in respect of Sales tax – When can be allowed – Tribunal holding that assessee not liable to pay sales tax as limitation for initiation of proceedings already expired and no sales-tax paid – Tribunal justified in disallowing deduction – Statement of facts made by the Tribunal – High Court cannot go behind it: *M/s Gangoomal Contractors, Raipur Vs. The Commissioner of Income Tax, M.P. Bhopal*, I.L.R. (1985) M.P. 569 (DB)

– **Section 256(1)** – High Court can answer only the question referred to it by the Tribunal: *Parmanand Bhai Patel Vs. Commissioner of Income Tax, Jabalpur*, I.L.R. (1984) M.P. 269 (DB)

– **Section 256(1)** – Tribunal holding that assessee not liable to pay sales-tax as limitation for initiation of proceedings already expired and no sales- tax paid – Tribunal justified in disallowing deduction – Statement of facts made by the Tribunal – High Court cannot go behind it: *M/s Gangoomal Contractors, Raipur Vs. The Commissioner of Income Tax, M.P. Bhopal*, I.L.R. (1985) M.P. 569 (DB)

– **Section 256(1)** – Reference – Assessee deriving income from Contract Work – Income Tax Rules, 1962 – Entry No. III(ii) E(1-A) of part I of Appendix-I - Depreciation on vehicles – Vehicles used by assessee in his own business and not running them on hire – Assessee not entitled to depreciation on truck @ 40% – Reference answered accordingly: *Income Tax Commissioner, Jabalpur Vs. M/s. Anupchand & Company, Raipur*, I.L.R. (2000) M.P., 766 (D.B.)

– **Section 256(1)**– Reference – Assessee liable to pay advance tax on current income – Under assessment and less payment of tax by assessee applying different method of depreciation – Re-assessment – Revised return showing income on much higher side – Section 115-J and also Section 234-B and 234-C – Would be applicable – Assessee liable to pay simple for deferment of advance tax – Reference answered in forum of the Revenue: *Itarsi Oil And Flours Pvt. Ltd, Raipur Vs. Commissioner of Income Tax, Jabalpur*, I.L.R. (2000) M.P., 900 (D.B.)

– **Section 256(1)** – Reference by Tribunal – Return filed by assessee Co – operative Society under Section 139 declaring loss – Assessing Officer already issued notice under Section 143(2) for scrutiny assessment – Subsequent adjustment by A.O. reducing the loss and levying additional tax and sending intimation to assessee – Amounts to raising demand under Section 156 of the Act – Once intimation under Section 143(2) for scrutiny assessment is sent to the assessee A.O. Cannot revert back to the powers under Section 143(1)(i) of the Act – The only course open the A.O. is to pass a regular assessment order under Section 143(3) of the Act – Interpretation of statute Words ‘without prejudice to the provisions of sub-section (2)’ occurring in Section 143 (1) (a) (i) - *Despite exercise of power under this provision A.O. has power to resort to the provisions of Section 143 (2), but the converse of it is neither within the jurisdiction of A.O. nor the intention of the legislature - Reference answered accordingly in favour of the assessee: Commissioner of Income Tax, Bhopal Vs. Regional Soyabean Products Co-Operative Union Ltd, Ujjain*, I.L.R. (2000) M.P. 299 (D.B.)

– **Section 256(1)** and Coal Mines Nationalisation Act (XXVI of 1973) – Section 26(5) – Coal Mines with machinery and equipment of contractor taken over by Govt. – Compensation payable therefore was to be apportioned between the owner of Coal mines and owner of machinery and Equipment by the District Court – Before such apportionment, I.T.O. treating the entire compensation receivable by owner and determining profits on that basis – Commissioner of Income – tax (appeals) holding that as liability to contractor was definite the owner had suffered a loss – On appeal Tribunal reopened the case and sent it back to the I.T.O. to pass order after award of district Court on question of apportionment of compensation – No question of law arises which needs a reference – Tribunal justified in sending case back to I.T.O.: *J.A. Trivedi Brothers, Balaghat Vs. The Commissioner of Income-Tax, Jabalpur*, I.L.R. (1984) M.P. 409 (DB)

– **Section 256(1) and (2)** – No power in High Court to re-assess material and come in its own finding – Section 37(1) – Requirements of the provision – Words “for the purposes of business” in – Have particular meaning – Do not include voluntary donation made by assessee for purposes of charity – Extraction of compulsory donation – Opposed to public policy – Section 80-G(2), clause (a), clause (v) – Donation falling

under this provision – Donation is voluntary to earn good will of Government – Not a business necessity or commercial expediency – Such sum allowable as voluntary donation: *The Additional Commissioner of Income Tax, M.P. , Bhopal Vs. M/s Badrinarayan Shrinarayan, Shajapur, I.L.R. (1979) M.P. 732 (DB)*

– **Sections 256(1), 271(1)(c), 275(a) and 275(b)** – Order of assessment not subject matter of appeal – Penalty imposed – Section 275(b) applies – Initial order imposing penalty passed within two years of assessment order – Penalty order within limitation – Subsequent penalty order passed after inordinate delay of six years after passing of remand order – Not bad simply because of delay: *Commissioner of Income-Tax, Jabalpur Vs. Dr. Manoranjan Mohanty, I.L.R. (1989) M.P. 315 (DB)*

– **Section 256(1)** – Question whether assessee concealed his Income – A Question of fact – Nature not altered by enquiring whether finding that the assessee had committed offence justified by evidence: *The Commissioner of Income Tax, M.P., Nagpur and Bhandara, Nagpur Vs. Shri Punjabhai Shah, Chhindwara, I.L.R. (1970) M.P. 858 (DB)*

– **Section 256 (2)** – Question whether there has been concealment of income – Is a question of fact and no reference is permissible: *The Commissioner of Income Tax M.P. Vs. Surajlal Mannalal, I.L.R. (1977) M.P. 1214 (DB)*

– **Section 256(2)** – Appeal by assessee against order of Income Tax Appellate Tribunal – Re-assessment by I.T.O. – Addition to the income of assessee – Plea that the Additional amount was of loan taken by assessee – Record revealing that the amount shown to be loan amount was actually repaid in day – Bank entries manipulated by transfer entries – Tribunal rightly upheld the addition to the extent the entries were manipulated: *M/s. Gyan Chand Anil Kumar, Narsinghpur Vs. The Income Tax Officer, Jabalpur, I.L.R.. (2001) M.P. 655 (D.B.)*

– **Section 256(2)** – For deciding whether a question of law arises, High Court is not competent to admit additional evidence: *The Commissioner of Income-Tax, M.P., Bhopal Vs. Shivnarayan Shivhare, I.L.R. (1986) M.P. 34 (DB)*

– **Section 256(2)** – Past conduct of the assessee not taken into account – Gives rise to a question of law: *The Commissioner of Income-Tax, M.P., Bhopal Vs. Shivnarayan Shivhare, I.L.R. (1986) M.P. 34 (DB)*

– **Section 256(2)** – Remedy of the assessee in case of refusal by the Tribunal to refer a question of law arising out of its order – Available under: *Parmanand Bhai Patel Vs. Commissioner of Income Tax, Jabalpur, I.L.R. (1984) M.P. 269 (DB)*

– **Section 256(2)** – Question of law for reference when arises – Question whether subsequent events and evidence can be taken into account or not – Is a question of law

– Tribunal not taking into consideration views expressed in *quantum* appeal – Question of law arises – Past conduct of the assessee not taken into account – Gives rise to a question of law – For deciding whether a question of law arises, High Court is not competent to admit additional evidence: *The Commissioner of Income-Tax, M.P., Bhopal Vs. Shivnarayan Shivhare, I.L.R. (1986) M.P. 34 (DB)*

– **Section 256(2)** – Question whether subsequent events and evidence can be taken into account or not – Is a question of law: *The Commissioner of Income-Tax, M.P., Bhopal Vs. Shivnarayan Shivhare, I.L.R. (1986) M.P. 34 (DB)*

– **Section 256(2)** – Tribunal not taking into consideration views expressed in quantum appeal Question of law arises: *The Commissioner of Income-Tax Bhopal M.P., Vs. Shivnarayan Shivhare, I.L.R. (1986) M.P. 34 (DB)*

– **Sections 256(2) and 271(1)(c), Explanation** – Assessee's Claim that certain cash entries in his books of account represented his past savings from agricultural income rejected by the I.T.O. and appellate Tribunal allowing only part of claim and remaining amount assessed as income from undisclosed source – Thereafter I.T.O. initiating penalty proceedings – Assessee not furnishing fresh material or evidence to prove availability of funds – Presumption raised by Explanation to section 271(1)(c) not displaced – Penalty imposed by I.T.O. and confirmed in appeal – Assessee's application under section 256(1) rejected by Tribunal – Finding of Tribunal is a finding of fact – No question of law arose for a discretion to the Income Tax Appellate Tribunal to State the case – Application under Section 256(2) liable to be rejected: *Mohammad Shabbir Vs. commissioner of Income Tax, M.P.II, Bhopal, I.L.R. (1984) M.P. 228 (DB)*

– **Section 261** – Decision by Full Bench – Money lent by partner to firm – Interest paid – Not liable to be added back under section 40(b) of the Act – Substantial question of law of general importance – Certificate granted: *Commissioner of Income-Tax, Jabalpur Vs. Narbharam Popat Bhai and Sons. Raipur, I.L.R. (1988) M.P. 285 (FB)*

– **Section 263** – Doctrine of merger – Applicability to Income- tax proceedings – Extent of its application: *Commissioner of Income Tax M.P., Bhopal Vs. M/s R.S. Banwarilal Bilaspur, I.L.R. (1982) M.P. 584 (FB)*

– **Section 263** – I.T.O's order of assessment challenged in appeal before A.A.C. In respect of some items only Remaining items neither agitated nor decided by A.A.C. – Scope of revisional power of C.I.T.: *Commissioner of Income Tax M.P., Bhopal Vs. M/s R.S. Banwarilal Bilaspur, I.L.R. (1982) M.P. 584 (FB)*

– **Section 263** – Revisional powers of C.I.T. – Doctrine of merger – Applicability to Income- tax proceedings – Extent of its application – I.T.O's order of assessment challenged in appeal before A.A.C. In respect of some items only - Remaining items

neither agitated nor decided by A.A.C. – Scope of revisional power of C.I.T.: *Commissioner of Income Tax M.P., Bhopal Vs. M/s R.S. Banwarilal Bilaspur, I.L.R. (1982) M.P. 584 (FB)*

– **Section 263** – Powers of Commissioner to revise order of assessment which was subject matter of appeal before A.A.C. Extent and Limitation of – Doctrine of Merger – Applicable to Income tax proceedings as well – Extent of its applicability: *The Commissioner of Income-Tax M.P., Bhopal Vs. K.L. Rajput, I.L.R. (1986) M.P. 618 (FB)*

– **Section 269 (d)** – “Fair Market value” – Determination of – Reversionary value of land – Land situated in Cantonment area – Terms of lease not giving any property or interest in land to the lessee – Reversionary value of land cannot be added while assessing the value of building – Section 269 – H – Appeal – Lies on question of law only – Estimate of fair market value of a capital asset and salvage value – Are questions of fact – Not liable to be interfered with in appeal – Limitation act, 1963 – Section 5 – Applies to appeals under section 269-H – Appeal against a respondent who was dead at the time of filing of appeal – After service report prompt action taken by Department to bring his legal representatives on record – Delay liable to be condoned: *Commissioner of Income-Tax, Madhya Pradesh, I, Bhopal Vs. Trilokinath Dubey, I.L.R. (1983) M.P. 257 (DB)*

– **Section 269 (d)** – Reversionary value of land – Land situated in Cantonment area – Terms of lease not giving any property or interest in land to the lessee – Reversionary value of land cannot be added while assessing the value of building: *Commissioner of Income-Tax, Madhya Pradesh I, Bhopal Vs. Trilokinath Dubey, I.L.R. (1983) M.P. 257 (DB)*

– **Section 269 (h)** – Appeal – Lies on question of law only: *Commissioner of Income-Tax, Madhya Pradesh I, Bhopal Vs. Trilokinath Dubey, I.L.R. (1983) M.P. 257 (DB)*

– **Section 269 (h)** – Estimate of fair market value of a capital asset and salvage value – Are questions of fact – Not liable to be interfered with in appeal: *Commissioner of Income-Tax, Madhya Pradesh I, Bhopal Vs. Trilokinath Dubey, I.L.R. (1983) M.P. 257 (DB)*

– **Sections 271, 274 and 275** – Construction of words “from the date of the completion of the proceedings in the course of which the proceedings for the imposition of penalty have been commenced” – Implication of: *Gopichand Sarju Prasad Vs. Union of India, I.L.R. (1973) M.P. 810 (DB)*

– **Section 271** – Assessment for the year ending 31-3-1962 or earlier year – Assessment completed after 1-4-1962 – Penalty proceedings to be initiated any penalty

imposed under 1961 Act – Sections 271, 274 and 275 – Construction of – Section 274 – Satisfaction to be reached by Income-tax Officer of appellate Assistant Commissioner – Question whether assessee concealed particulars of his Income – Is a question of fact: *M/s Gopichand Sarjuprasad, Rewa Vs. The Commissioner of Income Tax, M.P., I.L.R. (1976) M.P. 483 (DB)*

– **Sections 271(1) and 297(2)(a) and (g)** – Income-tax Act, 1922 – Section 28(1) – Section 297(2)(a) of 1961 Act – Applicable to a case where return filed before 1-4-62 – These proceedings would be under 1922 Act – Section 297(2)(g) – Circumstances in which it is applicable – Cases falling under – Penalty could be under Section 271(1) – The expression “proceeding.....may be initiated and any such penalty may be imposed” in clauses (f) and (g) of Section 297 – Has same meaning – This expression in clause (g) – Means that penalty can be imposed under Act of 1961 – Assessee liable to penalty under Section 271(1) of 1961 – Assessee liable to penalty under Section 271(1) of 1961 Act if defaults referred to in Section 28(1) of 1922 Act regarding assessment for the year ending March 1962 or earlier years – The Expression “(the period) during which the default continued” – Means period commencing from a date prior to 1-4-62 on which assessee became defaulter and ending on a date on which he ceased to be so: *Shri Kishanlal, Baghana, (Neemuch), Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 1051 (DB)*

– **Section 271 (1)** – Interest – Is by way of compensation for delay in recovering tax – Not a penalty for default: *M/s Todarmal Sufarishmal of Lashkar Vs. The Commissioner of Income-Tax Nagpur, I.L.R. (1980) M.P. 613 (DB)*

– **Section 271 (1)** – Nothing turns upon the use of word “may” in – Discretion steps in when authority has to determine whether there was reasonable cause under clauses (a) and (b): *M/s Todarmal Sufarishmal of Lashkar Vs. The Commissioner of Income-Tax Nagpur, I.L.R. (1980) M.P. 613 (DB)*

– **Section 271(1)** – Quantum of penalty is the matter of arithmetical calculation – Penalty can neither be more nor less than prescribed: *M/s Todarmal Sufarishmal of Lashkar Vs. The Commissioner of Income-Tax Nagpur, I.L.R. (1980) M.P. 613 (DB)*

– **Section 271 (1)** – Prescribes circumstances in clauses (a), (b) and (c) in which penalty can be imposed and the quantum of penalty is prescribed by clauses (i), (ii) and (iii) – Nothing turns upon the use of word “may” in – Discretion steps in when authority has to determine whether there was reasonable cause under clauses (a) and (b) – Clause (c) – Confers power on authority to see whether there was concealment – Court satisfied about absence of reasonable cause or concealment – No other reasons necessary to be given – Quantum of penalty is the matter of arithmetical calculation –

Penalty can neither be more nor less than prescribed – Interest – Is by way of compensation for delay in recovering tax – Not a penalty for default: *M/s Todarmal Sufarishmal of Lashkar Vs. The Commissioner of Income-Tax Nagpur, I.L.R. (1980) M.P. 613 (DB)*

– **Section 271(1)(c)** – Penalty proceeding under – Are penal proceeding in nature – Standard of proof required – Findings in assessment proceedings – Not *res judicata* in penalty proceedings – Definite finding that explanation is deliberately false – Necessary for imposition of penalty – Section 256(1) – Question whether assessee concealed his income – A question of fact – Nature not altered by enquiring whether finding that the assessee had committed offence justified by evidence: *The Commissioner of Income Tax, M.P., Nagpur and Bhandara, Nagpur Vs. Shri Punjabhai Shah, Chhindwara, I.L.R. (1970) M.P. 858 (DB)*

-- **Section 271(1)(c)** – Confer power on authority to see whether there was concealment – Court satisfied about absence of reasonable cause or concealment – No other reasons necessary to be given: *M/s Todarmal Sufarishmal of Lashkar Vs. The Commissioner of Income-Tax Nagpur, I.L.R. (1980) M.P. 613 (DB)*

– **Section 271(1)(c)** – Case falling under Section 271(i)(c) – Penalty to be computed by reference to the amount of income concealed: *Hansraj Agrawal Vs. Addl. Commissioner of Income Tax, Bhopal, I.L.R. (1982) M.P. 170 (DB)*

– **Section 271(i)(c)** – Proceedings under Section 271(i)(c) are of penal nature: *Hansraj Agrawal Vs. Addl. Commissioner of Income Tax, Bhopal, I.L.R. (1982) M.P. 170 (DB)*

– **Section 271(1)(c)** – Penalty – When can be imposed – Burden on the department to prove ingredients for imposition of penalty: *M/s J.A. Trivedi Brothers, Balaghat Vs. The Commissioner of Income-Tax, Bhopal, I.L.R. (1985) M.P. 187 (DB)*

– **Section 271(1)(c)** – Return for assessment years 1961-62 and 1962-63 concealing income Proceedings regarding penalty to be governed by the law before amendment – Interpretation of Statute – Rules regarding construction of fiscal statute: *The Commissioner of Income Tax, Bhopal Vs. M/s Ramchand, I.L.R. (1979) M.P. 176 (DB)*

– **Section 271(1)(c)(iii)** – Point of time for imposition of penalty – Is the date when order for imposition of penalty to be made – Law on that date is applicable – Date of initiation of penalty proceedings is of no consequence: *Commissioner of Income-Tax, Jabalpur Vs. Shri Ram Prakash Saraf, Rewa, I.L.R. (1987) M.P. 197 (DB)*

– **Sections 271(1)(c)(iii) and 274 (2)** – Deletion of Sub-section (2) of Section 274, w.e.f. 1-4-76 – Thereafter reference to inspecting Appellate Commissioner for

imposition of penalty not competent – Point of time for imposition of penalty – Is the date when order for imposition of penalty to be made – Law on that date is applicable – Date of initiation of penalty proceedings is of no consequence - Income-tax Officer making reference to Inspecting Appellate Commissioner on 15-7-77 and Inspecting Appellate Commissioner passing an order of imposition of penalty on 23-8-78 – Tribunal justified in holding that Inspecting Appellate Commissioner had no jurisdiction to impose penalty: *Commissioner of Income-Tax, Jabalpur Vs. Shri Ram Prakash Saraf, Rewa, I.L.R. (1987) M.P. 197 (DB)*

– **Section 271(1)(c)(iii) and 274 (2)** - Income Tax Officer making reference to Inspecting Appellate Commissioner on 15-7-1977 and Inspecting Appellate Commissioner passing an order of imposition of penalty on 23-8-1978 – Tribunal justified in holding that Inspecting Appellate Commissioner had no jurisdiction to impose Penalty: *Commissioner of Income-Tax, Jabalpur Vs. Shri Ram Prakash Saraf, Rewa, I.L.R. (1987) M.P. 197 (DB)*

– **Sections 271(i)(C), 271(1) (iii) and 2(24)** – Penalty for concealment of income – Capital gains sought to be concealed amounting to Rs. 9,000/- on which additional tax was only Rs. 2,200/- – Income to be considered for quantifying the amount of penalty Rs. 2,200/- and not Rs. 9,000/-: *Shri Kaluram Ganeshram (Huf), Rajnandgaon Vs. Commissioner of Income Tax, M.P.-II, Bhopal, I.L.R. (1989) M.P. 498 (DB)*

– **Sections 271(1)(2) and 271(c)** – Assessee's claim for registration of firm refused by I.T.O. – Assessee, assessed as Association of persons – In reassessment proceeding I.T.O. imposed penalties of the rejecting explanation of the assessee – Subsequently assessee was granted registration of firm in appeal – Assessee's contention that notice should have been issued to the firm – Not tenable: *M/s Heeralal Khushalchand Bothra, Betul Vs. The Commissioner of Income-Tax, Bhopal, I.L.R. (1986) M.P. 541 (DB)*

– **Sections 271(1)(2) and 271 (c)** – Assessee's identity as A.O.P. and as firm being same, no prejudice caused to the assessee – Imposition of penalties is not illegal: *M/s Heeralal Khushalchand Bothra, Betul Vs. The Commissioner of Income-Tax, Bhopal, I.L.R. (1986) M.P. 541 (DB)*

– **Sections 271(1)(2) and 271 (c)** – Imposition of penalty – After 1-4-1971 I.T.O. has jurisdiction to impose penalty's in excess of Rs. 1000/- - Assessee's claim for registration of firm refused by I.T.O. – Assessee, assessed as Association of persons – In reassessment proceedings I.T.O. imposed penalties after rejecting explanation of the assessee – Subsequently assessee was granted registration of firm in appeal – Assessee's contention that notice should have been issued to the firm – Not tenable – Assessee's identity as A.O.P. and as firm being same, no prejudice caused to the assessee – Imposition of penalties is not illegal: *M/s Heeralal Khushalchand Bothra, Betul Vs. The Commissioner of Income-Tax, Bhopal, I.L.R. (1986) M.P. 541 (DB)*

– **Section 271 (4-A)** – Power of commissioner to revise or reduce penalty under – Opportunity to assessee to invoke powers of Commissioner thereunder must be given: *Income Tax Officer B-Ward, Jabalpur Vs. Dr. B.M. Arora, I.L.R. (1981) M.P. 876*

– **Sections 273(b) and 212(3)** – Failure on the part of the assessee to file the estimate of advance tax payable by him attracts penalty provisions of section 273(b) – However, while imposing penalty deposit of advance tax ought to be taken into consideration – Income tax officer imposing penalty without considering deposit of advance tax by the assessee – Appellate assistant commissioner directed the I.T.O. to consider the case of penalty after considering deposit of advance tax by assessee – Tribunal setting aside the order – Tribunal not justified – Order of Appellate Assistant Commissioner restored: *M/s Surendra Mirani And Bros., Rajnandgaon Vs. the Commissioner of Income-Tax M.P., Bhopal, I.L.R. (1984) M.P. 469 (DB)*

– **Sections 273(b) and 212(4)** – Income tax officer imposing penalty without considering deposit of advance tax by the assessee – Appellate Assistant Commissioner directed the I.T.O. to consider the case of penalty after considering deposit of advance tax by assessee – Tribunal setting aside the order – Tribunal not justified – Order of Appellate Assistant Commissioner restored: *M/s Surendra Mirani And Bros., Rajnandgaon Vs. the Commissioner of Income-Tax M.P., Bhopal, I.L.R. (1984) M.P. 469 (DB)*

– **Section 274** – Proper opportunity to be given before imposing penalty on assessee: *Messrs Hajarila Kishorilal, Dhar Vs. The Commissioner of Income Tax, MP, Nagpur and Bhandara, Nagpur, I.L.R. (1970) M.P. 186 (DB)*

– **Section 274** – Question whether assessee concealed particulars of his income – Is a question of fact: *M/s Gopichand Sarjuprasad, Rewa Vs. The Commissioner of Income Tax, M.P., I.L.R. (1976) M.P. 483 (DB)*

– **Section 274** – Satisfaction to be reached by Income Tax Officer or appellate Assistant commissioner: *M/s Gopichand Sarjuprasad, Rewa Vs. The Commissioner of Income Tax, M.P., I.L.R. (1976) M.P. 483 (DB)*

– **Section 275(b)** – Penalty imposed – Section 275(b) applied – Initial order imposing penalty passed within two years of assessment order – Penalty order within limitation – Subsequent penalty order passed after inordinate delay of six years after passing of remand order – Not bad simply because of delay: *Commissioner of Income-Tax, Jabalpur Vs. Dr. Manoranjan Mohanty, I.L.R. (1989) M.P. 315 (DB)*

– **Section 276 – C.C.** – Failure to furnish returns of Income – Effect – What is wilfully – It is not merely failure to file return in time which constitutes the offence but it must be proved by clear, cogent and reliable evidence – Medical Certificate produce before the department was not enquired into much – less proved to be false – Wilful

must be intentional, deliberate calculated and conscious with full knowledge of legal consequences – Wilfull has not been proved beyond reasonable doubt by the prosecution – Revision allowed – Conviction and sentence set-aside: *Narayan Mahadeo Dhopade Vs. Union Of India, I.L.R. (1993) M.P. 686*

– **Sections 278-B and 2(35)(b)** – Prosecution of a firm and its partners for not deduction of Tax at source – Absence of designation will not vitiate prosecution of firm or its partner: *M/s. Laxman Das Pranchand Vs. Union of India, I.L.R. (1999) M.P., 63*

– **Section 279(2)** – Compounding of an offence – Permissible either before or after the institution of proceedings: *M/s. Laxman Das Pranchand Vs. Union of India, I.L.R. (1999) M.P. 63*

– **Section 293 and Rules 11(6), 20 and 21 of Schedule II** – Objection to attachment decided by Tax Recovery Officer against objector – Finding is binding on Criminal Court: *C.G. Sangamnerkar Vs. Suresh Chandra Modi, I.L.R. (1979) M.P. 1133*

– **Section 297 (2) (a)** – Assessment proceedings under 1922 Act – Proceedings are deemed to be under 1961 Act – Satisfaction of Income- Tax officer about concealment: *Gopichand Sarju Prasad Vs. Union of India, I.L.R. (1973) M.P. 810 (DB)*

– **Section 297, clauses (f) and (g)** – The expression “proceeding.....may be initiated and any such penalty may be imposed” in – Has same meaning: *Shri Kishanlal, Baghana, (Neemuch), Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 1051 (DB)*

– **Section 297(2)(g)** – Cases falling under – Penalty could be under Section 271(1): *Shri Kishanlal, Baghana, (Neemuch), Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 1051 (DB)*

– **Section 297(2) (g)** – Circumstances in which it is applicable: *Shri Kishanlal, Baghana, (Neemuch), Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and bhandara, Nagpur, I.L.R. (1969) M.P. 1051 (DB)*

– **Section 297 (2)(g)** – Finding that assessee did not conceal particulars of income – Is a finding of fact: *The Commissioner of Income Tax, M.P. Vs. Shri Champalal Sukhram, Harsud, I.L.R. (1974) M.P. 1026 (DB)*

– **Section 297 (2)(g)** – Initiation of proceedings for imposition of penalty and levy of penalty under the Act of 1961 there of – Does not refer to the fact whether assessment

was made under 1961 Act or the 1922 Act – Proceedings for assessment under 1922 Act – Is proceeding under 1961 Act itself – Question whether assessee concealed particulars of his income or committed offence in this connection – Is a question of fact to be determined on the circumstances of each case – Penalty proceedings – Duty of officer to find out whether a explanation is false before he imposes penalty – Finding that assessee did not conceal particulars of income – Is a finding of fact: *The Commissioner of Income Tax, M.P. Vs. Shri Champalal Sukhram, Harsud, I.L.R. (1974) M.P. 1026 (DB)*

– **Section 297 (2)(g)** – Penalty proceedings – Duty of officer to find out whether explanation is false before he imposes penalty: *The Commissioner of Income Tax, M.P. Vs. Shri Champalal Sukhram, Harsud, I.L.R. (1974) M.P. 1026 (DB)*

– **Section 297 (2)(g)** – Question whether assessee concealed particulars of his income or committed offence in this connection – Is a question of fact to be determined on the circumstances of each case: *The Commissioner of Income Tax, M.P. Vs. Shri Champalal Sukhram, Harsud, I.L.R. (1974) M.P. 1026 (DB)*

– **Section 297 (2) (g)** and Constitution of India, Article 14 – Vires of Section 297 (2) (g): *Gopichand Sarju Prasad Vs. Union of India, I.L.R. (1973) M.P. 810 (DB)*

Income Tax Appellate Tribunal Rules, 1946

– **Rule 29** – Condition in which appellate tribunal can admit additional evidence – New point when cannot be allowed: *The Commissioner of Income Tax, M.P. Nagpur and Bhandara, Nagpur Vs. Babulal Nim Contractor, Mhow, I.L.R. (1963) M.P. 941 (DB)*

Income Tax Rules

– **Entry No. III(ii) E (1-A) of Part-I of Appendix-I** – Depreciation on vehicles – Vehicles used by assessee in his own business and not running them on hire – Assessee not entitled to depreciation on truck @ 40% – Reference answered accordingly: *Income Tax Commissioner, Jabalpur Vs. M/s. Anupchand & Company, Raipur, I.L.R. (2000) M.P., 766 (D.B.)*

– **Rule 3** – Requires the partnership to disclose how losses are to be shared: *Messrs Chimanlal Umaji and Sons, Indore Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 130 (DB)*

– **Rule 6-B of Income-tax Act** – Section 30(1) – Validity – Order canceling Registration of firm – Order not appealable under section 30(1) Income-tax Act: *Sir Hukumchand and Mannalal Co., Indore Vs. The Commissioner of Income Tax, MP, Nagpur and Bhandara, Nagpur, I.L.R. (1963) M.P. 186 (DB)*

– **Rule 11(6)** – Remedy of suit under – Available in case of rejection of claim: *Girijashanker Vs. Union of India, I.L.R. (1979) M.P. 1045 (DB)*

– **Rule 22-A** – Prescribes form for making reference – Must be strictly complied with: *M/s Singhai Mojilal and Sons Vs. The Commissioner of Income-Tax, MP, Nagpur and Bhandara, Nagpur, I.L.R. (1965) M.P. 689 (DB)*

– **Rule 23(1) and (2)** – Assessee producing his own sugar-cane and utilizing it for producing sugar – Assessee claiming deduction for value of sugar-cane – Value fixed by notification to be taken in determining market value of sugar-cane: *The Commissioner of Income Tax M.P., Nagpur And Bhandara, Nagpur Vs. The Bhopal Sugar Industries Ltd, Sehore, I.L.R. (1963) M.P. 766 (DB)*

India Services (Leave) Rules, 1955

– Rule 3, sub-rule (I) – Confers discretionary power on Government to confer certain benefits or privileges on its servants – Do not create a legal right in Government servant – Constitution, Article 311 – Compulsory retirement not by way of punishment – Provisions not attracted: *Horace Ross Vs. The State of M.P., I.L.R. (1960) M.P. 59 (DB)*

Indian Administrative Service (Pay) Rules, 1954

– **Applicability of** – Memorandum dated 13-7-64 – Makes Indian Administrative Service (Pay) Rules, 1954 applicable to persons promoted as District and Sessions Judges after 1-4-58 – Unification of pay and Absorption Rules, Madhya Pradesh, 1959 – Unified scale of pay – Not applicable to persons absorbed as District and Sessions Judges in New State before 1-4-58 – Notification dated 5-10-60 – Makes no differentiation in the matter of pay scales of allocated permanent District and Sessions Judges – Constitution of India – Article 14 – Discrimination arising from historical reasons–or geographical classification based on Historical reasons – Article 14 not contravened – The term “equal protection” in – Meaning of: *Ramchandra Kotasthane Vs. State of M.P., I.L.R. (1970) M.P. 917 (DB)*

– **Memorandum dated 13-7-64** – Makes Indian Administrative Service (Pay) Rules, 1954 applicable to persons promoted as District and Sessions Judges after 1-4-58: *Ramchandra Kotasthane Vs. State of M.P., I.L.R. (1970) M.P. 917 (DB)*

– **Indian Ordnance Factories** (Recruitment and Conditions of Service of Class III Personnel) – Rules, 1956 – Rule 8 – Whether promotion to higher post can be regulated by executive instructions – Several persons promoted to the post of charge-man in the light of 1st circular after completion of 2 years successfully – Subsequent circular issued directing that promotion will be in accordance with rules – Held – Claim of promotion on the ground that number of persons were promoted in the light of earlier

circular – Not permissible – Appellants cannot claim benefit of equality with those who were wrongly promoted – Non consideration of supervisors for promotion after supersession of 1st circular does not amount to discrimination : *K.K.M. Nair Vs. Union of India*, I.L.R. (1993) M.P. 1 (F.B.)

Indian Railways Code for the Engineering Department

– **Para 1214** – and Constitution of India, Articles 14 and 19(1)(g) and 13 – Instructions have force of law – Circumstances when limited tenders can be invited under para 1214 – Tenders – Acceptance or rejection in accordance with instructions contained in para 1214 – Not violative of Article 14 or 19(1)(g) – Principles of equality means right to equal treatment to persons similarly situated: *M/s Mohanlal Hiralal, Itarsi Vs. The Union of India*, I.L.R. (1986) M.P. 489 (DB)

– **Para 1214** – and Constitution of India Articles 14 and 19(1)(g) – Tenders Acceptance or rejection in accordance with instructions contained in para 1214 – Not violative of Article 14 of 19(1)(g): *M/s Mohanlal Hiralal, Itarsi Vs. The Union of India*, I.L.R. (1986) M.P. 489 (DB)

– **Para 1214** – Circumstances when limited tenders can be invited under this para: *M/s Mohanlal Hiralal, Itarsi Vs. The Union of India*, I.L.R. (1986) M.P. 489 (DB)

Indian Telegraph Rules, 1951

– **Rule 420 and Constitution of India, Article 226** – Telephone service – Deprivation of a subscriber of such service – Notice issued under Rule 420 not mentioning reasons or facts for its issuance – Notice liable to be quashed for being ambiguous – Subsequent order passed by the authority on the basis of such notice on the ground of unauthorized use of telephone and without application of mind to subscriber's representation – Order liable to be struck down – Natural Justice – Principles of – Hearing must be by the authority passing the order: *M/s Kumar Kishandas, A Firm, Indore Vs. The Divisional Engineer Telephone, Indore*, I.L.R. (1985) M.P. 205 (DB)

Indira Kala Sangeet Vishwavidyalaya Adhiniyam, 1956

– **Sections 12,18,23,31, and Statute 14 thereof** – Appointment of Registrar – Panel of candidates given by Selection Committee – In absence of provision in the Act, Rules or statute it cannot be assumed that the panel is in order of merit and the executive council should appoint the candidate whose name appears first in the panel: *Dr. V.K. Chakravarty Vs. Indira Kala Sangeet Vishwa Vidyalaya*; I.L.R. (2004) M.P. 1065 (DB)

Indore Industrial Tax Rules

Rule 8-A (2) – Scope of – Rules make no provision for refund of tax in case of assessment being set aside – Constitution of India – Article 226 – Writ of mandamus – Not available for claiming refund after assessment order reversed in appeal - Cannot be issued for execution of decree or order – Does not confer jurisdiction to decide questions of fact – No power in High Court to issue writ in cases where party would be deprived of right to raise relevant pleas: *Suganmal Vs. The State of Madhya Bharat*, I.L.R. (1962) M.P. 48 (DB)

– **Rule 8-A (2) – Scope of:** *Suganmal Vs. The State of Madhya Bharat*, I.L.R. (1962) M.P. 48 (DB)

Indore Land Revenue and Tenancy Act, 1931

– **Section 45** – Provision regarding payment of *Nazarana* – Directory – Non-payment of *Nazarana*-Sale not rendered null and void – Civil Procedure Code, Order 13, Rule 4 – Certified copies of public documents admitted on record – Endorsement regarding admission not made – Document cannot be ignored: *Jadibai Vs. Har Singh*, I.L.R. (1962) M.P. 305

Indore Stamp Act (II of 1907)

– **Section 2(9), Articles 17 and 47-A** – Document transferring management of Trust property – Does not amount to conveyance – Stamp Duty payable governed by Article 47-A and not Article 17 – Deed does not fall under Section 2(9) – Deed – Interpretation of, Principles: *Shri Digambar Jain Tera Panthi Mandir Trust, Shakkar Bazar, Indore Vs. Sub-Registrar, Stamps, Indore*, I.L.R. (1971) M.P. 403 (FB)

Industrial Companies (Special Provision) Act 1985

– **(as amended by Act, (XII of 1994)** – Section 22 – Word ‘suit’ used does not include arbitration proceedings – Appeal rightly dismissed by the High Court: *Nepa Limited Vs. M/s H.S. Bagga*, I.L.R. (2005) M.P. 1138 (DB)

Industrial (Development and Regulation) Act (XLV of 1951)

– **Section 18AA** – And Constitution of India, Article 226 – Administrative Law – Exercise of quasi-judicial power by govt. department or Minister – Application of principles of natural justice – Taking over of a Textile Mill – Pre-decision hearing not necessary in all cases – Post decision hearing can meet the requirements of natural justice – Investigation or hearing part done by an official of the department – Final order passed by Minister – Order not bad provided there is honest application of mind to

the relevant material – Principle that “one who decides must hear” – Meaning of – Order of extension of the period of take over – Prior hearing not necessary: *Indore Textile Limited, Ujjain Vs. Union of India, I.L.R. (1983) M.P. 377 (DB)*

– **Section 18AA** – And Constitution of India, Article 226 – Order of extension of the period of take over – Prior hearing no necessary: *Indore Textile Limited, Ujjain Vs. Union of India, I.L.R. (1983) M.P. 377 (DB)*

– **Section 18AA** – Investigation or hearing part done by an official of the department Final order passed by minister – order not bad provided there is honest application of mind to the relevant material: *Indore Textile Limited, Ujjain Vs. Union of India, I.L.R. (1983) M.P. 377 (DB)*

– **Section 18AA** – Principle that “one who decides must hear” – Meaning of: *Indore Textile Limited, Ujjain Vs. Union of India, ILR (1983) MP 377 (DB)*

– **Section 18AA** – Taking over of a Textile Mill – Pre-decision hearing not necessary in all cases – Post decision hearing can meet the requirements of natural Justice: *Indore Textile Limited, Ujjain Vs. Union of India, I.L.R. (1983) M.P. 377 (DB)*

Industrial Disputes Act (XIV of 1947)

– **As amended – Prevails over M.P. Co-operative Societies Act:** *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd, P.O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, M.P., I.L.R. (1976) M.P. 905 (FB)*

– **As amended by the amending Act (XLV of 1971)** – Powers of labour and Industrial Court before and after insertion of section 11-A – Industrial Relations Act, M.P. 1960 – Power of Labour Court – Act does not confer appellate power on labour court – Cannot go into the merits of findings reached in domestic inquiry and re-appraise the evidence – Labour court does not possess powers wider than that of the labour court functioning under central Act before amendment in 1971 – Labour Court, Power of, to interfere with punishment – Evidence Act – Rules of evidence – Not applicable to domestic enquiry : *Vidyanath Vs. The M.P. State Road Transport Corporation, Bhopal, I.L.R. (1978) M.P. 229 (DB)*

– **And Co-Operative Societies Act, Madhya Pradesh, 1960 (XVII of 1961), Section 55(2)** – Dispute between the society and its employees dispute to be settled as per provision of Societies Act and not by Industrial Disputes Act, 1947 – Co-operative Societies Act, Madhya Pradesh, 1960 – Section 93 – Omission of reference to Industrial Disputes Act, 1947 in – Does not imply that that Act will apply to Societies registered under Societies Act, 1960: *The Sagar Motor Transport Karmchari Union, Sagar*

Vs. The Amar Kamgar Passenger Transport Company, Co-Operative Society, Sagar, I.L.R. (1972) M.P. 989 (DB)

– **And M.P. Shops and Establishments Act (XXV of 1958)** – Section 61 – Rights and privileges of an employee under Industrial Disputes Act – Saved by Section 61 of Shops and Establishments Act: *Chalchitra Karmchari Sangh Through Shri Tarasingh Viyogi, Gwalior Vs. Proprietor Regal Talkies, Gwalior, I.L.R. (1965) M.P. 56 (DB)*

– **And Minimum Wages Act (XI of 1948)** – Scope of and difference between – Things to be considered in fixing ‘fair wages’ – Determination of wage scale – Wages prevailing in comparable concerns in the region to be noted – Consideration of the question of comparable concerns – Relevant factors to be seen – Time from which Award is to be made effective – Dependent upon circumstances of each case – Not possible to lay down general formula: *M/s Prabhulal Patiram & Co., Bidi Factories, Raipur Vs. Industrial Tribunal, M.P., Indore, I.L.R. (1966) M.P. 54 (DB)*

– **Arbitrator must act within powers defined by Act and Rules:** *Nowrozabad Colleiry Mazdoor Sangh Vs. F. Jeejeebhoy, I.L.R. (1974) M.P. 208 (DB)*

– **Consideration of the question of comparable concerns** – Relevant factors to be seen: *M/s Prabhulal Patiram & Co., Bidi Factories, Raipur Vs. Industrial Tribunal, M.P., Indore, I.L.R. (1966) M.P. 54 (DB)*

– **And Co-operative Societies Act, M.P., 1960 (XVII of 1961)** – Industrial Disputes Act is special Act – Not repealed by co-operative societies Act, 1960-Both can co-exist without repugnancy: *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd, P.O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, M.P., I.L.R. (1976) M.P. 905 (FB)*

– **Contains no provision under which employer or employee may directly refer a dispute for adjudication to a labour Court – Section 12(5)** – Words “case for reference” in – Meaning of – Casts duty on Government to state reasons for not making reference – Reasons given for not making reference are extraneous and not germane – There is failure on part of Government to exercise jurisdiction – Writ of mandamus can be issued: *Vishnu Saday Bhattacharya Vs. The Manager, Cycle Industries, M.P. Laghu-Udyog Nigam, Guna, I.L.R. (1978) M.P. 254 (DB)*

– **Chapter V-A and Section 33(c)** – MP Industrial Disputes Rules, 1957, Rule 62 – Government – Power of, to determine lay-off compensation – Certificate for recovery under section 33(C) to be issued only after enquiry made by labour Court under section 7 – Officer appointed to make enquiry regarding lay-off compensation – Not a labour

Court: *The Burhanpur Tapti Mills Ltd., Burhanpur Vs. The Labour Officer Government of M.P., I.L.R. (1960) M.P.559 (DB)*

– **Determination of wage scale** – Wages prevailing in comparable concerns in the region to be noted: *M/s Prabhulal Patiram & Co., Bidi Factories, Raipur Vs. Industrial Tribunal, M.P., Indore, I.L.R. (1966) M.P. 54 (DB)*

– **Industrial disputes to be decided under this Act:** *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd, P.O. Dalli-Rajhara, District Durg VS. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, M.P., I.L.R. (1976) M.P. 905 (FB)*

– **Industrial Disputes Rules, Madhya Pradesh** – Rule 62 – Refers to application under sub-section (1) capable of being disposed of by Government: *The Central India Electric Supply Co. Ltd., Bilaspur Vs. The Presiding Officer District Labour Court, Jabalpur, I.L.R. (1972) M.P. 431 (DB)*

– **Labour Court not deciding issue whether domestic enquiry was defective as preliminary issue** – In final order holding enquiry to be defective – Management can complain regarding not affording opportunity to lead evidence before revisional authority: *R.K. Nair Vs. The General Manager, Bhilai Steel Plant, Bhilai, I.L.R. (1981) M.P. 195 (DB)*

– **Labour Court not finding any defect in domestic enquiry** – Not necessary to hold fresh enquiry – Labour Court can go to its own findings on basis of domestic enquiry conducted by Management: *R.K. Nair Vs. The General Manager, Bhilai Steel Plant, Bhilai, I.L.R. (1981) M.P. 195 (DB)*

– **Labour Court, Power of** – To go into merits of charges even when defective enquiry is found in final order: *R.K. Nair Vs. The General Manager, Bhilai Steel Plant, Bhilai, I.L.R. (1981) M.P. 195 (DB)*

– **Occasion when management can exercise right to prove charges by leading evidence:** *R.K. Nair Vs. The General Manager, Bhilai Steel Plant, Bhilai, I.L.R. (1981) M.P. 195 (DB)*

– **Right to back wages under normal rule – Employee wrongfully dismissed** – on rein statement employee entitled to full back wages – Burden is on employer to plead and prove circumstances justifying departure from normal rule – Deductions, when permissible: *Singeshwar Prasad Vs. The General Manager, Bhilai Steel Plant, Bhilai, M.P. , I.L.R. (1982) M.P. 502 (DB)*

– **Schedule IV** – Does not include transfer of employee who is rendered surplus upon closure of particular department of branch of business in another department or

branch of business or consequential change of condition of service – Transfer of workmen from higher capacity to a lower capacity – Results in reduction of status and emoluments – Standing Order – Clause 29 – Degradation of workmen – refusal to work in circumstances does not amount to absence from duty – Services not terminable for absence for 30 days under such circumstances – Dismissal amounts to wrongful dismissal – Master and servant – Transfer of servant resulting in workmen's loss in wages, bonus or other monetary benefits – Not justified – Parties agreeing to terms and condition of service and are included in standing order – Doctrine of common law or consideration of equity not relevant: *M/s Shaw Wallace and Co. Ltd. Parasia Vs. The Central Government Industrial Tribunal-Cum- Labour Court, Jabalpur, I.L.R. (1974) M.P. 451 (DB)*

– **Schedule IV** – Transfer of workmen from higher capacity to a lower capacity – Results in reduction of status and emoluments: *M/s Shaw Wallace And Co. Ltd., Parasia Vs. The Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, I.L.R. (1974) M.P. 451 (DB)*

– **Setting aside of the Ex-parte order** – Sufficient cause must be shown to set aside: *Nav Bharat and M.P. Chronical Group of News papers Vs. Krishnasharan Shrivastava I.L.R. (1991) M.P. 82 (DB)*

– **Standing order – Clause 29** – Degradation of workmen – Refusal to work in circumstances does not amount to absence from duty – Services not terminable for absence for 30 days under such circumstances – Dismissal amounts to wrongful dismissal: *M/s Shaw Wallace And Co. Ltd., Parasia Vs. The Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, I.L.R. (1974) M.P. 451 (DB)*

– **Things to be considered in fixing 'fair wages'**: *M/s Prabhulal Patiram & Co., Bidi Factories, Raipur Vs. Industrial Tribunal, M.P., Indore, I.L.R. (1966) M.P. 54 (DB)*

– **Time from which Award is to be made effective** – Dependent upon circumstances of each case – Not possible to lay down general formula: *M/s Prabhulal Patiram & Co., Bidi Factories, Raipur Vs. Industrial Tribunal, M.P., Indore, I.L.R. (1966) M.P. 54 (DB)*

– **Section 2** – Dispute between individual worker and the employer – Not an industrial dispute – Dispute must be sponsored by union of workmen in the same establishment or by number of workmen – Support by workmen working in the same line but under different employers – Not sufficient: *Association of Medical Representative (M & V) Through Its Secretary, Nagjibhai Town, Sitabuldi, Nagpur Vs. The Industrial Tribunal, M.P., Indore, I.L.R. (1969) M.P. 1(DB)*

– **Section 2-A, amended – Collective dispute** – Did not mean that it should be sponsored by majority of workers – Support of a section of workmen sufficient: *Employees in relation to New Chirimiri Ponri Coiery, Chirimiri Vs. Their Workmen, I.L.R. (1974) M.P. 439 (DB)*

– **Section 2-A, amended** – Covers individual dispute arising out of discharge, dismissal, retrenchment or termination, even though no other workman or union is a party – Before amendment of section 2-a – Individual dispute could not be industrial dispute unless taken up by union or number of workers – Collective dispute – Did not mean that it should be sponsored by majority of workers – Support of a section of workmen sufficient: *Employees in relation to New Chirimiri Ponri Coiery, Chirimiri Vs. Their Workmen, I.L.R. (1974) M.P. 439 (DB)*

– **Section 2-A** – Before amendment of section 2-A – Individual dispute could not be industrial dispute unless taken up by union or number of workers: *Employees in relation to new Chirimiri Ponri Coiery, Chirimiri Vs. Their Workmen, I.L.R. (1974) M.P. 439 (DB)*

– **Section 2 (b)** – Word “determination” in – Implies adjudication upon relevant material by the Tribunal or Court: *Shital Vs. Central Government Industrial Tribunal – Cum Labour Court, Jabalpur, I.L.R. (1973) M.P. 218 (DB)*

– **Section 2(j)** and Samaj Ke Kamjor Vargon Ke Liye Vidhik Sahayata Tatha Vidhik Salah Adhiniyam, 1976, Section 3 – Industry – Activities performed by M.P. Vidhik Sahayata Tatha Vidhik Salah Board constituted under section 3 of Samaj Ke Kamjor Vargon Ke Liye Vidhik Sahayata Tatha Vidhik Salah Adhiniyam falls within the purview of the definition of industry – Board is an industry : *Mahesh Bhargava Vs. State of M.P., I.L.R. (1993) M.P. 118 (D.B.)*

– **Section 2(j)** – Industry – Whether Municipal Council is Industry – Most of the functions are welfare activities – It collects taxes and derives income from various sources – Municipal Council is Industry although it discharges some sovereign and inalienable function of State: *Chief Municipal Officer, Municipal Council Govindgar, Rewa Vs. The Presiding Officer, Labour Court, Rewa, I.L.R. (1993) M.P. 496 (D.B.)*

– **Section 2(j)** – Public Health Department of State Govt. and Primary Health Centers working under it constitute “Industry” within the meaning of: *Gulab singh Chauhan Vs. State of M.P., Through the Chief Secretary, Govt. of M.P., Bhopal, I.L.R. (1984) M.P. 634*

– **Section 2(j)** – Pushing of sale in particular State without establishment of company – Not sufficient to confer on that State, power to make reference: *Association of*

Medical Representative (M & V) Through its Secretary, Nagjibhai Town, Sitabuldi, Nagpur Vs. The Industrial Tribunal, M.P., Indore, I.L.R. (1969) M.P. 1 (DB)

– **Section 2 (j)** – Rajkumar College, Raipur is an ‘industry’ within the meaning of the section: *Rajkumar College Karamachari Union Raipur Vs. The Principal, Rajkumar College Raipur, I.L.R. (1986) M.P. 374*

– **Section 2(j)** – 25-F and 2(oo) and Constitution of India, Article 226 – Section 2(j) – Rajkumar College, Raipur is an ‘industry’ within the meaning of the Section – Management of College terminating service of petitioners without complying with requirement of section 25-F as a whole – Complying only with Sub-Section(a) in paying one month’s salary in lieu of one month’s notice – Such termination result in ‘retrenchment’ within Section 2(oo) – Petitioners deemed to have been continued in employment – Entitled for full back wages – Petition allowed – Reinstatement with full back wages ordered: *Rajkumar College Karamachari Union Raipur Vs. The Principal, Rajkumar College Raipur, I.L.R. (1986) M.P. 374*

– **Sections 2(j), 2(s), 2(oo) and 25(f), Govt, Servants (Temporary and quasi-permanent service-Rules, M.P., 1960, Rule 12 and constitution of India, Articles 311, 14 and 16** – Temporary Govt. servant entitled to protection under article 311 – Termination order in reality made on the orders of minister being punitive in nature and without proper inquiry – Validity of – Termination of service of a temporary Govt. Servant on the ground of unsuitability – Retention of persons junior to him does not infringe articles 14 and 16 – Appointment temporary and liable to be terminated without notice – Rule 12 not attracted – Public Health Department of State Govt. and Primary Health Centers working under in constitute “industry” within the meaning of Section 2(j) – Family Planning Field worker working under District Family Planing -Cum-Health Officer is workman as defined in section 2(s) – Retrenchment – Termination order not falling under categories (a), (b) or (c) under section 2(oo) amounts to retrenchment and is invalid if conditions laid down by section 25F are not fulfilled: *Gulab singh Chauhan Vs. State of M.P., Through the Chief Secretary, Govt. of M.P., Bhopal, I.L.R.(1984) M.P. 634*

– **Section 2(j), 2(s)**, Society engaged in systematic activities of promoting health and training women on family planning programme – Organization having employers and employees – Makes the society “Industry” – Held – The application was maintainable: *Mahila Samiti, Tikamgarh Vs. State of M.P., I.L.R. (1989) M.P. 696 (DB)*

– **Sections 2(J), 2(n), 2(s) and 33-C(2)** – Application for overtime wages by employees of petitioner – Maintainability – Services in the Bank Note Press have been declared to be Public Utility Service for purpose of Industrial Disputes Act – Hence petitioner is an industry and its employees are workmen as envisaged in Sections 2(j) and 2(S) respectively – Tribunal’s Order allowing the application for over time wages

cannot be said to be perverse: *General Manager, Bank Note Press, Dewas Vs. Chhattar Singh, Bank Note Press, Dewas*, I.L.R. (1992) M.P. 728 (D.B.)

– **Section 2 (k)** – Essential condition necessary for constituting a dispute to be an industrial dispute: *The Modern Stores, Jabalpur Vs. Shri Krishnadas Sha, Presiding Officer labour Court, Jabalpur*, I.L.R. (1974) M.P. 229 (DB)

– **Section 2(k) and 2-A** – Jurisdiction of Civil Court – Relief claimed on the basis of general law and no specific provision of Industrial Disputes Act invoked – Suit maintainable: *Sudhir Kumar Sharma Vs. Bundel Khand Kshetriya Gramin Bank, Tikamgarh*; I.L.R (2003) M.P. 445

– **Section 2(k)** – Taking up of dispute only by a registered body not necessary: *Suman Verma Vs. The Nava Bharat Karmachari Sangh, Indore*, I.L.R. (1970) M.P. 292 (DB)

– **Section 2(k)** – When disputes becomes Industrial Dispute – Taking up of dispute only by a registered body not necessary – Section 33-B – Order transferring all proceedings from one Labour Court to another – Validity – The term “Any proceeding under this Act pending before a Labour Court” – Implications of – Working Journalists (Conditions of Service and Miscellaneous Provisions Act, 1955 – Section 14 and Industrial Employment (Standing Orders) Act, 1946 – Termination of Service under terms of contract of employment or under the Standing Order – Tribunal, Power of, to enquire into actual facts and to determine circumstances and to interfere with order – Circumstance in which order of re-instatement should not be passed: *Suman Verma Vs. The Nava Bharat Karmachari Sangh, Indore*, I.L.R. (1970) M.P. 292 (DB)

– **Section 2(k)** – Dispute between employer and a single employee – Not per se an industrial dispute – But becomes one if taken up by Union of Workers: *Aulia Bidi Factory, Burhanpur Vs. The Industrial, Tribunal, M.P., Indore*, I.L.R. (1968) M.P. 860 (DB)

– **Section 2(k)** – Dispute between Sangh or Union of employees and association of employers – Not a dispute between employers and their workmen: *Aulia Bidi Factory, Burhanpur Vs. The Industrial, Tribunal, M.P., Indore*, I.L.R. (1968) M.P. 860 (DB)

– **Sections 2(K), 2(S) and 10** – whether Industrial Court can entertain a dispute depends upon nature of employment of the employee – He should be pleaded to be a ‘workman’ as defined under Section 2(s) – This requires investigation of fact – Plea of jurisdiction can-not be raised in appeal – Civil Procedure Code, Order 6, Rule 17-Amendment application – No necessary particulars mentioned – Rightly rejected – *Krishi Upaj Mandi Adhiniyam, M.P., 1973* – Section 27 – Duties of Secretary of market committee are managerial or administrative in nature – He is not a word “Workman” under Industrial Disputes Act, 1947 – Industrial Disputes Act – Section 2(S) – Secretary

of Market Committee – Is not ‘Workman’ as defined under – Civil Procedure Code – Section 9 – Service matter of Secretary of Market Committee – Civil Court has jurisdiction to entertain it – Specific Relief Act, 1963 – Section 34 – Mere declaration including requisite relief as well as suit for mere declaration is maintainable – Civil Services – Termination on ground of invalid appointment – Principles of natural justice should be followed – Agriculture Produced Market Rules, M.P., 1962 – Rule 38 – Deputy Director – Subsequent action of Director may rectify the approval of Deputy Director in appointment of Secretary – Doctrine of promissory estoppel operates against Director and the committee as well: *Krishi Upaj Mandi Samiti, Mhow Vs. Shree Ram Choudhary, I.L.R. (1998) M.P. 961*

– **Section 2-kkk, 25-k and 25-M** – Due to want of adequate orders employer could not continue work – Situation falls within scope of: *Sai Mazdoor Union, Jabalpur Vs. The Labour Commissioner, Indore. I.L.R. (2001) M.P. 960*

– **Section 2-kkk, 25-M read with Rule 75-B of M.P. Industrial Dispute Rules** – Application for permission to lay-off to be made in prescribed manner and copy to be served to workman concerned – Since copy served to 2 other unions and a copy affixed on the Board – Provisions complied with – Order of Commissioner confirmed – However liberty Granted to raise dispute before appropriate authority: *Sai Mazdoor Union, Jabalpur Vs. The Labour Commissioner, Indore. I.L.R. (2001) M.P. 960*

– **Sections 2(oo) and 25(f)** – Retrenchment – Termination order not falling under categories (a), (b) or (c) under section 2(oo) amounts to retrenchment and is invalid in conditions laid down by section 25F are not fulfilled: *Gulab Singh Chauhan Vs. State of M.P., Through the Chief Secretary, Govt. of M.P., Bhopal, I.L.R. (1984) M.P. 634*

– **Sections 2(oo), 25F and 11-A** – Retrenchment – Termination of Service of an employee – When amounts to retrenchment – Termination without holding domestic enquiry – Null and void – Management not entitled to lead fresh evidence before Labour Court – Labour court has only to rely on material on record – Necessity of legislating penal consequence in cases of illegal termination pointed out: *Employers in relation to M/s Anand Cinema of M/s Maheshwari and Bernard, Jabalpur Vs. Mohan Tiwari, I.L.R. (1985) M.P. 283*

– **Section 2(oo) and 25F** – Management of College terminating service of Petitioners without complying with requirement of section 25F as a whole – Complying only with Sub – Section (a) in paying one month’s salary in lieu of one month’s notice – Such termination result in ‘retrenchment’ within Section 2(oo) – Petitioners deemed to have been continued in employment – Entitled for full back wages – Petition allowed –

Reinstatement with full back wages ordered: *Rajkumar College Karamachari Union Raipur Vs. The Principal, Rajkumar College Raipur*, I.L.R. (1986) M.P. 374

– **Section 2(oo)** – ‘Otherwise than as a punishment by way of disciplinary action’ could not be given restricted meaning – The action of the employer to be judged in the facts and circumstances preceding and following it: *Employers In Relation To M/s. Anand Cinema of M/s. Maheshwari And Bernard Vs. Mohan Tiwari* I.L.R. (1992) M.P. 79 (D.B.)

– **Sections 2(oo) and 25 F** – Retrenchment – Daily rated employees appointed subject to sanction of posts – Services terminated for want of sanction of posts – Held – Termination by employer for any reason except those expressly excluded in Section 2(oo) of Act amounts to retrenchment – Invalid appointment not one of the exceptions – Termination of services of the employees amount to retrenchment: *Chief Municipal Officer, Municipal Council Govindgar, Rewa Vs. The Presiding officer, Labour Court, Rewa*, I.L.R. (1993) M.P. 496(D.B.)

– **Section 2 (oo)** – Termination on account of illegal or invalid appointment – Is not covered by Exception clauses (a) to (c) – Will amount to retrenchment: *Sawan Kumar Shrivastav Vs. Municipal Corporation, Jabalpur*, I.L.R. (1998) M.P., 941 (D.B.)

– **Section 2 (oo) & (bb)** – Termination as per stipulation in Appointment Order or non-renewal of contract on expiry of term – Does not amount to retrenchment: *Sawan Kumar Shrivastav Vs. Municipal Corporation, Jabalpur*, I.L.R. (1998) M.P. , 941 (D.B.)

– **Sections 2(oo) and 25-F**, Industrial (Standing Orders) Act, M.P. (XXV of 1961) and Industrial Employment (Standing Orders) Rules, M.P., 1963, Framed thereunder – Clauses 11, 12 – Termination of Employee, on a ground apart from misconduct, under clause 11 of the I.D. Act – For misconduct disciplinary action could be taken pursuant to clause 12 – Duty of the Court to see that clause 11 could not be used as camouflage for an action under Clause 12 – “Disciplinary action” is a proceeding for punishing the breach of Discipline – Petitioner’s services terminated under clause 11 – Tried to be justified before Labour Court that termination was for a misconduct – Whether such a volte face could be permitted – Evidence Act, Indian – Sections 91, 92 – Prohibition for contracting or varying term of such document – Labour Court and Industrial Court misdirected themselves in considering justification of the respondents – No evidence could be led to prove misconduct of the petitioner – Impugned order set aside – Petitioner reinstated – Words & Phrases: “Disciplinary action” is punishing the breach of discipline: *Karan Singh Vs. State* , I.L.R. (2000) M.P., 472

– **Section 2 (s)** – Family Planning Field work working under District Family Planning Cum – Health Officer is workman as defined in: *Gulab Singh Chauhan Vs. State of M.P., Through the Chief Secretary, Govt. of M.P., Bhopal*, I.L.R. (1984) M.P. . 634

– **Section 2 (s)** – Secretary of Market Committee – Is not ‘Workman’ as defined under Section: *Krishi Upaj Mandi Samiti, Mhow Vs. Shree Ram Choudhary, I.L.R. (1998) M.P., 961*

– **Sections 7 and 33(C)** – Certificate for recovery under section 33(c) to be issued only after enquiry made by labour Court under section 7 – Officer appointed to make enquiry regarding lay-off compensation – Not a labour Court: *The Burhanpur Tapti Mills Ltd., Burhanpur Vs. The Labour Officer Government of M.P., Burhanpur I.L.R. (1960) M.P. 559 (DB)*

– **Section 9-A, proviso** – Nature of change in the condition of employment – When liable to be given to the employee- Rule making powers of the registrar – Not violative of section 9-A: *Hemant Kumar Gupta Vs. The President, District Co-operative Central Bank Ltd., Ambikapur, District Surguja, I.L.R. (1982) M.P. 694 (DB)*

– **Section 10** – Even after reference under section 10, parties not precluded from arriving at private settlement – Proper course is to make awards in terms of settlement: *Nowrozabad Colliery Mazdoor Sangh Vs. F. Jeejeebhoy, I.L.R. (1974) M.P. 208 (DB)*

– **Section 10** – Industrial Dispute – Existence of consent Award passed earlier related to regularization and retrenchment of Contingent workers recruited prior to the year 1979 – Plea of Management that during operation of said award there remains no dispute referable to Tribunal – Not sustainable as the present dispute relates also to workers recruited thereafter: *Mineral Exploration Corporation Ltd., Nagpur Vs. Mineral Exploration Corporation Employees Union, (AITUC), Nagpur, I.L.R. (2000) M.P., 1368*

– **Section 10** – Persons submitting to jurisdiction of a tribunal – Cannot be allowed to challenge its jurisdiction: *Nowrozabad Colliery Mazdoor Sangh Vs. F. Jeejeebhoy, I.L.R. (1974) M.P. 208 (DB)*

– **Section 10** – Reason employed by appropriate Government for not referring dispute amounts to decision on merit – Not permissible – Order quashed: *National Federation of News Paper Employees Vs. M/s. Naveen Duniya; I.L.R. (2004) M.P. 470*

– **Section 10** – Reference by Government of dispute to Industrial Tribunal under the section – Authority of Tribunal to decide whether it has jurisdiction: *Chalchitra Karmachari Sangh Through Shri Tarasingh Viyogi, Gwalior Vs. Proprietor Regal Talkies, Gwalior, I.L.R. (1965) M.P. 56 (DB)*

– **Section 10** – Reference of Dispute to Industrial Tribunal rightly made by the Central Government: *Mineral Exploration Corporation Ltd., Nagpur Vs. Mineral*

Exploration Corporation Employees Union, (AITUC), Nagpur, I.L.R. (2000) M.P. , 1368

– **Section 10** – Reference of Disputes – Power of Appropriate Government – Dispute raised “Whether closure is bonafide, actual, real” – A question to be considered by the Labour Court – Labour Commissioner in exercise of powers of appropriate Government cannot adjudicate the question which are disputed: *National Federation of News Paper Employees Vs. M/s. Naveen Duniya; I.L.R. (2004) M.P. 470*

– **Section 10** – Settlement of dispute – Includes mode of settlement of dispute: *Nowrozabad Colliery Mazdoor Sangh Vs. F. Jeejeebhoy, I.L.R. (1974) M.P. 208 (DB)*

– **Section 10** – Withdrawal of reference amounts to its having not been made at all – Right of parties to withdraw from the reference made under the section: *Nowrozabad Colliery Mazdoor Sangh Vs. F. Jeejeebhoy, I.L.R. (1974) M.P. 208 (DB)*

– **Section 10 and M.P. Shops and Establishments Act (XXV of 1958)** – Section 58 – Questions regarding reinstatement and payment of retrenchment compensation – Not covered by Section 58 of the Shops and Establishments Act: *Chalchitra Karmachari Sangh Through Shri Tarasingh Viyogi, Gwalior Vs. Proprietor Regal Talkies, Gwalior, I.L.R. (1965) M.P. 56 (DB)*

– **Section 10 and M.P. Shops and Establishments Act (XXV of 1958)** – Sections 58 and 61 – Reference by Government of dispute to Industrial Tribunal under Section 10 – Authority of Tribunal to decide whether it has jurisdiction – Questions regarding reinstatement and payment of retrenchment compensation – Not covered by Section 58 of the Shops and Establishments Act – Right and privileges of an employee under Industrial Disputes Act – Saved by Section 61 of the Shops and Establishments Act – Words “under any other law” in Section 61 – Meaning of – Constitution of India – Article 226 – Opinion of tribunal on merits after holding that it had no jurisdiction – Opinion not a decision or an Award or adjudication binding on parties – Opinion liable to be quashed: *Chalchitra Karmachari Sangh Through Shri Tarasingh Viyogi, Gwalior Vs. Proprietor Regal Talkies, Gwalior, I.L.R. (1965) M.P. 56 (DB)*

– **Section 10 (1)** – Ambit and scope of: *The Rewa Coalfields Limited Dhanpuri Vs. The Central Government Industrial Tribunal-Cum- Labour Court, Jabalpur I.L.R. (1973) M.P. 406 (DB)*

– **Section 10(1)** – “Appropriate Government” in – Meaning of – Test to be applied to determine which is appropriate Government to make reference – Residence of parties to give jurisdiction must be in relation to existence of industry – Place where Industrial Dispute arises – Section 2(j) – Pushing of sale in particular State without establishment of company – Not sufficient to confer on that State, power to make reference – Section

2 – Dispute between individual worker and the employer – Not an industrial dispute – Dispute must be sponsored by union of workmen in the same establishment or by number of workmen – Support by workmen working in the same line but under different employers – Not sufficient: *Association of Medical Representative (M & V) Through its Secretary, Nagjibhai Town, Sitabuldi, Nagpur Vs. The Industrial Tribunal, M.P., Indore, I.L.R. (1969) M.P. 1 (DB)*

– **Section 10 (1)** – Central Government not a necessary party to writ proceedings: *Shital Vs. Central Government Industrial Tribunal – Cum Labour Court, Jabalpur, I.L.R. (1973) M.P. 218 (DB)*

– **Section 10 (1)** – Condition precedent for the validity of reference of dispute: *The Modern Stores, Jabalpur Vs. Shri Krishnadas Sha, Presiding Officer Labour Court, Jabalpur, I.L.R. (1974) M.P. 229 (DB)*

– **Section 10(1)** – Dispute raised by workmen – Refusal by appropriate Government to make reference of CGIT on ground of delay – Not proper as no limitation is prescribed for such proceedings: *Anand Kumar Dubey Vs. Union of India, I.L.R. (2001) M.P. 188 (D.B.)*

– **Section 10 (1)** – Existence of industrial dispute – Factual existence and expediency of making reference – Matters entirely within discretion of Government – Jurisdiction of Court to enquire into those Matters: *Aulia Bidi Factory, Burhanpur Vs. The Industrial, Tribunal, M.P., Indore, I.L.R. (1968) M.P. 860 (DB)*

– **Section – 10 (1)** – Formation of opinion – Condition precedent for making reference – Making of reference is administrative act – Persons affected can show that dispute is not industrial dispute and tribunal has no jurisdiction – Existence of industrial dispute – Factual existence and expediency of making reference – Matters entirely within discretion of Government Jurisdiction of Court to enquire into those matters – Section 2(k) – Dispute between Sangh or Union of employees and association of employers – Not a dispute between employers and their workmen – Dispute between employer and a single employee – Not per se an industrial dispute – But becomes one if taken up by Union of Workers: *Aulia Bidi Factory, Burhanpur Vs. The Industrial, Tribunal, M.P., Indore, I.L.R. (1968) M.P. 860 (DB)*

– **Section 10 (1)** – Making of reference is administrative act: *Aulia Bidi Factory, Burhanpur Vs. The Industrial, Tribunal, M.P., Indore, I.L.R. (1968) M.P. 860 (DB)*

– **Section 10 (1)** – Once reference made – Cannot be dismissed for default or terminate except by adjudication upon the dispute: *Shital Vs. Central Government Industrial Tribunal – Cum Labour Court, Jabalpur, I.L.R. (1973) M.P. 218 (DB)*

– **Section 10(1)** – Persons affected can show that dispute is not industrial dispute and tribunal has no jurisdiction: *Aulia Bidi Factory, Burhanpur Vs. The Industrial, Tribunal, M.P., Indore, I.L.R. (1968) M.P. 860 (DB)*

– **Section 10 (1)** – Recording of settlement and allowing withdraw of dispute – Does not amount to adjudication and does not amount to an award: *Shital Vs. Central Government Industrial Tribunal – Cum Labour Court, Jabalpur, I.L.R. (1973) M.P. 218 (DB)*

– **Section 10(1)** – Test to be applied to determine which is appropriate Government to make reference – Residence of parties to give jurisdiction must be in relation to existence of industry – Place where Industrial Dispute arises: *Association of Medical Representative (M & V) Through its Secretary, Nagjibhai Town, Sitabuldi, Nagpur Vs. The Industrial Tribunal, MP, Indore, I.L.R. (1969) M.P. 1 (DB)*

– **Sections 10(1) and 12(5) and Constitution of India, Article 226** – Powers of Central Govt. under section 10 (1) and 12(5) though discretionary but has to be exercised in a reasonable manner and not arbitrarily – Sections 10(1) and 12(5) – Decision of Central Govt. under – To be rendered on consideration of relevant facts and reasons to be stated – Central Govt. has no jurisdiction to record a finding on disputed questions – If dispute exists, reference has to be made – Central Govt. refusing to make a reference to Industrial Tribunal after recording finding that caste certificate filed by Petitioner at the time of appointment was a false document – Order refusing reference is in excess of jurisdiction – Liable to be quashed: *M.P. Bank Employees Association, Gwalior Vs. The Union of India, I.L.R. (1987) M.P. 401*

– **Sections 10(1) and 12(5)** – Central Govt. has no jurisdiction to record a finding on disputed questions – If dispute exists, reference has to be made: *M.P. Bank Employees Association, Gwalior Vs. The Union of India, I.L.R. (1987) M.P. 401*

– **Sections 10(1) and 12(5)** – Decision of Central Govt. Under – To be rendered on consideration of relevant facts and reasons to be stated: *M.P. Bank Employees Association, Gwalior Vs. The Union of India, I.L.R. (1987) M.P. 401*

– **Sections 10(1) and 12(5) and Constitution of India, Article 226** – Central Govt. refusing to make a reference to Industrial Tribunal after recording findings that caste certificate filed by petitioner at the time of appointment was a false document – Order refusing reference is in excess of jurisdiction – Liable to be quashed: *M.P. Bank Employees Association, Gwalior Vs. The Union of India, I.L.R. (1987) M.P. 401*

– **Section 10(1) (d)** – Disputes for rise of wages between contractor and its workmen referred to Industrial Tribunal – Tribunal not justified in entering into question as to whether the workmen were employees of petitioner steel Authority – Award for entitlement of negotiated wages bad – Principle for present wage structure stated: *Steel Authority of India Ltd. Bhilai Vs. Shri B.S. Yadav, I.L.R. (1988) M.P. 152 (DB)*

– **Section 10(4)** – Question as to whether the employees are ‘workman’ whether the employees is an ‘industry’ and whether the dispute is an ‘industrial dispute’ are incidental matters within the purview of Section 10(4) of the Act – Labour Court alone has jurisdiction to decide such points – High Court would be slow in deciding such points on merits: *Rajya Gramin Vikas Sansthan Vs. State*, *I.L.R. (1992) M.P. 172 (D.B.)*

– **Section 10-A and Constitution of India, Article 226** – Labour union, party to arbitration agreement, not challenging award – Employees affected may challenge it in writ petition – Section 10-A – Arbitrator acting under – Possesses the status of statutory tribunal – Award – Must contain reason – Natural justice – Rules of – Applicable to administrative orders – Also require reasons in support of the order passed by *quasi-Judicial* authority or tribunals: *M.G. Panse Vs. S.K. Sanyal*, *I.L.R. (1980) M.P. 718 (DB)*

– **Section 10-A** – Arbitrary acting under – Possesses the status of statutory tribunal: *M.G. Panse Vs. S.K. Sanyal*, *I.L.R. (1980) M.P. 718 (DB)*

– **Section 10-A** – Arbitrator appointed under this section – Whether a Tribunal – Proceedings before arbitrator – Are quasi-judicial proceedings – Arbitrator must act within powers defined by Act and rules – Section 10-A(5) – Excludes operation of Act from proceedings under section 10-A – Arbitrator under section 10-A – Not a private arbitrator in the ordinary sense – Arbitration has all the essential attributes of statutory arbitration under section 10 – Constitution of India – Article 226 – Arbitrator in section 10-A, Industrial Disputes Act – Is a person in any case and amenable to writ jurisdiction – Industrial Disputes Act – Section 10 – Withdrawal of reference amounts to its having not been made at all – Right of parties to withdraw from the reference made under section 10 – Estoppel – Reference first made under section 10 – Workers by compromise withdrawing reference – Workmen Estopped from relying on reference – Persons submitting to jurisdiction of a tribunal – Cannot be allowed to challenge its jurisdiction – Even after reference under section 10, parties not precluded from arriving at private settlement – Proper course is to make awards in terms of settlement – Settlement of dispute – Includes mode of settlement of dispute: *Nowrozabad Colliery Mazdoor Sangh Vs. F. Jeejeebhoy*, *I.L.R. (1974) M.P. 208 (DB)*

– **Section 10-A** – Arbitrator not a private arbitrator in the ordinary sense – Arbitrator has all the essential attributes of statutory arbitration under section 10: *Nowrozabad Colliery Mazdoor Sangh Vs. F. Jeejeebhoy*, *I.L.R. (1974) M.P. 208 (DB)*

– **Section 10-A** – Award – Must contain reasons: *M.G. Panse Vs. S.K. Sanyal*, *I.L.R. (1980) M.P. 718 (DB)*

– **Section 10-A** – Decision of arbitrator – Subject to writ jurisdiction of High Court: *K.P. Singh Vs. S.K. Gokhale, I.L.R. (1972) M.P. 1016 (DB)*

– **Section 10-A** – Dispute between employees Union and employer – Dispute referred to arbitrator – Arbitration – Not a private arbitration – Arbitrator has to follow procedure laid down in Section 10-A – Procedure is mandatory – Award vitiated if procedure not followed – Decision of arbitrator – Subject to writ jurisdiction of High Court: *K.P. Singh Vs S.K. Gokhale, I.L.R. (1972) M.P. 1016 (DB)*

– **Section 10-A** – Proceedings before arbitrator – Are quasi-judicial proceedings: *Nowrozabad Colliery Mazdoor Sangh Vs F. Jeejeebhoy, I.L.R. (1974) M.P. 208 (DB)*

– **Section 10-A** – Procedure is mandatory – Award vitiated if procedure not followed: *K.P. Singh Vs S.K. Gokhale, I.L.R. (1972) M.P. 1016 (DB)*

– **Section 10-A (3)** – First part obligatory but second part is directory and not imperative: *The Modern Stores, Jabalpur Vs. Shri Krishnadas Sha, Presiding Officer Labour Court, Jabalpur, I.L.R. (1974) M.P. 229 (DB)*

– **Section 10-A(3)** – Provision for publication of arbitration agreement within the time fixed therein is only directory – However, arbitration agreement has to be published before award is given – Award based on statements submitted by the parties and not supported by any evidence required for proving the case of the party – Error being apparent on record, award is vitiated – Two out of three arbitrators giving the award without any notice to the third arbitrator about proceedings after a particular date – Award not binding on parties – Power of High Court to interfere with the award: *Aftab-E-jadid Vs. Bhopal Shramjivi Patrakar Sangh, I.L.R. (1984) M.P. 605 (DB)*

– **Section 10-A (5)** – Excludes operation of Act from proceedings under section 10-A: *Nowrozabad Colliery Mazdoor Sangh Vs. F. Jeejeebhoy, I.L.R. (1974) M.P. 208 (DB)*

– **Sections 10, 12** – Writ Petition – Sections 10(1) and 12(5) – Reference by the appropriate Government to the Labour Court: *Rajya Gramin Vikas Sansthan Vs. State, I.L.R. (1992) M.P. 172 (D.B.)*

– **Sections 10 and 33-C** – Deputy Labour Commissioner though an authority under the Industrial Disputes Act yet bereft of jurisdiction when an objection as to the employer employee relation is raised – Matter would have been refund under Section 17(2) for adjudication to the competent Labour Court constituted under the Industrial Disputes Act – Order impugned quashed: *Nav Bharat Press (Private) Ltd. Vs. State , I.L.R. (2001) M.P. 931*

– **Section 10** – Mining is industry – Workman engaged in mining operation – Is workman in mining industry – Dispute between such employee and his employer – Is Industrial dispute – Central Government appropriate authority to make reference – Reference to industrial court is valid and proper – For making reference dispute to be raised by employee with employer – Constitution of India – Article 284 – Conflict between special Act and General Act – Circumstances in which Special Act or General Act will prevail – Industrial Disputes Act is Special Act – Not repealed by Co-operative Societies Act, 1960 – Both can co-exist without repugnance – Co-operative Societies Act, M.P. 1960 and Industrial Disputes Act (Central), 1947 – Difference between the two – Industrial Disputes Act, 1947 – Industrial dispute to be decided under this Act – Industrial Disputes Act (after amendments by Acts 45/65 and 45/71) – Prevails over M.P. Co-operative Societies Act: *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd, P.O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, M.P., I.L.R. (1976) M.P. 905 (FB)*

– **Section 10** – Reference to Industrial Court is valid and proper – For making reference dispute to be raised by employee with employer: *Rashtriya Khadan Mazdoor Sahakari Samiti Ltd, P.O. Dalli-Rajhara, District Durg Vs. The Presiding Officer, Central Govt., Industrial Tribunal-Cum-Labour Court, Jabalpur, M.P., I.L.R. (1976) M.P. 905 (FB)*

– **Section 11-A, Proviso** – Management not entitled to lead fresh evidence before Labour Court – Labour Court has only to rely on material on record – Necessity of legislating penal consequence in cases of illegal termination pointed out: *Employers in Relation to M/s Anand Cinema of M/s Maheshwari and Bernard, Jabalpur Vs. Mohan Tiwari, I.L.R. (1985) M.P. 283*

– **Section 11(3)** – Tribunal possesses same powers as Civil Court in matter of attendance of witnesses – This power includes power to re-call a witness: *Messrs Karam Chand Thapar & Brothers (Private) Limited, Calcutta Vs. The Work Men of North Chirimiri Colliery, I.L.R. (1971) M.P. 439 (DB)*

– **Section 12(5)** – Casts duty on Government to state reasons for not making reference: *Vishnu Saday Bhattacharya Vs. The Manager, Cycle Industries, M.P. Laghu-Udyog Nigam, Guna, I.L.R. (1978) M.P. 254 (DB)*

– **Section 12(5)** – Words “case for reference” in – Meaning of: *Vishnu Saday Bhattacharya Vs. The Manager, Cycle Industries, M.P. Laghu-Udyog Nigam, Guna, I.L.R. (1978) M.P. 254 (DB)*

– **Section 12 (5) and Constitution of India, Article 226** – Reasons given for not making reference are extraneous and not germane – There is failure on part of

Government to exercise jurisdiction – Writ of mandamus can be issued: *Vishnu Saday Bhattacharya Vs. The Manager, Cycle Industries, M.P. Laghu-Udyog Nigam, Guna, I.L.R. (1978) M.P. 254 (DB)*

– **Section 17 (2)** – Does not debar high Court under Articles 226 and 227 from determining whether provisions of statute have been complied with: *Shital Vs. Central Government Industrial Tribunal - Cum - Labour Court, Jabalpur, I.L.R. (1973) M.P. 218 (DB)*

– **Section 18 and Constitution of India, Articles 14 and 16** – Daily rated workmen Settlement between Union of workmen and employer for regularization of such workmen depending upon needs and requirements of the employer – Claim for equal pay for equal work on facts and circumstances not granted: *Satyanarayan Sharma Vs. National Mineral Development Corporation, Hyderabad I.L.R. (1991) M.P. 421 (DB)*

– **Section 18** – Promotion policy brought into existence by way of settlement reached by majority of Employee's Union with management – Binding on both parties unless revoked: *Raghvendra Prasad Gautam Vs. Union Bank of India, I.L.R. (1999) M.P., 103 (D.B.)*

– **Section 18(3)** – Tribunal or Labour court to look to fairness or reasonableness of the settlement between employer and union representing the workmen – Settlement between parties to the lis – In such contingency no difficulty in passing award arises – In case all are not parties to lis – Tribunal or Labour Court has to examine fairness and reasonableness of settlement – Settlement if found to be fair and reasonable – It will be binding on all parties – Workmen not represented by Federation – Workmen can question the terms through their Union – Contract Act – Section 23 – Stipulation about forfeiture of variation in dearness allowance after three month – Stipulation opposed to public policy and is void: *Hardeosingh Vs. The Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, I.L.R. (1978) M.P. 662 (DB)*

– **Sections 19(3), 6** – Minimum Wages Act, 1948, Section 3(2-A) – Fixing of minimum rates of wages – Dispute between employees and employers regarding minimum wages referred to M.P. Industrial Tribunal – Settlement between the employees and employers regarding minimum wages during pendency of reference – Awards passed by Tribunal on 30-11-1981 in view of settlement, to remain in force till 22-10-1986 – Complaint filed before Labour Court alleging non payment of minimum wages from 1-10-1984 till 31-10-1984 – Labour Court directed to pay deficit of wages, penalty and compensation – Held – Section 3(2-A) provides that notification issued during the operation of award shall not apply – Irrespective of settlement award passed on 30-11-1981 to remain in force for a period of one year as per Section 19(3) of Industrial Disputes Act – Minimum Wages Notification issued on 14-6-1983 applies as award had

already ceased to be in operation in view of statutory provision – Order of Labour Court proper – Petition dismissed: *M/s Priya Darsan Agarbatti Vs. State of M.P.* I.L.R. (1994) M.P. 317(D.B.)

