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– **Rule 3-A** – The words ‘otherwise order’ occurring in – Import of: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450 (F.B.)*

– **Rule 3-A** – Words “appointing authority” in – Have to be read in case of Judicial Officers as ‘competent authority’: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450 (F.B.)*

– **Rules 3-A and 12** and Constitution of India, Articles 309, 234 and 235 – No inconsistency between Rules and Articles 234 – Rules are not invalid – Interpretation of Statute – Article 235 and Rule 3-A – Provisions may be read differently in order to make it constitutional – Words ‘appointing authority’ in Rule 3-A – Have to be read in case of Judicial Officers as ‘competent authority’ – Natural Justice – Principles of – Applicable to *Quasi-Judicial* and administrative functions – Rule of reasons – Connotation of The words “reason” and “conclusions” – Distinction between and import of – Rule 3-A – Requirement of reasons to be recorded thereby – Implications of – The Words ‘otherwise order’ occurring in Rule 3-A – Import of – Resolution of the High Court recording that petitioner “not found fit for confirmation” – Cannot be construed to mean an order arresting the effect of deeming provision contained in Rule 3-A acquiring the status of *Quasi-Permanent* – Petitioner acquiring status of *Quasi-Permanent* Servant – Termination of his service under Rule 12 is invalid and liable to be quashed – Constitution of India – Article 141 – Conflicting view of law by Supreme Court – Later view to be accepted as correct view – Practice and Rule 3-A – Validity of an order has to be Judged by reasons so mentioned and not by fresh reasons in the shape of affidavits or otherwise: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450 (F.B.)*

– **Rule 12** – During period of suspension, there can be no termination of service by either party: *V.P. Gidroniya Vs. State of M.P., I.L.R. (1970) M.P., 249 (D.B.)*

– **Rule 12** – Petitioner acquiring status of *Quasi-permanent* servant – Termination of his service under Rule 12 is invalid and liable to be quashed: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450 (F.B.)*

– **Rule 12** – Presupposes existence of relationship of employer and employee: *V.P. Gidroniya Vs. State of M.P., I.L.R. (1970) M.P., 249 (D.B.)*

– **Rule 12(b)** – Period of suspension, there can be no termination of service by either party: *V.P. Gidroniya Vs. State of M.P., I.L.R. (1970) M.P., 249 (D.B.)*

Madhya Pradesh High Court Rules

– **Chapter IV, Rule 10 – Word “immediately” in – To be reasonably construed** – To be read so as to advance its purpose and not to defeat justice – Leave can be asked after delay if it is sufficiently explained – Letters Patent – Clause 10 – Grant of leave by single Judge – Bench hearing appeal – Jurisdiction to question or interfere with grant of 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 – Transfer of Property Act – Section 107 – Registration Act, section 90 – Lease of Nazul Land by Government exempted from section 107, Transfer of Property Act – Does not require registration – Lease by auction – Acceptance of bids and delivery of possession – Amounts to demise of land – Registration Act – Section 2 – Agreement to lease ascertaining terms and giving right of exclusive possession immediately or at future date – Formal lease to be executed afterwards – Operates as lease – Revenue Manual – Instructions regarding disposal of Nazul plots – Are executive instructions – Compliance or non-compliance thereof – Does not affect validity of lease: *Ramnaryan Vs. The State of M.P., I.L.R. (1962) M.P. 84 (D.B.)*

Madhya Pradesh High Court Rules and Orders (Criminal)

– **Rules 546 to 549** – Process Fee is payable only in non-cognizable cases and not in cognizable cases: *Ram Sewak Vs. Savitribai, I.L.R. (1993) M.P. 316*

Madhya Pradesh Industrial Disputes Rules, 1957

– **Rule 62** – Government – Power of, to determine lay off Compensation: *The Burhanpur Tapti Mills Ltd., Burhanpur Vs. The Labour Officer, Government of M.P., Burhanpur, I.L.R. (1960) M.P. 559 (D.B.)*

Madhya Pradesh Land Revenue Code, 1954

– **Section 169 (3)** – Creates a rule of decision for Courts – Does not refer either to procedure or to substantive rights – Makes no distinction between a case arising prior to the Code and subsequent: *Sona Bai Vs. The Board of Revenue, I.L.R. (1958) M.P. 137 (D.B.)*

Madhya Pradesh Local Government Act, 1948

– **Section 23(3)** – Casual vacancy in the Office of Chairman – Election of Chairman – Chairman of the Standing Committee Though not elected councilor – Right to vote in the election of Chairman of Sabha – Section 2(I) (b) “councilor” – Meaning of – Member of Sabha, Right of, to take part in deliberation and in election of Chairman: *Ambika Charan Vs. The Collector, Durg, I.L.R. (1960) M.P. 64 (D.B.)*

Madhya Pradesh Municipalities (Amendment) Act, 1958 (Act No. 14 of 1958)

– **Section 7** – Scope of – Rules 20 and 23 – Election not complete before amending Act came into force – Holding of fresh election necessary – Election when comes to an end: *Gyanchand Jain Vs. The State of M.P., I.L.R. (1959) M.P. 187 (D.B.)*

Madhya Pradesh Municipalities (Preparation, Revision and Publication of Electoral Rolls, Election and Selection of Councillors) Rules, 1962

– **Form IV** to be strictly and literally followed: *Sheo Dayal Vs. K.P. Rawat, Returning officer And Tahsildar, Narsighpur, I.L.R. (1977) M.P. 653 (D.B.)*

– **Rules 4(1) and 8(1)** – Collector alone has authority to publish preliminary and final rolls has no power to delegate these matters: *Hafiz Mohammad Anwar Khan Vs. State of M.P., I.L.R. (1969) M.P. 183 (D.B.)*

– **Rule 4(2)** – Objection not pursued by appeal or petition – Petitioner cannot be permitted to challenge election on that ground: *Hafiz Mohammad Anwar Khan Vs. State of M.P., I.L.R. (1969) M.P. 183 (D.B.)*

– **Rule 4(2)** – Reduction in period of limitation for filing objection – Not permissible: *Hafiz Mohammad Anwar Khan Vs. State of M.P., I.L.R. (1969) M.P. 183 (D.B.)*

– **Rule 8** – Contemplates a case and provides for a situation in which no action has been taken in accordance with Section 13 and Section 14(2): *Prahlad Dutt Vs. State of M.P., I.L.R. (1969) M.P. 214 (D.B.)*

– **Rule 8** – Does not limit the effect of Sections 13 and 14(2): *Prahlad Dutt Vs. State of M.P., I.L.R. (1969) M.P. 214 (D.B.)*

– **Rule 13(1)(i)** – Is mandatory: *Sheo Dayal Vs. K.P. Rawat, Returning officer And tahsildar, Narsighpur, I.L.R. (1977) M.P. 653 (D.B.)*

– **Rule 13(1)(vi)** – Number of ward given and description of ward not given – Defect is of substantial character and vice versa – Other columns giving correct description of ward and its number – In one column description of ward incomplete but number is correct – Defect is not substantial: *Sheo Dayal Vs. K.P. Rawat, Returning officer And tahsildar, Narsighpur, I.L.R. (1977) M.P. 653 (D.B.)*

– **Rule 13(2)** – Contemplates intimation to be given in writing: *Sheo Dayal Vs. K.P. Rawat, Returning officer And tahsildar, Narsighpur, I.L.R. (1977) M.P. 653 (D.B.)*

– **Rule 13(2)** – Requires intimation to be given to supervising officer of intention to file appeal – Contemplates intimation to be given in writing – Rule 13(1)(i) – Is mandatory – Form IV to be strictly and literally followed – Rule 13(1)(vi) – Number of ward given and description of ward not given – Defect is of substantial character and vice versa – Other columns giving correct description of ward and its number – In one column description of ward incomplete but number is correct – Defect is not substantial – Constitution of India – Article 226 – Right of franchise denied – Right is valuable right – High Court can interfere even though other remedy available – High Court not to interfere if enquiry into facts is necessary – Election petition – Candidate withdrawing from contest – Such candidate need not be joined as a party: *Sheo Dayal Vs. K.P. Rawat, Returning officer And tahsildar, Narsighpur, I.L.R. (1977) M.P. 653 (D.B.)*

Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualifications for Member ship) Rules 1962

– **Rule 22(1) (d) (iii)** – Covers illegalities or irregularities committed antecedent to or in preparation of electoral roll: *Idandas Vs. The Election Officer (Gram Panchayat Election), East Nimar, Khandwa, I.L.R. (1968) M.P. 48 (D.B.)*

Madhya Pradesh Secretariate Service Recruitment Rules 1976

– **Rules 5 & 8** – English Stenographers – Subsequent to appointment condition for obtaining certificate in Hindi Shorthand imposed – Deleted by policy decision – When Rules do not cover any area or apply to a particular arena the Government can take policy decision – Vested rights of Hindi Stenographers not affected – Tribunal eared in holding that appointments were made dehors the rules: *Vinod Kumar Zakariah Vs. State of M.P., I.L.R. (2003) M.P. 739 (D.B.)*

Madhya Pradesh States Re-organisation Act, 2000

– **Section 58** – State Re-organisation – Bifurcation of Electricity Board – Applicant entitled to refund – Cannot be made to suffer because the States and Board have not reached an agreement – Security deposit received by original M.P. Board and kept in nationalised bank – Earning interest – Liability to refund is on the original M.P. Board being still in existence and without prejudice to its rights in getting adjustment or recovery from the Chhattisgarh Board in accordance with the Re-organisation Act: *Bhilai Power Supply Company Limited Vs. State of M.P., I.L.R. (2003) M.P. 661 (D.B.)*

Madhya Pradesh Sthaniya Pradhikaran (Nirvachan Sthagan) Adhyadesh, 1965

– **Sections 3 and 5** – General election of local body before ordinance – Selection of Councillor or his notification not barred: *Goverdhanlal Vs. State of M.P., I.L.R. (1969) M.P. 224 (D.B.)*

– **Sections 3 (1) and 5** – Not applicable to selection of councillors: *Manaklal Vs. The Collector, Seoni, I.L.R. (1968) M.P. 695 (D.B.)*

– **Section 5** – Does not touch the selection of councillors or issue of a notification of elected and selected councillors: *Manaklal Vs. The Collector, Seoni, I.L.R. (1968) M.P. 695 (D.B.)*

Madhya Pradesh Unification of Pay Scales and Fixation of Pay on Absorption Rules, 1959

– **Rules deal with fixation of pay** – Do not deal with absorption of personnel – Do not confer right of being absorbed against certain posts: *Vinod Kumar Verma Vs. State of M.P., I.L.R. (1966) M.P. 91 (D.B.)*