– **Section 25-B** – Continuous Service – Actual working days – Calculation of – Sundays and other paid holidays can be taken into Account: *Sawan Kumar Shrivastav Vs. Municipal Corporation, Jabalpur*, I.L.R. (1998) M.P., 941 (D.B.)

– **Section 25-F** – Power of employer to terminate services of employee and to reorganise business – Reorganisation resulting in discharge of some employees – Discharge cannot be said to be mala fide: *The Modern Stores, Jabalpur Vs. Shri Krishnadas Sha, Presiding Officer Labour Court, Jabalpur*, I.L.R.(1974) M.P. 229 (DB)

– **Section 25-F** – Requirements of section not fulfilled – Retrenchment peruse invalid: *The Modern Stores, Jabalpur Vs. Shri Krishnadas Sha, Presiding Officer Labour Court, Jabalpur*, I.L.R. (1974) M.P. 229 (DB)

– **Section 25-F** – Retrenchment-A managerial Function – Management possess full power to take steps to carry on industrial undertaking efficiently and economically: *The Modern Stores, Jabalpur Vs. Shri Krishnadas Sha, Presiding Officer Labour Court, Jabalpur*, I.L.R. (1974) M.P. 229 (DB)

– **Section 25-F** – Termination without holding domestic enquiry – Null and void: *Employers in relation to M/s Anand Cinema of M/s Maheshwari and Bernard, Jabalpur Vs. Mohan Tiwari*, I.L.R. (1985) M.P. 283

– **Section 25-F** – Termination order not amounted to retrenchment – Cases remanded to Labour Court to decide the matter afresh granting opportunity to employer to lead evidence and to employer to rebut the same: *Employers In Relation To M/s. Anand Cinema of M/s. Maheshwari And Bernard Vs. Mohan Tiwari* I.L.R. (1992) M. P. 79 (D.B.)

– **Section 25-F** – Petitioner appointed as clerk in the office of Tahsil Legal Aid and Advice Committee for 89 days – Was allowed to work after expiry of 89 days – Termination of Service challenged – Termination of invalid appointment also amount to retrenchment – Provision of Section 25-F, should have been followed – Termination without fulfilling prerequisites of Section 25-F invalid – Petitioner directed to be reinstated: *Mahesh Bhargava Vs. State of M.P.*, I.L.R. (1993) M.P. 118 (D.B.)

– **Section 25-F** – Oral termination of a workman who has worked for 240 days – Amounts to retrenchment – Without complying mandatory provision of Section 25-F – Oral termination bad – Section 25-B – Continuous Service – Actual working days – Calculation of – Sundays and other paid holidays can be taken into account – Section

2(00) – Termination on account of illegal of invalid appointment – Is not covered by exception clauses (a) to (c) – Will amount to retrenchment – Section 2(00) & (bb) – Termination as per stipulation in appointment order or non-renewal of contract on expiry of term – Does not amount to retrenchment: *Sawan Kumar Shrivastav Vs. Municipal Corporation, Jabalpur, I.L.R. (1998) M.P., 941 (D.B.)*

– **Section 25-F** – Three months notice served on workmen for retrenchment – Not maintainable in law – Period of sixty days shall start only when the application is made in strict compliance of law – Order of learned Single Judge concurred with as no interference is warranted: *Orissa & Allied Industries Ltd. Vs. State, I.L.R. (2000) M.P., 980 (D.B.)*

– **Section 25F, 25FFF and Section 33(C)** – Section 33(C) – Scope and applicability – Mode of determination of compensation payable to workmen when Mill closed – Labour Commissioner, Jurisdiction of to issue certificate before determining compensation – Computation of benefits in terms of money – Not equivalent to ascertainment of monetary claim under settlement or award – Proceedings for recovery of money – Not proceedings for computation of amount due to workmen – No certificate can issue without computation by proper authority in accordance with proper procedure: *Bengal Nagpur Cotton Mills Ltd. Rajnandgaon VS. The State of M.P., I.L.R. (1960) M.P. 225 (DB)*

– **Section 25-FF** – A claim to compensation thereunder – Does not falling the definition of wages: *Surajmal Mehta, Managing Director, The Barnagar Electric Supply and Industrial Co. Ltd., Barnagar Vs. Authority under the Payment of Wages Act, Ujjain, I.L.R. (1965) M.P. 873 (DB)*

– **Section 25-FF** – Transferree neither liable to pay compensation nor to re-employment of workman whose employment stood automatically terminated on the transfer: *Madhya Pradesh Laghu Udyog Nigam Ltd. Bhopal Vs. Mohd. Imran I.L.R. (2001) M.P. 975*

– **Section 25-FF** – Person discharged from service consequent on transfer of undertaking – Person cannot be regarded as retrenched: *Surajmal Mehta, Managing Director, The Barnagar Electric Supply and Industrial Co. Ltd., Barnagar Vs. Authority under the Payment of Wages Act, Ujjain, I.L.R. (1965) M.P. 873 (DB)*

– **Section 25-FFF** – Payment of Wages Act – Section 2(vi)(d) – Compensation payable under Section 25-FFF of Industrial Disputes Act – Does not fall within the definition of “Wages” in Section 2 (vi) (d) of payment of Wages Act – Jurisdiction of Authority under Payment of Wages Act to decide claim under Section 25-FFF: *Fajale Hussain Vs. Authority Under the Payment of Wages Act, Ujjain, I.L.R. (1965) M.P. 893 (DB)*

– **Sections 25-F and 33-C(c)** – Question of amount of retrenchment compensation payable under Section 25-F – Falls within jurisdiction of Labour Court under Section 33-C(2): *The Central India Electric Supply Co. Ltd., Bilaspur Vs. The Presiding Officer District Labour Court, Jabalpur*, I.L.R. (1972) M.P. 431 (DB)

– **Section 25-FFF(1)** – Applicability of: *The Central India Electric Supply Co. Ltd., Bilaspur Vs. The Presiding Officer District Labour Court, Jabalpur*, I.L.R. (1972) M.P. 431 (DB)

– **Sections 25-F, 25-B** – Retrenchment – Employee putting 15 years service – Striking off from the rolls of employer on the ground of his long absence amount to retrenchment – Termination void ab initio for non – compliance of provisions of Section 25-F read with Section 2(oo) – Petitioner deemed to be in continuous service for not less than one year – Termination ab initio void: *All India Trade Union Of Food Corporation Employees And Workers Vs. Food Corporation Of India*, I.L.R. (1994) M.P. 59 (D.B.)

– **Section 25-J** – Permanency in employment – Is itself a benefit: *The Modern Stores, Jabalpur Vs. Shri Krishnadas Sha, Presiding Officer Labour Court, Jabalpur*, I.L.R. (1974) M.P. 229 (DB)

– **Section 25-N** – Permission for retrenching workmen from the appropriate Government – Mandatory: *Orissa & Allied Industries Ltd. Vs. State*, I.L.R. (2000) M.P., 980 (D.B.)

– **Section 25-N(4)** – Application not filed as required under the law – Expiry of sixty days from date of application – Deemed permission cannot take effect: *Orissa & Allied Industries Ltd. Vs. State*, I.L.R. (2000) M.P., 980 (D.B.)

– **Sections 25-O and 25-N and Constitution of India, Articles 226 and 227** – Interests of General public and interests of the workmen under the two provisions are to be considered in granting or refusing permission contemplated therein – Order of State Govt. containing reasons for refusal of permission and order not based on irrelevant or extraneous consideration non-existent factors – Constitution of India – Article 226 – Writ petition – Scope of enquiry in – Limitation – No error apparent on the face of the record – No interference in writ jurisdiction – Petitioner may avail of remedy of review under Section 25-O (5) and reference under Section 25-N(6) in case not satisfied with the impugned order: *Straw Products Limited Jaykaypur, Rayagada District Koraput (Orissa) Through General Manager (Works), Bhopal Vs. Union of India*, I.L.R. (1987) M.P. 147 (DB)

– **Sections 25-O(5) and 25-N (6)** – No error apparent on the face of the record – No interference in writ jurisdiction – Petitioner may avail of remedy of review under

section 25-O(5) and reference under section 25-N(6) in case not satisfied with the impugned order: *Straw Products Limited Jaykaypur, Rayagada District Koraput (Orissa) Through General Manager (Works), Bhopal Vs. Union of India, I.L.R. (1987) M.P. 147 (DB)*

– **Section 25-O(5)** – Review – Reference – First Writ Petition was disposed of with direction about disposal of pending review petition – No other relief including that of reference to the Tribunal was pressed – Review application rejected – Appellant cannot re-agitate the matter before writ court – Section 25-O(5) – Powers under this Section for review/Reference not mandatory for the Government to resort to both options simultaneously or one after the another – Word ‘may’ occurring makes it optional for the Government: *Ujjain Mill Mazdoor Sangh, Ujjain Vs. State of M.P., I.L.R. (1998) M.P., 848 (D.B.)*

– **Section 25-O(5)** – Nature of provision – Word “may” occurring in the provision makes it optional for the Government to either review the order granting or refusing permission for closure or refer the matter to the Tribunal for adjudication – Provision not mandatory: *Ujjain Mill Mazdoor Sangh Vs. State, I.L.R. (2000) M.P., 1250 (D.B.)*

– **Section 25-O(5)** – Option of review stands exhausted – Appellants cannot ask for other option as a matter of right: *Ujjain Mill Mazdoor Sangh Vs. State, I.L.R. (2000) M.P., 1250 (D.B.)*

– **Section 33(B)** – Order transferring all proceedings from one Labour Court to another – Validity: *Suman Verma Vs. The Nava Bharat Karmachari Sangh, Indore, I.L.R. (1970) M.P. 292 (DB)*

– **Section 33(B)(1)** – The term “Any proceeding under this Act pending before a Labour Court” – Implications of: *Suman Verma Vs. The Nava Bharat Karmachari Sangh, Indore, I.L.R. (1970) M.P. 292 (DB)*

– **Section 33-C(1)** – Closure of Industry due to dispute with Bank – Permission for ‘lay – off’ or for ‘closure’ not taken – Recovery of wages during closure – Order by authority without notice to industry – No specific provision in Section for notice to employer – No provision in law by which workers can be deprived of wages in such circumstances – No prejudice caused to employer – Dispensing with notice not against the natural justice: *Bilaspur Spinning Mills and Industries Limited, Bilaspur Vs. The Deputy Labour Commissioner Raipur, I.L.R. (2002) M.P. 196*

– **Section 33-C(1)** – Recovery under – Can be only when amount is determined: *Surajmal Mehta, Managing Director, The Barnagar Electric Supply and Industrial Co. Ltd., Barnagar Vs. Authority under the Payment of Wages Act, Ujjain, I.L.R. (1965) M.P. 873 (DB)*

– **Section 33-C(1) and (2) and Rule 62** – Application for relief under sub-section (2) – To be made to Labour Court having jurisdiction to decide the question – Rule 62 refers to application under sub-section (1) capable of being disposed of by Government – Section 33-C(2) – Application made under, by Advocate – Is mere irregularity not affecting merits – Order of Labour Court on that count not challengeable – Question of amount of retrenchment compensation payable under Section 25-F – Falls within jurisdiction of Labour Court under Section 33-C(2) – Section 25-FFF(1) – Applicability of: *The Central India Electric Supply Co. Ltd., Bilaspur Vs. The Presiding Officer District Labour Court, Jabalpur, I.L.R. (1972) M.P. 431 (DB)*

– **Section 33-C(a)** – Application made under, by advocate – Is mere irregularity not affecting merits – Order of Labour Court on that count not Challengeable: *The Central India Electric Supply Co. Ltd., Bilaspur Vs. The Presiding Officer District Labour Court, Jabalpur, I.L.R. (1972) M.P. 431 (DB)*

– **Section 33-C(2)** and Fundamental Rules, Rule 53, Sub-rule (1), clause (i) of proviso – Whether Labour Court has jurisdiction to adjudge the amount of subsistence allowance in excess of 50% under clause (i) of proviso to Rule 53 (1) of Fundamental Rules: *Jabalpur Municipal Corporation, Jabalpur Vs. Presiding Officer Labour Court, Jabalpur, I.L.R. (1987) M.P. 137 (DB)*

– **Section 33-C(2)** and Minimum Wages act (XI of 1948), Section 2(h), 4(1)(iii) & Section 20 – Attendance Bonus – Payable under independent contract and not under terms of employment cannot be included in minimum wages payable – Determination of right or liability and extent of liability – Distinction between – Industrial disputes Act – Section 33-C(2) – Grievance of workmen about extent of liability of employer for minimum wages – Application under – Maintainability of – Jurisdiction – Workmen applying for balance of amount payable at notified rate – dispute not covered under section 20, Minimum Wages Act – Jurisdiction under section 33-C(2) not Ousted – Period of Limitation under – Minimum wages Act – Section 20 – Not applicable to a claim under section 33-C(2) Industrial Disputes Act: *Manganese Ore (India) Ltd., Nagpur Vs. Bisen, I.L.R. (1980) M.P. 813 (DB)*

– **Section 33-C(2)** and Minimum Wages Act (XI of 1948) , Section 2(h), 4(1)(iii) and Section 20 – Determination of right or liability and extent of liability – Distinction between: *Manganese Ore (India) Ltd., Nagpur Vs. Bisen, I.L.R. (1980) M.P. 813 (DB)*

– **Section 33-C(2)** and Payment of Wages Act (IV of 1936) – Section 15 – Difference between: *Surajmal Mehta, Managing Director, The Barnagar Electric Supply and Industrial Co. Ltd., Barnagar Vs. Authority under the Payment of Wages Act, Ujjain, I.L.R. (1965) M.P. 873 (DB)*

– **Section 33-C(2)** and Payment of Wages Act (IV of 1936), Sections 15 and 22 – Jurisdiction – section 22 of Payment of Wages act does not bar jurisdiction of labour court under section 33-C(2), Industrial Disputes Act, in respect of claims referable to section 15, Payment of wages Act – Section 33-C(2) – Claims under – Scope of: *Mohammad Ismail Vs. Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court, Jabalpur, I.L.R. (1982) M.P. 757 (FB)*

– **Section 33-C(2)** and Minimum Wages Act (XI of 1948), Section 20 – Jurisdiction – Workmen applying for balance of amount payable at notified rate – Dispute not covered under Section 20, Minimum wages Act – Jurisdiction under section 33-C(2) not ousted: *Manganese Ore (India) Ltd., Nagpur Vs. Bisen, I.L.R. (1980) M.P. 813 (DB)*

– **Section 33-C(2)** and Section 17- B - Comes into operation when proceedings are preferred before High Court or Supreme Court against award directing reinstatement – Section not applicable in present case because petitioner has challenged the order by which petitioner has to comply the award of reinstatement although he was not a party to the award: *Madhya Pradesh Laghu Udyog Nigam Ltd. Bhopal Vs. Mohd. Imran I.L.R. (2001) M.P. 975*

– **Section 33-C (2)**—Amount computable in terms of money—Limitation provided in the minimum wages Act, will not debar the Court to enforce statutory liability: *Kishore Jaidka Vs. Persiding Officer, Labour Court, Sagar, I.L.R. (2004) M.P. 147*

– **Section 33-C(2)** – Application for recovery of difference of wages/salary – No limitation provided in I.D.Act – Amount computable in terms of money – Limitation provided in the Minimum Wages Act will not debar the court to enforce statutory liability: *Kishore Jaidka Vs. Persiding Officer, Labour Court, Sagar, I.L.R. (2004) M.P. 147*

– **Section 33-C(2)** – Circumstances in which it comes into play: *Surajmal Mehta, Managing Director, The Barnagar Electric Supply and Industrial Co. Ltd., Barnagar Vs. Authority under the Payment of Wages Act, Ujjain, I.L.R. (1965) M.P. 873 (DB)*

– **Section 33(C)(2)** – Claim regarding difference in wages – Not a claim under any settlement or an award or under the provision of Chapter V-A – Scope of, not wide enough to include a claim falling under Section 15 of Payment of Wages Act: *Laxman Vs. M/s Dayalal Meghji and Co., Malviya Road, Raipur, I.L.R. (1970) M.P. 285 (DB)*

– **Section 33-C(2)** – Grievance of workmen about extent of liability of employer for minimum wages – Application under – Maintainability of: *Manganese Ore (India) Ltd., Nagpur Vs. Bisen, I.L.R. (1980) M.P. 813 (DB)*

– **Section 33-C(2)** – Labour Court – Competency of, to determine amount of monetary or non-monetary benefit: *Surajmal Mehta, Managing Director, The Barnagar Electric Supply and Industrial Co. Ltd., Barnagar Vs. Authority under the Payment of Wages Act, Ujjain, I.L.R. (1965) M.P. 873 (DB)*

– **Section 33-C(2)**—Labour law – Minimum wages—Employer duty bound to provide sufficient wages to its employees —Application filed by workman cannot be thrown merely on the ground of delay: *Kishore Jaidka Vs. Presiding Officer, Labour Court, Sagar, I.L.R. (2004) M.P. 147*

– **Section 33-C(2)** – Proceedings under – Are akin to execution proceedings – Award not executable against the petitioner who was not a party to the dispute in which award was passed – Employee only entitle to benefit under Section 25-FF against the transferor – Order of Labour Court quashed: *Madhya Pradesh Laghu Udyog Nigam Ltd. Bhopal Vs. Mohd. Imran I.L.R. (2001) M.P. 975*

– **Section 33(C)(2)** – Scope of, not wide enough to claim falling under Section 15 of Payment of Wages Act: *Laxman Vs. M/s Dayalal Meghji and Co., Malviya Road, Raipur, I.L.R. (1970) M.P. 285 (DB)*

– **Sections 33, 33-A** – Workman transferred during pendency of dispute regarding fixation of wages before labour court – Order of Transfer having no bearing on the pending of dispute – Conditions precedent as mentioned in Section 33 not presented – Sections 33 and 33-A not attracted – Order of Labour Court staying operation of Transfer Order quashed for want of jurisdiction: *Management, Dainik Naveen Duniya, Wright Town, Jabalpur, Vs. Presiding Officer, Labour Court, Jabalpur, I.L.R. (1992) M.P. 166 (D.B.)*

– **Section 36** – Does not prevent aggrieved workman from moving High Court in writ jurisdiction: *Shital Vs. Central Government Industrial Tribunal – Cum Labour Court, Jabalpur, I.L.R. (1973) M.P. 218 (DB)*

– **Section 36** – Restricted to proceedings under the Act – Does not prevent aggrieved workman from moving High Court in writ jurisdiction – Section 17 (2) – Does not debar High Court under Articles 226 and 227 from determining whether provisions of statute have been complied with – Section 2 (b) – Word “determination” in – Implies adjudication upon relevant material by the Tribunal or Court – Once reference made – Cannot be dismissed for default or terminate except by adjudication upon the dispute- recording of settlement and allowing withdrawal of dispute – Does not amount to adjudication and does not amount to an award – Central Government not a necessary party to writ proceedings: *Shital Vs. Central Government Industrial Tribunal - Cum - Labour Court, Jabalpur, I.L.R. (1973) M.P. 218 (DB)*

– **Section 36-A** – Object of – Enables Government to make a reference in case of doubt or difficulty arising out of the interpretation of any provision of award or settlement – Power of interpretation not to form a basis for deciding something that is ancillary – Reference under, not permissible to supplement original award: *Water Works Karmachari Sangh, Ujjain Vs. Public Health and Engineering Department, Bhopal, I.L.R. (1966) M.P. 47 (DB)*

– **Section 36-A** – Reference under, not permissible to supplement original award: *Water Works Karmachari Sangh, Ujjain Vs. Public Health and Engineering Department, Bhopal, I.L.R. (1966) M.P. 47(DB)*

- Industrial Disputes (State) Rules 1957

– **Section 76-A** – Procedure for obtaining permission – Application for permission has to be made in triplicate with copy to the concerned workmen: *Orissa & Allied Industries Ltd. Vs. State , I.L.R. (2000) M.P. 980 (D.B.)*

- Industrial Disputes Settlement Act, C. P. and Berar (XXIII of 1947)

– **Difference between unit basis and industry-cum-region basis** – Constitution – Article 226 – Writ of *certiorari* – Not a writ of right – Discretionary remedy – Not granted as a matter of course – Not granted at the instance of party at whose instance or in whose favour the error was made – Person taking chance of decision in his favour by adopting one basis – Cannot be allowed to question that basis when decision goes against him – High Court not to substitute its own judgment when tribunal has taken possible view on evidence: *The Jabalpur Bijlighar Karmachari Panchayat, Jabalpur Vs. The Jabalpur Electric Supply Co., Ltd., Jabalpur I.L.R. (1963) M.P. 56 (DB)*

– **Finding that domestic enquiry not proper** – Opportunity to be given to employer to produce evidence to prove charges: *The M.P. State Road Transport Corporation, Bhopal Vs. Industrial Court, M.P. Indore, I.L.R. (1975) M.P. 26 (DB)*

– **Schedule II, Item 3** – “Law” in-Includes ordinary Law governing the relationship of employer and employee – Dismissal of employee under general law – Rules of natural justice have no application: *Shri Abdul Salam Vs. Abdul Khalik, I.L.R. (1960) M.P. 550 (DB)*

– **Section 2(10)** – Test to be applied to see whether a person is an employee or a contractor – Section 16 – Question whether a person is an employee or not – Is a jurisdictional fact – By deciding collateral fact wrongly – Tribunal cannot confer jurisdiction upon itself – Difference between decision on collateral fact and the decision on fact or law for which it is constituted: *Kantilal Mehta Vs. Gopal, I.L.R. (1975) M.P. 586 (DB)*

– **Section 2, clause 10** – Definition of employee – Does not include coolies employed by a contractor, though working under supervision of owner for a limited purpose – Constitution of India, Article 226 – Jurisdiction of Tribunal conditioned by certain facts – Issue of writ of *certiorari* – Premissibility if facts conditioning jurisdiction found to be not existing: *The Jabalpur Electric Supply Co., Jabalpur Vs. The State Industrial Court MP*, I.L.R. (1959) M.P. 220 (DB)

– **Section 7 and 7(a)** – Provide for cancellation of certificate of recognition to a union or for granting a certificate to applicant *i.e.* other union: *Bhilai Steel Kamgar Sangh, Bhilai Vs. Shri L.R. Joshi, Registrar of Recognised Unions, Indore*, I.L.R. (1962) M.P. 166 (DB)

– **Section 12(1)** – Notice thereunder – Time and place not necessary to be mentioned: *Bhilai Steel Kamgar Sangh, Bhilai, Vs. Shri L.R. Joshi, Registrar of Recognised Unions, Indore*, I.L.R. (1962) M.P. 166 (DB)

– **Section 12(1) and (2)** – Scope of: *Bhilai Steel Kamgar Sangh, Bhilai, Vs. Shri L.R. Joshi, Registrar of Recognised Unions, Indore*, I.L.R. (1962) M.P. 166 (DB)

– **Section 12(1) and (2)** – Scope of – Notice under section 12(1) – Time and place not necessary to be mentioned – Section 12(2) – Persons interested in applying for being made parties within period mentioned – Persons made Parties can file objections on date fixed – Section 12 (1) does not contemplate inviting of objections – Sections 7 and 7 (a) – Provide for cancellation of certificate of recognition to a union or for granting a certificate to applicant *i.e.* other union: *Bhilai Steel Kamgar Sangh, Bhilai, Vs. Shri L.R. Joshi, Registrar of Recognised Unions, Indore*, I.L.R. (1962) M.P. 166 (DB)

– **Section 12(2)** – Persons interested in applying for being made parties within period mentioned – Persons made parties can file objections on date fixed – Section 12(1) does not contemplate inviting of objection: *Bhilai Steel Kamgar Sangh, Bhilai, Vs. Shri L.R. Joshi, Registrar of Recognised Unions, Indore*, I.L.R. (1962) M.P. 166 (DB)

– **Section 16** – By deciding collateral fact wrongly – Tribunal cannot confer jurisdiction upon it self: *Kantilal Mehta Vs. Gopal*, I.L.R. (1975) M.P. 586 (DB)

– **Section 16** – Deference between decision on collateral fact and the decision on fact or law for which it is constituted: *Kantilal Mehta Vs. Gopal*, I.L.R. (1975) M.P. 586 (DB)

– **Section 16** – Question whether a person is an employee or not – Is a jurisdictional fact: *Kantilal Mehta Vs. Gopal*, I.L.R. (1975) M.P. 586 (DB)

– **Section 16** – Standing orders – Clause 29 and Rule 18 – Scope of enquiry under – Finding of Manager – Binding on Labour Commissioner – Labour Commissioner – Power of – To Examine question of contravention of section 42 in enquiry under section 16: *The Burhanpur Tapti Mills Ltd. Vs. The State Industrial Court M.P., I.L.R. (1958) M.P. 631 (DB)*

– **Section 16(3)** – Labour Commissioner – Conditions under which he can order reinstatement and payment of back wages – Schedule II, Item 3 – “Law” in – Includes ordinary Law governing the relationship of employer and employee – Dismissal of employee under general Law – Rules of natural justice have no application: *Shri Abdul Salam Vs. Abdul Khalik, I.L.R. (1960) M.P. 550 (DB)*

– **Section 16(3)** – Power of Labour Commissioner or Industrial Court to decide question of fact on the existence of which their jurisdiction to decide dispute depends – Objection to jurisdiction not raised before Labour Commissioner – Industrial Court has power to investigate the objection and adjudicate: *The Municipal Council, Bhatapara Vs. The Industrial Court, M.P., Indore, I.L.R. (1964) M.P. 60 (DB)*

– **Section 16(3)** – Revisional authority – Jurisdiction and scope of: *The Burhanpur Tapti Mills Ltd. Vs. The Industrial Court M.P., I.L.R. (1960) M.P. 15 (DB)*

– **Section 16(5)** – Limitation provided in – To be strictly construed – Limitation starts from time of embezzlement and not from time of knowledge of employer – Time cannot be enlarged on equitable grounds: *The Raipur Co-Operative Central Bank Ltd. Raipur, M.P. Vs. The State Industrial Court, Madhya Pradesh, Indore, I.L.R. (1962) M.P. 174 (DB)*

– **Rule 18(3)** – Date of the pronouncement of order or judgment communicated to party is the date of communication to the party even if he is not present: *Manager, M/s Chhotalal Keshav Ram, Rajnandgaon, Vs. Shri M.A. Razzaque, Priesident of the Industrial Court, M.P., Indore, I.L.R. (1967) M.P. 488 (DB)*

– **Rule 18(3)** – Does not speak of communication of order to party – Speaks of computation of limitation from announcement of order – Order in suit to be announced when pronounced by Court – Date of the pronouncement of order or judgment communicated to party is the date of communication to the party even if he is not present: *Manager, M/s Chhotalal Keshav Ram, Rajnandgaon, Vs. Shri M.A. Razzaque, Priesident of the Industrial Court, M.P., Indore, I.L.R. (1967) M.P. 488 (DB)*

– **Rule 18(3)** – Order in suit to be announced when pronounced by Court: *Manager, M/s Chhotalal Keshav Ram, Rajnandgaon, Vs. Shri M.A. Razzaque, Priesident of the Industrial Court, M.P., Indore, I.L.R. (1967) M.P. 488 (DB)*

Industrial Employment (Standing Orders) Act (XX of 1946)

– **Section 1(4)** – Heavy Electrical (India) Ltd., Bhopal – Is controlled by the Central Government: *Sakhrulla Khan Vs. State Industrial Court, Indore I.L.R. (1982) M.P. 397 (DB)*

– **Section 1(4)** – Standing Order no. 42 (10) – Use of the word ‘Presumed’ in – Import of: *Sakhrulla Khan Vs. State Industrial Court, Indore I.L.R. (1982) M.P. 397 (DB)*

– **Section 1(4)** – Word ‘Control’ – Meaning of Heavy Electrical (India) Ltd. Bhopal – Is controlled by the central Govt. – Industrial Employment (Standing Orders) Act, 1961, M.P. – Section 4, Proviso – Effect of – Constitution of India – Article 254(2) – Industrial Employment (Standing Orders) Act – State Acts and Central Act – Effect of State Act receiving assent of the President to Central Act – Standing Orders made under the 1946 Central Act – Effect of enforcement of State Acts – Standing orders have the force of law – Standing order no. 42(10) – Use of the word ‘Presumed’ in – Import of: *Sakhrulla Khan Vs. State Industrial Court, Indore I.L.R. (1982) M.P. 397 (DB)*

– **Section 10** – Differentiation bad in law – Cannot get validity because employees were getting certain benefits thereunder: *Steel Workers Union, Bhilai Vs. Chief Labour Commissioner (Central) And Appellate Authority, New Delhi, I.L.R. (1977) M.P. 941 (DB)*

– **Section 10** – Differentiation not in conformity with Act – Fair and reasonable to get of differentiation: *Steel Workers Union, Bhilai Vs. Chief Labour Commissioner (Central) And Appellate Authority, New Delhi, I.L.R. (1977) M.P. 941 (DB)*

– **Section 10** – Existence of change of circumstances – Not necessary for modification of certified standing order – Change possible if point overlooked in previous certificate proceedings – Differentiation not in conformity with Act—Fair and reasonable to get rid of differentiation – Differentiation bad in law – Cannot get validity because employees were getting certain benefits thereunder – Uniformity of application – A necessary attribute of standing order – Uniformity if affected – Standing Order can be held to be bad: *Steel Workers Union, Bhilai Vs. Chief Labour Commissioner (Central) And Appellate Authority, New Delhi, I.L.R. (1977) M.P. 941 (DB)*

– **Section 10** – Uniformity of application – A necessary attribute of standing order – Uniformity if affected – Standing order can be held to be bad: *Steel Workers Union, Bhilai Vs. Chief Labour Commissioner (Central) And Appellate Authority, New Delhi, I.L.R. (1977) M.P. 941 (DB)*

– **Order 31(f)** – Authorises framing of charges and holding of enquiry – To be by authority lower in rank than appointing authority: *R.K. Nair Vs. The General Manager, Bhilai Steel Plant, Bhilai, I.L.R. (1981) M.P. 195 (DB)*

– **Order 34 and Standing Order 2(c)** – Authority lower than appointing authority – No power to pass an order of removal – Delegation of powers under – Can be effective subject to protection conferred on employee by Standing Order 31(f) – Order 31(f) – Authorises framing of charges and holding of enquiry – To be by authority lower in rank than appointing authority – Industrial Disputes Act – Labour Court not deciding issue whether domestic enquiry was defective as preliminary issue – In final order holding enquiry to be defective – Management can complain regarding no affording opportunity to lead evidence before revisional authority – Occasion when management can exercise right to prove charges by leading evidence – Labour Court, Power of, to go into merits of charges even when defective enquiry is found in final order – Labour Court no finding any defect in domestic enquiry – Not necessary to hold fresh enquiry – Labour court can go to its own findings on basis of domestic enquiry conducted by management: *R.K. Nair Vs. The General Manager, Bhilai Steel Plant, Bhilai, I.L.R. (1981) M.P. 195 (DB)*

– **Order 34 and Standing Order 2(c)** – Delegation of powers under – Can be effective subject to protection conferred on employee by Standing order 31(f): *R.K. Nair Vs. The General Manager, Bhilai Steel Plant, Bhilai, I.L.R. (1981) M.P. 195 (DB)*

Industrial Employment (Standing Orders) Act, Madhya Pradesh (XXVI of 1961)

– **Standing Orders certified under** – Govern the relations of the parties: *V.K. Jain Vs. Kamal Singh, I.L.R. (1979) M.P. 970 (DB)*

– **Standing Order** – Difference between terms and Conditions of standing Order and the terms of contract – Terms and conditions of standing order to prevail – Standing Orders – Are statutory rules – Not liable to be ignored, modified varied or departed from by an agreement of contract between employer and the employee – Parties cannot contract out of the terms of standing orders – Standing Order 12 – “Unsatisfactory work” – May not constitute “misconduct” – Employer can terminate services still on that ground – Termination is not by way of punishment: *Jagdish Mitra Sharma Vs. Jiyajee Rao Cotton Mills Ltd. Gwalior, I.L.R. (1972) M.P. 890 (DB)*

– **Standing Order 12** – “Unsatisfactory work” – May not constitute “misconduct” – Employer can terminate services still on that ground – Termination is not by way of punishment: *Jagdish Mitra Sharma Vs. Jiyajee Rao Cotton Mills Ltd. Gwalior, I.L.R. (1972) M.P. 890 (DB)*

– **Standing Order 29, sub-clause (XVIII)** – Misconduct – Un-authorised use of company's quarter – When amounts to misconduct – Industrial Dispute – Right to back wages under normal Rule – Employee wrongfully dismissed – On reinstatement employee entitled to full back wages – Burden is on employer to plead and prove circumstances justifying departure from normal rule – Deductions, When permissible: *Singeshwar Prasad Vs. The General Manager Bhilai Steel Plant, Bhilai M.P. I.L.R., (1982) M.P. 502 (DB)*

– **Section 4, Proviso** – Effect of: *Sakhrulla Khan Vs. State Industrial Court, Indore, I.L.R. (1982) M.P. 397 (DB)*

– **Section 21, Schedule I, Item XI and Standard Standing order 11** – Retirement on attaining particular age is not covered by Standing Order 11: *M.P. State Road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669 (FB)*

– **Section 21, Schedule I, Item XI and Standard Standing order 11** – Scope of – Retirement on attaining particular age is not covered by Standing Order 11 – Road Transport Corporation Act, 1950, Section 45(2)(c), Road Transport Corporation Employees Service Regulations, M.P., Regulation 59, Industrial Employment (Standing Orders) Act, 1946, Section 13-B and M.P. Industrial Employment (Standing Orders) Act 1961, Section 2(2) and standard standing Orders 14-A – Scope of – Regulations cannot prevail over matters regulated by Standing Orders – Regulation apply to Industrial Workmen in respect of matters not covered by Standing Order – Regulation 1 – Not effective before 1st June 1970 – Constitution of India – Article 254 – Applies only when competing legislations both pertain to concurrent list – Inherent supremacy of Parliament to legislate in respect of matter in Union list: *M.P. State Road Transport Corporation Vs. Heeralal I.L.R. (1982) M.P. 669 (FB)*

Industrial Employees/Standard/ (Standing Orders) Rules, M.P. 1963

– **Rule 2 (i)** – Permanent employee – Categorization – Requirement of – Six months satisfactory service and service rendered in a clear vacancy in one or more posts – Conditions cumulative – Not independent of each other – Service in clear vacancy not established – Cannot be categorised as permanent employee : *State of Madhya Pradesh Vs. Onkar Prasad Patel, I.L.R. (2005) M.P. 1135 (DB)*

– **Clauses 11 and 12** – Duty of the Court to see that clause 11 could not be used as a camouflage for an action under Clause 12 – “Disciplinary action” is a proceeding for punishing the breach of Discipline – Petitioner's services terminated under clause 11 – Tried to be justified before Labour Court that termination was for a misconduct – Whether such a volte face could be permitted: *Karan Singh Vs. State, I.L.R. (2000) M.P., 472*

– **Sub-clause (iv) of clause 2** – Status of – Permanent employee – When acquired – Rendering service for six months is the only requirement: *M.P.R.T.C. Gwalior Vs. Harish Agrawal, I.L.R. (1990) M.P. 606 (DB)*

– **Rule 12(1)(F), Rule 12(3)(b)(vi)** – Respondent no. 1 guilty of Major misconduct Serious view is to be taken–Punishment dismissal is awarded: *Manager Central India Flour Mills, Bhopal Vs. Mohd. Ishaq, I.L.R. (1989) M.P. 415 (DB)*

Industrial Relations Act, Madhya Pradesh (XXVII of 1960)

– **as amended by M.P. Act No. 41 of 1981** – Section 62 – Limitation – Services of employee terminated on 5.1.1973–Bar of Limitation incorporated w.e.f. 26.1.1982 providing period of one year for commencement of proceedings – Employee approached Labour Court against his termination by filing application on 5.1.1986 – Held – Application filed by employee was not barred by time as there was no provision providing period of limitation on the date of termination of services – Application cannot be dismissed as barred by time – However, Labour Court to decide the question of granting or not granting relief as the employee had approached after 13 years and not within reasonable time – Petition dismissed : *M.P. State Road Transport Corporation Vs. Jaiprakash Narayan Tiwari, I.L.R. (1993) M.P. 514 (DB)*

– **Cannot go into the merits of findings reached in domestic inquiry and re-appraise the evidence:** *Vidyanath Vs. The M.P. State Road Transport Corporation, Bhopal, I.L.R. (1978) M.P. 229 (DB)*

– **Constructional Department** – Not Incidental to Industry of Iron and Steel – Constructional Department of Bhilai Steel Plant – Not an Industry within the meaning of the Act: *Ajit Singh Vs. State Industrial Court, Indore, I.L.R.(1979) M.P. 961 (DB)*

– **Industrial Court** – Has Power to join other unions as parties: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. President, Industrial Court, M.P., Indore, I.L.R. (1973) M.P. 205 (DB)*

– **Labour Court does not possess powers wider than that of the labour court functioning under central Act Before amendment in 1971:** *Vidyanath Vs. The M.P. State Road Transport Corporation, Bhopal, I.L.R. (1978) M.P. 229 (DB)*

– **Labour Court, Power of, to interfere with punishment:** *Vidyanath Vs. The M.P. State Road Transport Corporation, Bhopal, I.L.R. (1978) M.P. 229 (DB)*

– **Notification dated 31-12-60 and Schedule attached thereto under Section 1(3)** – Word “Potteries” in – Meaning of – Denotation of term – Not to be determined

with reference to technical books or dictionaries ignoring rules of construction – Interpretation of Statute – Rule – General statutes presumed to use words in popular sense – Statute not dealing with particular trade or business or a technical matter – Evidence as to existence of technical meaning of ordinary words – Inadmissible – Purpose and subject matter – Control the meaning of words – Words to be construed to best attain purpose of statute – Word liable to be construed either in popular sense or as word of art – Burden on person to show that it is used in technical sense: *R.N. Mishra Vs. The Works Manager, Burn And Co. Ltd., Niwar, I.L.R. (1968) M.P. 852 (DB)*

– **Power of Labour Court** – Act does not confer appellate power on labour court: *Vidyanath Vs. The M.P. State Road Transport Corporation, Bhopal, I.L.R. (1978) M.P. 229 (DB)*

– **Question of Bonus** – To be decided as a whole and not region-wise: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. President, Industrial Court, M.P., Indore, I.L.R. (1973) M.P. 205 (DB)*

– **Question of jurisdiction of Tribunal** – To be first decided by Tribunal: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. President, Industrial Court, M.P., Indore, I.L.R. (1973) M.P. 205 (DB)*

– **Regulates relations of those persons who are employees in undertakings notified under Section 1(3)** – Sections 2(19) and 31(3) – School run by Hindustan Steel Ltd. – Not an industry – Person engaged by the school as physical instructor – Is not an employee – Section 2(18)(i)(b) – “Any person” in – To be read subject to limitations and qualification and definition of ‘Industry’ ‘employer’, ‘employee’ and ‘industrial matter’: *M.P. Sharma Vs. The Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 418 (DB)*

– **Scheme** – Framing of the gratuity scheme – Circumstance when it is not justified: *Central India Electric Supply Company Workers Union, Katni Vs. Central India Electric Supply Company Ltd., Katni I.L.R. (1967) M.P. 191 (DB)*

– **Schedule I, Item 9** – Refers to wage scale of labourers as a class and not of one individual labourer: *Sheo Narayan Choudhary Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 51 (DB)*

– **Schedule II, Item 1** – Refers to propriety or legality of order passed, or action taken by employer – Matter comes within jurisdiction of Labour Court under section 31: *V.K. Jain Vs. Kamal Singh, I.L.R. (1979) M.P. 970 (DB)*

– **Schedule II, Item 6** – Definition of employment – Is inclusive and relates to any matter relating to employment: *V.K. Jain Vs. Kamal Singh, I.L.R. (1979) M.P. 970 (DB)*

– **Schedule II, Item 6** – *Per se* remedy to be followed in case of reduction of wages of individual labourer: *Sheo Narayan Choudhary Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 51 (DB)*

– **Schedule II, Item 6** – Speaks of employment including two things: *V.K. Jain Vs. Kamal Singh, I.L.R. (1979) M.P. 970 (DB)*

– **Schedule II, Item 6** – Term “employment” in – Wide enough to include matter relating to wages of individual labourer – Not confined to wage scale of employment: *Sheo Narayan Choudhary Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, MP, Indore, I.L.R. (1970) M.P. 51 (DB)*

– **Whether Industrial Court of Tribunal empowered to enlarge the scope of terms of reference for arbitration:** *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. President, Industrial Court, M.P., Indore, I.L.R. (1973) M.P. 205 (DB)*

– **Section 1** – Does not take away jurisdiction of Authority under section 15 of Payment of Wages Act: *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Industrial Court, Indore, M.P., I.L.R. (1981) M.P. 298 (DB)*

– **Section 1(3)** – Cement Industry does not begin from the moment construction work begin – Constructional work not incidental to cement manufacture: *Jamul Cement Works, Jamul Vs. President, State Industrial Court, M.P. Indore, I.L.R. (1971) M.P. 445 (DB)*

– **Section 1(3)** – Construction of cement factory – Not like activity or operation in the manufacture of cement or its distribution or sale: *Jamul Cement Works, Jamul Vs. President, State Industrial Court, M.P. Indore, I.L.R. (1971) M.P. 445 (DB)*

– **Section 1(3)** – Industries referred in notification – To be understood in limited sense – Constructional activity carried on by cement company – Is not an industry: *Jamul Cement Works, Jamul Vs. President, State Industrial Court, M.P. Indore, I.L.R. (1971) M.P. 445 (DB)*

– **Section 1(3)** – Necessity of issuing notification for bringing section 112 into force: *The Management of The Burhanpur Tapti Mills Ltd., Burhanpur Vs. Industrial Court, M.P. Indore I.L.R. (1965) M.P. 580 (DB)*

– **Section 1(3)** – Notification dated 31-12-60 – Word “Cement” in – Meaning of – Construction of cement factory – Not like activity or operation in the manufacture of cement or its distribution or sale – Cement Industry does not begin from the moment construction work begins – Constructional work not incidental to cement manufacture – Industries referred in notification – To be understood in limited sense – Constructional

activity carried on by cement company – Is not an industry – Section 2(13) – Employees working on constructional side – Not employees within the definition in this provision – Section 51 – Non obstinate clause – Does not abrogate requirement of Act which requires the existence of Industrial Dispute – Words “Industrial Dispute” – Meaning of – Standard standing Orders – Not applicable to workers in Constructional work of cement company – Section 6(1) – Notification dated 14-3-63 – Word “cement” in – Has to be given same meaning as in notification dated 31-12-60 under Section 1(3) of the Act – Standard Standing Order No. 2 – Clause (vi) – “Temporary Employee” includes workers continuously employed for a period of less than six months: *Jamul Cement Works, Jamul Vs. President, State Industrial Court, M.P. Indore, Jamul. I.L.R. (1971) M.P 445 (DB)*

– **Section 1(3) and Notification dated 31-12-60 issued there under** – Item Nos. 2 and 16 – “engineering” in Item No. 16 – Includes “Civil Engineering and construction work carried on as trade or business” – Words “Employed in any Industry” – Include persons employed in operation incidental to Industry – Constructional department – Not incidental to Industry of Iron and Steel – Constructional department of Bhilai Steel Plant – Not an Industry within the meaning of M.P. Industrial Relations Act 1960: *Ajit Singh Vs. State Industrial Court, Indore, I.L.R. (1979) M.P. 961 (DB)*

– **Section 1(3)(B), 2(13) AND Schedule item 10** – Respondent No.3 a diploma holder in Electrical Engineering employed by M.P.E.B. and asked to supervise the work of muster roll employees employed in erection and construction of poles and laying lines for transmission of electrical energy – Is an ‘employee’ within section 2(B) – Entitled to all benefits under the Act – The words “Generation” “transmission” and “distribution” used in item No. 10 of the schedule – Meaning and scope of: *The M.P. Electricity Board, Jabalpur Vs. Industrial Court, State of M.P., Indore, I.L.R. (1984) M.P. 583*

– **Section 2(iv) – Industrial dispute** – Not restricted to dispute arising out of notice of change under section 31 – Power of State Government to make reference under section 51 – Not controlled by anything in section 31 – Section 51 – Giving of Notice – Not a condition precedent for making reference under this provision – Proposed strike etc. leading to industrial dispute – Reference can be made if other conditions satisfied – Section 82 – Authorities Labour Court of Industrial Court to give declaration only – Section 51 not controlled by section 82: *The Employees of the Asbestos Cement Ltd., Kymore Vs. The Industrial Court, M.P. Indore, I.L.R. (1973) M.P. 31 (DB)*

– **Section 2(13) – Employees working on constructional side** – Not employees within the definition in this provision: *Jamul Cement Works, Jamul Vs. President, State Industrial Court, M.P. Indore, I.L.R. (1971) M.P. 445 (DB)*

– **Section 2(13) – Word “employed” in** – Involves concept of employment under contract of service: *The East India Carpet Co. (Pvt) Ltd. Amritsar, Gwalior Branch, Gwalior Vs. Their Workmen, I.L.R. (1975) M.P. 30 (DB)*

– **Section 2(13), Explanation** – The term ‘employee’ in – Meaning and scope of – Includes an ex-employee claiming re-employment on the ground of being a retrenched employee – Section 31, Schedule II, Item No. 6 – Covers topic of re-employment also – Section 31(2) – Application by an ex-employee is maintainable – *res judicata* and constructive *res judicata* – Principles of – Applicable to Industrial adjudication also – Former Application claiming setting aside termination and reinstatement – Dismissal of – Latter application claiming re-employment as a retrenched employee – Not barred by the principles of *res judicata* or constructive *res judicata*: *Bharat heavy Electricals Ltd., Bhopal Vs. R.D. Saxena, I.L.R. (1983) M.P. 44 (DB)*

– **Section 2(18)(i)(b)** – “Any person” in – To be read subject to limitations and qualification and definition of ‘Industry’ ‘employer’, ‘employee’ and ‘industrial matter’: *M.P. Sharma Vs. The Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 418 (DB)*

– **Sections 2(19) and 31(3)** – School run by Hindustan Steel Ltd. – Not an industry – Person engaged by the school as physical instructor – Is not an employee: *M.P. Sharma Vs. The Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 418 (DB)*

– **Section 5(1)** – After retirement no fresh appointment of respondent no. 2 as Registrar – Respondent no. 2 has no jurisdiction to pass any order as Registrar of representative Union: *Rajya Parivahan Karmachari Mahasangh Ujjain Vs. State of M.P., I.L.R. (1983) M.P. 321 (DB)*

– **Section 6(1)** – Notification dated 14-3-63 – Word “Cement” in – Has to be given same meaning as in notification dated 31-12-60 under Section 1(3) of the Act: *Jamul Cement Works, Jamul Vs. President, State Industrial Court, M.P. Indore, I.L.R. (1971) M.P. 445 (DB)*

– **Section 13** – Question regarding application or interpretation of Standing Order, employer, employee or representative of employees – Can refer the matter to Labour Court having jurisdiction: *V.K. Jain Vs. Kamal Singh, I.L.R. (1979) M.P. 970 (DB)*

– **Section 13 and Rule 13 of Rules framed thereunder** – Nature of enquiry – Requirements of issue of notice and fixing dates of hearing and intimation thereof to the parties – Principles of natural justice: *Rajya Parivahan Karmachari Mahasangh Ujjain Vs. State of M.P., I.L.R. (1983) M.P. 321 (DB)*

– **Section 22 – Appeal – Who can file – Aggrieved party** – Nature of: *Rajya Parivahan Karmachari Mahasangh Ujjain Vs. State of M.P., I.L.R. (1983) M.P. 321 (DB)*

– **Sections 22, 13 and 5(1) and Rule 13 of Rules framed thereunder** – Heading prefixed to sections – Help of, in interpreting words in the Section – Section 22 – Appeal – Who can file – Aggrieved party – Nature of Section 13 and Rule 13 – Nature of enquiry – Requirements of issue of notice of fixing date of hearing and intimation thereof to the parties – Principles of natural justice – Section 5(1) – The words ‘any other person’ – Meaning of – After retirement no fresh appointment of respondent no. 2 as Registrar – Respondent No. 2 has no jurisdiction to pass any order as Registrar of representative Union: *Rajya Parivahan Karmachari Mahasangh Ujjain Vs. State of M.P., I.L.R. (1983) M.P. 321 (DB)*

– **Section 27** – Representative Union – Party to the proceedings – Can file writ petition: *Sone Singh Vs. State Industrial Court Indore, I.L.R. (1979) M.P. 311 (DB)*

– **Section 27** – Representative Union – Represents all employees in the industry in the local area for which it is registered: *Sone Singh Vs. State Industrial Court Indore, I.L.R. (1979) M.P. 311 (DB)*

– **Section 31 and Constitution of India, Article 226** – Finding of Labour Court based on material on record that order of discharge passed under the garb of Standing Order No. 24 – Order was colourable – Finding cannot be said to be erroneous or in excess of jurisdiction – Constitution of India – Article 226 – Point not raised before Tribunals – Point cannot be allowed to be argued in writ- petition – Writ jurisdiction – High Court does not enter into controversial facts: *General Manager, Hindustan Steel Ltd. Bhilai Steel Plant, Bhilai Vs. Santosh Singh, I.L.R. (1979) M.P. 337 (DB)*

– **Section 31** – Schedule II, Item no. 6 - Covers topic of re-employment also: *Bharat Heavy Electricals Ltd. Bhopal Vs. R.D. Saxena, I.L.R. (1983) M.P. 44 (DB)*

– **Sections 31, 33 and 97 and Constitution of India, Articles 14 and 16** – Equality – Concept of Differential treatment of workers – Does not *per se* violate Article 14 – Management providing different hours of work for its workmen belonging to the same cadre – Reasonable basis for differentiation – Articles 14 and 16 are not violated – Settlement between the Management and representative Union of the petitioners fixing different working hours for clerical staff working on administrative side and in the plant of the Respondent – Company on the basis of charter of demand made by the representative union during the period of settlement – Cannot be challenged by individual workmen – Petition dismissed: *A.J. Verghese Vs. Bharat Aluminium Company Ltd. New Delhi, I.L.R. (1985) M.P. 480 (DB)*

– **Sections 31, 33 and 97 and Constitution of India, Articles 14 and 16** – Management providing different hours of work for its workmen belonging to the same cadre – Reasonable basis for differentiation – Articles 14 and 16 are not violated: *A.J.*

Verghese Vs. Bharat Aluminium Company Ltd. New Delhi, I.L.R. (1985) M.P. 480 (DB)

– **Sections 31,33 and 97 and Constitution of India, Articles 14 and 16** – Settlement – Settlement between the Management and representative Union of the petitioners fixing different working hours for clerical staff working on administrative side and in the plant of the Respondent – Company on the basis of charter of demand made by the representative union during the period of settlement – Can not be challenged by individual workmen – Petition dismissed: *A.J. Verghese Vs. Bharat Aluminium Company Ltd. New Delhi, I.L.R. (1985) M.P. 480 (DB)*

– **Sections 31, 34 and 61 and Schedule II** – Change in industrial matters mentioned in Schedule I – To be effected only in accordance with Section 31(1) – Representative of employees desiring change regarding matters not covered by standing orders or by Schedule II – Procedure laid Section 31(2) to be followed – Change regarding matters specified in Schedule II desired – Procedure required to be followed – Reduction in wages when will amount to illegal change – Procedure for getting relief against illegal change – Scheme envisaged by sub-sections (1) to (3) of Section 31 – Matter falling under sub-section (1) of Section 31 – Individual employee does not come into picture – Schedule I, Item 9 refers to wage scale of labourers as a class and not of one individual labourer – Section 31(1) and (2) – Scope of – Reduction in the wage of labourer without following proper procedure – Change does not amount to illegal change – Application under Section 61 not maintainable – Schedule II, Item 6 – Term “employment” in – Wide enough to include matter relating to wages of individual labourer – Not confined to wage scale of employment – *Per se* remedy to be followed in case of reduction of wages of individual labourer: *Sheo Narayan Choudhary Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 51 (DB)*

– **Sections 31, 34 and 61 and Schedule II** – Change regarding matters specified in Schedule II desired – Procedure required to be followed: *Sheo Narayan Choudhary Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 51 (DB)*

– **Sections 31, 34 and 61 and Schedule II** – Procedure for getting relief against illegal change – Scheme envisaged by sub-sections (1) to (3) of Section 31 – Matter falling under sub-section (1) of Section 31 – Individual employee does not come into picture: *Sheo Narayan Choudhary Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 51 (DB)*

– **Sections 31, 34 and 61 and Schedule II** – Reduction in the wage of labourer without following proper procedure – Change does not amount to illegal change – Application under Section 61 not maintainable: *Sheo Narayan Choudhary Vs. Shri*

A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 51 (DB)

– **Sections 31, 34 and 61 and Schedule II** – Reduction in wages when will amount to illegal: *Sheo Narayan Choudhary Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 51 (DB)*

– **Sections 31, 34 and 61 and Schedule II** – Representative of employees desiring change regarding matters not covered by standing orders or by Schedule II – Procedure laid by Section 31(2) to be followed: *Sheo Narayan Choudhary Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 51 (DB)*

– **Sections 31 and 62** – Labour Court finding that petitioner was absent without leave but not finding that it was without reasonable cause – Order of Labour Court directing reinstatement of the petitioner without back wages restored and order of Industrial Court set aside: *Wincent Warnor Vs. M.P.S.R.T. Corporation, Bhopal, I.L.R. (1985) M.P. 407*

– **Sections 31 and 62** – Petitioner charged for remaining absent without leave and without reasonable cause – Charges held proved in domestic enquiry and punishment of termination of service ordered – Labour Court holding domestic enquiry not in accordance with law and proceeded to examine merits of the case – Labour Court has jurisdiction to decide the question of misconduct and also quantum and propriety of punishment: *Wincent Warnor Vs. M.P.S.R.T. Corporation, Bhopal, I.L.R. (1985) M.P. 407*

– **Sections 31, 61 and Evidence Act Indian, 1872** – Sections 103,114, I11s. (g) – Labour law- – Employment of people in local area for limited job- – Cannot be construed as an employment for a continuous and regular work – Employment on job required basis – Employee cannot claim permanency or regularisation: *M.P. Electricity Board Vs. Hariram; I.L.R. (2004) M.P. 887*

– **Sections 31, 61 and Evidence Act Indian, 1872, Sections 103,114, I11s. (g)** – Labour law- – Employment of people in local area for limited job- – Cannot be construed as an employment for a continuous and regular work – Employment on job required basis – Employee cannot claim permanency or regularisation – Claim for permanent employment – Burden of proving the fact of continuous employment for 240 days in a year rests with employee – Burden not discharged – Non-production of muster rolls by the employer – Drawing of adverse inference – Not obligatory but optional – Other circumstances may exist upon which such non-production may be found justifiable – Trial Court not drawn any adverse inference – Not proved that applicants worked continuously worked for 240 days in a year – Tribunal and High Court could not base

order of reinstatement solely on adverse inference – Appeal allowed – Order of Labour Court restored: *M.P. Electricity Board Vs. Hariram*; I.L.R. (2004) M.P. 887(DB)

– **Sections 31(1) and (2)** – Scope of: *Sheo Narayan Choudhary Vs. Shri A.W. Kanmadikar*, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1970) M.P. 51 (DB)

– **Section 31(2)** – Application by an ex-employee is maintainable: *Bharat Heavy Electricals Ltd. Bhopal Vs. R.D. Saxena*, I.L.R. (1983) M.P. 44 (DB)

– **Section 31(3)** – Acceptance of amount – No bar to approaching Labour Court for getting order set aside: *Manager, Hira Mills Ltd, Ujjain Vs. Mukund*, I.L.R. (1972) M.P. 293 (DB)

– **Section 31(3)** – Enquiry by Labour Court after enquiry by domestic tribunal – To be restricted to the charge-sheet and statement of allegation given to the employee – Management entitled to opportunity to adduce evidence to justify dismissal of employee when conclusion of Labour Court is that domestic enquiry is vitiated – Standing Order, Paragraph 15, clause (h) – “Misconduct” in – Includes any act subversive of discipline – Not necessary that act should be committed during the working hours or when on duty or at the Industrial establishment itself – Disorderly behaviour or assault outside the establishment and the working hours would amount to subversive of discipline if it has rational connection with employment of assailant and the victim – Labour Court on appraisal of evidence upholding order of domestic tribunal – The order of domestic tribunal even in defective enquiry when upheld – To relate back to the date when order is made: *Sarguja Raigarh Motor Karmachari Sangh, Ambikapur Vs. The Managing Director, Sarguja Raigarh Roadways (P) Ltd., Ambikapur*, I.L.R. (1969) M.P. 604 (DB)

– **Section 31 (3)** – Jurisdiction of Labour Court to decide whether a case was of classification of promotion – Section 13 – Question regarding application or interpretation of Standing Order, employer, employee or representative of employees – Can refer the matter of Labour Court having jurisdiction – Industrial Employment (Standing Orders) Act, Madhya Pradesh, 1961 – Standing Orders certified under – Govern the relations of the parties – Section 31(3) – Matters of particular interest to individual employee – Employee seeking a change in respect of such matter – Employee to approach Labour Court after complying with requirement of provision of Section 31 (3) – Sech. II, Item I – Refers to propriety of legality of order passed, or action taken by employer – Matter comes within jurisdiction of Labour Court under Section 31 – Sech.II, Item 6 – Speaks of employment including two things – Definition of employment – Is inclusive and relates to any matter relating to employment: *V.K. Jain Vs. Kamal Singh* I.L.R. (1979) M.P. 970 (DB)

– **Section 31(3)** – Judgment of employer whether activities of employee are prejudicial to maintenance of security – Is a subjective Judgment – Not open to challenge or scrutiny: *Madhukar Vs. General Manager, Bhilai Steel Project, Hindustan Steel Ltd., Bhilai, M.P. I.L.R. (1969) M.P. 965 (DB)*

– **Section 31(3)** – Labour Court on appraisal of evidence upholding order of domestic tribunal – The order of domestic tribunal even in defective enquiry when upheld – To relate back to the date when order is made: *Sarguja Raigarh Motor Karmachari Sangh, Ambikapur Vs. The Managing Director, Sarguja Raigarh Roadways (P) Ltd., Ambikapur, I.L.R. (1969) M.P. 604 (DB)*

– **Section 31(3)** – Proceedings commenced beyond the period of Limitation as stipulated in the statute – Appellate Court rightly dismissed the proceedings as time barred holding that workmen are not entitled to get benefit of Limitation Act: *Vijay Kumar Sharma Vs. The Executive Engineer, Public Health, Bilaspur I.L.R. (2001) M.P. 1304*

– **Section 31(3)** – Matters of particular interest to individual employee – Employee seeking a change in respect of such matter – Employee to approach Labour Court after complying with requirement of provision of Section: *V.K. Jain Vs. Kamal Singh I.L.R. (1979) M.P. 970 (DB)*

– **Section 31(3)** – Passing of receipt in full and final payment of all claims – Does not preclude the employee from challenging the correctness of order of discharge: *Manager, Hira Mills Ltd, Ujjain Vs. Mukund, I.L.R. (1972) M.P. 293 (DB)*

– **Section 31(3)** – Payment of amount of salary for notice period, gratuity amount and provident fund – Not a gratuitous payment or as matter of bounty or boon – Does not amount to an advantage under an order of discharge – Acceptance of amount – No bar to approaching labour court forgetting order set aside – Passing of receipt in full and final payment of all claims – Does not preclude the employee from challenging the correctness of order of discharge: *Manager, Hira Mills Ltd, Ujjain Vs. Mukund, I.L.R. (1972) M.P. 293 (DB)*

– **Section 31(3)** – Refusal of prayer for reinstatement – Dependent on facts and circumstances of the case even though termination of service is wrongful – judgment of employer whether activities of employee are prejudicial to maintenance of security – Is a subjective judgment – Not open to challenge or scrutiny – Constitution of India – Article 226 – Question of re-instatement – Is a question of fact: *Madhukar Vs. General Manager, Bhilai Steel Project, Hindustan Steel Ltd., Bhilai, M.P. I.L.R. (1969) M.P. 965 (DB)*

– **Section 31(3) read with Section 61** – Standing Order, Clause 21(4) – Circumstances in which the Labour Court or the Industrial Court cannot consider the

property or correctness of the order of the Domestic Tribunal: *Manager, Hukumchand Mills Ltd. Indore, Vs. The Industrial Court, M.P. Indore, I.L.R. (1966) M.P. 863 (DB)*

– **Sections 31 (3), 61 and Limitation Act, Section 5** – Adverse remarks in ACR and promotion – Limitation for application to Labour Court is 2 years – Proceedings can not be initiated after the prescribed period – Labour Court performs judicial function and hence in a court – Since Labour Court was not decided the issue of limitation: *Narayan Singh Thakur Vs. Madhya Pradesh Electricity Board, Jabalpur, I.L.R. (2002) M.P. 269*

– **Section 33** – Not exhaustive of agreement contemplated by Act: *Bhilai Steel Employees Association, Bhilai Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P. Indore, I.L.R. (1978) M.P. 909*

– **Section 33 and Minimum Wages Act (XI of 1948)** – Agreement or settlement for payment of wages less than the minimum – Illegal – Agreement or settlement providing for payment of wages less than minimum in super-session of the award passed by Industrial court as modified by High Court and Supreme Court – Registration of, by, Registrar under section 33 of Industrial Relations Act – Enquiry into its validity – Is mandatory – Registrar registering such agreement without holding an enquiry as to its validity – Registration in contravention of the Act – Liable to be quashed: *Metal And Engineering Workers Union (Aituc) Bhilai Vs. Himmat Steel Foundary Ltd., Kumhari I.L.R. (1983) M.P. 688*

– **Section 33, Minimum Wages Act (XI) of 1948) and Constitution of India, Article 23** – Payment of wages less than the minimum – Violates Article 23 – Agreement or settlement for payment of wages less than the minimum – Illegal – Agreement or settlement providing for payment of wages less than minimum in super-session of the award passed by Industrial Court as modified by High Court and supreme Court – Registration of, by Registrar under section 33 of Industrial Relations Act – Enquiry into its validity – Is mandatory – Registrar registering such agreement without holding an enquiry as to its validity – Registration in contravention of the Act – Liable to be quashed: *Metal And Engineering Workers Union (Aituc) Bhilai Vs. M/s Himmat Steel Foundary Ltd., Kumhari I.L.R. (1983) M.P. 688*

– **Section 31** – Dismissal of conductor by State Road Transport Corporation for carrying passengers without ticket – Driver suspended for 4 days – Dismissal of conductor, whether can be challenged on ground of discrimination in awarding punishment: *Man Rakhanlal Vs. The Depot Manager, M.P.S.R.T.C. Durg, I.L.R. (1981) M.P. 1 (DB)*

– **Section 33** – Employees challenging dismissal order before Labour Court – Case dismissed in default – Restoration application – Not governed by Order IX, C.P.C.

– On a sufficient cause being shown, the Labour Court in exercise of powers conferred by Rule 55 can recall the *ex parte* dismissal order and restore the case – Limitation Act – Section 29(2) – Provisions of Limitation Act would not apply to proceedings before the Labour Court in the matter of restoration of a case dismissed in default: *Kartik Ram Vs. State Industrial Court, Raipur, I.L.R. (1998) M.P. 386*

– **Section 51** – Giving of Notice – Not a condition precedent for making reference under this provision: : *The Employees of the Asbestos Cement Ltd., Kymore Vs. The Industrial Court, M.P. Indore, I.L.R. (1973) M.P. 31 (DB)*

– **Section 51** – Non obstante clause – Does not abrogate requirement of Act which requires the existence of industrial Dispute: *Jamul Cement Works, Jamul Vs. President, State Industrial Court, M.P. Indore, I.L.R. (1971) M.P. 445 (DB)*

– **Section 51** – Proposed strike etc. leading to industrial dispute – Reference can be made if other conditions satisfied: *The Employees of the Asbestos Cement Ltd., Kymore Vs. The Industrial Court, M.P. Indore, I.L.R. (1973) M.P. 31 (DB)*

– **Sections 51 and 31** – Power of State Government to make reference under Section 51 – Not controlled by anything in section 31: *The Employees of the Asbestos Cement Ltd., Kymore Vs. The Industrial Court, M.P. Indore, I.L.R. (1973) M.P. 31 (DB)*

– **Sections 51 and 82** – Section 51 not controlled by section 82: *The Employees of the Asbestos Cement Ltd., Kymore Vs. The Industrial Court, M.P. Indore, I.L.R. (1973) M.P. 31 (DB)*

– **Section 51 (1)** – Scope of – Section 2 (13) – Word “employed” in – Involves concept of employment under contract of service – principles applicable to determine whether a particular contract of employment is a contract of service – Whether particular contract is a contract of service or not – Is a question of fact – Factors which should be considered in determining the fact – Whether person employed is servant or contractor – A question of fact – Is jurisdictional fact – Tribunal of inferior jurisdiction – Power of, to decide finally the question of its jurisdiction – Contract of service – Contract to weave certain pieces of carpet at agreed prices – Not a contract to serve: *The East India Carpet Co. (Pvt) Ltd. Amritsar, Gwalior Branch, Gwalior Vs. Their Workmen, I.L.R. (1975) M.P. 30 (DB)*

– **Section 61** – Labour Court, Power of, to decide the legality of strike, lock-out, stoppage, closure or any change under the Act: *S.P. Nanavaty, Factory Manager, Satna Cement works, Satna Vs. R.K. Mishra, I.L.R. (1975) M.P. 19 (DB)*

– **Section 61** – Limitation prescribed two years from the date of termination as envisaged in section 61(A)(a): *Vijay kumar Sharma Vs. The Executive Engineer, Public Health, Bilaspur I.L.R. (2001) M.P. 1304*

– **Section 61** – Provisions of the Limitation Act not applicable to proceedings before the Labour Court: *Vijay kumar Sharma Vs. The Exective Engineer, Public Health, Bilaspur I.L.R. (2001) M.P. 1304*

– **Section 61(1)(A)(a)** – Power of labour Court to enquire in-to charges framed and also the question whether condition of service of employee is regulated by Standing Order or by statutory regulation: *Jagat Singh Choudhury Vs. M.P. Electricity Board, Jabalpur, I.L.R. (1971) M.P. 272 (DB)*

– **Section 66** – Revisional power not to be exercised for setting aside order of Labour Court for existence of any defect: *Jagat Singh Choudhury Vs. M.P. Electricity Board, Jabalpur, I.L.R. (1971) M.P. 272 (DB)*

– **Section 66** – Revisional Jurisdiction of Industrial Court – Same as that of High Court under Section 115, Civil Procedure Code: *Mahendralal Vs The General Manager, Hindustan Steel Ltd., Bhilai, I.L.R. (1972) M.P. 48 (DB)*

– **Section 66 (1)** – Grounds on which revision can be entertained: *Kymore Cement Mazdoor Congress, Kymore Vs. The Industrial Court, M.P., Indore, I.L.R. (1968) M.P. 356 (DB)*

– **Section 66(1)** – Powers of revision under – Similar to those given by section 115, Civil Procedure Code – Grounds on which revision can be entertained Errors of fact or of law cannot be corrected unless they have relation to the jurisdiction of the Court to try dispute itself: *Kymore Cement Mazdoor Congress, Kymore Vs. The Industrial Court, M.P., Indore, I.L.R. (1968) M.P. 356 (DB)*

– **Section 66(1)(c)** – Stay order of labour court – Order is final order – Revision against the order – Maintainability—Section 67 – Confers power on appellate of revisional Court to correct orders of subordinate Court: *P.G. Paul Vs. Union of India, I.L.R. (1975) M.P. 464 (DB)*

– **Sections 66, 67 and 35 and Constitution of India, Article 220** – Employer implementing the order of Labour Court and also challenging the order in writ petition does not become infructuous: *Madhya Pradesh State Road Transport Corporation, Bhopal, through The General Manager Vs. Shivmurthy Pathak, I.L.R. (1980) M.P. 730 (DB)*

– **Sections 66, 67 and 35 and Constitution of India, Article 226** – Order of quasi – Judicial Tribunals – Should be speaking order – Revisional order not giving reasons – Liable to be quashed – Employer implementing the order of Labour Court and also challenging that order in writ petition – Petition does not become infructuous: *Madhya Pradesh State Road Transport Corporation, Bhopal, through The General Manager Vs. Shivmurthy Pathak, I.L.R. (1980) M.P. 730 (DB)*

– **Sections 66, 67 and 35 and Constitution of India, Article 226** – Revisional order not giving reasons – Liable to be quashed: *Madhya Pradesh State Road Transport Corporation, Bhopal, through The General Manager Vs. Shivmurthy Pathak, I.L.R. (1980) M.P. 730 (DB)*

– **Section 67** – Confers power on appellate or revisional court to correct orders of subordinate court: *P.G. Paul Vs. Union of India, I.L.R. (1975) M.P. 464 (DB)*

– **Section 77** – Decision does not act as in rem unless made so by statute: *S.P. Nanavaty, Factory Manager, Satna Cement works, Satna Vs. R.K. Mishra, I.L.R. (1975) M.P. 19 (DB)*

– **Section 82** – Authorises Labour Court of Industrial Court to give declaration only: *The Employees of the Asbestos Cement Ltd., Kymore Vs. The Industrial Court, M.P. Indore, I.L.R. (1973) M.P. 31 (DB)*

– **Section 82** – Deals with a situation of possibility of strike or lock-out – Does not deal with a case when there is already a strike – Section 61 – Labour court, power of, to decide the legality of a strike, lock-out, stoppage, closure or any change under the act – Section 88—Declaration of illegality of strike – Not condition precedent for declaring strike as illegal – Same authority can take cognizance of complaint for imposing penalty – Section 88-Proviso – Scope of – Section 77 – Decision does not act as in rem unless made so by statute: *S.P. Nanavaty, Factory Manager, Satna Cement Works, Satna Vs. R.K. Mishra, I.L.R. (1975) M.P. 19 (DB)*

– **Sections 83, 85 and 86** – Power of appellate Court to set aside the order of reinstatement – Order of conviction set-aside-order of reinstatement also falls: *Rameshwer Vs. The Industrial Court, Indore, I.L.R. (1973) M.P. 198 (DB)*

– **Sections 83, 85 and 86** – Scope of – Finding that no offence made out under section 86 – Demolishes the foundation of order for the re-instatement – Power of appellate Court to set aside the order of re-instatement – Order of conviction set aside – Order of reinstatement also falls: *Rameshwer Vs. The Industrial Court, Indore, I.L.R. (1973) M.P. 198 (DB)*

– **Section 86** – Finding that no offence made out under section 86 – Demolishes the foundation of order for the reinstatement: *Rameshwer Vs. The Industrial Court, Indore, I.L.R. (1973) M.P. 198 (DB)*

– **Section 88** – Declaration of illegality of strike – Not condition precedent for declaring strike as illegal – Same authority can take cognizance of complaint for imposing penalty: *S.P. Nanavaty, Factory Manager, Satna Cement Works, Satna Vs. R.K. Mishra, I.L.R. (1975) M.P. 19 (DB)*

– **Section 88** – Proviso – Scope of: *S.P. Nanavaty, Factory Manager, Satna Cement Works, Satna Vs. R.K. Mishra, I.L.R. (1975) M.P. 19 (DB)*

– **Section 97(1), Proviso (b)** – Agreement between representative Union and employees – Binding on all employees in the industry in the local area: *Sone Singh Vs. State Industrial Court Indore, I.L.R. (1979) M.P. 311 (DB)*

– **Section 98** – Contemplates an agreement between employer and Representative Union: *Bhilai Steel Employees Association, Bhilai Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1978) M.P. 909*

– **Section 98** – Not necessary that agreement should finally determine the dispute – Does not exclude the possibility of parties referring to machinery to decide dispute: *Bhilai Steel Employees Association, Bhilai Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1978) M.P. 909*

– **Section 98** – Tribunal to be satisfied about the agreement being not in contravention of any provision of the Act and consent of either party not vitiated by mistake or fraud: *Bhilai Steel Employees Association, Bhilai Vs. Shri A.W. Kanmadikar, Member Judge, Industrial Court, M.P., Indore, I.L.R. (1978) M.P. 909*

– **Section 108** – Recovery of amount due under the Act – Provision juxta – position Section 421(1)(b) of the Criminal Procedure Code, 1973 – Warrant issued by Labour Court to recover the amount as arrears of Land Revenue – Cannot be executed by arrest or detention in prison of the offender: *Niwar Textiles Ltd East Nimar, Khandwa Vs. Anwar Khan, I.L.R. (1999) M.P. 997*

– **Section 112, Proviso (b)** – Preserves only acquired right – Right when becomes an acquired right: *Gayaprasad Vs. The Burhanpur Tapti Mills Ltd., Burhanpur, I.L.R. (1963) M.P. 665 (DB)*

Industrial Relations Rules, Madhya Pradesh 1961

– **Rule 57** – Labour Court, Industrial Court and Board – Possess power of joinder akin to Order 1 rule 10 – Civil Procedure Code: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. President, Industrial Court, M.P. Indore, I.L.R. (1973) M.P. 205 (DB)*

Industries (Development and Regulation) Act (65 of 1951)

– **Section 11 – License** – Licensee sought permission from Central Government for change of location of factory without applying for grant of new license – Notification of State Government granting incentive of units except new industrial unit set-up, by transferring, shifting or dismantling or closing an unit – Communication of State Government that transferred unit will not be allowed incentive due to new unit –

Acceptance – State recommended the application – Permission granted by Central Government to change location – License granted for earlier location amended to be operative at changed location – Earlier unit closed since company sought permission to shift unit along with license and not settling new unit – Can not claim concessions to new unit: *State Of M.P. Vs. M/s Bindal Agro Chemical Ltd., I.L.R. (1996) M.P. 259 (D.B.)*

– **Section 18-G and Schedule I, item 19(11), Insecticides Act (XLVI of 1968), Sections 34 and 36 and Constitution of India, Articles 73 and 257 and Schedule VII, List I, Entry 52, List II, entry 33 and Entries 14, 24, 26 and 27** – Executive powers of Union Government – Issue of directions and scheme to State Government – Binding nature of Entry 14 of List II – Has to be read with Entries 24, 26 and 27 of List II and corresponding entries relating to Scheduled Industry (Entry 52, List I and Entry 33, List-II – Central Government's scheme and directions regarding distribution of technical grade pesticides fall within Entry 52, List I and Entry 33, List II and not within Entry 14, List II – Mandatory directions of Central Government – Binding on State Government – Allotment in breach of directions – Is invalid: *M/s National Pesticides Company Vidisha Vs. State of M.P., I.L.R. (1981) M.P. 182 (DB)*

Inheritance

– **Last surviving coparcener dying in 1948 leaving behind his widow, two widows of predeceased sons and a daughter** – Widow alone inherits as a limited owner – Death of limited owner in 1951 – Legal fiction: *Mst. Bhagwan Kunwar Vs. Mst. Nanhi Dulaiya, I.L.R. (1980) MP 490*

Injunction

– **Mandatory injunction on interlocutory application** – Rarely granted: *Durg Transport Co. Pvt. Ltd., Durg Vs. The Regional Transport Authority, Raipur, I.L.R. (1965) M.P. 1 (DB)*

Insolvency Court

– **No power to remove receiver appointed in suit or by executing Court:** *Mishrilal Vs. Bhupraj, I.L.R. (1959) M.P. 780*

Inspection Note

– **Should not mention any disputed portion of site as owned by one party or other** – Can be used only for appraisal of situation and better understanding of case – Cannot be made basis of judgment: *Nilkanth Purshottam Bhawe Vs. Gopaldas, I.L.R. (1961) M.P. 850*

Instructions

– **Relate only to ad hoc promotions** – Not to be struck down: *D.R. Jhirad Vs. State of Madhya Pradesh, I.L.R. (1981) M.P. 927 (DB)*

- Insurance Act (IV of 1938)

– **Assignment of policy and nomination of policy** – Distinction between: *The Controller of Estate Duty, M.P. Jabalpur Vs. Kewalram, I.L.R. (1990) M.P. 1 (FB)*

– **Insurance contract** – Enforceability of – Receipt of premium and issue of cover note – Revocation of proposal not communicated to the assured – Insurance Company liable for the risk covered under the cover- note – Insurance Agents – Action of, in excess of apparent authority – Effect of – Disclosure of material facts by assured – Requirement of – Under valuation of stock in trade – Whether amounts to material suppression of facts: *Hindustan General Insurance Society Ltd., Calcutta Vs. Khushiram, I.L.R. (1982) M.P. 432*

– **Liability of the Insurer under the policy of Insurance** – Reimbursement – Right to seek in respect of amount spent over repairs of vehicle – Whether liability of insurer and insured joint and several as against third party: *M/s Laddha Traders, Indore Vs. M/s Sanghi Brothers, Indore, I.L.R (1983) M.P. 337 (DB)*

– **Word “Riot” in insurance policy** – To be given same meaning as given in Criminal Law – Exception of riot in a policy of Insurance – To be understood in its strict legal sense – More than one cause responsible for causing loss – Rule of proximity to be resorted to – Meaning of rule of proximity: *Damodardas Nagori Vs. The Ruby General Insurance Co., Bombay, I.L.R. (1964) M.P. 739 (DB)*

– **Section 2(ii)** – Family benefit fund scheme run by the municipal corporation wholly on the contribution made by its employees – Does not fall within the ambit of life insurance business: *Vishwanath Verma Vs. Jabalpur Municipal Corporation, Jabalpur, I.L.R. (1984) M.P. 320*

– **Section 39** – Insurance policy not containing any endorsement as to nomination – Widow of the deceased policy holder not entitled payment of the amount due under the policy without production of a succession certificate: *Smt. Urmila Jain Vs. Oriental Fire & General Insurance Co. Ltd., New Delhi, Branch at Sagar, I.L.R. (1985) M.P. 199 (DB)*

– **Section 41 and 45** – Repudiation of liability by Life Insurance Corporation – When can be made Insurance Policy more than two years old – Cannot be questioned by the Corporation – Corporation Doctors’ opinion about health of proposer neither disputed nor doubted – Section 45 not attracted: *Life Insurance Corporation of India Vs. Mrs. Sanjokta Oberai, I.L.R. (1987) M.P. 632*

– **Section 45** – Life Insurance Contract – Validity – Insured is under solemn obligation to make full disclosure of material facts – Allegations of insured being guilty of making false representation and suppressing material facts while applying for contract for life insurance – Burden of proof – It is on the Corporation – Corporation despite opportunity failed to adduce relevant and reliable evidence and failed to discharge its burden – Appeal dismissed: *Life Insurance Corporation of India Vs. Ambika Prasad Pandey*, I.L.R. (1998) M.P. 81

Insurer

– **A necessary party to the proceedings for recovery of damages:** *The M.P. State Road Transport Corporation, Jabalpur Vs. Jahiram*, I.L.R. (1971) M.P. 329 (DB)

Inter Zonal Wheat and Wheat Products (Movement Control) Order, 1964

– **Section 3** – Covers the case of attempt or abetment of an act of export – Not covered by exemptions mentioned in the section – Dividing line between preparation and attempt is thin – Whether there is attempt or preparation to be decided on facts of each particular case – Taking wheat-laden carts towards the border amounts to attempt and not preparation – Section 6(iii) – Applies to movement within the town or village in Zonal border – Section 4 – Restricts movement within Zonal area subject to restriction of Section 6 – Section 6(vii) – Does not permit movement within the same Zone: *State of M.P. Vs Ramcharan*, I.L.R. (1971) M.P. 339 (DB)

Interest Act (XXXII of 1839)

– **Award of interest at 9% per-annum of transaction not commercial in nature** – Award to that extent is bad – Award of interest modified to 6% per annum: *State of Madhya Pradesh Vs. M/s M.B. Gharpuray, Poona*, I.L.R. (1987) M.P. 637 (DB)

– **Cannot be granted in the absence of usage or contract express or implied or by any provision of Law:** *Union of India Vs P.V. Jagannath Rao*, I.L.R. (1971) M.P. 681 (DB)

Interest on Delay– Delay is disposed of the claim before the Tribunal was not attributable to the appellant, therefore, it would be unjust to burden the appellant with the award of interest for the total period spent in litigation: *Shanker Prasad Vs. Malti Devi*, I.L.R. (1997) M.P. 174(DB)

– **Interest when can be allowed:** *Firm M/s Gopal Company Ltd., Bhopal Vs. Firm Hazarilal and Co., Bhopal*, I.L.R. (1965) M.P. 938 (DB)

– **Interest prior to suit** – When can be granted – Granted Interest not allowable on unliquidated damages prior to suit: *Vinod Kumar Shrivastava Vs. Ved Mitra Vohra*, I.L.R. (1974) M.P. 121 (DB)

– **Not allowable on unliquidated damages**: *Smt. Gulab Devi Sohaney Vs. Govt. Of Madhya Pradesh, Bhopal*, I.L.R. (1974) M.P. 677 (DB)

– **Nature and applicability of**: *Mahant Narayandas Vs. Registrar, Public Trusts, Bilaspur*, I.L.R. (1981) M.P. 755 (DB)

Interpretation of Deed

– **Court on consideration of document reaching conclusion** – Aggrieved party cannot complain of its non-consideration: *Smt. Saguna Bai Vs. Dhanprasad*, I.L.R. (1987) M.P. 509

– **Two possible interpretation of statements** – One not defamatory should be preferred: *Habib bhai Vs. Pyare lal*, I.L.R. (1966) M.P. 248 (DB)

– **Words occurring sometimes singular and sometimes plural** – Singular cannot be said to be excluded: *M/s Kamani Engineering Corporation Ltd. Bombay Vs. M.P. Electricity Board, Jabalpur*, I.L.R. (1965) M.P. 834

Interpretation of Documents

– **Cardinal rules of construction** – Language not precise and is ambiguous – Aid from extraneous considerations may be taken: *Sardar Jogendra Singh Vs. The State Transport Appellate Tribunal*, M.P., Gwalior, I.L.R. (1981) M.P. 636 (DB)

Interpretation of entries in previous decision

– **Not strictly *res judicata* between parties but binding on parties as judicial precedent**: *Syed Hafiz Mir Vs. Abdul Nayeemkhan*, I.L.R. (1959) M.P. 887 (DB)

- Interpretation of Statutes

– **Act giving retrospective effect** – Closed transactions or substantive rights affected and re-opened: *Ghanshyamdas Vs. Sales Tax Officer, Durg*, I.L.R. (1965) M.P. 221 (DB)

– **Additional remedy provided by new Act** – Does not take away existing remedy: *M/s J.A. Trivedi Brothers, Chhindwara Vs. Union of India*, I.L.R. (1975) M.P. 657 (DB)

– **Determination of term** – Aid from subsequent statute can be taken to determine meaning of particular term: *Gulabchand Vs. Rukmani Devi*, I.L.R. (1972) M.P. 799 (FB)

– **Ambiguity in procedural law** – Rule to be followed: *Gangadhar Vs. The Nirvachan Adhikari, Marketing Society, Vijaypur, I.L.R. (1975) M.P. 249 (DB)*

– **Amendment do not automatically get incorporated in the incorporated enactment:** *Nagar Nigam Harijan Karmchari Sangh Vs. The Municipal Corporation, Jabalpur, I.L.R. (1977) M.P. 883 (D.B.)*

– **‘And’ used in Section 300 does not produce unintelligible or absurd result**
– Cannot be read as ‘or’ to hold that sanction shall be deemed to have lapsed on expiry of two years if construction is not complete within two years: *Mahadeo Prasad Vs. Municipal Corporation, Jabalpur, I.L.R. (2001) M.P. 631*

– **Associated words to be understood in cognate sense as they were taking their colour from each other:** *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (DB)*

– **Beneficial construction** – Rules of – ‘Head on clash’ between two sections of a statute – Duty of courts to avoid by following rule of harmonious construction: *Hiralal Vs. Hatesingh, I.L.R. (1984) M.P. 55*

– **Best clue for interpreting a particular term used in** – Is to see its use in another provision thereof: *Bhagirath Vs. State of M.P., I.L.R. (1981) M.P. 996*

– **Canon of taxation** – No imposition of tax or fee by instrument of subordinate legislation – Not permissible unless specially authorized by statute: *Lucky Bharat Garage (P) Ltd., Through Sardar Baldeosingh, Raipur Vs. The Regional Transport Authority, Raipur, I.L.R. (1967) M.P. 381 (DB)*

– **Cardinal principle** – Every Statute is prima face prospective unless expressly or by necessary implication made to have retrospective operation – More so when object is to affect vesting rights or to impose new burden or to impair existing obligations: *Wali Mohd. Vs. Batul Bi, I.L.R. (2004) M.P. 37(FB)*

– **Cardinal principles of** – Absence of internal aid – External aid can be taken – Social welfare legislation imposing penal consequence – To be strictly construed: *The Central India Excise, Traders, Mount Road Extension Nagpur Vs. The Regional Provident Fund Commissioner, M.P., Indore, I.L.R. (1990) M.P. 70 (DB)*

– **Cardinal rule** – Statute is prospective unless specially made retroactive: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (FB)*

– **Certain words of statute** – Certain words of statute acquiring certain meaning on judicial pronouncement – legislature aware of such decision and still using them

without change – Words to be interpreted according to meaning assigned to them by judicial decisions: *Prabhakar Rao Vs. Seth Kanhaiyalal*, I.L.R. (1960) M.P. 597 (DB)

– **Command in negative form in a Statute** - Exception: *Zaheer Ahmad Vs. The Kuladhipati, Bhopal University, Bhopal*, I.L.R. (1983) M.P. 436

– **Conflict between specific and general provision** – Specific provision to prevail
– Things to be considered in ascertaining real intention of legislature: *Chitra Kumar Tiwari Vs. Ganga Ram Patil*, I.L.R. (1966) M.P. 620

– **Constitution of India, Article 235 and M.P. Govt. Servant (Temporary and Quasi – Permanent Service) Rules, 1960, Rule 3-A** – Provisions may be read differently in order to make it Constitutional: *Samaru Das Banjare Vs. State of M.P.*, I.L.R. (1985) M.P. 450 (FB)

– **Construction** – Actual words to be construed – Words have to be read together
– Should be construed in a way so as to give their meaning and not to render them meaningless: *The Amalgamated Coalfields Limited Calcutta Vs. The State of M.P.*, I.L.R. (1969) M.P. 399 (DB)

– **Construction** – General words following particular and specified words – General words to be confined to things of same kind as those specified: *Gwalior Sugar Co. Ltd., Dabra Vs. Shyam Saran Gupta*, I.L.R. (1971) M.P. 502 (DB)

– **Construction** – Proviso – Way in which it is to be construed – Municipal Corporation Act, 1956 – Section 58 – Main enactment casts duty on Corporation to employ officers and servants – Proviso vests power on authorities mentioned therein of appointing them – Power to appoint secretary in Standing Committee and not in Corporation – Rules under C.P. and Berar Municipalities Act, 1922 – Rule 6 – Not applicable to a temporary appointment for a period not exceeding six months: *Shankarlal Choubey Vs. The Municipality, Jabalpur*, I.L.R. (1965) M.P. 286 (DB)

– **Construction** – To be construed in such a way that no part of statute is rejected: *H.H. Nawab Hamidulla Khan, Bhopal Vs. Basantram*, I.L.R. (1959) M.P. 1043 (DB)

– **Construction** – Two interpretation possible – One in agreement with spirit of enactment to be accepted: *Thakur Jaswantsingh Vs. Firm Khetaji Bardaji*, I.L.R. (1961) M.P. 957 (DB)

– **Construction** – Words in Statute – To be construed in the popular sense: *Chhannulal Motilal Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore* I.L.R. (1967) M.P. 451 (DB)

– **Construction** – Words to be given ordinary, natural and grammatical meaning – If such construction leading to absurdity – Other construction if possible to be adopted: *Dr. Om Prakash Mishra Vs. National Fire and General Insurance Co. Ltd., Jabalpur*, I.L.R. (1961) M.P. 1009 (DB)

– **Construction of procedural law** – Rule of construction: *Union of India Vs. Punamchand*, I.L.R. (1974) M.P. 1010

– **Construction of provision made in a judicial decision** – Deemed to be in consonance with legislative intent, if no amendments made in the statute thereafter: *Purshottamlal kaushik Vs. Vidya Charan Shukla*, I.L.R. (1980) M.P. 937

– **Construction of statutes** – Cardinal rule of – Intention of enactment to be gathered from the language employed – Duty of Court to give effect to the words used in a statute: *S.S. Harischandra Jain Vs. Dr. Captain Indersingh Bedi*, I.L.R. (1978) M.P. 811 (FB)

– **Construction of taxing statute** – Intendment or equitable principles not to be imported – Rule of strict construction – Does not mean that language should be tortured into meaning something artificial, if natural not repugnant to reason: *Panchamlal Vs. Municipal Board, Rewa*, I.L.R. (1963) M.P. 191 (DB)

– **Construction of taxing statute** – Intendment or equitable principles not to be imported – To be construed from its language uninfluenced by consideration of reason of provision – “Proviso” – Restricts rather than enlarges meaning of provision to which it is appended – Question whether proviso is exception or conditions or is itself substantive provision – To be determined on substance of proviso and not on its form – Section 10 (2) (vii), Indian Income-Tax Act – Proviso II of Section 12(3)(4) – Profits and gains in computing income – Proviso applicable when allowance granted under section 10 (2) (vii): *The Commissioner of Income Tax, M.P. Nagpur and Bhandara, Nagpur*, Vs. *M/s Nandlal Bhandari & Sons Private Ltd. Indore*, I.L.R. (1963) M.P. 376 (DB)

– **Construction of two apparent conflicting – Provision** – Manner of resolving such conflict: *Thakur Prasad Vs. Bhagwandas*, I.L.R. (1985) M.P. 310 (DB)

– **Construction of taxing statute** – One has to look is what it clearly said and not to any intendment – No equity or presumption arises in tax matter: *The Commissioner of Income Tax, M.P. Vs. M/s. Kisan Co-opreative rice mills, Mahasamund*, I.L.R. (1979) M.P. 382 (D.B.)

– **Construction of Welfare legislation** – Language of Act Clear and unambiguous – Effect to be given to it – Inconvenience and hardship can be no consideration: *Rajaram Bhiwaniwala Vs. Nandkishore*, I.L.R. (1976) M.P. 660 (FB)

– **Construction which renders provision superfluous to be avoided**: *Rama Rao Vs. Shantibai*, I.L.R. (1978) M.P. 509 (FB)

– **Court cannot supply the deficiencies by judicial legislation**: *Dhanna Singh Vs. State Transport Appellate Tribunal Gwalior*, I.L.R. (1975) M.P. 8 (FB)

– **Court has no power to alter language of statute to supply meaning when meaning of statute is clear:** *M/s Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey*, I.L.R. (1975) M.P. 82 (DB)

– **Court not to create or take away any statutory right by re-writing law on the garb of interpretation:** *Laxmichand Vs. Chhallu*, I.L.R. (1981) M.P. 148 (DB)

– **Court, Power of, to rectify language to carry out intention of legislature:** *Somdutta Chaubey Vs. The Janpada Sabha, Sohagpur*, I.L.R. (1960) M.P. 106 (DB)

– **Creation of New right** – Specific language necessary therefor: *Smt. Mankunwar Bai Vs. Sunderlal Jain*, I.L.R. (1979) M.P. 676 (FB)

– **Definition clause** – Word “include” – Use of – Makes the definition extensive but not exhaustive: *Gurudayal Singh Vs. Shri Faquirchand, Member, Board of Revenue, Gwalior*, I.L.R. (1981) M.P. 26 (DB)

– **Delegation** – Delegation to subordinate authority by legislature to impose and assess a tax – Delegation to be specific and not in general terms: *Lucky Bharat Garage (P) Ltd., Through Sardar Baldeosingh, Raipur Vs. The Regional Transport Authority, Raipur*, I.L.R. (1967) M.P. 381 (DB)

– **Denotation of term** – Not to be determined with reference to technical books or dictionaries ignoring rules of construction: *R.N. Mishra Vs. The Works Manager, Burn And Co. Ltd., Niwar*, I.L.R. (1968) M.P. 852 (DB)

– **Departmental instructions cannot over-ride true meaning or construction of statutory provision:** *The Christian Fellowship (Hospital), Rajnandgaon Vs. State of M.P.*, I.L.R. (1975) M.P. 67 (DB)

– **Different enactments to be construed to avoid repugnancy to each other:** *Hindustan Aluminium Co. Ltd., Bombany Vs. State of M.P.*, I.L.R. (1987) M.P. 595 (DB)

– **Doctrine of frustration** – Illustration of: *Narain Prasad Vs. Premsingh*, I.L.R. (1981) M.P. 137

– **Doctrine of severability** – Offending provision severable from rest of the Act – Such provision is *ultra vires* and not the entire statute: *Bisahulal Vs. State of M.P.*, I.L.R. (1969) M.P. 683

– **Doing of act is illegal under the provision of an enactment** – Act not rendered legal because of repeal of that enactment – Action taken under repealed enactment can be continued: *Dr. H.N. Bhargava Vs. University of Sagar*, I.L.R. (1978) M.P. 43 (DB)

– **Doubt about meaning of the words in a Statute** – Meaning to be determined by the subject or occasion on which they are used and object to be attained – Meaning ascertainable by reference to words which are associated with it: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh*, I.L.R. (1969) M.P. 550 (DB)

– **Doubt regarding meaning of words in section** – Heading and Marginal notes to be used to resolve doubt: *The Commissioner of Income Tax, M.P., Nagpur and Bhandara, Nagpur Vs. Sardar C.S. Angre*, I.L.R. (1967) M.P. 1012 (DB)

– **Duty of Court to harmonise various provisions of Act** – Cannot stretch words to fill in gaps and omissions revealed by the Act: *Mohammad Manzar Hussain Vs. Chand Khan*, I.L.R. (1964) M.P. 711 (DB)

– **Each word used in Section 482 of the Criminal Procedure Code has to be given meaning:** *N.A. Palkhivala Vs. Madhya Pradesh Pradushan Niwaran Mandal*, I.L.R. (1990) M.P. 466

– **Earlier Act ambiguous** – Later Act can be seen to clarify ambiguity: *The Ratlam Bone And Fertilizer Company, Ratlam Vs. State of M.P.*, I.L.R. (1975) M.P. 216 (FB)

– **Earlier Act to be interpreted on the basis of later Act under certain circumstances:** *Kishanlal Vs. Keshrichand*, I.L.R. (1971) M.P. 572

– **Effect of a proviso:** *Smt. Sunderbai Vs. M.P. Electricity Board, Through Divisional Engineer, Chhindwara*, I.L.R. (1982) M.P. 541

– **Effect of the interpretation of law:** *M/s. Raja Traders, A Registered Firm of Jagdalpur Vs. Union of India*, I.L.R. (1979) M.P. 840 (D.B.)

– **Effect of proviso** – Does not in all cases mean an exception to the main Section or main provision: *Mehdi Bai Fouzdar Vs. State of M.P.*, I.L.R. (1998) M.P., 739

– **Effect of rule to be determine on fair and reasonable construction of words used:** *M/s. Bundelkhand Motor Transport Company, Nowgaon Vs. the State Transport Appellate Authority, M.P. Gwalior*, I.L.R. (1969) M.P. 901 (FB)

– **Elementary principles of:** *Col. Harbans Singh Vs. Smt. Margrat G. Bhingardive*, I.L.R. (1990) M.P. 179 (FB)

– **Enactment ambiguous** – Scheduled form is legitimate aid to construction: *Gajanan Saw mill, Sagar Vs. The State of M.P.*, I.L.R. (1976) M.P. 123 (DB)

– **Enactment prescribing procedure for depriving personal liberty** – Should be construed strictly: *Kankar Mujare Vs. State of M.P.*, I.L.R. (1985) M.P. 1 (DB)

– **Every word used in a Statute has its own significance:** *Devendra Kumar Vs. Satyanarayan Singh Thakur, I.L.R. (1990) M.P. 89 (DB)*

– **Every word used in the statute by the legislature has its own importance and role to play in construction of sentence** – Benefit of exemption only available to basic drugs when used as raw material for manufacturing some other medicine – No case for interfere in the notification: *M/s. Lupin Laboratories Ltd. Vs. The Commissioner, I.L.R. (2001) M.P. 334*

– **Executive instructions** – Admissible aid to interpretation: *The Christian Fellowship (Hospital), Rajnandgaon Vs. State of M.P., I.L.R. (1975) M.P. 67 (DB)*

– **Exemption from tax given by statute** – To be given free scope and amplitude – Not to be whittled down by limitation not inserted by legislature – Exemption must fall within language granting exemption: *The Commissioner of Sales Tax, M.P. Indore Vs. Shri Harichand Chandulal, I.L.R. (1967) M.P. 308 (DB)*

– **Exercise of statutory discretion by the authorities** – Guiding principles of Opportunity to make submission must be given: *Asbestos Cement Limited, Kymore Vs. Union of India, I.L.R. (1983) M.P. 542 (DB)*

– **Expression in one Act – Used also in another Act** – The same meaning cannot be given – Meaning of words and expressions depends upon context in which they appear – Explanation to section – Not to be read as exception – May be used to extend the meaning, but cannot dispense with the basic condition – Two interpretations possible – That which save private rights should be accepted: *Rao Shankar Pratapsingh Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 639 (FB)*

– **Expression in a Statute to be understood in a sense to harmonise the object of the Statute and Legislature** : *R.R.P Singh Vs. Awadhesh Pratap Singh University, Rewa, I.L.R. (1986) M.P. 313 (D.B.)*

– **Expression in one statute** – Not be interpreted in another statute in the same sense unless in pari materia: *Tarachand Gupta, Vs. Mst. Annapurna Bai, I.L.R. (1968) M.P. 816*

– **Expression used in a Statute** – Not to be interpreted by reference to another statute enacted for different purpose: *Khushilal Moolchand Kachhi Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1970) M.P. 712 (DB)*

– **Fiscal statute – Two interpretations possible** – Effect to be given to one benefiting the citizen: *The Amalgamated Coalfields Limited Calcutta Vs. The State of M.P., I.L.R. (1969) M.P. 399 (DB)*

– **Fiscal Statutes – To be constructed strictly** – Words used in – Must be given natural meaning: *Akhtar Abbas Vs. Assistant Collector, Central Excise, Bhopal*, I.L.R. (1960) M.P. 408 (DB)

– **Flaw in the language used by legislature** – Court can interpret provision in case of ambiguity – Court cannot supply the deficiencies by judicial legislation – No inconsistency between the rule and the provision of the Act under which it is made – Not permissible to construe it upon a priori notions derived from other statutes and to take help of the back ground or any other extrinsic aid – *United State of Gwalior, Indore, Malwa (Madhya Bharat) Motor Vehicles Rules, 1949 – Rule 80* – No obligation cast to serve copy of order on persons for whom there is no obligation – Limitation in their case starts running on the date they obtain certified copy of order – Conception of knowledge cannot be introduced: *Dhanna Singh Vs. State Transport Appellate Tribunal Gwalior*, I.L.R. (1975) M.P. 8 (FB)

– **General Statute to yield to Special Statute:** *Bhotey Vs. The Collector, Gwalior*, I.L.R. (1977) M.P. 203 (D.B.)

– **Hardship** – No ground for putting narrow construction: *Shyamlal Vs. Umacharan*, I.L.R. (1960) M.P. 377 (FB)

– **Harmonious construction** – Requirements of – Inconsistency and repugnancy to be avoided : *Commissioner of Sales Tax, M.P. Vs. M/s Vijay Motors, Gwalior*, I.L.R. (1986) M.P. 103 (DB)

– **Has to be construed according to ordinary grammatical meaning:** *Balkishandas Vs. Harnarayan*, I.L.R. (1982) M.P. 1 (FB)

– **Heading prefixed to section** – Use of : *Smt. Tripta Chhabra Vs. Ajit Kumar Chhabra*, I.L.R. (1986) M.P. 475

– **Heading of a statute** – Use of, for construction of sections: *Ramesh Kumar Mishra Vs. State of M.P.*, I.L.R. (1983) M.P. 34

– **Heading of section** – Can be read with enacting part of the section while construing it – Enacting words of the section clear and cannot bear the construction suggested with aid of heading – Construction so suggested not acceptable – Heading has no controlling effect in such circumstances: *Sonelal Vs. State of M.P.*, I.L.R. (1973) M.P. 925

– **Implications of directory and mandatory provisions of the statute** – Test to be applied to find out whether provision is mandatory – *Municipalities Act, Madhya Pradesh, 1961 – Section 43(2)(b)* – Provision as to time in – Is directory – Notification of the result of election held before expiry of time – Amounts to substantial compliance:

Bir Govind Sing Vs. The Chief Municipal Officer, Municipal Committee, Jora, I.L.R. (1972) M.P. 1000 (DB)

– **Implied repeal not to be readily inferred:** *M/s J.A. Trivedi Brothers, Chhindwara Vs. Union of India, I.L.R. (1975) M.P. 657 (DB)*

– **In construing provisions regarding limitation** – Equitable considerations out of place – Strict grammatical meaning of words to be seen: *M/s. Bundelkhand Motor Transport Company, Nowgaon Vs. the State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1969) M.P. 901 (FB)*

– **Incorporation of provision by an act by reference in another Act** – Those provisions become part of the other Act – Repeal of incorporated provisions – Effect of, on the Act, incorporating them – Minimum Wages Fixation Act, Madhya Pradesh, 1962 – Section 3 – Does neither validate rates fixed in notification nor attempt to fix rates under Central Act – Act enacted by competent legislature – Motive irrelevant – Act valid – Constitution of India – Article 19(1)(f) and (g) – Fixing of minimum wages – Does not constitute violation of fundamental right – Minimum Wages Fixation Act, Madhya Pradesh, 1962 – Not invalid because rates fixed by itself – Burden of proof – Burden on person challenging Constitutionality of Act – Act giving retrospective operation to the fixation of rates – Insufficient to show that it imposes unreasonable restriction on fundamental right – Sections 3 and 4 – Validity: *Narottamdas Vs. The State of M.P., I.L.R. (1965) M.P. 70 (DB)*

– **Intent of legislature** – To be gathered not only from phraseology but also from nature, design and consequences which follow from construing the word in one sense or other: *The Municipal Committee, Khurai Vs. The State of M.P., I.L.R. (1964) M.P. 668 (DB)*

– **Intention of legislature** – Equitable considerations: *Sharadchand Vs. Vishnu Pant, I.L.R. (1979) M.P. 1 (FB)*

– **Interpretation of provision in Constitution** – To be construed in the same way as any other statute – Interpretation carrying out intention of Constitution makers to be given effect: *Dr. S.C. Barat Vs. Shri Hari Vinayak Pataskar, Chancellor of the University of Jabalpur, I.L.R. (1962) M.P. 226 (DB)*

– **Interpretation of words in one statute** – Not to be relied on for interpretation of same expression in another statute: *Seth Rishabhkumar Vs. the State of MP, Indore, I.L.R. (1970) M.P. 936 (DB)*

– **Interpretation to be given to harmonise with object of enactment and object which legislature has in view:** *Shri Mohammad Sadiq Vs. The State of Madhya Pradesh, I.L.R. (1966) M.P. 709 (DB)*

– **Interpretation to be in accordance with commonsense:** *The Oudh Sugar Mills Ltd. Bombay Vs. State of M.P., I.L.R. (1978) M.P. 1022 (DB)*

– **Interpretation put on wordings of one Act or the decisions given thereon**
– Cannot guide the interpretation of different Act: *Firm Panjuml Daulatram, Satna Vs. Sakhi Gopal, I.L.R. (1980) M.P. 672*

– **It is not open to Courts to curtail or enlarge the provision beyond obvious meaning:** *Smt. Nathibai Vs. Maheshwari Samaj Ramola Trust, I.L.R. (1996) M.P. 206 (D.B.)*

– **It is not permissible to add or subtract any word or words** – It is not given to Courts to alter the material – The maximum that can be done is to iron out the creases, if any: *Badamilal Dube Vs. Chandraprakash Khairatilal Khanna, I.L.R. (1997) M.P. 181*

– **Language capable of two meanings** – Absurdity should be avoided: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh Vishwa Vidyalaya, Rewa, I.L.R. (1987) M.P. 736 (FB)*

– **Language used in Constitution or modern statute in general terms** – Should be construed to include new scientific inventions: *Restaurant Lee, Jagdalpur Vs. State of M.P., I.L.R. (1983) M.P. 606 (DB)*

– **Later enactment incorporating provisions of earlier enactment** – Amendments made in earlier enactment subsequent to incorporation is normal rule – Amendment do not automatically get incorporated in the incorporated enactment – Jabalpur Municipal Corporation Servants Bye-Laws, 1967 – Bye-Law 3 – Words “From time to time” in – Implication of – Amendment made by State Government to Fundamental Rules and other Rules – Amendment gets automatically incorporated by the bye-law and begins to apply to employees of Corporation – Delegation – Power conferred on authority to make delegated legislation – That power cannot be sub-delegated 1967 Bye-laws as amended in 1971 – Validity: *Nagar Nigam Harijan Karmchari Sangh Vs. The Municipal Corporation, Jabalpur, I.L.R. (1977) M.P. 883 (D.B.)*

– **Legislation within competence of legislature** – Motive is irrelevant – Has no bearing on question of colourableness of legislation: *M/s Chhotabhai Jethabhai Patel and Co., Rajnandgaon Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 721 (DB)*

– **Litigant has no vested right to a particular forum** – Legislature can provide for pending proceedings. By making an express provision to that effect : *B. Johnson. Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (DB)*

– **Meaning of words ambiguous** – Meaning to be understood in the sense in which they best harmonise – Meaning to be considered taking into consideration subject, occasion and object to be attained: *Hiranand Tejmal Vs. The Commissioner of Sales Tax, Indore, Madhya Pradesh, I.L.R. (1962) M.P. 674 (DB)*

– **Mode of reviving a statute** – Court, power of, to add or subtract words in the statute in the process of interpretation – Not to be construed on the judge's view of what legislature ought to have done: *The Amalgamated Coalfields Limited Calcutta Vs. The State of M.P., I.L.R. (1969) M.P. 399 (DB)*

– **Meaning of the words used in a statute plain** – Intention of Legislature has to be gathered from those words: *Daryaobai Vs. Surajmal, I.L.R. (1980) M.P. 920 (F.B.)*

– **“Spirit” of the statute** – Necessary intendment regarding retrospective application to be gathered or collected from language employed in statute and not from “Spirit” of the statute: *Mst. Shanti Bai Vs. Biharilal, I.L.R. (1967) M.P. 34 (DB)*

– **Negative words are prohibitory**: *Ramlal Sharma Vs. State of M.P., I.L.R. (1975) M.P. 369*

– **No amendment possible to a nonexistent statute unless it is revived**: *The Amalgamated Coalfields Limited Calcutta Vs. The State of M.P., I.L.R. (1969) M.P. 399 (DB)*

– **No inconsistency between the rule and the provision of the Act under which it is made** – Not permissible to construe it upon a priori notions derived from other statutes and to take help of the back ground or any other extrinsic aid: *Dhanna Singh Vs. State Transport Appellate Tribunal Gwalior, I.L.R. (1975) M.P. 8 (FB)*

– **No order of Court can take away jurisdiction**: *M/s. Raja Traders, A Registered Firm of Jagdalpur Vs. Union of India, I.L.R. (1979) M.P. 840 (D.B.)*

– **No words to be added unless provision rendered absurd or nugatory**: *Nathu Prasad Vs. Singhai Kapoorchande, I.L.R. (1977) M.P. 1131 (F.B.)*

– **Non obstante clause** – To be strictly construed: *State Vs. Chainkaran, I.L.R. (1976) M.P. 870 (DB)*

– **Object of**: *Pooranmal Vs. Sushila Devi, I.L.R. (1981) M.P. 418*

– **Ordinary meaning to be adopted unless it leads to absurdity**: *Tolaram Vs. The Shop Inspector, Nagar Palika Indore, I.L.R. (1959) M.P. 798 (DB)*

– **Placing of section at a particular place in Act** – Not sufficient to place an interpretation on the words which they do not justify: *The Commissioner of Income*

Tax, M.P., Nagpur and Bhandara, Nagpur Vs. Sardar C.S. Angre, I.L.R. (1967) M.P. 1012 (DB)

– **Powers** – Interpretation of statutes should not lead to manifest absurdity, rigidity, palpable injustice or absurd in convenience or anomaly – Powers of a Magistrate is not unlimited and is regulated by law – He cannot order the doing of an act in excess of the power conferred on him by law: *State of M.P. Vs. Rakesh Kumar Gupta, I.L.R. (1998) M.P. 721 (F.B.)*

– **Preamble important guide to construction** – Can be resorted to when enactment not clear – Legislative intent to be gathered from all parts of statute taken together – Meaning of words in one part of statute explicit and clear – Another part not to be used to diminish or control effect of first part – Words not having clear meaning – Other parts can be considered to throw light on intention of legislature – General rule – Not to import words which are not there – Can be imported in order to give sense and meaning to them: *Smt. Jankibai Vs. Ratan, I.L.R. (1962) M.P. 1 (FB)*

– **Preamble to key is to open the mind of legislature:** *Jagjitkumar Vs. Jagdishchandra I.L.R. (1982) M.P. 1057 (DB)*

– **Presumption that statute is prospective** – Does not affect vested right – Rule regarding vested rights extends to remedial rights, their nature and content: *Narayansingh Vs. The Board of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1962) M.P. 788*

– **Principle** – Act ousting jurisdiction of Civil Court to be strictly construed – Presumption in respect of jurisdiction to be made – Exclusion of jurisdiction must be explicitly expressed or clearly implied Co-operative Societies Act, 1960 – Section 64 – Business of society – To be ascertained from the object for which it is constituted – Trespass by society – Not to be treated as acquisition for purposes of providing residential accommodation – Encroachment by society – Cannot be regarded as any business transaction arising as a result of business that it had with its winders – Word “Business” – Meaning of – Word “transaction” in section 64 of the Co-operative Societies Act, 1960 – Suggests continued course of dealing – Words “trade” and “business” – Connotation of: *The State Bank of India Employees housing Co-Operative Society Ltd., Raipur Vs. Naval Shankar Dave, I.L.R. (1975) M.P. 538*

– **Principale** – Criminal Procedure Code, 1973 – Section 438- Provisions of – Not to be read in isolation – But together with those of Section 437(1) – Grant of anticipatory bail – Effective till the conclusion of trial unless cancelled under Section 437(5) or 439(2) – Directions can also be issued for not to commit the accused persons under custody while committing the case to Sessions Court: *Ramsewak Vs. State of M.P., I.L.R. (1980) M.P. 784 (D.B.)*

– **Principle** – Different part of enactment – To be interpreted in a way so as to give effect to every one of them: *The State of MP Vs. Somnath*, I.L.R. (1960) M.P. 505 (DB)

– **Principle** – Each word to be given due weight – No word to be considered superfluous: *Ithoba Vs. Bhagchand*, I.L.R. (1965) M.P. 293 (DB)

– **Principle** – Language cannot be stretched to fill gaps or omissions – Not permissible to give forced interpretation on ground of equity, inconvenience or hardship: *Ghanaram Vs. Smt. Pyari Bahoo*, I.L.R. (1963) M.P. 473 (DB)

– **Principle** – Meaning of the word in statute – To be determined in the context of section of Act – True meaning to be determined in the context relating to the subject matter dealt with by the section: *Commissioner of Sales Tax, M.P. Inodre Vs. M/S Mohammad Hussain Rahim Bux, Maihar*, I.L.R. (1967) M.P. 148 (DB)

– **Principle** – Nothing to be added or subtracted – Statute to be construed according to its plain meaning: *Satya Prakash Vs. Bashir Ahmad*, I.L.R. (1965) M.P. 106 (DB)

– **Principle** – Particular clause containing disqualification – Wide to include both individuals and societies – Restricted meaning not to be given to that clause: *Basant Kumar Mishra Vs. The Assistant Registrar, Co-operative Societies, Jabalpur*, I.L.R. (1974) M.P. 415 (DB)

– **Principle** – Preamble not to control the Act: *Motilal Jagannath Nima Deceased Through Heirs and Legal Representatives Vs. Gopal Tunyaji Sutar*, I.L.R. (1957) M.P. 573 (DB)

– **Principle** – Statute to be construed according to intention expressed in statute itself – The subject matter with respect to which it is used and the object in view to be borne in mind: *Mukundlal Vs. Shankarlal*, I.L.R. (1967) M.P. 100 (DB)

– **Principle** – Statute to be construed in a way so as to harmonize different provisions and not in a way which would make non-sense of legislation: *Badriprasad Vs. The State of Madhya Pradesh*, I.L.R. (1972) M.P. 1110

– **Principle** “In a taxing Act one has to look merely at what is clearly said – There is no room for any intendment – There is no equity about a tax – There is no presumption as to a tax – Nothing is to be read in nothing is to be implied – One can only look fairly at the language used” – Applicable to the construction of charging sections and not machinery sections – Municipalities Act, Central Provinces and Berar – Rules framed under – Rules 9 and 10 – Words “consumption or use” in Meaning of – Goods brought within municipal area for sale – Liable to payment of octroi tax – Words and Phrases – Word “Evade” – Implication of – Rules 13 and 43 – Person not paying tax

under *bona fide* and honest belief reasonably entertained regarding particular interpretation of Act or the rule – Person does not come within the mischief of those provisions – Mens rea – An essential constituent of offence: *The Municipal Committee, Harda, District Hoshangabad, M.P. Vs. Banshilal Agarwal, Proprietor of the shop M/s Baijnath Banshilal, Harda, I.L.R. (1972) M.P. 935 (DB)*

– **Principle for determining retrospectivity of statute:** *Tikamdas Vs. State of Madhya Pradesh, I.L.R. (1967) M.P. 668 (DB)*

– **Principle Governing the operation of a Statute on a particular new Section:** *Sitaram Vs. State of M.P., I.L.R. (1982) M.P. 855 (FB)*

– **Principle of Construction** – No part of statute should be rendered devoid of any meaning: *Ram Ratan Gupta Vs. State of M.P., I.L.R. (1975) M.P. 377 (FB)*

– **Principle of Construction** – Rule to be construed according to intention expressed in statute – Object in view to be also taken into consideration: *Bhagwati Dhar Bajpai Vs. The Jabalpur University, Jabalpur, I.L.R. (1970) M.P. 765 (DB)*

– **Principle of construction of general law** – Statute containing general and specific provision – Specific provision to govern the case: *Rustomji Vs. Income-Tax Officer, Special Investigation Circle, Indore, I.L.R. (1965) M.P. 555 (DB)*

– **Principle of interpretation** – Court, power of, to travel outside the words used to find out secret intention – Provision conferring jurisdiction on special bodies, persons or courts – Provision to be strictly construed: *Ayyub Khan Vs. Fundilal, I.L.R. (1969) M.P. 343 (FB)*

– **Principle of interpretation is that no clause, sentence or word to be rendered superfluous, void or insignificant:** *Manaklal, Vs. The Collector, Seoni, I.L.R. (1968) M.P. 695 (DB)*

– **Principle that Statutes are prospective and not retrospective unless there is express direction to that effect** – Applicable to modifications: *Shri J.F. Shroff Vs. The Government of MP, I.L.R. (1961) M.P. 785 (DB)*

– **Principle to be followed in construction of statutory interpretation clauses or definition – Motor transport workers Act, 1961** – Section 2 (vi) as amended – Phrase “capable of being so expressed” in – Includes anything agreed to be paid in kind in the circumstances contemplated by the definition of “wages”: *M.P. State Road Transport Corporation, Bhopal Vs. The Industrial Court, M.P., Indore, I.L.R. (1975) M.P. 998 (DB)*

– **Principle to be followed in interpreting law** – Court to give effect to intention of legislature as expressed in the words used – No outside consideration can prevail: *Nathu Prasad Vs. Singhai Kapoorchande, I.L.R. (1977) M.P. 1131 (FB)*

– **Principles of construction** – Words and expressions used in the Act – Must take colour from the context in which they appear: *Devi Prasad Vs. The Board of Revenue MP*, I.L.R. (1960) M.P. 565 (DB)

– **Principle of harmonious construction to be applied in construing different provisions of statute**: *B.K. Jain Vs. Y.S. Dharmadhikari*, I.L.R. (1978) M.P. 103 (DB)

– **Principles of**: *Lala Lalsing Vs. Seth Shobhagchand*, I.L.R. (1985) M.P. 252

– **Principles of**: *S.S. Harischandra Jain Vs. Dr. Captain Indersingh Bedi*, I.L.R. (1978) M.P. 811 (FB)

– **Principles of**: *Vasant Kumar Jaiswal Vs. State of Madhya Pradesh*, I.L.R. (1985) M.P. 221

– **Procedural enactment** – Duty of Court – Apparently conflicting provision to be interpreted in a way so that they harmonise – Duty of Court when conflict irreconcilable: *Chitra Kumar Tiwari Vs. Ganga Ram Patil*, I.L.R. (1966) M.P. 620

– **Prospective statute** – Can rely on past acts for fastening liability or conferring benefit on a person: *State of M.P. Vs. Shri Poonam Chand*, I.L.R. (1971) M.P. 13 (DB)

– **Provision of law interpreted by Court** – Court is not making a new law: *M/s. Raja Traders, A Registered Firm of Jagdalpur Vs. Union of India*, I.L.R. (1979) M.P. 840 (D.B.)

– **Provision to be construed in a way which is consistent with scheme** – Sub-Sections of a section to be read as a whole – Attempt to be made to reconcile both parts – Obvious object of legislature to be given effect to – Construction reducing statute to futility to be avoided – More general words to be limited from excluding more specific from its ambit: *Ramsingh Vs. Ramkaran*, I.L.R. (1965) MP. 897 (DB)

– **Provision to be construed in a way that no part to be left as superfluous, void or insignificant**: *Pandit Dwarka Prasad Mishra Vs. Kamalnarain Sharma*, I.L.R. (1966) M.P. 345 (DB)

– **Provision to be construed in a way not to make it redundant or meaningless**: *Haji Ibrahim Vs. State of M.P.*, I.L.R. (1979) M.P. 868 (D.B.)

– **Provision whether mandatory or directory** – Does not depend upon whether consequences for non-compliance were provided or not: *Pandit Dwarka Prasad Mishra Vs. Kamalnarain Sharma*, I.L.R. (1966) M.P. 345 (DB)

– **Provisions granting exemption from tax** – Has to be construed liberally: *The Commissioner of Income-Tax, Jabalpur Vs. Shri Bharatchandra Bhanjdeo Jagdalpur*, I.L.R. (1985) M.P. 375 (DB)

– **Provisions of Payment of Wages Act, 1936 and Industrial Disputes Act, 1947 to be interpreted so as to avoid repugnancy or redundancy** – Reasonable and sensible construction to be given so that each Act operates in its own sphere: *Surajmal Mehta, Managing Director, The Barnagar Electric Supply and Industrial Co. Ltd., Barnagar Vs. Authority under the Payment of Wages Act, Ujjain*, I.L.R. (1965) M.P. 873 (DB)

– **Provisions regulating manner in which Government or public official to exercise power** – Provision to be construed as mandatory and not directory: *M/s. Chhotabhai Jethabhai Patel and Co. Rajnandgaon Vs. The State of M.P.*, I.L.R. (1967) M.P. 688 (DB)

– **Proviso to be construed in relation to subject-matter of principal section:** *Ramsingh Vs. Ramkaran*, I.L.R. (1965) M.P. 897 (DB)

– **Proviso to section operates within field of the subject – matter of main section:** *The Commissioner of Income Tax, New Delhi Vs. Messrs Ramgopal Kanhaiyalal*, I.L.R. (1959) M.P. 814 (DB)

– **Purpose and subject-matter** – Control the meaning of words – Words to be construed to best attain purpose of statute: *R.N. Mishra Vs. The Works Manager, Burn And Co. Ltd., Niwar*, I.L.R. (1968) M.P. 852 (DB)

– **Purpose of saving clause** – Purpose defeated if expression “amendments made from time to time” interpreted literally to make subsequent amendments applicable: *Shyam Sunder Govindram Vs. R.R. Mishra, Income Tax Officer, Raigarh Circle*, I.L.R. (1972) M.P. 69 (DB)

– **Question whether provision of statute absolute or merely directory** – To be determined on the relation of that provision to the general object intended to be achieved – Words and Phrase – Words in the Statute – Meaning how to be ascertained: *Dr. S.C. Barat Vs. Shri H.V. Pataskar, Chancellor of the University of Jabalpur*, I.L.R. (1962) M.P. 360 (DB)

– **Reference to language of repealed Act** – Cannot be taken in aid to construe provision of repealing Act: *Firm Ratanchand Darbarilal, Satna Vs. Rajendra Kumar*, I.L.R. (1969) M.P. 524 (FB)

– **Repeal not to be implied if scope of two enactments different:** *Bisahulal Vs. State of M.P.*, I.L.R. (1969) M.P. 683

– **Repeal – Repeal of an Act by another** – Provision regarding repeal and savings only attracted – Act expiring by efflux of time – Act cannot be invoked for any purpose after it comes to an end: *Mangilal Vs. Shivprasad*, I.L.R. (1966) M.P. 938

– **Retrospective operation of Statute** – Rules of: *Modi Bai Vs. Nagraj*, I.L.R. (1982) M.P. 260

– **Retrospectivity** – Statute retrospective if dealing with procedure or if there are express words or necessary intendment: *Ithoba Vs. Bhagchand*, I.L.R. (1965) M.P. 293 (DB)

– **Retrospectivity of statute how to be determined** – Its effect on different proceedings: *Kumari Sushma Mehta Vs. The Central Provinces Transport Services Ltd., Jabalpur*, I.L.R. (1963) M.P. 688 (DB)

– **Rule** – General statutes presumed to use words in popular sense – Statute not dealing with particular trade or business or a technical matter – Evidence as to existence of technical meaning of ordinary words – Inadmissible : *R.N. Mishra Vs. The Works Manager, Burn And Co. Ltd., Niwar*, I.L.R. (1968) M.P. 852 (DB)

– **Rule** – Meaning of the Act not to be ascertained from the forms prescribed by Rules framed under the Act: *Firm Harpal Das Jairamdas, Bilaspur Vs. The Sales Tax Officer, Bilaspur*, I.L.R. (1965) M.P. 402 (DB)

– **Rule of Construction** – Words clear and mischievous – Effect to be given to these words even though it may appear absurd or mischievous: *Dhan Singh Vs. Ramsaran*, I.L.R. (1960) M.P. 707 (DB)

– **Rule of Construction** – Words in singular to include the plural and vice-versa: *Dr. Ramsingh Vs. The University of Saugar, Saugar*, I.L.R. (1975) M.P. 292 (DB)

– **Rule of construction** – Words not to be stretched to fill in gaps or omissions in the provision of law – Representation of the People Act Section 100(1) (d) (i) – Person describing himself as Scheduled Caste in nomination paper wrongly – His right to contest general seat cannot be challenged – Representation of the People Act – Section 130 – Breach of – Does not *per se* vitiate election – Constitution of India – Article 341 (2) – States Reorganisation Act, Section 41 – Authorised President to make modification in original (Scheduled Castes Order) as compatible with territorial changes – Did not confer authority to exclude person from Scheduled Caste: *Naunihal Singh Vs. Kishorilal Paliwal*, I.L.R. (1959) M.P. 955 (DB)

– **Rule of construction of statute, rule or bye-law** – Use of different expressions – Connote different things or ideas – Two different interpretations possible – Interpretation which is just, reasonable and fair to be accepted: *Satna Central Co-*

operative and land Mortgage Bank, Ltd. Satna Vs. Puranlal Agrawal, I.L.R. (1974) M.P. 580 (DB)

– **Rule of harmonious construction** – Applicability of, to the provision of both the Acts: *Raviprakash Pujari Vs. Hemraj Alias Hemram, I.L.R. (1990) M.P. 289*

– **Rule of harmonious construction** – Meaning: *The Ratlam Bone and Fertilizer Co., Ratlam Vs. State of M.P., I.L.R. (1975) M.P. 216 (FB)*

– **Rule regarding vested right Applicable to remedial rights, their nature and content** – Disturbing right of appeal – Not a mere alteration of procedure – No presumption permissible to be made regarding interference in the matter of right of appeal – M.P. General Sales Tax Act, Section 52 (2) – Scope and applicability – C.P. and Berar Sales Tax Act, Section 22 (5) – Right of revision – Is in the nature of vested right: *Nathulal Chhotelal Shellac Factory, Dhamtari Vs. The Deputy Commissioner of Sales Tax, Jabalpur, I.L.R. (1963) M.P. 405 (DB)*

– **Rule when can be said to be ultra vires and when not:** *Municipal Committee, Raipur, Vs. Messrs Punjab Oil Mills, Ramsagarpara, Raipur, I.L.R. (1959) M.P. 14 (DB)*

– **Rules** – Can be used to interpret an ambiguous provision: *Shree Synthetics Limited, Ujjain Vs. Union of India, I.L.R. (1982) M.P. 706 (DB)*

– **Rules of construction** – Essential Commodities Act, 1955, as amended by Amendment Act, 1974 – Section 4 – Prospective and not retrospective – Section 6A, (Before Amendment) – Collector had no power to confiscate the vehicle or other conveyance carrying essential commodity – Section 6-A – Word “May” in – Indicates power to be discretionary – Not necessary to confiscate essential commodity in every case – Collector has to act fairly, reasonably and judiciously – Essential Commodities (Amendment) Act – Is not Procedural nor pertains to evidence – No indication in the Amending Act to show that it is retrospective – Section 6-A, (as amended) not applicable to offenses committed prior to Amendment Act – Sections 3 and 7 – Till contravention of any order under section 3, Criminal court not competent to levy any of the penalties mentioned in section 7 – Sections 7(1)(b) and (e) – Scope of – Section 6-A, as amended – Confiscation when can be ordered – Section 7 – Court to consider all relevant facts before ordering the custody or disposal of property pending trial or enquiry before it – Criminal Procedure Code 1973 Section 451 – Order under, is temporary, operative during the period of enquiry of trial – Section 452 – Operates when enquiry or trial is complete – Sections 451 and 452 – Powers of criminal court under – Not taken away unless there is special provision to that effect – Essential commodities Act – Section 7 – Empowers criminal court to pass appropriate order – Essential Commodities Act – Section 6-A and 7 and Criminal Procedure Code, Sections 451 and 452 – Combined

effect of these provisions – Under Section 6-A and 7, Essential Commodities Act and Criminal Procedure Code, Sections 451 and 452 – Concurrent jurisdiction of the Collector and Criminal Court regarding disposal of property – General provision regarding disposal of property under Criminal Procedure Code – Cannot be exercised by Criminal Court in matter of confiscation of food grain – Criminal Procedure Code, 1898 – Sections 516 – A and 523 – After completion of enquiry and trial – Criminal court can exercise power under Section 516 – A for due custody or return or for final disposal of property under Section 523.: *Rameshwar Rathod Vs. State of M.P., I.L.R. (1981) MP 1008 (DB)*

– **Rules of construction** – Preamble – Language of the Statute plain and clear – Preamble cannot be called in aid to ascertain intention: *Pooranmal Vs. Sushila Devi, I.L.R. (1981) M.P. 418*

– **Rules of construction:** *Mahant Narayandas Vs. Registrar, Public Trusts, Bilaspur, I.L.R. (1981) M.P. 755 (DB)*

– **Rules of:** *Laxminarayan Rice Mill, Lanji Vs. State of M.P., I.L.R. (1983) M.P. 393*

– **Rules regarding construction:** *M/s. Shri Ganesh Trading Company, Sagar Vs. State of M.P., I.L.R. (1973) M.P. 735 (FB)*

– **Rules regarding construction of fiscal statute:** *The Commissioner of Income Tax, Bhopal Vs. Ramchand Kundanlal, I.L.R. (1979) M.P. 176 (D.B.)*

– **Salutary rule of** – Two statutory provisions – Not to be so construed as to encourage frivolous litigation or render one of them otiose: *Rajeev Khandelwal Vs. Arun Pannalal, I.L.R. (1987) M.P. 670 (FB)*

– **Saving clause** – To be liberally construed giving effect to saving provision: *Narula Transport Service, Hamidia Road, Bhopal Vs. State of M.P., I.L.R. (1980) M.P. 1131 (D.B.)*

– **Sense and meaning of a statute** – To be gathered by comparing one part with other and by viewing all parts together as a whole: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (DB)*

– **Should be done to advance cause of justice:** *M.P. State Co-operative Land Development Bank Limited, Bhopal Vs. J.L. Chouksey, I.L.R. (1980) M.P. 1176*

– **Special Act dealing with special subject** – Special provision governs the matter and not general provision in any Act: *The Municipal Committee, Khurai Vs. The State of M.P., I.L.R. (1964) M.P. 668 (DB)*

– **Special Act to override general Act** – Non obstante clause when used – To be given full effect: *Municipal Council, Khurai, Vs. Agriculture Produce Marketing Committee, Khurai, I.L.R. (1968) M.P. 93*

– **Statements of objects and reasons and speeches of members** – Not admissible as extrinsic and to interpretation of statutory provision: *Rajkumarsinghi Vs. The Commissioner of Expenditure-Tax, M.P. & Nagpur, I.L.R. (1971) M.P. 384 (DB)*

– **Statute prescribing a particular method in which votes on particular subject is to be taken** – That method only has to be followed: *Vasant Rao Parhate Vs. Ghanshyam, I.L.R. (1974) M.P. 558 (DB)*

– **Statute affecting vested right of legal character of past transaction** – It has to be construed prospectively: *Union of India Vs. Punamchand, I.L.R. (1974) M.P. 1010*

– **Statute depriving person of right to sue or affect that right** – Retrospective character to be clearly expressed: *Gokuldas Ragaria Vs. Parmanand Chaurasia, I.L.R. (1969) M.P. 657 (DB)*

– **Statute ought to be interpreted rationally** – Reasonableness or otherwise is immaterial – Two interpretation possible – Interpretation in favour of subject to be preferred: *Kanhaiyalal Vs. The Municipal Committee, Mungeli, I.L.R. (1959) M.P. 448*

– **Statute to be construed according to intent of them that make it** – Court has to act upon intention of legislature: *M.P. State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Sagar, I.L.R. (1978) M.P. 762 (DB)*

– **Statute to be construed in a way so as to advance remedy and to suppress mischief** – Rules not to control construction of provisions of the Act: *M/s Battulal Vs. The Commissioner of Sales Tax, M.P., Indore, I.L.R. (1964) M.P. 175 (DB)*

– **Statute to be construed with reference to its intended scope and purpose and to carry out the purpose rather than to defeat it**: *Mukundlal Vs. Shankarlal, I.L.R. (1967) M.P. 100 (DB)*

– **Statute to be construed in a way as not to render any provision nugatory, redundant or meaningless**: *Mst. Mankuwar Bai Vs. Udairam, I.L.R. (1979) M.P. 285*

– **Statute to be interpreted in a way so as not to render any portion redundant**: *M/s Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey, I.L.R. (1975) M.P. 82 (DB)*

– **Statute using present tense for describing certain set of facts** – User of present tense is to express a hypothesis, without regard to time: *State of M.P. Vs. Shri Poonam Chand, I.L.R. (1971) M.P. 13 (DB)*

– **Tax or fee can be imposed by subordinate authority only when statute specifically confers that authority:** *Lucky Bharat Garage (P) Ltd., Through Sardar Baldeosingh, Raipur Vs. The Regional Transport Authority, Raipur, I.L.R. (1967) M.P. 381(DB)*

– **Tax Statute** – How to be construed: *M/s K.P. Sons, Katni Vs. Sales Tax Officer, Katni, I.L.R. (1987) M.P. 10 (DB)*

– **Taxing provision to be strictly construed in a manner favorable to citizen:** *Balu Vs. Amichahd, I.L.R. (1972) M.P. 1 (FB)*

– **Taxing Statute requires purposive approach :** *Commissioner of Sales Tax Vs. M/s. Vijay Motors, Gwalior, I.L.R. (1986) M.P. 103 (D.B.)*

– **Taxing Statute – Rules of Construction :** *M/s. Sushil Kumar Sarad Kumar, Rewa Vs. Commissioner of Sales Tax, M.P., I.L.R. (1986) M.P. 605 (DB)*

– **Taxing Statute** – Word requiring interpretation for grant of exemption from tax – Rules of interpretation: *M/s Shreeram Vastra Bhandar, Raipur Vs. Sales Tax Officer, Raipur, I.L.R. (1982) M.P. 487 (DB)*

– **Taxing Statute to be construed in favour of subject:** *Balkishan Muchhal Vs. The Controller of Estate Duty, M.P. Nagpur, I.L.R. (1974) M.P. 376 (FB)*

– **Test to be applied to determine whether requirement is mandatory or directory:** *Lakhanlal Vs. The Town Improvement Trust, Jabalpur, I.L.R.(1975) M.P. 263 (DB)*

– **Tests to be applied to determine whether particular provision is mandatory or directory:** *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

– **Tests to be applied to find out repeal by implication:** *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

– **Test to be applied to see whether statute is prospective or retrospective:** *Mst. Shanti Bai Vs. Biharilal, I.L.R. (1967) M.P. 34 (DB)*

– **The Court in its jurisdiction interprets a particular law for the benefit of all and that interpretation would be adopted right from day one that is from the day of enforcement of the statute:** *M/s. Kailash Automobiles, Jabalpur Vs. Additional Commissioner of Commercial Tax, Jabalpur, I.L.R..(2001) M.P. 644*

-Adoption of interpretation- The Rule in question is penal in nature and if two constructions are possible the Court should adopt that interpretation which does not affect a citizen's fundamental and legal rights: *Ritwik Pandey Vs. Professional Examination Board, M.P. Bhopal*, I.L.R. (2001) M.P. 162

– **The word 'include'** – Interpretation of the word 'Include' in the definition of a word – Ordinarily makes the definition extensive but no inflexible rule – Should be taken as extensive or exhaustive in the context in which used : *K.V. Krishna Murthy Vs. State of Madhya Pradesh*, I.L.R. (1988) M.P. 296 (DB)

– **To be read so as to harmonise different provisions:** *State of M.P. Vs. Mooratsingh*, I.L.R. (1976) M.P. 962 (DB)

– **To imply repeal, specific provision in subsequent Act necessary:** *State of M.P. Vs. Bheronlal Sharma*, I.L.R. (1963) M.P. 761

– **True meaning of a phrase in a Statute has to be judged from the context:** *Narsing Vs. Kamandas*, I.L.R. (1981) M.P. 534 (FB)

– **True meaning, exact scope and significance of provision of a Statute** – To be ascertained on comparison of the same with other provisions of the statute and intention of legislature ascertained in that way: *Sojharml Vs. Municipal Council, Kharsia*, I.L.R. (1965) M.P. 438 (DB)

– **Two laws covering same subject** – Later Act prevails over previous Act: *The State of MP Vs. Atmaram*, I.L.R. (1970) M.P. 452

– **Two laws framed by the same legislature** – Both not liable to exist together – Earlier Act stands impliedly repealed by later Act – Repeal not to be implied if scope of two enactments different – Doctrine of severability – Offending provision severable from rest of Act – Such provision *ultra vires* and not entire statute – Opium Laws (Amendment) Act – Madhya Bharat opium (Amendment) Act, 1955 becomes invalid because of inconsistency – Excise Act, Madhya Pradesh – Section 34 – Does not compel levy of sentence less than the minimum on first offender – Extension of laws Act, Madhya Pradesh, 1958 – Section 3(2) – Opium (Amendment) Act, Madhya Bharat, 1955 – Section 9 – Section 9 becoming void from before appointed day i.e. 1.1.59 – Extension of Laws Act, Madhya Pradesh, 1958 – Section 3(2) – Does not extend that part of the law to the whole State after appointed day – Item No. 4 of Part B of Schedule of Extension of Laws Act, Madhya Pradesh – Not extended to whole of the State: *Bisahulal Vs. State of M.P.*, I.L.R. (1969) M.P. 683

– **Two provisions contradictory** – Leading provision will override subordinate one: *The Ratlam Bone And Fertilizer Company, Ratlam Vs. State of M.P.*, I.L.R. (1975) M.P. 216 (FB)

– **Two views possible** – The view more in consonance with justice and convenience should be preferred: *Sardarilal Vs. Narayanlal*, I.L.R. (1980) M.P. 1109 (F.B.)

– **Use of comma in statute** – Not a determining factor in construing Statute: *Rajkumarsinghji Vs. The Commissioner of Expenditure-Tax*, M.P. & Nagpur, I.L.R. (1971) M.P. 384 (DB)

– **Use of subsequent legislation as a Parliamentary exposition of an earlier Statute** – permissibility of: *The Commissioner of Income-Tax M.P.I, Bhopal Vs. Shri Badri Prasad Agrawal* I.L.R. (1982) M.P. 1086 (DB)

– **Welfare Legislation** – Interpretation advancing object and purpose of Statute has to be adopted : *Employees State Insurance Corporation, Bhopal Vs. Dwarka Prasad Agarwal*, I.L.R. (1988) M.P. 26

– **When words of a Statute are Precise** – When words of a statute are precise and unambiguous, no more is necessary than to expound them in their natural and ordinary sense. *Hiralal Vs. Agarchand*, I.L.R.(1956) M.P. 1

– **Widest possible interpretation to be put on words in statute unless content otherwise directs**: *Khushilal Moolchand Kachhi Vs. The Board of Revenue, MP Gwalior*, I.L.R (1970) M.P. 712 (DB)

– **Word “May”** – Discretionary and unabling word unless provision using the word made exercise of the power imperative on the authority: *Shri Jagadish Kapoor Vs. The New Education Society, Jabalpur*, I.L.R. (1969) M.P. 534 (FB)

– **Word “May”** – Not a word of compulsion – Confers power or authority and implies discretion – Confers power or authority and implies discretion – Circumstances in which it is a mandatory provision – Land Revenue Code, Madhya Pradesh, 1959 – Section 178 – Power of Revenue Officer to partition landed property – Is an enabling provision – Power of civil Court to partition same type of property – Revenue Officer, Power of, to allot holding to one and compensation to another: *Kanhaiya Vs. Mst. Lila Bai*, I.L.R. (1971) M.P. 165

– **Word “oil-seeds”** in-To be construed on its popular meaning as understood in common language: *The Commissioner of Sales Tax M.P. Vs. M/s Bakhat Rai and Co., Katni*, I.L.R. (1970) M.P. 1020 (DB)

– **Word in fiscal statute to be understood in popular and commercial sense**: *The Commissioner of Sales Tax, Madhya Pradesh, Indore, Vs. M/s Jaswant Singh Charansingh, Ujjain*, I.L.R. (1968) M.P. 990 (DB)

– **Word in singular – Includes plural**: *Dhanna Singh Vs. The Regional Transport Authority, Gwalior*, I.L.R. (1979) M.P. 795 (D.B.)