Madhya Pradesh Yarn Dealers Licensing Order, 1956

– **Clause 25** – Conditions pre-requisite for passing order – Constitution, Article 226 – Reasons persuading Deputy Commissioner to pass order – Cannot be enquired into in a petition under Article 226 of Constitution: *M/s Vrijlal Manilal and Co., Sagar Vs. The State of Madhya Pradesh, I.L.R. (1960) M.P. 439 (D.B.)*

Madhyamic Shiksha Adhiniyam, M.P. (XXIII of 1965)

– **Education** – Petitioner allow to appear in xii board examination on her furnishing all necessary information to the board – Respondents estopped from canceling her examination: *Kumari Kalpana Singh Vs. State, I.L.R. (2000) M.P. 583 (D.B.)*

– **Regulation 1** – Petitioner employed as Principal by society and possessing qualification prescribed by Regulations – Not entitled to be absorbed as Principal without possessing requisite qualification prescribed by Govt. order: *Laxminarayan Behre Vs. State of M.P., I.L.R. (1981) M.P. 378 (D.B.)*

– **Regulations 61(1)(a), 71 and 79 of the Regulations framed under** – Have no statutory force and can not be given the status of regulations framed under the Act – Constitution of India – Article 226 – No writ of mandamus can be issued to private body: *Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti, Korba, I.L.R. (1975) M.P. 638*

– **Section 8** – 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, I.L.R. (2004) M.P. 360 (D.B.)*

– **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 issuing out Board examination: *Sanjay Memorial Higher Secondary School Vs. Board of Secondary Education, I.L.R. (2004) M.P. 360 (D.B.)*

– **Section 28 and Regulations framed thereunder** – Regulations 2(16), 97 and 139 – Petitioner ‘private candidate’ as defined is 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 exams, as also in the exam, of next higher class – Deferent 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 (D.B.)*

– **Section 28 and Regulation 71 Specific Relief Act, Indian (XLVII of 1963), Sections 14(b), 41(h)** – Private High School recognized under regulations – Service condition of teachers governed by regulations – Regulations have statutory force, provide protection to employee of private educational institutions – Import of section 14(b) of Specific Relief Act – Refusal of specific performance only when dependency on personal qualifications or volition of parties is such that denial would be just and fair – Remedy of appeal not efficacious – No bar of section 41(h) – Jurisprudence – Two decisions of Supreme Court laying down different law by the Benches of equal judges – Latest decision would prevail: *Hansaben Vs Kumari Kumud Kaniya, I.L.R. (1989) M.P. 726*

– **Section 28, Regulation 79, framed thereunder** – Object of – Liberal construction required to promote its object – The expression “appointed on written contract” – Means principal who is appointed or who ought to be appointed on written contract – Right of appeal before the Director – Absence of written contract in Form I – No bar: *Laxmi Kant Shukla Vs. President, Birla Educational Society, Satna, I.L.R. (1983) M.P. 497 (D.B.)*

– **Section 28, Regulation 79, framed thereunder** – Right of appeal before the Director – Absence of written contract in Form I – No bar: *Laxmi Kant Shukla Vs. President, Birla Educational Society, Satna, I.L.R. (1983) M.P. 497 (D.B.)*

– **Section 28, Regulation 79, framed thereunder** – The expression “appointed on written contract” – Means principal who is appointed or who ought to be appointed on written contract: *Laxmi Kant Shukla Vs. President, Birla Educational Society, Satna, I.L.R. (1983) M.P. 497 (D.B.)*

Madhyastham Adhikaran Adhiniyam (XXIX of 1983)

– **Sections 7, 7-B, 19** – Revision – Reference of dispute – Limitation – Dispute raised – No decision from final authority – Obligatory on part of claimant to approach Tribunal within one year from the date Section 7-B came in statute book – Reference filed beyond 24/3/91 – *Rightly rejected by Tribunal: M/s Naresh & CO. Vs. State of M.P., I.L.R. (2005) M.P. 165 (D.B.)*

– **Section 7** – Apportionment of delay by Tribunal justified – Claim for loss of profit is such that no contractor can prove actual loss of profit – Splitting of claim not justified – Case remanded to lead evidence on claim of consolidated damages: *M/s. Saluja Construction Company Vs. State, I.L.R. (2001) M.P. 1394 (D.B.)*

– **Sections, 7, 10, 11, 12, 17-A and 19** – Civil Revision – Work contract – Loan advanced for purchase of machinery – Removal of machines from work site by contractor – Seizure – Claims regarding damages on account of seizure referred to Tribunal – Counter claim by Department – Civil Procedure Code, Order 8, Rule 6 – Counter claim is nothing but a reference of dispute in relation to same work contract by the opposite party – Madhyastham Adhikaran Niyam, M.P., 1983, Rule 7 and M.P. Madhyastham Adhikaran Regulation, Regulation 3 – Form and procedure for presentation of claim prescribed – In absence of any provision for filing counter claim – Tribunal has ample power to regulate its own jurisdiction – Counter claim can be entertained in the pending reference as counter reference on payment of requisite Court fees and within limitation – Evidence Act, Indian, Section 34 – Findings 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.)*

– **Sections 7 and 19** – Revision – Whole work site not provided to contractor at once – Long delay in completion of work – Claim for damages on account of loss of profit and overhead expenses – Contractor was required to work in phases and not simultaneously – Liability of Department for delay ascertained looking into working capacity of contractor – Apportionment of delay by Tribunal justified – Claim for loss of profit is such that no contractor can prove actual loss of profit – Splitting of claim not justified – Case remanded to lead evidence on claim of consolidated damages: *M/s. Saluja Construction Company Vs. State, I.L.R. (2001) M.P. 1394 (D.B.)*

– **Section 7-B** and Limitation Act 1963, Article 113 – Rejection of claim on ground of limitation – Cause of arbitration – Accrual of – Dependant upon various factors in a given case – A contractor has to approach final authority within a period of three years from date of accrual of cause of arbitration – View of Tribunal that cause

of action would arise within three years of completion of work is sensitively susceptible – Award set aside – Matter remitted back to Tribunal: *M/s. Serman (india) Road Makers Pvt. Ltd. Vs. State of M.P., I.L.R. (2005) M.P. 902 (D.B.)*

– **Sections 7(1), 20(1), 20(2)**, Arbitration Act, Indian (X of 1940), Sections 37(3), 46 and Constitution of India, Articles 14, 254(2), Seventh Schedule, List III – Works contracts – Separate Class by themselves – Adhiniyam is special enactment for deciding disputes by arbitration by statutory independent tribunal Adhiniyam not arbitrary, discriminatory or violative article 14 of the constitution – Adhiniyam is enactment under Entry No. 13 of List III of seventh Schedule – Special enactment will prevail over Arbitration Act in State of M.P. – Interpretation of word “shall” in section 7(1) of Adhiniyam – Natural meaning to be given – Commencement of arbitration – When reference made to arbitration – Section 37 (3) of Arbitration Act is only for computation of limitation – Saving clause – Only pending proceedings are saved – Reference made to arbitrator after coming into force of Adhiniyam – Reference and proceeding before arbitrator without jurisdiction: *M.P. Spectro Engineering Corporation, Engineers & Contractors, Bhopal Vs. State of M.P., I.L.R. (1989) M.P. 97 (D.B.)*

– **Sections 7(5), 19, 20** – Jurisdiction of Civil Court saved by Section 20(2) – What is really barred is the jurisdiction to entertain dispute of which cognizance could be taken by Tribunal – Tribunal is not brought into existence to give new lease of life to already time barred claims – Limitation Act India, 1963 – Whether cause of action was still alive – The disputes had arisen in the year 1982 – Obviously barred by time – Award of Tribunal set aside as barred by Limitation: *Secretary, State of Madhya Pradesh, Irrigation Department, Bhopal Vs. Jaswant Singh Dhillon, I.L.R. (1999) M.P. 605 (D.B.)*

– **Section 19 and Contract Act Indian (IX of 1872)** – Section 7 – Work Contract – “Anticipatory Breach” – What is Alternatives available to the department – Contractor committing breach for not commencing the work as per stipulated time – Department terminating contract but committing technical breach in terminating contract before expiry of fourteen days notice period fixed in agreement – Department justified in terminating contract – However, for technical breach committed by Department contractor held entitled to nominal damages only contractor failing to prove estimated loss of his profit due to termination of contract before expiry of notice period – Only nominal damages can be awarded – Nominal damages – Assessment of: *State of M.P. Vs. M/s Recondo Ltd, Bhopal, I.L.R. (1990) M.P. 110 (D.B.)*

– **Section 19** – Revision assailing award of Tribunal – Extension of time beyond stipulated period – Hence time was not the essence of contract – Rescission of Contract without notice – Not justified – Perusal of reasonings given by the Tribunal – Approach of the Tribunal is correct and infallible – No interference in revisional jurisdiction: *M.P.*

State Warehousing Corporation Vs. Shri Aziz Rehman Siddiqui, I.L.R. (1999) M.P. 383 (D.B.)

– **Section 20(1) and (2) and Arbitration Act 1940** – Section 20 (1) – Cognizance of dispute by Arbitration Tribunal under Adhinyam—Jurisdiction of Civil Court barred – Applicability – Jurisdiction barred only from date of constitution of Arbitration Tribunal i.e. 1-3-1985 – Pending application for reference U/s 20 (1) of Arbitration Act before Civil Court before Tribunal was constituted, is saved by Section 20(2) of Adhinyam: *State of M.P. Vs. M/s Chahal & Company, New Delhi, I.L.R. (1995) M.P. 142 (F.B.)*

– **Rule 7 and M.P. Madhyastham Adhikaran Regulation, Regulation 3** – Form and procedure for presentation of claim prescribed – In absence of any provision for filing counter claim – Tribunal has ample power to regulate its own jurisdiction – Counter claim can be entertained in the pending reference as counter reference on payment of requisite Court fees and within limitation: *P.K. Pande Vs. State, I.L.R. (2001) M.P. 1244 (D.B.)*

Magistrate

– **Discretion to direct attendance of accused for examination when exemption was granted u/s 205 (2):** *The State Vs. Tarachand s/o Anand of Dehradun, I.L.R. (1957) M.P. 218*

Maintenance

– **Grant** – Ceases with life of grantee – Presumption rebuttable: *H.H. Maharaja Devendra Singh Ju Deo Vs. The State of M.P., I.L.R. (1978) M.P. 362 (D.B.)*

– **Liability of Maintenance** – Is a legal obligation and has a overriding title: *Commissioner of Income Tax, Bhopal Vs. Sardar Virendra Singh, I.L.R. (1981) M.P. 711 (D.B.)*