– **Word liable to be construed either in popular sense or as word of art** – Burden on person to show that it is used in technical sense: *R.N. Mishra Vs. The Works Manager, Burn And Co. Ltd., Niwar, I.L.R. (1968) M.P. 852 (DB)*

– **Words used in a statute to be interpreted in the context in which they are used and in furtherance of the objective to be achieved** – Interpretation of words in one statute – Not to be relied on for interpretation of same expression in another statute – Land Revenue Code, Madhya Pradesh, 1959 – Section 251 – Tanks saved to proprietor under Abolition Act – Tanks vest in State under this provision: *Seth Rishabhkumar Vs. the State of M.P., Indore, I.L.R. (1970) M.P. 936 (DB)*

– **Word used in Taxing Statute** – Word to be interpreted in popular sense as known in general usage and known in trade and commerce: *Commissioner of Sales Tax, MP, Indore Vs. M/s Laddumal Jangilal, Ujjain, I.L.R. (1964) M.P. 824 (DB)*

– **Words and Expressions**– Words and Expressions in entries in Schedule to be construed in popular commercial sense and not on scientific, technical or rigid dictionary meaning: *M/s Sukhu Ram Tamrakar, Durg Vs. State of M.P., I.L.R. (1978) M.P. 1103 (FB)*

– **Words capable of one construction** – Not open to adopt any other hypothetical construction on ground of objects and policy of the Act: *Shivraj Vs. Aashalata I.L.R. (1990) M.P. 643 (DB)*

– **Words clear** – Intention to be gathered as expressed in unambiguous and clear words: *Ram Singh Vs. Shankarlal, I.L.R. (1974) M.P. 727 (FB)*

– **Words clear and unambiguous and not inconsistent with other provisions of Act** – Help of provisions of other Act or of the background or other extrinsic aid cannot be taken: *M/s. Bundelkhand Motor Transport Company, Nowgaon Vs. the State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1969) M.P. 901 (FB)*

– **Words to be construed in natural and popular sense:** *M/s Channulal Motilal, Jabalpur Vs. The Commissioner of sales tax, M.P., I.L.R. (1976) M.P. 577 (FB)*

– **Words to be interpreted in the context in which they are used** – Words susceptible of wider connotation – To be interpreted that way unless something in the statute to give it limited connotation: *Tarachand Gupta, Vs. Mst. Annapurna Bai, I.L.R. (1968) M.P. 816*

Interpretation of taxing Laws

– **Principles of:** *The Commissioner of Income-Tax M.P.I, Bhopal Vs. Shri Badri Prasad Agrwal, I.L.R. (1982) M.P. 1086 (DB)*

Interpretation of Taxing Statute

– **Two constructions possible** – One to the benefit of assessee should be preferred: *Commissioner of Income Tax, M.P. Vs. Jaswantlal Dayabhai*, I.L.R. (1982) M.P. 104 (DB)

Interpreting Taxing Statute

– **While interpreting one must have regard to the strict letter of law** – If the person/entity sought to be taxed comes within the letter of the law, he must be taxed: *M/s. Geo Miller & Co. Pvt. Ltd. Vs. State of M.P.*, I.L.R. (2004) M.P. 605 (DB)

Iron and Steel (Control of Production and Distribution) Order, 1941

– **Clause 11-B** – The iron and Steel (Scrap Control) Order 1943 – Clause 8 – Constitution – Article 19 (1) (f) and (g) – Clause 11-B of iron and Steel (Control of Production and Distribution) Order – *Ultra Vires* – Clause 8 of Iron and Steel (scrap control) Order – Not ultra Vires – Delegation of power to subordinate agency – Circumstances under which it is valid: *State Vs. Haidarali*, I.L.R. (1958) M.P. 458 (FB)

Iron and Steel (Scrap Control) Order, 1953

– **Clause 8** – Not *ultra-vires* – Delegation of power to subordinate agency – Circumstances under which it is valid: *State Vs. Haidarali*, I.L.R. (1958) M.P. 458 (FB)

Iron and Steel Control Order, 1956

– **Paras 4, 5 and 15 (3)** – Para 15 *intra vires* – Controller competent to fix price – Sale for price higher than that fixed by Controller – Act amounts to an offence: *Fidahussain Vs. State*, I.L.R. (1960) M.P. 911

– **Para 15(3)** – “Any other person therein” – Wide enough to include any body contravening the provisions of the order and includes any person who is neither producer nor stock holder: *Fidahussain Vs. State*, I.L.R. (1960) M.P. 911

Irrigation of Engineering Service (Gazetted) Recruitment Rules, 1968

– **Rule 12(2) and Constitution of India, Article 226** – Joinder of parties – Candidate recommended for appointment by Public Service Commission to the State Govt. – Has no vested right until appointment – Joinder of such candidates not necessary: *Dashrath Singh Vs. State of M.P.*, I.L.R. (1985) M.P. 333 (DB)

– **Rule 12(2) and Constitution of India, Article 320 and 226** – Rule 12(2) Providing for Selection of candidate after interview – Public Service Commission not

authorized to hold written tests – Advertisement proving for written test – Cannot be enforced - Criteria fixed by Public Service Commission initially – Cannot be changed later on – Joinder of parties – Candidate recommended for appointment by Public Service Commission to the State Govt. – Has no vested right until appointed – Joinder of such candidates not necessary: *Dashrath Singh Vs. State of M.P., I.L.R. (1985) M.P. 333 (DB)*

Jabalpur Corporation Act (III of 1948)

- **and Octroi Rules** - Provide for remedy for claiming refund - Suit for claiming refund - Maintainability : *Shrikishandas Vs. Radhabai, I.L.R. (1969) M.P. 492*

Jabalpur Corporation Conduct of Business Byelaws

- **Byelaw No.37** - Meeting called under section 29(4) or 30 of the Municipal Corporation Act, M.P. – Meeting cannot consider other subjects than mentioned in agenda: *Ram Sharan Bari, Municipal Councillor, Jabalpur Vs. Dr. K.L. Dube, Mayor, Municipal Corporation, Jabalpur, I.L.R. (1978) M.P. 126 (DB)*

Jabalpur Municipal Corporation Servants Bye-laws, 1967

- **Amendment made by State Government to Fundamental Rules and other Rules** – Amendment gets automatically incorporated by the bye-law and begins to apply to employees of Corporation : *Nagar Nigam Harijan Karamchari Sangh, Jabalpur Vs. The Municipal Corporation, Jabalpur, I.L.R. (1977) M.P. 883 (DB)*

- **and 1971, as amended – Validity** : *Nagar Nigam Harijan Karamchari Sangh, Jabalpur Vs. The Municipal Corporation, Jabalpur, I.L.R. (1977) M.P. 883 (DB)*

- **Bye Law 3** – Words “From time to time” in – Implication of : *Nagar Nigam Harijan Karamchari Sangh, Jabalpur Vs. The Municipal Corporation, Jabalpur, I.L.R. (1977) M.P. 883 (DB)*

Jabalpur University Act (XXII of 1956)

- **Additional Statute 19(2)**-Does not prohibit recognized professor from continuing as member of University or Academic Council: *Bhagwat Saran Vs. The Chancellor University of Jabalpur, Rajbhawan, Bhopal, I.L.R. (1968) M.P. 554 (DB)*

- **Authority cannot question vires of the Act creating it or any provision whereunder it functions** : *State of MP Vs. Bhagwati Prasad Omprakash, J.H.F. Firm, Naila, I.L.R. (1975) M.P. 697*

- **Executive Council** - Acts *quasi* Judicially When dealing with mal-practices committed by examinees – Principles of natural justice - Essential requirements -Rules

of natural justice very according to circumstances – Ordinance 75 - Article 3 – Use of word “the” in – Significance of – Empowers University to debar examinee from that particular examination - Nature of enquiry when breaches of discipline detected in examination hall itself : *Surendra Kumar Patel Vs. The University of Jabalpur*, I.L.R. (1973) M.P. 587 (DB)

- **Section 2(e)(j) and (k), Section 22(1)** - Clause (XII to XIV), Section 27(2), Clauses (VI) to (VIII) and Section 57, 58 and 59 - Principal proceeding on leave - Ceases to be head of the College - Cannot be regarded as Principal during period of leave - But does not cease to be a member of the staff of the College - Recognition given to such person under Section 58 as professor continues to be validly effective - Cannot remain an *ex-officio* member of the Court as Principal or as Head of the Department of studies - Also ceases to be a member of the Academic Council - As a recognized professor entitled to function as a member of the University and of the Academic Council - Appointed professor - Recognized professors do not fall under that category - Court and Academic Council - Not authorities - Additional Statute 19(2) - Does not prohibit recognized professor from continuing a member of university or Academic Council - Constitution of India - Article 226 - Error apparent on face of record - Can be corrected in writ proceedings : *Bhagwat Saran Vs. The Chancellor University of Jabalpur, Rajbhawan, Bhopal*, I.L.R. (1968) M.P. 554 (DB)

-**Section 9** - Indicates only that person who is Governor shall be Chancellor – Not Governor *ex-officio* to be chancellor – Action of Chancellor under the Section - Action not as of Governor : *Dr. S.C.Barat Vs. Shri Hari Vinayak Pataskar, Chancellor of the University of Jabalpur*, I.L.R.(1962) M.P. 226 (DB)

-**Section 11, sub-section (2)** –Prescribes qualification of person who can be member of Committee-Provision is mandatory-There can be no degree of compliance with the provision : *Dr. S.C.Barat Vs. Shri H. Vs. Pataskar, Chancellor of the University of Jabalpur*, I.L.R. (1962) M.P. 360 (DB)

- **Section 11, sub-section (5)**-Power under, is a contingent power and is to be exercised when committee fails to submit panel : *Dr. S.C.Barat Vs. Shri H. Vs. Pataskar, Chancellor of the University of Jabalpur*, I.L.R.(1962) M.P. 360 (DB)

- **Section 11(1) to (3)** – In making appointment of Vice-Chancellor, Chancellor has to follow procedure laid down in sub-sections (2) and (3) – Chancellor has no right to ignore recommendation of committee – Committee constituted under sub-section (3) not only advisory : *Dr. S.C.Barat Vs. Shri Hari Vinayak Pataskar, Chancellor of the University of Jabalpur*, I.L.R.(1962) M.P. 360 (DB)

- **Section 11(1) and (5)** - Sub-section (5) does not override sub-section (1)-Sub Section (5) not to be involved till valid committee fails to submit a panel within time

specified in sub-section (4) : *Dr. S.C.Barat Vs. Shri H. VS. Pataskar, Chancellor of the University of Jabalpur, I.L.R. (1962) M.P. 360 (DB)*

- **Section 11(2)**-Committee under, not a body of University : *Dr. S.C.Barat Vs. Shri H. Vs. Pataskar, Chancellor of the University of Jabalpur, I.L.R. (1962) M.P. 360 (DB)*

- **Section 11(2)** - Object of, object is to place selection of Vice-Chancellor above parochial or local influence and to give voice to executive council in that matter – Section 11(1) to (3) – In making appointment of Vice-Chancellor, Chancellor has to follow procedure laid down in sub-section (2) and (3)-Chancellor has no right to ignore recommendation of committee - Committee constituted under sub-section (3) not only advisory - Sub Section (2) - Prescribes qualification of person who can be member of committee - Provision is mandatory - There can be no of degree compliance with the provision - Section 11(3) - Persons nominated by chancellor on behalf of executive council - To fulfil the same qualifications - Section 11(2) -Committee under, not a body of University - Section 11(1) and (5) Sub section (5) – Does not override sub-Section (1) – Sub-section (5) not to be involved till valid committee fails to submit a panel within time specified in sub-section (4) – Sub-section (5) - Power under, is a contingent power and is to be exercised when committee fails to submit panel – Constitution - Article 226 - Member of University, right to move for a writ of mandamus to University to act according to provisions of Act - Appointment of Vice-Chancellor void - Amounts to office remaining vacant and appointment of Vice-Chancellor remains to be made - Issue of writ of mandamus in circumstances only proper remedy - Interpretation of Statutes - Question whether provision of statute absolute or merely directory - To be determined on the relation of that provision to the general object intended to be achieved - Words and Phrases -Words in the statute - Meaning how to be ascertained : *Dr. S.C.Barat Vs. Shri H. Vs. Pataskar, Chancellor of the University of Jabalpur, I.L.R. (1962) M.P. 360 (DB)*

– **Section 11 (2), (3) And (5)** – Selection by Executive Committee of one member out of two, defective-Selection set aside-two courses open to Chancellor, either to call upon Executive Council to validly select two members, or to appoint two members himself – No power to appoint only one in place of the old one whose selection was found to be defective – The selection of two persons is as a unit – Words “Two of whom shall be appointed by the Executive Council by single transferable vote” in sub-section (2) of section 11 – Meaning of : *N.P. Shrivastava Vs. Dr. Hari Vinayak Pataskar, Chancellor of the university of Jabalpur, Bhopal, I.L.R. (1963) M.P. 390 (DB)*

- **Section 11 (3)**-Persons nominated by Chancellor on behalf of executive council – To fulfil the same qualifications : *Dr. S.C.Barat Vs. Shri H. V. Pataskar, Chancellor of the University of Jabalpur, I.L.R. (1962) M.P. 360 (DB)*

- **Section 12(4)**-Subsequent revision of marks notified with the approval of Vice-Chancellor - Action is under valid authority : *Satya Swaroop Rattan Vs. University of Jabalpur, I.L.R. (1969) M.P. 33 (DB)*

- **Section 18(1)** - Does not require notice of motion of no - confidence to be served on Registrar personally - Receipt of written notice - Merely ministerial or executive Act-Use of definite article “the” in - Does not indicate that service of notice on Registrar personally is necessary - The words “the Registrar” in - Only particularize the office and not person - Regulations of University - Chapter VI - Regulation 11-A- Does not permit assumption of jurisdiction or permit avoidance of statutory duty by deciding collateral fact wrongly - Interpretation of Statute - Principle on construction - Rule to be construed according to intention expressed in Statute - Object in view to be also taken into consideration - Constitution of India - Article 226 - Remedy provided by Section 23(3) of the Jabalpur University Act - Not sufficient for non-exercise of discretion under this provision : *Bhagwati Dhar Bajpai Vs. The Jabalpur University, Jabalpur, I.L.R (1970) M.P. 765 (DB)*

- **Section 18(1)** - Receipt of written notice - Merely ministerial or executive Act : *Bhagwati Dhar Bajpai Vs. The Jabalpur University, Jabalpur, I.L.R. (1970) M.P. 765 (DB)*

- **Section 18(1)**- The words “the Registrar” in - Only particularize the office and not person : *Bhagwati Dhar Bajpai Vs. The Jabalpur University, Jabalpur, I.L.R. (1970) M.P. 765 (DB)*

- **Section 18(1)** - Use of definite article “the” in - Does not indicate that service of notice on Registrar personally is necessary : *Bhagwati Dhar Bajpai Vs. The Jabalpur University, Jabalpur, I.L.R. (1970) M.P. 765 (DB)*

- **Section 21, Clause (VI)** - Court and Academic Council - Not authorities: *Bhagwat Saran Vs. The Chancellor University of Jabalpur, Rajbhawan, Bhopal, I.L.R. (1968) M.P. 554 (DB)*

- **Section 22 (xxi)** - Defect of not mentioning names of proposer and seconder - Defect is of substantial character : *Dharampal Bhatia Vs. B.K. Mishra, I.L.R. (1976) M.P. 446 (DB)*

- **Section 22 (xxi)** - Test to determine the nature of provision whether directory or mandatory - Possibility of ascertainment of name of proposer or seconder - Does not cure defect in the form: *Dharampal Bhatia Vs. B.K. Mishra, I.L.R. (1976) M.P. 446 (DB)*

- **Section 22 (xxi) -Word “mode”** - Has restricted meaning - Does not connote manner or procedure to be adopted for completing election - Has to be given wide

connotation - Covers entire procedure for all stages of election: *Dharampal Bhatia Vs. B.K. Mishra, I.L.R. (1976) M.P. 446 (DB)*

- **Section 26** - Executive Council, Power of, to make corrections in the result - Section 12(4) - Subsequent revision of marks notified with approval of Vice-Chancellor - Action is under valid authority : *Satya Swaroop Rattan Vs. University of Jabalpur, I.L.R. (1969) M.P. 33 (DB)*

- **Section 57(2)** - Appointed professor - Recognised professors do not fall under that category : *Bhagwat Saran Vs. The Chancellor University of Jabalpur, Rajbhawan, Bhopal, I.L.R. (1968) M.P. 554 (DB)*

- **Ordinances 1 to 10, Form A** - Form A not published in University calendar - Does not mean that it did not form part of ordinance no. 4 - Section 22(xxi) - Word “mode” - Has restricted meaning - Does not connote manner or procedure to be adopted for completing election-Has to be given wide connotation-Covers entire procedure for all stages of election-Test to determine the nature of provision whether directory or mandatory-Possibility of ascertainment of name of proposer of seconder-Does not cure defect in the form-Defect of not mentioning names of proposer and seconder-Is of substantial character-Ordinance 4, clause iv(iv)- Does not enable overlooking of defect unless defect is merely of technical nature which does not affect merits - Defect about omission of names of proposer or seconder – Defect is not of technical character-Defect of presentation of nomination paper - Not to be overlooked if the thing is clear from record: *Dharampal Bhatia Vs. B.K. Mishra, I.L.R. (1976) M.P. 446 (DB)*

- **Ordinance No. 2 Section 10 (1)** – Does not provide any special form of procedure- Principal has to follow the principles of natural justice- Principles of natural justice depend upon circumstances of the case, the nature of enquiry and the subject matter that is being dealt with : *Sudhir Kumar Suri Vs. Principal Mahakoshal Arts Mahavidyalaya, Jabalpur M.P., I.L.R. (1977) M.P. 529 (DB)*

- **Ordinance 4, clause iv(iv)**-Defect about omission of names of proposer or seconder-Defect is not of technical character: *Dharampal Bhatia Vs. B.K. Mishra, I.L.R. (1976) M.P. 446 (DB)*

- **Ordinance 4, clause iv(iv)** - Defect of presentation of nomination paper-Not to be overlooked if the thing is clear from record: *Dharampal Bhatia Vs. B.K. Mishra, I.L.R. (1976) M.P. 446 (DB)*

- **Ordinance 4, clause iv(iv)** - Does not enable overlooking of defect unless defect is merely of technical nature which does not affect merits: *Dharampal Bhatia Vs. B.K. Mishra, I.L.R. (1976) M.P. 446 (DB)*

- **Ordinance 75** - Nature of enquiry when breaches of discipline detected in examination hall itself : *Surendra Kumar Patel Vs The University Of Jabalpur*, I.L.R. (1973) M.P. 587 (DB)

- **Ordinance 75** - Article 3- Empowers University to debar examinee from that particular examination : *Surendra Kumar Patel Vs The University of Jabalpur*, I.L.R. (1973) M.P. 587 (DB)

Jabalpur University Regulations

- **Chapter VI** – Regulation 11-A – Does not Permit assumption of jurisdiction or permit avoidance of statutory duty by deciding collateral fact wrongly : *Bhagwati Dhar Bajpai Vs. The Jabalpur University, Jabalpur*, I.L.R. (1970) M.P. 765 (DB)

Jagir

- **Burden on revenue to prove that it was heritable** : *The Controller of Estate Duty, M.P., Nagpur Vs. Smt. Usha Devi Patankar*, I.L.R. (1976) M.P. 795 (DB)

- **Is normally for life but usually renewed** : *The Controller of Estate Duty, M.P., Nagpur Vs. Smt. Usha Devi Patankar*, I.L.R. (1976) M.P. 795 (DB)

Jagir Land Records Management Act (XXV of 1949)

- **Sections 3 and 4** - Costs fixed at 10% of the Nikasi of Jagir - Not necessary for the Government to give details of calculation in the order : *Col. Sardar Chandroji Rao, Lashkar Vs. State of M.P.*, I.L.R. (1980) M.P. 827 (DB)

Jail Manual Rules

- **Rule 431(2)** – Permits detenue to have his own mosquito-net and his own bedstead and mattress - Facility regarding mosquito-net – Is subject to condition of sanction by Medical Officer : *Shri Nirmal Chand Jain Vs. State of M.P.*, I.L.R. (1978) M.P. 322 (DB)

Jagir Manual of the Holker State

- **Section 16 - Order passed by His Highness fixing maintenance** - Has force of law – Cannot be withdrawn or cancelled except by specific legislation : *Commissioner of Income Tax, Bhopal Vs. Sardar Virendrasingh*, I.L.R. (1981) M.P. 711 (DB)

Jawaharlal Nehru Krishi Vishwa Vidyalaya Act (XII of 1963)

- **Board constituted is the Supreme Executive Body** – Board delegated power of appointment to the Vice-Chancellor – Under Section 27 of the Act power to approve

appointments etc. vests in the Board – Power to compulsorily retire is the power which could be read by implication of : *Dr. P.G. Najpande Vs. The Jawaharlal Nehru Krishi Vishwavidyalaya, I.L.R. (1999) M.P. 200*

- **Section 2(x) and Statute 32 - Teacher** – Who is – Post of Soil Microbiologists - Comes within it - Section 14(2) - Powers of the chancellor thereunder - Extent of – Krishi Vishwa Vidyalaya Statute, 1964 - Statute No. 6(a)(i) – Procedure of appointment - Post should be advertised - Constitution of India – Article 226 - Interference by Courts in matters of discipline etc. of the University - When may be made – Letters Patent (Nag.) - Clause 10 - Plea not raised before Single Judge - Cannot be allowed to be raised in Letters Patent appeal – Practice - Mention of wrong section - Cannot vitiate an order : *Dr. S.L. Namdeo Vs. Chancellor, Jawaharlal Nehru Krishi Vishwavidyalaya, Bhopal, I.L.R. (1987) M.P. 558 (DB)*

- **Section 2(x), 12 and 49** - Petitioner not appointed by University as per procedure laid down under Section 49 for appointment of teacher - She is not a teacher within the meaning of Section 2(x) - Not entitled to benefit of enhancement of retirement age to 62 years : *Smt. Maya Verma Vs. Jawaharlal Nehru Krishi Vishwavidyalaya, Jabalpur, I.L.R. (2001) M.P. 794*

- **Section 12- Assistant Registrar not a statutory officer:** *Ramchandra Tiwari Vs. Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, I.L.R. (1975) M.P. 987 (DB)*

- **Section 12-** Mentions certain officers as statutory officers – Others can be declared by statute to be officers of the University : *Ramchandra Tiwari Vs. Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, I.L.R. (1975) M.P. 987(DB)*

- **Section 14(2)** - Powers of the chancellor thereunder – Extent of : *Dr. S.L. Namdeo Vs. Chancellor, Jawaharlal Nehru Krishi Vishwavidyalaya, Bhopal, I.L.R. (1987) M.P. 558 (DB)*

- **Section 27(9), 56 and 57** - JNKVV is a creation of statutory and governed by law - Board of the University alone has absolute power to make regulation for admissions - Denial of petitioner's admission to Ph.D. on basis of an instruction issued by ICAR - Illegal : *Dr. Neelu Gupta Vs. Jawaharlal Nehru Krishi Vishwavidyalaya, Jabalpur, I.L.R. (2001) M.P. 153*

- **Sections 28 and 29** - Powers of the Academic Council, to take action in the matter of conduct and discipline of students – Section 38 and regulations made under - Regulation 8(1) (iv), Sub – Clauses (e) and (g)- Power of the Academic Council for awarding punishment – Section 38(1) (c) - The words “any other matter solely concerning such authorities”- Connotation of – Petitioner found to be guilty of obtaining admission

in the course of the college of Veterinary Science and Animal Husbandry by Practicing cheating and forgery - Academic Council taking decision for rustication of the petitioner and debarring his admission in any other courses of the university in future - Decision not liable to be interfered with : *Ganesh Prasad Soni Vs. Jawaharlal Nehru Krishi Vishwavidyalaya, Jabalpur, I.L.R. (1982) M.P. 605 (DB)*

- Section 37 and Statutes 1964, Statute 6(b) and (c), as amended and Constitution of India, Article 226 – Merit Promotion Scheme evolved and approved by Indian Council of Agricultural Research - Has to be given effect to by following normal procedure prescribed by Statute for selection – Statute 6(b) - Providing for ‘Interview’ – Applies only to direct recruitment – Statute 6(c) – Not providing for any interview in case of promotion of departmental employees – Vice-Chancellor has no power to hold their interview and to allocate marks in interview - Locus Stand - Doctrine of – Every citizen has a right to challenge an issue of public importance - Petition filed in advance apprehending threat to right - Cannot be dismissed as premature – Illegal action of Vice-Chancellor challenged by some persons only - No bar to quash it –Benefit arising therefrom liable to be extended to others also : *Prof. R. A. Gour Vs. Chancellor, Jawaharlal Nehru Krishi Vishwa Vidyalaya, Adhartal, Jabalpur, I.L.R. (1986) M.P. 565*

- Section 38 — Petitioner found to be guilty of obtaining admission in the course of the college of Veterinary Science and Animal Husbandry by practicing cheating and Forgery - Academic Council taking decision for rustication of the petitioner and debarring his admission in any other courses of the University in future - Decision not liable to be interfered with : *Ganesh Prasad Soni Vs. Jawaharlal Nehru Krishi Vishwavidyalaya, Jabalpur, I.L.R. (1982) M.P. 605 (DB)*

- Section 38 and Regulations made under – Regulation 8 (i)(iv), Subclasses (e) and (g) - Power of the Academic Council for awarding punishment : *Ganesh Prasad Soni Vs. Jawaharlal Nehru Krishi Vishwavidyalaya, Jabalpur, I.L.R. (1982) M.P. 605 (DB)*

- Section 38 (1) (c) - The words “any other matter solely concerning such authorities” – Connotation of : *Ganesh Prasad Soni Vs. Jawaharlal Nehru Krishi Vishwavidyalaya, Jabalpur, I.L.R. (1982) M.P. 605 (DB)*

- Section 48 (1) (d) and 48 (2) – Power of first Vice-Chancellor to make appointment with sanction of Chancellor – Appointment made continues till modified by authority or body competent to deal with it – In such cases appointing authority is Vice-Chancellor – Sanction of Chancellor not necessary for termination of services of such appointee – Section 12 – Mentions certain officers as statutory officers – Others can be declared by statute to be officers of the University – Assistant Registrar not a

statutory officer : *Ramchandra Tiwari Vs. Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, I.L.R. (1975) M.P. 987(DB)*

- **Section 48 (1) (d) and 48 (2)** - Sanction of Chancellor not necessary for termination of services of such appointee : *Ramchandra Tiwari Vs. Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, I.L.R. (1975) M.P. 987 (DB)*

- **Section 55, Sub-Section (2) and Clause (aa)** – Government employees on deputation for two years – Authority which can revert employee from one grade to another – Essentials necessary for validity of option : *Sharangdhar Sharma Pathak Vs. The State of Madhya Pradesh, I.L.R. (1971) M.P. 235 (DB)*

- **Section 55(2)(a)** – Essential condition to be fulfilled for the validity of option : *Dr. Shivnand Jha Vs. State of M.P., I.L.R. (1972) M.P. 713 (DB)*

Jawaharlal Nehru Krishi Vishwa Vidyalaya, Statute, 1964

- **Statute 6(b)** - Providing for 'Interview' - Applies only to direct recruitment : *Prof. R. A. Gour Vs. Chancellor, Jawaharlal Nehru Krishi Vishwa Vidyalaya, Adhartal, Jabalpur, I.L.R. (1986) M.P. 565*

- **Statute 6(c)** - Not providing for any interview in case of promotion of departmental employees – Vice-Chancellor has no power to hold their interview and to allocate marks in interview : *Prof. R. A. Gour Vs. Chancellor, Jawaharlal Nehru Krishi Vishwa Vidyalaya, Adhartal, Jabalpur, I.L.R. (1986) M.P. 565*

Jiwaji University Act, MP (XV of 1963)

- **Section 35 (a)**- If conditions of service are to be regulated statutorily-Statutes are to be made by court and not by regulations of executive council: *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R. (1975) M.P. 570 (FB)*

-**Section 35 (a)** – Service Governed by contract of employment – Dismissal even without proper enquiry is not nullity or void: *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R (1975) M.P. 570 (FB)*

-**Section 38 and 39** - Lay down special procedure for making ordinance-Resolution d/11-2-65-executive council never intended to exercise its quasi- legislative power of making ordinance-Judgment merely administrative decision to follow ordinance of Vikram University-Section 40- Executive Council did not act under its powers in whole- sole adopting regulations of Vikram University – Powers on executive authorizes under two Acts different – Topics on which ordinances and regulations could be made different-Executive Council of Jiwaji University could not adopt all ordinances and Regulations of Vikram University-Section 40 (1)(c)-Confers no powers to make regulations regarding

conditions of service-Section 35 (a)- If conditions of service are to be regulated statutorily-statutes are to be made by court and not by regulations of Executive council – Service Governed by contract of employment-Dismissal even without proper enquiry is not nullity or void : *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R. (1975) M.P. 570 (FB)*

- **Section 40** -Executive council did not act under its powers in whole- sale adopting regulations of Vikram University-Powers on Executive authorities under two Acts different : *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R. (1975) M.P. 570 (FB)*

-**Section 40** -Topics on which ordinances and regulations could be made different-Executive council of Jiwaji University could not adopt all ordinances and Regulations of Vikram University : *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R. (1975) M.P. 570 (FB)*

- **Section 40** - (1)(c)-Confers no powers to make regulations regarding conditions of service : *Mahendra Kumar Sharma Vs. The Jiwaji University, Gwalior, I.L.R. (1975) M.P. 570 (FB)*

Jiwaji University Ordinance 16

- **Clause 10 - Distinction between “Preparation” and “attempt”** : *Rikhabchand Vs. Jiwaji University, Gwalior, , I.L.R. (1969) M.P. 26 (DB)*

- **Clause 10** - Executive Council - Power of, to debar student from appearing in examination because of preparation for using unfair means - Distinction between “preparation” and “attempt” Principles of natural justice - Applicable to inquiry by University against student for using unfair means - University can devise its own procedure - The question whether student did or did not use slips of paper or attempted to use them - Is one of inference to be drawn from the recovery of slips, their contents and answers recorded by students : *Rikhabchand Vs. Jiwaji University, Gwalior, I.L.R. (1969) M.P. 26 (DB)*

- **Clause 10** - The question whether student did or did not use slips of paper or attempted to use them - Is one of inference to be drawn from the recovery of slips, their contents and answers recorded by students : *Rikhabchand Vs. Jiwaji University, Gwalior, I.L.R. (1969) M.P. 26 (DB)*

Joint Family Firm

– **It cannot be adjudged insolvent** - Manager’s act of insolvency is his alone : *Kanhai Singh Vs. Harcharanlal, I.L.R. (1958) M.P. 889 (DB)*

Joint trial

- **Circumstances in which it is justified** : *Lachhman Vs. State of M.P.*, I.L.R. (1966) M.P. 135(DB)

- **Object of** – Magistrate, discretion of, in holding joint – trial Principle of: *Manoharlal Lohe Vs. State of M.P.*, I.L.R. (1981) M.P. 790

- Judgment and decree

- **Three aspects in which it can be considered** : *Smt. Attarbhai Vs. Seth Mishrilalsa*, I.L.R. (1967) M.P. 773

Judicial Officers' Protection Act (XVIII of 1850)

- **Section 1** - Does not extend protection to acts purely extra judicial or alien to judicial duty of officer-Conditions necessary to be fulfilled to secure protection – Words “in the discharge of his judicial duty” in – Used in contra distinction to the exercise of administrative or executive function – Test to be applied to determine whether act was done in discharge of duty or not : *Shri H.W.F. D'Souza, Magistrate First Class, Khandwa Vs. Chandrika Singh*, I.L.R. (1967) M.P. 443

- **Section 425** – Additional Session Judge while issuing warrant under section 425 performed his judicial function – Protected under Section 1 of the Act – Not liable for damages for illegal detention : *Hamid Raza Vs. Superintendent, Central Jail, Rewa*, I.L.R. (1984) M.P. 557 (DB)

Judicial Service (Classification, Recruitment and Conditions of Services) Rules, 1955

- **Applicability** - Inapplicable to an Officer promoted to officiate as “District Judge”- Civil Services, MP (General Conditions of Services) Rules, 1961, Rule 9 -Conditions of Services of promotee District Judge are governed by Rule 9 - Rules 1961, Rule 9(5) - Is discriminatory and does not govern the conditions of Services of a promotee District Judge - Rules 1961, Rule 9 and Special Direct Recruitment of District and Sessions Judge Rules 1964, Rule 10 - Period of officiation of the promotee District Judge & period of probation of a Directly Recruited District Judge -Can not exceed beyond 2½ years - District Judge, whether promotee or direct recruited is confirmed automatically after 2½ years : *D.R. Rahul Vs. High Court of M.P. , Jabalpur*, I.L.R. (1998) M.P. 33 (DB)

- **No written examination is provided for selection of candidates** - Examination is held for screening purposes only - Legality of : *Anil Kumar Jain Vs. State of M.P.*, I.L.R. (1985) M.P. 265 (DB)

– **Rule 21** - Syllabus mentioning only certain Rules and Orders of Civil Procedure Code - Sections are not excluded thereby - Question asked from such laws – No substantial effect on the result : *Anil Kumar Jain Vs. State of M.P.*, I.L.R. (1985) M.P. 265 (DB)

- **Rule 24(1)** – Training period cannot be extended beyond six months – Yet grievance not raised within reasonable time but raised while challenging termination during probation period – Once accepted such challenge at belated stage is futile – Should not be entertained : *Bhurelal Pagare Vs. State*, I.L.R. (2000) M.P. 228

Jurisdiction

- **Ordinarily to determine such questions plaintiff allegations only to be looked into**-In case of obvious facts, the Court cannot shut its eyes- Facts disclosed in the written statement or document filed cannot be ignored- In case evidence is led on such points –Court has to consider that evidence-Jurisdiction-Authority created by Statute-Authority cannot question vires of the Act, creating it or any provision whereunder it functions- General Sales Tax Rules, 1959-Rule 33- Question regarding the validity of the period of notice- Question cannot be agitated in Civil Court : *State of M.P. Vs. Bhagwati Prasad Omprakash, J.H.F. Firm, Naila*, I.L.R. (1975) M.P. 697

- **Authority not possessing Jurisdiction initially**-Cannot get jurisdiction conferred by making amendment in application : *M.P. State Road Transport Corporation, Bairagarh, Bhopal Vs. State Transport Appellate Authority, M.P., Gwalior*, I.L.R. (1964) M.P. 687 (DB)

- **Civil Court, Jurisdiction of, to entertain suit at the instance of person who is not still legal owner** : *Sadashiv Vs. Jagdishchandra*, I.L.R. (1966) M.P. 954

- **Civil Court when can interfere with decision of special Tribunals** : *M/s Kalekhan Mohammad Hanif Bhopal Vs. Union of India*, I.L.R. (1974) M.P. 647 (DB)

- **Contempt jurisdiction to be exercised when there is serious interference with justice** – Apology to be tendered must be before arguments begin-Circumstances when it can be useful : *Smt. Padmavati Devi Bhargava Vs. Shri R.K. Karanjia*, I.L.R. (1963) M.P. 952 (DB)

- **Court not invalidate a statute on ground of abdication of legislative power or excessive delegation** : *The Collective Farming Society Ltd., Lilakheri Vs. State of Madhya Pradesh*, I.L.R. (1975) M.P. 187 (FB)

- **Court under special Act** - Exercises special jurisdiction and not ordinary jurisdiction: *The State of M.P. Vs. Ramesh Nai*, I.L.R. (1976) M.P. 386 (FB)

- **Defect of** – Not curable: *Jasbir Singh Vs. State of M.P.*, I.L.R. (1985) M.P. 304

- **Distinction between lack of jurisdiction and illegal or irregular exercise of it** : *State of M.P. Vs. Naraindatta*, I.L.R. (1967) M.P. 822 (DB)

- **Distinction between jurisdiction of Tribunal and that of Civil Court in deciding matters regarding their jurisdiction** : *Pyarelal Vs. Bhagwati Prasad*, I.L.R. (1970) M.P. 949 (DB)

- **Exclusion of jurisdiction of civil Court not to be readily inferred**-Jurisdiction of civil Court must be expressly or impliedly barred-Provision of law excluding jurisdiction to be strictly construed : *Municipal Committee Council, Balaghat Vs. Meghraj*, I.L.R. (1966) M.P. 475

- **Executing Court cannot go behind decree is a general rule** - Exception: *Thakur Jaswantsingh Vs. Firm Khetaji Bardaji*, I.L.R. (1961) M.P. 957 (DB)

- **Finding recorded by Court in suit** - Finding is binding on executing Court-Executing court cannot go behind the finding-Rule of res-judicata operates- Partnership Act-Section 47-Pending suit for eviction is transaction begun but unfinished – Partner has a right to prosecute-His right continues till assets are placed in land of partner to whom they are allotted by mutual agreement-Authority to file suit-includes authority to prosecute till its end and his satisfaction obtained for benefit of partner to whom such benefit must go-Dissolution of partnership – Debt assigned to one partner-Debtor has notice of assignment—Debtor can pay only to the assignee-Decree-Decree in favour of firm-Decree executable by any partner even after dissolution-Civil Procedure code-Order 30, rule 1 and order 21, rule 15-Provisions not abrogated by partnership Act: *Sajjan Sings Vs. M/s Nadeali And Brothers, Through Ajaib Husain Yaseen Ali Bhopal*, I.L.R. (1978) M.P. 1134

- **Jurisdiction conferred on Authority by Act of Parliament** - Cannot be taken away by rules framed by the state: *P.C. Adhikari Vs. The manager, The Brait Waite Burn And Jossop Construction Co. Ltd., Bhilai*, I.L.R. (1985) M.P. 161

- **Jurisdiction of inferior tribunals depends upon fulfillment of condition precedent or upon existence of particular facts**-Tribunal cannot give jurisdiction by deciding facts wrongly except when legislature confers powers to decide collateral facts finally : *Shyamkishore Agarwala Vs. State of M.P.*, I.L.R. (1964) M.P. 563 (DB)

- **Jurisdiction to try an offence** - Not same thing as jurisdiction to try offender: *The State of M.P. Vs. Ramesh Nai*, I.L.R. (1976) M.P. 386 (FB)

- **Objection to-Can be taken in execution-Nullity is a nullity and can be so declared at any stage :** *Govind Das Vs. Lala Parmeshwaridas, I.L.R. (1957) 223(FB)*

- **Objection to jurisdiction must be raised during trial:** *State of M.P. Vs. K.C. Verma, I.L.R. (1980) M.P. 175 (DB)*

- **Order passed without jurisdiction a nullity :** *Chhitu Vs. Mathuralal, I.L.R. (1981) M.P. 777*

- **Ouster of jurisdiction of civil Court not to be readily inferred** - Parties can contract regarding jurisdiction of particular Court - Matter is question of fact in each case - Words regarding jurisdiction printed on top of contract form - Contract stating that it was subject to conditions printed over leaf which did not contain that condition - Jurisdiction of civil court not ousted: *Ratanchand Vs. Rohtas industries Limited Calcutta, I.L.R. (1972) M.P. 1106*

- **Particular Court specified or special tribunal created by the Act for determination of rights created by Statute** - Jurisdiction is exclusive : *The Nava Samaj Ltd. Nagpur Vs. Civil Judge Class I, Rajnandgaon, I.L.R. (1968) M.P. 367 (DB)*

- **Parties can contract regarding jurisdiction of particular court** - Matter is a question of fact in each case : *Ratanchand Vs. Rohtas industries Limited Calcutta, I.L.R. (1972) M.P. 1106*

- **Quasi - Judicial authority deciding matter Jurisdiction not lost by coming to wrong conclusion** : *M/s Kalekhan Mohammad Hanif Bhopal Vs. Union of India, I.L.R. (1974) M.P. 647 (DB)*

- **Sale of property without the persons owning them being on record-Court has no jurisdiction to sell the property :** *Phoolchand Vs. Mathura Prasad, I.L.R. (1961) M.P. 385*

- **Words regarding jurisdiction printed on top of contract form** - Contract stating that it was subject of conditions printed over - leaf which did not contain that condition - Jurisdiction of civil court not ousted : *Ratanchand Vs. Rohtas industries Limited Calcutta, I.L.R. (1972) MP 1106*

- Jurisprudence

- **Punitive Action** – Convincing proof of offensive activities necessary : *Haji Ibrahim Vs. State of Madhya Pradesh, I.L.R. (1979) M.P. 868 (DB)*

- **Two decisions of Supreme Court laying down different law by the Benches of equal Judges** – Latest decision would prevail : *Hansaben Vs. Ku. Kumud Kaniya*, I.L.R. (1989) M.P. 726

Juristic Person

- **Idol is a juristic person**: *Laxman Prasad Vs. Shrideo Janki Raman*, I.L.R. (1979) M.P. 368 (DB)

- **Temple not a legal person** - Suit can be filed only by legal person-Idol is a juristic person – Civil Procedure code – Section 9 - Suit on behalf of deity to recover possession against stranger - All shebait or trustees must join as plaintiffs – One trustee can file suit only after obtaining approval of other co-trustees - Accommodation control Act, MP, 1961 - Section 12(1)(e) - Distinction between residential and non-residential accommodation - Premises needed for consecrating of deity - This is residential purpose: *Laxman Prasad Vs. Shrideo Janki Raman*, I.L.R. (1979) M.P. 368 (DB)

Jus tertii

- **A party cannot set up title of a person which is negatived in a suit between that person and party in a suit in which that plea is raised** : *Mulaimchand Vs. Baijnath Prasad*, I.L.R. (1964) M.P. 597

- **No defence-Condition under which it is available** : *Budhilal Vs. Mahant Jagannathdas*, I.L.R. (1965) M.P. 471 (DB)

Justice

-**Legal Justice** - Should not be allowed to become a losing illusion of promise of unreality - Evidence Act, Indian, 1872 - Section 138-Ascertainment not disputed in cross-examination-Should be taken as correct, truthful - Accommodation Control Act, MP, 1961 - Section 12(1)(c) - Expression ‘act in consistent with the purpose’ is independent and separate from expression “act which has likelihood of affecting adversely and substantially the interest of the landlord therein” - Provision does not speak of whole or part of accommodation - Denial of landlord’s title -Sufficient to pass a decree against tenant - Section 12(1)(c) - Inconsistent act prove-Not necessary to prove further that the act is likely to affect adversely and substantially the interest of landlord: *Badrilal Dubey Vs. Chandra Prakash*, I.L.R. (1998) M.P. 869

Juvenile Justice Act (53 of 1986)

- **Section 5** – Constitution of Juvenile Court – State Government issued notification u/s 5 of the Act – Notification makes it apparent that the Court consist – Chief Judicial

Magistrate and Civil Judge Class-II and Judicial Magistrate First Class – The exercise of jurisdiction by the CJM alone would not be valid exercise of power – Determination of age by CJM can not be said to be a determination by Juvenile Court : *Sultan Singh Vs. State of M.P., I.L.R. (1996) M.P. 229*

– **Section 8** – Application to sent case to Juvenile Court on the ground that accused on the date of offence was below the age of 16 – Session Judge rejected the application on the basis of electoral roll – Held – Essential ingredient of section is of forming opinion by session judge – For forming opinion Session Judge must record a finding about the person brought before it is a juvenile – The Trial Court had jurisdiction to determine the question whether the accused is juvenile – No infirmity committed by Learned Session Judge in coming to the conclusion that petitioner is not juvenile – Revision dismissed : *Rinkoo Khatri Vs. State of M.P., I.L.R. (1997) M.P. 601*

- **Section 8** - Accused arraigned for offences under Sections 149, 148, 302/149, I.P.C.-Accused raising the plea that on the date of offence he was below 16 years of age-Magistrate has to record opinion after due enquiry with regard to age of delinquent juvenile-Rejection of plea without holding an enquiry-Bad in law-Age as reflected in School Admission Register-Can not be accepted as correct always-Parents and guardians do some times understate or overstate the age of children at the time of admission: *Devendra Singh Vs. State of M.P., I.L.R. (1998) M.P. 261*

- **Section 8** - Age as reflected in School Admission Register-Cannot be accepted as correct always-Parents and guardians do some times understate or overstate the age of children at the time of Admission: *Devendra Singh Vs. State of M.P., I.L.R. (1998) M.P. 261*

Kanoon Mal (Gwalior)

- **Section 409** - Suit filed under section 325, Kanoon Mal Gwalior - Mortgagee of suit property subsequently added as proper party beyond period of limitation - Suit not barred : *Champalal Vs. Manbhavan, I.L.R. (1959) M.P. 330 (DB)*

Kanoon Registry, Riasat, 1337, Mohammadi

– **Section 88 (a)** - Grant from Government - Grant was exempt from registration : *The State of Madhya Pradesh, Vs. Ikram Ahmad, I.L.R. (1977) M.P. 900 (DB)*

Karadhan Adhiniyam M.P., (XV of 1982)

- **As amended by M.P. Acts**, Nos. XV of 1983 and XIII of 1985, Section 9, Constitution of India, Article 246, Entries 23, 66, 49 and 50 of list II and Entry 54 of List I of Seventh Schedule and Mines and Minerals Regulation and Development) Act,

(LXVII of 1957), Section 2 - Mineral Areas Development Cess by State Legislature - Imposition of Nature and constitutional validity of – *Quid pro quo* – Rendering general services to persons within area is enough - Such cess is ‘fee’ and not tax - State legislature not competent to impose such cess - Field of legislation this behalf available to parliament only - Imposition of Mineral Area Development Cess by state legislative is unconstitutional : *M/s Hiralal Rameshwar Prasad, Jaitwara Vs. State of M.P.*, I.L.R. (1986) M.P. 698 (DB)

- **Section 3(2)** - School building cess - Procedure for assessment - Same as assessment, collection and recovery of land revenue - Levy of School building cess is not same as levy of land revenue - Hence, it does not amount of double taxation - Scheme of Act hence, can be implemented : *Gautamlal Agrawal Vs. State of M.P.*, I.L.R. (1995) M.P. 207 (DB)

- **Sections 3, 3(1), 4** – Vires of Act no. 50, challenged – Fixation of six hectares holding for general category and ten hectares for. Scheduled Castes and Scheduled Tribes - Object is general upliftment of SC’s and ST’s — Rationale of fixation, not arbitrary — Whether education cess is tax or fee - Determination - Levy of school building cess - Recovery made for construction of primary school buildings in rural areas — To be utilised only for that purpose within same financial year - Levy is not a tax but a fee : *Gautamlal Agrawal Vs. State of M.P.*, I.L.R. (1995) M.P. 207 (DB)

– **Vires** - Act is within legislative competence of State - It falls under Entry 49 of List II of Seventh Schedule of Constitution, hence not ultra vires the Constitution of India : *Gautamlal Agrawal Vs. State of M.P.*, I.L.R. (1995) M.P. 207 (DB)

Karadhan Vidhi (Sanshodhan) Adhiniyam, M.P., (IX of 1972)

- **Section 3–A and Constitution of India, Entry No. 63 of List II** – Concurrent subject – State can levy stamp duty in respect of documents other than those mentioned in list-I Article 49 of Indian Stamp Act not included in Section 3-A of the State Act – No additional Stamp duty payable to the promissory-note : *Inder Singh Ahuja Vs. Baldeo Singh Bhatia*, I.L.R. (1991) M.P. 130 (DB)

Kashtha Chiran (Viniyaman), Adhiniyam (XIII of 1984)

- **Powers given to licensing Authority under** – Are neither arbitrary not unchanged : *Abdul Sattar Khan Vs. Divisional Forest Officer (Vikas), Seoni*, I.L.R. (1985) M.P. 522 (DB)

- **Section 4 and Criminal Procedure Code, 1973 (II of 1974), Section 438** – Application for grant of anticipatory bail – Maintainability : *Arun Kumar Vs. State*, I.L.R. (2000) M.P. 1323

- **Section 4 ,8, 9, 10 and 15** and rule 3(b) of the rules framed thereunder and Constitution of India, Articles 14, 19, (1)(g) and 19(6) and entry 17A, List III of Seventh Schedule - The word 'Forests' used therein – Also includes felled trees – State Legislature competent to enact M.P. Kashtha Chiran Adhiniyam, 1984 - Provisions contained in sections 8 and 9 are not violative of either Article 14 or 19(1)(g) and 19(6) of the Constitution – Adhiniyam and Rules framed thereunder are Constitutionally valid – Transit (Forest Produce) Rules, M.P., 1961, Rule 27 and Forest Act, Indian, 1927, Section 41(2)(b) – Rule 27 is valid – The expression 'specified local limits' in Section 41(2)(b) – Connotation of : *Itarsi Timber Merchants Association, Itarsi Vs. State of M.P., I.L.R. (1986) M.P. 1 (DB)*

– **Sections 6,7,9,12, 13 and 15** - Revocation of licence and confiscation - Grounds have to be informed - Supply of material on basis of which grounds arise and opinion is formed is necessary ingredient - Relevant documents not supplied - Petitioner deprived of opportunity to defend properly : *Dwarka Prasad Rai Vs. State of M.P., I.L.R. (2002) M.P. 615*

- **Section 9 and 10** – Requirements of Sections 9 and 10 of Adhiniyam – Do not contravene the provisions of Article 301 or Article 304 of the Constitution : *Secretary Timber Merchants Association, Indore Vs. State of M.P., I.L.R. (1989) M.P. 333 (DB)*

- **Section 9, 10, 2(a)**, Kashtha Chiran (Viniyaman) Adhyadesh, MP (II of 1983), Kashtha Chiran (Viniyaman) Sanshodhan Adhyadesh, MP (XVII of 1984) and Constitution of India, Articles 14, 19(1) (g) 301, 304 and 213(1) – Provisions of Adhiniyam not violative of Articles 14 and 19(1) (g) – Requirements of Sections 9 and 10 of Adhiniyam – Do not contravene the provisions of Article 301 or Article 304 of the Constitution – Adhyadesh prescribing the date of commencement of Adhiniyam – Adhyadesh not *Ultra vires* on ground that it had been promulgated without obtaining instructions from the president – None of the Clauses (a), (b) and (c) of proviso to Article 213(1) of the Constitution attracted in view of the nature of provision in Adhyadesh – Date of commencement of Adhiniyam – Adhiniyam replacing Adhyadesh No. 11 of 1983 which had come into force on 15-12-1983 – No illegality in fixing that very date as the date of commencement of Adhiniyam : *Secretary Timber Merchants Association, Indore Vs. State of M.P., I.L.R. (1989) M.P. 333 (DB)*

- **Section 9 and 12** – For confiscation of saw mill it is not necessary that it has been used for storage – What is required is that implements and equipments have been used for commission of the offence : *State Vs. Arvind Kumar Agrawal, I.L.R. (2003) M.P. 208 (DB)*

- **Section 9 and 12** – Surprise check in the saw mill – Stock found more than what was mentioned in the transport licence – Teak logs without any hammer mark – Different

from those shown in account book – Unaccounted for and fresh – Only conclusion to be drawn is that provisions of the Act have been violated – Licensing authority within its jurisdiction to order for confiscation – Order of writ Court and that of the Additional District Judge set aside : *State Vs. Arvind Kumar Agrawal, I.L.R. (2003) M.P. 208 (DB)*

Kawaid Motor-Gadiyan Riyasat, Bhopal 1941

- **Rule 67 - A(1)** - Clauses (a) to (a-2) - Are parts of the Act - Has effect as if enacted under that Act : *Abdul Mohi Siddiqui Vs. State of M.P., I.L.R. (1965) M.P. 862 (DB)*

- **Rule 67 - A(1)**, Clauses (a) to (a-4) - Validity of : *Abdul Mohi Siddiqui Vs. State of M.P., I.L.R. (1965) M.P. 862 (DB)*

- **Rule 67 - A(1)**, Clauses (a-2) and (a-4) - Validity of : *Abdul Mohi Siddiqui Vs. State of M.P., I.L.R. (1965) M.P. 862 (DB)*

- **Rule 67 - A(1)** - Clause (a-2) - Authorises Chairman to constitute Benches - Does not involve delegation by Government of its power to appellate authority : *Abdul Mohi Siddiqui Vs. State of M.P., I.L.R. (1965) M.P. 862 (DB)*

- **Rule 67 - A(1)**, Clauses (a-4) - Directs presentation of appeals to secretary - Does not constitute secretary appellate authority : *Abdul Mohi Siddiqui Vs. State of M.P., I.L.R. (1965) M.P. 862 (DB)*

Khudkasht

- **Not a right** : *Rao Shankar Pratap Singh Vs. The State of M.P., I.L.R. (1959) M.P. 639 (FB)*

Khadya Padarth Sarvajanik Nagrik Purti Vitaran Scheme, M.P. 1981, and Essential Commodities Act (X of 1955)

- **Section 3 and 7** – Conviction of appellant under Section 7 read with section 3 for breach of paragraphs 5 and 6 of the scheme - Legal implication of - Food Stuffs (Distribution Control) Order, M.P. 1960, published in M.P. Rajpatra, Part 1, dated 5-11-1960 at page 1396 - Clause 2 (d) - Definition of expression ‘Government Scheme’ in – Postulates the ‘Scheme’ made in exercise of its executive power of State - Does not confer any power to make scheme - The ‘Scheme’ not deemed to be made in exercise of the power conferred by the Food Stuffs (Distribution Control) Order, 1963 –

Prosecution and conviction for breach of any provision of scheme not sustainable :
Mohan Vs. State of M.P., I.L.R. (1990) MP 337

Koyala Upkar (Manyatakaran) Adhiniyam, Madhya Pradesh (XVIII of 1964)

- **Expression “as if the enactment under which they were issued stood amended at all material times so as to empower the Board to issue said notification”** - Does not confer power on Board retrospectively to increase coal cess rate without obtaining Government sanction : *The Amalgamated Coalfields Limited, Calcutta Vs. State of M.P., I.L.R. (1969) M.P. 399 (DB)*

- **Nature of Validating Act** - To be determined by its substance : *The Amalgamated Coalfields Limited, Calcutta Vs. State of M.P., I.L.R. (1969) M.P. 399 (DB)*

- **Non-obstante Clause** - Not to be read in isolation - To be read with the clause “as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications” - Validates coal cess as imposed by notification under the Act and specified in the Schedule to the Act : *The Amalgamated Coalfields Limited, Calcutta Vs. State of M.P., I.L.R. (1969) M.P. 399 (DB)*

- **Section 3** - Not an independent charging Section - Is ineffective and invalid - Retrospectively amends law by introducing fiction - Effect - Distinction between investing body with power to issue notification and to remove hurdle which renders it nugatory - Nature of validating Act - To be determined by its substance - *Non obstante* clause - Not to be read in isolation - To be read with the clause “as if the enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications” - Validates coal cess as imposed by notification under the Act and specified in the schedule to the Act - Expression “as if the enactment under which they were issued stood amended at all material times so as to empower the Board to issue said notification” - Does not confer power on Board retrospectively to increase coal cess rate without obtaining Government sanction - Interpretation of Statute - No amendment possible to a non-existent statute unless it is revived - Mode of reviving a statute - Court, power of, to add or subtract words in the statute in the process of interpretation - Not to be construed on the Judge’s view of what legislature ought to have done - Interpretation of Statute – Construction - Actual words to be construed - Words have to be read together - Should be construed in a way so as to give them meaning and not to render them meaningless - Fiscal statute - Two Interpretations possible - Effect to be given to one benefiting the citizen - Letters Patent, Clause 26 and High Court Rules, Chapter 1, Part 6, Rule 11 - Difference of opinion between the Judges of Division Bench - Referee Judge - Can only decide point of difference - “Matter” in rule

11 of High Court Rules - Meaning of - Clause 26 and Rule 11 of High Court Rules - Do not empower reference to referee Judge on all points in the case – Legislature - Power of - Method of validating past Acts - Amendment effected - Fictional and not factual - Statute effecting a legal fiction - Court has to ascertain the purpose and give effect to it - Words employed in the Section - Wide enough to infer that obtaining of previous permission for imposition of tax is dispensed with - Validity : *The Amalgamated Coalfields Limited, Calcutta Vs. State of M.P., I.L.R. (1969) M.P. 399 (DB)*

- **Section 3 - Retrospectively amends law by introducing fiction** – Effect - Distinction between investing body with power to issue notification and to remove hurdle which renders it nugatory : *The Amalgamated Coalfields Limited, Calcutta Vs. State of M.P., I.L.R. (1969) M.P. 399 (DB)*

- **Section 3** - Words employed in the Section - Wide enough to infer that obtaining of previous permission for imposition of tax is dispensed with - Validity : *The Amalgamated Coalfields Limited, Calcutta Vs. State of M.P., I.L.R. (1969) M.P. 399 (DB)*

Krishak Pashu Parirakshan Adhiniyam, 1959

- **Prima facie proved that applicant in real owner** – Claim for interim custody bonafide : *Nabhu Vs. State of M.P., I.L.R. (2005) M.P. 773*

Krishi Upaj (Mandi Samiti Ka Nirvachan) Niyam, 1997

- **Rule 10** - Disposal of claim and objection - Mandi Samiti election - Inclusion of petitioner's name in voters' list by prescribed authority and confirmed by Appellate Authority under the Nirvachan Rules - Order not revisable by Commissioner under Section 50 of the Land Revenue Code : *Smt. Nirmalabai Vs. Hukan Singh, I.L.R. (2001) M.P. 790*

Krishi Upaj Mandi Adhiniyam, M.P., 1972 (XXIV of 1973)

- **Election** - (Adhi Suchanan, Prakashan Riti Bhar Sadhak Samiti Tatha mandi samiti Gathan) Niyam, M.P. 1974 rules 13 (3) and 12 (vi) and krishi upaj mandi adhiniyam, M.P. (XXIV of 1972), Section 11 (1)(b) – Rules 12 (vi) is ultra vires of Section 11(1)(b) – Constitution of India - Article 226 - Voters list - Objections to - Secretary himself cannot be objector - Returning Officer deleting names of 309 traders from Voters list on objection by Secretary and without hearing the traders - Such deletion is invalid and in breach of principles of natural Justice – Voters list and election quashed and directions for preparing valid voters list issued : *Rambilas Gour Vs. Tahsildar, Hoshangabad, I.L.R. (1987) M.P. 612 (DB)*

-Election- (Adhisuchana Prakasan Niti Bharsadhak Samiti Tatha Mandi Samiti Gathan) Niyam M.P., 1974 Niyam 44 - Election Petition - Remedy : *Ramesh Rewatkar Vs. Returning Officer Krishi Upaj Mandi, Pandhurana, I.L.R (1987) M.P. 103 (DB)*

- Election- (as amended) Section 66-A, 79, Krishi Upaj Mandi Niyam, M.P. - 1974 (as amended), Rules. 13-A, 44 and Krishi Upaj Mandi Nirvachan Rules, 1997, Rule 90 - Election of - Chairman of Krishi Upaj Mandi – Challenge – Can only be made by way of Election Petition Limitation is 30 days : *Ashok Kumar Jain Vs. Neetu Kathoria, I.L.R. (2004) M.P. 414 (SC)*

- as amended by Krishi Upaj Mandi Sanshodhan Adhiniyam, M.P. 1986 (XXIV of 1986), Sections 2(a), (e) and (m), 19(3), 32(5), 36(3), 37 and Constitution of India, Articles 19(1) (g), 286 and 301 – Amendments act brought about by amending Act XXIV of 1986, valid – No contravention of Articles 19(1)(g), 286 and 301 : *Adet Association, Dr. Katju Mandi Prangan, Jaora Vs. State of M.P., I.L.R. (1989) M.P. 197 (DB)*

- (As amended by Act 8 of 1994) - Sections 10, 56, 57 - Replacement of Mandi Committee by officer - in-charge - Allegation that new government which was installed after general election exercised legislative right with political object of removing persons appointed on committee during previous regime - Motive which impelled legislature to pass Act is irrelevant - Statement and objects show that it was done with view to rationalize and bring uniformity in administration of mandis - Data produced show that even before amendment most of the committees were being run by officer - in-charge - Only one elected Mandi committee was in existence whereas others were nominated - Right to be nominated accrues only because of provision existing before amendment - This Statutory Right can be taken away by statute - Amendments made to Sections 10, 56 and 57 do not suffer from arbitrariness and *intravires* - Petition dismissed: *Mangilal Patidar Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 138 (DB)*

– Section 2(1) (b) – Candidate has to be an ‘agriculturist’ within the meaning of section 2(1) (b) – Otherwise the very purpose of amending provision shall get frustrated – Returned candidate prima facie involved in contractorship business – Tribunal committed an error in overlooking the outstanding bills brought on record by the petitioner – Finding of Tribunal perverse – Matter remanded to the Tribunal for decision afresh: *Bhaskar Singh Raghuwanshi Vs. Harveer Singh Raghuwanshi, I.L.R. (1992) M.P. 1 (DB)*

- Section 2(b) - Word Agriculturists - Definition of – Reasonable and not ultra vires : *Ramesh Rewatkar Vs. Returning Officer Krishi Upaj Mandi, Pandhurana, I.L.R. (1987) M.P. 103 (DB)*

- **Section 2(b)** and Interpretation of Statute – Election to Mandi Samiti as agriculturist – Definition of agriculturist under Adhiniyam – Person to be an agriculturist must have source of livelihood wholly dependent on agricultural produce – By amendment significant departure in the definition of term agriculturist – Words of statute clear plain or unambiguous – Courts bound to give effect to that meaning irrespective of consequences – Word ‘wholly’ occurring in definition of a agriculturist – Full effect must be given to its meaning : *Mahesh kumar Gour Vs. Additional Collector Hoshangabad, I.L.R. (1989) M.P. 572 (DB)*

- **Sections 2(b), 2(p), 19, 32 and Constitution of India** – Article 226 – Petitioner State Level Co-operative Federation of Oil seeds farmers is a trader – Once it is held that petitioner is not an ‘agriculturist’ as defined in Section 2(b) then there is no escape from the conclusion that it would be a trader as defined under Section 2(p) – Petitioner in regular course of business selling notified agricultural produce – Obligated to obtain licence to work as trader in the market area and recover market fee from its purchaser/ buyers and pay the amount so collected to the market committee – Language of the statute has to be appreciated as it is – Court shall not read something which is not in the statute : *Gujrat Co-Operative Oil Seeds Growers Federation Vs. Krishi Upaj Mandi, Indore, I.L.R. (1999) M.P. 1010*

- **Section 2(1)(m)** - ‘Notified agricultural produce’ defined to mean all such produce specified in the schedule - Schedule appended to the Act is a part of legislation and contains ‘wheat’ at SI. No. 2 - Legislative intention clear to include ‘Maida’ in ‘agricultural produce’ as Maida is derived by powdering wheat i.e. by processing as defined under Section 2(1)(mmm) - Maida so derived from wheat - Is an agricultural produce liable to levy of Market fee : *M/s. Damroolal Jagannath Prasad Pathak Vs. Krishi Upaj Mandi Samiti, Jabalpur, I.L.R. (2001) M.P. 7*

- **Sections 2(m), 4 and 82 and Agricultural produce markets Act, M.P. (XIX of 1960)** - Notification issued under section 4 of Act of 1960 include certain agricultural produce ‘notified agricultural produce’ - Continue to be so under the Adhiniyam of 1972 also even after repeal of Act of 1960 on account of saving clause - Levy of market-fee - Element of *quid pro quo* - Existence of - Amount spend mostly on providing amenities and facilities to purchasers in market area – levy is valid: *M/S Manakchand Nathuram Agrawal, Itarsi Vs. Krishi Upaj Mandi Samiti, Itarsi, I.L.R. (1983) M.P. 357 (DB)*

- **Sections 11-A, 11 (1) (a) and 2(b)**, Krishi upaj Mandi (Adhisuchana prakashan Niti Bharsadhak Samiti Tatha Mandi Samiti Gathan Niyam, M.P., 1974 - Niyam 44 and Constitution of India Articles 330, 332 and 226 - Articles 330 and 332 – not applicable to elections under Adhiniyam of 1972 – Reservation of seat for Scheduled Caste and Scheduled Tribe candidates in Mandi Samiti whether should be in proportion to their population – Section 11 - A not ultra vires - Section 2(b) - Word Agriculturists – Definition

of reasonable and not ultra vires Niyam 44 of Niyam of 1974 – Election petition – Remedy Co-opted panchas are not elected panchas and co-opted panchas cannot be voters for election representatives of Agriculturists u/s 11 (1) (a) of Adhiniyam of 1972 as amended by Adhyadesh of 1985 - Voters list wrongly including Co-opted panches – Alternative remedy of election petition available – No interference in writ jurisdiction – Election when can be set aside in such cases : *Ramesh Rewatkar Vs. Returning Officer Krishi Upaj Mandi, Pandhurna, I.L.R. (1987) M.P. 103 (DB)*

- **Section 11(i)(b)** and Constitution of India, Articles 226 and 227 – Election of a Member of Krishi Upaj Mandi Samiti from the traders constituency – Condition of continuously holding licence for a period of two successive years as traders under Section 11(i) (b) – Is mandatory – Constitution of India – Articles 226 and 227 – Jurisdiction of High Court in exercise of extraordinary and discretionary powers under – Scope of Permissibility of reappraisal of evidence under – Interpretation of Statute – Every word used in a Statute has its own significance : *Devendra Kumar Vs. Satyanarayan Singh Thakur, I.L.R. (1990) M.P. 89 (DB)*

- **Section 12(6)** and Krishi Upaj Mandi (Adhisuchna Prakashan, Riti Bharsadhak Samiti Tatha Mandi Samiti Gathan) Niyam, MP, 1974, Rule 54, Sub-rule 13(a) and (b) – Election petition – Amendment by notification dated 23-3-83 – In Rule 54(13), clause (b) appears to be a mis-print, for clause (a) – Election petition filed within 15 days – Held within time – Section 12(6) of Adhiniyam only prescribes the competent authority to be Collector – Procedure for election petition prescribed by Rule 54(13) of Rules - Election Petition filed to Collector directly and not through presiding Officer held not bad – Rule 54(13) of Rules not *ultra vires* – *Persona designata* – Person pointed out or described as an individual – Collector referred to in Section 12 (6) of Adhiniyam or Rule 54(13) includes Additional Collector of authorised in pursuance of any statutory provision or by special authorisation : *Rambihari Vs. Baijnath Singh, I.L.R. (1989) M.P. 280 (DB)*

- **Section 19 (unamended)** - Samiti entitled to levy market fee on notified agricultural produce on its purchase, sale or brought for sale in the market area except for self consumption or brought from out side State - Groundnut purchased from another State for manufacture of oil - Respondent Samiti not justified in charging Mandi fee on such produce as there was no commercial transaction involved in the market area of Mandi Samiti - Demand of market fee quashed - Amount collected directed to be refunded : *S.K. Goyal Mill Vs. Krishi Upaj Mandi Samiti, I.L.R. (2001) M.P. 1122*

- **Section 19(1)** - Market fee levied on agricultural produce - Petitioners, owners of flour mills obtaining wheat supply from Food Corporation of India - Petitioners buying un notified wheat agricultural produce and are therefore, traders - Transactions taking place in market area - Attracts levy of market fee : *National Pure Food Suppliers, Jabalpur Vs. State of M.P., I.L.R. (1995) M.P. 198 (DB)*

- **Section 27** - Duties of Secretary of market Committee are managerial or administrative in nature be is not a “Workman” under Industrial Disputes Act, 1947 : *Krishi Upaj Mandi Samiti, Mhow Vs. Shree Ram Choudhary, I.L.R.(1998) M.P. 961*

- **Section 27** - Person appointed as Secretary - Is not a workman within the meaning of Industrial Disputes Act, 1947 - Civil Court has jurisdiction to entertain the suit relating to discharge from service - *Krishi Upaj Mandi Adhiniyam, Madhya Pradesh, 1972 - Administrative Law – Section – 27 - Person appointed with due approval of Dy. Director as Secretary - Discharged from service without even a show cause notice - Action held violative of Principles of Natural Justice - Krishi Upaj Mandi Adhiniyam, Madhya Pradesh, 1972 - Administrative Law - Section 27 - Person appointed with due approval of Dy. Director as Secretary - Discharged from Service on the ground that in absence of approval of Director under Rule, 38 of M.P. Agricultural Produce Market Rules, 1962 - Action hit by doctrine of promissory estoppel - Appeal dismissed : Krishi Upaj Manki Samiti, Mhow District, Indore Vs. Shreeram Chaudhary, I.L.R. (1998) M.P. 98*

- **Sections 32, 33** – Licence granted under Mandi Act – Cannot be cancelled or suspended for non – Payment of levy under 1970, Adhiniyam: *The Sagar Anaj Avam Tilhan Vyapari Sangh, Sagar Vs. Krishi Upaj Mandi Samiti , Sagar, I.L.R. (1988) M.P. 424 (DB)*

- **Section 37 (2)(c) and Natural justice** – Adhiniyam enacted for benefit of agriculturist – Section 37 (2) aimed to achieve that purpose – Consequence of deemed cancellation provided for in clause (c) as deterrent – Excluding rule of natural justice not fatal – Section 37(2) held not *ultra vires* : *Chandra Shekher Agarwal Vs. Krishi Upaj Mandi Samiti, Seoni, I.L.R. (1989) M.P. 340 (DB)*

- **Section 55(1) - Essential documents withheld** — Opportunity not afforded to rebut — Independent finding required to be recorded as to alleged misconduct of office bearer — No such finding recorded by the authority — Removal improper — Order impugned set aside: *Arbind Kumar Pandey Vs. M.P. State Agriculture Marketing Board, I.L.R. (2004) M.P. 142*

- **Section 61, as amended by M.P. Act No. (XXIV of 1986)** - Limitation of 30 days prescribed for appeal to Director - Appeal filed within 30 days from the date of coming into force of Amending Act - Appeal within limitation as limitation would start from the date of commencement of Amending Act - Impugned order set aside - Matter remanded to Director for decision on : *Madhya Pradesh State Co-Operative Marketing Federation Ltd., Bhopal Vs. Director Krishi Upaj Mandi Samiti, I.L.R. (2001) M.P. 776*

- **Section 79 (I) and 2** and MP Krishi Upaj Mandi (Adhisuchna Prakashan, Riti Bharsadhak Samiti Tatha Mandi Samiti Gathan) Niyam, MP, 1974, Rules 17, 43 and 44 – Any voter of the constituency has a right to file election petition to challenge the election on various grounds including improper rejection of nomination paper : *Sumerchand Jain Vs. Shyam Lal, I.L.R. (1990) M.P. 621 (DB)*

- **Rule 37(3) of the rules framed thereunder** – Duty of election Tribunal – Duty to give finding regarding validity of votes failure to perform duty - Amounts to failure to exercise jurisdiction - Constitution of India – Article 226 - Writ of certiorary when can be issued to quash order of election tribunal - Rule 37 of the Rules framed under Krishi upaj Mandi Adhiniyam, 1972 - Permits candidate to ask for re-count before declaration of result after furnishing grounds on which he demands re-count – Rules 37(3) – After allowing application for re-count - Counting of votes afresh necessary in accordance with his decision – Decision to relate to grounds on which re-count is asked – Re-count not restricted to mere enumeration, but relates to all other scrutiny provided in Rule 37 - Has to scrutinise and re-examine the validity of improperly rejected votes: *Deochand Vs. Raghuraj Singh, I.L.R. (1981) M.P. 367 (DB)*

Krishi Upaj Mandi (Adhisuchana – Gathan) Niyam, 1974

- **Rules 7(x), 43** - Moral turpitude – An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general : *Uttam Singh Vs. Collector, Panna, I.L.R. (1991) M.P. 251 (DB)*

- **Rules 43 and 44** - Constitution of India – Article 226 – Rule 43 – Right envisaged thereunder can be exercised even by ‘any Voter’ – Election Tribunal holding that voter has no right to agitate the question of illegal rejection of nomination papers – Acts illegally : *Sumerchand Jain Vs. Shyam Lal, I.L.R. (1990) M.P. 659 (DB)*

Krishi Vishwa Vidyalaya Statute, 1964

- **Statute No.6 (a) (i)** - Procedure of appointment – post should be advertised : *Dr. S.L. Namdeo Vs. Chancellor, Jawaharlal Nehru Krishi Vishwavidyalaya, Bhopal, I.L.R. (1987) M.P. 558 (DB)*

Labour Commissioner

-**Reinstatement**- Conditions Under which he can order and payment of back wages : *Shri Abdul Salam Vs. Abdul Khalik, I.L.R. (1960) M.P. 550 (DB)*

- **Jurisdiction of**- To issue certificate before determining compensation : *Bengal Nagpur Cotton Milis Ltd. Rajnandgaon Vs. The State of Madhya Pradesh, I.L.R. (1960) M.P. 225 (DB)*

- **Power of** - To examine question of contravention of Section 42 in enquiry under section 16 : *The Burhanpur Tapti Mills Ltd. Vs. The State Industrial Court, I.L.R. (1958) M.P. 631 (DB)*