– **Widow** – 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: *Gowardhan Vs. Smt. Gangabai I.L.R. (1964) M.P. 83 (D.B.)*

Maintenance of Internal Security (Amendment) Ordinances (IV and VII of 1975)

– **Effect of combined reading of both ordinances together Section 16-A (6) (b)** – Does not make it necessary to disclose grounds for making order of detention

– Section 16-A(3) – Does not prescribe period for making a declaration – Word “when” in – Means simultaneously or soon thereafter – Even if it means simultaneously – Delay in making declaration amounts only to irregularity – Detention made under section 3(1) (a) (ii) followed by declaration under section 16-A(3) – Compliance with provisions of sections 8 to 12 not necessary: *Madan Tiwari Vs. The District Magistrate Rajnanadgaon, I.L.R. (1977) M.P. 301 (D.B.)*

– **Section 3(1)(a)(ii)** – Detention made under section 3(1)(a)(ii) followed by declaration under section 16-A (3) – Compliance with provisions of section 8 to 12 not necessary: *Madan Tiwari Vs. The District Magistrate Rajnanadgaon, I.L.R. (1977) M.P. 301 (D.B.)*

– **Section 16 (3)** – Does not prescribe period for making a declaration: *Madan Tiwari Vs. The District Magistrate Rajnanadgaon, I.L.R. (1977) M.P. 301 (D.B.)*

– **Section 16-A (3)** – Word “when” in – Means simultaneously or soon thereafter – Even if it means simultaneously – Delay in making declaration amounts only to irregularity: *Madan Tiwari Vs. The District Magistrate Rajnanadgaon, I.L.R. (1977) M.P. 301 (D.B.)*

– **Section 16-A (6) (b)** – Does not make it necessary to disclose grounds for making order of detention: *Madan Tiwari Vs. The District Magistrate Rajnanadgaon, I.L.R. (1977) M.P. 301 (D.B.)*

Maintenance of Internal Security Act (XXVI of 1971)

– **As amended by Maintenance of Internal Security (Amendment) Act, 1975** – Sections 3(1), 16-A, 18 and Constitution of India, Articles 226, 352(1), 359(1), 22, 32 and 368 – Writ of *Habeas Corpus* – Proclamation of Emergency by the President of India – Suspension of enforcement of rights conferred by Articles 14, 21 and 22 of the Constitution – Jurisdiction of Courts to issue writ of *Habeas Corpus* against an order of illegal detention is not barred – Scope of enquiry – Power to issue writ of *Habeas Corpus* is neither a statutory right nor based upon common law or Natural Law – Constitutional remedies cannot be barred by any legislation – Constitution does not empower President to suspend power to issue writ of *Habeas Corpus*: *Shivkant Shukla Vs. Additional District Magistrate, Jabalpur, I.L.R. (1978) M.P. 301 (D.B.)*

– **Personal hearing not claimed by detenu** – Hearing by the advisory board is in its discretion: *Santosh Bharti Vs. The State, I.L.R. (1974) M.P. 368 (D.B.)*

– **Section 3 (1) (a) (ii)** – Acquittal in prosecution – No bar to taking action by detaining authority – Similar is case with initiation of prosecution: *Lacchi Vs. State of M.P., I.L.R. (1977) M.P. 114 (D.B.)*

– **Section 3 (1) (a) (ii)** – Difference between breaches of law and order and disturbance of “public order” – Principles on which distinction is made – Delay material for purposes of consideration of a reasonable basis for subjective satisfaction of detaining authority for purposes of detention – For determining validity of detention – Court not to enquire into truth or otherwise of allegation forming subject-matter of ground – Only thing to be seen in bonafide of detaining authority – Acquittal in prosecution – No bar to taking action by detaining authority – Similar is case with initiation of prosecution: *Lacchi Vs. State of M.P., I.L.R. (1977) M.P. 114 (D.B.)*

– **Section 3 (1) (a) (ii)** – For determining validity of detention – Court not to enquire into truth or otherwise of allegation forming subject-matter of ground – Only thing to be seen in *bona fides* of detaining authority: *Lacchi Vs. State of M.P., I.L.R. (1977) M.P. 114 (D.B.)*

– **Section 11** – Provision meant for benefit of detainee – Must be construed to be mandatory: *Santosh Bharti Vs. The State, I.L.R. (1974) M.P. 368 (D.B.)*

– **Section 11** – Right of making a written representation – Different and distinct from right of personal hearing: *Santosh Bharti Vs. The State, I.L.R. (1974) M.P. 368 (D.B.)*

– **Section 11** – Right of personal hearing – Not defendant upon making of any representation – Right of making a written representation – Different and distinct from right of personal hearing – Personal hearing not claimed by determine – Hearing by the advisory board is in its discretion – Provision meant for benefit of detainee – Must be construed to be mandatory: *Santosh Bharti Vs. The State, I.L.R. (1974) M.P. 368 (D.B.)*

– **Section 12 (1)** – Distinction between “Public Order” and “Law and Order” – Power to determine the cumulative effect of the acts of the petitioner – Rests with District Magistrate – Power of High Court in such matter – Authority is conferred with two powers – Both powers available in given case – Action taken under one such power cannot be challenged: *Mohammad Anwar Vs. District Magistrate, Sehore, I.L.R. (1977) M.P. 514 (D.B.)*

– **Section 12 (1)** – Power to determine the cumulative effect of the acts of the petitioner – Rests with District Magistrate – Power of High Court in such matter – Authority is conferred with two powers – Both powers available in given case – Action taken under one such power cannot be challenged: *Mohammad Anwar Vs. District Magistrate, Sehore, I.L.R. (1977) M.P. 514 (D.B.)*

Maintenance of Public Order Act, Madhya Pradesh (XVII of 1965)

– **Section 3** – Externment is preventive measure – Penal action and preventive action are exclusive recourses – Externment order does not extend beyond contiguous

districts – Contemplates dispersal of each member of the gang: *Kashiram Vs. The District Magistrate Sagar, I.L.R. (1977) M.P. 1091 (D.B.)*

– **Section 3** – Matter left to subjective satisfaction of District Magistrate – Objective examination by High Court on merits and propriety of order is prohibited: *Kashiram Vs. The District Magistrate Sagar, I.L.R. (1977) M.P. 1091 (D.B.)*

– **Section 3** – State possess two powers – One for punishing for crime and other to take preventive measure: *Kashiram Vs. The District Magistrate Sagar, I.L.R. (1977) M.P. 1091 (D.B.)*

– **Section 3(b)** – Does not contemplate passing of order against an individual: *Brijlal Vs. The District Magistrate, Damoh I.L.R. (1971) M.P. 20 (D.B.)*

– **Section 3(b)** – Hits at activities of persons forming a gang or body having objectionable community of purpose and intention: *Brijlal Vs. The District Magistrate, Damoh, I.L.R. (1971) M.P. 20 (D.B.)*

– **Section 3(b)** – Mode in which the order has to be served: *Brijlal Vs. The District Magistrate, Damoh, I.L.R. (1971) M.P. 20 (D.B.)*

– **Section 3(b)** – Scope of – Does not contemplate passing of order against an individual – Hits at activities of persons forming a gang or body having objectionable community of purpose and intention – Mode in which the order has to be served – Word “disperse” in – Meaning of – Section 7(1) – Directs service on leader or chief – man of material allegations against the gang or body intended to be dealt with under Section 3: *Brijlal Vs. The District Magistrate, Damoh, I.L.R. (1971) M.P. 20 (D.B.)*

– **Section 4** – Opinion of District Magistrate – Not open to question by Court – Court must form opinion regarding necessary ingredient of the provision on material placed before it: *Jagannath Prasad Vs. The State of M.P., I.L.R. (1971) M.P. 617 (D.B.)*

– **Section 4** – Provision not punitive – Conditions under which power of externment can be exercised: *Jagannath Prasad Vs. The State of M.P., I.L.R. (1971) M.P. 617 (D.B.)*

– **Section 4** – Requires formation of opinion by District Magistrate as regards activities at the time when the order is made – Provision not punitive – Conditions under which power of externment can be exercised – Opinion of District Magistrate – Not open to question by Court – Court must form opinion regarding necessary ingredient of the provision on material placed before it – Section 5 (c) – Contemplates conviction of a person thrice under section 3 or under section 4 of Public Gambling Act, 1867: *Jagannath Prasad Vs. The State of M.P., I.L.R. (1971) M.P. 617 (D.B.)*

– **Section 5 (c)** – Contemplates conviction of a person thrice under section 3 or under section 4 of Public Gambling Act, 1867: *Jagannath Prasad Vs. The State of M.P., I.L.R. (1971) M.P. 617 (D.B.)*

– **Section 7 (1)** – Directs service on leader or chief man of material allegations against the gang or body intended to be dealt with under section 3: *Brijlal Vs. The District Magistrate, Damoh, I.L.R. (1971) M.P. 20 (D.B.)*

– **Section 8 and Constitution of India, Article 226** – No appeal filed within limitation as provided by section 8 of M.P. Maintenance of Public Order Act – Petition under Article 226 after expiry of period of limitation for appeal – Petitioner not entitled to discretionary and extraordinary remedy under article 226: *Bhupendrasingh Vs. State of M.P., I.L.R. (1977) M.P. 441 (D.B.)*

Majority Act, Indian (IX of 1874)

– **Section 2** – Does not apply to act of person on specified matters: *Smt. Premambai Vs. Channoolal, I.L.R. (1964) M.P. 75 (D.B.)*

Malice

– **Dependent upon prosecutor's belief** – Not connected with reasonable and probable cause – Acquittal of accused in criminal case – Does not mean that accusation was false to the knowledge of prosecutor: *Shrimant Seth Rishabhkumar Vs. Pandit K.C. Sharma, I.L.R. (1960) M.P. 1008 (D.B.)*

– **Member of Sabha, Right of, to take part in deliberation and in election of Chairman:** *Ambika Charan Vs. The Collector, Durg, I.L.R. (1960) M.P. 64 (D.B.)*

Malicious Prosecution

– **Damages** – Question who is prosecutor in criminal case – Depends upon several circumstances – Person actively instrumental in putting criminal law in motion – Person would be prosecutor: *Shrimant Seth Rishabhkumar Vs. Pandit K.C. Sharma, I.L.R. (1960) M.P. 1008 (D.B.)*

– **Suit for damages for initiating proceedings under Legal Practitioners Act** – Award of costs in those proceedings – No bar to maintainability of suit for damages – Words and Phrases – “Reasonable and probable cause” – Meaning of: *Lakhan Lal Mishra Vs. Kashinath Dube, I.L.R. (1959) M.P. 544 (D.B.)*

– **What amounts to prosecution** – Burden of proof: *Babulal Vs. Ghasiram, I.L.R. (1970) M.P. 980*

Marriage laws (amendment) Act (LXVIII of 1976)

– **Section 39 and Hindu marriage act (XXV of 1955)** – Section 13 (1)(i) as amended by Act No, 68 of 1976 – Scope and applicability of – Section 39 – Words “all petitions and proceedings in cause and matters matrimonial which are pending” occurring in – Construction of – Appeal pending when amending Act came into force – Appellant entitled to benefit of the amended provision: *N.C. Dass. Vs. Smt. Chin Mayee Das*, I.L.R. (1982) M.P. 637 (D.B.)

– **Section 39** – Words “all petitions and proceeding in causes and matters matrimonial which are pending” occurring in construction of: *N.C. Dass. Vs. Smt. Chin Mayee Das*, I.L.R. (1982) M.P. 637 (D.B.)

Master and Servant

– **Authority who has power to accept resignation:** *Bhairon Singh Vishwakarma Vs. The Civil Surgeon, Narsimhapur*, I.L.R. (1976) M.P. 7 (D.B.)

– **Bhilai steel plant conduct, discipline and Appeal rules, 1977 – Rules 5, 23 and 27** – Employer’s right to deduct salary and right to recover pecuniary loss from pay – Distinction between – Procedure of Rule 27, whether required to be followed for deduction of salary for the period during which employee does not work: *Vikram Tamaskar Vs. Steel Authority of India Ltd., Bhilai*, I.L.R. (1982) M.P. 624 (D.B.)

– **Change of master** – Contract of personal service cannot be assigned – Employee of old master cannot enforce terms against new master in absence of agreement – Contract between Govt. and Society – Not enforceable by a stranger even if it confers benefit on him – Constitution of India – Article 299 – Contract with Govt. not in manner prescribed – Contract unenforceable – Article 16 – Govt. Taking over institution and passing order prescribing terms and conditions for absorption of its staff – Order though not statutory has to be followed uniformly – Denial of equality of opportunity – Article 16 infringed – *Madhyamik Shiksha Adhiniyam*, M.P., 1965 – Regulation 1 – Petitioner employed as Principal by society and possessing qualification prescribed by Regulations – Not entitled to be absorbed as Principal without possessing requisite qualification prescribed by Govt. order: *Laxminarayan Behre Vs. State of M.P.*, I.L.R. (1981) M.P. 378 (D.B.)

– **Contract between Govt. and Society** – Not enforceable by a stranger even if it confers benefit on him: *Laxminarayan Behre Vs. State of M.P.*, I.L.R. (1981) M.P. 378 (D.B.)

– **Contract of employment performance of duty by employee is condition precedent for earning remuneration** – Employee attending site or place of work but

not working, not entitled to salary – “No work no pay”, principles of and scope of its application by the employer – Bhilai steel plant conduct, discipline and appeal rules, 1977 – Rules 5, 23 and 27 employer’s right to deduct salary and right to recovery pecuniary loss from pay destitution between procedure of rule 27, whether required to be followed for deduction of salary for the period during which employee does not work: *Vikram Tamaskar Vs. Steel Authority of India Ltd. Bhilai, I.L.R. (1982) M.P. 624 (D.B.)*

– **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 (D.B.)*

– **Employee attending site or place of work but not working, not entitled to salary** – “No work no pay”, principles of and scope of its application by the employer: *Vikram Tamaskar Vs. Steel Authority of India Ltd. Bhilai, I.L.R. (1982) M.P. 624 (D.B.)*

– **Employee bound by his terms of employment given to him or by those that he subsequently accepted expressly or impliedly** – Not to be prejudiced by reservation not communicated to him though same noted on office file or recorded elsewhere – Terms of appointment cannot be unilaterally revised – States Reorganization Act Section 115 (7) – Scales of pay – Not revisable to the disadvantage of employee – Mode for prescribing the condition of service of the Government Servant of the former State – Is by making rules under Article 309 of the constitution only: *J.K. Pal Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 1008 (D.B.)*

– **Employee not to be prejudiced by reservation not communicated to him though same noted on office file or recorded elsewhere:** *J.K. Pal Vs. State of Madhya Pradesh I.L.R. (1972) M.P. 1008 (D.B.)*

– **Liability of Govt. for the acts of its officers and agents acting beyond the scope of their authority:** *Vitthal Rao Mahale Vs. State of M.P., I.L.R. (1984) M.P. 210 (D.B.)*

– **Managing agents or managing director in relation to managed company is its agent:** *Parashar Singh Vs. Hindustan Manganese Mines Ltd. Bombay, I.L.R. (1971) M.P. 295 (D.B.)*

– **Matter of promotion** – Entirely in the discretion of employer – Temporary Promotion of a person to a higher cadre in officiating capacity – Does not amount to appointment in that post or cadre – Does not confer right to the post – Industrial Relations Act, Madhya Pradesh, 1960 – 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 (D.B.)*

– **No law compelling a master to retain servant in service** – Wrongful dismissal – Servant can file suit for damages – Specific performance of contract of service not possible – Grant of leave to servant – Matter of discretion of master – Reasonable notice about termination of service not given – Servant can ask for charges for that period: *The New Bhopal Textiles Ltd. Bhopal Vs. Ramdutt Chatruvedi, I.L.R. (1961) M.P. 590*

– **No power to suspend employee in the absence of special contract** – Order of suspension cannot be retrospective: *Dukhooram Gupta Vs. Co-operative Agricultural Association Ltd., Kawardha, I.L.R. (1961) M.P. 673 (D.B.)*

– **Parties agreeing to terms and conditions 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. Parasias Vs. The Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, I.L.R. (1974) M.P. 451 (D.B.)*

– **Power regarding “the general conduct and management of the business and affairs”** – Includes power to terminate services of employees unless contrary is shown: *Parashar Singh Vs. Hindustan Manganese Mines Ltd. Bombay, I.L.R. (1971) M.P. 295 (D.B.)*

– **Principles applicable to determine whether a particular contract of employment is a contract of service:** *S.P. Nanavaty, Factory Manager, Satna Cement works Satna Vs. R.K. Mishra, I.L.R. (1975) M.P. 19 (D.B.)*

– **Provisional Contract of service** – Does not involve relationship of master and servant: *Rudra Prasad Vs. State of M.P., I.L.R. (1977) M.P. 38 (D.B.)*

– **Resignation when takes effect** – Principle of contract are applicable in masters not governed by any statutory rules or terms of employment – Neither party can bring about termination of service by unilateral Act except in accordance with rules of employment – Public Works Department Manual, Madhya Pradesh, (Vol. 1) – Rule 98 – Member of temporary establishment – Member desiring to resign employment – One month’s notice sufficient or forfeiture of one month’s pay in lieu of such notice – Resignation by temporary employee – Takes effect after period of one month and bring about termination – Acceptance of resignation by competent authority not necessary – Competent authority cannot refuse such resignation – Service once validly terminated – Relationship cannot be restored by withdrawing resignation: *Harish Chandra Gupta Vs. State of M.P., I.L.R. (1978) M.P. 355 (D.B.)*

– **Right of master to punish servant for misconduct which has been condoned** – Civil Services (Classification, Control and Appeal) Rules, Madhya Pradesh before 1965 – Rule 55-A and Civil Services (Classification, Control

and Appeal) Rules, Madhya Pradesh, 1965 – Rule 13(1)(a) – Giving notice to servant to show cause why increment should not be withheld for misconduct – Sufficiency – Servant to be informed regarding allegations against him and the material on which they are based: *Lal Audhraj Singh Vs. State of M.P., I.L.R. (1970) M.P. 910 (D.B.)*

– **Right of Master to suspend servant during pendency of enquiry** – Right of Servant to salary during pendency of suspension – College Code – Has force of law – Clause 9 (iv) – Effect of the provision – General Clauses Act, Madhya Pradesh, 1957 – Section 16 – Not available for construing University of Sagar Act or Ordinance made by University under the Act – Section 16 enacts the rule of general law: *Dr. Umshankar Shukla Vs. B.R. Anand, Chairman Governing Body Arts and Commerce College, Harda, I.L.R. (1972) M.P. 249 (D.B.)*

– **Servant carrying business of his master in his absence** – Master vicariously liable for the acts of his servants: *Deepchand Vs. S.R. Mittal, I.L.R. (1981) M.P. 346*

– **Servant of the Assurance Company** – No law conferred statutory status on him – Termination of his services does not violate any statutory provision – Life Insurance (Emergency provisions) Ordinance No. 1 of 56 – Does not confer statutory status on servant – Does not become servant of the Central Government – Custodian has power to terminate the services – Servant cannot claim a declaration that order terminating his services was a nullity – Limitation Act, 1908 – 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. Thkur Mohansingh, I.L.R. (1977) M.P. 769 (D.B.)*

– **Servant tendering resignation** – Servant can withdraw resignation before its acceptance – Authority who has power to accept resignation: *Bhairon Singh Vishwakarma Vs. The Civil Surgeon, Narsimhapur, I.L.R. (1976) M.P. 7 (D.B.)*

– **Servant wrongfully dismissed** – Master liable to pay damages for compensating for the wrong sustained – Power regarding “the general conduct and management of the business and affairs” – Includes power to terminate services of employees unless contrary is shown – Managing agents or managing director in relation to managed company is its agent – Torts – Servant or agent not liable for tort for procuring breach of masters or Principal’s contract with another – Matter different if servant or agent acts mala fied: *Parashar Singh Vs. Hindustan Mangnese Mines Ltd. Bombay, I.L.R. (1971) M.P. 295 (D.B.)*

– **Service once validity terminated** – Relationship cannot be restored by withdrawing resignation: *Harish Chandra Gupta Vs. State of M.P., I.L.R. (1978) M.P. 355 (D.B.)*

– **Temporary promotion of a person to a higher cadre in officiating capacity**
 – Does not amount to appointment in that post or cadre – Does not confer right to the post: *Mahendralal Vs. The General Manager, Hindustan Steel Ltd. Bhilai*, I.L.R. (1972) M.P. 48 (D.B.)

– **Termination of service after reasonable notice but not for any failure** – Matter governed by ordinary law of master and servant – Not governed by section 25(7) (i) of Municipal Act: *The Municipal Committee Vs. Smt. Maina Bai*, I.L.R. (1962) M.P. 123

– **Terms of appointment cannot be unilaterally revised:** *J.K. Pal Vs. State of Madhya Pradesh*, I.L.R. (1972) M.P. 1008 (D.B.)