Labour Law

- **Compassionate appointment** – Without ascertaining capacity of Management Tribunal not justified in passing award of Compassionate appointment : *Mineral Exploration Corporation Ltd., Nagpur Vs. Mineral Exploration Corporation Employee's Union, (AITUC), Nagpur, I.L.R. (2000) M.P. 1368*

- **Regularisation** – Temporary employees engaged by Mineral Exploration Corporation Limited at different projects – Though continued for a long period but absence of Rules in Employer's organization – Tribunal not justified in passing of award of regularization of temporary Employees – Award of Tribunal set aside : *Mineral Exploration Corporation Ltd., Nagpur Vs. Mineral Exploration Corporation Employee's Union, (AITUC), Nagpur, I.L.R. (2000) M.P. 1368*

- **Workman retired as found medically unfit**–Option to accept monetary benefit or employment–To be exercised by female dependent and not by employer–Unmarried daughter is a dependent–Entitled to seek employment : *Bheem Sen Tiwari Vs. SECL, I.L.R. (2005) M.P. 119*

Laghu Udyog Nigam Recruitment and promotion Rules, M.P. 1986

- **Rules 13, 14**–Department not estopped from again looking into qualification which was accepted at the time of appointment: *G.N. Rao Vs. MP Laghu Udyog Nigam Ltd, I.L.R. (2001) M.P. 1291*

- **Rules 13, 14 and Schedule 3, Entry 6**–Departmental promotion Committee for selection of General Manager–Condition for promotion merit-cum-seniority–Petitioner lacking in academic qualification–Certificate of petitioners not recognized by State Government–D.P.C. not found petitioner as eligible for promotion : *G.N. Rao Vs. M.P. Laghu Udyog Nigam Ltd, I.L.R. (2001) M.P. 1291*

Land Acquisition (Madhya Pradesh Amendment) Act (V of 1959)

- **Constitution of India, Article 14**–Classification of land in Bhopal and other parts of State–It is with reason and reasonable–Classification made with a view to acquire land for capital at reasonable price–Land Acquisition (MP Amendment) Act, 1959 not hit by Article 14 of Constitution–Vires of: *Satish Kumar Vs. the State of M.P., I.L.R. (1961) M.P. 810 (DB)*

Land Acquisition (Mines) Act (XVIII of 1885)

- Not applicable to erstwhile State of Madhya Pradesh as mines owned by Government: *State of Madhya Pradesh Vs. Ramansha Byramji*, I.L.R. (1978) M.P. 768 (DB)

Land Acquisition Act (1 of 1894)

- **Does not confer right on person for whom land acquired to question the amount of compensation**-Does not prohibit land Acquisition officer to grant compensation in excess of the amount claimed-Court has no such power : *Municipal Council Pipariya Vs. the State of M.P.*, I.L.R. (1968) M.P. 22 (DB)

- **Nature of proceedings under the Act before the Collector and before civil Court**-Proceedings before civil Court-Burden of proving award to be wrong on claimant-Admissibility of evidence before Court to be determined according to Evidence Act-Record of Collector not admissible in civil Court except with consent of parties-Land Acquisition Manual, Paragraph 34-Directions in Not binding on civil Court-Market value to be determined on the evidence tendered-Evidence Act-Section 65(G)-Conditions necessary to attract the provisions in the section-Sale statement prepared by an official-Not of any value-Not admissible-Land Acquisition Act-Section 23(2)-Compulsory compensation payable only regarding property falling under first clause : *The Collector Raigarh Vs. Chaturbhuj Panda*, I.L.R. (1963) M.P. 887 (DB)

- **Words**- “as nearly as may be, in accordance with the provisions of the Land Acquisition Act, 1894” in-Qualify the verb “shall be calculated”-Calculation of compensation to be made according to land Acquisition Act and not whole procedure for determining compensation to be followed : *Pooranchand Sharma Vs. Smt. Saila Bala Dassi*, I.L.R. (1962) M.P. 774

- **Section 3**-Court in, functions as a Civil Court and not merely as a *persona designata* – Decision of such court – Cannot be treated merely as a judgment of special tribunal-Court functioning under this Act-Is a civil court and subordinate to High court-All interests in land sought to be acquired not belonging to State-Procedure under the act to be followed : *Krishna Saranlal Vs. Collector, Durg*, I.L.R. (1962) M.P. 634

- **Section 3(b)**-Definition of “Person interested”-Is inclusive definition and not exhaustive-Meaning of Includes State Government: *Sheikh Mohammad Vs. Director of Agriculture, Madhya Pradesh*, I.L.R. (1968) M.P. 808 (DB)

- **Section 3(b)**-Government necessary party to proceedings in civil Court on reference : *Sheikh Mohammad Vs. Director of Agriculture, Madhya Pradesh*, I.L.R. (1968) M.P. 808 (DB)

- **Section 3(b)** – “Person interested” – Includes persons claiming interest in compensation – Not necessary that he must be person receiving notice under section 9 or 12 : *Smt. Sugandhi Vs. The Collector, Raipur, I.L.R. (1971) M.P. 842 (DB)*

- **Section 3(b)** – Right Conferred by statute not lost because suit filed for nullification of proceedings : *Smt. Sugandhi Vs. The Collector, Raipur I.L.R. (1971) M.P. 842 (DB)*

- **Section 3(d)**- Land Acquisition Officer, not included in definition of “Court” : *Chhangalal Vs. The Land Acquisition Officer, Mahasamund, I.L.R. (1965) M.P. 460 (DB)*

- **Section 3(f)** - and Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973, Section 55—Section 27-Public purpose-Meaning-Must be a purpose by which the public or part of the public is to be benefited-The Primary satisfaction of the Government regarding public purpose is the foundation for publication of the notification under Section 4 of the Land Acquisition Act-The word “satisfaction” is a term of considerable expensiveness-It has been understood to mean free from dis-honesty, doubt, perplexity, suspicion or uncertainty-If from the admitted, undisputed and uncontroversial facts, it appears to the court that declaration was result of absolute non-application of mind-Court can certainly interfere in the matter : *Shailendra Vs. State of M.P., I.L.R. (1998) M.P. 820*

- **Section 4** - Acquisition of site for house purpose to remove congestion-Acquisition for public purpose : *Anand Kumar Vs. The State of M.P., I.L.R.(1964) M.P. 546 (DB)*

- **Section 4** - Notification issued in the name of Board-Constitution of the Board changed-Notification enures for the benefit of new Board-Acquisition of site for house purpose to remove congestion-Acquisition for public purpose-Notification under Section 6 quashed-Notification under Section 4 not exhausted : *Anand Kumar Vs. The State of M.P., I.L.R. (1964) M.P. 546 (DB)*

- **Section 4** - Shortage of houses and accommodation-Acquisition for relieving shortage-Acquisition for public purpose : *Vasudeo Prasad Vs. The M.P. Housing Board, Bhopal, I.L.R. (1970) M.P. 943 (DB)*

- **Section 4(1) and 6(1)** – Difference between – Notification under Section 4(1) is exploratory – But otherwise under Section 6- word “Locality” in Section 4(1)- Meaning of Section 4(1)- Mention of village as “Locality” – A sufficient compliance of the requirement- Departmental instruments cannot over-ride true meaning or construction of statutory provision- Executive instructions- Admissible aid to interpretation- Mention of village in notification-Sufficient compliance of Section 4(1) – Failure to specify Locality- Does not affect validity of notification- Entire proceedings not vitiated- Practice- New

ground – Can be raised if it is pure question of law and goes to the root- But not mixed question of law of fact : *The Christian Fellowship (Hospital), Rajnandgaon, Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 67 (DB)*

- **Sections 4, 5, 5-A, 6-A, 11 and 11-A** – Different procedure are laid down in the Act at different stages for achieving the object of the Act – Sections 6 and 11-A – Acquisition of land and compensation – Time limit – Delay in making award owing to stay order passed by competent Courts – In computing stipulated time of making award of compensation the period of operative stay order, irrespective of its nature, has to be excluded : *Burhani Griha Nirman Sahkari Sanstha Maryadit, Indore Vs. State, I.L.R. (2000) M.P. 342*

- **Sections 4 and 6** - Notification under Section 4 - Is of exploratory nature-Not exhausted by issue of notification under Section 6 : *Dhiroo Bhai Vs. The State of M.P., I.L.R. (1965) M.P. 51(DB)*

- **Sections 4 and 6** – Only when the land is included in final notification, proceeding for acquisition can be initiated – Petitioner's land not included in final notification – Even if included in the subsequent notification – Defect of non-inclusion in final notification would not stand cured or rectified : *Sunderlal Gandhi Vs. State, I.L.R. (2000) M.P. 150*

- **Section 4 and 6** - Notification under Section 6 quashed-Notification under Section 4 not exhausted : *Anand Kumar Vs. The State of M.P., I.L.R. (1964) M.P. 546 (DB)*

- **Sections 4 and 6** - Notification under - Essential part of acquisition proceedings are in the nature of jurisdictional facts which give power to Land Acquisition authorities to act further - In its absence subsequent proceedings will be *ultra vires* : *Iftikhar Ahmad Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 697 (DB)*

- **Sections 4, 6** - Collector alone is competent to deal with the matters under the Land Acquisition Act which is a complete Code : *Pashu Chikitsa Vibhagiya Sahkari Nirman Samiti Maryadit, Bhopal Vs. State, I.L.R. (2001) M.P. 819 (DB)*

- **Sections 4, 6, 9, 11, 23, 28, 351-A** - Compensation-Reference for determination-Award based on sale deeds of land in the vicinity-Appeal for enhancement-Sale deeds can not be read in evidence in absence of examination of vendor or vendee to substantiate the sale deed and to prove consideration thereunder-Award set aside-Case remitted for reconsideration : *Ghanshyam Vs. State, I.L.R. (2001) M.P. 1707 (DB)*

– धारा 4, 6, 18 – अधिनियम की धारा 4 एवं 6 के अंतर्गत अधिसूचना-विवादित भूमि पर अपीलार्थिनी के स्वत्व परविवाद के कारण मुआवजा नहीं-धारा 18 के अंतर्गत न्यायालय को रेफरेन्स-न्यायालय द्वारा अपीलार्थिनी के स्वत्व के संबंध में वाद प्रश्न निर्मित नहीं : *Pushpmala Raje Pawar Vs. State, I.L.R. (2001) M.P. 1368 (DB)*

– **Sections 4, 5, 18, 30–Acquisition of land by State**–Person interested–State cannot be said to be a person interested to agitate any claim either under sections 18 or section 30–Court exercising jurisdiction U/s 18 could not decide question of title of State over land acquired–Compensation–Land having potentiality as building sites–Not being used for agricultural purposes–Reference court rightly awarded Rs. 2/per Sq. Ft.–Deduction of 30% for developmental charges would be just and appropriate : *M/s Ahad Brothers Vs. State of M.P., I.L.R. (2005) M.P. 287 (SC)*

– **Sections 4, 6 and 40** -Acquisition of Land for railway siding of a cement company-Purpose of acquisition useful for public-Proceedings challenged after passing of award without filing objections despite direction of High Court-Petitioners are estopped to turn around and seek quashment.Land Acquisition Act (LXVIII of 1984)–Sections 4,6 and 40-Acquisition of Land for railway siding of a cement company-Purpose of acquisition useful for public-Proceedings challenged after passing of award without filing objections despite direction of High Court-Petitioners are estopped to turn around and seek quashment. *Smt. Mahrana Vs. State of M.P., I.L.R. (2002) M.P. 901*

- **Sections 5-A and Constitution of India, Article 166** – Express delegation of power to the Collector is mandatory – In absence of specific delegation of power under Section 5-A, the whole proceedings stand null and void and vitiated : *Burhani Griha Nirman Sahkari Sanstha Maryadit, Indore Vs. State, I.L.R. (2000) M.P. 342*

– **Sections 6, 9, 11, 17(1) and 54**–Appeal against award of reference Court–Compensation–Proximity with the National Highway–Potential value cannot totally be marginalized–Rs. 20,000/- per acre would be in turne–Claimants entitled to interest @ 9% on solatium as also on the award : *The State of M.P. Vs. Buddhasen, I.L.R. (2005) M.P. 851 (DB)*

- **Section 9**-Mere failure without there being willful refusal to serve notices to persons interested-Does not vitiate Award or affect vesting-Constitution of India-Article 226-High Court, Jurisdiction of, to investigate Controversial questions of fact-Land Acquisition Act-Section 31(2), third Proviso-No notice under section 9 issued-Remedy by way of suit is open : *Mst. Sugandhi Vs. The Collector, Raipur, I.L.R. (1968) M.P. 871 (DB)*

- **Section 9 and 18**-Original Award quashed-Fresh notification under section 6 issued and notices under section 9 issued to parties – Officer not giving opportunity to parties to adduce evidence-Award vitiated-Existence of opportunity in civil Court-No ground for depriving party of opportunity to lead evidence before land Acquisition Officer : *Smt. Saroj Kumari Vs. State of Madhya Pradesh, I.L.R. (1968) M.P. 737 (DB)*

– **Section 9 and 25(1)**-Claim made in pursuance of notice-Cannot be equated to offer- Claimant cannot claim compensation in excess of that made under this provision

: *The Collector, Seoni, Vs. Dadoo Yogendra Nath Singh, I.L.R. (1972) M.P. 311 (DB)*

- **Section 11**-Land Acquisition Officer-Agent of Government and a Court-Award of Land Acquisition Officer-Not a judgment: *Smt. Sumatra Bai Vs. State of M.P., I.L.R. (1967) M.P. 568 (DB)*

- **Section 11**-Offer embodied in the Award of Collector-offer becomes irrevocable : *Chhangalal Vs. The Land Acquisition Officer, Mahasamund, I.L.R. (1965) M.P. 460 (DB)*

- **Section 11 and 12** – Award made by Additional Collector – Award sent to Collector for approval as per instructions – Award does not cease to be that of Additional Collector – Constitution of India – Article 226 – Provision of alternative remedy – Does not take away jurisdiction under this provision – Rule that statutory remedies to be exhausted before asking for a writ- Is not a rigid rule of law but merely a matter of discretion – Land Acquisition Act- Section 18 Application by person interested within time for reference Leaves no option to refuse reference- Any person interested who has not accepted Award – Can ask for reference Section 3(b) – “Person interested” – Includes persons claiming interest in compensation – Not necessary that he must be person receiving notice under section 9 or 12 – Right conferred by statute not lost because suit filed for nullification of proceedings : *Smt. Sugandhi Vs. The Collector, Raipur, I.L.R. (1971) M.P. 842 (DB)*

-**Section 12**-Filling of Award in Collector’s Office-Not pre-requisite to its finality : *Chhangalal Vs. The Land Acquisition Officer, Mahasamund, I.L.R. (1965) M.P. 460 (DB)*

-**Section 12**-Finality of award not subject to sub-section (2) : *Chhangalal Vs. The Land Acquisition Officer, Mahasamund, I.L.R. (1965) M.P. 460 (DB)*

- **Section 17(1)**-Conditions necessary for applicability-Conditions satisfied-Direction for inapplicability of section 5-A of the Act to be issued-Question of urgency-A matter for subjective determination of Government-Not a justiciable matter-Fact whether land is waste of arable-Is an objective fact-Government has to reach decision before issuing direction with regard to the inapplicability of section 5A-Constitution of India-Article 226-High Court, Jurisdiction of, to determine whether finding regarding character of land is correct or not: *Jagannath Prasad Vs. State of M.P., I.L.R. (1973) M.P. 420 (DB)*

- **Section 17(1)**-Fact whether land is waste or arable-Is an objective fact: *Jagannath Prasad Vs. State of M.P., I.L.R. (1973) M.P. 420 (DB)*

- **Section 17(1)**-Government has to reach decision before issuing direction with regard to the inapplicability of section 5-A of the Act: *Jagannath Prasad Vs. State of M.P., I.L.R. (1973) M.P. 420 (DB)*

-**Section 17(1)**-Question of urgency-A matter for subjective determination of Government- Not a justiciable matter: *Jagannath Prasad Vs. State of M.P., I.L.R. (1973) M.P. 420 (DB)*

– धारा 18—भू अर्जन के अधिनियम के अंतर्गत रेफरेन्स प्रकरण में न्यायालय को प्रार्थिनी के स्वत्व के संबंध में तय करने का अधिकार है—रेफरेन्स न्यायालय का आदेश निरस्त—स्वत्व संबंधी वाद प्रश्न निर्मित करते हुए प्रकरण अधीनस्थ न्यायालय को संप्रेषित : *Pushp mala Raje Pawar Vs. State, I.L.R. (2001) M.P. 1368 (DB)*

- **Section 18** – Application by person interested within time for reference- Leaves no option to refuse reference- Any person interested who has not accepted Award – Can ask for reference : *Smt. Sugandhi Vs. The Collector, Raipur, I.L.R. (1971) M.P. 842 (DB)*

– **Section 18** – Award of Collector based solely on report of Chief Engineer – No scrutiny of report – Award cannot be said to be an award at all : *Ramnarain Vs. The State, I.L.R. (1960) M.P. 1041(DB)*

- **Section 18**- Claimant leading no evidence – Award has to be upheld : *State of Madhya Pradesh Vs. Ganga Sahai Garg, Gwalior I.L.R. (1975) M.P. 1053 (DB)*

- **Section 18**- Nature and burden of proving that Acquisition officer was wrong- Depends upon nature of inquiry held by him : *State of Madhya Pradesh Vs. Ganga Sahai Garg, Gwalior, I.L.R. (1975) M.P. 1053 (DB)*

- **Section 18**-Duty of Court under-Award of Collector-Is an offer of compensation to person entitled-Reference to Court – Court has to determine amount of compensation- Land Acquisition Officer-Agent of Government and not a Court-Award of Land Acquisition Officer-Not a judgment-Land Acquisition Officer-Can take into consideration all available information for delivering compensation-Award an administrative act- Proceeding not judicial-Becomes judicial when reference made to Court : *Smt. Sumatra Bai Vs. State of M.P., I.L.R. (1967) M.P. 568 (DB)*

- **Section 18** - Jurisdiction under, is special one- Jurisdiction limited to four ground mentioned therein- Question of constitutional validity of Act- Cannot be considered under special jurisdiction - Constitution (Forth amendment) Act, 1955 – Inadequacy of compensation- Cannot be a ground for challenging a statute- Constitution of India- Article 14 Act not applying to certain transaction taking place before commencement of the Act- Not sufficient to hold that the law offends Article 14 : *Sardarmal Lalwani Vs. The Collector, Sehore, I.L.R. (1976) M.P. 777 (DB)*

- **Section 18**-Not applicable to award given by Collector-Reference to civil Court not necessary : *Pooranchand Sharma Vs. Smt. Saila Bala Dassi, I.L.R. (1962) M.P. 774*

- **Section 18**-Proceedings on reference under-Order 22, Civil Procedure Code and Articles 171 and 176 of the Limitation Act-Applicability to proceedings under Section 18, Land Acquisition Act- Civil Procedure Code, Order 22-"Suit" in-Means a suit instituted by a presentation of plaint-Reference proceedings under Section 18, Land Acquisition Act not a suit-Land Acquisition Act-Section 53-Deeming provision in-Does not have effect of proceedings in suit : *Abdul Karim Vs. The State of M.P. Through The Collector, Bilaspur, I.L.R. (1966) M.P. 237 (DB)*

- **Section 18**-Proceedings before Additional District Judge-Proceedings are judicial-Court to base findings on evidence adduced or brought on record from proceedings before Land Acquisition Officer with consent of parties : *Mrs. M.G. Dunne Vs. The Collector, Jabalpur, I.L.R. (1961) M.P. 845 (DB)*

- **Section 18**- Reference under- Burden of proving that compensation is inadequate is on claimant : *State of Madhya Pradesh Vs. Ganga Sahai Garg, Gwalior, I.L.R. (1975) M.P. 1053 (DB)*

- **Section 18**-Reference under-To Additional District Judge-Additional District Judge has no power to challenge order of acquisition or want of jurisdiction to make the order-Can be challenged in a separate suit or in writ proceedings - Section 23-Average price of adjacent land-Good basis to fix compensation-Ratio to be adopted in dividing compensation between lessor and lessee-Method to be followed in determining present value of compensation payable in future-Transfer of Property Act-Section 105-Long acceptance of rent amounts to creation of tenancy-Contract Act-Section 29-Clause regarding renewal vague and uncertain-No valid contract of renewal comes into existence-Such contract not enforceable : *Hitkarini Sabha, Jabalpur Vs. The Corporation of the City of Jabalpur, I.L.R. (1961) M.P. 543 (DB)*

- **Section 18**-Reference proceedings thereunder, not a suit : *Abdul Karim Vs. The State of M.P. Through The Collector, Bilaspur, I.L.R. (1966) M.P. 237 (DB)*

- **Section 18** – Reference to the Civil Court seeking enhancement – Appeal by Housing Board – Earlier notification lapsed and hence by second notification land was acquired : *Madhya Pradesh Grih Nirman Mandal, Sidhi Vs. Smt. Mira Singh, I.L.R. (2000) M.P. 989 (DB)*

- **Section 18 (2)** -Reference by Collector to District Judge-District Judge power of, to go behind reference : *Kaliyanchand Vs. Kanchanbai, I.L.R. (1964) M.P. 340 (DB)*

- **Section 18(3)** - Revision – Rejection of reference – Exercise of the power by District Judge in this behalf is clearly without authority of law or jurisdiction- Order of the District Judge, therefore, is a nullity – As per the amendment, Revision lies only before the High Court : *Mirza Majid Hussain Vs. State of M.P.*, I.L.R. (1995) M.P. 23 (SC)

- **Sections 18, 20**–Interested Person–Lands acquired for the benefit of Railways and liable to pay compensation–Railways not noticed by reference Court–Railway is an interested and aggrieved person in the reference proceedings–Notice should have been issued by the Reference Court–Appearance of Collector as agent of interested party before reference Court is not sufficient compliance of statutory provision–Matter remitted back to Reference Court : *Central Railway, Through ITS General Manager, Central Railway, Bombay-VT Vs. Ramaiya S/o Chhokodi Ram*, I.L.R. (1993) M.P. 444 (DB)

- **Section 19**-Condition precedent for exercise of jurisdiction by court – No valid reference to court-No jurisdiction in court to decide objections or to make award-Section 3(b)-Definition of “Person interested”-Is inclusive definition and not exhaustive-Meaning of-Includes State Government-Government necessary party of proceedings in civil Court on reference : *Sheikh Mohammad Vs. Director of Agriculture, Madhya Pradesh*, I.L.R. (1968) M.P. 808 (DB)

- **Section 19(1) (d)**-Reference by Collector-Reference to mention grounds on which compensation determined-Grounds unsustainable-Burden on Collector to justify Award-Section 23-Market value-Meaning of-Things to be taken into consideration in determining it-Post notification sales can be taken into consideration in determining market value : *Mumtazali Vs. The Collector, Sehore*, I.L.R. (1963) M.P. 1067 (DB)

- **Section 23**-Average price of adjacent land-Good basis to fix compensation-Ratio to be adopted in dividing compensation between lessor and lessee-Method to be followed in determining present value of compensation payable in future : *Hitkarini Sabha, Jabalpur Vs. The Corporation of the City of Jabalpur*, I.L.R. (1961) M.P. 543 (DB)

- **Section 23** – Determination of compensation – A compulsory acquisition – 33 and odd bighas of land – No willing prudent purchaser agree to purchase on sq. ft. basis – Compensation on the basis of sq. ft. is illegal per se : *State of M.P. Vs. Harishankar Goel*, I.L.R. (1996) M.P. 274 (SC)

- **Section 23** – Just an adequate compensation – Reasonable market value – Factors to be considered – Lands are situated beyond municipal limits and on uneven land – Land was to await sometime for development either for industrial or colonisation – Claimants themselves purchased the land as builders to develop the land but they did

not file their sale deeds which would have furnished best material – They themselves had sold at Rs 0.50 per sq. ft. for a small extent of land – Therefore determining the compensation at Rs. 0.90 per sq. ft. is not correct – Considering the facts compensation determined at the rate of Rs. 4 per sq yard : *State of M.P. Vs. Harishankar Goel*, I.L.R. (1996) M.P. 274 (SC)

- **Section 23-** Market value-Meaning of-Things to be taken into consideration determining it-Post notification sales can be taken into consideration in determining market value : *Mumtazali Vs. The Collector, Sehore*, I.L.R. (1963) M.P. 1067 (DB)

- **Sections 23 and 24-**Principles for determining the amount of compensation for land sought to be acquired-Oral evidence unsupported by documentary evidence-No weight can be attached-Depth of frontage-Matter of importance-Actual lay out of the property at the time of acquisition of properties most advantageous and lucrative-Acquisition of large piece of land-20% of the total land to be left out in working out compensation-Interest to which owner is entitled-Interest at 4% per annum from the date the collector took possession till compensation amount is paid-Evidence Act-Section 45-Expert-Not necessary for a witness to be expert to acquire knowledge professionally-Acquisition by special experience is sufficient : *The Collector, Jabalpur Vs. Nawab Ahmad Yar Jahangir Khan.*, I.L.R. (1973) M.P. 1061 (DB)

- **Section 23(1)-**Principles on which assessment of Compensation to be made-Land used as agricultural land till acquisition-Its potentiality as non-agricultural land not to be ignored-Land Acquisition Act, Section 34 and Civil Procedure Code, Section 152-Award omitting direction regarding interest-Power of Court to correct omission-Civil Procedure Code-Section 34-Not applicable to award of interest in land acquisition cases : *State of M.P. Vs. Man Mohan Swaroop*, I.L.R. (1966) M.P. 746 (DB)

- **Section 23 (2)-**Compulsory compensation payable only regarding property falling under first clause : *The Collector Raigarh Vs. Chaturbhuj Panda*, I.L.R. (1963) M.P. 887 (DB)

- **Sections 23 (2), 23 (1-A) & 28** – Land acquired in 1964, Collector made award on 14-03-66 and reference Court determined compensation on 15-05-75 – Therefore claimants can not get additional benefit of enhanced solatium U/s 23 (2) and interest under proviso to Section 28 which is inserted by amended Act 68 of 1984 : *State of M.P. Vs. Harishankar Goel*, I.L.R. (1996) M.P. 274 (SC)

- **Section 25-** In case of compulsory acquisition- Value of the property in actual condition at the time of expropriation with advantage and possibilities excluding advantage due to carrying out of the claim for the purpose for which it is acquired- Has to be considered : *State of Madhya Pradesh Vs. Ganga Sahai Garg, Gwalior*, I.L.R. (1975) M.P. 1053 (DB)

- **Section 25**- Various methods for arriving at a valuation are provided- The method adopted must be supported by evidence- Section 18- Reference under- Burden of proving that compensation is inadequate is on claimant- Nature and burden of proving that Acquisition Officer was wrong- Depends upon nature of enquiry held by him- Claimant leading no- evidence – Award has to be upheld- Section 25- In case of compulsory acquisition- Value of the property in actual condition at the time of expropriation with advantages and possibilities excluding advantage due to carrying out of the claim for the purpose for which it is acquired- Has to be considered- Absence of development scheme- Site cannot be valued as building site-For valuation as building site- Evidence about building activity of a substantial nature in the neighborhood about the time of issue of notification is necessary- Agricultural land in municipal area- Its potential value as building site can be considered- Section 23- Expression “Land” in- Includes benefits to arise out of land-Compensation for trees and structures meant of agricultural operation- Not to be separately compensated : *State of Madhya Pradesh Vs. Ganga Sahai Garg, Gwalior, I.L.R. (1975) M.P. 1053 (DB)*

- **Section 25(1)** - Court, Power of, to grant compensation at a rate higher than that claimed – Sections 9 and 25 (1) – Claim made in pursuance of notice-cannot be equated to offer- Claimant cannot claim compensation in excess of that made under this provision: *The Collector, Seoni, Vs. Dadoo Yogendra Nath Singh, I.L.R. (1972) M.P. 311 (DB)*

- **Section 26**-No valid reference to court-No jurisdiction in Court to decide objections or to make award under the section : *Sheikh Mohammad Vs. Director of Agriculture, Madhya Pradesh, I.L.R. (1968) M.P. 808 (DB)*

- **Section 30** - Dispute as to apportionment of compensation - Appeal against reference U/s 30 - Question whether property was joint family property or self acquired property – Nothing on records to show that appellant paid consideration for disputed property from his separate funds - No interference required in concurrent findings of Courts that property is joint family property : *Surendra Kumar Vs. Phoolchand, I.L.R. (1996) M.P. 1 (SC)*

- **Section 30** - Dispute as to apportionment of compensation - Disputed property not included in earlier partition suit - Not fatal to reference proceedings U/s 30 – Provisions of order II, Rule 2 of Civil Procedure Code, not applicable : *Surendra Kumar Vs. Phoolchand, I.L.R. (1996) M.P. 1 (SC)*

- **Section 30**-Order of Court on reference under the section-Is a decree : *Rishiraj Singh Vs. Raghubar Singh, I.L.R. (1969) M.P. 981 (DB)*

- **Section 31(2), Third proviso**-No notice under Section 9 issued-Remedy by way of suit is open: *Mst. Sugandhi Vs. The Collector, Raipur, I.L.R. (1968) M.P. 871 (DB)*

- **Section 31 (2)** - Dispute regarding party entitled to receive compensation as well as apportionment - Reference by Collector necessary - Payment of compensation money to parties - Jurisdiction of Civil Court to hear reference not ousted - Power of reference Court to call money back from party : *Hitkarini Sabha, Jabalpur Vs. The Corporation of the City of Jabalpur, I.L.R. (1957) M.P. 130 (DB)*

- **Section 34 and Civil Procedure Code (V of 1908)-Section 152**-Award omitting direction regarding interest-Power of Court to correct omission : *State of M.P. Vs. Man Mohan Swaroop, I.L.R. (1966) M.P. 746 (DB)*

- **Section 49(1)**-Proviso as amended-Proceedings for acquisition along with factory and office building-Collector, Duty of, to refer the matter regarding factory and office building to Court – No power to take possession till reference decided : *Deepchand Vs. The Land Acquisition Officer, Rajgarh, I.L.R. (1966) M.P. 909 (DB)*

- **Sections 50(2) and 18 and constitution of India , Article 226**- Local Authority or the company at whose instance acquisition of property is made – Not entitled to demand a reference in case award given by Land Acquisition Officer is not accepted by them – Such award cannot be challenged by writ petition also –Where such local Authority or company has no notice of Acquisition proceedings – case can be remanded for redetermination of compensation : *M.P. State Co-Operative Oilseed Growers Federation, Seoni-Malwa Vs. State of M.P, I.L.R. (1986) M.P. 497*

- **Sections 51 and 54** – First Appeal – Section 4(1) – Notification for compulsory acquisition of land – Award by land acquisition officer – Section 18 – Reference to the Civil Court seeking enhancement – Appeal by Housing Board – Earlier notification lapsed and hence by second notification land was acquired – Section 23 – Market value of land as on date of second notification has to be taken into consideration – Section 51-A – Parties can produce certified copies of sale-deed to prove market value of the land under acquisition – Land situated adjacent to municipal area – Land though agricultural has potential value – Large chunk of land acquired – Compensation on Sq. ft. basis not proper – Award of reference Court enhancing compensation partly reduced and modified : *Madhya Pradesh Grih Nirman Mandal, Sidhi Vs. Smt. Mira Singh , I.L.R. (2000) M.P. 989 (DB)*

- **Section 53**-Deeming provision in-Does not have effect of proceeding in suit : *Abdul Karim Vs. The State of M.P. Through The Collector, Bilaspur, I.L.R. (1966) M.P. 237 (DB)*

- **Section 53**-Makes Civil Procedure Code applicable to proceedings before Court under the Act and not to proceedings before Land Acquisition Officer-Section 3(d)-land Acquisition Officer not included in definition of “Court”-Land Acquisition Officer, Power of, to review-Section 12-Filling of Award in Collector’s Office-Not pre-requisite to its finality-Words “Shall be filed in Collector’s Office” in-Connotation of-Section 11-

Offer embodied in the award of Collector-Offer becomes irrevocable-Finality of Award not subject to sub-section (2) of Section 12: *Chhangalal Vs. The Land Acquisition Officer, Mahasamund, I.L.R. (1965) M.P. 460 (DB)*

– **Section 53** - and Civil Procedure Code, Order 41, Rule 22 – Appeal against Award – Cross – objection to the Award – Maintainability : *The Collector, Jabalpur Vs. Shri Baboo Lal Mishra, I.L.R. (1960) M.P. 474 (DB)*

- **Section 54** - Appeal against award - Money in deposit in Bank by order of Court - Party declared owner becomes entitled - Money no longer in *custodia legis*-*Ad valorem* Court fee to be paid on memo of appeal : *Chhangalal Vs. Thakore Uttamsingh, I.L.R. (1959) M.P. 750 (DB)*

- **Section 54** – Acquisition of large tract of land – Determination of value on square feet basis – Not proper – Compensation has to be decided keeping in view the price which willing vender might reasonably expect from a willing purchaser – There has to be compensation also for the interest of claimant recognized by the State Government : *State Vs. M/s. Ahad Brothers, I.L.R. (1999) M.P. 1154 (DB)*

- **Section 54**, - Court Fess Act, 1870, Article 1-A of Schedule 1-*Ad valorem* Court Fees-State acquiring land under Land Acquisition Act-Award passed by Land Acquisition Officer challenged in reference under Section 18 of Land Acquisition Act-Reference Court enhancing compensation-Appeal-Award passed by the reference Court is a decree in view of amended provision of Section 26(2)-*Ad Valorem* Court Fee is payable under Article 1-A of Schedule 1 and not fixed Court Fee under Article 11 of Schedule 2 : *State of M.P. Vs. Seth Goverdhandas, I.L.R. (1993) M.P. 41 (FB)*

Land Acquisition Manual, Paragraph 34

- **Directions in**-Not binding on civil Court-Market value to be determined on the evidence tendered : *The Collector Raigarh Vs. Chaturbhuj Panda, I.L.R (1963) M.P. 887 (DB)*

Land Alienation Act, C.P. (II of 1916)

- **Section 4** - Transfer without permission of Deputy Commissioner - Transfer ineffective so long as sanction is not given - Becomes effective from date of sanction - Contract not void - Contract Act, Section 65 - Transferee to restore what he got and not what benefit he derived therefrom : *Smt. Janki Vs. Atmaram, I.L.R. (1959) M.P. 1020*

Land Improvement Loans Act, Madhya Bharat (LII of 1950)

- **Section 7(1)** - (a) and Civil Procedure Code (V of 1908)-Order 21, Rule 84-Officer sanctioning sale delegating power of holding sale to subordinate officer-Bid accepted only when officer sanctioning sale accepts bid-Non-deposit of 1/4 amount of

the bid on the day bid is closed—Does not vitiate sale : *Balmukund Vs. Gaurishankar*, I.L.R. (1970) M.P. 117

Land Revenue Act, C.P. (XVIII of 1881)

- **Section 78 and 83** - and Land Revenue Act, C.P. (II of 1917), Section 80- Settlement entries – Presumption about their correctness Party Challenging their correctness has to prove it- Conclusive, if not set aside within one year- Adverse possession- Doctrine “Possession follows title”- Applies when lands not capable of use and enjoyment and are submerged- Constructive possession is deemed to be with true owner, even through immediately prior to the diluviation – Physical possession is with adverse claimant- Mere assertion of possession- Whether amounts of possession : *Amritlal Vs. Keshriprasad Bilaiya*, I.L.R. (1979) M.P. 464 (DB)

Land Revenue Act-Central Provinces, (II of 1917)

- **Chapter XIII** - Not applicable to *Raiyats* in *Raiyatwari* villages in erst while Princely States : *Manohar Prasad Vs. The State of M.P.*, I.L.R. (1963) M.P. 448 (DB)

- **Section 2(5)** - and C.P. Tenancy Act (I of 1920), Section 2 (2)- Word “Agricultural” in – “Agricultural practice” occurring in section 2(5) - Meaning to be given thereto - Expression “allowed to lie fallow according to agricultural practice”-Meaning of Khudkasht - Not a right - Explanation to Section 2(5) - Applies to cases where originally land was khudkasht and was allowed to lie fallow with the idea of bringing it under cultivation after it regained fertility-Period of rest to regain fertility-Depends upon various factors- Purpose of explanation-Abolition of Proprietary Rights (Estates, Mahals, alienated Lands) Act, 1950, MP (I of 1951), section 2(b)-Does not contemplate modification of definition of khudkasht by taking the meaning of “Agriculture” as given in the C.P. Tenancy Act, 1920-Fiction Created in section 2(5) of the Land Revenue Act attaches to the process and not to the land -Created only for purpose of enabling proprietor to claim sir rights in such khudkasht lands-Interpretation of Statutes-Expression in one Act- Used also in another Act- The same meaning cannot be given-Meaning of words and expressions depends upon context in which they appear-Explanation to section-Not to be read as exception-May be used to extend the meaning, but cannot dispense with the basic condition-Two interpretations possible-That which saves private rights should be accepted - Words and phrases-”Cultivation”-Connotation: *Rao Shankar Pratap Singh Vs. The State of M.P.*, I.L.R. (1959) M.P. 639 (FB)

- **Section 2 (8)** -”Mahal” Meaning of : *Smt. Rupkali Vs. Kedarnath*, I.L.R. (1957) M.P. 450

- **Section 5 (3) and Section 40, first proviso** – Additional Deputy Commissioner Subordinate to Deputy Commissioner for purposes of the Act – No power to review

without sanction of Deputy Commissioner : *Raja Ram Vs. Rani Jamit Kunwar Devi*, I.L.R. (1960) M.P. 253 (DB)

- **Section 13 : Extra Assistant Commissioner** – Not subordinate in rank to sub – Divisional officer : *Shri Deo Prashnathji Mousuma Ghanshyam Bhudu Singhai Vs. Firm Kanhaiyalal Komalchand Godre, Sagar*, I.L.R. (1974) M.P. 699

- **Sections 45 and 47**-Papers prepared under section 47-Have not the same evidentiary value as record of rights prepared under section 45-Are not documents of title-Do not create any title in land : *Subhedar Mritunjaya Prasad Vs. State of M.P.*, I.L.R. (1962) M.P. 949 (DB)

- **Section 56(1)**-All land, to whatever purpose applied and wherever situate” in-Wide enough to include Abadi site : *Radheshyam Agrawal Vs. The State of M.P.*, I.L.R. (1963) M.P. 425 (DB)

- **Section 109-(1)**, - Proviso 1-M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, Section 39-*Thekedari* in the name of one co-sharer-Rights of other co-sharers in *sir* and *khudkasht* lands-Arrangement between *thekedar* and his co-sharers-Arrangement binding on successors or *thekedar*-Land settled with *thekedar* after Abolition of Proprietary Rights-*Thekedar* deemed to have acted on behalf of all members of the family who are entitled to claim *theka* as their joint family property : *Tekram Vs. Amolibai*, I.L.R. (1959) M.P. 975 (DB)

- **Section 109** – Joint family can own *Thekedari* property *Thekedari* property impartible – Members of family have no right to claim partition or share in it – Family arrangement between *Thekedar* and co-sharers-Arrangement binding on *Thekedar* but not on successors : *Hiralal Vs. Chandel*, I.L.R. (1960) M.P. 302 (DB)

-**Section 109**- Protected *thekedar* – Incidents of tenure of a protected *thekedar*-Section 109, proviso – *Theka* impartible-Rights of members of the *thekedar*’s family – Basis of – Section 112-*Theka* joining property of the *thekedar* and his family – Remedy of the members of the family for their share of maintenance-Civil Suit- Maintainability-Abolition of Proprietary Rights (Estate, Mahal, Alienated Lands) Act, Madhya Pradesh 1950-Section 39 (1) and Land Revenue Act, Central Provinces, 1917-Section 107-*Thekedar* recognized as occupancy tenant-Land Revenue Codes, M.P., 1954 and 1959 – Accrual of rights of Bhumidhari and Bhuswami thereunder : *Mustafa Khan Vs. Mst. Hayat BI*, I.L.R. (1981) M.P. 596 (DB)

- **Section 122(1)**-Arrears of Land Revenue-A paramount charge-Does not authorize revenue officer to adopt summary procedure for recovery by selling land : *Narayansingh Vs. The Board of Revenue, M.P. Gwalior*, I.L.R. (1962) M.P. 788

- **Section 127, Rule 1**-Notice for arrears of revenue on defaulter is compulsory-Purchaser of property having charge of arrears of land revenue-Becomes defaulter-

Arrears can be recovered even personally from him : *Narayansingh Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1962) M.P. 788*

- **Sections 127 and 128 and Rule 14**-Sale of property not required to be attached- Personal sanction of Deputy Commissioner necessary-Sale without previous sanction illegal-Not rendered valid by subsequent confirmation by authority whose sanction was necessary-Limitation Act, Articles 12, 95 and 120-Suit for declaration that sale is void and not binding, is governed by Art. 120 and not by Article 12 –Suit to set aside sale on ground of fraud-Suit governed by Art. 95-Jurisdiction-Sale of property without the persons owning them being on record-Court has no jurisdiction to sell the property: *Phoolchand Vs. Mathura Prasad, I.L.R. (1961) M.P. 385*

- **Sections 145 and 146**-Sale void-Applications under the said sections not necessary : *Narayansingh Vs. The Board of Revenue, MP Gwalior, I.L.R. (1962) M.P. 788*

- **Section 188** - “Course of village management” Meaning of - Patta by Lambardar - Not binding if granted during pendency of partition proceedings - Abolition of Proprietary Rights (Estates, Mahals, Alienated lands) Act, Madhya Pradesh, 1950 (I of 1951) – Form prepared under section 13 – Not binding on claims officer : *Bishnooprasad Vs. Dau Tikaram, I.L.R. (1957) M.P. 125 (DB)*

- **Section 202**-Authorities mentioned in-Are *quasi* judicial tribunals of limited jurisdiction-Jurisdiction-Jurisdiction of interior tribunals depends upon fulfillment of condition precedent or upon existence of particular facts-Tribunal cannot give jurisdiction by deciding facts wrongly except when legislature confers powers to decide collateral facts finally : *Shyamkishore Agarwala Vs. State of M.P., I.L.R. (1964) M.P. 563 (DB)*

- **Section 218(4)**-Occupation of land by mining proprietor without sanction of Deputy Commissioner and without offering compensation-Occupation is that of trespasser-Revenue Court has no jurisdiction to determine and award compensation-Action lies in Civil Court : *The Amalgamated Coalfields Ltd. Calcutta Vs. The Board of Revenue MP, Gwalior, I.L.R. (1962) M.P. 210 (DB)*

- **Rules framed under Section 202**-Rule 3(1)-Lease of land containing forest growth-Previous permission is condition precedent-Rule 3(2)-Does not authorize grant of lease-Enables cutting and disposing of forest growth-Abolition of Proprietary Rights Act, Madhya Pradesh-Section 45-Presupposes a valid tenancy : *Gulab Bai Vs. President Board of Revenue, M.P., Gwalior, I.L.R. (1965) M.P. 34 (DB)*

- **Rule 3(1)** of the Rules framed under Section 202-Lease of land containing forest growth-Previous permission is condition precedent : *Gulab Bai Vs. President Board of Revenue, M.P., Gwalior, I.L.R. (1965) M.P. 34 (DB)*

Land Revenue and Tenancy Act, Madhya Bharat (LXVI of 1950)

- **Section 15 and Notification dated 7.5.56 under Section 16**-Power of Government to appoint Naib-Tahsildar and Additional Naib-Tahsildar-Power of Tahsildar-Can be exercised by Additional Naib-Tahsildar after appointment : *Ayyub Khan Vs. Fundilal*, I.L.R. (1969) M.P. 343 (FB)

- **Sections 39 and 91**-Revision arising out of proceedings under Section 91, governed by Section 39 of the Act and not by Section 55 of MP Land Revenue Code, 1959 : *Asafjahan Begam Vs. Mst. Bashir Begam*, I.L.R. (1965) M.P. 278 (DB)

-**Section 39(2)**-Principles applicable under Section 115, Civil Procedure Code apply to revision under section 39(2) of Land Revenue and Tenancy Act : *Asafjahan Begam Vs. Mst. Bashir Begam*, I.L.R. (1965) M.P. 278 (DB)

- **Section 51**-“Person aggrieved” in-Contemplates that that person was party to the proceedings in which order was passed : *Phoolsingh Vs. The Collector of Vidisha*, I.L.R. (1969) M.P. 230 (DB)

- **Section 54 (XVIII)**-*Bataidar*-Not a tenant within the meaning of the section-Section 73, Explanation-Person cultivating land of another not with his own bullocks-Is not a sub-lessee of the land-M.B. Zamindari Abolition Act- Section 38(2), Proviso and Madhya Bharat Land Revenue and Tenancy Act, Section 74(1)-Word “Person” includes an artificial person-The words “other physical infirmity”-Means material or substantial infirmity having an objective existence and is distinct and different from that already mentioned-Principle of *ejusdem generis* not applicable-Constitution of India-Article 226-High Court when can interfere with decision of inferior tribunal on the ground of wrong decision on facts : *Anandji Kalyanji Idol Vs. Daulat Singh*, I.L.R. (1963) M.P. 247 (DB)

- **Section 70** – Contemplates an agreement which is ostensibly an agreement but in effect purports to be a sale : *Leeladhar Vs. Ramsingh*, I.L.R. (1973) M.P. 298 (DB)

- **Section 74**-Civil Court, Jurisdiction of, to decide the issue whether a person is disabled person according to section 74 of Madhya Bharat Land Revenue and Tenancy Act : *Amarsingh Vs. Anopa*, I.L.R. (1970) M.P. 170

- **Section 74 and 54 (XVII)**-Terms “Personal Cultivation” and “to cultivate personally” personally in-Meaning of : *Brijdevi Vs. Manakchand*, I.L.R. (1968) M.P. 846 (DB)

- **Section 74 (2)**- Applicability –Pattas executed before enforcement of the provision – Not invalid for want of registration : *Dalchand Vs. Kamalabai*, I.L.R. (1987) M.P. 374

- **Sections 75 and 76**-Statutory sub-tenant created by Durbar's order in 1934-Sub tenancy terminating in 1954 under section 75, M.B. Land Revenue and Tenancy Act-Sub-tenant continuing in actual occupation under M.B. Sub-lessee's Protection Act, 1955-Sub-lessee entitled to occupancy tenant's rights under M.P. Land Revenue Code, section 185-Such sub-lessee not a trespasser under section 76 of the M.B. Land Revenue and Tenancy Act : *Dhansingh Vs. Nathoo Prasad, I.L.R. (1962) M.P. 295*

- **Section 78** – Conditions necessary for application- Section 70 – Contemplates an agreement which is ostensibly an agreement but in effect purports to be a sale- Combined effect of section 78 and 70 : *Leeladhar Vs. Ramsingh, I.L.R. (1973) M.P. 298 (DB)*

- **Section 78**-Joint tenants holding more than 15 acres of land-Exemption for 15 acres to each individual tenant-Permissibility: *Daryo Vs. Rakhaldas, I.L.R. (1968) M.P. 200 (DB)*

- **Section 82**-Word "sister" in-Meaning of: *Kaveribai Vs. Rewabai, I.L.R. (1967) M.P. 574*

-**Section 91**-Proceedings for recovery of possession under-Questions of title wholly irrelevant-MP Land Revenue Code, 1959 coming into force during the pendency- Proceedings to be governed by the Tenancy Act-Section 39-Revision arising out of proceedings under Section 91, governed by this section and not by Section 55 of MP Land Revenue Code, 1959-Principles applicable under Section 115, Civil Procedure Code apply to revision under section 39(2) of Land Revenue and Tenancy Act : *Asaffjahan Begam Vs. Mst. Bashir Begam, I.L.R. (1965) M.P. 278 (DB)*

- **Section 92**-Proceedings under the rules decided by original Court-during appeal third person impleading himself as party-Appeal allowed-Appeal and revision filed-Trail Court's decision going against that party-Party raising objection as third party-Maintainability of objection : *Rameshwar Dayal Vs. Board of Revenue, M.P. Gwalior, I.L.R. (1969) M.P. 769 (DB)*

- **Sections 140 and 142** - Scope and applicability - Decision given by Tahsildar under section 140 – Final unless got set aside through civil court- Party injured by breach of that order- Remedy is before revenue officer under later part of Section 142 – Condition in which Civil court will have jurisdiction when matter is entrusted to the revenue Court by the provision of the Act- Civil court, Jurisdiction of, to entertain suit for removing encroachment on recognized road or path or common land : *Bhulibai Vs. Ambaram, I.L.R. (1972) M.P. 164*

- **Section 142 and 147**- Civil Court, Jurisdiction of, to entertain suit for removing encroachment on recognized road or path or common land : *Bhulibai Vs. Ambaram , I.L.R. (1972) M.P. 164*

- **Section 149(2)**-Confers powers on revenue officer to apply principles of law of limitation regarding extension of period of limitation : *Brijrajsingh Vs. The Board of Revenue, Gwalior, I.L.R. (1966) M.P. 21 (DB)*

- **Section 149(2)**-Words “Extension of Principles of limitation”in-Indicate wrong drafting or accidental slip : *Brijrajsingh Vs. The Board of Revenue, Gwalior, I.L.R. (1966) M.P. 21 (DB)*

- **Section 149(2)** - and Abolition of jagirs Act, Madhya Bharat (XXVIII of 1951), Section 30-Board of Revenue, Power of, to apply Section 5 of the Limitation Act : *Brijrajsingh Vs. The Board of Revenue, Gwalior, I.L.R. (1966) M.P. 21(DB)*

Land Revenue and Tenancy Act, Vindhya Pradesh, 1953

- **Section 2(2)**-Explanation-Scope of-Section 221-Section in existence on the date of commencement of proceedings-Land Revenue Code, Madhya Pradesh, 1959 coming into force during its pendency-Section being procedural, only that part which is saved by Section 262 of 1959 Code is saved-Alteration in procedure is retrospective unless otherwise provide-Enactment dealing with procedure-Applicable to pending action-Land Revenue Code, Madhya Pradesh, 1959-Section 262(1)-Saves cases pending before State Government or revenue Court from applicability of the Code-Section 262(2)-Applies to cases pending before civil Court but which were triable by revenue Court : *Vansh Bahadur Singh Vs. Kamla Singh, I.L.R. (1969) M.P. 115*

- **Section 220** – Proceedings under the Act – Proceedings governed by the Act and not by the M.P. Land Revenue Code, 1959- Reference made by revenue Court to civil Court – Civil Court bound to answer-Collector or District Judge, power of, to compel Civil Judge to entertain the reference, without party getting the order of the Civil Judge refusing to decide reference set aside : *Bajrang Bali Singh Vs. Shriman Kunwari, I.L.R. (1965) M.P. 241 (DB)*

- **Section 220** - Finding given by civil court in a reference – Finding not to be considered to be of civil court in a suit respecting title- Civil Court acts in consultative or advisory capacity : *Smt. Sarbadia Bai Vs. Ishwardin Singh, I.L.R. (1972) M.P. 1049*

- **Section 221**-Section in existence on the date of commencement of proceedings-Land Revenue Code, Madhya Pradesh, 1959 coming into force during pendency-Section being procedural, only that part which is saved by Section 262 of 1959 Code is saved : *Vansh Bahadur Singh Vs. Kamla Singh, I.L.R. (1969) M.P. 115*

Land Revenue Code M.P. (XX of 1959)

- **and M.B. Ryotwari Sub-lessees Protection Act (XXIX of 1955)**- Expression “Sub-lease” in-Used in broader sense-Includes a lessee whose tenancy is terminated: *Sunderlal Vs. Hema, I.L.R.(1966) M.P. 15 (DB)*

- Appeal or revision provided in the Code- further appeal or revision available in cases arising under Ceiling Act : *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943 (FB)*

-Remedy- Does not provide speedy and summary remedy to Bhumiswami dispossessed of immovable property: *Krishnakumar Das Vs. Balramdas, I.L.R. (1973) M.P. 356*

-Distinction-Distinction between legal proceeding for a right acquired and proceeding for acquisition of right : *Dolumal Vs. State of Madhya Pradesh, I.L.R. (1970) M.P. 930 (DB)*

- Provision not confined only to agricultural land- Also deal with non- agricultural lands situate in urban area- Section 2(k)- Word 'Land' in- Includes everything permanently fastened to earth and which becomes Part of the land- Section 165(1) as unamended – Prohibits making of a will regarding house situated in *Bhumiswami* land- Land does not cease to be held by a *Bhumiswami* because house constructed on it- Land does not cease to be a land held in *Bhumiswami* right- Section 2(k)- Court bound to give effect to corollaries : *Narayan Vs. Mst. Nagubai, I.L.R. (1978) M.P. 178*

- Recognises only one type of tenure-holders, viz, *Bhumiswami* : *Khushilal Moolchand Kachhi Vs. The Board of Revenue, I.L.R. (1970) M.P. 712 (DB)*

- What is a right accrued : *Dolumal Vs. State of Madhya Pradesh, I.L.R. (1970) M.P. 930 (DB)*

- Section 2(i)-Lands held jointly and assessed to land revenue jointly-Land constituted one holding-Joint holders cannot get exemption separately: *Balmukund Vs. Gendalal, I.L.R. (1967) M.P. 421*

- Section 2 (1) (i) – Holding – Requirements of : *Ramsingh Vs. Shankarlal, I.L.R. (1974) M.P. 727 (FB)*

- Section 2(b) – Petitioner-company though carrying on industrial activities but also carrying on agriculture which is not mentioned in the articles of association of the company-Activities pertaining to “agriculture” covered under section 2(b) of the code : *The Bhopal Sugar Industries Ltd., Sehore Vs. The state of M.P., I.L.R. (1984) M.P. 86 (DB)*

– Sections 2(4), 168 and 257 (k)–A lessee under Section 168(2) of the Code is not a tenant as defined under section 2 (Y) of the Code, but a lessee having no statutory right of occupancy tenant : *Hariram Singh Vs. Manohar Rao & Anr., I.L.R. (1992) M.P. 55*

- Section 2(5)-Area of village-is a revenue unit though included within municipal limits : *The State of M.P. Vs. Atmaram, I.L.R. (1970) M.P. 452*

- **Section 2(k)** – Court bound to give effect to corollaries : *Narayan Vs. Mst. Nagubai*, I.L.R. (1978) M.P. 178

- **Section 2(k)** – Definition of land- Includes buildings on land- Land Revenue Code-Does not provide speedy and summary remedy to Bhumiswami dispossessed of immovable property – Section 250- Dominant motive is restoration of possession of building – Section not applicable- Proper remedy is under Section 6, Specific Relief Act- In case of dominant motive- Definition of land does not include building: *Krishnakumar Das Vs. Balramdas*, I.L.R. (1973) M.P. 356

- **Section 2(k)** – Word ‘Land’ in- Includes everything permanently fastened to earth and which becomes part of the land : *Narayan Vs. Mst. Nagubai*, I.L.R. (1978) M.P. 178

- **Section 2(1)(u)**-Revenue Officer defined as an Officer by notification directed to discharge function under any provision of the Code : *Smt. Nirmalabai Vs. Hukan Singh*, I.L.R. (2001) M.P. 790

- **Sections 3 and 170-B**-Provisions cannot be read in piece meal-Mere failure to furnish information as required under this Section would not necessarily render the transfer invalid-Vendee has a further opportunity to explain the reasons of his failure-Orders of the lower Tribunals passed without applying correct law and without making any enquiry under Sections 170-B(3) of the Code-Order set aside-Case remitted for decision afresh : *Dhanna Vs. Nanudi @ Nanki*, I.L.R. (2001) M.P. 780

- **Section 17**-Deputy Collector, appointed as Additional Collector-Does not begin to function as such until the exercise of powers are notified : *Hariram Singh Vs. Kamta Prasad*, I.L.R. (1968) M.P. 68 (DB)

- **Section 17**-Person appointed as Assistant Returning Officer was not Deputy Collector in fact-Does not by itself vitiate election unless election materially affected: *Hariram Singh Vs. Kamta Prasad*, I.L.R. (1968) M.P. 68 (DB)

- **Section 17(2)** - Additional Collector also entitled to hear appeal under section 8 of Samaj ke Kamjor Vargon Ke Krishi Bhumi Dharkon Ka Udhar Dene Walon ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, M.P., 1976 : *Mirza Rashid Beg Vs. Inayatulla Khan*, I.L.R. (1986) M.P. 250 (DB)

- **Section 17(2)**-Additional Collector-Can exercise only the powers mentioned in the section : *Pt. Banarasi Dass Bhanot Vs. Devi Shankar*, I.L.R. (1966) M.P. 554 (DB)

- **Section 17(2) and (3)** – Word ‘Collector’ would include “Additional Collector” – It cannot be said that Collector has made any further delegation: *Kaushal Prasad Kashyap Vs. State*, I.L.R. (1999) M.P. 650

- **Sections 22(2) and 251**-Exercise of powers of Collector by S.D.O.-Notification issued vesting powers of Collector on S.D.O. in matters covered by Section 251-Order of S.D.O. not without jurisdiction : *Chandrika Prasad Tiwari Vs. State, I.L.R. (2001) M.P. 1832*

- **Section 26** : - Word “Disabled” in-Not to be construed narrowly so as to cover only such disability as may be occasioned due to an act independent of volition or person holding rank of Collector : *Girja Shanker Shukla Vs. Sub Divisional Officer, Harda, I.L.R. (1974) M.P. .885 (FB)*

- **Section 28, Proviso** – When attracted : *Mansingh and another Vs. State, I.L.R. (1981) M.P. .251*

- **Sections 31, 32, 33, 41, 43 and 55** – Constitute revenue officers as full-fledged Courts- Governed by provisions of Land Revenue Code and in absence of any provision therein by Code of Civil Procedure if they do not come in conflict with the former- Civil Procedure Code- Section 144- Includes orders as may be passed in writ proceedings: *Dangalia Vs. Deshraj, I.L.R. (1977) M.P. 739 (DB)*

- **Section 35(2)**-Power of Tehsildar to proceed ex-parte-Show-cause notice by Tehsildar directed to be affixed if notice refused to accept the same-Direction of Tehsildar and Rule 14 not complied with by process server-Ex-parte order by Tehsildar rejecting application under Section 35(2) of the Code for grant of a patta stands vitiated-Impugned order and all subsequent proceedings quashed : *Resources Development Institute, Bhopal Vs. State, I.L.R. (2001) M.P. 468*

- **Section 42** - Does not cover an error, omission or defect affecting jurisdiction-Refers to procedural errors or defects : *Manmohanlal Vs. The Board of Revenue, M.P., Gwalior, I.L.R. (1964) M.P. 850 (DB)*

- **Sections 42 and 50** – *Suo motu* revision – Powers can only be exercised if error, omission or irregularity has in fact occasioned a failure of justice and while exercising such powers revisional authority is obliged to serve a notice on other party : *Paramjeet Singh Vs. Principal Secretary, Revenue Ministry, Bhopal, I.L.R. (2000) M.P. 334*

- **Section 43** -Proceedings before revenue court-governed by civil procedure code regarding award of costs tort damages party not pressing for costs before revenue court cannot sue for costs alone in Civil Court : *Ram Narain Vs. Madan Mohan Zira, I.L.R. (1980) M.P. 898*

- **Section 44** - Conditions under which right of Second Appeal is available : *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943 (FB)*

- **Section 44**- Words “any order passed in first appeal” in- Are wide enough and include any appellate order whether passed under sub-section (1) or (2) : *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943 (FB)*

- **Section 44 (1)** – Competent Authority is Revenue Officer- Appeal lies to authority competent to hear appeals under this provision : *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943 (FB)*

- **Section 44 (1)** - Competent Authority not a Revenue Officer-Appeal lies to Board of Revenue : *Ravishankar Vs. Board of Revenue, I.L.R. (1973) M.P. 943 (FB)*

- **Section 46(e)**-Takes away right of appeal against an order of appointment of Patwari passed under section 104(2) of the Code – Right of appeal against order of dismissal of Patwari –Not taken away : *Ramkishan Vs. State of M.P. Through the Secretary, Revenue Department, Bhopal, I.L.R. (1981) M.P. 124 (DB)*

- **Section 50** – Board of Revenue, Power of, to set aside illegal and irregular order of lower Court – No right in a party to claim revision of order on grounds mentioned in the section – Section 50, Proviso 3 – Limitation prescribed not applicable to the Board acting *suo motu* even though application is made by a party : *Harprasad Vs. Board of Revenue, M.P. Gwalior, I.L.R. (1965) M.P. 855 (DB)*

- **Section 50** – Power of *suo-motu* revision – No bar of limitation but has to be exercised within reasonable time – Patta of land granted in favour of petitioner – By virtue of long lapse of time petitioner spent huge amount and constructed house in which he is residing – Exercise of *suo-motu* power wholly unwarranted : *Sita Ram Vs. State, I.L.R. (1999) M.P. 820*

- **Section 50** – Revision – Jurisdiction of Board of Revenue – Not restricted to order passed under the Code but extends to order passed by Revenue Officers under any enactment : *State Vs. M/s. Triyug Talkies, Khandwa, I.L.R. (2000) M.P. 786*

- **Section 50** - Revision against order of consolidation officer- Revision lies to Collector : *Rajendra Bharati Vs. Shri M.P. Dube, Member, Board of Revenue, M.P. Gwalior, I.L.R. (1977) M.P. 1176 (DB)*

- **Section 50** - SDO while acting as Appellate Authority under the Nirvachan Rules does not function as Revenue Officer and his order as such not revisable by Commissioner in revisional powers under Section 50 of the Code-Order impugned set aside : *Smt. Nirmalabai Vs. Hukan Singh, I.L.R. (2001) M.P. 790*

- **Sections 50 and 51** – Revision and Review – Powers of – Should only be exercised within reasonable time and not after lapse of about nine years from the date of passing the order under review : *Ravi Narayan Vs. State, I.L.R. (2000) M.P. 1329*

- **Sections 50 , 51 and 170-B** – Failure to furnish information by the transferee within stipulated period – Enquiry held and orders passed by S.D.O. – Review thereof : *Ravi Narayan Vs. State, I.L.R. (2000) M.P. 1329*

- **Section 51** - and Abolition of Proprietary Right Act, Madhya Pradesh 1950 (I of 1951), Section 6 (2) - Order passed under section 6(2) of abolition of proprietary Right Act, Madhya Pradesh, 1950 – Can be reviewed under Section 51 of the Madhya Pradesh, Land Revenue Code : *Govind Prasad Agrawal Vs. State of M.P., I.L.R. (1972) M.P. 238 (DB)*

- **Section 51-** Notice to parties before review necessary : *Mohammad Bashir Khan Vs. The Board of Revenue M.P., Gwalior, I.L.R. (1973) M.P. 73 (DB)*

- **Section 51-** Power of review retrospectively conferred and is available in respect of orders made by Revenue Officers under any law for the time being in force : *Govind Prasad Agrawal Vs. State of M.P., I.L.R. (1972) M.P. 238 (DB)*

- **Sections 51** – Review – Enquiry conduct by S.D.O. earlier ended in an order in favour of petitioner that consideration was passed and sanction of Collector was obtained for the transfer – Review of said order by succeeding S.D.O. after nine years – Cannot be approved of : *Ravi Narayan Vs. State, I.L.R. (2000) M.P. 1329*

- **Section 51-** Revenue Officer subordinate to Collector or Settlement officer- Review by such officer- Previous sanction in writing of superior officer necessary- Notice to parties before review necessary- Section 147 – Recovery of *taccavi* loan – Power of Tahsildar to issue process under section 147 – Rule 8 framed under Section 258, clause XXXIV- Tahsildar, Power of to confirm sale- No such power vests in Sub-Divisional Officer and the Naib-Tahsildar : *Mohammad Bashir Khan Vs. The Board of Revenue M.P., Gwalior, I.L.R. (1973) M.P. 73 (DB)*

- **Section 51(1) and (3)-** Additional Tahsildar whose office remains unfulfilled-Not a predecessor in office of Tahsildar- Collector is his successor : *Hiralal Vs. The Board of Revenue, Madhya Pradesh, Gwalior, I.L.R.(1967) M.P. 185 (DB)*

- **Section 56-** Definition of “Order” in - Applies to the whole of the chapter : *Govind Prasad Agrawal Vs. State of M.P., I.L.R. (1972) M.P. 238 (DB)*

- - **Section 57(1),** - Effect of : *Her Highness Mehr Taj Nawab Sajeda Sultan, Ruler of Bhopal Vs. State of M.P., I.L.R. (1981) M.P. 452 (DB)*

- **Section 57(1), Proviso** – Nature of “Rights” preserved thereunder – Subsequent memorandum issued by state Government merely exempt land Revenue : *Her Highness Mehr Taj Nawab Sajeda Sultan, Ruler of Bhopal Vs. State of M.P., I.L.R. (1981) M.P. 452 (DB)*

Section 57(1) - Saves right of a person existing at the time of commencement of the Act : *Raghubar Singh Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 385 (FB)*

- **Section 59**, - Clause 5, as amended-rule 14(3), framed under it-Authority which can fix the premium : *Gandharv Land and Finance (Private Ltd., Bhopal Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1970) M.P. 26 (DB)*

- **Section 59 (1)** – Condition under which deeming clauses comes into operation : *State of Madhya Pradesh Vs. Shri Poonam Chand, I.L.R. (1971) M.P. 13 (DB)*

- **Sections 59(1)**, - 138, 139, 247 and Land Revenue Code (Amendment Act) M.P. (XXV of 1987), Land under Mining Leases Quarry Leases Assessment Rules, M.P., 1987 and Constitution of India, article 14-Section 59 (1) does not Levy or impose any land revenue- Amending Act declared within legislative competence of State Legislature- Mining Lessee- Not liable to pay land revenue for land held under mining lease- New Assessment Rules- Assessment rates arbitrarily fixed Rules unreasonable, invalid & violative of Article 14 of Constitution- Retrospective operation- Rules cannot be given retrospective effect- Natural Justice- Opportunity of hearing not given in respect of Assessment- Assessment made contrary to rules of natural justice-Assessment order and demand notice quashed : *M/s Satna Stone Lime & Co., Calcutta Vs. State of M.P., I.L.R. (1991) M.P. 200 (DB)*

- **Section 59 (2)** – Words “is diverted” in – Used without reference to time – Diversion of land taking place prior to the Code – Land can be assessed on the basis of diversion after coming into force of Code – Section 59 (1) – Condition under which deeming clause comes into operation – Interpretation of Statute- Prospective statute- Can rely on past acts for fastening liability or conferring benefit on a person Statute using present tense for describing certain set of facts-User of present tense is to express a hypothesis, without regard to time : *State of Madhya Pradesh Vs. Shri Poonam Chand, I.L.R. (1971) M.P. 13 (DB)*

- **Section 59(2)** – Grant of quarrying lease- Does not amount to diversion- Grant of mining lease- Does not vest title in the lessee- Title continues with holder of land- Section 140- Re-assessment can be prospective and not retrospective : *Asbestos Cement Ltd. Kymore Vs. State of M.P., I.L.R. (1975) M.P. 817 (DB)*

- **Section 104(2)** - Confers power on Collector to appoint Patwari –General Clauses Act, M.P. – Section 16-Expression ‘Power to appoint’ – Includes power to dismiss-land Revenue Code, M.P., 1959 –Section 46(e)-Takes away right of appeal against an order of appointment of Patwari passed under section 104(2) of the code – Right of appeal against order of dismissal of Patwari – Not taken away - Appeal - Right of appeal – Is a statutory right – Cannot be taken away by assumption or analogy – Can be taken away only by a statute : *Ramkishan Vs. State of M.P. Through the Secretary, Revenue Department, Bhopal, I.L.R. (1981) M.P. 124 (DB)*

- **Section 110** – For mutation for five months while as per law he is required to dispose of the application either why in one month – Plea that complainant wanted to

mutate more land than his entitlement hence delay – Cannot be accepted : *Shyam Lal (Since Deceased) Through His L.R. Arun Kumar Pandey Vs. State, I.L.R. (2000) M.P. 870.*

- **Section 117**-Presumption of correctness-Self-serving statements of a party can not rebut clear entries in revenue records-Plaintiff living separately-Partition of joint property cannot be presumed on ground that plaintiff is living separately-Decree of declaration and partition granted by Trial Court restored : *Narayan Vs. Pannalal , I.L.R. (2001) M.P. 1729*

- **Section 131(1)** – Does not bar jurisdiction of Civil court- Section 131 (2) – Contemplates suit by claimant for establishment of right if not recognized by Tahsildar – Suit for perpetual injunction lies under general law at the instance of party on whose land right of way is declared- Section 257- Decision of Tahsildar under Section 131 (1) – Not covered by the Provision-Words “Except as otherwise provided in any other enactment for the time being in force” in- Preserves pre-existing right : *Mahant Gopidas Vs. Ramkrishna Pande, I.L.R. (1973) M.P. 167*

- **Section 137**-Not applicable to amount due from employer under section 8 of the Employees provident Funds Act : *M/s Prabhulal Patiram & Co., Bidi Factory, Raipur Vs. Industrial Tribunal, M.P. Indore, I.L.R. (1966) M.P. 54 (DB)*

- **Section 137 and 152**-The Words “The land sold for arrears of land revenue” and qualifying words “due in respect thereof”-Show that sale for recovery of land revenue conveys land free of all encumbrances: *State Bank of Indore, Indore Vs. Regional Providing Fund Commissioner, Indore, I.L.R. (1966) M.P. 559 (DB)*

- **Section 139**- Land Revenue not falling due- Notice of demand not served on Bhumiswami- There is no default in payment on the part of Bhumiswami: *Seth Kantilal Vs. Ramchandrarao, I.L.R. (1977) M.P. 134*

- **Section 140**- Re-assessment can be prospective and no retrospective : *Asbestos Cement Ltd. Kymore Vs. State of M.P., I.L.R. (1975) M.P. 817 (DB)*

- **Section 147**- Recovery of *taccavi* loan- Power of Tahsildar to issue process under the Section : *Mohammad Bashir Khan Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1973) M.P. 73 (DB)*

- **Section 150 and 155**- Expression ‘Arrears of land revenue’ and ‘Moneys recoverable as an arrears of land revenue’ – Distinction between- Section 150(2) and (3) – Arrears of land revenue- Recovery of- Aggrieved party’s remedy before Sub-Divisional Officer- Remedy of a Civil Suit- Constitution of India- Article 226(3) and Section 58(2) of the Constitution (42nd Amendment) Act, 1976 – Remedy of a Civil suit contemplated by section 150(3) of the land Revenue Code, M.P. 1959- Is an alternative remedy- Land Revenue Code, Madhya Pradesh, 1959- Section 155- “Moneys

recoverable as an arrears of land revenue”- Proceedings before Sub-Divisional Officer and Civil Suit not available- Civil suit not an alternative remedy – Section 257- Question whether land revenue claimed is really due or not-Jurisdiction of the Sub- Divisional Officer to decide- Bar of suit : *Manoharlal Vs. State of M.P., I.L.R. (1978) M.P. 710 (FB)*

- **Section 153** – Rights or occupancy tenant-Acquisition of sub-tenancy created by widow having limited interest – Divested of her interest on remarriage - Possession of sub tenant would be as trespasser-No accrual of rights of occupancy : *Dalchand Vs. Kamalabai, I.L.R. (1987) M.P. 374*

- **Sections 158, 185, 189, 190 and Transfer of Property Act (IV of 1882), Section 53-A**-Bhumiswami rights-Land mutated on basis of an unregistered sale-deed- Unregistered sale-deed does not pass any title-Defendant does not claim to be occupancy tenant-Cannot be conferred Bhumiswami rights as not covered under any of the clauses envisaged in Section 185 of M.P. Land Revenue Code-Order of mutation illegal-Has to be ignored : *Ram Lal Vs. Mangal Singh, I.L.R. (2001) M.P. 1542*

- **Section 159**-Sub-Iessee continuing in possession on 2-10-59-Becomes occupancy tenant, though sub-lease not subsisting and suit for ejectment pending-Entitled to benefit of the section : *Sunderlal Vs. Hema, I.L.R. (1966) M.P. 15 (DB)*

- **Section 162**-Rules-Rule 4(1) and (2)-No application for allotment by Co-operative Societies of landless persons or by landless persons-allotment to be made by auction-Method of allotment by auction not followed-Collector to allot with approval of Commissioner-Amending Act, 1964-Does not preserve applications previously filed-Transactions past and closed-Statute after repeal completely obliterated as if never enacted-Repeal does not affect right acquired or accrued and not mere hope of expectation of or liberty to apply for acquiring right-Distinction between legal proceeding for a right acquired and proceeding for acquisition of right-What is a right accrued : *Dolumal Vs. State of Madhya Pradesh, I.L.R. (1970) M.P. 930 (DB)*

- **Section 164**, - as amended-Not retrospective-Interpretation of Statutes-Test to be applied to see whether statute is prospective or retrospective-Necessary intendment regarding retrospective application to be gathered or collected from language employed in statute and not from “Spirit” of the statute-Constitution-Article 14-Things to be considered in determining whether statute contravenes Article 14: *Mst. Shanti Bai Vs. Biharilal, I.L.R. (1967) M.P. 34 (DB)*

- **Section 164 before amendment**-Succession opening before amendment of Section 164-Succession to be governed by unamended Section 164 and not by Hindu Succession Act : *Raja Ram Vs. Dindayal, I.L.R. (1969) M.P. 80*

- **Section 164-** Original landlord died prior to Amending Act, M.P., 1961, whereby Section 164 was deleted- Succession opened on the death of original landlord- Succession has to be decided as per the unamended provision i.e. Section 164 as it then stood in the act-Revenue authorities erred in deciding the question of succession on the law prevalent after deletion of Section 164, M.P. Act, 1982 : *Smt. Nirmalabai Vs. Hukan Singh, I.L.R. (2001) M.P. 790*