– **Tests which determine the relationship of Master and Servant** – Panchayats Act, Madhya Pradesh 1962 – Section 17 – Village Patel – A person in the service of Government – Disqualified from being elected as Panch.: *Manoharlal Vs. Gangaram*, I.L.R. (1972) M.P. 1026 (D.B.)

– **Transfer of servant resulting in workmen's loss in wages, bonus or other monetary benefits:** *M/s Shaw Wallace And Co. Ltd., Parasias Vs. The Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur*, I.L.R. (1974) M.P. 451 (D.B.)

– **Vicarious liability** – Vehicle though owned by UNICEF but loaned to State Govt. and under direct control and use of State Govt. – Accident committed when it was being driven rashly and negligently by an employee of State Govt. in discharge of his official duties – State Govt. vicariously liable – Vehicles owner's liability not absolute: *State of M.P. Vs. Prembai*, I.L.R. (1981) M.P. 334 (D.B.)

– **Whether particular contract is a contract of service or not – Is a question of fact:** *S.P. Nanavaty, Factory Manager, Satna Cement works Satna Vs. R.K. Mishra*, I.L.R. (1975) M.P. 19 (D.B.)

– **Whether person employed is servant or contractor – A question of fact**
 – **Is a jurisdictional fact:** *S.P. Nanavaty, Factory Manager, Satna Cement works Satna Vs. R.K. Mishra*, I.L.R. (1975) M.P. 19 (D.B.)

– **Withdrawal of resignation before it became operative** – Validity – Ravishanker University Act, M.P. 1963 – Sections 23 and 35 – Ordinance no. 20 – Has force of law – Teacher can enforce right granted by the provision – Provides safeguard to Principal against termination of service – Relation of servant governed by statute – Servant can invoke writ jurisdiction for enforcing right – In case of contractual relationship – Remedy is suit – Writ jurisdiction can be invoked even if power conferred is discretionary – Statute 22 (3) (iii) – Authorises university for prescribing of service conditions –

Service conditions have force of law – Governing body not authorised to terminate services of Principal without obtaining approval of University – Constitution of India – Article 226 – Issue of writ of Mandamus – Whether can be issued against University for taking decision regarding grant of approval to the resolution of governing body of the college – Precedent – One Division Bench – No power to ignore decision of an other Division Bench – Proper remedy to refer case to Full Bench: *Jai Prakash Mudaliar Vs. A.C. Choubey, Pleader & President, Governing Body Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298 (F.B.)*

Matrimonial Causes Act, 1950

– **and Hindu Marriage Act (XXV of 1955)** – Difference and distinction between: *Mohanmurari Vs. Smt. Kusum Kumari, I.L.R. (1967) M.P. 394 (D.B.)*

Maufi

– **Lapses on death of holder** – Does not pass on his death to his successor: *The Controller of Estate Duty, M.P., Nagpur Vs. Smt. Usha Devi Patankar, I.L.R. (1976) M.P. 795 (D.B.)*

Meat dressed and cooked

– **Quite different from raw meat:** *Pyarasingh Vs. The Municipal Committee, Raipur, I.L.R. (1958) M.P. 51 (D.B.)*

Medical and Dental Post-Graduate Entrance Examination Rules, M.P.

– **Rules, 1998 – Rule 3 (VI) (iv)** – Prohibition on admission of candidates already pursuing P.G. Courses in their university till they complete the course – Applicable only to those universities which have framed such prohibitory regulation or to those candidates who are selected in professional examination under the M.P. Rules: *Dr. Vishal Madan Vs. State, I.L.R. (2001) M.P. 760*

– **Rules X(ii), (iii), (iv), (v) and (viii) (1)** – Provisions unambiguous – Candidates already exercised option whether to get admission to the available subject course or to run the risk of continuing in the waiting list in anticipation of seats of choice falling vacant subsequently – Candidates who have already taken admission in a particular course subject not entitled to be considered for admission to the seats falling vacant subsequently: *Dr. Sameer Harshe Vs. State, I.L.R. (2001) M.P. 749*

– **Rule X (iv)** – Candidates who chose to remain in waiting list at the time of counseling for want of availability of seats in the subject of choice can only be considered

for filling up the seats falling vacant subsequently for any reason – Writ issued accordingly:
Dr. Sameer Harshe Vs. State, I.L.R. (2001) M.P. 749

– **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 V.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. Course shall not be eligible: *State Vs. Dr. Vishal Madan, I.L.R. (2000) M.P. 1262 (D.B.)*

– **Rule 3 (VI)** (iv) – Eligibility criteria – A person admitted in previous year but not completing the Post-graduation course or a person who was allotted post-graduation seat in Madhya Pradesh at the time counseling but later did not join the course shall not be eligible upto three years to take up the examination – Not applicable to candidates taking up both All India basis examination as also the examination under the M.P. Rules, 1999 in the same year: *Ritwik Pandey Vs. Professional Examination Board, M.P., Bhopal, I.L.R. (2001) M.P. 162*

– **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 (D.B.)*

– **Rules, 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 (D.B.)*

– **Rules, 2001** – Rule 15.8 – As amended and revived – Opt for waiting – Oblished and subsequently revived – Seats surrendered from All India quota not included in first counseling – For non availability of seats of choice candidate opted for waiting – SLP filed before second counseling – Candidate entitled to appear in second counseling when all the vacant seats/colleges, should have been made available – Direction issued to consider the matter within 10 days: *Paramjeet Gambhir Vs. State, I.L.R. (2003) 168 (D.B.)*

– **Rules, 2003** – Rules 15. 9, 15.10 and 15.11 – Admission to PG courses – Counselling – Sequence of – (A) Unreserved (B) ST (C) SC (D) OBC – By the time seats fall vacant following Rule 15.10 the unreserved category candidate would not get chance as there is prohibition on change of subject and institution – Sequence does not

stand in consonance with other rules – Cannot withstand scrutiny – Rule 15.9 and 15.11 invalid: *Dr. Amit Kumar Aritwal Vs. State of M.P.*, I.L.R. (2004) M.P. 635 (D.B.)

Medical Colleges

– **Revised Rules framed by Government for selection of candidates for appointment as House Job Officers in the Medical Colleges of The State, 1984** Rules 3 and 4 and Constitution of India, Article 19 – Rules providing cent percent reservation for institutional candidates are discriminatory and violative of Article 14 – They cannot be allowed to stand unless 25% seats are left open for outsiders and non-institutional candidates: *Smt. Mitali Choudhary Vs. State of M.P.*, I.L.R. (1991) M.P. 500 (F.B.)

Medical Colleges in Madhya Pradesh Rules for Admission, 1960

– **Rules** – Mere executive or administrative instructions – Cannot be classified as law – Do not attract principle of equality before law – Constitution, Article 14 – Is in form of an admonition, addressed to State – Does not confer any right on any person – Obligation enures for benefit of all persons – Constitution, Articles 15(3) and 29(2) – Effect of non-admission of male candidate in women's college – Right of women to admission in other colleges – Matter is regulated by authorities empowered to admit candidate: *Raghunath Vishnu Athawale Vs. The State of M.P.*, I.L.R. (1961) M.P. 55 (D.B.)

Medical Council

– **Medical Education** – Request of State Govt. for reduction of minimum qualifying marks for admission to Post-Graduation Courses in Medical Education for reserved categories – Declined by the Medical Council 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: *State Vs. Medical Council of India*, I.L.R. (2000) M.P. 591 (D.B.)

Medical Council Act, Indian (XXVII of 1933)

– **Sections 20, 33** – Criteria of house job is to equip the candidate with minimum practical experience in the concerned discipline: *Dr. Ku. Meena Bathija Vs. State*, I.L.R. (1992) M.P. 232 (D.B.)

Medical Council Act, Indian (CII of 1956)

– **Sections 12 and 14** – Migration – Migration of a student from Dar-es-Salam University Tanzania of MBBS Course to Medical College in India – Dar-es-Salam University not recognized by Medical Council – Migration of a student from

unrecognized University to recognized University to recognized University not permissible – University of Dar-es-Salam not included in 2nd Schedule – Qualification imparted by Dar-es-Salam University and its institution not recognized – Migration was rightly rejected by Medical council – Appeal Allowed : *Medical Council of India Vs. Silas Nelson*, I.L.R. (1993) M.P. 22 (F.B.)

Medical Council Regulations and Revised Rules

– **Are framed by State Govt. for selection of candidates for appointment as House Officers:** *Dr. Rajesh Malik Vs. State of M.P.*, I.L.R. (1987) M.P. 75 (D.B.)

– **Rules 11 and 12**, Fresh option to change subject – Scope of: *Dr. Rajesh Malik Vs. State of M.P.*, I.L.R. (1987) M.P. 75 (D.B.)

– **Rules 11 and 12** – Housemanship for the prescribed period in the subject once opted by the candidate – Requirement of: *Dr. Rajesh Malik Vs. State of M.P.*, I.L.R. (1987) M.P. 75 (D.B.)

Medicinal and Toilet Preparation (Excise Duties) Act (XVI of 1955)

– **Rule 87(1)** – Suspension or revocation of license prior to recording of final finding regarding breach of conditions of license, rules or provisions of the Act – Legality – Rule 114 – Confers ample powers to check contravention of conditions of license, rules or provisions of Act – Authority suspending or revoking license – Acts in quasi-judicial capacity – Appellate authority also acts in quasi-judicial capacity – Must give opportunity to address before decision of appeal: *Shri Bhagwandas T. Mandaliya Vs. The State of M.P.*, I.L.R. (1962) M.P. 191 (D.B.)

– **Rule 114** – Confers ample powers to check contravention of conditions of license, rules or provisions of Act – Authority suspending or revoking license – Acts in quasi-judicial capacity – Appellate authority also acts in quasi-judicial capacity – Must give opportunity to address before decision of appeal: *Shri Bhagwandas T. Mandaliya Vs. The State of M.P.*, I.L.R. (1962) M.P. 191 (D.B.)

Memorandum

– **Memorandum of State Government** – Direction in – Have all characteristics of a rule: *Shri I.N. Saksena Vs. The State of Madhya Pradesh*, I.L.R. (1966) M.P. 216 (D.B.)

Mens Rea

– **It is a question of fact and requires determination only after evidence is led** – AIR 1966 SC 43 *Distinguished: Ranbaxy Laboratories Ltd. Vs State of M.P.*, I.L.R. (1996) M.P. 547

Merged States (Laws) Act (LIX of 1949)

– **Acts mentioned in schedule became applicable to Bhopal which became Chief Commissioner's province** – Came into force on 1-1-50 – Patta granted after 1-1-50, by Nawab of Bhopal is illegal: *State of Madhya Pradesh Vs. F.R. Qureshi*, I.L.R. (1976) M.P. 461

– **Section 3** – Notification issued under – Effect is to bring into force the Act in force in Bhopal: *Akhtar Abbas Vs. Assistant Collector, Central Excise, Bhopal*, I.L.R. (1960) M.P. 408 (D.B.)