- **Section 164-** Vires of Section 164(1) and (2) (before amendment)-Section not retrospective- Sub-section (2)- Not dependent on sub-section (1) or a proviso to sub section (1) – Effect of death of tenure- Holder before or after coming into force of the Code- Death or remarriage of female heir- Does or does not divest her of her property – Mode of succession after death of female tenure holder- Section 164(2)(c) – Has wider operation- Female *Bhumiswami* inheriting as widow or as mother or father’s mother or father’s father’s mother- Property must have at one time belonged to her husband – Hindu Succession Act, 1956- Section 4(2) – Words “Tenancy rights” – Whether includes *Bhumiswami* or *Bhumidhari* tenure - holder : *Nahar Vs. Mst. Dukalhin, I.L.R. (1975) M.P. 753 (FB)*

- **Section 165(1)**, as unamended- Prohibits making of a will regarding house situated in *Bhumiswami* land: *Narayan Vs. Mst. Nagubai, I.L.R. (1978) M.P. 178*

- **Section 165(1)-** Land does not cease to be held by a *Bhumiswami* because house constructed on it- Land does not cease to be a land held in *Bhumiswami* right : *Narayan Vs. Mst. Nagubai, I.L.R. (1978) M.P. 178*

- **Section 165 (2) (b)** – Mortgage not in accordance with the requirements of – Mortgage is not valid –Restoration of respective benefits to mortgagor and motgagee equitable : *Haji Fatma Bee Vs. Prahladsingh, I.L.R. (1984) M.P. 259*

- **Section 165 (4)(a)** – Not applicable since no ceiling limit fixed by the rules framed under the Code : *Jagan Vs. Harakchand, I.L.R. (1978) M.P. 288*

- **Section 165(4)(b) and 170-**Right of distant heir to apply for setting aside transfer made in contravention of Section 165(4)(b)-Liability of petitioner to pay the consideration of the transfer : *Laxmi Prasad Vs. Gajadhar Prasad, I.L.R. (1970) M.P. 721 (DB)*

- **Section 165(4)(b)-**Prohibition against transfer of part of holding of *bhumiswami* : *Laxmi Prasad Vs. Madan Mohan, I.L.R. (1981) M.P. 58*

- **Section 165 (4)(b)-**Proviso – Word ‘His entire holding’ in – Meaning and scope of : *Laxmi Prasad Vs. Madan Mohan, I.L.R. (1981) M.P. 58*

- **Section 165(4)(b) -** Transfer of *Bhumiswami* lands –Restrictions- Transfer in pursuance of an agreement to sell made prior to restriction – Validity of – Transfer of

Property Act, 1882-Section 54-Agreement to sell immovable property-Whether creates any interest therein-Contract Act, Indian, 1872-Section 56-Doctrine of frustration of contract –Whether applicable to a contract for sale of Bhumiswami lands – Subsequent legislative restrictions – Whether parties are absolved from its performance-Interpretation of statutes-doctrine of of frustration – Illustration of : *Narain Prasad Vs. Premsing*, *I.L.R. (1981) M.P. 137*

– **Section 165 (4)(5)** and Contract Act–Section 23–Forbidden by law via section 165 (4)(b) of the MPLRC was deleted subsequently by amendment on 23.4.1964 and consideration under the agreement was made payable till 01.05.1964 after the date of omission of prohibition and possession was to be delivered on execution of Sale deed-Under circumstances–Suit agreement can not be construed as being hit by section 165 (4)(b) of MPLRC or section 23 of the Contract Act–As material date is date of transfer and not the date of contract : *Basantilal Jagannath Mahajan Vs. Rameshwar Prasad Nanoolal Mahajan*, *I.L.R. (1993) M.P. 584*

- **Section 165(6)** - and Transfer of Property Act, Section 5-Transfer-Transfer occurring in Section 165(6) has to be liberally construed so as to include every contingency-It should not be read in the light of definition of transfer given in Section 5 of Transfer of Property Act : *Chambaram S/o Gangaram Vs Chanda.*, *I.L.R. (1993) M.P. 171*

- **Section 165 (6)** - and Transfer of Property Act, 1882, Section 53-A–Transfer of land belonging to a member of aboriginal tribe to a person not belonging to such tribe without permission of Collector, prohibited–Possession of land delivered in pursuance of agreement to sell without obtaining permission from Collector–Doctrine of Part Performance cannot protect the possession as transfer in Section 165(6) includes agreement to sell also : *Mewalal Kanhaiyalal Vs. Jankibai*, *I.L.R. (1993) M.P. 604*

- **Section 165(6)** - and Contract Act, Indian (IX of 1872)- Section 23 and Transfer of Property Act, 1961, Section 53-A-Use of the word “Transferrable” brings an ‘agreement to sale’ within the purview of Section 165(6)-Vendee not member of aboriginal tribe-Agreement void being in violation of Section 165(6) - Past performance-On the basis of a void contract equity for protection of possession cannot be claimed : *Ram Kishore Vs. Smt. Battoo Bai* , *I.L.R. (2001) M.P. 1225*

- **Section 165(6)** – Agreement for sale of land by an aboriginal to a non-aboriginal without previous sanction of Collector- Sale is void- Transfer of Property Act, 1882-Section 53-A- Not applicable where transaction is void or a nullity : *Radhelal Vs. Punaram*, *I.L.R. (1979) M.P. 377*

– **Section 165(6)**–Sale of house by a member of aboriginal tribe without obtaining permission from Collector–Not hit by Section 165(6) : *Mewalal Kanhaiyalal Vs. Jankibai*, *I.L.R. (1993) M.P. 604*

- **Section 165 (6)**-Suit filed against defendant who is the member of aboriginal tribe for declaration of title by adverse possession-Defendant admitting the claim in his written statement-Suit dismissed by Trial Court as accepting the claim of plaintiff would result in extinction of defendant's title in violation Section 165(6) of M.P. Land revenue Code-Title of member of aboriginal tribe cannot be extinguished by adverse possession-Appeal dismissed : *Chambaram S/o Gangaram Vs. Chanda, I.L.R. (1993) M.P. 171*

- **Section 165 (7)** : - Assessment made in respect of a portion of land held in Bhumiswami right irrespective of area-Such parcel of land would constitute a holding : *Ramsingh Vs. Shankarlal, I.L.R. (1974) M.P. 727 (FB)*

- **Section 165 (7)** – No lack of jurisdiction in court to attach and sell even though case falls under this provision : *Akhechand Vs. Motilal I.L.R. (1974) M.P. 972*

- **Section 165 (7)** – The word “Holding” in- Has to be given same meaning as in Section 2 (1) (i), unless there is anything repugnant in the subject or context- Section 2 (1) (i) – Requirements of holding – Section 2 (1) (i) Portion of land” – Meaning of – Section 165 (7) – Assessment made in respect of a portion of land held in *Bhumiswami* right irrespective of area- Such parcel of land would constitute a holding- Interpretation of Statutes- Words clear- Intention to be gathered as expressed in unambiguous and clear words : *Ramsingh Vs. Shankarlal, I.L.R. (1974) M.P. 727 (FB)*

- **Section 165(7) (a)**-Applicable to sales in pending execution where code came in to force: *Balmukund Vs. Gendalal, I.L.R. (1967) M.P. 421*

- **Section 165 (7) (a)** – Applies to a case in which sale is yet to take place : *Ithoba Vs. Bhagchand, I.L.R. (1965) M.P. 293 (DB)*

- **Section 165 (7) (a)** – Applies to pending proceedings in which attachment is made even prior to the coming into force of the Code and in which sale is yet to take place – Getting property sold in pursuance of attachment – Not a vested right – Interpretation of Statute – Retrospectivity – Statute retrospective if dealing with procedure or if there are express words or necessary intendment – Principle – Each word to be given due weight – No word to be considered superfluous : *Ithoba Vs. Bhagchand, I.L.R. (1965) M.P. 293 (DB)*

- **Section 165(9)** – Right of a Co-operative Society to sell land belonging to an aboriginal for the recovery of loan advances – Is regulated by provisions of Section 41-A (5) of M.P. Co-operative Societies Act, 1960 – Civil Procedure Code – Respondent's right to challenge adverse finding in second appeal under Order 42, Rule 22 – Is controlled by Section 100 read with Order 42, Rule 1: *Smt. Chandrawati Vs. Ganesh Prasad, I.L.R. (1999) M.P. 39*

- **Sections 168, 169**-Batai arrangement also covered under the term ‘lease’-Plaintiff has no right to evict the defendant-Lower appellate Court not justified even in partly

decreeing the suit-Entire suit dismissed-Judgment & decree of Trial Court restored : *Mansingh (Deceased) Through LRs. Vs. Kalyan Singh , I.L.R. (2001) M.P. 1034*

- **Section 168 (2) (v), 109, 120 and 250**—Bhumiswami under physical or mental disability—Can lease out whole or any part of his holding—Pleading and proof of physical or mental disability required—In absence of evidence it cannot be held that plaintiff was subject to physical or mental disability: *Khadak Singh Vs Hulkar Singh @ Chota Singh, I.L.R. (2003) M.P. 537*

- **Section 168 (2) (v), 109, 120, 250**—Land leased out unauthorisedly and the lessee also allowed to continue in possession—Lessee became Bhumiswami—Lower Appellate Court rightly dismissed the suit : *Khadak Singh Vs Hulkar Singh @ Chota Singh, I.L.R. (2003) M.P. 537*

- **Section 168 (5)** – Applicability: *Ram Krishna das Vs. Mahila Shanker Purwali, I.L.R. (1976) M.P. 614 (DB)*

- **Section 168 (2)** - Headings of section not attracted person holding land becomes occupancy tenant- Section 168 (4) – Provides for ejectment of a tenant of a disabled Bhumiswami – Section 257- Jurisdiction under, to be treated as exclusive unless provision is found to grant jurisdiction to civil Court- Sub-Divisional Officer alone has jurisdiction to eject tenant of disabled Bhumiswami and not civil court for claiming benefit under Section 168(2)(v) – Tenant has to move Sub-Divisional officer and not civil Court : *Narayan Rao Vs. Shivram, I.L.R. (1972) M.P. 324*

- **Section 168 (2)(v)** – For claiming benefit under-Tenant has to move Sub-Divisional Officer and not Civil Court : *Narayan Rao Vs. Shivram, I.L.R. (1972) M.P. 324*

- **Section 168 (4)**-Provides for ejectment of a tenant of a disabled Bhumiswami : *Narayan Rao Vs. Shivram, I.L.R. (1972) M.P. 324*

- **Section 169**-Applicable to leases made after Code came into force-Cannot have retrospective operation: *Ranchhodprasad Vs. Nathuprasad, I.L.R. (1969) M.P. 997*

- **Section 170**- Liability of petitioner to pay the consideration of the transfer : *Laxmi Prasad Vs. Gajadhar Prasad, I.L.R. (1970) M.P. 721 (DB)*

- **Sections 170-A, 170-B and 257-A**, - Constitution of India, Articles 14, 19 (1), (f), (g), (21) 254 and Entry 18 of State List of Seventh Schedule – Sections 170-A, 170-B and 275-A – Are Constitutionally valid and are not Violative of Articles 14, 19 (1) (f) (g) or 21-No repugnance between section 170- B and any of the Central Acts – Presumption arising under Sub-Section (2) of Section 170-B-Final order has to be passed under Sub-Section (3)-Procedure Prescribed, Is fair and Reasonable – No arbitrariness and no usurpation of Judicial functions : *Dhirendra Nath Sharma Vs. State of M.P., I.L.R. (1986) M.P. 119 (DB)*

- **Sections 170(B)(3)** – Failure to furnish information by transferee – Land would not automatically revert back to the original holder in absence of a detailed enquiry in the matter : *Ravi Narayan Vs. State, I.L.R. (2000) M.P. 1329*

- **Section 170-B(1)(2)** - Reversion of land of members of aboriginal tribe, Section 170-B(1) requires notifying information by non aboriginal who is in possession of land belonging to aboriginal tribe as to possession-Non submission of information leads to presumption that person has been in possession without lawful authority-Order of reversion passed by S.D.O. on the basis of presumption-Held-Presumption is rebuttable-S.D.O. did not consider contentions of petitioners nor advert to question that whether presumption has been rebutted or not-Order of reversion quashed being contrary to provisions of law-Matter remanded back to S.D.O. for fresh enquiry in accordance with law : *Atmaram Vs. State of M.P., I.L.R. (1994) M.P. 336 (DB)*

- **Section 170-B, Section 170-C and 170-D, Sub-section (3)** – Proviso – Inserted by the legislative act of Governor in exercise of powers conferred by sub-paragraph (1) of paragraph 5 of the Constitution of India – Are applicable to agricultural land belonging to member of tribe declared aboriginal tribe situated in the schedule area notified in terms of Clause 6 or Vth Schedule to the Constitution of India – Land belonging to a member of tribe declared aboriginal tribe situated out side schedule area are governed by provisions of Section 170-B as originally enacted, therefore directions to determine and pay compensations instead of return the lands belonging to member of aboriginal tribes are erroneous – “Agricultural land” – Land recorded as Bhoomi Swami land for agriculture kept fallow for two years or put to non agriculture use – Does not ceased to be agricultural land for the purposes of Section 170-B of the Code, unless the said character is changed in accordance with the procedure laid down in Section 172 – Sub-section (2) of Section 170-B – Person in possession of land belonging to aboriginals failed to furnish information in stipulated time under Section 170-B (1) to justify possession – Results in statutory consequences as provided in sub – section (2) of Section 170 : *Lal Captan Lal Vs. Board of Revenue, I.L.R. (1999) M.P. 1*

- **Section 178** - and Constitution of India, Article 226-Decree declaring rights of the parties does not become infructuous for want of its execution for 12 years-Prayer for partition of agricultural land in accordance with such decree granted by Tahsildar – Sub – Divisional Officer, Commissioner and Board of Revenue holding declaratory decree as infructuous and refused prayer for partition – Error of law apparent on the face of the record-Orders of Revenue tribunals quashed and order of Tahsildar upheld : *Rahman Khan Vs. Board of Revenue, M.P., Gwalior, I.L.R. (1984) M.P. 509*

- **Section 178**, - Proviso-Revenue Officer, Jurisdiction of, to decide question of title-Procedure to be followed if such question is raised: *Paitram Patel Vs. The Board of Revenue, I.L.R. (1970) M.P. 597(DB)*

- **Section 178** – Power of Revenue Officer to partition landed property-Is an enabling provision-Power of civil court to partition same type of property : *Kanhaiya Vs. Mst. Lilabai, I.L.R. (1971) M.P. 165*

- **Section 178**-Revenue Officer, Power of, to allot holding to one and compensation to another : *Kanhaiya Vs. Mst. Lilabai, I.L.R. (1971) MP 165*

- **Section 178**- Revenue Court, Power of, to effect mutation on the basis of private partition- Civil Court, Power of, to direct making of mutation to revenue Court : *Godavaribai Vs. Gogilal, I.L.R. (1973) M.P. 318*

- **Section 178**-Suit property is agricultural land and thus partition would not be effected by Civil Court-Suit for declaration simplicitor maintainable-Judgement and decree of lower appellate Court upheld : *Shyam Sunder Vs. Bhailal, I.L.R. (2004) M.P. 589*

- **Sections 179, 180 and 240** - and Contract Act, Indian (IX of 1872), Sections 23 and 74 – Agreement to sell all standing jungle by a Bhumiswami- Agreement is void and unenforceable-Damages-Measure of – Agreement to sell for certain amount stipulating damages of exorbitant amount in case of breach-Stipulation is by way of penalty and not liquidated damages-proof of actual damages suffered, necessary : *Sardar Gurbax Singh Gorwara Vs. Smt. Begum Rafiya Khurshid, I.L.R. (1981) M.P. 127 (DB)*

- **Section 185**-Conditions to be satisfied for claiming of occupancy right by sub-lessee-Madhya Pradesh Land Revenue Code and Madhya Bharat Ryotwari Sub lessees protection Act-Expression “Sub lessee” in-Used in broader sense-Includes a lesee whose tenancy is terminated-M.P. land Revenue Code-Section 159-Sub-lessee continuing in possession on 2-10-59-Becomes occupancy tenant, though sub-lessee not subsisting and suit for ejectment pending-Entitled to benefit of the section : *Sunderlal Vs. Hema, I.L.R. (1966) M.P. 15 (DB)*

- **Section 185** – Contemplates two kinds of sub-lessees- Sub-lessees granted protection- Leases coming to an end sub-lessees protected : *Ram Krishna das Vs. Mahila Shanker Purwali , I.L.R. (1976) M.P. 614 (DB)*

- **Section 185**-M.B. Land Revenue and Tenancy Act, 1954-Sections 75 and 76-Statutory sub-tenant created by Darbar’s order in 1954-Sub-tenancy terminating in 1934 under section 75, M.B. Land Revenue and Tenancy Act-Sub-tenant continuing in actual occupation under M.B. Sub-lessee’s Protection Act, 1955-Sub-lessee entitled to occupancy tenant’s rights under M.P. Land Revenue Code, section 185-Such sub-lessee not a trespasser under section 76 of the M.B. Land Revenue and Tenancy Act: *Dhansingh Vs. Nathoo Prasad, I.L.R. (1962) M.P. 295*

- **Section 185** – Person not holding land as *Ryotwari* sub-lessee-Person losing possession because of wrongful act of opposite party – Person can still claim benefit : *Khanderao Vs. Ganpatrao, I.L.R. (1965) M.P. 97 (DB)*

- **Section 185-** Requirements which sub-tenant had to satisfy to get occupancy rights : *Ram Krishna das Vs. Mahila Shanker Purwali I.L.R. (1976) M.P. 614 (DB)*

- **Section 185-** Tenant holding over after termination of tenancy, but not dispossessed- Entitled to benefit of the section-Quit notice-Not sufficient to terminate status as ordinary tenant: *Gutti Padka Vs. Mohanlal, I.L.R. (1969) M.P. 299*

- **Section 185(1)(i)-** The words “holds any land” in – Connotation of – Ordinary tenant under M.P. Land Revenue code, 1954 - Continuing in possession after his tenancy came to an end before commencement of land Revenue code of 1959- Cannot acquire status of occupancy tenant : *Balaji Vs. Derha, I.L.R. (1982) M.P. 644 (DB)*

- **Section 185 (1)(ii) (b) –** Person in possession on the date when code came into force- Person will get advantage of being occupancy tenant : *Soorajmal Vs. Rama, I.L.R. (1974) M.P. 282 (DB)*

- **Section 185 (1) (ii) (b) –** Right under, claimable by person holding land as *Ryotwari* sub-lessee and who has not renounced that status – Person asserting hostile title to landlord and abandoning his status – Person not holding as *Ryotwari* sub-lessee- Person losing possession because of wrongful act of opposite party – Person can still claim benefit : *Khanderao Vs. Ganpatrao, I.L.R. (1965) M.P. 97(DB)*

- **Section 185 (3) -** and Tenancy Act, Madhya Bharat (LXVI of 1950)- Section 74- Exclusion created by sub section (3) Operative on sub-leases granted under Section 74, M.B. Tenancy Act when Code came into force even through wider connotation to sub- section (3) not given : *Ram Krishna das Vs. Mahila Shanker Purwali, I.L.R. (1976) M.P. 614 (DB)*

- **Section 185(3) –** Excludes sub-lessees from acquiring occupancy rights when M.P. Land Revenue Code come into force: *Ram Krishna das Vs. Mahila Shanker Purwali, I.L.R. (1976) M.P. 614 (DB)*

- **Section 185(3) –** Special definition of sub-lessee under Protection Act not incorporated – Sub-tenant therefore must have a subsisting lease in his favour : *Ram Krishna das Vs. Mahila Shanker Purwali, I.L.R. (1976) M.P. 614 (DB)*

- **Section 185(3) -** Words “holds land from a Bhumiswami” in – Refers to an existing relationship : *Ram Krishna das Vs. Mahila Shanker Purwali, I.L.R. (1976) M.P. 614 (DB)*

- **Sections 185, 190(2-B)-** Entire land given to defendant for cultivation under Batai arrangement for two years-Bhumiswami rights conferred on occupancy tenant/ defendant with effect from the commencement of agriculture year next following the date on which the right of occupancy tenant accrued : *Mansingh (Deceased) Through LRs. Vs. Kalyan Singh, I.L.R. (2001) M.P. 1034*

- **Section 190**-Collusive entries in revenue records about acquisition of Bhumiswami rights there under-Whether purchaser's right under agreement for sale affected: *Jainendra Kumar Vs. Kailashchand, I.L.R. (1984) M.P. 325*

- **Section 190** - 'Bhumiswami' – Before coming into force of the Code, a person was allotted land in 1954 with temporary sanad - Permanent sanad given in 1965 after the Code became applicable – Continuous possession and enjoyment of right by allottee for all such years - Proved - He must be deemed to have become Bhumiswami in 1954 : *Bhagwan Das Vs. Sardar Atma Singh, I.L.R. (1995) M.P. 454 (SC)*

- **Section 210** – Confers power on Collector only to confirm scheme under section 209 – Decision of Collector is final subject to order under section 50- Revisional jurisdiction vested in Settlement Commissioner though ordinarily Commissioner is revisional authority- Section 50- Revision against order of Consolidation Officer- Revision lies to Collector- Practice – Subsequent event – Power of court to take notice of subsequent event and mould relief provided substantial justice so requires- Civil Procedure Code- Section 144- Decree of Civil Court varied or reversed- Restitution can be only by Civil Court- Summary of conclusions : *Rajendra Bharati Vs. Shri M.P. Dube, Member, Board of Revenue, M.P. Gwalior, I.L.R. (1977) M.P. 1176 (DB)*

- **Section 210**- Revisional Jurisdiction vested in Settlement Commissioner though ordinarily Commissioner is revisional authority : *Rajendra Bharati Vs. Shri M.P. Dube, Member, Board of Revenue, M.P. Gwalior, I.L.R. (1977) M.P. 1176 (DB)*

- **Sections 211 and 257(v)** – Confirmation of consolidation scheme by the Collector and preparation records under section 211 of the code – Civil suit claiming a declaration as to being a co-owner and in joint possession of the suit lands along with defendants and alternatively claiming joint possession, not barred by section 257(v) of the code : *Chandrabhan Vs. Sarjoo, I.L.R. (1984) M.P. 521*

- **Section 224** - and rules under Section 258-Patel does not discharge police functions : *Shantilal Vs. Bipinlal, I.L.R. (1966) M.P. 431 (DB)*

- **Section 237 and 248** - Road is land-Land held by *Bhumi Swami* a tenant, a Government lessee-Is unoccupied land-Lands fall under Sections 237 and 248 : *State of M.P. Vs. Atmaram, I.L.R. (1970) M.P. 452*

- **Section 244**- Confers special power on Gram Panchayat to dispose of Abadi sites- Power exercisable only after rules are framed- Expression "subject to the rules made in this behalf" in- Must be read as "Subject to rules to be made in this behalf" : *Gram Panchayat Gorakhpur Vs. Khushali, I.L.R. (1974) M.P. 1 (FB)*

- **Section 246**- Words "lawfully holds" in- Meaning of – Person obtaining possession in pursuance of a decree which is subsequently reversed when in fact the property had

vested in the State- Possession of such person would be per se wrongful, though it may not be strictly called as that of trespasser- Words and Phrases- “Legal” and “lawful”- Meaning of: *Hemdutta Vs. State of Madhya Pradesh, I.L.R. (1971) M.P. 820 (DB)*

- **Section 247**-Confers unfettered power to assign its rights to minerals, mines and quarries on lands whose surface belongs to third person-Sub-section (3)-Words “all or any of the powers specified in subsection (1) and (2)” in-Refers to subsidiary powers necessary for enjoyment of right over minerals etc.-Makes distinction between “right over minerals, mines and quarries” and “powers” to do certain acts for their proper enjoyment-Assignment of rights to mines etc. not fettered, but powers for necessary enjoyment hedged with condition and burdened with liability-Comes into play after assignment of rights over minerals etc: *Premchand Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 66 (DB)*

- **Section 247**- Non Compliance of some provision of the Section 247 does not affect the interest of claiming damages for wrongful extraction of minerals of a valid lease : *M/s Ramchandra Badri Prasad Gour, Katni Vs. M/s Associated Cement Company Ltd., I.L.R. (1991) M.P. 90 (DB)*

- **Section 247(3)**-Assignment of rights to mines etc. not fettered, but powers for necessary enjoyment hedged with condition and burdened with liability-Comes into play after assignment of rights over minerals etc.: *Premchand Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 66 (DB)*

- **Section 247(3)**-Words “all or any of the powers specified in sub sections (1) and (2)” in Refers to subsidiary powers necessary for enjoyment or right over minerals etc.-Makes distinction between “right over minerals, mines and quarries” and “powers” to do certain acts for their proper enjoyment : *Premchand Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 66 (DB)*

- **Section 247(4)**-Mineral Concession right granted on land of State-State not entitled to compensation for use of surface : *S.N. Sunderson and Co.,Katni, Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 516 (DB)*

- **Section 247(4)**-Words “any person” in-Used in contradistinction to State or its assignee : *S.N. Sunderson and Co.,Katni, Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 516 (DB)*

- **Section 247 (5)** – Provides two conditions- Assignee of lease hold rights- Right to enter upon land before the determination of compensation by Civil Court- Word “and” in – To be read disjunctively : *Rambheja Vs. M/s Newton Chikli Collieries (PR.) Ltd., Newton Chikhli, I.L.R. (1973) M.P. 1089*

- **Section 248**-Condition under which Tahsildar can exercise powers under the provision : *State of MP Vs. Atmaram, I.L.R. (1970) M.P. 452*

- **Sections 248**-Proceedings under-Application for grant of patta-Issuance of notice by Tehsildar-Schedule I, Rules 14 & 15-Procedure for service of notice by affixture if notice refused to accept the same : *Resources Development Institute, Bhopal Vs. State, I.L.R. (2001) M.P. 468*

- **Section 248**-Tahsildar under this provision acts on behalf of State-Sections 93 and 94-Do not bar jurisdiction of Tahsildar : *State of MP Vs. Atmaram, I.L.R. (1970) M.P. 452*

- **Section 250**- Dominant motive is restoration of possession of building- Section not applicable- Proper remedy is under Section 6-Specific Relief Act- In case of dominant motive-Definition of land does not include building : *Krishnakumar Das Vs. Balramdas, I.L.R. (1973) M.P. 356*

- **Section 250**-Gives additional remedy which can be availed of-Does not give exclusive remedy : *Kittu Vs. Jamnaprasad, I.L.R. (1963) M.P. 548*

- **Sections 250** - and 257(x)-Suit challenging the decision of Revenue Officer given under Section 250-Civil Court's jurisdiction to try such suit-Section 250 provides alternate remedy similar to one under Section 9, Specific Relief Act-Jurisdiction of Civil Court under Section 257 not barred : *Phattelal Vs. Nandlal Dewangan, I.L.R. (1963) M.P. 552*

- **Section 251**- Provides for abolition of certain kinds of rights in tanks which were saved under section 5(e), (f) and (g) of the Abolition Act : *Raghubar Singh Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 385 (FB)*

- **Section 251**-Tanks saved to proprietor under Abolition Act-Tanks vest in State under this provision : *Seth Rishabhkumar Vs. The State of M.P., I.L.R. (1970) M.P. 936 (DB)*

- **Section 251**- Words "vesting of tanks" in- Meaning of – Abolishes rights in tanks situated on unoccupied lands in which villagers had right of irrigation or Nistar : *Raghubar Singh Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 385 (FB)*

- **Section 257**- Decision of the Tahsildar under section 131(1) – Not covered by the provision : *Mahant Gopidas Vs. Ramkrishna Pande, I.L.R. (1973) M.P. 167*

- **Section 257**-Expresion "Except as otherwise provided in this Code or in any other enactment for the time being in force" in-Refers to general provision in the Section-Does not qualify second limb of the Section-Does not bar a suit on the basis of title : *Nathu Vs. Dilbande Hussein, I.L.R. (1966) M.P. 671 (DB)*

- **Section 257** – Jurisdiction under, to be treated as exclusive unless provisions is found to grant jurisdiction to civil Court : *NarayanRao Vs. Shivram, I.L.R. (1972) M.P. 324*

- **Section 257**-Opening part of section-Not controlled by specification of different subject-matters in clauses (a) to (z-2)-Suit for establishment of customary right-Maintainability: *Rameshwar Vs. Dwarka Prasad, I.L.R. (1970) M.P. 330*

- **Section 257**- Sub-Divisional Officer alone has jurisdiction to eject tenant of disabled Bhumiswami and not civil court : *NarayanRao Vs. Shivram, I.L.R. (1972) M.P. 324*

- **Section 257**-Saves the effect of provisions in other enactments-Suit under section 9, Specific Relief Act, not affected-Section 250-Gives additional remedy which can be availed of-Does not give exclusive remedy : *Kittu Vs. Jamnaprasad, I.L.R. (1963) M.P. 548*

- **Section 257**-Specific Relief Act-Section 9-Suit for possession by *Bhumiswami* of Land after dispossession barred by Section 257 of Land Revenue Code-Expression “Except as otherwise provided in this code or in any other enactment for the time being in force” in Section 257-Refers to general provision in Section 257-Does not qualify second limb of Section 257-Does not bar a suit on the basis of title-*Res judicate* – Decision of Revenue Court-Not *Res judicate* in Civil Suit : *Nathu Vs. Dilbande Hussein, I.L.R. (1966) M.P. 671 (DB)*

- **Section 257**- Words “Except as otherwise provided in any other enactment for the time being in force” in- Preserves pre-existing right: *Mahant Gopidas Vs. Ramkrishna Pande, I.L.R. (1973) M.P. 167*

- **Section 257** – Question whether Land Revenue claimed is really due or not – Jurisdiction of the Sub- Divisional Officer to decide – Bar of suit : *Manoharlal Vs. State of M.P., I.L.R. (1978) M.P. 710 (FB)*

- **Section - 257 (k)**-Bars jurisdiction of civil Court in respect of suits for possession by person under disability against their lessees : *Ranchhodprasad Vs. Nathuprasad, I.L.R. (1969) M.P. 997*

- **Section 257(k)**–Excludes jurisdiction of Civil Court in matter of ejectment of a lessee of a Bhumiswami: *HariRam Singh Vs Manohar Rao & Anor., I.L.R. (1992) M.P. 55*

- **Section 258-Rule 2(iv) framed thereunder** - Vires of : *Mst. Thanwarin Vs. Naib Tahsildar, Fingeshwar, I.L.R. (1967) M.P. 40 (DB)*

- **Section 258, Clause (XXXIV)** - Rule 8 framed thereunder - Tahsildar, Power of, to confirm sale- No such power vests in Sub- Divisional Officer and the Naib-

Tahsildar : *Mohammad Bashir Khan Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1973) M.P. 73 (DB)*

- **Section 262(1)**-Saves cases pending before State Government or revenue Court from applicability of Code : *Vansh Bahadur Singh Vs. Kamla Singh, I.L.R. (1969) M.P. 115*

- **Section 262 (1) Scope of-** Mere pendency of revenue recovery proceedings- Will not attract this provision- Proceedings from stage of fresh sale proclamation and the subsequent sale- Will be separate proceedings to which this provision will apply- Appeal- Right of appeal is a vested right : *Nehru Singh Vs. S. Rajan, I.L.R. (1973) M.P. 263 (DB)*

- **Section 262(2)**-Applies to cases pending before civil Court but which were triable by revenue Court : *Vansh Vansh Bahadur Singh Vs. Kamla Singh, I.L.R. (1969) M.P. 115*

- **Rule 2 (iv)** - Framed under section 258 read with section 230 and Constitution of India, Article 15-Rule 2(iv)-Vires of-Article 15-Discrimination not founded on ground of sex alone-Article not violated : *Mst. Thanwarin Vs. Naib Tahsildar, Fingeshwar, I.L.R. (1967) M.P. 40 (DB)*

- **Rule 41 framed under Section 41** – Collector confirming sale without hearing objector – Procedure illegal - Appeal against order of Collector confirming sale – Auction purchasers not made parties – Auction purchaser appearing in appeal – Appeal not incompetent - Defect merely of form and not of substance : *Firtu Vs. The State of M.P., I.L.R. (1965) M.P. 12 (DB)*

Land Revenue Code, Madhya Pradesh, 1954 (II of 1955)

- **and Land Revenue Code, M.P. (XX of 1959)**-Accrual of rights of Bhumidhari and Bhumiswami, Thereunder : *Mustafa Khan Vs. Mst. Hayat BI, I.L.R. (1981) M.P. 596 (DB)*

- Bhumiswami and Bhumidhari are not tenancy holdings : *Kumari Ramlali Alias Laltoo Vs. Mst. Bhagunti Bai, I.L.R. (1971) M.P. 279 (DB)*

- **Section 2(1)(i) and Section 52(3)**-Abadi site used for commercial purpose- Amounts to diversion-Section 52(3) applies to the case : *Radheshyam Agrawal Vs. The State of M.P., I.L.R. (1963) M.P. 425 (DB)*

- **Section 47 (1)** – Review by successor Deputy Commissioner of the order of his predecessor-Sanction of Board of Revenue not obtained-Order of review liable to be set aside – Subsequent appellate and revisional orders of superior officer also liable to

be set aside : *Seth Pratapchand Vs. The Board of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1965) M.P. 448 (DB)*

- **Section 133** – Certified statement of Deputy Commissioner or Tahsildar – Not foundation of jurisdiction for initiation of recovery proceedings for arrears : *Premchand Vs. Board of Revenue M.P. Gwalior, I.L.R. (1964) M.P. 70 (DB)*

- **Section 134** and Land Revenue Code, 1959, Section 146 – Provision regarding notice to defaulter – Provision mandatory – Appearance of defaulter without notice and his taking part in proceedings – Are of little importance – Land Revenue Code, 1959 – Section 42 – Does not cover an error, omission or defect affecting jurisdiction – Refers to procedural errors or defects : *Manmohanlal Vs. The Board of Revenue, M.P., Gwalior, I.L.R. (1964) M.P. 850 (DB)*

- **Section 134** and 135 and Rule 2 – Word “May” in section 134 – Used in imperative sense – Issue of notice mandatory – Notice of demand – To be in writing – Sale without issue of notice of demand – Sale void – Section 133 – Certified statement of Deputy Commissioner or Tahsildar – Not foundation of jurisdiction for initiation of recovery proceedings for arrears : *Premchand Vs. Board of Revenue M.P. Gwalior, I.L.R. (1964) M.P. 70 (DB)*

- **Section 143 (C)** and section 236 – Civil Court, Jurisdiction of, to entertain proceedings for recovering purchase price from auction purchaser who purchased right to collect tax : *Gram Panchayat, Kaudia Vs. Dattoolal, I.L.R. (1962) M.P. 734*

- **Section 151** – Not a provision dealing with devolution of tenancy rights : *Smt. Gopikabai Vs. Bajya, I.L.R. (1974) M.P. 115*

- **Section 151** – Not a provision regarding fragmentation of holdings etc : *Kumari Ramlali Alias Laltoo Vs. Mst. Bhagunti Bai I.L.R. (1971) M.P. 279 (DB)*

- **Section 151** – “Personal Law” in – Meaning of : *Kumari Ramlali Alias Laltoo Vs. Mst. Bhagunti Bai, I.L.R. (1971) M.P. 279 (DB)*

- **Section 152 (2)** – Failure of Additional Collector to record reasons in writing – Grant of permission is nullity – Transfer void and legally unenforceable : *Sukhsen Vs. Shrawan Kumar, I.L.R. (1975) M.P. 328*

- **Section 169** – Requirements necessary to attract the section – Words “declared an occupancy tenant of a *malik makbuza*” in section 169 includes a person authoritatively recognized as occupancy tenant – Section 147 – Words “Every person” in – Means every person holding land from the State – Interpretation of Statutes – Principles of construction – Words and expressions used in the act – Must take colour from to context in which they appear : *Devi Prasad Vs. The Board of Revenue, M.P., I.L.R. (1960) M.P. 565 (DB)*

- **Section 169 (2) and Section 170**-Application for declaration of status as ordinary tenant-Holding land for agricultural purpose from tenure holder an essential condition-Conditions necessary to be satisfied for stay of suit for ejectment against that person stated : *Nichaldas Vs. Askaran Chopra, I.L.R. (1959) M.P. 454*

- **Sections 175 and 176** – Rights and remedy under – Cannot be equated with the right and remedy under Section 12 – A (8) and sub-sections (11) and (12) of C.P. Tenancy Act : *Govindrao Vs. Board Revenue MP Gwalior, I.L.R. (1965) M.P. 206*

- **Sections 175 and 176** – Scope of : *Govindrao Vs. Board Revenue M.P. Gwalior, I.L.R.(1965) M.P. 206*

- **Section 225** – Entry in *wazib-ul-arz*- Does not create title - Raises a strong presumption in its support- Burden shifts on person challenging the entry to prove non-existence of custom : *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843 (DB)*

- **Section 225**- Finality and exclusiveness attaches to entry in *wazib-ul-arz*- Can be Questioned only as provided in sub-section (3) of section 225- Remains good till set aside by Civil Court : *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843 (DB)*

- **Section 228(1)** – Embodies two distinct and separate concepts viz. (i) Vested right and (ii) Powers necessary for enjoyment of that vested right – Section 228(2) – Delimits collateral powers for proper enjoyment of all minerals, mines and quarries – Section 228(4) – Scope and extent – Word “Disturbance” in – Limited to the disturbance caused by overt acts in exercise of powers specified in sub-section (2) : *Amalgamated Coalfields Limited, Calcutta Vs. The Collector Chhindwara, I.L.R. (1964) M.P. 21 (DB)*

- **Section 228(4)**-Award given by Collector-Section 18, Land Acquisition Act not applicable-Reference to civil Court not necessary-Words “as nearly as may, in accordance with the provisions of the Land Acquisition Act, 1894” in-Qualify the verb “shall be calculated”-Calculation of compensation to be made according to land Acquisition Act and not whole procedure for determining compensation to be follow-Limitation Act, Article 14-Suit to set aside order of Deputy Commissioner-Suit governed by this Article-Government not necessary party to such suit : *Pooranchand Sharma Vs. Smt. Sailabala Dassi, I.L.R. (1962) M.P. 774*

- **Section 228(7)**-Scope and applicability of Extract of mineral in contravention of the Act or the rules by servant or agent-Liability of Master-Intent or state of mind-Not relevant-Liability of employer of the independent contractor when arises-Criminal Responsibility-Guilty mind necessary under *mens rea* ruled out by statute : *Govind Prasad Sharma Vs. Board of Revenue, M.P. Gwalior, I.L.R. (1967) M.P. 18 (DB)*

- **Section 236**- Does not prevent adjudication by Civil Court regarding sanction under Section 152(2) of Code : *Sukhsen Vs. Shravan kumar, I.L.R. (1975) M.P. 328*

- **Section 236-** Prohibits institution of suit to obtain decision on matters which have to be decided by revenue officers : *Sukhsen Vs. Shravan kumar, I.L.R.(1975) M.P. 328*

- **Section 236-** To be strictly construed : *Sukhsen Vs. Shravan kumar, I.L.R. (1975) M.P. 328*

-**Section 239** – Accrual of rights of pre-emption – Not dependent on making application under sub-section (11) or (12) of Section 12 A of C.P. Tenancy Act – C.P. Tenancy Act – Section 12 (1) and 12 A (8) Accrual of right of pre-emption-Dependent upon sale of holding in contravention of Section 12-A and possession obtained – General Clauses Act – Section 5 – Repeal of Tenancy Act by Code of 1954 – Does not affect the right or remedy in respect of that right – Words and Phrases – Words “Right accrued” – Circumstances when right accrues – M.P. Land Revenue Code – Sections 175 and 176 – Scope of – Rights and remedy under-Cannot be equated with the right and remedy under Section 12 – A (8) and sub-sections (11) and (12) of C.P. Tenancy Act : *Govindrao Vs. Board of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1965) M.P. 206 (DB)*

- **Section 253-** Proceedings under, are *quasi* - Criminal – Order in such proceedings – Not binding on Civil Court : *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843 (DB)*

– **Rule 29, Schedule II-** Auction purchaser – A necessary party to appeal – Appeal liable to be dismissed if not joined - Difference in the execution case and in appeal as regards auction purchaser as a party : *Firm Jagmohan Lal Ramnath Vs. The Board of Revenue, Madhya Pradesh, I.L.R. (1960) M.P. 587 (DB)*

Land Revenue Code, Madhya Pradesh (XXV of 1964)

- **as amended-**Does not preserve applications previously filed : *Dolumal Vs. State of Madhya Pradesh, I.L.R. (1970) MP 930 (DB)*

- **as amended-**Repeal does not affect right acquired or accrued and not mere hope of expectation of or liberty to apply for acquiring right : *Dolumal Vs. State of Madhya Pradesh, I.L.R. (1970) M.P. 930 (DB)*

- **as amended-**Transactions past and closed-Statute after repeal completely obliterated as if never enacted : *Dolumal Vs. State of Madhya Pradesh, I.L.R. (1970) M.P. 930 (DB)*

Land Tenure Order, 1949

- **Sub-clause (1) of clause 21 and clause 42-Raiyat,** right of to sell trees in his holding : *Manohar Prasad Vs. The State of M.P., I.L.R. (1963) M.P. 448 (DB)*

- **Second Schedule, Article 1-Clause 2 (g) and (k)-**Person holding land from a State or tenure-holder-Person holding land from a State or tenure-holder-Person is *raiya*t and a tenant-Clause 2, sub-clause (1)-Tenure-holder includes *Ganotia*-Suit by

such person against trespasser-Suit governed by Article 1, Schedule II : *Karmoo Vs. Mst. Laxmi, I.L.R. (1959) M.P. 771*

-Lawyer - Lawyer engaged by the Municipality on yearly sum as fee or honorium is not a municipal servant-Not disqualified to stand for election : *Beharilal Gupta Vs. Ram Charan, I.L.R. (1959) M.P. 183 (DB)*

Landlord and Tenant

- Ejectment-Plea regarding agreement to sell, accompanied with or without possession-Not a valid defence : *Bhagwandas Vs. Surajmal, I.L.R. (1962) M.P. 443*

- Heirs of tenant inheriting as tenants- in- Common- But are joint tenants so far as landlord is concerned unless there has been renovation of contract : *Shambhudayal Vs. Suleman, I.L.R. (1979) M.P. 1114*

- Relationship- Mere payment of rent no sufficient to establish relationship : *Motilal Bhatia Vs. Yusuf Ali, I.L.R. (1975) M.P. 121*

- Suit between- Question of title Immaterial : *Jasraj Vs. Kamaruddin, I.L.R. (1974) M.P. 779 (DB)*

-Sub-letting- Suit for ejectment on ground of unlawful sub-letting- Circumstances in which inference of sub-letting can be drawn : *Ziaun Hasan Vs. M/s Pannalal Nanoomal Jain, Bhopal, I.L.R. (1975) M.P. 911*

- Suit for ejectment and arrears of rent between the landlord and tenant (Original parties) – No transfer of title of lessor taking place- Question of title of landlord is outside the scope of suit- Only question to be decided in existence of contract of tenancy – Cannot be said that existence of title has no bearing on question of tenancy if it be disputed- Evidence of title of lessor- Relevant fact for proof or disproof of contract of tenancy- Averment of existence or non-existence of title – Not a material fact that can be tried in suit- Finding regarding title will be outside the scope of suit - Civil Procedure Code- Order 6, rule 16 and order 14, rule 5- Pleadings not to be struck out because they are unnecessary – Issues wrongly framed on disputed evidenciary facts not necessary for suit- Such issues liable to be struck out- Evidence Act- Section 92- Circumstance in which oral evidence concerning the deed can be given : *Lekhranj Diddi Vs. Sardar Sawansingh, I.L.R. (1977) M.P. 1204 (DB)*

- Usufructuary mortgage executed by Mortgagor-Lease of mortgaged property to Mortgagor-Both may constitute one transaction-Two liabilities not inconsistent or mutually exclusive –Each enforceable independently-Not open to a party to urge that they constitute two different transactions with different terms-Mortgagee's suit for ejectment and rent maintainable-Order 34, rule 14 of Civil Procedure Code not applicable: *Mathuralal Vs. Sobhagmal, I.L.R. (1961) M.P. 104*

Law

– **Alterations in Law relating to procedure** -Are generally retrospective : *Modi Bai Vs. Nagraj, I.L.R. (1982) M.P. 260*

-**Rules, Orders and Notification** - Law includes Rules, Orders and Notification issued by Government or subordinate authority is exercise of delegated legislative power : *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601 (FB)*

- **Invalidity of law** – Effect : *Babulal Sharma Vs. The Vice-Chancellor, Awadesh Pratap Singh University, Rewa, I.L.R. (1980) M.P. 735 (DB)*

- **Order or Notification**- Order or Notification issued in exercise of non-statutory power or in exercise of statutory power which is purely executive-Does not amount to law : *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601 (FB)*

Lease

- **Agreement**- Agreement ascertaining the terms of lease, and giving lessee right to exclusive possession immediately or at a future date-Agreement operates as a lease : *Durga Prasad Vs. Mst. Parveen Foujdar, I.L.R. (1980) M.P. 448 (DB)*

- **Covenants in lease** - Sanction not to be refused for extraneous reasons-Grounds for refusal to have rational connection with leased property or character of proposed transfer or the assignee or sub-lessee-Cannot withhold sanction for obtaining collateral advantage or for imposing greater burden than imposed by lease : *Shri Shanker Prasad Goenka Vs. State of M.P., I.L.R. (1966) M.P. 871 (DB)*

- **Liberties, privileges and powers granted to lessee**-Not statutory warranties or rights and privileges : *United Collieries Ltd Vs. Engineer-In-Chief, South Eastern Railway, Maninderagarh, I.L.R. (1965) M.P. 18 (DB)*

- **Partition of leased premises**- Effect also severance of tenancy *pro tanto*: *Subhash Chandra Vs. Radhavallabh, I.L.R. (1977) M.P. 50*

-**Work permission**- State Government authorizing railway administration to enter upon and construct railway line on leased premises and providing for compensation- Lessee's rights not impaired, abridged or destroyed-Payment of compensation-Not a condition precedent to the authorization or commencement of constructional work by railway-Authority of Government to grant permission even after starting work - Work permission cures want of previous authority : *United Collieries Ltd Vs. Engineer-In-Chief, South Eastern Railway, Maninderagarh, I.L.R. (1965) M.P. 18 (DB)*

- **Splitting of, by agreement of parties** : *Richchpal Vs. Kishanlal*, I.L.R. (1966) M.P. 312

Lease and license

- **Distinction** : *Girdharilal Vs. Prafulla Chandra*, I.L.R. (1969) M.P. 479

Leave Rules, M.P., 1977

- **Rule 24 (a) and (2)** – Employee remaining absent after expiry of his sanctioned leave – order to treat such period as break in service not in accordance with law – order quashed : *Dr. Ali Hussain Vs. State of M.P.*, I.L.R. (1984) M.P. 579

Legal fiction

- Court has to see the purpose of fiction- Court to consider all facts, inevitable corollaries and consequences of giving effect to fiction- Full effect has to be given to fiction- Has to be carried to logical conclusion- Has not to be extended beyond the purpose for which it is created : *Navnit Das Vs. Bhagwandas*, I.L.R. (1977) M.P. 227

Legal Person

- Status of a legal person can be acquired only under a statute and not by affiliation with a registered body under a statute: *Smt. Kalyani Mitra Vs. Hindu Milan Mandir, Tikarapara*, I.L.R. (1986) M.P. 657

Legal Practitioners Act (XVIII of 1879)

- **Section 6,7 and 8**-Rule framed thereunder-Power of District Judge to issue warning to a person found practicing as a legal practitioner : *Badri Prasad Vs. District Judge, Indore*, I.L.R. (1965) M.P. 727 (DB)

- **Section 13**-Pleader appearing for one party in one suit-Serving notice on that very party to make the best of the bargain-Action of the pleader amounts to legal misconduct : *Rambharosa Vs. T. Pleader*, I.L.R. (1959) 321 (DB)

- **Section 32**-Person ignoring the warning and persisting in his activities-Person liable to be punished : *Badri Prasad Vs. District Judge, Indore*, I.L.R. (1965) M.P. 727 (DB)

Legal representative

- Person who is not an heir but is in possession of property of deceased person can be brought on record as legal representative to defend but cannot continue suit as a plaintiff-Intermeddler has liabilities and obligations : *The Kalyanmal Mills Ltd., Vs. Walimohammed*, I.L.R. (1964) M.P. 801

Legal Services Authorities Act (XXXIX of 1987)

- **Sections 19, 20, 21, 25**-On reference made by the Court as per Section 20 the Lok Adalat acquires jurisdiction to take cognizance : *Punjab National Bank Vs. Shri Laxmichand Rai* , I.L.R. (2001) M.P. 209 (DB)

- **Sections 25 and 21(2)**-Provisions of the Act has overriding effect-Compromise award passed by the Lok Adalat attached finality to the lis : *Punjab National Bank Vs. Shri Laxmichand Rai* , I.L.R. (2001) M.P. 209 (DB)

Legislation

- **Delegation**-Types of delegation-Essentials of each type of delegation-Legislature laying down policy and guidance-Legislation delegation powers to subordinate body to work the legislation-Delegation not excessive-Rule making authority can fix rates of taxation-Panchayat Vidhan, Madhya Bharat-Section 38(b) and Rule 214-Act laying down policy and general indication regarding total income from taxation-Delegating power to rule making authority to prescribe rule regarding house tax-delegation not excessive or unconstitutional-Sections 115 and 116-Authorise government to further delegate power by the rule itself-Section 38 (b) – Land included in enclosure used for factory – Whole liable to tax and not only site built upon and covered under a roof – Words and Phrases – Word “Building” – Meaning of : *Munnalal Lachhiram & Sons Vs. The Gram Panchayat, Susari*, I.L.R. (1964) M.P. 199 (DB)

- **Doctrine of colourable legislation**-Does not involve question of *bona fide or mala fides* on parts of legislature : *M/s Chhota Bhai Jetha Bhai Patel And Co.Vs. The State of Madhya Pradesh* , I.L.R. (1967) M.P. 721 (DB)

- **Law empowering State Government to enter into contract**- Exercise of that power amounts to exercise to executive power- Includes contracts made by State under statutory authority : *Ram Ratan Gupta Vs. State of M.P.*, I.L.R. (1975) M.P. 377 (FB)

- **Legislature providing mode of doing a thing**- Party has to do the thing in that manner or not at all : *Shrimati Ramakunwarbai Vs. Motiram*, I.L.R. (1970) M.P. 602 (DB)

- **No power in legislature to delegate legislative function**- Can lay down policy and principles-Can afford guidance to carry out policy-Accommodation Control Act, Madhya Pradesh, 1961-Section 3(2)-Does not confer unfettered and uncanalized discretion on Government in matter of exemption-Confers discretion in matter of election of institution satisfying condition mentioned in section 3 of the Accommodation Control Act-Clearly lays down legislative policy and principle-Provision constitutionally valid-Challenge to *vires* of order passed under section 3(2)-Things to be enquired into-Reasons for grant of exemption-Validity and sufficiency thereof, to be decided on facts in each

case-Reason to be germane to the purpose for which power granted-Exemption to be granted for reasonable eviction of tenant and reasonable fixation of rent : *Kanhaiyalal Vs. The Gulab Bai Digambar Jain Kanya Vidyalaya, Bhopal, I.L.R. (1967) M.P. 1 (DB)*

- Presumption regarding validity or subordinate legislation- Exercise of power of subordinate legislation-Referable to a power which confers validity upon it Octroi Rules-New rule enhancing octroi duty in super-session of old rule by State Government – Validity – Octroi Rules framed by State Government for Raigarh Municipality in modification of old rules – Validity : *Municipal Council, Raigarh Vs. Pahawa Trading Company, Raigarh, I.L.R. (1975) M.P. 833 (DB)*

Legislative Assembly Members (Disqualification on the ground of Defection) Rules, M.P., 1986

- Rules 6(6), R-7(1)(2) - Disqualification of Membership of MLA on the Ground of defection - Rules providing for proper verification and in the absence of the same, petitioner liable to be dismissed and the speaker required to intimate the concerned MLA - Held - The Speaker had no jurisdiction to permit any kind of correction or modification in the petition - If the petitions were not filed in terms of sub-rule(6) of Rule 6 of the Rules of 1986, there was no option left to Speaker but to dismiss the petitioner - Unfortunately the Speaker permitted the amendment which was not warranted in law - The Speaker should have dismissed the petitions on the preliminary objection filed by petitioners and not to have addressed himself on the merit of the petitions - Order Quashed - Petition Allowed : *Laxman Jaidav Satpathy Vs. Union of India, I.L.R. (1997) M.P. 96 (DB)*

Legislature

- Power of, to enact law nullifying decision-Does not amount to exercise of judicial power-Can enact law giving retrospective operation : *M/s Dayalal Meghji & Co., Raipur Vs. The State of M.P., I.L.R. (1963) M.P. 985 (DB)*

- Power of-Method of validating past Acts-Amendment effected-Fictional and not factual : *The Amalgamated Coalfields Limited, Calcutta Vs. State of M.P., I.L.R. (1969) M.P. 399 (DB)*

- Power of, in enacting fiscal measure – Very wide : *The Ratlam Bone and Fertilizer Company, Ratlam Vs. State of M.P., I.L.R. (1975) MP 216 (FB)*

- Power of, to amend law retrospectively : *M/s Chhotelal Keshavram, Rajnandgaon Vs. Additional Assistant Commissioner of Sales Tax Raipur, I.L.R. (1979) M.P. 123 (DB)*

Lessor and Lessee

- **Joint co-lessor can sue other co-sharer for reimbursement** : *Gangadhar Rao Kher Vs. Ganesh Prasad, I.L.R. (1972) M.P. 749*

- **Plaintiff** – Joint Lessor-not entitled to sue for share of his proportionate rent unless there is arrangement – Joint co-lessor can sue other co-sharer for reimbursement : *Gangadhar Rao Kher Vs. Ganesh Prasad, I.L.R. (1972) M.P. 749*

Letters Patent

- **Advalorem Court fee** - Not payable there in : *Yogeshwar Vs. Laxminarayan, I.L.R. (1987) M.P. 110 (DB)*

- **Division Bench**-Appellate authority over decision of Single Bench-Transfer of Property Act, section 52 and Specific Relief Act, section 27(b)-Transfer during pendency of suit-Transfer not void but voidable-Transferee's subsequent suit for possession-Plaintiff in earlier suit cannot succeed unless he brings the case under section 27(b), Specific Relief Act : *Munnial Vs. Bhaiyalal, I.L.R. (1963) M.P. 702*

- **Is intra Court Appeal**-Under clause (10)-Appellant has to demonstrate that order passed by learned Single Judge suffers from infirmity of impropriety, in-correctness and illegality and assumes and the nature of perversity-Clause 10-Order under challenge is detailed one and all necessary aspects of the matter have been considered by learned Single Judge-No interference is necessary-Dismissal-Charge leveled against the appellant was within the knowledge of the appellant it shows that the charge was not aided by trained mind in legal profession-Refusal of appellants request to defend the case through a legal practitioner is rightly rejected-Dismissal-Assistance of legal practitioner when permitted-It depends upon facts of each case and if there would be violation of the principles of natural justice : *Mahendra Kumar Jain Vs. Bank of Baroda, I.L.R. (1998) M.P. 412 (DB)*

- **Objection not raised before learned Single Judge**-Objection not allowed to be raised in Letters Patent Appeal : *Chhatradharilal Vs. Shyamabai, I.L.R. (1967) M.P. 523 (DB)*

- **Clause X, Constitution of India, Article 226**, - Co-operative Societies Act, M.P. 1960 (XVII of 1961) and Co-operative Central Bank Employees Services (Terms of Employment of Working Conditions) Rules, M.P. – Rules 10, 22 (iv), 23 (iii) – Recruitment of Manager of Tribal Services of Co-operative Services- Requirement of under going written test as may be prescribed by Registrar – No Procedure laid down-Appointment made in conformity with instruction issued by Registrar cannot be said to be illegal-Maximum Limit for direct recruitment 40% as per rule 23 (iii), Service societies

are newly established societies- Recruitment so made are for the newly created posts- Quota under Rule 23 (iii) Would not be applicable for all purposes- Petitioners also participated in the process cannot be allowed to challenged the selection on the ground that they were not in accordance with the Recruitment Rules : *Ram Das Chourasia Vs. Vijay Kumar Pathak, I.L.R. (1991) M.P. 649 (DB)*

– **Clause X – Appeal** – Not maintainable against an order dropping contempt proceeding – Remedy would be available under Article 136 of the Constitution – Contempt proceeding – A matter between the Court and the Contemner – Private party – Only an informer – No right to ask for the contempt power to be exercised according to his perception : *Satish Trading Co., Indore, Vs. Divisional Manager, Indore, I.L.R. (1999) M.P. 945 (DB)*

- **Clause 10-Appeal under-Provisions of C.P. Code under Order 41, Rule 22** applicable-Cross-objection can be filed- Hindu Law-Alienation-By widow-Alienation for charitable or religious purpose-Not necessary to prove benefit to estate or pressure on estate-Religious acts-Different classes-Nature of proof for each kind of religious acts-Performance of obsequies and dipping of bones in Ganges-Amounts to religious act which is obligatory-Construction of temple-A religious and pious act conferring spiritual benefit-Giving caste dinner after dipping of bones in Ganges falls under obligatory religious act: *Mst. Ghasnin Vs. Mst. Kaushalya, I.L.R. (1961) M.P. 77 (DB)*

- **Clause 10** – Appeal heard by single Judge of the new High Court – Appeal competent under clause 10 of Letters Patent : *Soorajmal Vs. Rama I.L.R., (1974) M.P. 282 (DB)*

– **Clause X– Constitution of India, Articles 226 and Land Acquisition Act, 1894 Section 4, 6, 11, 11-A, 17(1) and 48** – Housing scheme to be implemented over 130 acres of land – Petitioner’s 1.20 acres also included – Acquisition of land – Award not made within stipulated period of two years – Entire proceedings for acquisition of land shall lapse – Writ petition challenging refusal to withdraw from acquisition – Acquisition proceeding not in question – Delay and laches – Petitioners allowed thing to happen – 1400 houses already constructed – Delay defeat justice – Not a fit case to invoke extra-ordinary jurisdiction : *Dilip Kumar Goushalawale Vs. State of M.P., I.L.R. (2003) M.P. 676 (DB)*

- **Clause X and Constitution of India, Article 226** – Panchayat Raj – No confidence motion – Passed by 13 against 3 votes – Challenge in writ petition – Petition has to prove serious prejudice caused to him or of justice – Panchayat Raj Adhiniyam M.P., 1993 – Section 28 (2) – Petitioner may have a right to speak or otherwise take part in the proceedings – Presiding Officer not required to ask him to speak – No prejudice caused by the way the meeting took place – No interfere in Appeal : *Shivajirao Patil Vs. The Collector, Balaghat, I.L.R. (2003) M.P. 813 (DB)*

- **Clause X and Constitution of India, Article 226** – Writ Petition – Seeking writ of mandamus prohibiting pirated exhibition of cinematograph film “KABHI KHUSHI KABHI GAM” – Petition filed on mere apprehension – Deprivation of right not existed at the time of filing the petition – Writ petition dismissed – No interference in appeal : *M/s Khajamchi Film Exchange Vs. State of M.P., I.L.R. (2003) M.P. 895 (DB)*

- **Clause X, Constitution of India, Article 226** - and Panchayat Raj Adhiniyam M.P., 1993, Section 122 – Panchayat Election – Panchayat Election Rule – Election Petition – Recount of votes – Electricity failed – Counting done candle light – Difference in form 15 and form 18 - Discrepancy of 34 votes – Margin of 17 votes between appellant and petitioner – To remove the doubt recounting was necessary – Recount rightly granted : *Rakib Mohammad Vs. The District Collector and Specified Officer, Raisen, I.L.R. (2003) M.P. 941 (DB)*

- **Clause X and Constitution of India, Article 226** – Service Law – Superannuation – Madhya Bharat Roadways – A unit of erstwhile State of Madhya Bharat – Taken over by State of Madhya Pradesh with effect from 1.11.1956 – Appellant appointed on 1-3-1959 – Governed by Fundamental Rules of the new state of M.P. – Not entitled to benefit of superannuation at the age of 60 years – No interference called for in the order of writ court : *Sultan Ahmad Vs. Madhya Pradesh State Road Transport Corporation, I.L.R. (2003) M.P. 956 (DB)*

- **Clause X, and Constitution of India, Article 226 and 227** – Mines & Mineral (Regulation and Development) Act 1957 – Sections 5 (1) and 11(4) – Mining lease – Grant of – Prior approval of Central Government – Obtained under Section 5(1) and not under Section 11(4) – It is the substance that is important and not the form – In substance approval was obtained – Authorities were satisfied regarding the requirement is a finding of fact – Jurisdiction of High Court under Articles 226 and 227 can not be invoked for setting aside finding of fact – Writ petition rightly dismissed : *M/s. M.P. Mineral Supply Co. Satna Vs. Government of India, I.L.R. (2003) M.P. 818 (DB)*

- **Clause X and Constitution of India, Article 226** – Service Law – Writ petition and appeal – State Bank of India (Supervising Staff) Service Rules/Rule 20-B – Scope is limited to continuation and conclusion of the disciplinary proceedings alone – Simply because appellants was paid subsisting allowance by interim order of the Apex Court his service cannot be deemed to be extended till the final judgment : *S.S. Kaushal Vs. State Bank of India, I.L.R. (2003) M.P. 796 (DB)*

- **Clause X–Appeal–** Constitution of India, Articles 226, 227, Industrial Disputes Act (XIV of 1947), Sections 2 (oo) , 10-A, 1-A and 25-F, Shops and Establishment Act, M.P. (XXV of 1958), Section 58, unamended and Shops and Establishment Rules, M.P., 1959, Rule 14 and Amendment Act No. 10 of 1982–Order of termination simplicitor

passed by employer—On challenge made before the Labour Court—Employer alleged misconduct within the meaning of Rule 14—No mention of misconduct in the order of termination—Orders of termination passed prior to coming into force of Amending Act No. 10 of 1982—Termination order does not contravene Section 58 as it stood prior to amendment—Employer should not be precluded from proving that the order did not amount to retrenchment—Section 2 (oo) – ‘Otherwise than as a punishment by way of disciplinary action’ could not be given restricted meaning—The action of the employer to be judged in the facts and circumstances preceding and following it—Termination order not amounted to retrenchment—Cases remanded to Labour Court to decide the matter afresh granting opportunity to employer to lead evidence and to employer to rebut the same : *Employers in Relation To M/s Anand Cinema of M/s. Maheshwari And Bernard Vs. Mohan Tiwari, I.L.R. (1992) M.P. 79 (DB)*

- **Clause X – Appeal** – Widow making application followed by repeated representations : *Smt. Kamla Bai Vs. Union of India, I.L.R. (2000) M.P. 489 (DB)*

- **Clause X – Appeal** – Private educational institution though not aided by State is an authority within the purview of Article 12 – Private educational institution – Amenable to writ jurisdiction of High Court – Constitution of India – Article 226 – Writ Petition – Maintainability – Respondent College affiliated to University and running course as per educational programme of the State – It is performing supplemental role to the State activity – Assumes character of a State agency amenable to writ jurisdiction – Writ Petition maintainable : *Mrs. Promilla Bais Vs. The Principal Daly College, Indore, I.L.R. (2000) M.P. 1423 (DB)*

- **Clause X – Appeal** – Payment of gratuity and interest thereon—Dues not cleared in time—Delayed payment—Reasons ascribed for delay neither cogent nor germane—Interest awarded : *Ambika Charan Awasthy Vs. State of M.P., I.L.R. (2003) M.P. 313 (DB)*

- **Clause X – Appeal** – Scope of—Not limited to question of law only—Extends also to re-appreciation of evidence in an appropriate case—Motor Vehicles Act, 1988, Section 173—Appeal for enhancement—Motor accident—Contributory negligence—Brake of the erring truck proved defective leading to the accident—Plea of contributory negligence cannot be examined at the instance of a party who himself is at fault—No case for contributory negligence made out : *Mariyambai Vs. Kishanlal, I.L.R. (2002) M.P. 69 (DB)*

- **Clause X – and Constitution of India, Article 226** - Appeal by Revenue against writ Court order—Declaration under section 88 of Finance Act No. 2 of 1998 for Assessment year 1990-91—Pendency of Appeal pre-requisite—Appeal dismissed for want of prosecution but recalled subsequent to filing declaration—Order recalling dismissal relates back to the date of original appeal—Appeal deemed to be pending on the date of

declaration—No error in the order of learned Single Judge : *Union of India And Ans. Vs. Shri Radhika Prakashan (Raipur) Private Limited Bhopal, I.L.R. (2004) M.P. 162 (DB)*

- **Clause X – Appeal–Service Law**–Termination–Constitution of India, Articles 226, 311–Coal Mines Provident Fund (Employees Recruitment) Rules 1982, Rule 7(6)–Probation and confirmation–In absence of specific order of confirmation employee cannot be deemed to be permanent employee–Petitioner as member of Civil Services safeguard under Article 311 of Constitution cannot be denied–Requirement of termination–One month’s notice or pay plus allowances in lieu thereof–Not complied with–Order of termination not passed by appointing authority but an authority subordinate to him–Order of termination quashed : *Chhatrapal Singh Thakur Vs. Assistant Commissioner of Coalmines Provident Fund, I.L.R. (2002) M.P. 76 (DB)*

- **Clause 10 – Appeal**–Suit for one third share in suit property–Defendant despite repeated opportunity not producing his witness or evidence–Trial Court rightly closed the evidence–Plaintiff illiterate woman–Alleged partition deed got executed by playing fraud on her–Share of ancestral property given to those who are not entitled to the property–Sufficient to invalidate the partition deed–Suit rightly decreed by Trial Court : *Rewa Prasad Vs. Smt. Amsa Bai, I.L.R. (2002) M.P. 82 (DB)*

- **Clause 10 – Appeal** – Transfer of land by member of Scheduled Caste–Written permission of Collector–Constitution of India, Article 226, Land Revenue Code, M.P., 1959, Sections 50, 158, 165 (7-B)–Grant of patta to landless person and consequent conferral of Bhumiswami rights–Such holder of land cannot transfer land before expiry of ten years that too subject to prohibition contained in Section 165(7-B) of the Code–Sale without permission of Collector–Sale rightly set aside and possession restored in Revision by Collector–*Suo motu* revision–Collector acting promptly as soon as this fact was brought to his notice power rightly exercised : *Mulayam Singh Vs. Budhuwa Chamar, I.L.R. (2002) M.P. 284 (DB)*

- **Clause X – Appeal – Constitution of India – Articles 226** – Writ petition challenging dismissal of appeal after 12 years – Competent authority concluded proceeding in 1990 - Cannot be re-opened by filing writ petition in 2002 – Urban Land (Ceiling and Regulation) Act, 1976, (Repealed by Act No. 15 of 1999), Sections 6(1), 10(5) and 33 – Objection to Draft Statement – Appeal – Dismissal of Notice – Nature of Land – Finding of fact – Clear finding that the land was meant for housing purpose – Cannot be reagitated in appeal – Dismissal of petition justified on ground of laches : *Bhaiyaji Udayram Vs. State, I.L.R. (2003) M.P. 621 (DB)*

- **Clause X – Appeal** – Service Law – Labour - Constitution of India – Articles 226 and Industrial Disputes Act, 1947 – Section 10 – Reference of dispute – Not limitation prescribed – Refusal to make reference on ground of delay – Not Justified –

Order set aside – Respondents directed to make the reference : *Ramadhar Tiwari Vs. Union of India*, I.L.R. (2003) M.P. 618 (DB)

- **Clause X -Appeal-** Against dismissal of writ petition as not maintainable-Constitution of India, Article 226 and Land Acquisition Act, 1894, Sections 3(b)(g), 11, 18, 28-A and 54-Land Acquired and compensation awarded-No reference made under Section 18 of the Act-Application for re-determination-Allowed by collector-Writ Petition is the only remedy available to the Union of India as it would not avail remedies of either reference under Section 18 or Appeal under Section 54 as it is not an interested person as envisaged under Section 3(b) of the Act-”Person interested” in Section 3(b) includes all persons claiming an interest in the compensation of land acquired-Order of Writ Court set aside and with the bipartite consent parties directed to institute reference proceedings under Section 18 of the Act notwithstanding any plea of limitation involved : *Union of India Vs. The Jt. Collector & Land Acquisition Officer*, I.L.R. (2001) M.P. 998 (DB)

- **Clause X -Appeal** - Against dismissal of writ petition-Constitution India, Article 226-Panchayat Raj Adhinyam, M.P. 1993-Section 91 and Panchayat (Appeal and Revision), Rules M.P., 1995, Rule 5-Suo motu revisional power-Lease granted in violation of statutory provisions-Additional Commissioner in suo motu revision setting aside the same-Revisional Jurisdiction of Commissioner-Rule 5 is in conformity of Section 91 of the Act and Rules framed under the enactment is a part of the said enactment-Additional Commissioner still vested with the same revisional power even after coming into force of the Appeal & Revisional Rules 1995-Reasonable time for exercising suo motu power of revision-Varies from case to case and depends upon the facts and circumstances of each case-Nothing to show that the power was excised without reason or justification-Order of learned Single Judge confirmed : *Harijan Matsyodhyog Sahkari Sanstha Maryadit, Sajvaya Vs. State*, I.L.R. (2001) M.P. 1173 (DB)

- **Clause X – Appeal** - Against judgment confirming decree of restitution of conjugal rights-Hindu Marriage Act, 1955-Sections 9 and 19-Suit for restitution of conjugal rights-Jurisdiction-Court in whose territory marriage took place would have jurisdiction to try the suit-Civil Procedure Code, 1908-Section 21-Objections as to jurisdiction has to be taken at the first available opportunity-No objection should be entertained at appellate or revisional stage unless taken in the Court of first instance-Section 19, Hindu Marriage Act and Section 21, C.P.C.-Paramount consideration would be whether there has been failure of justice-Number of opportunities given to husband to lead evidence and cross-examine witnesses of wife-Husband not availing such opportunities-No failure of Justice occasioned-Section 9, Hindu Marriage Act, 1955-Suit under-Second marriage by husband during subsistence of first marriage-Reprehensible-Even if marriage between the parties rendered irretrievable yet the husband cannot be given benefit of his own wrong-Judgment impugned affirmed : *Lalit Gurubaxani Vs. Smt. Usha Gurubaxani*, I.L.R. (2001) M.P. 809 (DB)

- **Clause X – Appeal** – Constitution of India - Article 26 – Writ petition against resolution passed to remove Sarpanch on account of no confidence motion-Madhya Pradesh Panchayat Raj Adhiniyam, 1993, Sections 2, 21-Madhya Pradesh-Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch Janpad Panchayat Tatha Zila Panchayat ke President Tatha Vice President Ke Virudh Avishwas Prastav) Niyam, 1994-Rule 3-Prescribed authority on being satisfied about the notice of no confidence shall fix the date, time and place of the meeting and notice shall be caused to be dispatched by him through the Secretary Gram Panchayat-Cause to be dispatched by him should not necessarily mean notice should be signed by prescribed authority-Issue of notice is a clerical job and has to be served through Secretary Gram Panchayat-Notice of no confidence issued by order of prescribed authority by Secretary Gram Panchayat-Not illegal-Notice should specify particular purpose of motion of no-confidence-Plea not raised before Single Judge hence not permitted to be raised in appeal-Order of Single Judge upheld : *Smt. Somvati Soni Vs. Gram Panchayat Padwa, I.L.R. (2001) M.P. 1684 (DB)*

- **Clause X – Appeal** – Excise Policy of State Government-Contract for sale of country liquor and Indian Made Foreign Liquor-Constitution of India, Articles 14, 19, 226-Writ Petition-Compulsory condition to purchase stock of outgoing licensee on payment of price for stock, excise duty and permit fee-Claim for adjustment on the basis of new excise policy-Excise Act, M.P., 1915, Sections 32, 62 and General Licence Conditions framed thereunder, and Foreign Liquor Rules, M.P., 1986, Rule 8, Clause 12-General Licence condition amended prior to auction-Therefore that statutory condition of purchasing left over stock of outgoing licences is binding both on the State and the licensee-State Government not under obligation to grant rebate or adjustment-General Police Statement of Cabinet sub-Committee-Unless incorporated in the Rules cannot be enforced through writ of mandamus particularly when they are made prior to amendment of the provisions for General Licence Conditions framed under the Rules-Promissory Estoppel-Not strictly applicable as against State Policy-Oral promise cannot be equated with statutory conditions-Claim of Rebate on basis of oral assurance of the cabinet sub-committee-Not incorporated in the rules-Have no statutory force-Petitioner entered into contract with all eyes open-Not open for them to seek enforcement of promissory estoppel against the State-Order impugned reversed : *State Vs. M/s. Swami Traders, I.L.R. (2001) M.P. 1495 (DB)*

- **Clause X - Appeal** from writ proceedings-Interested parties not arraigned-Leave to appeal and permission to intervene granted resolving the controversy as to joinder of necessary parties-Constitution of India-Article 14 and 226-Writ Petition-Challenging propriety of grant of escrow cover to successful bidders on least tariff basis after re-bidding as per direction of Central Government Power Ministry-After finalization of contract petitioners participated in the rebidding on the basis of least tariff-Precluded from challenging the same or to seek enforcement of statutory contract by reason of

acquiescence-Indian Electricity Act, 1948-Sections 43 and 43-A-Contract for purchase or sale of electricity by the Board and terms & conditions therefore-Such contracts are statutory contracts-Yet enforceability and Principle of promissory estoppel can be denied by the Courts if larger public interest is achieved by doing so as public interest is paramount as against individual interest-Escrow cover-Security for payment-Condition for providing financial coverage to IPPs in order to secure payment for sale of their energy to MPEB-Limited financial resources available-Has to be distributed on a good criterion-High powered committee consisting of experts decided that Least Tariff to be good criterion for grant of escrow-Many factors and complicated process involved-Difficult for the Court in writ jurisdiction to enter into merits and demerits of Least Tariff basis-Once high powered committee taking into consideration all relevant factors found Least Tariff to be a good Criterion-Grant of Escrow cover on that basis to successful bidders cannot be said to be arbitrary-Order of writ court set aside-State Govt. and MPEB left at liberty to proceed with the matter further on Least Tariff basis : *Bina Power Supply Company Ltd. Vs. State, I.L.R. (2001) M.P. 658 (DB)*

- **Clause X - Appeal** - Imposition of terminal tax on export of goods from Municipal limits-Constitution of India, Article 226-Municipalities Act, M.P., 1961-Sections 127 and 129 and Terminal Tax (Assessment and Collection) on Goods Exported From Madhya Pradesh Limits Rules, 1996-Rule 9 Scope and applicability-Legislative enactments cannot be subjugated or superseded by executive instructions-Imposition of tax by Municipality is a legislative process-Cannot be undone by executive circular of State Government-Can only be superseded by superior enactment-Executive instruction of State Government reducing rate of terminal tax from 0.5% to 0.2%-Not binding on Municipality till the date of enforcement of 1990 Rules-Order of writ Court set aside : *Chief Municipal Officer Kymore Vs. Eternit Everest Ltd., I.L.R. (2001) M.P. 1867 (DB)*

- **Clause X -Appeal** Motor Accidents-Award of compensation by Tribunal-Insurance company not filing written statement nor took plea of limited liability before the Tribunal-Plea of limited liability raised for first time at appellate stage-Cannot be sustained in absence of any document showing insurance contract did not stipulates any liability in excess of statutory liability-Motor Vehicles Act, 1939-Section 95-Plea of limited liability of insurer-It is for the insurance company to take such plea-Tribunal not expected to embark on a *suo motu* enquiry to ascertain whether insurer's liability was limited or unlimited : *Kaushal Bai Vs. Aabid Ali, I.L.R. (2001) M.P. 33 (DB)*

- **Clause X -Appeal**-Nature of-Intra Court Appeal-Not to be dealt with as if it is a First Appeal-Constitution to India, Article 226-Writ Petition-Forest offence-Penal Proceedings-Van Upaj (Vyapar Viniyam) Adhiniyam, M.P., 1969, Sections 15(6) and 19(1)(b)-Seizure of Truck carrying forest produce illegally-Husband of petitioner present in the vehicle-No explanation therefore-Plea of innocence rightly disbelieved as the trick is exposed by his presence in the vehicle-Order of learned Single Judge confirmed

: *Smt. Mani Jain Vs. Divisional Forest Officer-Cum-Authorised Officer, Mhow, I.L.R. (2001) M.P. 1359 (DB)*

- **Clause X-Appeal**-Sale of mortgage property by Finance Corporation for recovery of dues-State Financial Corporation Act, M.P., 1951. Sections 29.31.32 and Lokdhan (Shodhya Rashiyon Ki Vasuli)Adhinyam, 1987, Sections 3 and 5-R.R.C. issued to tehsildar for recovery of the due as arrears of land revenue-Provision does not bar the Corporation to take recourse to Section 29 to recover dues by sale of mortgaged property : *Dogar Tools Private Ltd. Vs. M.P. Financial Corporation, I.L.R. (2001) M.P. 1520 (DB)*

- **Clause X-Appeal**-Scope of Division Bench in dealing with Single Bench's Order-It is legally good, correct enough and justifiable Division Bench should be slow in disturbing it-Constitution of India-Articles 14, 21 and 226-Writ Petition-Education-Admission to B.E./B.Arch-Prayer for grant of admission-Interested candidates likely to be affected by such relief not joined as parties-Appeal deserves to be dismissed for non-joinder of parties-Interveners granted admission against available seats on basis of higher marks obtained by them-Because of stay they already suffered loss of one semester-Family members of petitioners making communication to concerned authorities-Party indulging in unfair mean cannot blame others to be unfair-Authorities directed to frame stringent rules to ensure fairness in admission to such courses-Writ Court elaborately dealing with provision of admission rules-No infringement of fundamental rights passed-Appellants not made out suitable case-Writ petition rightly dismissed : *Ku. Varsha Shrivastava Vs. State, I.L.R. (2001) M.P. 1003 (DB)*

- **Clause X-Appeal**-Service jurisprudence-It is cardinal principle that adverse ACR having adverse effect on career must be communicated to the incumbent else that would be violation of principles of natural justice and the whole process of promotion shall be vitiated-Purpose of communication is to inform the incumbent about adverse remarks to enable him to make representation-Though not communicated appellant made representation against the adverse ACR-Shows knowledge of appellant-Representation of appellant rejected after consideration at higher level-Violation of principles of natural justice cannot be alleged nor sustained-Order of Single Judge affirmed : *Madan Pal Singh Vs. Chief of the Army Staff, I.L.R. (2001) M.P. 513 (DB)*

- **Clause X-Appeal**-Suit for possession on compliance of conditional decree of permanent injunction in earlier suit-Amount deposited in promptitude-Refusal by defendant to receive money and deliver possession-Civil Procedure Code, 1908-Sections 11, 96, 151, Order VI, Rule 6 and Order 21, Rule-35-Contract Act, Indian, 1872 Section 46-Reasonable time for performing an act-Depends and varies from case to case-Money deposited within three days from the date of decree and on defendants refusal to comply to decree suit was filed for recovery of possession-No delay could be attributed to plaintiff in filing the suit-Trial Court rightly decreed the suit-Section 96-Dismissal of suit

by Appellate Court attributing delay to plaintiffs in depositing money and on ground of limitation-Not sustainable in the facts and circumstances as in a Revision in the same case High Court held that the suit is not barred by Limitation and the said order attained finality-Section 11, C.P.C.-In earlier suit title of present defendants negated and only conditional decree of permanent injunction was granted-No appeal filed by either parties-Finding and decree attained finality-Question of title cannot be raised by defendants in subsequent suit as principle of res judicata attracted-Limitation Act, Indian, 1963, Section 27 and Article 65 and Transfer of Property Act, 1908, Section 53-A-Adverse possession and part performance-If part performance is pleaded and the date of possession is traceable-Suit is not barred by limitation-Case of Adverse possession of defendant not made out-Suit of plaintiff decreed-Judgment & Decree of Trial Court restored : *Ratan Singh Vs. Shaligram, I.L.R. (2001) M.P. 1178 (DB)*

- **Clause X-Appeal**-Transfer-Constitution of India, Article 226-Writ petition-Challenging transfer on ground of malice-No sufficient material to sustain illwill-Petitioner can not be competitor of Chief General Manager thus allegation of personal competence can not be presumed-Service law-Transfer on request by incharge of Training Institute-Transfer policy and guide lines shows even intercompany transfer may be effected at any time on administrative ground-No bar under policy to transfer an employee from one subsidiary to another subsidiary-Vacancies in transferring department can not be held to be not based on administrative exigencies-No violation of transfer policy : *Sarvjit Singh Vs. Coal India Ltd, I.L.R. (2001) M.P. 1692 (DB)*

- **Clause X-Appeal**-Eviction suit-Accommodation Control Act, M. P., 1961-Sections 12(1)(c), (k) and (m)-Decree of eviction under Sections 12(1)(c) and (f)-Bona fide requirement of old lady for starting her own business-Age will not come in the way to start business-Bona fide need has to be judged objectively-Tenant and his staff creating obstruction in using room in possession of landlord at suit premises-Such act constitutes nuisance with the meaning of Section 12(1)(c)-Evidence Act, Indian, 1872-Section 92-Exclusion of oral evidence as to contents of a written document-Claim of set-off for the amount spent in alteration and modification of building-Contention contrary to written agreement-Agreement provides adjustment of such less amount than claimed-Tenant not entitled to set off as claims-Decree of eviction under Sections 12(1)(c) and (f) confirmed : *Dr. Sudhir Tiwari Vs Smt. Bhagwanti Devi Issrani, I.L.R. (2002) M.P. 289 (DB)*

- **Clause X-Appeal**-Maintainability-Suit for declaration and injunction-Agreement for sale by plaintiff and delivery of possession during pendency of the suit-Vendee permitted by the Court to join as defendant and also to conduct the suit on behalf of plaintiff-Cannot be estopped from pursuing further remedy available to the plaintiff-Suit decreed but reversed in First Appeal-Letters Patent Appeal by vendee defendant-Maintainable subject to restrictions already imposed earlier : *Harichand Vs. Dharampal Singh Baba, I.L.R. (2003) M.P. 1202 (DB)*

- **Clause X–Appeal** –Tax Laws -General Sales Tax Act, M.P. 1958 (II of 1959)– Sections 39 and 43–Power to impose penalty for alleged concealment of turn over– Provision relates to additional power and confers jurisdiction on the Commissioner for imposition of penalty–Proceeding can be initiated in *suo-motu* power of revision by the Commissioner–Order of Single Judge set aside: *Addl. Commissioner of Sales Tax, Jabalpur Vs. M/s. Moujilal Das Singh, I.L.R. (2004) M.P. 240 (FB)*

- **Clause X** – Appellant not party to writ petition before the learned Single Judge – Maintainability of appeal – Test is whether judgment of the learned Single Judge prejudicially affects the rights of the appellant or not – Appellant as elected councilor of Nagar Panchayat is a person aggrieved as she is interested to see that the person elected to the office of president should have confidence of the majority – Objection of respondent/petitioner overruled – M.P. Municipalities Act, 1961 – Section 59 – No-Confidence Motion against President – Vice President though present did not choose to exercise his statutory obligation and permitted a third councilor to preside over the meeting – Motion of no confidence passed, not illegal : *Smt. Chandi Bai Vs. Smt. Gulab Kali Singh, I.L.R. (1999) M.P. 464 (DB)*

- **Clause 10** and Civil Procedure Code (V of 1908) – Section 104, Order 43, rule 1 and order 39, rules 1 and 2- Letters patent appeal against an appellate order passed under order 39, rules 1 & 2-Not maintainable : *Firm M/s. Chhunilal Laxman Prasad, Jabalpur Vs. M/s. Agrawal And Company, Jabalpur, I.L.R. (1987) M.P. 173 (DB)*

- **Clause 10** - and Civil Procedure Code (V of 1908), Section 104, Order 43, Rule 1- Letter Patent Appeal against order in appeal of a Single Judge- Nothing but a second appeal- Appeal not maintainable : *B.S. Adityan Vs. Fencing Association of India, I.L.R. (1991) M.P. 560 (DB)*

- **Clause X** - and Civil Procedure Code (V of 1908), Section 96 – Dispute over use of particular Trade mark by the rival parties – Suit for perpetual injunction for restraining defendant for use of the plaintiff's Trade mark – Trade and Merchandise Marks Act, 1958, Section 2(q)(r) and (s) Sections 48, 49 – Registration of Trade mark with the Registrar under the Act is pre-requisite for being such an action – Plaintiff not registered proprietor nor registered user of the Trade marks – In absence of any supporting material on record finding of trial Court perverse : *M/s. Himalaya Drugs Co. Pvt. Ltd. Vs. M/s. Arya Aushadhi Pharmaceutical Works, I.L.R. (2000) M.P. 262 (DB)*

- **Clause X** - and Civil Procedure Code (V of 1908), Section 96, Order 9, Rules 7 and 13 and Civil Procedure Code (Amendment) Act, 1976 – Suit for partition, mesne profits and possession – Suit proceeded *ex parte* against defendants – Application under Order 9, Rule 7 of the court rejected – Suit decreed *ex parte* against defendants – Application for setting aside *ex parte* decree under Order 9, Rule 13 rejected, upheld by High Court and S.L.P. before Supreme Court dismissed as withdrawn – Appeal

under Section 96 of the Code filed thereafter dismissed as not maintainable – Letters Patent Appeal – Reference to larger Bench as to maintainability of First Appeal – Civil Procedure Code (Amending) Act, 1976 – Explanation added to Rule 13 of Order 9 of the Code – Legislative intention – Embargo – Remedy of this provision cannot be resorted to when an appeal against such *ex parte* decree has been disposed of except by way of withdrawal – Section 96(2) of the Code – Appeal – No bar even if filed after exhausting remedy under Order 9, Rule 13, C.P.C. – Appeal maintainable – Even proceedings of Appeal under Section 96 and application under Order 9, Rule 13 of the Code can be prosecuted simultaneously – Reference answered accordingly – Words “ratio decidendi” – What constitutes binding is ratio decidendi – ‘Precedent’ – A decision is a precedent for what it decides and not what is inferable from it : *Smt. Archana Kumar Vs. Purendu Prakash Mukherjee, I.L.R. (2000) M.P. 309 (FB)*

- **Clause X** - and Civil Procedure Code (V of 1908) Order 41, Rule 22 and 33-Appellate Court can exercise discretionary power under order 41, Rule 33, even in absence of cross objection-Appellant did not explain reason for delay in instituting proceedings-Decree of divorce can not be granted under Section 23(1) and (d) : *Rajesh Vs. Smt. Rukmani, I.L.R. (2001) M.P. 357 (DB)*

- **Clause X** - and Civil Procedure Code (V of 1908) –Section 96–Suit for recovery of difference owing to revision of prices–Upward revision of price for sale of fertilizers to tea, coffee, rubber plantations or to the cultivators–Notification issued on 8.6.1980 but communicated to the defendant on 23-6-1980–Revision of prices could not be enforced retrospectively when fertilizer purchased by dealer was already sold to consumers–Doctrine of precedent–Applies to pronouncement of law only–Interpretation of a clause of agreement–Not a pronouncement of law–Merely because other dealers chose to pay would not create an obligation on the part of appellant to pay the prices so fixed even in absence of communication to that effect–Suit dismissed : *Chhattisgarh Trading Co. Vs. Madras Fertilizers Ltd., I.L.R. (2003) M.P. 946 (DB)*

- **Clause X** – Civil Procedure Code (V of 1908) - Section 96 and Limitation Act, (XXXVI of 1963), Article 113–Suit for declaration against order of removal from service and for arrears of pay–Limitation is three years from the date when cause of action accrued–Subsequent representation can not be considered for fixing limitation–Ashashkiya Shikshan Sansthan (Adhyapakon Tatha Anya Karmcharyon Ke Vatano Ke Sanday) Adhinyam, M.P., 1978, Section 6(a) and Ashashkiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachari) Appeal Rules, M. P., 1978, Rule 10–Provision for appeal against order of removal–Includes an order passed without obtaining approval of competent authority–Appeal so provided not preferred and the suit also was filed beyond the period of limitation–Suit rightly dismissed : *Smt. Vinod Shrivastava Vs. Laxminarayan Sharma; I.L.R. (2003) M.P. 1084 (DB)*

- **Clause X**, - Civil Procedure Code, 1908 –Section 100, Order 41, Rule 19–Appeal against rejection of application for re-admission of second appeal–Second appeal

dismissed for want of prosecution—Order refusing re-admission not appealable under Clause X of Letters Patent : *Kamla Bajpai Vs. Smt. Sharda Devi Bajpai, I.L.R. (2003) M.P. 127 (DB)*

– **Clause X** – Constitution of India – Articles 226, 73, 253 Entry 14 of List I of Seventh Schedule – International agreement for sale Bhutan Lotteries – M.P. Lotteries Pratibandh Act, 1993 – Section 3 – Ban on Lotteries within the territory of Madhya Pradesh – Unless the Parliament enacts law, international agreement cannot be implemented if contrary to Municipal Laws – Executive instructions issued by Govt. of India can be of no avail – Lotteries (Regulation) Act 1998 – Sections 3, 4, 5 – States are within their right to prohibit sale of lotteries of other States : *Dinesh Gurjar Vs. Union of India, I.L.R. (1999) M.P. 561 (DB)*

- **Clause 10** – Constitution of India – Articles 226 - Appeal–Service–Termination from service after lapse of about 15 years–Alleged production of false Caste Certificate–Caste ‘Panika’ ceased to be a Scheduled Tribe after appointment–Caste Certificate not obtained by playing fraud–Order of termination quashed : *Lakhandas Manikpuri Vs. The Central Warehousing Corporation, New Delhi, I.L.R. (2002) M.P. 279 (DB)*

– **Clause X** – Constitution of India – Articles 226 – Intra - court Appeal and writ petition – Seizure of unaccounted teak logs and confiscation of saw mill – Kasth Chiran (Viniyaman) Adhiniyam, M.P., 1984 – Section 9 and 12 – For confiscation of saw mill it is not necessary that it has been used for storage – What is required is that implements and equipments have been used for commission of the offence – Surprise check in the saw mill – Stock found more than what was mentioned in the transport licence – Teak logs without any hammer mark – Different from those shown in account book – Unaccounted for and fresh – Only conclusion to be drawn is that provisions of the Act have been violated – Licensing authority within its jurisdiction to order for confiscation – Order of writ Court and that of the Additional District Judge set aside : *State Vs. Arvind Kumar Agarawal, I.L.R. (2003) M.P. 208 (DB)*

– **Clause X** – Constitution of India – Articles 226 and Civil Services Classification Control and Appeal – Rules, M.P., 1966, Rule 29 – Writ Petition and Letters Patent Appeal – Service law – Suspension – Suspension ordered in the wake of arrest in criminal case – Subsequently revoked – Second suspension order passed on ground of pendency of criminal case – Not review – Order not passed by superior authority – Cannot be treated to be a review : *Chandra Pal Singh Pundhir Vs. Madhya Pradesh of Board of Secondary Education, Bhopal, I.L.R. (2003) M.P. 521 (DB)*

– **Clause X** – Constitution of India – Articles 226 – Writ petition – Service Law – Transfer – Petitioner holding requisite qualification for being posted as Assistant Mines Manager – Had to be posted as such on transfer to re-open the mine closed by Deputy

Director of Mines Safety for non-appointment of such an officer like the petitioner – Mere change of nomenclature of the post does not demean status – No adverse consequence can be attributed to the transfer order – Not open to judicial review – No interference in appeal : *R.K. Khare Vs. M.P. State Mining Corporation Ltd., Bhopal*, I.L.R. (2003) M.P. 408 (DB)

– **Clause X** – Constitution of India, Article 226 and Petroleum Rules 1976 – Rule 144(4) – Public Interest Litigation – Petrol Pump located in thickly populated area – Traffic hazard – Safety of public and property pre-supposes that traffic hazard is one of the parts of safety – Non - objection – *sine qua non* for grant of licence – Fire accident – If the District Administration feels that location of Petrol Pump will not be conducive and congenial to the public at large then it is within its rights not to grant no-objection certificate – Collector on direction by the High Court constituted a committee and on its report felt persuaded to remove the petrol pump from its present site in public interest – Decision cannot be said to suffer from arbitrariness, unfairness or by any illegality : *Ravindra Singh Sando Vs. Bharat Petroleum Corporation Ltd*, I.L.R. (1999) M.P. 654 (DB)

– **Clause X** – Constitution of India, Article 226, Essential Commodities Act (X of 1955), Sections 3, 5 and Rice Procurement (Levy) Order, M.P. 1970 – Aims and objects are to secure surplus rice available for requirement of other deficit State in the country – Regulatory and prohibitory exercise of power – Word ‘Rice’ includes any variety of rice – Licence is given to produce rice – Levy is on the rice – The State Government has right to direct licensed Millers to produce any particular type of rice while imposing the levy due to public need : *State Vs. Santosh Kumar Agrawal*, I.L.R.(1999) M.P. 1034 (DB)

- **Clause X** - and Constitution of India- – Retrenchment of workmen – Application therefor – Industrial Disputes Act, 1947- Section 25-N – Permission for retrenching workmen from the appropriate Government- Mandatory – Rule 76-A of the Industrial Disputes (State) Rules, 1957 – Procedure for obtaining permission – Application for permission has to be made in triplicate with copy to the concerned workmen – Section 25-N(4) – Application not filed as required under the law – Expiry of sixty days from date of such application – Deemed permission cannot take effect – Section 25-F – Three months notice served on workmen for retrenchment – Not maintainable in Law – Period of sixty days shall start only when the application is made in strict compliance of law – Order of learned Single Judge concurred with as no interference is warranted : *Orissa & Allied Industries Ltd. Vs. State*, I.L.R. (2000) M.P. 980 (DB)

- **Clause X** - and Constitution of India – Writ Petition – Taking over of private textile company and handing over of the same to State Textile Corporation –Review application pending before the State Government – Writ Petition seeking quashing of

the order of State Government and for direction to consider review application – Prayer confined only to direction to consider review application – Petitioner impliedly abandoned other relief – Cannot be allowed to re-agitate the matter in subsequent writ petition – Industrial Disputes Act, 1947 – Section 25 – O(5) – Nature of provision – Word “may” occurring in the provision makes it optional for the Government to either review the order granting or refusing permission for closure or refer the matter to the Tribunal for adjudication – Provision not mandatory – Option of review stands exhausted – Appellants cannot ask for other option as a matter of right : *Ujjain Mill Mazdoor Sangh Vs. State*, I.L.R. (2000) M.P. 1250 (DB)

- **Clause X** - and Constitution of India, Articles 14, 226 – Writ Petition and L.P.A. – Maintainability – Controversy relates to validity of admission of students more than the strength fixed by the competent council to the college run by petitioner society – Society registered under the M.P. Societies Registrykaran Adhiniyam, 1973 – Maintainability of L.P.A. – Not affected by non-joinder of students as parties when the society itself is filing writ petition and prosecuting the case in their interest – Article 14 – Discrimination – Grievance that similar Societies permitted by the council to admit more students than the petitioner’s college – Council rightly directed to re-examine the matter fairly and fix strength of students for petitioner society – No interference called for in that part of impugned judgment – National Council for Teachers’ Education Act, 1993 – Sections 2(J), 12 and 14 – ‘Regional Committee’ as defined under the Act is the only authority having jurisdiction to regulate recognition and fixation of strength of students to an institution in absence to provision of Sections 12 and 14 of the Act – Education College run by petitioner society – Petitioner society admitting more students than the strength fixed by the council – Not proper – Holding of examination and publication of results of such excess students – Not a proper solution – Direction to this effect in the impugned judgment set aside : *National Council For Teachers Education Vs. Chouhan Education Society*, I.L.R. (2000) M.P. 569 (DB)

- **Clause X** - and Constitution of India, Article, 226 – Amenability to writ jurisdiction – Depend upon notice of action complained – Securities Contracts (Regulations) Act, 1956 and Article 12 – Stock Exchange – Performing public duty – Though not a State under Article 12 yet can be amenable to writ jurisdiction if the action complained against involves breach of statutory public duty cast on it – Order of learned Single Judge set aside – Directed to be placed before appropriate Bench to examine the nature of issues involved : *Rajendra Vs. M.P. Stock Exchange*, I.L.R. (2000) M.P. 844 (DB)

- **Clause X** - and Constitution of India, Article 226 – Education – Petitioner allowed to appear in XII Board examination on her furnishing all necessary information to the Board – Respondents estopped from canceling her examination – Madhyamik Shiksha Adhiniyam, M.P., 1965 – Section 28 and Regulations framed thereunder – Regulations 2(16), 97 and 139 – Petitioner ‘private candidate’ as defined in Regulation 2(16) –

Cleared supplementary examination of X Board and appearing in the XII Board examination in next academic year – Regulation 97 not a bar as Regulation 139 permits candidates to appear in supplementary exam as also in the exam of next higher class – Different methods cannot be adopted in case of private candidate who can also skip one class and straightway appear in Class XII exam : *Kumari Kalpana Singh Vs. State, I.L.R. (2000) M.P. 583 (DB)*

- **Clause X - and Constitution of India – Article 226 – Medical Education – Admission to Post-graduate courses – M.P. Medical and Dental Post-graduate Entrance Examination Rules, 1999 – Rule 3(VI)(iv) and the Bulletin of information for Guidance for All India Pre-P.G. Courses 1999, Paragraph – 6** Petitioner Successfully appeared in Pre-P.G. Examination and studying in M.D. Courses in skin and VS.D. – Appeared in subsequent examination for admission in M.S., (General-Surgery) – Denial of admission cannot be faulted with as there is statutory prohibition under para 6(b) of the Bulletin that candidate already pursuing P.G. courses shall not be eligible – Rule 3(VI)(iv) of the State Rules also puts embargo on such re-test for next three year from the date of previous counseling – Petitioner appeared at his own risk – Cannot be granted admission in M.S. (General Surgery) for the very basic disqualification under the Rules – Order of learned Single Judge set aside : *State Vs. Dr. Vishal Madan, I.L.R. (2000) M.P. 1262 (DB)*

- **Clause X and Constitution of India, Article 226 – Medical Education – Request of State Govt. for reduction of minimum qualifying marks for admission to Post-Graduation Courses in Medical Education for reserve categories – Declined by the Medical Council of India as the matter is still under process as per direction of Hon'ble Supreme Court and yet to be finalized – Not liable to be interfered with – Medical and Dental Postgraduate Entrance Examination Rules, M.P., 2000 – Provision for unfilled reserved seats to revert to General Category – Decision of learned single judge maintained : *State Vs. Medical Council of India, I.L.R. (2000) M.P. 591 (DB)***

- **Clause X and Constitution of India, Article 226 – Office falling vacant due to resignation of President addressed to Chief Municipal Officer – Writ Petition – Single Judge directing fresh election of President – L.P.A. – Municipalities Act, 1961 – Section 43(7) – Resignation by President – Notice in writing necessary – Resignation though not tendered in accordance with Section 43(7) of the Act yet by subsequent conduct appellant herself fortified the fact of her resignation – Cannot be allowed to turn around on a technical plea – Writ issued by learned Single Judge upheld : *Smt. Prabharani Vishwakarma Vs. State, I.L.R. (2000) M.P. 716 (DB)***

- **Clause X and Constitution of India, Article 226 – Panchayat Election – Petitioner declared elected unopposed to the office of Sarpanch as a result of rejection of nomination paper of other contestants – Panchayat Raj Adhiniyam, M.P., 1993 – Section 122(2) – Election petition – Limitation of thirty days – Panchayat Nirvachan**

Niyam, M.P., 1994 – Rules 47 and 90 – Period of thirty days for Election Petition has to be reckoned from the date of notification of election in form 26-A under Rule 90 and not from the date of notification in form 24 under Rule 47 of the Nirvachan Rules – Election Petition filed within thirty days from the date of notification under Rule 90 – Not time barred – Cost of Rs. 20,000/- imposed by learned Single Judge waived of as petitioner is not guilty of wrong rejection of nomination paper of other candidates : *Smt. Pramila Bai Vs. Sub-Divisional Officer, Bareilly*, I.L.R. (2000) M.P. 1115 (DB)

- **Clause X and Constitution of India, Article 226** – Writ Petition – Freedom Fighters' Pension – Widow is entitled to get benefit after death of husband freedom fighter – Freedom Fighters – It is the duty of the State to look after the welfare of freedom fighters and their dependent widows – After grant the pension withdrawn by the respondents and before challenge could be made freedom fighter expired – Application moved by widow rejected – Writ Court's direction also entailed rejection – Second round of litigation – Writ Court holding petitioner eligible to get benefit but from the date of sanction – Letters Patent – Clause 10 – Appeal – Widow making application followed by repeated representations – Freedom Fighters' Pension Scheme, 1972 – Column 'DURATION' Note (i) – Recipient entitled for pension from the date of application – Petitioner entitled for pension from the date of her husband was deprived of – Delay on the part of Respondent – Once entitlement is established the amount has to carry interest till payment is made : *Smt. Kamla Bai Vs. Union of India*, I.L.R. (2000) M.P. 489 (DB)

- **Clause X and Constitution of India, Article 226 and 227** – Alternative Remedy – Existence of an alternative remedy does not operate as a bar on the exercise of a Writ Jurisdiction, but this by itself cannot be stretched to mean that a Writ Court was bound to entertain a Writ Petition, merely because it was based on violation of Principles of Natural Justice – Writ Jurisdiction – Discretionary and equitable jurisdiction – Writ Court cannot be held bound or compelled to exercise it necessarily to suit the convenience and wishes of Petitioner – Dismissal of Writ Petition confirmed – Imposing of cost of Rupees 5,000/- on Petitioner/Appellants by Writ Court – Excessive – Impugned order modified to that extent only : *Dinesh Vs. State*, I.L.R. (2000) M.P. 59 (DB)

- **Clause X – Constitution of India – Article 226, 227** – Writ Petition – Maintainability – Van Upaj (Vyapar Viniyaman) Adhiniyam, M.P., 1969 – Section 15-B – Order of Sessions Judge in exercise of revisional power attains finality by virtue of sub-section (5) of Section 15-B – But amenable to writ jurisdiction of High Court as no remedy is available under the law – Writ Petition maintainable – Criminal Procedure Code, 1973 – Section 397(3) – Bar of second revision by the same party – Controversy not falling under the Cr.P.C. – Question of circumventing statutory bar of second revision under Section 397 (3) of the Code does not arise – Order of learned Single Judge set aside – Matter directed to be placed before appropriate Bench for decision on merit :

Smt. Mani Jain Vs. Sub-Divisional Forest Officer, Mhow, I.L.R. (2000) M.P. 1257 (DB)

- **Clause X and Constitution of India, Article 226 and 227** – Writ Petition – Promotion – Approval accorded by the Selection Board and also by the Army Headquarters for petitioner's promotion to the rank of Lt. Colonel – Adverse material discovered subsequent to such approval – Cannot be used – Such approval washed away the sting of any such adverse material – Promotion rightly granted by writ Court to the rank of Lt. Colonel – Further promotion to the rank of Colonel – Not within the domain of writ Court – Order already implemented and petitioner retired as Colonel – Order maintained on ground of equity : *Union of India Vs. Lt. Col. Suba Singh Aulakh, I.L.R. (2000) M.P. 158 (DB)*

- **Clause X and Constitution of India, Articles 14 and 226**-Writ Petition-Adverse ACR not communicated but considered for purposes of promotion-Refusal by writ Court to interfere with the ACR on ground of delay-Letters Patent, Clause X-Appeal-Service prudence-It is cardinal principle that adverse ACR having adverse effect on career must be communicated to the incumbent else there would be violation of principles of natural justice and the whole process of promotion shall be vitiated-Purpose of communication is to inform the incumbent about adverse remarks to enable him to make representation-Though not communicated appellant made representation against the adverse ACR-Shows knowledge of appellant-Representation of appellant rejected after consideration at higher level-Violation of principles of natural justice cannot be alleged nor sustained-Order of Single Judge affirmed : *Madan Pal Singh Vs. Chief of the Army Staff, I.L.R. (2001) M.P. 513 (DB)*

- **Clause X and Constitution of India, Article 226**- Appeal from interim order of Single Judge passed in writ petition-Demands raised by State Govt. challenged in writ petition-Initially whole demand was stayed but later the same was modified requiring petitioners to pay 50% of the demand amount and also furnish Bank guarantee for remaining part of the demand-Appeal against-Not maintainable-L.P.A. would only lie against final adjudication of rights of the parties by a Single Judge : *M/s. Raymond Cement Works , Bilaspur Vs. State, I.L.R. (2001) M.P. 365 (DB)*

- **Clause X and Constitution of India, Article 226**- Imposition of Terminal Tax by Municipal Council on Copper concentrate-Terminal Tax (Assessment & Collection) on the Goods Exported from Madhya Pradesh Municipal Limits Rules, 1996-Residuary Entry-SI. No. 15-Municipality is left free to levy terminal tax on other local products except edible oil-Plead that copper is a Central subject and the State of Municipality has no competence to levy tax-Not tenable-Terminal tax imposed as revenue for performing mandatory duty by the council-No infirmity in the reasoning of learned Single Judge : *Hindustan Copper Ltd. Vs. State, I.L.R. (2001) M.P. 48 (DB)*

- **Clause X and Constitution of India, Article 226**-Service Law-Writ Petition and Appeal-Industrial Disputes Act, 1947-Section 10(1)-Dispute raised by workmen-Refusal by appropriate Government to make reference to CGIT on ground of delay-Not proper as no limitation is prescribed for such proceedings-Limitation Act, 1963-Article 137-Not attracted as Limitation Act is not applicable to applications under the I.D. Act-Impugned Order set aside : *Anand Kumar Dubey Vs. Union of India*, I.L.R. (2001) M.P. 188 (DB)

- **Clause X and Constitution of India, Article 226**-Writ Court elaborately dealing with provision of admission rules-No infringement of fundamental rights proved-Appellants not made out suitable case-Writ petition rightly dismissed : *Ku. Varsha Shrivastava Vs. State*, I.L.R. (2001) M.P. 1003 (DB)

- **Clause X and Constitution of India, Article 226**-Writ Petition and Appeal-Service Law-Promotion-Agrieved person-Who is-Petitioner not entitled to be considered for promotion by the time questioned promotion took effect-Petitioner not an aggrieved person-C.C.S. (Redeployment of Surplus Staff) Rules, 1990-Rule 2(g)-Surplus staff-Incumbent came on deputation from Forest Research Institute to the Deciduous Forest Institute and absorbed as Head Clerk in the institute-Subsequent closure of former would not render him surplus staff-His seniority deserved to be preserved : *Smt. Manda Ade Vs. Indian Council of Forestry Research Education Dehradun*, I.L.R. (2001) M.P.37 (DB)

- **Clause X and Constitution of India, Article 226** - and Municipal Corporation Act (XXIII of 1956), Section 7-Service Law-Age of retirement in local bodies-Appellants Class IV staff-Age of retirement reduced and they have been retired at the age of 50 years-No grievance can be made out on ground that State Govt. increased the age of retirement of Class IV employees to 62 years as Municipal Corporation are corporate bodies having own conditions of service-Back wages-Subsequent Notification-Corporation accepted the age of retirement to be 62 years and reinstated the appellants-Back wages not paid on no work no pay basis-Cannot be termed as arbitrary : *Makhanlal Sahu Vs. State*, I.L.R. (2001) M.P. 185 (DB)

- **Clause X and Constitution of India, Article 226** – Allotment of L.P.G. Distributorship to freedom fighters–Allottee getting Freedom Fighter’s Pension by State Government–Eligibility of allotment not confined to only pensioners of Central Government–Allegation against chairman being bias due to relationship–Chairman not participated in Board meetings at the time of interview of allottee–No ground for interference in allotment–Writ petition and appeal by legal representative–Since allotment has not been made in his favour no cause of action survives–Order in writ petition confirmed : *Smt. Nirmala Shrivastava Vs. Oil Selection Board (Madhya Pradesh)*, I.L.R. (2002) M.P. 297 (DB)

- **Clause X and Constitution of India, Articles 14 & 226-** Service Law–Principles of natural justice–Departmental Enquiry–Disciplinary authority disagreeing with the finding of the Inquiry Officer imposed penalty–The Disciplinary authority himself in a different capacity conducted preliminary enquiry–Concept of bias cannot totally be ruled out–Justice does not appear to have been done–Order of punishment imposed on petitioner quashed–Order of learned Single Judge reversed : *Dr. J. N. Dubey Vs. Registrar, J. N. Krishi Vishwa-Vidyalaya, Jabalpur, I.L.R. (2003) M.P. 400 (DB)*

- **Clause X, Constitution of India, Article 226 -** and Panchayat Nirvachan Niyam, M.P., 1995, Rule 80–Recount of Votes –Can only be permitted if a written application is made to the Returning Officer immediately after announcement of election result–If such an application was made and returned appellant should have filed the same–No document filed in appeal or before writ Court–Plea of making application for recount is an after thought–No interference in the order of writ Court: *Lakhanlal Patel Vs. State, I.L.R. (2003) M.P. 52 (DB)*

- **Clause X and Constitution of India -Articles 14, 226 –** Appeal against writ Court order–Service law–Co-Operative Bank–Recruitment–Stay of process–No reasons assigned–Writ petition–Action not justified by showing adequate material of alleged irregularities–Writ Court ought to have quashed the orders instead of directing to conduct enquiry and pass order–Such a course would be against the Law laid down by the Supreme Court–Order of writ Court set a side–Order staying recruitment process also set a side : *Ajay Sahu Vs. State of M.P., I.L.R. (2004) M.P. 278 (DB)*

- **Clause X and Constitution of India, Articles 141, 226 –** Service Law–Deputation–Parent department has right to recall services of its employer in absence of specific contract assuring particular tenure of absorption and unless absorbed in borrower department–Precedent–Similar petition admitted and ad interim writ granted by another Bench of High Court will not act as precedent–Reasoned decision in subsequent case will become a binding precedent on co-ordinate Bench : *DR. S.M.P. Sharma Vs. The State Of M.P. Through The Secretary, Animal Husbandry Department, Vallabh Bhawan, Bhopal, I.L.R. (2004) M.P. 1129 (DB)*

- **Clause X and Constitution of India, Article 226 –** Appeal from writ Court order–Service law–Promotion–Criteria fixed “seniority-cum-merit”–Given the minimum merit a senior person is required to be promoted first before his junior–Not permissible to be superseded on ground that on comparative merit he was found less meritorious : *Vinod Kumar Pandey Vs. Managing Director, M.P. S.R.T.C., I.L.R. (2004) M.P. 576 (DB)*

- **Clause X, Constitution of India, Article 226 -** and Co-operative Societies Act, M.P., 1960, Sections 55, 64 and 65(3)– Co-operative Service Law–Termination–Dispute–Limitation–Termination order passed in 1974–Limitation of one month for raising dispute

introduced in 1977–Not applicable to the present case–Termination of workman–Dispute–Cannot be shut merely on the question of limitation–Non obstante clause–Dispute filed belatedly–Can be entertained by Registrar if sufficient cause is shown–Registrar has power to condone the delay–Registrar and Tribunal held that the termination is illegal–A finding of fact–Court will not interfere in exercise of powers under Article 226 of the Constitution unless such findings are perverse–No material to show that the orders are based on “No evidence”–Order of writ Court set aside and that of Registrar restored : *Narayan Prasad Tamrakar Vs. M.P. State Co-operative Land Development Bank Ltd., I.L.R. (2004) M.P. 154 (DB)*

- **Clause X and Constitution of India-Article 226-** Intra - Court appeal from writ court–Service Law-Regularisation of services—Temporary employees put in more than five years service–Order of writ court to regularise qualified persons on basis of seniority—Difficulty faced by the University as State has refused to release additional funds—Any order the Court passes must be implementable–In absence of State coming forward the court must evolve a realistic balance between interests of the two parties—Order of writ court modified on a broad consensus–Employees completing 5 years shall not be terminated and no direct recruitment till they are regularised–Modified order also to apply to those employees who could not approach the Court : *Jawahar Lal Nehru Krishi Vishwavidyalaya Vs. Rajendra Singh, I.L.R. (2004) M.P. 270 (DB)*

- **Clause X Constitution of India, Article 226**–Appeal from writ Court order–Education–De-recognition of School Madhyamic Shiksha Adhiniyam, M.P. Section 8–Withdrawal of recognition–Effort of the Court will be not to save the institution if it had not complied with the requirements but to save the children from missing out Board examination. De-recognition done in middle of academic session–Interim order of the writ Court also enured to the benefit of the institution–Students allowed to appear in Board examination as private candidate : *Sanjay Memorial Higher Secondary School Vs. Board Of Secondary Education M.P. 360 (DB)*

- **Clause X and Constitution of India, Article 226**– Intra Court appeal from writ Court order–Service Law–Military Services – Disability Pension–Army pension Regulations 19, 61– Regulations 173, 187–Disability Pension is payable if disability is 20% and above and is attributable to Military Service – Though attributable to military service disability assessed at less than 20% at the time of discharge–Subsequently if disability aggravates and increases to 20% & above incumbent entitled to disability pension from the date of reconvey–On resurvey disability assessed at 20% permanent–Petitioner entitled to disability pension–Denial by respondents not fair–Writ Court order set aside–Mandamus issued to grant disability pension with 6% interest on arrears : *Shiv Prasad Soni Vs. Union of India, I.L.R. (2004) M.P. 368 (DB)*

- **Clause X and Constitution of India, Article 226**–Appeal from writ Court order–Service law Jurisdiction–Writ Petition dismissed on ground of jurisdiction with liberty to

move Gwalior Bench of High Court–Matter taken up on merits to cut short litigation–Furnishing false information about criminal prosecution–Appellant prosecuted in a criminal case–Fact that he is acquitted in the case could never be a ground for not mentioning it in verification roll at Q.No. 12(a)–Consequent termination–Shockingly disproportionate–Disciplinary authority did not hold an inquiry and did not consider the quantum of punishment–Permissible for the Court to substitute the punishment as an exception–Termination set aside–Appellant reinstated in service with imposition of punishment of stoppage of one increment with cumulative effect : *Kalyan Singh Verma. Vs. Director General, Headquarters, Central Reserve Police Force, New Delhi, I.L.R. (2004) M.P. 655 (DB)*

- **Clause 10, Constitution of India, Article 226** - and Indira Kala Sangeet Vishwavidyalaya Adhinyam, 1956–Sections 12,18,23,31, and Statute 14 thereof–Appointment of Registrar–Panel of candidates given by Selection Committee–In absence of provision in the Act, Rules or statute it cannot be assumed that the panel is in order of merit and the executive council should appoint the candidate whose name appears first in the panel–No error in writ Court order : *Dr. V.K. Chakravarty Vs. Indira Kala Sangeet Vishwa Vidyalaya, I.L.R. (2004) M.P. 1065 (DB)*

- **Clause X and Constitution of India–Article 226** - and Nagar Tatha Gram Nivesh Adhinyam, M.P. 1973, Section 73–Power of State Government to give direction–Can only be exercised in the matter of administration and supervision–Colonising and housing–Circular for surrendering 15% of total land for informal sector before accepting lay out–Land sought to be taken away permanently–A transfer of ownership from the original owner–However laudable be the object–Cannot be done without payment of just compensation–Appeal dismissed : *State Vs. Gautam Nagar Housing Society, Bhopal, I.L.R. (2004) M.P. 274 (DB)*

- **Clause X, XIII, Constitution of India Articles 226, 227**, - Civil Procedure Code, 1908, Section 96, Order 41, Rule 22–Intra–Court Appeal from writ Court order–Different from an LPA from First Appeal under Section 96 CPC–Cross-objection or cross-appeal–Not maintainable–Respondent cannot await service of notice to file cross appeal in LPA–Respondent may prefer LPA subject to Rule XIII for condonation of delay–May also defend or assail the findings recorded by the learned Single Judge on different grounds that find mention in the order–Reference answered accordingly: *Jabalpur Development Authority Vs. Y. S. Sachan, I.L.R. (2004) M.P. 231(FB)*

- **Clause X, XV and Constitution of India, Articles 226, 227**– Writ petition–Challenge of award passed by the Industrial Tribunal –Single Bench of High Court agreeing with the view taken by Industrial Tribunal–This is in exercise of supervisory jurisdiction and not original jurisdiction under Article 226–LPA not maintainable–Petitioner obtained employment on false representation–Admittedly not the son of displaced person–Story of adoption not put forth in domestic inquiry –Plea rightly negatived –Appeal

dismissed : *Gyan Singh Markam Central Govt. Industrial Tribunal-Cum-Labour Court, JBP, I.L.R. (2004) M.P. 491 (DB)*

- **Clause 10 and Hindu Marriage Act, (XXV of 1955) – Section 24-** Interlocutory order passed under section 24 of the Act is judgment within the meaning of clause 10 of Letters Patent – Order passed by Single Judge of High Court on an application under section 24 of the Act in appeal Letters Patent Appeal lies: *Raghvendra Singh Choudahry Vs. Smt. Seema Bai, I.L.R. (1988) M.P. 495 (DB)*

- **Clause X, Hindu Marriage Act (XXV of 1955), Sections 13(1),13(1-B),23(1)(b) and (d) and 28 and Civil Procedure Code (V of 1908), Order 41, Rules 22, 33-**Petition for divorce on ground of desertion-Decree refused by trial Court on ground of delay of 28 years-Section 28-First Appeal-Appeal dismissed and also finding on desertion reversed by first appellate court though there was no cross-objection-Letters Patent-Clause X, Appeal under Order 41, Rules 22 and 33, C.P.C.-Appellate Court can exercise discretionary power under Order 41, Rule 33 even in absence of cross-objection-Appellant did not explain reason for delay in instituting proceedings-Decree of divorce can not be granted u/s. 23(1)(b) and (d)-Plea that there is no possibility of reunion and it is a broken marriage therefore decree should be granted-Not acceptable-Appellant cannot take advantage of his own wrong-Courts below rightly dismissed the case of appellant : *Rajesh Vs. Smt. Rukmani, I.L.R. (2001) M.P. 357 (DB)*

- **Clause X and Succession Act, Indian (XXXIX of 1925), Sections 276, 299** – Execution of second will – Suspicion circumstances – Testatrix octogenarian – Died of septicaemia kind of blood poisoning – Animus testandi – Finding that testatrix was not of sound disposing mind impregnable – Testatrix died within three week of execution – Will not registered during her life time but after her – Certain in explicable gaps in the will – Execution not proved as enjoined in Section 63(c) – Suspicious circumstances expositied cannot be interfered with – Nothing elicited to discredit attesting witness of first – Conclusion that the will has been duly executed and proved – Cannot be found fault with : *Vivian Parera Vs. David Laughran , I.L.R. (1999) M.P. 1144 (DB)*

- **Clause 10**-Division Bench hearing letters patent under-Powers of : *Shrichand Vs. Sardar Tejinder Singh, I.L.R. (1980) M.P. 129 (DB)*

- **Clause 10**-Ground not raised before Single Juge cannot be raised in Letters Patent Appeal : *Shri D.N. Sethi of Jabalpur Vs. Dr. Miss J.D. Sharma 536 (DB)*

- **Clause 10**-Grant of leave by single Judge-Bench hearing appeal-Jurisdiction to question or interfere with grant to leave by a single Judge granting leave-Single Judge can grant leave *suo motu*-Relation between Bench hearing Letters Patent appeal and single Judge-Not the same between appellate Court and subordinate Court : *Ramnarayan Vs. The State of M.P., I.L.R. (1962) M.P. 84 (DB)*

- **Clause 10**-Impugned order finally deciding a question in the ancillary proceedings – Whether amounts to ‘Judgment’ within the meaning of clause 10 : *Shrichand Vs. Sardar Tejinder Singh*, I.L.R. (1980) M.P. 129 (DB)

- **Clause 10**-Judgment –Meaning of – Civil Procedure Code Sections 22 and 23 order of single judge transferring suit from one court to another under-Not a ‘Judgment’- Not appealable under clause 10 of letter patent-Sections 22, 23 and 24-High Court, Jurisdiction of-Transfer of suit from the court within its jurisdiction to another court within the jurisdiction of another High Court-Transfer within jurisdiction-Transfer of suit from one court to another-Preponderance of balance of convenience-Is prime consideration: *Jagatguru Shri Shankaracharya, Jyotish Pethadhiswer Shri Swami Swaroopanand Saraswati Vs. Shri Ramji Tripathi*, I.L.R. (1980) M.P. 231 (DB)

- **Clause 10**-‘Judgment’-Test-Order of single Judge setting aside ex-parte decree-Whether a ‘Judgment’-Impugned order finally deciding a question in the ancillary proceedings – whether amounts to ‘Judgment’ within the meaning of clause 10-Division Bench hearing Letters Patent under – Powers of – Order of single Judge-when can be interfered with: *Shrichand Vs. Sardar Tejinder Singh*, I.L.R. (1980) M.P. 129 (DB)

- **Clause 10** – Leave restricted certain point – No other point can be allowed to be raised – Point not argued before single Judge – Cannot be permitted to be urged in Letters Patent Appeal : *Madanlal Vs. Ramprakash* I.L.R. (1964) M.P. 901 (DB)

- **Clause 10**- Leave permissible may be granted on restricted ground or without restriction : *M/s Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey*, I.L.R. (1975) M.P. 82 (DB)

- **Clause 10**-Leave can be restricted to particular point : *Sukhdeo Vs. Gendalal*, I.L.R. (1965) M.P. 335

- **Clause 10** - Letters Patent not an enactment - Does not amend or supplement Government of India Act - Not repealed under express terms of Article 395 : *S.S. Nirmalchand Vs. Shrimati Parmeshwari Devi*, I.L.R. (1957) M.P. 396 (DB)

- **Clause X**- L.P.A. would only lie against final adjudication of rights of the parties by a Single Judge : *M/s. Raymond Cement Works , Bilaspur Vs. State*, I.L.R. (2001) M.P. 365 (DB)

- **Clause 10**- Leave granted by a single Judge to file appeal- Person becomes entitled to prefer an appeal- When leave is granted to a person- That person becomes entitled to prefer an appeal : *Chandel Vs. Hiralal*, I.L.R. (1978) M.P. .997 (DB)

- **Clause 10** – Maintainability of Letters Patent Appeal – Single Judge passed judgment in exercise of powers under Article 227 of Constitution – No Letters Patent Appeal would lie against such judgment : *Indore Dugdh Sangh Vs. K.P. Singh*, I.L.R. (1996) M.P. 378 (DB)

- **Clause X** – Maintainability of L.P.A. – Not affected by non-joinder of students as parties when the society itself is filing writ petition and prosecuting the case in their interest : *National Council For Teachers Education Vs. Chouhan Education Society*, I.L.R. (2000) M.P. 569 (DB)

- **Clause 10** - Order determining rights of parties on merits-Order is final order-Appeal maintainable-Constitution of India-Article 226-Appellate order confirming order of Lower Tribunal-Appeal but not original tribunal made party-Petition liable to dismissal-Abolition of Proprietary Rights, MP (Estates, Mahals, Alienated Lands) Act –Rule 4 (ii) (c) framed under section 54-Does not contemplate extension of Land Revenue Act-*Gaontia* placed on par with *Thekedar* in C.P.-*Thekedar* not deprived of benefits because “*Gaontia*” was not used in the State-Conditions in proviso affirmative-All conditions not necessary to be satisfied : *Mst. Laxmi Kumari Devi Vs. Radhakishan*, I.L.R. (1961) M.P. 821 (DB)

- **Clause 10** - Order holding that decree was satisfied in terms of agreement between parties - Amounts to a decree - Order appealable under Clause 10, Letters Patent : *S.S. Nirmalchand Vs. Shrimati Parmeshwari Devi*, I.L.R. (1957) M.P. 396 (DB)

- **Clause 10**-Order on application for interim injunction-Not a judgment-No Letters Patent Appeal lies : *Punjab Soap Works, Jabalpur Vs. Hindustan Lever Ltd., Bombay*, I.L.R. (1962) M.P. 541 (DB)

- **Clause 10**-Order passed on merits setting aside decree and remanding the case for trial-Order is a judgment-Limitation Act, Article 31-Applicable to every case of non-delivery by carrier irrespective of cause of non-delivery-Special article dealing with carrieres-Railway receiving goods from criminal Courts after decision of case-Position of railway still that of carrier-Applicable to cases laid in contract or in tort-Delivery of goods to Railway by criminal Court-Does not furnish fresh cause of action: *Union of India Vs. Ainkumar Kaluram*, I.L.R. (1962) M.P. 391 (DB)

- **Clause 10**-Order of single Judge setting aside *ex parte* decree-Whether a ‘Judgment: *Shrichand Vs. Sardar Tejinder Singh*, I.L.R. (1980) M.P. 129 (DB)

- **Clause 10**-Order of Single Judge – When can be interfered with : *Shrichand Vs. Sardar Tejinder Singh*, I.L.R. (1980) M.P. 129 (DB)

- **Clause 10**-Order passed by Single Judge of High Court on an application under section 24, of the Act in appeal-Letters Patent Appeal lies: *Raghvendra Singh Choudahry Vs. Smt. Seema Bai*, I.L.R. (1988) M.P. 495 (DB)

- **Clause X** – Order of learned Single Judge set aside – Matter directed to be placed before appropriate Bench for decision on merit : *Smt. Mani Jain Vs. Sub-Divisional Forest Officer, Mhow*, I.L.R. (2000) M.P. 1257 (DB)

- **Clause X**-Order of Writ Court set aside and with the bipartite consent parties directed to institute reference proceedings under Section 18 of the Act notwithstanding any plea of limitation involved : *Union of India Vs. The Jt. Collector & Land Acquisition Officer*, I.L.R. (2001) M.P. 998 (DB)

- **Clause 10** - Obtaining of permission of Single Judge- Obligatory for filing Letters Patent Appeal : *Sardar Harbans Singh Vs. The Trust Committee Shri Gurusingh Sabha Gurudwara Trust, Jabalpur*, I.L.R. (1973) M.P. 452 (DB)

- **Clause 10**- Permission necessary to file cross-Objection in Letters patent Appeal : *M/s Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey*, I.L.R. (1975) M.P. 82 (DB)

- **Clause X**-Panchayat Avam Gram Swaraj Adhiniyam, M.P., 1993-Section 36, 40 and 122-Panchayat election-Reserved seat-Allegedly contested and returned by suppressing disqualification-Not an act or omission of office bearer after being elected-Section 40 not applicable-Matter covered by Section 36 and/or Section 122 of the Act-Prescribed authority could not have initiated action under Section 40 for removal-Order of writ court quashing the order is proper : *Roshanlal Maravi Vs. Shambhoo Singh*, I.L.R. (2005) M.P. 53

- **Clause 10** - Review applications filed against the order of High Court beyond 30 days with the application of condonation of delay - Applications dismissed on ground of unreasonable delay - It would not amount to dismissal of ground of limitation but it was refusal to exercise inherent powers on ground of delay : *State of M.P. Vs. G.L. Patel And Company*, I.L.R. (1996) M.P. 121 (DB)

- **Clause 10**- Scope of appeal under-Restricted to terms of leave : *Nagar Palika Sabalgarh Vs. Laxminarayan*, I.L.R. (1966) M.P. 735 (DB)

- **Clause X, XV** - Single Bench of High Court agreeing with the view taken by Industrial Tribunal- This is in exercise of supervisory jurisdiction and not original jurisdiction under Article 226-LPA not maintainable : *Gyan Singh Markam Vs. Central Govt. Industrial Tribunal-Cum-Labour Court, JBP*, I.L.R. (2004) M.P. 491 (DB)

- **Clause 10**- When leave is granted to a person- That person becomes entitled to prefer an appeal : *Chandel Vs. Hiralal*, I.L.R. (1978) M.P. 997 (DB)

- **Clause 26** - and High Court Rules, Chapter 1, Part 6, Rule 11-Difference of opinions between the Judges of Division Bench-Referee Judge-Can only decide point of difference : *The Amalgamated Coalfields Limited, Calcutta Vs. State of M.P.*, I.L.R. (1969) M.P. 399 (DB)

- **Clause 26** - and High Court Rules, Chapter 1, Part 6, Rule 11-Do not empower reference to referee Judge on all points in the case : *The Amalgamated Coalfields Limited, Calcutta Vs. State of M.P.*, I.L.R. (1969) M.P. 399 (DB)

Letters Patent (Nagpur)

- **Clause 10 and Civil Procedure Code, 1908, Section 100-A, Order 47, Rules 1 and 2**-Whether Letters Patent Appeal lies against order rejecting application for restoration of review application of judgment passed in Second Appeal-Husband of first appellant filed suit for declaration, permanent injunction-Suit was dismissed-First and Second Appeals too were dismissed-Application for review of judgment passed in second appeal was filed which was dismissed for want of prosecution-Appellants filed an application for restoration of review application-Single Judge dismissed the application on merits holding that there is no sufficient cause to set aside earlier order-Held-Section 100-A of C.P.C. imposes total ban on further appeal from second appellate judgment of Single Judge-Order dismissing application for restoration of review application may affect the rights of parties but that itself is not sufficient to render the order appealable-When appeal cannot be filed against main judgment then appeal cannot lie against subsequent order-Letters Patent Appeal not maintainable : *Smt. Seema Mitra Vs. Smt. Lotika Mitra, I.L.R. (1994) M.P. 283 (FB)*

- **Clause 10 and Civil Procedure Code, (Amendment) Act, 2002, - Section 100-A**-Insertion of Section 100-A-Affect of insertion of Section 100-A CPC on pending Letters Patent Appeal-Letters Patent is substantive right, vested from inception of the suit-Provision of Section 100-A not applicable on Letters Patent Appeals pending on 1.7.2002, the date of insertion of section 100-A-Enactments dealing with substantive rights are prospective unless expressed contrarily : *Laxmi Narayan Vs. Shiv Lal Gujar, I.L.R. (2002) M.P. 783 (FB)*

- **Clause 10, - Civil Procedure Code, 1908, Section 104 (2), Order 43 Rule 1**-Question referred to Full Bench as to whether Letters Patent Appeal maintainable against order passed by Single Judge in appeal filed under Order 43 Rule 1-Held-Letters Patent provides that where trial judge has passed an order an appeal would lie to Division Bench-No second appeal lies against an appellate order passed under O.43 Rule 1-Appeal filed by appellant not maintainable : *Dr. Mahesh Chandra Choubey Vs. Shri M.M. Dubey, I.L.R. (1994) M.P.12 (FB)*

- **Clause 10, - Constitution Articles, 226, 227 – Writ Petition under articles, 226, 227** challenging Constitutional validity of provision of Indian Forest Act, Rules and order of sessions Judge in revision – Subsequently, challenge of validity of Act all Rules deleted - Petition remains as under Article 227 – Held – Supervisory jurisdiction under Article 227 invoked and not original jurisdiction under Article 227 – Appeal against order of Single Judge not maintainable – Liberty granted to approach Supreme Court : *State of M.P. Vs. Yankappa, I.L.R. (1997) M.P. 366 (DB)*

- **Clause 10 - and Court-fees Act (VII of 1870), Article 1, Schedule 1**-Advalorem Court fees is payable on Letters Patent Appeal against Judgment of Single Judge in

First Appeal : *Sant Prasad pande Vs. Smt. Indirabai Sarwate, I.L.R. (1987) M.P. 275*

- **Clause 10** – Plea not raised before Single Judge – Cannot be allowed to be raised in Letters Patent appeal : *Dr. S.L.Namdeo Vs. Chancellor, Jawaharlal Nehru Krishi Vishwavidyalaya, Bhopal, I.L.R. (1987) M.P. (DB)*

- **Clause 10** - and representation of the people act (XLIII of 1951), Section 98 and 99 – Election petition interlocutory order passed by Single Judge – Amounts to ‘Judgment’-Appealable under clause 10: *Laxmi Narayan Nayak Vs. Ramratan Chaturvedi, I.L.R. (1985) M.P. 710 (FB)*

- **Clause 10** – Scope–There is no doubt that in an appropriate case a Letters Patent Bench hearing an appeal from a learned Single Judge of the High Court of First Appeal heard by him is entitled to review even the finding of fact : *Kailash Chandra Vs. Vinod., I.L.R. (1993) M.P. 535 (DB)*

Letting of Houses and Rent Control Order 1949 - Madhya Pradesh

- **Order in favour of a party** - Appeal filed by the opposite party - Other party, right of to support order by challenging findings given against him - “Error of law apparent on the face of record” - Meaning of : *Seetaram Vs. Smt. Rambai, I.L.R. (1958) M.P. 54 (DB)*

- **Suit or notice without permission of rent control authority**-Suit did not become untenable and notice not invalid-Landlord became liable to prosecution : *Smt. Sugga Bai Vs. Smt. Takuribai, I.L.R. (1969) M.P. 70*

- **Clause 13(3)(v)**-Tenant owning house-House requiring considerable expenses to make it habitable-Tenant cannot be said to have secured alternative accommodation : *Birdhichand Vs. Manaklall, I.L.R. (1959) M.P. 362 (DB)*

- **Clause 23 (1) Proviso** - Enquiry under – Proviso does not lay down that the enquiry as to the need of the landlord has to be completed within 15 days of the receipt of the intimation under sub-clause 1 of clause 22 : *S.K. Mohammad Umar Vs. The House Rent Controller, Billaspur, I.L.R. (1957) M.P. 457 (DB)*

- **Clause 23**-Allotment order passed beyond 15 days from date of intimation-Order in valid-Pendency of application of landlord for personal occupation is not material-Letters patent-Clause 10-Ground not raised before Single Judge cannot be raised in Letters Patent Appeal : *Shri D.N. Sethi of Jabalpur Vs. Dr.Miss J.D. Sharma, I.L.R. (1959) M.P. 536 (DB)*

- **Clause 24** - Clause not dependent upon any action of the landlord - Rent Controller can act *suo motu* after receiving information about house being vacant - Liberty to

landlord to apply for reconsideration of order : *Dr. Sett J. Edwards Vs. The Additional Collector, Jabalpur, I.L.R. (1958) M.P. 770 (DB)*

- **Clause 24-A** - House being vacant or becoming available for occupation by particular date - A condition precedent to exercise of power by allotment officer - House does not become vacant as soon as tenancy terminated : *Shri Radhakishan Temple, Sihora Vs. The SDO, & Rent Controller, Sihora, I.L.R. (1958) M.P. 650*

- **Clause 24-A** - Likelihood of accommodation becoming vacant or available for occupation by a particular date-Condition precedent for passing order of allotment- Certain circumstances subsequently making order inoperative-Order not bad because of want of jurisdiction from the very beginning- MP Accommodation Control Act 1955- M.P. Extension of Laws Act-Section 6 order passed under Rent Control Order, 1949 before coming into force of these Acts-Subsequent order of rent controlling authority granting extension of time for vacating premises after coming into force of the said Acts-Orders not without jurisdiction : *Shri D.P. Tiwari Vs. House Allotment Officer, I.L.R. (1959) MP 828 (DB)*

Licence

- **Measure of damages after revocation of licence** – Loss of business profits claimable : *M/s Mishra Bandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshshal, I.L.R. (1973) M.P. 88 (DB)*

- **Revocation of** - Implied revocation may result even from acts and conduct of the parties : *M/s Suhag Hotels (Pvt.) Ltd., New Delhi Vs. M.P. Housing Board, Bhopal, I.L.R. (1984) M.P. 129 (DB)*

- **Clause (iv)(a)**- Can be terminated if land needed by grantor or for public purpose- Grantor sole judge of determining whether land is so required- His opinion not liable to interference if honestly formed : *State of M.P. Vs. Abdul Rahim Khan I.L.R. (1979) M.P. 910 (DB)*

- **Clause (iv)(a)**- Licence not terminable at the will of licensor : *State of M.P. Vs. Abdul Rahim Khan, I.L.R. (1979) M.P. 910 (DB)*

Licensee

- **Bailee**-Servant holding property belonging to the employer-His position is that licensee or bailee : *Balaram Vs. Durgalal, I.L.R. (1970) M.P. 624 (DB)*

Licensing of Wireless Receiving Apparatus Rules, 1965

- **And Indian Wireless telegraphy (Possession) Rules, 1965**- Commercial licence granted thereunder-Does not permit use of VCR and TV for playing pre-record

cassettes of movies: *Restaurant Lee, Jagdalpur Vs. State of M.P., I.L.R. (1983) M.P. 606 (DB)*

Life Insurance (Emergency Provisions)

- **Ordinance No. 1 of 1956** – Custodian has power to terminate the services – Servant cannot claim a declaration that order terminating his services was a nullity : *The Life Insurance Corporation of India, Bombay Vs. Thakur Mohan Singh I.L.R. (1977) M.P. 769 (DB)*

- **Ordinance no. 1 of 1956** – Does not confer statutory status on servant- Does not become servant of the Central Government : *The Life Insurance Corporation of India, Bombay Vs. Thakur Mohan Singh, I.L.R. (1977) M.P. 769 (DB)*

Life Insurance Corporation Act (XXXI of 1956)

- **Sections 30 and 44(f) and Municipal Corporation Act, Section 421** –Not applicable to scheme not involving municipal Corporation fund-Order of the State Govt., stopping the scheme and order of the controller of Insurance relating thereto liable to be quashed : *Vishwanath Verma Vs. Jabalpur Municipal Corporation, Jabalpur, I.L.R. (1984) M.P. 320 (DB)*

Limitation

- **Application to transferee court for execution**-Is a Continuation of the previous pending proceedings for transfer of decree – Limitation not liable to be computed on the date of application in transferee court : *Hemchand Vs. Premchand, I.L.R. (1985) M.P. 436*

- **Case of exercise of inherent power**-Matter governed by principle by reasonable time : *Shrimati Ramakunwarbai Vs. Motiram, I.L.R. (1970) M.P. 602 (DB)*

- **Imperative for the Court to first decide the question of limitation** – Court proceeding without doing so-Has no power to hear an appeal even for admission : *Chhitu Vs. Mathuralal, I.L.R. (1981) M.P. 777*

- **Limitation for filing application under section 33**, - Governed by Article 137 of Limitation Act : *M/s Foods, Fats and Fertilisers Ltd., Tadepalligudem, Andhra Pradesh Vs. Ramkishandas Radhakishan, Ambikapur, I.L.R. (1985) M.P. 689 (DB)*

- **Starting point** - Starting point of Limitation for determination of the tax liability of unregistered dealer – Commencement of : *M/s Joshi Iron And Steel Corporation Polo Ground, Indore Vs. The Commissioner of Sales Tax, I.L.R. (1981) M.P. 112 (DB)*

-Starting point– Starting point of limitation for suit for account of Sub-partnership – Sub-partnership for signal venture - Duration not necessarily limited to the period of that venture- But may continue for a longer period with consent : *Gulabsingh Vs. Gattulal*, I.L.R. (1973) M.P. 857 (DB)

Limitation Act, Indian (XXXVI of 1963)

- and Industrial Relations Act MP (XXVII of 1960) - Sections 31(3), 61 and 62-Labour Court is not a Court as is commonly understood in the eye of law-Functions within the confines of the special statute-Vested with no power to condone delay in commencement of proceedings : *Vijay Kumar Sharma Vs. The Executive Engineer, Public Health, Bilaspur*, I.L.R. (2001) M.P. 1304

- and Industrial Relations Act MP (XXVII of 1960) - Sections 31(3), 61 and 62-Provisions of the Limitation Act not applicable to proceedings before the Labour Court – Proceedings commenced beyond the period of Limitation as stipulated in the statute – Appellate Court rightly dismissed the proceedings as time barred holding that workmen are not entitled to get benefit of Limitation Act : *Vijay Kumar Sharma Vs. The Executive Engineer, Public Health, Bilaspur*, I.L.R. (2001) M.P. 1304

- Does not provide for suit for relief of rectification-Matter governed by residuary Article 113-Starting point is when right to sue accrues: *Shanker Singh Vs. Sanstha Sonabai Bharvkashram, Khurai*, I.L.R (1980) M.P. 568 (DB)

- Makes no provision of limitation for filing complaint – Complaint under Section 198-B not governed by Limitation Act : *Janardan Baliram Mankar Vs. The Government Pleader (Public Prosecutor), Durg*, I.L.R. (1971) M.P. 1070

- Section 5-Appeal against a respondent who was dead at the time of filling of appeal – After service report prompt action taken by Department to bring his legal representatives on record-Delay to be condoned: *Commissioner of Income-Tax, M.P.,Bhopal Vs. Trilokinath Dubey*, I.L.R. (1983) M.P. 257 (DB)

- Section 5 – Delay of 24 days–Cannot be construed to be deliberate attempt not to take recourse to legal remedy–Delay condoned : *Khena Bai Vs. Mathura Prasad*, I.L.R. (2004) M.P. 820 (SC)

- Section 5-Applies to appeals under section 269-H: *Commissioner of Income-Tax, M.P.,Bhopal Vs. Trilokinath Dubey*, I.L.R. (1983) M.P. 257 (DB)

- Section 5- Applicable to election petition : *Pancham Vs. The Collector District Bhind* I.L.R. (1977) M.P. 29 (DB)

- Section 5-Applicable to applications under section 30, Arbitration act – Objections filed against award within limitation –Court ought to hear on the objections by affording

opportunity to substantiate the objections : *Bharat Aluminium Company Ltd., Korba Vs. M/s Hukum Chand Stone & Lime Company, Katni, I.L.R. (1985) M.P. 294 (DB)*

- **Section 5**-Condonation of delay-Opportunity for-First appeal filed without application for condonation of delay-Dismissed as barred by time-Second appeal also dismissed-Review on ground that opportunity shall have been given to the delay condoned ever at final hearing stage-Not tenable : *Daulat @ Babu Sonkar Vs. Kunti Sonkar, I.L.R. (2001) M.P. 278*

- **Section 5** - Formal application for condonation of delay - Not required, if, from the facts, Judicial conscience of the Court is satisfied that sufficient cause prevented in bringing up the proceeding well within limitation - However, Court must provide opportunity to show sufficient cause for delay – Too technical view in this regard can not be appreciated : *Suresh Kumar Vs. Firm Kurban Hussain Taiyab Ali, I.L.R. (1995) M.P. 615*

- **Section 5**- Mistake of lawyer or agent- They not acting with due care and attention – Delay cannot be condoned : *Niranjana Singh Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1977) M.P. 731 (DB)*

- **Section 5** – No application for condonation of delay filed before lower appellate Court – Cannot be allowed to make such application at second appellate stage : *Khushal Prasad Vs. Moolchand @ Mula Agrawal, I.L.R. (2000) M.P. 173*

- **Sections 5 & 14**–Delay in filing appeal–Bona fide mistake–Means that the person was innocently carried away by an innocent mistake–Delay in even approaching the writ Court–The cleverness of choosing the erroneous forum of writ Court can not wash out the delay which was already to the dis-credit–Delay can be condoned when there is bona fide mistake and delay is explained satisfactorily–Delay not condoned : *Manoramabai Vs. Municipal Council, Khargone, I.L.R. (2002) M.P. 326*

- **Section 5** – 15 months delay – Cause shown to be delayed communication by the Advocate as to necessary of bringing LRs on record by filing application – Sufficient cause – Abatement set aside : *Dolat Ram Vs. Kishan, I.L.R. (2000) M.P. 858*

- **Section 5** - and Hindu Marriage Act (XXV of 1955), Section 12-Not applicable to petition under section 12 of Hindu Marriage Act: *Nandkishore Vs. Smt. Munni Bai, I.L.R. (1981) M.P. 583(DB)*

- **Section 5** - and Article 137 and Motor Vehicle (Amending Act) (LIV of 1994)-Effect-Legislature intended completely to cure the defect of limitation in filing claim petition arising out of Motor Accidents and not to restrict the period of limitation to three years-Hence provision of Section 5 or Article 137 of the Limitation Act are not applicable to Motor Accident Claims Case : *Oriental Insurance Company Vs. Balwant Singh, I.L.R. (2001) M.P. 725*

– **Section 5 and 23-C** – Leave to defend sought beyond stipulated period of 15 days and condonation of delay sought on vague grounds – In absence of any sufficient cause R.C.A. rightly refused leave to defend and condonate the delay – Tenant cannot contest the prayer for eviction – Bonafide requirement and non-availability of alternative accommodation cogently established : *Smt. Sheela Devi Vs. Devendra Singh Parihar*, I.L.R. (2000) M.P. 198

– **Section 5 and 29** – Savings clause in Section 29, Limitation Act- Does not make provisions of Section 5 applicable to Election Petitions : *Abhimanyu Rath Vs. Virendra Pande*, I.L.R. (1979) M.P. 455

- **Sections 5 and 14** – Applicability- Ceiling on Agricultural Holdings Act, Madhya Pradesh, 1960- Section 4(3) – The provision is a provision to the contrary- Appeal against order of Competent Officer lies to Board of Revenue – Limitation Act, 1963- Section 5- Mistake of lawyer or agent – They not acting with due care and attention- Delay cannot be condoned : *Niranjana Singh Vs. The Board of Revenue, M.P., Gwalior*, I.L.R. (1977) M.P. 731 (DB)

- **Sections 7 and 29(2)**- Section 7, Limitation Act applies to all applications covered by 1st part of section 29(2) of the Act – Provisions of section 29(2), Limitation Act applies to proceedings before Commissioner for workmen's compensation – Period of limitation would extend because of minor claimants : *Smt. Lauki Devi Vs. Sardar Gurlal Singh*, I.L.R. (1988) M.P. 398

- **Section 12**-Condition in which time between the date of judgment and the date of signing of the decree can be excluded : *Chunnilal Vs. State of M.P.*, I.L.R. (1967) M.P. 789

– **Section 12(1),(2),(3) and (4)** – Time requisite for obtaining certified copy has to be excluded – The date on which the judgment impugned is delivered also to be excluded and also the date from which limitation starts and the date on which appeal is filed are to be excluded while computing limitation – To take advantage of exclusion of time for obtaining certified copy party must prove that there was no default on his part – Exclusion of time for preparing decree – Can only be availed if the decree is prepared after making application for certified copy and not otherwise – Appeal is barred by one day : *Khushal Prasad Vs. Moolchand @ Mula Agrawal*, I.L.R. (2000) M.P. 173

- **Section 12(2) and 5**- Deduction of time for obtaining certified copy of the impugned judgment and decree-Copy filed in Court alone has to be considered for that purpose-Earlier certified copy not relevant: *Bharat Aluminium Company Ltd., Korba Vs. M/s Hukum Chand Stone & Lime Company, Katni*, I.L.R. (1985) M.P. 294 (DB)

- **Section 14**-Condonation of delay in filing appeal : *General Manager, Western Coalfields Ltd., Kanhan Area Vs. Smt. Kalasia Bai, Junnardeo*, I.L.R. (1987) M.P. 443

- **Section 14** - and Civil Procedure Code (V of 1908), Order 7, rule 10-Earlier proceedings should have been prosecuted with due diligence and in good faith - Meaning of 'good faith' defined in section 2(h) of the act-Endorsement on plaint when returned – Official act presumed to have been done according to law-Party entitled to deduction of entire period upto the date of return of plaint : *Choudhary Khemraj Singh Alias Sheokumar Vs. Bhagwat Singh, I.L.R. (1988) M.P. 264*