Merged States (Taxation Concession) Order, 1949

– **Paragraph 13 (iii)** – Conditions necessary for the application of the provision – Word “Pension” in – Meaning of – The words “Subordinate Chief of the Ruler” in – Does not refer to blood relationship of the person claiming the status of the subordinate chief of the ruler: *Shri Raj Kumar Bikram Bahadur Singh Vs. The Commissioner of Income Tax M.P.*, I.L.R. (1975) M.P. 1103 (D.B.)

– **Paragraph 13 (iii)** – The words “subordinate Chief of the Ruler” in – Does not refer to blood relationship of the person claiming the status of the subordinate chief of the ruler vide Merged states (Taxation Concessions) Order, 1949, Paragraph 13 (iii): *Shri Raj Kumar Bikram Bahadur Singh Vs. The Commissioner of Income Tax M.P.*, I.L.R. (1975) M.P. 1103 (D.B.)

Mesne Profits

– **Suit for mesne Profits** – Not a suit for account – Distinction between a suit for past mesne profits and future mesne profits – Court-fees Act, Section 7(1) – Suit for mesne profits – Plaintiff has to state approximately value of his claim – Court-fee payable on such value – Cannot be valued as a suit for accounts: *Ambika Prasad Vs. Shiv Shankar Dayal Choube*, I.L.R. (1962) M.P. 557 (D.B.)

Migration

– **Presumption that family carries the law applicable at the place from which migration has taken place** – Presumption rebuttable – Leva patidar kulmees migrated from Gujraht – 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: *Sita Bai Vs. Tuljabai*, I.L.R. (1963) M.P. 75 (D.B.)

– **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 a very strong evidence in proof of migration – Marathas living in Chhattisgarh speaking Marathi language governed by Bombay school: *Mst. Anjubai Vs. Hemchandrarao*, I.L.R. (1960) M.P. 621 (D.B.)

Mineral Concession Rules, 1949

– **General law of waiver of forfeiture** – Applicable to mining leases – Rule 27(5) – Use of words “May” and “Shall” – Indicates that Government not bound to determine lease if notice not complied with – Embodies the principle of waiver – Government doing any act after serving notice showing intention to continue lease – Action amounts to implied waiver of right to forfeit or determine lease: *M/s Ozha and co. (Private) Ltd., Jamkunda Colliery Vs. The Union of India*, I.L.R. (1972) M.P. 708 (D.B.)

– **Rule 27** – Validity of: *S.N. Sunderson and Co., Katni Vs. The State of Madhya Pradesh* I.L.R. (1964) M.P. 516 (D.B.)

– **Rule 27 (5)** – Use of words “May” and “Shall” – Indicates that Government not bound to determine lease if notice not complied with – Embodies the principle of waiver – Government doing any act after serving notice showing intention to continue lease – Action amounts to implied waiver of right to forfeit or determine lease: *M/s Ozha and co. (Private) Ltd., Jamkunda Colliery, Vs. The Union of India*, I.L.R. (1972) M.P. 708 (D.B.)

– **Rule 54** – Revision against order of State Government on application for grant on lease – Application for grant on lease – Applicant entitled to be heard – Revision dismissed as barred by time without hearing – Order vitiated: *Messrs G.H. Cook and Sons, Katni Vs. The State Government of M.P.*, I.L.R. (1965) M.P. 919 (D.B.)

– **Rule 54** – Revision dismissed as barred by time without hearing – Order vitiated: *Messrs G.H. Cook and sons, Katni Vs. The State Government of M.P.*, I.L.R. (1965) M.P. 919 (D.B.)

Mineral Concession Rules, 1960

– **Review** – Order passed in revision by Central Government – Central Government – Power of, to review the order: *R.B. Seth Narsinghdas Jankidas Mohta Vs. State of Madhya Pradesh*, I.L.R. (1966) M.P. 901 (D.B.)

– **Rules 22 and 23 (1)** – Scope and implication of: *Sou. Jayanti Mishra Vs. The Union of India*, I.L.R. (1977) M.P. 645 (D.B.)

– **Rule 24 (3)** – Provision of – Is consistent with Act: *The Kanhan Valley Coal Company Private Limited, Nagpur Vs. The State of Madhya Pradesh*, I.L.R. (1976) M.P. 11 (D.B.)

– **Rules 24 (3) and 38** – Pending applications – Deemed to be made on the date when 1960 Rules came into force – No order passed within 90 days therefrom – Application lapses: *The Kanhan Valley Coal Company Private Limited, Nagpur Vs. The State of Madhya Pradesh, I.L.R. (1976) M.P. 11*

– **Rule 26(1)** – Reduction of period of lease applied for – Opportunity of hearing has to be given to the applicant – By amendment dated 10.2.87 “after giving an opportunity of being heard” was incorporated in Rule 26 – Impugned orders set aside – Matter remanded to the State Govt. to reconsider the question after giving opportunity to petitioner: *Balkrishna Gupta Vs. State of M.P., I.L.R. (1999) M.P. 194*

– **Rule 54, Explanation** – Deemed refusal – Amounts to an order refusing to grant a lease – Rules 24 (3) and 38 – Pending applications – Deemed to be made on the date when 1960 Rules came into force – No order passed within 90 days therefrom – Application lapses – Rule 24 (3) – Provision of – Is consistent with Act: *The Kanhan Valley Coal Company Private Limited, Nagpur Vs. The State of Madhya Pradesh, I.L.R. (1976) M.P. 11*

– **Rule 54** – Revision by Central Government of order of State Government refusing to renew lease – State government bound to renew lease – Review – Order passed in revision by Central Government – Central Government, Power of, to review the order: *R.B. Seth Narsinghadas Jankidas Mohta Vs. State of Madhya Pradesh, I.L.R. (1966) M.P. 901 (D.B.)*

– **Rule 56** – Empowers Government to correct clerical or arithmetical mistake – Does not empower the Government to review its previous order – Constitution of India – Article 226 – Order not giving reasons – Order not a speaking order – Order liable to be quashed: *Smt. Radha Devi Sharma Vs. The Union of India, I.L.R. (1971) M.P. 53 (D.B.)*

– **Rule 58** – Object of the requirements of this rule – If decision taken to receive application on holiday – Notice of that arrangement should be given to all concerned: *Sou. Jayanti Mishra Vs. The Union of India, I.L.R. (1977) M.P. 645 (D.B.)*

– **Rule 58** – “Period of 30 days” in – Mode of counting – Object of the requirements of this rule – If decision taken to receive application on holiday – Notice of that arrangement should be given to all concerned – Rules 22 and 23 (1) – Scope and implication of – District Office (Collectorate) Manual M.P. – 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.)*

– **Rule 59** before amendment – Land reserved for mining for minerals – Reservation is for mining purposes – This purpose excluded by this rule: *J.C. Rishi Vs. Union of India, I.L.R. (1970) M.P. 897 (D.B.)*

– **Rules 59 and 58** – Applicability of Rule 58 dependent upon attraction of Rule 59: *J.C. Rishi Vs. Union of India, I.L.R. (1970) M.P. 897 (D.B.)*

– **Rules 59 and 58** – Purpose of the rules: *J.C. Rishi Vs. Union of India, I.L.R. (1970) M.P. 897 (D.B.)*

– **Rule 64-A** – Demand of Interest at the rate of 24% on delayed payment of royalty – Liability of the lessee – No mining operation is permissible except in accordance with the terms and conditions of mining lease: *South Eastern Coal Fields Ltd. Vs. State of M.P., I.L.R. (2004) M.P. 10 (D.B.)*

– **Rule 64-A** – Notices issued for recovery of interest @ 24% on the difference of enhanced royalty – No act of the Court should cause prejudice to any party – Petitioners and appellants have an obligation to pay royalty at enhanced rate – Rate of interest conditionally reduced from 24% to 12% per annum, if paid within a month: *Indo Unique Flame Pvt. Ltd., Nagpur, Vs. Union of India, I.L.R. (1999) M.P. 850 (D.B.)*

– **Rule 64-A** – State Government is entitled to charge interest at the rate of 24% per annum – By notification dated 1.8.1991, Central Govt. enhanced the rate of Royalty – High Court quashed the same as ultra vires – Hon. Supreme Court upheld its validity – During pendency of proceedings the Courts passed interim orders restraining recovery of royalty at enhanced rate – Notices issued for recovery of interest @ 24% on the difference of enhanced royalty – No act of the Court should cause prejudice to any party – Petitioners and appellants have an obligation to pay royalty at enhanced rate – Rate of interest conditionally reduced from 24% to 12% per annum, if paid within a month: *Indo Unique Flame Pvt. Ltd., Nagpur, Vs. Union of India, I.L.R. (1999) M.P. 850 (D.B.)*

Mines Act Indian (XXXV of 1952)

– **Chapter VII** – Does not operate as a bar to grant of sick leave to workers under Award: *Harris Mineral Supply Co., Jaitwara Vs. Shri Salim M. Merchant, Presiding Officer of the Central Government Industrial Tribunal, Bombay, I.L.R. (1967) M.P. 860 (D.B.)*

– **Managing agents brought within the ambit of the Act for observance of regulations framed under the Act:** *M.P. Colliery Workers Federation Chirimiri Vs. The United Collieries Ltd. Calcutta, I.L.R. (1973) M.P. 664*

– **Section 2 (1)** – Closure of mine – Owner directly affected as irreparable loss would result to owner: *M.P. Colliery Workers Federation Chirimiri Vs. The United Collieries Ltd. Calcutta, I.L.R. (1973) M.P. 664*

– **Section 2(1)** – Definition of “owner” in – Is inclusive: *M.P. Colliery Workers Federation Chirimiri Vs. The United Collieries Ltd. Calcutta, I.L.R. (1973) M.P. 664*

– **Section 2(1)** – Interest of managing agent is only in the commission out of profits: *M.P. Colliery Workers Federation Chirimiri Vs. The United Collieries Ltd. Calcutta, I.L.R. (1973) M.P. 664*

– **Section 2(1)** – Owner not deprived of ownership and enjoyment of its property: *M.P. Colliery Workers Federation Chirimiri Vs. The United Collieries Ltd. Calcutta, I.L.R. (1973) M.P. 664*

– **Section 17** – Electricity Act – 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 – Rule 136 – Conditions under which Manager or Agent can be held liable: *The State of Madhya Pradesh Vs. J.P. Cassed, I.L.R. (1963) M.P. 932 (D.B.)*