- **Section 14(2)** – In computing the period for a suit under Order 21, rule 63, Civil Procedure Code- Not only the time taken for the decision of the revision but also the time required for obtaining a certified copy of order against which revision was filed has to be excluded : *Poonamchand Vs. Basantilal, I.L.R. (1977) M.P. 129 (DB)*

- **Section 14** - and Article 115 and Arbitration Act, India (X of 1940), Section 37(1) and (5) and 46-Exclusion of time – Time spent in Arbitration proceedings can be excluded only under section 37, Arbitration Act, being a special provision in Arbitration Act and not under section 14 of Limitation Act – Arbitrator refusing to arbitrate-Defendant not concurring in the appointment of new arbitrator-Plaintiff's application under section 8 of Arbitration Act seeking appointment of new arbitrator rejected – Time spent in proceeding before Arbitrator and Court has to be excluded –Forest contract Rules- Rules 8 and 29 and Forest Act, 1927, Section 83 and contract Act, section 73 – Consideration of contract payable in installments-Plaintiff defaulted in paying installment-Breach committed – Government within its right to stop working of contract-Interest on damages cannot be awarded: *Jugalkishore Asati Vs. State of M.P., I.L.R. (1981) M.P. 307 (DB)*

- **Section 15 (1) and Articles 52 and 113** – Would be governed by Article 52 or Article 113 and not by Section 15(1) of the Limitation Act – Suit filed after final adjudication by the appellate courts but within 3 years – Not barred by Limitation : *Dr. Ashwani Trivedi Vs. Bhumi Vikas Bank, I.L.R. (2000) M.P. 62*

- **Section 17 and Residuary Article 113-C** – Commencement of period of limitation of 3 years in a suit of this nature would commence from the date when such mistake comes to the knowledge of plaintiff – Date of refusal by defendant to pay the amount cannot be held to be the date of cause of action – Suit filed beyond three years from date of knowledge of such mistake – Clearly barred by limitation – Impugned judgment and decree set aside : *B. Viplava Prasad Vs. State Bank of India, I.L.R. (2000) M.P. 597*

- **Section 17(1) and Article 113**-The suit for the purpose of recovery of the amount should be filed within the period of three years from the date on which the amount was advanced-Mistake cannot enlarge the period of limitation and cannot start from running against appellant from the date when the mistake has been discovered : *Bank of India Vs. Aristocrate Engineers, I.L.R. (1998) M.P. 594*

- **Section 18** - Acknowledgment of liability extends limitation – Admission should be of subsisting liability – Character not altered even if its is accompanied by refusal to pay – Is to be distinguished from a case of repudiation of liability : *Ratanchand Jain Vs. Jawahar Engineering (Pvt.) Limited, Shrirampur, I.L.R. (1988) M.P. 85*

- **Section 18**, - Articles 19, 21, 55 and 113, Contract Act, Indian (IX of 1872) - Sections 133, 134, 135 and 137 – Law of Limitation – Does not extinguish the right but bar the remedy – Acknowledgment of liability by principal debtor – Enlarge the period of limitation against the debtor but does not have the effect of enlarging the period of limitation against surety – Limitation Act against surety – 3 years from the date of cause of action – Article 19, 21 and 55 or residuary article 113 will apply : *Smt. Sarabai Vs. Central Bank of India, I.L.R. (1988) M.P. 690*

- **Section 18** - and Contract Act, Indian (IX of 1872), sections 25, 134- Fresh agreements - No reference to earlier liability or agreement and existence of relationship of debtor and creditor-Does not amount to acknowledgment – Consideration – Promise to pay past-debt, even if time barred, is good consideration- Bank obtaining new agreement on past consideration – Amounts to fresh contract binding only to the parties to the agreement – Would terminate the earlier contract and discharge the earlier guarantor –Borrower compelled to give fresh guarantee-Bank deemed to have released earlier guarantor : *Smt. Vimla Pradhan Vs. United Commercial Bank, I.L.R. (1990) M.P. 566*

- **Sections 18, 19, 20** - ‘Acknowledgment of Payment’ - Suit for recovery of money against firm - Plea that partner giving such acknowledgment had retired from partnership firm prior to date of acknowledgment and that a new firm was constituted prior to that date - No public notice of retirement of concerned partner or a constitution of new firm - Firm bound by acts of partner - Acknowledgment by such partner binding on firm : *M/s Sharda Talkies Vs. Smt. Madhulata Vyas, I.L.R. (1995) M.P. 267 (DB)*

- **Section 23(D)(3)** – Unless the contrary is proved there is presumption that the requirement is bona fide – Eviction order proper : *Smt. Sheela Devi Vs. Devendra Singh Parihar, I.L.R. (2000) M.P. 198*

- **Section 27**, - Article 65-Adverse possession-Even by lapse of time permissive possession on basis of agreement of sale cannot become hostile-Vendee has to prove for which date his possession became hostile : *Shreechand Vs. Dhannalal, I.L.R. (2001) M.P. 537*

- **Section 27** - and Constitution of India, Article 65 and Transfer of Property Act, 1908-Section 53-A-Adverse possession and part performance-If part performance is pleaded and the date of possession is traceable-Suit is not barred by limitation-Case of Adverse possession of defendant not made out : *Ratan Singh Vs. Shaligram, I.L.R. (2001) M.P. 1178 (DB)*

- **Section 29(2)**-Provisions of Sections 4 to 24 of Limitation Act would apply to the extent to which they are not expressly excluded by the Section 8(3) of the M.P. Anusuchit Jati Tatha Anusuchit Jan Jati Rini Sahayata Adhiniyam, 1967: *Ram Singh Vs. State of M.P.*, I.L.R. (1998) M.P. 736

- **Section 30** -Does not apply after the termination of special period prescribed by it-Section becomes obsolete on 31-3-64:*Beharilal Tiwari Vs. Conservator of forests, Eastern Circle, Jabalpur* I.L.R. (1968) M.P. 987 (DB)

- **Section 30** - Not applicable to suit, appeal or application when right to institute accrued after coming into force of new Act: *Beharilal tiwari Vs. Conservator of forests, Eastern Circle, Jabalpur*, I.L.R. (1968) M.P. 987 (DB)

- **Article 4** - Applicable to suits against agent for neglect or mis-conduct- Employee of Municipal Committee entrusted with money- Is in a position of agent : *Ramjilal Vs. Municipal Committee Sarangarh*, I.L.R. (1976) M.P. 976

- **Article 4** - Article applicable to a suit against Agent- Starting point of limitation : *Ramjilal Vs. Municipal Committee Sarangarh* I.L.R. (1976) M.P. 976

- **Articles 19, 21, 55 and 113** - Limitation Act against surety – 3 years from the date of cause of action – Article 19, 21 and 55 or residuary article 113 will apply : *Smt. Sarabai Vs. Central Bank of India*, I.L.R. (1988) M.P. 690

- **Article 22** – Distinction between ‘Deposit’ and ‘loan’ - Plaintiff depositing and withdrawing money at regular intervals in a firm – Accounts books of firm showing account in favour of plaintiff - Account statement sent every year to plaintiff - Interest added and balance carried forward to next year - It is transaction of deposit and not loan : *M/s. Sharda Talkies (Firm) Vs. Smt. Madhulata Vyas*, I.L.R. (1995) M.P. 264 (DB)

- **Article 22** - LOAN - Deposit of money with defendant firm - Amount was paid to plaintiff on relevant date under a cheque found positively proved by clinching evidence - Admission of such payment in written statement - Cheque not produced in evidence - Would not mitigate against filing of suit on ground that primary evidence of cheque was missing : *M/s. Sharda Talkies (Firm) Vs. Smt. Madhulata Vyas*, I.L.R. (1995) M.P. 265 (DB)

- **Article 22** - Suit for recovery of money deposited with a firm -Question whether money was deposited with partner or firm - Immaterial - Partner has implied authority to receive payment on behalf of firm - Transaction found to be of deposit and not of loan - Plaintiff – Not a money lender on date of initial deposit - Holding of Licence for money lending by plaintiff as for subsequent period - Provisions of Money Lenders Act not applicable - Plaintiff cannot be denied interest and costs on that account : *M/s. Sharda Talkies (Firm) Vs. Smt. Madhulata Vyas*, I.L.R. (1995) M.P. 266 (DB)

– **Article 24 and Section 17(1)(c)** – Applicable to suit for recovery of money recovered illegally- Starting point : *The Municipal Council, Murwara Vs. M/s S.K. Khansons And Co., Katni, I.L.R. (1979) M.P. 920*

- **Article 47**-Suit for return of purchase more where sale is avoided by minor or anybody claiming under him – Article 47 applies : *Hubbalal Vs. Ramanand, I.L.R. (1986) M.P. 514*

- **Articles 47 and 24** – Commencement of period of limitation – Failure of consideration when occurs : *Hubbalal Vs. Ramanand, I.L.R. (1986) M.P. 514*

- **Articles 47 and 24** - and Hindu Minority and Guardianship Act (XXXII of 1956), Section 8 (2) – Sale of Minor’s Property without permission is voidable-Suit for return of purchase money where sale is avoided by minor or anybody claiming under him – Article 47 applies – Commencement of period of limitation – Failure of consideration when occurs : *Hubbalal Vs. Ramanand, I.L.R. (1986) M.P. 514*

– **Articles 59 and 113**- Suit for rectification of sale- deed on ground of mistake and for declaration-Barred if filed after more than 3 years from the date of knowledge of mistake : *Dashrath Vs. Shatruhan Singh, I.L.R. (1979) M.P. 523*

– **Articles 64, 65**– Adverse possession–Defendant and his predecessor shown to be in continuous possession from 1960 onward–Suit having been filed in 1976 defendants will be deemed to have perfected the title by adverse possession–Suit dismissed–Judgment and decree of Courts below set aside : *Alabux Vs Budhsen, I.L.R. (1992) M.P. 840*

- **Article 65**-Adverse possession-Defendants possession discontinued by virtue of execution of decree of Civil Court-Subsequent dispossession of plaintiff during second round of litigation-Possession of defendant not adverse so as to perfect title-Finding of trial Court proper : *Yashwant Rao Khogal Vs. Smt. Jahoorbi, I.L.R. (2001) M.P. 709*

- **Article 65** – Adverse possession – Mere continuous possession does not become adverse possession unless the person in possession puts up his own title hostile to the title of the Original Owner and to the knowledge of such owner – Possession becomes adverse only on that date when the person in possession puts-up his claim of adverse possession, disputes the title of the original Owner and does so to his knowledge – The period of limitation prescribed by Article 65 would run then from that date : *Rao Mahendra Singh Vs. Abdul Rashid, I.L.R. (1999) M.P. 336 (DB)*

- **Article 65**-Amended-Declaration-Possession-Evidence available on record proved plaintiffs title over the suit property-It is for defendants to prove their adverse possession for more than 12 years of the filing of the suit over the said property-Possession under an agreement cannot be held to be adverse possession but permissible in nature : *Smt. Shakuntala Bai Vs. Bhagwandas, I.L.R. (1998) M.P. 855*

- **Article 65**-Claim based on title by succession-Article 65 applies –Co–sharer’s possession as constructive trustee of other co-sharers not in possession – Absence of plea of ouster-Suit not barred by limitation: *Smt. Ramkunwarbai Vs. Ranibahu, I.L.R. (1985) M.P. 100 (DB)*

- **Article 65**- What constitutes exclusion from possession- Depends on particular facts and circumstances of the case- Acquiescence- Inferable from act and conduct of the party : *Chhotelal Vs. Premlal, I.L.R. (1978) M.P. 954 (DB)*

- **Article 65, Section 27**- Prescription of title by adverse possession-Requirements of adverse possession –Possession must be adequate in continuity, in publicity and plea required to show when it becomes adverse – Person entering possession with consent – No adverse possession in absence of notice dis-claiming owner’s title : *Ganesh Prasad Vs. Narendralal, I.L.R. (1990) M.P. 703*

- **Article 111** - Adverse possession against Janapada Sabha, a local body – Period of Limitation is 30 years : *Janapada Sabha, Sagar Vs. Municipal Council, Sagar, I.L.R. (1981) M.P. 1041 (DB)*

- **Article 111** - Janapada Sabha not taking possession of part of land acquired by it – Municipal Council Constructs Pakka Drain over it and remaining in possession for over 30 years – Municipal Council acquires title over it by adverse possession : *Janapada Sabha, Sagar Vs. Municipal Council, Sagar, I.L.R. (1981) M.P. 1041 (DB)*

- **Article 113** – Every threat for recovery – Furnishes fresh cause of action – Suit can be filed within 3 years therefrom : *Mohanlal Vs. State of M.P., I.L.R. (1981) M.P. 627 (FB)*

- **Article 113** – Party not availing of earlier causes of action – Not prevented from availing of the same later : *Mohanlal Vs. State of M.P., I.L.R. (1981) M.P. 627*

- **Article 113** - and Arbitration Act, Indian (X of 1940), Sections 16, 30 and 33 – State starting recovery proceedings for alleged dues and threatening to recover – Suit for injunction – Governed by Articles 113 – Every threat for recovery furnishes fresh cause of action – Suit can be filed within 3 years therefrom – Party not availing of earlier causes of action – Not prevented from availing of the same later Award – Ground for interference – Arbitrator wrongly holding claim referred to as barred by limitation – It is a ground for remitting award for decision on merits : *Mohanlal Vs. State of M.P., I.L.R. (1981) M.P. 627*

- **Article 113** – Suit for declaration against order of removal from service and for arrears of pay – Limitation is three years from the date when cause of action accrued – Subsequent representation can not be considered for fixing limitation : *Smt. Vinod Shrivastava Vs. Laxminarayan Sharma, I.L.R. (2003) M.P. 1084 (DB)*

- **Article 116**-Appeal directed against unamended judgment and decree-No grounds urged against amended decree-Date of original judgment and decree-Is starting point for limitation for appeal : *Harvilas Vs. Kanhaiyalal*, I.L.R. (1970) M.P. 309 (DB)

- **Article 119** - Applicability of – Arbitration Act- Section 28 (1) Court, Power of, to extend time after the award is made - Word “Court” in—Includes appellate and revisional court- Power of appellate court to extend time when no application for the purpose made to trial court- Power conferred is discretionary- Things to be noted for exercising discretion : *Jamnuprasad Vs. Maheshprasad Shukla*, I.L.R. (1973) M.P. 500 (DB)

- **Article 119** – Staring point of limitation – Date of service of notice – Parties present or represented on the date of filing of award – Even oral intimation sufficient compliance of service of notice – Objection filed beyond 30 days of the service of notice of filing of signed copy of award – Objection held time barred : *Union of India Vs. M/s Prithipal Singh And Co., Nagpur*, I.L.R. (1989) M.P. 365 (DB)

- **Article 127** – Court cannot close its eyes because it has to do complete justice between the parties – Revision allowed – Impugned sale set aside – Amount deposited by auction purchaser directed to be refunded if an application is filed : *Prakash Chand Rai Vs. State Bank of Indore*, I.L.R. (1999) M.P. 240

- **Article 131**- and section 5, Criminal Procedure Code, 1973 (II of 1974), Sections 227, 228 and 397 – Constructive knowledge to the applicant – Period of limitation cannot be extended for want of knowledge – If materials on record remain un rebutted and conviction could result, charge must be framed – Absence of any glaring defect in the procedure of manifest error on point of law resulting in fragrant miscarriage of justice – No interference by High Court in revision : *Kishorilal Agarwal Vs. Smt. Rampyaribai*, I.L.R. (1989) M.P. 737

- **Article 137**- Not attracted as Limitation Act is not applicable to applications under the I.D. Act-Impugned order set aside : *Anand Kumar Dubey Vs. Union of India*, I.L.R. (2001) M.P. 188 (DB)

- **Article 137**-Limitation prescribed thereunder applies to application under section 20 of the Arbitration Act : *Sardar Amarjeet Singh Vs. State of M.P.*, I.L.R. (1985) M.P. 174 (DB)

Limitation Act, Indian (IX of 1908)

- **and General Clauses Act (X of 1897)-Section 10**- Section 4 of Limitation Act is applicable to suits, appeals and applications- Other cases governed by General Clauses Act, Section 10- Principle underlying these provisions applicable when act is to be done under order of the Court : *Budhulal Vs. Chhotelal*, I.L.R. (1977) M.P. 1153 (FB)

- **Bars remedy but does not extinguish right itself** : *Swaroopnarain Vs. Mst. Bhanwar Kunwar Bai*, I.L.R. (1967) M.P. 261

- **Case covered by express statutory provision**-Case governed by limitation provided by Act : *Shrimati Ramakunwarbai Vs. Motiram*, I.L.R. (1970) M.P. 602 (DB)

- **Contract further providing appeal against the order of that authority** - Limitation for suit for damages-Not suspended till the decision of appellate authority : *Vishwanath Singh Vs. The State of M.P.*, I.L.R. (1970) M.P. 787 (DB)

- **Fundamental principle underlying the Act**- Contract between parties providing authority for interpreting the clauses-Contract further providing appeal against the order of that authority-Limitation for suit for damages-Not suspended till the decision of appellate authority : *Vishwanath Singh Vs. The State of M.P.*, I.L.R. (1970) M.P. 787 (DB)

- **In the absence of any specific provision in any special Law the provision of limitation Act**-Would be attracted : *Rakesh Kumar Vs. Shambhoo Singh*, I.L.R. (1998) M.P. 496 (DB)

- **Is a procedural law**-Operation is retrospective-Law prevailing on the date of suit, appeal or application applicable-Limitation Act, 1963-Section 30-Not applicable to suit appeal or application when right to institute accrued after coming into force of new Act-Does not apply after the termination of special period prescribed by it-Section becomes obsolete on 31-3-64: *Beharilal Tiwari Vs. Conservator or forests, Eastern Circle, Jabalpur*, I.L.R. (1968) M.P. 987 (DB)

- **Suit by raiyat for possession against person in possession without title**-Suit not governed by Article 1, Schedule 11 of C.P. States Land Tenure order but by Limitation Act : *Munsiram Vs. Atmaram*, I.L.R. (1959) M.P. 991

- **To be construed according to plain meaning of the language used**- Court to give full effect to language used - Section 15- Word “execution” in- Meaning of – Embraces various processes of execution and any of them – Words “has been stayed by an injunction or order” in- Relatable to the factual position – Condition under which period can be excluded- Decree-holder-Prevented from taking steps which he likes – Limitation does not run against him : *Ramnarayan Vs. Anandilal*, I.L.R. (1971) M.P. 789 (FB)

- **Section 3**-Provision mandatory : *Lalchand Vs. Dharamchand*, I.L.R. (1965) M.P. 320

- **Section 4**-Applicability of-Section 12-Advantage of, can be had only if application for copies made before expiry of the period of limitation-Section 5-Not applying for

copy before vacation-Not sufficient ground for condonation in all cases : *Kanhaiyalal Vs. Ramkishan*, I.L.R. (1966) M.P. 795

- **Section 4**- Expiry on a day which is holiday- Act done on reopening day, act is in time : *Budhulal Vs. Chhotelal*, I.L.R. (1977) M.P. 1153 (FB)

- **Section 5**-Mistaken advice of legal practitioner-Circumstances in which it can or it cannot constitute sufficient cause-Question of sufficiency of cause in-Not to be decided in the light of definition given in section 3(22) of Indian General Clauses Act – Not to be construed in a manner so as to operate penally to the prejudice of either of the parties – Things necessary to be proved to establish sufficient cause : *Mariambai Vs. Hanifabai*, I.L.R. (1966) M.P. 567 (DB)

- **Section 5** - Provision to be liberally construed - Every advice of the counsel does not amount to sufficient cause - Advice given after due care and attention may amount to sufficient cause : *Bhojraj Vs. Dasru*, I.L.R. (1958) M.P. 723

- **Section-5**-Not applying for copy before vacation-Not sufficient ground for condonation in all cases : *Kanhaiyalal Vs. Ramkishan*, I.L.R. (1966) M.P. 795

- **Section 5 and 29**-Indicate that Sections 4, 9 to 18 and 22 apply to appeals under any special or local law-Section 29(2)-Words “Shall not apply” in-Do not mean to prohibit any local or special law from making provisions other than sections 4, 9 to 18 and 22 applicable by express reference or necessary implication-Land Revenue and Tenancy Act, Madhya Bharat-Section 149(2)-Confers powers on revenue officer to apply principles of law of limitation regarding extension of period of limitation-Words “Extension of Principles of limitation” in-indicate wrong drafting or accidental slip-Word “Principle” really means “Period”-Land Revenue and Tenancy Act, Madhya Bharat, Section 149(2) and Abolition of jagirs Act, Madhya Bharat, Section 30-Board or Revenue, Power of, to apply section 5 of the Limitation Act: *Brijrajsingh Vs. The Board of Revenue, Gwalior*, I.L.R. (1966) M.P. 21 (DB)

- **Section 5 and General Clauses Act (X of 1897)**-**Section 3(22)**-Question of sufficiency in Section 5-Not to be decided in the light of definition given in Section 3(22) of Indian General Clauses Act-Not to be construed in a manner so as to operate penally to the prejudice of either parties : *Mariambai Vs. Hanifabai*, I.L.R. (1966) M.P. 567 (DB)

- **Sections 5 and 12** – Time spent in taking certain steps prescribed by statute – That time has to be excluded in computing period of limitation : *The Municipal Committee, Mandsaur Vs. Ahmadkhan*, I.L.R. (1960) M.P. 139 (DB)

- **Section 5, Article 123**–In case where defendant is not properly served limitation starts from the date of knowledge–*Ex parte* judgment and decree set aside–And matter

remitted back to the Trial Court for decision afresh : *M/s. Electric Construction And Equipment Co. Ltd., NewDelhi Vs. Premali Wallace Ltd., I.L.R.(1992) M.P. 197 (DB)*

- **Section 6**-Essential requisite for applicability : *Lalchand Vs. Dharamchand, I.L.R. (1965) M.P. 320*

- **Section 6 and 7**- More than one person jointly entitled to sue- One of them minor- Limitation prescribed by Schedule extended : *The Amalgamated Coal fields Ltd. Parasia Vs. Mst. Chhotibai, I.L.R. (1978) M.P. 60 (DB)*

- **Section 6 and 7**- Section 7 is in the nature of proviso to Section 6 – More than one person jointly entitled to sue- One of them minor- Limitation prescribed by Schedule extended- Fatal Accidents Act, 1855- Section 2- Contemplates filing of one suit through Legal Representatives of deceased have distinct interest- Contract Act- Discharge regarding liability by one tenant- in- common- Validly – Limitation Act, 1908- Section 7- Discharge by joint tenant as guardian- Not contemplated- Tort – Negligence by Hospital staff doing ministerial duty- Hospital is still liable for negligence : *The Amalgamated Coal fields Ltd. Parasia Vs. Mst. Chhotibai, I.L.R. (1978) M.P. 60 (DB)*

- **Sections 6 and 9** – Section 6 - Essential- requisite for applicability-Section 9- Limitation started running-Subsequent disability in person in whom right of suit does not vest at the starting time does not extend limitation-Cause of action-Cause of action arising in favour of adoptive mother-Subsequent adoption-No fresh cause of action arises in his favour-Limitation Act-Section 3-Provision mandatory : *Lalchand Vs. Dharamchand, I.L.R. (1965) M,P. 320*

- **Section 7**- Discharge by joint tenant as guardian- Not contemplated : *The Amalgamated Coal fields Ltd. Parasia Vs. Mst. Chhotibai, I.L.R. (1978) M.P. 60 (DB)*

- **Section 9**-Limitation started running-Subsequent disability in person in whom right of suit does not vest at the starting time does not extend limitation : *Lalchand Vs. Dharamchand, I.L.R. (1965) M.P. 320*

- **Section 12**-Appeal against order of election tribunal-Computation of limitation for Appeal-Time required for obtaining copies to be exclude : *Surajmal Tugnawat Vs. Sundarlal Patwa, I.L.R. (1965) M.P. 800 (DB)*

– **Section 12** – Time taken in obtaining copy of the main judgment delivered in other case – Time taken is time requisite – Time liable to be excluded in computing limitation for appeal in a case in which skeleton judgment or order is passed – Section 12 (2) and (3) – Reasons for the rule in these provisions : *Dalipram Vs. Chhabiram, I.L.R. (1964) M.P. 932*

- **Section 12(2)** - Application for certified copy of decree made before decree signed- Time from the date of Judgment till signing of decree to be excluded in computing period of limitation : *Messrs Chhotelal Keshoram, Rajnanadgaon, M.P. Vs. The Union of India, Represented by the General Manager South Eastern Railway, Calcutta, I.L.R. (1974) M.P. 8 (FB)*

- **Section 12 (2) and (3)** – Reasons for the rule in these provisions : *Dalipram Vs. Chhabiram, I.L.R. (1964) M.P. 932*

- **Section 12 (2)** - Not applicable to revision filed under section 64-A, Motor Vehicles Act : *Beharilal Chourasiya Vs. The Regional Transport Authority, Rewa, I.L.R. (1960) M.P. 569 (DB)*

- **Sections 12 (2) and 29 (2)** – Motor Vehicles Act – Section 64-A-Limitation Act, Section 29 (2) – Applicable to Motor Vehicles Act - Words “expressly excluded” in clause (a) of sub-section (2) of section 29 – Means specifically mentioned as excluded and not exclusion inferred as a result of logical process of reasoning – Section 12 (2) – Not applicable to revision filed under section 64-A, Motor Vehicles Act : *Beharilal Chourasiya Vs. The Regional Transport Authority, Rewa, I.L.R. (1960) M.P. 569 (DB)*

- **Section 12(2)**-Not applicable in computing limitation for execution- Provision to be given natural strict grammatical meaning : *Shri Lalchand Vs. Shri Kanhaiyaqlal, I.L.R. (1961) M.P. 557*

- **Section 12**-Advantage of can be had only if application for copies made before expiry of the period of limitation : *Kanhaiyalal Vs. Ramkishan, I.L.R. (1966) M.P. 795*

- **Section-12**- Time which can be excluded as time requisite for copy : *Balchandra Vs. M/s India Pictures, Indore, I.L.R. (1971) M.P. 529 (DB)*

- **Section 14** - Not applicable to suit which is misconceived or not recognized by law as legal in its initiation - Article 89 - Applies to suit for recovery of movable property from agent : *Kashiram Vs. Santokhbai, I.L.R. (1957) M.P. 552 (DB)*

- **Section 14(1)** - Conditions to be fulfilled for applicability of - Burden of proving conditions - Civil Procedure Code (V of 1908) - Section 20 (b) - Applicability - Objection to Jurisdiction raised - Courses open to party suing - Civil procedure Code-Section 149 - Request for time for payment of Court - Fees granted - Propriety of excluding time cannot be questioned : *Firm Lalchand Nathmal Vs. Firm Balaram, I.L.R. (1957) M.P. 316 (DB)*

- **Section 14(I)** - Explanation 1 - Computation of time in prosecuting with due diligence another civil proceeding - Time requisite for obtaining certified copy under

section 12, Limitation Act, and period for filling appeal if can be taken into consideration
 - But if appeal filed earlier, time upto date of filling appeal can be taken into consideration
 - Terms “Defect of jurisdiction” and “Other causes of like nature” -Include untenable appeal : *Mst. Duliabai Vs. Vilayatli, I.L.R. (1958) M.P. 695 (DB)*

- **Section 15**-Applicability of-Whole period during which prohibition operated against Decree-holder liable to be exclude: *Choudhari Raja Bhaiya Vs. Choudhari Daulat Singh, I.L.R. (1962) M.P. 246 (DB)*

- **Section-15** - Condition under which period can be excluded : *Ramnarayan Vs. Anandilal, I.L.R. (1971) M.P. 789 (FB)*

- **Section-15** - Decree holder prevented from taking steps which he likes – Limitation does not run against him : *Ramnarayan Vs. Anandilal, I.L.R. (1971) MP 789 (FB)*

- **Section 15** - Stay or Injunction prohibiting execution of decree-Decree-holder entitled to claim benefits of deduction under this section: *Laxmichand Vs. Chhallu, I.L.R. (1981) M.P. 148 (DB)*

- **Section- 15, -** Word “execution” in-Embraces various processes of execution and any of them : *Ramnarayan Vs. Anandilal, I.L.R. (1971) M.P. 789 (FB)*

- **Section 15**- Words “has been stayed by an injunction or order” in- Relatable to the factual position : *Ramnarayan Vs. Anandilal, I.L.R. (1971) M.P. 789 (FB)*

- **Section 15 (1)**- Express order of stay-Not necessary for its application : *Shri Lalchand Vs. Shri Kanhaiyaqlal, I.L.R. (1961) M.P. 557*

- **Section 15 (1)** - and Section 48, Civil Procedure Code – Order for stay of execution for a certain period – Order for stay not preventing Decree-holder to execute decree absolutely – Period of stay cannot be deducted under Section 15 (1) : *Anandilal Vs. Ramnarain, I.L.R. (1964) M.P. 765*

- **Section 15(1)**- Application for recovery of maintenance for a period of more than a year – Decision of the application depending upon the decision of the various contentions raised in the previous case regarding recovery of arrears for a prior period – Time taken in decision of previous application-Liable to be excluded for computing period of subsequent application : *Devideen Vs. Nankibai, I.L.R. (1966) M.P. 828*

- **Section 15 (2)** – No difficulty in interpretation when there is only one defendant-In case of more defendants the period of notice has got to be excluded when it is necessary to be given to one of the defendants : *The Life Insurance Corporation of India, Bombay Vs. Thakur Mohansingh, I.L.R. (1977) M.P. 769 (FB)*

- **Section 17(1)**- Conditions for applicability of the section-Limitation Act-Article 149-Applies only when a suit is by or on behalf of Central Government or State

Government-Limitation Act-Section 19-Acknowledgment to save limitation must be before the expiry of limitation : *Dilawar Khan Vs. Hazarilal*, I.L.R. (1967) M.P. 127

- **Section 18-** Applicable in a case of active and designed fraud : *Dwarka Prasad Naik Vs. Shyama Charan Naik*, I.L.R. (1963) M.P. 434 (DB)

- **Section 19-** Acknowledgment to save limitation must be before the expiry of limitation : *Dilawar Khan Vs. Hazarilal*, I.L.R. (1967) M.P. 127

- **Section 19-** Express admission of existing liability in partition deed- Amounts to an acknowledgment within this section : *Radha Krishna Vs. Anoop Chand*, I.L.R. (1979) M.P. 242 (DB)

- **Section 20** - Dispenses with the condition of payment being in the handwriting of or signed by person making payment- Section 20(2)- Applies to a house and the site on which it stand, if mortgaged with possession as to cultivable land- The word Rent” in – Cannot be read as “*ejusdem generis*” With “produce” - The receipt of usufruct- Deemed to be a payment in respect of mortgage and would give fresh start of limitation- Section 19- Express admission of existing liability in partition deed- Amounts to an acknowledgment within this section : *Radha Krishna Vs. Anoop Chand*, I.L.R. (1979) M.P. 242 (DB)

- **Section 20-** Gives a good title to wrong doer-Right to immovable property extinguished-Right to claim damages, or rent or profits due prior to extinguishment – Is extinguished : *Durga Prasad Vs. Mst. Parveen foujadar*, I.L.R. (1980) M.P. 448 (DB)

- **Section 20** - Payment made be post- dated cheque- Acknowledgment becomes effective from the date mentioned on the cheque even through cheque handed over earlier : *Balchandra Vs. M/s India Pictures, Indore*, I.L.R. (1971) M.P. 529 (DB)

- **Section 20-** Word “Payment” in-Used in two different senses-Giving of negotiable instrument by debtor in his hand-writing and acceptance thereof by a creditor-Amounts to payment and extends limitation-Dishonour of instrument subsequently-Has not the effect of blocking limitation-Civil Procedure Code, Order 7, Rule 7-Suit not based on alternative cause of action-On facts pleaded, relief can be granted provided there is no surprise to other side: *Gorelal Vs. Ramjeelal*, I.L.R. (1961) M.P 366

- **Section 20(2)** – Applies to a house and the site on which it stands, if mortgaged with possession as to cultivable land : *Radha Krishna Vs. Anoop Chand*, I.L.R. (1979) M.P. 242 (DB)

- **Section 20(2)** – The receipt of usufruct- Deemed to be a payment in respect of mortgage and would give fresh start of limitation : *Radha Krishna Vs. Anoop Chand*, I.L.R. (1979) M.P. 242 (DB)

- **Section 21(1)** – Initially suit filed against State of Madhya Pradesh after Service of notice – Adding the period of notice suit was within Limitation – At second appellate Stage joinder of new defendants not served with notice – Suit barred as against newly added respondents/defendants – Termination of service – Preliminary enquiry held but no departmental enquiry – Termination apparently camouflaged for an order dispensing with service on account of misconduct : *R.R. Naidu Vs. State, I.L.R. (1999) M.P. 576*

– **Section 22** – Applicable in case of joinder of necessary parties but not proper parties : *Mahadulal Vs. Chironjilal, I.L.R. (1964) M.P. 721 (DB)*

- **Section 22-** Not applicable to disclosure of names : *Firm Narain Das Mangal Sen Vs. Anand Behari Mishra, I.L.R. (1959) M.P. 121 (DB)*

- **Section 22-** Suit filed in firms's name-Names of some partners disclosed under Order 30, rule 2, after the limitation period-Suit not affected : *Firm Narain Das Mangal Sen Vs. Anand Behari Mishra, I.L.R. (1959) M.P. 121 (DB)*

- **Section 22-** Suit filed Under section 325, Kanooon Mal, Gwalior-Mortgagee of suit property subsequently added as proper party beyond period of limitation-Suit not barred : *Champalal Vs. Manbhavan d/o Babroo and w/o Onkarsingh, I.L.R. (1959) M.P. 330 (DB)*

- **Section 23-** Applicability of principle to continuing offence : *The State of M.P., Vs. Umashankar, I.L.R. (1963) M.P. 518 (DB)*

- **Section 28-** Application for execution barred by time-Right to the property not extinguished-Decree itself does not cease to subsist : *Swaroopnarain Vs. Mst. Bhanwar Kunwar Bai, I.L.R. (1967) M.P. 261*

- **Section 28-** Failure to bring a suit within limitation – Right to property is extinguished : *Durga Prasad Vs. Mst. Parveen foujadar, I.L.R. (1980) M.P. 448 (DB)*

- **Section 28** - Institution of suit against person in adverse possession- A mere decree for declaration will not arrest adverse possession : *Mst. Sultan Jehan Begum Vs. Gul Mohammad, I.L.R. (1973) M.P. 847 (DB)*

- **Section 28** - Suit for declaration of title- Decree granting declaration- Declaration relates back to date of suit- Section does not confer title – It merely extinguishes the right if time for filing suit is allowed to run out-Principles of Law stated institution of suit against person in adverse possession – A mere decree for declaration will not arrest adverse possession : *Mst. Sultan Jehan Begum Vs. Gul Mohammad, I.L.R. (1973) M.P. 847 (DB)*

- **Section 28** – The section does not confer title- It merely extinguishes the right if time for filing suit is allowed to run out Principles of law stated : *Mst. Sultan Jehan Begum Vs. Gul Mohammad, I.L.R. (1973) M.P. 847 (DB)*

- **Section 28** - and Land Revenue Code, M.P., (XX of 1959)- Rights of Bhumiswami in agricultural lands-Whether can be acquired by adverse possession – Right to claim mutation based on adverse possession-Whether can be claimed: *Kashiram Vs. Nathu*, I.L.R. (1983) M.P. 183 (FB)

- **Section 28-A**-Applicable to suits for possession, but does not apply to applications for possession : *Swaroopnarain Vs. Mst. Bhanwar Kunwar Bai*, I.L.R. (1967) M.P. 261

- **Section 29 (2)** – Did not make section-5 applicable to suits, appeals and application – Limitation Act 1963 makes, Section 4 to 24 applicable to them : *Janardan Baliram Mankar Vs. The Government Pleader (Public Prosecutor) Durg*, I.L.R. (1971) M.P. 1070

- **Section 29(2)**- Words “Shall not apply” in do not mean to prohibit any local or special law from making provisions other than section 4, 9 to 18 and 22 applicable by express reference or necessary implication : *Brijrajsingh Vs. The Board of Revenue, Gwalior*, I.L.R. (1966) M.P. 21 (DB)

-**Section 29(2)**-Provisions of Limitation Act would not apply to proceedings before the Labour Court in the matter of restoration of a case dismissed in default : *Kartik Ram Vs. State Industrial Court, Raipur* I.L.R. (1998) M.P. 386

- **Section 29(2)**-Provisions of Limitation Act would not apply to proceedings before the quasi-judicial Tribunals or Executive Authorities in absence of an express provision in the special statute to extend the prescribed period of limitation for sufficient cause : *Mandas Vs. State of M.P.*, I.L.R. (1998) M.P. 449

- **Article 2**- Public Officer acting in pursuance of statutory authority – Public Officer exceeding his powers and committing tortuous act- Suit for damages for such act- Suit governed by this provision : *State of Madhya Pradesh Vs. Ramansha Byramji*, I.L.R. (1978) M.P. 768 (DB)

- **Articles 11**-Essentials of a suit under Order 21, Rule 63 of the Civil Procedure Code falling under Article 11 of the Limitation Act : *Gole Vs. Shri Kishandas Agarwal*, I.L.R. (1965) M.P. 929 (DB)

- **Articles 12, 95 and 120**-Suit for declaration that sale is void and not binding is governed by Article 120 and not by Article 12-Suit to set aside sale on ground of fraud-Suit governed by Article 95 : *Phoolchand Vs. Mathura Prasad*, I.L.R.(1961) M.P. 385

- **Article 14** - Not applicable when jurisdictional competency of officer is questioned : *The State of Madha Pradesh Vs. Gajraj Singh*, I.L.R. (1971) M.P. 511 (DB)

- **Article 14**-Suit to set aside order of Deputy Commissioner-Suit governed by this Article-Government not necessary party to such suit : *Pooranchand Sharma Vs. Smt. Sailabala Dassi*, I.L.R. (1962) M.P. 774

- **Article 18**- Suit for damages for non-completion or refusal to complete acquisition under Land Acquisition Act- Suit governed by this Article : *State of Madhya Pradesh Vs. Ramansha Byramji*, I.L.R. (1978) M.P. 768 (DB)

- **Article 30**-Suit for damages for injury to goods-Governed by this article-Starting point-Date of delivery in the absence of proff of date of injury by railway : *Union of India, Vs. Haji Latif Abdulla*, I.L.R. (1960) M.P. 904

- **Article 39** – Applicable to suits for compensation for trespass-Limitation does not begin from a date when title is declared by Court : *Antoolal Vs. Chhitarmal*, I.L.R. (1964) M.P. 408

- **Articles 39 and 49**-Applicability to a suit for compensation for trespass and wrongfully injuring goods : *Ratanlal Vs. Baboolal*, I.L.R. (1959) M.P. 994

- **Article 47**-Right to property extinguished – Operation of article cannot be eluded by bringing a suit for damages-Object of suit under the article: *Durga Prasad Vs. Mst. Parveen Foujadar*, I.L.R. (1980) M.P. 448 (DB)

- **Articles 49 and 145**-Suit for return of deposit-Suit governed by Article 145 and not by Article 49 : *Kedarmal Vs. Gopaldas*, I.L.R. (1962) MP 815 (DB)

- **Article 56**-Governs suits for price of work done-Time to be computed from the date when work is done: *The Cantonment Board, Mhow, Vs. Chhajumal and Sons, Mhow*, I.L.R. (1968) M.P. 245 (DB)

- **Article 62**- Scope and applicability : *Raobhupendra Singh Vs. Smt. Deepkunwar*, I.L.R. (1973) M.P. 457 (DB)

- **Article 95**-Applicability to a suit for damages for deceit : *Shri S. Chatterjee Vs. Dr. K.L. Bhawe*, I.L.R. (1960) M.P. 265 (DB)

- **Article 89**- Applies to a suit for accounts : *Prakashchandra Vs. Firm Swarupchand Hukumchand and co. Indore*, I.L.R. (1976) M.P. 30 (DB)

- **Article 96** – Limitation for suit based on mistake is 3 years from date when such mistake is detected : *B. Viplava Prasad Vs. State Bank of India*, I.L.R. (2000) M.P. 597

- **Article 96** -and Limitation act, Indian (XXXVI of 1963), Section 17(1)(c), Article 96 applicable to suit to recover money paid under mistake of law- This provision

incorporated in Section 17(1)(c) of Limitation Act, 1963 : *The Municipal Council, Murwara Vs. M/s S.K. Khansons and Co., Katni I.L.R. (1979) M.P. 920*

- **Article 96 and 120-** Suit for refund of excess sales tax paid-Suit governed by Article 120 and not Article 96-Cause of action accrues by making assessment not by discovery of mistake : *Govind Singh Gurudatta Singh Vs. The State of M.P., I.L.R. (1960) M.P. 849 (DB)*

- **Article 97** - and Abolition of Proprietary Right (Estates, Mahals, Alienated Lands) Act, M.P. 1950 (1 of 1951), Section 3 and 4- Failure of consideration- Suit for refund of consideration- Starting point of limitation is date of abolition : *Rameshwardas Vs. Jagannath I.L.R. (1979) M.P. 511 (DB)*

- **Article 97** - and Abolition of Proprietary Right (Estates, Mahals, Alienated Land) Act, M.P. 1950 (1 of 1951), Section 3 and 4- Vesting of proprietary right in the State- Contract for mortgage of certain Proprietary right in *Chhota ghas* land and sir and *khudkhast* lands becoming void and unenforceable- Failure of consideration- Suit for refund of Consideration- Starting point of limitation is date of abolition- Contract Act, Section 65 and Transfer of Property Act, Section 58- Mortgage of past debts- Forbearance to sue- Is a Valid consideration- Suit to refund of entire consideration- Maintainable- Specific Relief Act- Section 15- Contract one and indivisible – Part rendered void and unenforceable- Unperformed part forming considerable portion of the whole- Plaintiff has option to relinquish all claim to further performance and compensation- Option not exercised- No adjudication of Court under Section 47, Civil Procedure Code necessary – Limitation starts from the date of failure of consideration e.g. And date of abolition : *Rameshwardas Vs. Jagannath I.L.R. (1979) M.P. 511 (DB)*

- **Articles 97 and 116-** Scope and applicability-Contract Act-Presumption that contract was with reference to existing state of law-Subsequent legislation nullifying contract-Contract frustrated-Promisor excused from performing contract unless agreed to be bound with reference to future state of law : *Raja Hirdey Singh Ju Deo Vs. Seth Murlimanohar, I.L.R. (1962) M.P. 619*

- **Article 102** - Governs suits regarding arrears of pay : *The State of Madhaya Pradesh Vs. Gajraj Singh I.L.R. (1971) M.P. 511 (DB)*

- **Article 106** – Suit for accounts- Starting point of limitation : *Sheo Bhagwan Vs. Mst. Durgadevi I.L.R. (1979) M.P. 349 (DB)*

- **Article 115** - Suit for compensation for breach of contract by Government Applicability : *Manoharlal Vs. The State of M.P., I.L.R. (1958) M.P. 864 (DB)*

- **Article 115** - Word “compensation” in - Wide and includes claim for damages, refund of consideration and also interest on the consideration - Article 97 - Not applicable

to contracts forbidden by law or which are void *ab-initio* : *Seth Mohammad Hussain Vs. Firm Andani Company, Akola, I.L.R. (1958) M.P. 505 (DB)*

- **Article 115**-Breach of contract by one party-Breach accepted by opposite party-Question of successive breaches does not arise-Suit for damages governed by this Article-Starting Point-Date of breach of contract : *Firm Bhagwandas Shobhalal Jain, Sagar Vs. State of M.P. I.L.R. (1966) M.P. 913 (DB)*

- **Article 115 and 120**- Suit for compensation based on contract- Suit governed by Art. 115 and not Art. 120 : *State of Madhya Pradesh Vs. Ramansha Byramji I.L.R. (1978) M.P. 768 (DB)*

- **Article 116** - Creditor (Displaced Person) suing another displaced person treating the debt as an unsecured debt-Suit governed by Article 116 and not Article 132 : *Radhomal Vs. Bhagwandas, I.L.R. (1969) M.P. 624 (DB)*

- **Article 116**-Suit for refund of consideration on ground of dispossession-Suit governed by the article-Starting point of limitation is date of dispossession : *Mohammad Khan Vs. Suratsingh, I.L.R. (1963) M.P. 299*

- **Article 120** – Suit for declaration by servant that he continues in service – Maintainability – Limitation for such suit governed by this Article – Article 14 – Not applicable when jurisdictional competency of Officer is questioned – Article 102 – Governs suits regarding arrears of pay – Constitution of India – Article 311 – Procedure under – Has to be valid where servant dismissed with a black mark – Principle applicable even in the case of temporary or provisional employee – Dismissal based on several grounds good and bad – Good and bad grounds not intermixed – Grounds capable of separation – Dismissal still supportable on good grounds – Derogatory remark against employee passed behind his back – Civil Court, Power of, to declare it as illegal – *Res Judicata* – Decision in writ petition – Not *res judicata* in civil suit, though can be used as precedent : *The State of M.P. Vs. Gajraj Singh, I.L.R. (1971) M.P. 511 (DB)*

- **Article 123** - Date of Knowledge would be the date of commencement of the limitation in case where the defendant is not served or is not served in accordance with law : *Smt. Lila Bai Vs. Triyogi Narayan, I.L.R. (1998) M.P. 509*

- **Article 131** – Applicability : *Raobhupendra Singh Vs. Smt. Deepkunwar, I.L.R. (1973) M.P. 457 (DB)*

- **Article 139**-In suit governed by the Article question whether possession was adverse or not does not arise-Suit filed twelve years after termination of tenancy-Suit is barred by time-Transfer of Property Act-Section 106-Tenancy by sufferance-Does not create relationship of landlord and tenant-Tenancy Act, Central Provinces, Second Schedule, Article 1-Not applicable to a suit by a tenant against a sub tenant : *Shri Mahadeoji Idol, Jabalpur Vs. Dasai, I.L.R. (1966) M.P. 99 (DB)*

- **Article 139**-Termination of tenancy-Burden of proof : *Mitharam Vs. Deochand*, I.L.R. (1960) M.P. 486

- **Article 142** - Suit for possession after dispossession- Plaintiff has to establish title – Relief of possession – Includes declaration of title – Jurisdiction is only of Civil Court – Land Revenue and Tenancy Act, Vindhya Pradesh, 1953 – Section 220 – Finding given by Civil Court in a reference- Finding not to be considered to be of Civil Court in a suit respecting title- Civil Court acts in consultative or advisory capacity – *Resjudicata* – Decision given by revenue court in pursuance of order of civil Court on reference not *resjudicata* in subsequent suit in Civil Court : *Smt. Sarbadia Bai Vs. Ishwardin Singh* I.L.R. (1972) M.P. 1049

- **Article 142**-Word “dispossession” and “Discontinuance of possession”-Meaning of-Open and vacant land-Presumption of possession following title applicable in deciding question of the possession : *Badulla Vs. Gyasiram*, I.L.R. (1959) M.P. 117 (DB)

- **Articles 142 and 144**-Possession of Co-widow is possession on behalf of all co-widows-Limitation Act-Bars remedy but does not extinguish right itself-Limitation Act-Section 28-Applicable to suits for possession, but does not apply to applications for possession-Application for execution barred by time-Right to the property not extinguished-Decree itself does not cease to subsist-Adverse possession-Adverse possession arrested by a suit for possession-Essentials to be proved for establishing adverse possession by one co-heir against other co-heirs : *Swaroopnarain Vs. Mst. Bhanwar Kunwar Bai*, I.L.R. (1967) M.P. 261

- **Articles 142 and 144**-Applicability-Allegations or proof either of dispossession or discontinuance of possession-Essential for applicability of Article 142-Adverse possession-Third party dispossessing tenant-Possession of third party not adverse to landlord during continuance of lease : *Pyarelal Vs. Suganchand*, I.L.R.(1961) M.P. 856

- **Article 142** – Principle that possession follows title – Applicable in case of uncultivated grass lands : *Mulaimchand Vs. Baijnath Prasad*, I.L.R.(1964) M.P. 597

- **Article 142**- Relief of possession – Includes declaration of title – Jurisdiction is only of Civil Court : *Smt. Sarbadia Bai Vs. Ishwardin Singh*, I.L.R. (1972) M.P. 1049

- **Article 144** -Defendants claiming title by adverse possession-Article 144 applies to the suit : *Mulaimchand Vs. Baijnath Prasad*, I.L.R. (1964) M.P. 597

- **Article 148**-Mortgagee in possession of mortgaged property for over 12 years under unregistered mortgage deed-Mortgagee acquires rights of mortgagee by prescription-Suit for redemption falls within the article and is maintainable : *Bherulal Vs. Dhapubai*, I.L.R. (1963) M.P. 121

- **Article 149**-Applies only when a suit is by or on behalf of Central Government or State Government : *Dilawar Khan Vs. Hazarilal*, I.L.R. (1967) M.P. 127

- **Article 158**-Application to set aside award on any ground-Application governed by this provision : *Mauj Bihari Vs. Umrao Bihari*, I.L.R. (1961) M.P. 832 (DB)

- **Article 163**-Starting point of limitation for application under Order 9, Rule 9-*Res-judicate* – Order dismissing application as not maintainable-Observation made in order on merits-Mere *obiter dicta*-Observation do not operate as *Res-judicate*: *Maroti Ashtankar Vs. Gangadhar Rao Kher*, I.L.R. (1968) M.P. 137

- **Articles 163 and 181**-Not applicable to application for restoration of an application for restoration of suit dismissed for default-Applicable to application under C.P. Code : *Shri Pooranchand Vs. Komalchand*, I.L.R. (1962) M.P. 752 (DB)

- **Article 164**-Application for setting aside *ex-parte* decree passed with out due service of notice-Starting point of limitation-Date of knowledge of decree and not date of decree: *Kamalabai w/o Sajjansingh Vs. Bhula s/o Moti Chamar*, I.L.R. (1959) M.P. 307

- **Article 181**- Bar of Limitation- Decree conditional – No date fixed for performance of the condition- Time would commence from the date of the decree-Condition performed and execution filed after 12 years- Limitation, Bar of : *Rajivlochan Mishra Vs. Gangaram* I.L.R. (1979) M.P. 170

- **Article 181** - Appeal against preliminary decree in mortgage suit - Appeal automatically abating - Starting point for limitation for application for final decree -Civil Procedure Code (V of 1908) - Order XXXIV, Rule 4 - Not obligatory on judgment creditor - Only an enabling provision : *Gyaniram Vs. Mst. Gangabai*, I.L.R. (1957) M.P. 337 (DB)

- **Article 181** – Application by a party for possession of property which has been taken delivery of under void execution sale - Application governed by this provision : *Akhechand Vs. Motilal*, I.L.R. (1974) M.P. 972

- **Article 181** - and Civil Procedure Code (V of 1908), Order 21, Rule 95-Starting point of limitation for application to resist delivery of possession –*Res Judicata*-Party failing to raise objection at appropriate time-Party debarred from raising objection on ground of constructive *res judicate*-Principle of constructive *res judicate*- Applicable to execution proceeding: *Kashiram Vs. Firm Metal Trading Co.*, I.L.R. (1968) M.P. 306

- **Articles 181 and 182 (5)**-Execution stayed by order of appellate Court during stay, execution dismissed for default-Fresh execution application claiming same relief

filed more than 3 years after dismissal-Application amounts to revival of previous application-Application not barred either by Art. 181 or Art. 182(5)-Difference between application for fresh execution and application for revival : *Umrao Khan Vs. Waheed Khan, I.L.R. (1962) M.P. 130*

- **Article 182** - Order consigning the execution record to record-room-Does not amount to disposal of execution case-Civil Procedure Code-Order 21, rule 16-Decree-holder dying during execution-Legal representative becomes assignee by operation of law-Legal representative can carry on the pending execution-Application to continue execution-Is not application for substitution-Such application is essential to be made-Words “may apply in execution of the decree to the Court which passed it”-Do not imply an application *de novo*-Implications of those words-Order 21, rule 16-Local Amendment-Permits making of application to the Court passing the decree or to the Court where execution is transferred-Order 21, rule 16-Excludes operation of Section 146, Civil Procedure Code-Legislature providing mode of doing a thing-Party has to do the thing in that manner or not at all-Prayer to continue execution falls under Order 21, rule 16-Case of exercise of inherent power-Matter governed principle by reasonable time : *Shrimati Ramkunwarbai Vs. Motiram, I.L.R. (1970) M.P. 602 (DB)*

- **Article 182 (1)**- Starting point of limitation-Date of delivery of judgment or order and not the date where the decree of executable order is signed-Limitation Act- Section 12(2)-Not applicable in computing limitation for execution-Provision to be given natural strict grammatical meaning-Section 15(1)-Express order of stay-Not necessary for its application-Precedent-Whether observations of Privy Council binding on High Court : *Shri Lalchand Vs. Shri Kanhaiyaqlal, I.L.R. (1961) M.P. 557*

- **Article 182(2)**-"Appeal"- Does not include appeal preferred against an order refusing to set aside an *ex-parte* decree – Stay or Injunction prohibiting execution of decree- Decree-holder entitled to claim benefits of deduction under section 15 of the act - Interpretation of statutes-Court to create or take away any statutory right by rewriting law on the garb of interpretation: *Laxmichand Vs. Chhallu, I.L.R. (1981) M.P. 148 (DB)*

- **Article 182(2)**-Does not include Appeal from order refusing to set aside *ex-parte*-Decree Application by Judgment debtor to set aside *ex-parte* decree-Is not a step-in-aid within the meaning of Article 182(2) of the Limitation Act : *Surajdin Vs. Shriniwas, I.L.R. (1998) M.P. 365 (FB)*

- **Article 182 (4) and (7)** – Decree amended by order granting installments – Starting point of limitation for execution of amended installment decree- Limitation governed either by clause 4 or clause 7 of Article 182 – Civil Procedure Code- Order 21, rule 16 – Decree-holder can execute decree even after assignment if assignee does not execute- Execution to be for benefit of assignee : *Brijlal Vs. Dulichand I.L.R. (1977) M.P. 1009*

- **Article 182 (5)**- Requirement of “Final orders” in-Means and includes appellate order when appeal filed against order of executing Court : *The C.P. Syndicate Ltd. Nagpur Vs. Firm Hasan Ali, I.L.R. (1959) M.P. 1 (FB)*

- **Article 182(5)**- Successive application to transferor Court for execution till actual order of transfer and certificate of non-satisfaction sent to transferee Court-Applications amount to step-in-aid of execution and save limitation: *Abdul Sattar Vs. Masuryadin, I.L.R. (1961) M.P. 616*

- **Article 182(5)**-Expression “Application in accordance with law”-Meaning of Question whether particular step is a step-in-aid of execution-Depends on facts and circumstances in each case-Essentials of-Application for bringing on record legal representatives of deceased party to decree-Application a step in-aid of execution : *Onkarsingh Vs. Meharbansingh, I.L.R. (1963) M.P. 589 (FB)*

Limited owner

- **Property inherited by limited owner and sold and other property purchased**-The new property partakes of the same character as the old one: *Todsingh Vs. Begambai, I.L.R. (1959) M.P. 250 (DB)*

Local Authorities School Teachers (Absorption in Government Service) Act, Madhya Pradesh (XXV of 1963)

- **Section 6(1)**-Question whether a teacher is to be absorbed in Government service-Dependent on opinion of Screening Committee-Opinion to be formed not only on basis of principles prescribed by rules but also on past service record and academic qualifications: *Ramgopal Vs. The Janapada Sabha, Korea, I.L.R. (1966) M.P. 82 (DB)*

- **Section 10(2)** – Proviso- Scope of- Municipal Corporation Act, Madhya Pradesh, 1956- Standing Committee, Power of, to frame bye- law regarding retirement of officers or servants- Section 58 (1) and 427 – Power to determine amount of pension and gratuity – Includes power to fix age of retirement – Section 58 (1), Proviso- Does not confer power on Standing Committee to fix age of retirement or pension and gratuity- Power vests in Corporation only and that too by framing a bye- law under Section 427 : *Bhagwat Prasad Choubey Vs. The State of M.P., I.L.R. (1971) M.P. 487 (DB)*

Local Government Act, C.P. and Berar (XXXVIII of 1948)

- **Section 6(1)** - Chairman if not from elected, selected or nominated councillors - Deemed to be councilor under one of three categories of councillors mentioned in the section-Chairman entitled to accept notice-Service of notice on Chairman of Janapada

Sabha-Service is valid-Section 60 and Section 104-Provision regarding supersession of Sabha-Does not affect corporate character of Sabha or its perpetual succession-Effect and consequences of supersession on Sabha- Words and Phrases-"It appears" or "is satisfied"-Meaning of-Evidence Act, Section 114-Order issued by Under Secretary or Secretary in the name of Governor-Presumption about legality: *Narmadaprasad Vs. The State of M.P.*, I.L.R. (1959) M.P. 8 (DB)

- **Section 12 (I), Proviso - Sections 20 and 33** - Nominated Sabha holds office till the period fixed or till any earlier date mentioned in any subsequent notification of the Government - Notification regarding elected Sabha - Elected Sabha functions only after taking office after first meeting : *Hariharprasad Sharma Vs. The State of M.P.*, I.L.R. (1957) M.P. 380 (DB)

- **Section 14**-Representatives of Municipal Committee to the Janapada Sabha not elected in general election-Municipal Committee electing representatives some time after general election-Election amounts to bye-election permissible under the section-Term "casual vacancy" wide enough to cover all cases where initially seats could not be filled up for any reason-Rules framed under section 182(2) (iv)-Rule 4 Electoral roll-Correction-Can be made even during the pendency of Sabha: *Murlidhar Vs. The Collector, Raigarh*, I.L.R. (1959) M.P. 506 (DB)

- **Section 21**-Scope and Extent of : *Pandit Kanhaiyalal Tiwari Vs. The Chief Executive Officer, Janapada Sabha Lakhnadon*, I.L.R. (1965) M.P. 46 (DB)

- **Section 21(3)**-Cannot be given retrospective effect so as to affect elections held before 9-4-63: *Lakhandhar Vs. State of MP*, I.L.R. (1965) M.P. 264 (DB)

- **Section 35**-Requisition for special meeting-Requisition to be signed by at least 1/5th of the members of the Sabha-Section 18(3) ,(4)-Exercise of power by State under these provisions is purely administrative-Resolution of non-confidence passed by 2/3rd majority-State Government has power to scrutinize-Not necessary to give hearing to person concerned: *Thakur Budheshwar Singh Vs. State of M.P.*, I.L.R. (1959) M.P. 207 (DB)

- **Section 45(1)**-Condition necessary to make decision of Administrative Committee valid and binding : *Motilal Vs. The Janapada sabha, Rajnandgaon*, I.L.R. (1966) M.P. 71 (DB)

- **Section 52(2) and (3)**- Gram Panchayat authorized to manage market-Gram Panchayat becomes agent of Sabha-Loss caused by action of Gram Panchayat-Janpad Sabha liable for loss-Civil Procedure Code, Section 115-Finding based not on legal evidence-High Court can interfere in revision: *Janapad Sabha, Bilaspur Vs. Bhukhanlal*, I.L.R. (1959) M.P. 1011

- Section 60 and 66 and rule 2 of the rules framed under the Act-Contract for sale of land belonging to Janapada Sabha – Validity and enforceability of – Janapada Sabha not passing any resolution for selling its land-Chairman and chief Executive Officer not authorised to enter into contract for its sale – Contract by Chairman and Chief Executive Officer void and unenforceable – Decree for specific performance cannot be passed against Janapada Sabha-Sale of property of Janapada Sabha has to be by public auction – Contract for private sale is void – Limitation Act, 1963- Article 111-Adverse possession against Janapada Sabha, a local Body – period of Limitation is 30 year – Janpada Sabha not taking possession of part of land acquired by it- Municipal council constructs Pakka drain over it and remains in possession for over 30 years- Municipal Council acquires title over it by adverse possession: *Janapada Sabha, Sagar Vs. Municipal Council, Sagar, I.L.R. (1981) M.P. 1041 (DB)*

- Section 60 and 66 and rule 2 of the rules framed under the Act-Janapada Sabha not passing any resolution for selling its land-Chairman and Chief Executive Officer not authorized to enter into contract for sale-Contract by chairman and Chief Executive officer void and unenforceable – Decree for specific performance cannot be passed against Janapada Sabha : *Janapada Sabha, Sagar Vs. Municipal Council, Sagar, I.L.R. (1981) M.P. 1041 (DB)*

- Sections 60 and 66 and rule 2 of the rules framed under the Act-Sale of property of Janapada Sabha has to be publication – Contract for private sale is void: *Janapada Sabha, Sagar Vs. Municipal Council, Sagar, I.L.R. (1981) M.P. 1041 (DB)*

- Section 68 (2)-Administrative Committee-Power to punish servants-Section 70(1) (2)-Administrative Committee-Power of Sabha to punish servants-Servant of Janpada Sabha-Not in civil service of Union or State-Article 311 not applicable to his case-Section 182(2) (xv)-Rules framed thereunder-Enquiry against servant-A *quasi*-Judicial process-Principles of natural justice according to common law to be followed though not laid by the Act-Suspension of servant- Amounts to penalty :*Dattatraya Vs. Janpada Sabha, Burhanpur, I.L.R. (1960) M.P. 7 (DB)*

- Section 70(1) (2)-Administrative Committee-Power of Sabha to punish servants : *Dattatraya Vs. Janpada Sabha, Burhanpur, I.L.R. (1960) M.P. 7 (DB)*

- Section 89-Authorises imposition of fee but not tax-Requirements necessary for imposition on the purchase money by the purchaser amounts to a tax and not fee: *Dhaniram Vs. Janapada Sabha, Janjgir, I.L.R. (1966) M.P. 521 (FB)*

- Section 90-Vires of : *Achhelal Vs. The Janapada Sabha, Sihora, I.L.R. (1963) M.P. 777 (FB)*

- **Section 90**-Vires of-Constitution-List II-Item 5-Word “Power” in-A large word and its meaning cannot be limited-Includes power of making laws and imposing taxes : *Achhelal Vs. The Janapada Sabha, Sihora, I.L.R. (1963) M.P. 777 (FB)*

- **Section 100**-Conditions in which jurisdiction under this section can be exercised-Order of Chief Executive Officer neither illegal nor in excess of jurisdiction-Additional Collector has no jurisdiction to refer to Government – Observations do not amount to a finding: *The Chief Executive Officer, Janpada Sabha, Sihora Vs. J.D. Dixit, I.L.R. (1968) M.P. 899 (DB)*

- **Section 116(1) and Section 20 of the C.P. and Berar General Clauses Act**-Section 116(1)-Does not confer power on government to cancel notification issued under any provision of the Act-Cancellation of notification-Does not amount to withdrawal or modification of provision of the Act-Public market to be disestablished only on representation of Sabha-Implied power of cancellation etc. issued under section 116(1)-Exercisable subject to limits and conditions prescribed by section 20, C.P. and Berar General Clauses Act-Constitution-Article 226-Persons holding market, Right of, to file petition challenging the validity of notification disestablishing Market : *Sunderlal Vs. The State of Madhya Pradesh I.L.R. (1964) M.P. 359 (DB)*

- **Section 159**-Rule 1 (ii) and (iii) (under old Act)-Revision provided by Section 159-Rule 1(ii) and (iii) framed under old Act-Has no effect so as to take away right of revision given by statute-Rules irreconcilable with statute-Statute will prevail-Interpretation of statute-Court, Power of, to rectify language to carry out intention of legislature : *Somdutta Chaubey Vs. The Janpada Sabha, Sohagpur, I.L.R. (1960) M.P. 106 (DB)*

- **Section 182(2)(xv)**-Rules framed thereunder-Enquiry against servant-A *quasi* judicial process-Principles of natural justice according to common law to be followed though not laid by the Act : *Dattatraya Vs. Janpada Sabha, Burhanpur, I.L.R. (1960) M.P. 7 (DB)*

- **Section 388(1)**-Panchayats (Amendment and Validation) Act, Madhya Pradesh, 1963-Sections 28, 29 and 33-Effect of amendment in the original Section 388(1) as it stood before amendment-Local Government Act-Section 21(3)-Cannot be given retrospective effect so as to affect elections held before 9-4-63 : *Lakhandhar Vs. State of M.P., I.L.R. (1965) MP 264 (DB)*

- **Rule 3 under Section 188 (2) (ix)** – Imprint got on ballot paper by keeping the ink wet deliberately with purpose- Imprint amounts to making mark within the meaning of the rule- Imprint made intentionally in concert with candidate – Secrecy of ballot is violated – No provision in Act for making enquiry regarding validity of ballot paper- Chairman rejecting vote-Action cannot be said to be lacking in jurisdiction or propriety- Rules framed under Section 182 (2) (ii), (iii) and (ix)-Non-compliance with – Constitutes

distinct and independent condition – Not related to improper reception or refusal of a vote-Constitution – Articles 226 and 227 – Provisions not to be invoked for adjudication of controverted questions of fact : *Hariprasad Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 154 (FB)*

Local Self – Government Act, C.P. (IV of 1920)

- **Section 51 and 79** - Coal cess is not a tax on sales nor excise duty-is a rate on mineral rights-Has lawful origin and its levy validly continues-Words “within the Jurisdiction of Independent Mining local Board” Qualify “Coal Manufactured at the mines” and not “sold for export by rail or sold otherwise than for export by rail”-Expressions merely descriptive of goods attracting tax-Sale of goods Act, 1930-Section 39-property in goods passes to buyer on delivery of goods to common carrier – Petitioners having siding at mines within area of Independent mining local Board & Loading coal in wagon for transmission to buyer – Sales are complete – Civil procedure code-Section 11-Constructive *res judicata*- Findings in civil suit duly confirmed in appeal holding that there were sales within the area of independent mining, Board – Operate as constructive *res-judicata* in later writ proceedings-Evidence Act, Section 115 and constitution of India, Articles 226 and 277-Estoppel – Petitioners in writ petitions impleading Janapada Panchayats as successor in interest of dissolved Jannapada Sabha-Estopped from contesting that Janapada Panchyats cannot recover arrears of tax due to sabha-Panchayats Act, M.P., 1962 – Section 393 (1)(b)-Janapada Panchayats have right to recover arrears of tax due to sabha: *The Amalgamated Coalfields Ltd., Calcutta Vs. The Janapada Panchayat, Chhindwara, I.L.R. (1981) M.P. 8 (DB)*

Locus Standi

– **Petitioner registered voter of the concerned constituency** – Eligible to file election petition : *Chandra Shekhar Chaturvedi Vs. Smt. Rajesh Nandini Singh, I.L.R. (2000) M.P. 953*

Lok Abhikaron Ke Madhyam Se Bis Sutriya Karyakram Ka Kriyanvayan Adhiniyam, M.P. (XIII of 1980)

- **Section 1-** M.P State Road Transport Corporation permitting petitioners to ply their buses on the routes on regular permits – Sufficient time given to the petitioners to establish themselves-Corporation not bound to continue to help : *Krishan Gopal Dixit Vs. M.P. State Road Transport Corporation, Bhopal, Katni, I.L.R. (1985) M.P. 215 (DB)*

- **Section 1** - and Evidence Act Indian (1 of 1872) section 115-Estoppel – “Half a Million Job programme”-Help liable to be given to un-employed educated persons thereunder-Nature and extent – Corporation permitting petitioners to ply their buses on

the routes on regular permits-Sufficient time given to the petitioners to establish themselves- Corporation not bound to continue to help – Estoppel-Whether operates against the corporation : *Krishan Gopal Dixit Vs. M.P. State Road Transport Corporation, Bhopal, Katni, I.L.R. (1985) M.P. 215 (DB)*

– **Section 7(2) and 8(2)**–Setting aside of order of S.D.O. by Collector in revision on ground that Appeal was barred by limitation–Objection as to limitation not taken in appeal cannot be allowed to be raised in revision else it would amount to curtail the right to get the delay condoned–Revisional authority gets jurisdiction only when delay was rightly refused or wrongly allowed : *Indra Singh Vs. State & Others, I.L.R. (1992) M.P. 615 (DB)*

– **Section 8(2)**– Appeal filed much prior to notification fixing date for expiry of limitation–Appeal within time–Order of Revisional authority quashed : *Indra Singh Vs. State & Others, I.L.R. (1992) M.P. 615 (DB)*

Lok Ayukt Evam Up Lokayukt Adhiniyam, M.P. (XXXVII of 1981)

- **Sections 2(g), 2(g)(v), 7(ii)**-Executive engineer in M.P. Housing Board is a Public Servant-Up Lokayukt competent to make enquiries on complaints-Consideration of report of Up Lokayukt for making a recommendation for premature/compulsory retirement-Cannot be said to be consideration of extraneous material : *Mahipal Singh Vs. Madhya Pradesh Grih Nirman Mandal & Ors. I.L.R. (1993) M.P. 109 (DB)*

- **Section 12**-Unless the Lokayukt himself makes the report published Courts of law will not call for the report-Trial Court justified in rejecting petitioner's prayer : *Khageshwar Prasad Vs. State, I.L.R. (2001) M.P. 1097*

- **Sections 12, 13 and 14**-Bar on calling any evidence collected by Lokayukt includes the report of the Lokayukt as it is necessarily based on comments on evidence collected by it through various agencies : *Khageshwar Prasad Vs. State, I.L.R. (2001) M.P. 1097*

Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987, M.P. (I of 1988)

- **Section 3**-Provides for recovery of certain dues as arrears of Land Revenue-Legislative Competence of State Legislature-The State Legislature derives source to enact the Adhiniyam from entry 11-A of Concurrent List of Seventh Schedule of the Constitution of India-Is a valid piece of legislation-Writ petitions dismissed : *New Laxmi Oil Mills Vs. Bank of India, I.L.R. (1998) M.P. 279 (DB)*

Lok Parisar (Bedakhali) Adhiniyam, M.P. (XLVI of 1974)

– **Section 2(g)** – Provision not ultra vires – Use of word ‘reason’ in the definition clauses antithesis of arbitrariness – There could be many reasons for which the authority may determine occupation of public premises – All such reasons cannot be mentioned in the provision – Very word ‘reason’ assumes sound exercise of reason : *Vinay Shukla Vs. State, I.L.R. (2000) M.P. 937 (DB)*

– **Section 4 and 9** – Order of eviction and appeal therefrom – Occupant has a remedy to show cause against proposed order of eviction with further remedy of Appeal under Section 9 against the order of eviction – Petitioner’s appeal pending – No interference called for at this stage : *Vinay Shukla Vs. State, I.L.R. (2000) M.P. 937 (DB)*

- **Section 4, 5, 9** - and Amendment Act, M.P. (XVIII of 1981), sections 4 and 7 sections 4, 5 and 9 of the Adhiniyam substituted by Amendment Act 18 of 1981 not ultra vires – Defects found in amendment Act No. 9 of 1978 are not to be found in Amendment Act of 1981 – Effective alternate remedy of appeal provided in Adhiniyam – Writ petition cannot be entertained : *Attaullah Khan Vs. State of M.P., I.L.R. (1989) M.P. 325 (DB)*

- **Section 10**, - Civil procedure code (V of 1908), Order 39, rule 1 and Constitution of India, Article 21-Civil suit challenging jurisdictional competence of the authority not barred by section 10 of the adhiniyam-Grant to Temporary Injunction in such suit - Plaintiffs right to shelter-Is a fundamental right under Article 21-Plaintiff being in possession and existence of a *prima facie* case for trial – Plaintiff entitled to temporary injunction till question of maintainability of suit is decided : *Shambhudayal Saxena Vs. State of M.P., I.L.R. (1987) M.P. 576 (DB)*

Lottery (Niyantaran Tatha Kar) Adhiniyam, M.P. 1973 (IX of 1974)

- **Section 6(2)(a)** - and Rules 29 and 30 of M.P., lottery Rules and Civil Procedure Code (V of 1908), Order 39, rules 1 & 2 – State Govt. Permitting promoters of lottery to run the lottery through recognized organizing agents – Legality of - Purchaser of a lottery ticket-Whether entitled to obtain injunction in a suit for declaration alleging infraction of rules : *M.P. Flying Club Ltd., Indore, Vs. Vijaydutta, I.L.R. (1985) M.P. 248*

Lotteries (Relegation) Act (XVII of 1998)

- **and Lottery (Niyantaran Tatha Kar) Adhiniyam, M.P. 1973 (IX of 1974)** – Sections 2(a) and 3 – Lottery - Definition of land procedure laid down – Provisions not

aimed at legitimizing or encouraging lotteries but ensuring fair play in conduct thereof – Central and State enactment would not take out lottery from the category of ‘wager agreement’ not enforceable through Court – Trial Court rightly dismissed the suit : *Subhas Kumar Manwani Vs. State, I.L.R. (2000) M.P. 854 (DB)*

- **Sections 3, 4 and 5** – States are within their right to prohibit sale of lotteries of other States : *Dinesh Gurjar Vs. Union of India, I.L.R. (1999) M.P. 561 (DB)*

Lottery Pratibandh Act, M.P. (VIII of 1993)

- Scheme floated by a financial company inviting deposits on distribution of prizes drawn by lots-Is not a lottery : *Rajneesh Trivedi Vs. State of M.P., I.L.R. (1998) M.P. 637*

- **Section 3 and Constitution of India, Article 253** – Ban on lotteries within the territory of Madhya Pradesh – Unless the Parliament enacts law international agreement cannot be implemented if contrary to Municipal Laws – Executive instructions issued by Govt. of India can be of no avail : *Dinesh Gurjar Vs. Union of India, I.L.R (1999) M.P. 561 (DB)*