– **Section 72-C** – Offence under – Nature of – Section 79(ii) – Complaint – Commencement of period of limitation – Inspector receiving information about accident on 12th, 16th March and 14th April 1973 – Enquiry made and completed on 14th April 1973 when commission of offence discovered – Complaint filed on 7-9-1973 is within limitation – Criminal Procedure Code, 1973 – 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 15-9-73 with copies – Complaint deemed to have been filed on 7-9-73: *State (Union of India), Through Regional Inspector of Mines, Nagpur Division Vs. V.L. Jain, I.L.R. (1983) M.P. 121 (F.B.)*

– **Section 72-C (1)** – Word “Whoever” used in section 72-C(1) and other section of the Act is wide enough to cover any other person responsible for contravention: *The State (Govt. of India) Vs. J.N. Uppal, I.L.R. (1983) M.P. 581*

– **Section 72-C (1) (a)** – Writ Petition – Mines safety – Violation of Regulations – Complaint case – Purpose and intendment is different than an offence under Section 304-A, IPC – Prosecution in complaint case cannot be quashed: *J.N. Uppal Vs. State (Govt. of India), I.L.R. (2005) M.P. 485*

– **Sections 72 and 74** – Indian Metalliferous Mines Regulations 1926 – Regulations No. 38 and No. 91 – Sections 72 and 74 – Scope of – Instructions by Manager to labourers and foreman to work according to regulations – Responsibility for breach not absolved: *The State Vs. Chaturbhuj, I.L.R. (1960) M.P. 511 (D.B.)*

– **Section 74** – Does not require mens-rea as essential ingredient of the offence: *H.S. Sachdeo Vs. State of Madhya Pradesh, I.L.R. (1976) M.P. 172*

– **Section 79** – Explanation (a) – Scope of – Criminal Procedure Code – Section 197 – Object of – 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 79 (ii)** – Complaint – Commencement of period of limitation – Inspector receiving information about accident on 12th, 16th March and 14th April 1973 – Enquiry made and completed on 14th April 1973 when commission of offence discovered – Complaint filed on 7-9-1973 is within limitation: *State (Union of India), Through Regional Inspector of Mines, Nagpur Division Vs. V.L. Jain, I.L.R. (1983) M.P. 121 (F.B.)*

– **Section 87** – 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*

Mines and Minerals (Regulation and Development) Act (LXVII of 1957)

– **Schedule II Item 21** – Royalty payable on iron ore prescribed – Slime exploited containing ferrous above 63.70 percent – Item falls within the second category of ‘fines’ i.e. Item No. 21(ii)(b) of Schedule II under Section 9(1) of the Act – Even if used as commercial commodity it does not cease to be ‘ore’ – Petitioner liable to pay royalty as per schedule: *National Mineral Development Corporation Ltd., Hyderabad Vs. State, I.L.R. (2000) M.P. 1220 (D.B.)*

– **Mineral Concession Rules, 1960 framed thereunder** – Do not give to lease-deed or any of its terms the status of statutory provision or rule: *United Collieries Ltd. Vs. Engineer-In-Chief, South Eastern Railway, Maninderagarh, I.L.R. (1965) M.P. 18 (D.B.)*

– **Section 3(e)** – Notification issued thereunder – Lime Stone – A minor mineral if used in kilns for manufacturing of lime used as a building material – Mining officer not able to determine whether lime used for manufacture of lime – Lime has to be held as major mineral and Royalty payable accordingly: *Gorelal Dubey Vs. State of M.P., I.L.R. (1977) M.P. 755 (D.B.)*

– **Section 9 and Entry 23 Second Schedule** – Slimes – Whether included in ‘fines’ or ‘concentrate’ for purposes of charging royalty – Iron ore subjected to processing yield lumps, fines, concentrates and Slimes – Entry 23 mandates quantification of royalty – once result of processing is available lumps, fines and concentrates are subjected to levy of royalty at different rates – Slimes left out of Entry 23 for purposes of quantification and levy parliament has to be attributed with the knowledge that ‘slimes’ do not have any commercial value – No rate of royalty prescribed to be charged on slimes and also no rate of royalty prescribed on iron ore as run of mine – There are ferrous contents but that is a total waste – Royalty cannot be charged on the wastage – Judgment of High Court set aside: *National Mineral Development Corporation Ltd. Vs. State of M.P., I.L.R. (2004) M.P. 614 (D.B.)*

– **Section 9** – Royalty in respect of mining leases: *National Mineral Development Corporation Ltd., Hyderabad Vs. State, I.L.R. (2000) M.P. 1220 (D.B.)*

– **Section 9** – The words “subject to” in Section 9 – Effect of: *Dadabhoy’s New Chirimiri Ponri Hill Colliery Company Private Ltd., Vs. The State of M.P., I.L.R. (1970) M.P. 363 (D.B.)*

– **Section 9 (1)** – Applicability of – Gives power to fix rate of royalty according to provision of Schedule II of the Act and supersedes any term in the lease to the contrary: *The Amalgamated Coalfields Ltd, Calcutta Vs. The Union of India, I.L.R. (1975) M.P. 607 (D.B.)*

– **Section 9 (1)**, Minor Mineral Rules, Madhya Pradesh, 1961, Rule 24 and Mineral concession Rules, 1949, rules 3(ii) and 4 – Applicability of Circumstances when lessee becomes liable to pay royalty under section 9(1) of the Act: *Manoharlal Awal Vs. State of Madhya Pradesh., I.L.R. (1981) M.P. 359 (D.B.)*

– **Section 9 (1)** – State Government performing duty under section 9(1) – Other provisions of Act attracted unless specifically excluded: *The Amalgamated Coalfields Ltd, Calcutta Vs. The Union of India, I.L.R. (1975) M.P. 607 (D.B.)*

– **Section 9 (3)** – Delegation of Power – Section 9(3) free from excessive delegation of legislative power – Delegation of power to central Govt. to fix royalty rates – Not without guidelines – Delegation not excessive. Constitution of India, Article 254 – Sub delegation – Excessiveness – Section 9(3) does not suffer from any excessive delegation of legislative power. *State of M.P. Vs. Mahalaxmi Fabric Mills Limited, I.L.R. (1995) M.P. 28 (F.B.)*

– **Section 9 (3)** – MINES AND MINERALS – *Vires* challenged – Legislative Competence – Section 9(3) is within legislative competence of Parliament – Both under Entry 54 of the Union list as well as Entry 97 thereof: *State of M.P. Vs. Mahalaxmi Fabric Mills Limited, I.L.R. (1995) M.P. 28 (F.B.)*

– **Section 9 (3)** – Notification D/- 1-8-1991 – Notification substantially raising royalty on Coal – Notification is not a colourable device – Notification is issued not for the purpose of development of mineral as contemplated by Section 9(3) but entirely for a collateral purpose of compensating the State Government for the loss of cess revenue and for swelling their coffers – Issued for extraneous purpose – Hence, Decision of High Court Reversed: *State of M.P. Vs. Mahalaxmi Fabric Mills Limited, I.L.R. (1995) M.P. 28 (F.B.)*

– **Section 13** – Mineral Concession Rules, (1960), Rule 27(1)(i) – Regulations framed by the State Government in exercise of Powers conferred under Rule 27 – *Vires* of challenged on the ground that it is Central Government which can make rule,

regulation and the State Government has no Jurisdiction to make the regulations – Held – These so called Regulations are nothing but a sort of instruction which has been issued for the purpose of effectuating the purpose mentioned in Rule 27(1)(i) and various clause of the lease agreement as reproduced above, which require the State Government to seek information from the lessee with regard to quantity of mineral drawn, dispatch and royalty paid – Therefore, these are Regulations to effectuate that purpose and that cannot be said to be ultra-vires: *M/s. Neogy and Sons. Vs. State of M.P., I.L.R. (1997) M.P. 79 (D.B.)*

– **Sections 13 and 18** – Rules framed under – Not specifically made applicable by notification – Petitioner not deprived of statutory remedy as provided by section 30 because of application of section 9(1): *The Amalgamated Coalfields Ltd, Calcutta Vs. The Union of India, I.L.R. (1975) M.P. 607 (D.B.)*

– **Section 15** – Mineral Concession Rules (1960), Rule 24 A (6) (as amended by GSR 724 (E) date 27 Sept. 1994) – Renewal of mining lease – During the pendency of renewal application sub-rule (6) amended – “that lease would be deemed to have been extended till the State Govt. passes order thereon” – Lessee would get benefit of the amended rule: *Pratap Singh Chauhan Vs. State of M.P., I.L.R. (1995) M.P. 550*

– **Section 15 (1)** – Empowers Government to make rules for fixing rates of royalty in respect of minor minerals – Minor Mineral Rules, Madhya Pradesh, 1961 – Rule 25(1) – Control quarry lease – Quarry lease subject to condition contained in sub-rule (1) to rule 25 – Obligation to pay royalty – Does not depend upon any term in lease-deed – Amendment of schedule – Revised rates become rates in First Schedule – Lessee liable to pay revised rates – Rate of royalty – Not changeable more than once in every five years – Clause 3 in lease – To be read subject to rules 24 and 25 – Amounts to conferring additional power to revise rate of royalty in contract: *Banku Bihari Saha Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 414 (D.B.)*

– **Section 18** – Levy Should have some relation to the services rendered in order to be fee – Rule cannot impose tax unless statute specifically authorizes imposition: *M.P. Lime Manufacturers Association, Katni Vs. State of M.P., I.L.R. (1991) M.P. 1 (F.B.)*

– **Sections 19, 6 (1) and Land Revenue Code, M.P., (XX of 1959)**, Section 247 – Lease acquired before 1971 was valid – Application for renewal pending when 1972 amendment came into force – It would merely irregular and liable to be terminated or forfeited for failure to bring it in conformity with the provisions of Amended Act, 1972 – 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 Ramchanda Badri Prasad Gour, Katni Vs. M/s Associated Cement Company Ltd. Bombay, I.L.R. (1991) M.P. 90 (D.B.)*

– **Section 25** – First part of section is prospective – Second part deals with procedure – Procedure applicable to recovery of sums due and under any prospecting licence or the mining lease – Whether the sums to be recovered become payable prior to or after the coming into force of the Act: *M/s Gwalior Red-Chalk Corporation, Gwalior Vs. The Additional Tahsildar, Gwalior*, I.L.R. (1971) M.P. 76 (D.B.)

– **Section 26 (2)** – Collector power of, to delegate powers conferred by above notification issued under the Section: *Pt. Banarasi Dass Bhanot Vs. Devi Shanker*, I.L.R. (1966) M.P. 554 (D.B.)

– **Section 26 (2)** – Notification under – Delegating powers to Commissioner and Collector – Additional Collector cannot exercise those powers – Land Revenue Code, Madhya Pradesh, 1959 – Section 17(2) – Additional Collector – Can exercise only the powers mentioned in the section – Collector, power of to delegate powers conferred by above notification – Minor Mineral Rules, Madhya Pradesh, 1961 – Rule 12(2) – Collector not obliged to refer every case to State Government but confers discretion in that respect: *Pt. Banarasi Dass Bhanot Vs. Devi Shanker*, I.L.R. (1966) M.P. 554 (D.B.)

– **Section 27** – Suit not maintainable against a person for anything done in good faith or intended to be done under this Act: *Durga Prasad Vs. Mst. Parveen foudjar*, I.L.R. (1980) M.P. 448 (D.B.)

– **Section 30** – Revisional powers of Central Government – Can be exercised only once – Review – Authority cannot review unless powers specifically given – Mineral Concession Rules, 1960 – Rules 59 and 58 – Applicability of Rule 58 dependent upon attraction of rule 59 – Purpose of the Rules – Rule 59 before amendment – Land reserved for mining for minerals – Reservation is for mining purposes – This purpose excluded by this rule – Constitution of India – Article 226 – Point of jurisdiction not raised before tribunal – Point can be raised in writ petition: *J.C. Rishi Vs. Union of India*, I.L.R. (1970) M.P. 897 (D.B.)

– **Section 30-A** and notification dated 29-12-61 – Construction of, scope and interpretation of The words “subject to” in Section 9 – Effect of – Word “modification” in – Meaning of – The effect of modification mentioned in the notification – Section 30-A – Nature of power conferred on Central Government – Power of State Government to reduce royalty where royalty was more than 2½% not affected – Power of State Government to rescind the revision granted earlier – Constitution of India – Article 226 – Rule regarding exhaustion of statutory remedy – Is a rule of convenience and discretion rather than a rule of law: *Dadabhoy's New Chirimiri Ponri Hill Colliery Company Private Ltd. Bombay, Vs. The State of M.P.*, I.L.R. (1970) M.P. 363 (D.B.)

– **Section 30-A** and notification dated 29-12-61 – The effect of Modification mentioned in the notification: *Dadabhoy's New Chirimiri Ponri Hill Colliery Company Private Ltd., Vs. The State of M.P.*, I.L.R. (1970) M.P. 363 (D.B.)

– **Section 30-A** – Excluded application of Section 9(1) and Section 16(1) unless they are made applicable by notification issued by Central Government – Second part empowers Central Government to apply those sections and rules made under sections 13 and 18 – Subject to modification and exception in respect of leases granted before 25-10-49 – Applicability of section 9(1) – Gives power to fix rate of royalty according to provision of Schedule II of the Act and supersedes any term in the lease to the contrary – State Government performing duty under section 9(1) – Other provisions of Act attracted unless specifically excluded – Rules framed under sections 13 and 18 not specifically made applicable by notification – Petitioner not deprived of statutory remedy as provided by section 30 because of application of Section 9(1): *The Amalgamated Coalfields Ltd, Calcutta Vs. The Union of India, I.L.R. (1975) M.P. 607 (D.B.)*

– **Section 30-A** – Nature of power conferred on Central Government – Power of State Government to reduce royalty where royalty was more than 2½% not affected – Power of State Government to rescind the revision granted earlier: *Dadabhoy's New Chirimiri Ponri Hill Colliery Company Private Ltd., Vs. The State of M.P. I.L.R. (1970) M.P. 363 (D.B.)*

– **Section 30-A** – Second part empowers Central Government to apply those sections and rules made under sections 13 and 18 subject to modifications and exception in respect of leases granted before 25-10-49: *The Amalgamated Coalfields Ltd, Calcutta Vs. The Union of India, I.L.R. (1975) M.P. 607 (D.B.)*

– **Rules framed under** – Do not give to lease-deed or any of its terms the status of statutory provision or rule – Liberties, privileges and powers granted to lessee – Not statutory warranties or rights and privileges – 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 – Permission cures want of previous authority – Constitution of India – Article 226 – Breach of terms of mining lease – No relief can be granted under Article 226 – Remedy lies in civil Court: *United Collieries Ltd Vs. Engineer-In-Chief, South Eastern Railway, Maninderagarh, I.L.R. (1965) M.P. 18 (D.B.)*

Mines and Mineral Rules, Madhya Pradesh, 1961

– **Rule 55** – Revision – Powers of Central Government to interfere with the Order of State Government – Petitioner's application for grant of quarry lease for limestone as minor mineral sanctioned and lease granted – 'A' applying for grant for extracting limestone as major mineral – Application rejected by State Govt. By assigning reasons – Central Govt. without considering reasons assigned by State Govt. and Considering report of Geologist produced before it allowing revision and directing State

Govt. To grant lease in favour of 'A' – Order of Central Govt. in excess of jurisdiction – Liable to be quashed – Proper course to be adopted in such cases pointed out: *Shyambabu Gupta Vs. Union of India*, I.L.R. (1983) M.P. 81 (D.B.)

Minimum Wages Act (XI of 1948)

– **Declares how certain provisions of the principal Act shall have effect – Real character of Act not determined by words used but by the effect** – Act within competence of State Legislature and is valid – Fixation of minimum wages under control Act invalid – Can be validated only by control Act: *M/s Dayalal Meghji & Co., Raipur Vs. The State of M.P.* I.L.R. (1963) M.P. 985 (D.B.)

– **As amended – Section 18-A** – Contractor and manufacturer – Liability for breach of Rules 29 (2) and this provision: *Saraju Prasad Vs. State of Madhya Pradesh* I.L.R. (1977) M.P. 825

– **Fixation of subsistence or minimum wages** – Capacity of employer not to be considered – Matters to be considered in fixing minimum wages of employees – Section 2(s) – Excludes persons employed mainly in a managerial capacity or person appointed in supervisory capacity drawing wages exceeding Rs. 500/- per mensem or exercises functions mainly of a managerial character – Test to be applied to determine whether a person is a manager or not – Section 25-F – Not applicable to ochre mine – Section 25-C to 25-F – Not applicable to industrial establishments of seasonal character or on which work is done intermittently – Mines Act – Chapter VII – Does not operate as a bar to grant of sick leave to workers under Award: *Harris Mineral Supply Co., Jaitwara Vs. Shri Salim M. Merchant, Presiding Officer of the Central Government Industrial Tribunal, Bombay*, I.L.R. (1967) M.P. 860 (D.B.)

– **Section 2, clause (g) and Part I of Schedule** – Employee working in Bidi Karkhana – An employee in a scheduled employment – Section 2, clause (e) – Person employing workers in branches of scheduled employments for which minimum wages not fixed – Person does not fall under the category of employer: *Nathuram Vs. The State of M.P.*, I.L.R. (1959) M.P. 464

– **Section 2 (e) and section 18-A as amended in 1951** – When comes into operation: *Narottamdas Vs. Shri P.B. Gawarikar*, I.L.R. (1960) M.P. 970 (D.B.)

– **Section 2 (i) and schedule item 3** – The phrase “employment” in item 3 of schedule to be construed in the context of definition in section 2(i) – Workers preparing *bidis* at their residence come under category of employees – The word “manufactory” in schedule – Includes processes of Biri making at employee’s residence: *Loknath Vs. The State of M.P.*, I.L.R. (1959) M.P. 607

– **Section 2 (s)** – Excludes persons employed mainly in a managerial capacity or person appointed in supervisory capacity drawing wages exceeding Rs. 500/-per mensem

or exercises functions mainly of a managerial character: *Harris mineral Supply Co., Jaitwara Vs. Shri Salim M. Merchant, Presiding Officer of the Central Government Industrial Tribunal, Bombay, I.L.R. (1967) M.P. 860 (D.B.)*

– **Section 2 (s)** – Test to be applied to determine whether a person is a manager or not: *Harris mineral Supply Co., Jaitwara Vs. Shri Salim M. Merchant, presiding Officer of the Central Government Industrial Tribunal, Bombay, I.L.R. (1967) M.P. 860 (D.B.)*

– **Section 3 (1)** – Appropriate Govt. empowered rescind any previous notification fixing minimum rates of wages when number of employees in a scheduled employment falls down below one thousand: *Sahdeo Sahu Vs. State of M.P., I.L.R. (1990) M.P. 18 (D.B.)*

– **Section 3 (1)** – And Section 3 (1A), general clauses Act (X of 1897), Section 21 and Constitution of India, Article 23 – Right of employee in a scheduled employment to get minimum rates of wages fixed – Extent of – Appropriate Govt., when can refrain from fixing minimum rates of wages – The word ‘refrain’ in Section 3(1A) – Meaning of – Appropriate Govt. empowered to rescind any previous notification fixing minimum rates of wages when number of employees in a scheduled employment falls down below one thousand – General Clauses Act – Section 21 – Is merely a rule of construction – Constitution of India – Article 23 – Right against exploitation – Enforcement of: *Sahdeo Sahu Vs. State of M.P., I.L.R. (1990) M.P. 18 (D.B.)*

– **Section 3 (1A)** – The word ‘refrain’ in – Meaning of: *Sahdeo Sahu Vs. State of M.P., I.L.R. (1990) M.P. 18 (D.B.)*

– **Section 5 (1) Notification No. 189-XVI-58, d/-18-8-58 and Notification No. 307-XVI-58, d/-30-12-58 – Validity – Section 5(2)** – Notification fixing the minimum – Cannot be given retrospective effect – Words and phrases – “Independent person” – Meaning of – Section 2(e) – and section 18-A as amended in 1951 when comes into operation: *Narottam Das Vs. Shri P.B. Gawarikar, I.L.R. (1960) M.P. 970 (D.B.)*

– **Section 5 (1)(b)** – Notification issued by State Government increased variable Dearness Allowance to 2 paise – On representation State Govt. reconsidered the matter – Second notification proposing to revise the earlier notification – Effect – Retrospective or prospective – Unless a notification is specifically stated to have retrospective effect it has to have prospective effect – Demand made by respondents at the rate of 2 paise for entire period is untenable: *B.S. Patel Vs. State, I.L.R. (1999) M.P. 528*

– **Section 5 (2)** – Notification fixing the minimum – Can not be given retrospective effect: *Narottam Das Vs. Shri P.B. Gawarikar, I.L.R. (1960) M.P. 970*

– **Section 20** – Applies to past claims and not future claims – Interest not payable on the amount directed to be paid for the period during which employer failed to carry out the obligation – Section 20 (3) – Scope of: *Combined Transport Services Private Limited, Bilaspur Vs. Shri Shrikrishna Das Shah, Authority Under The Minimum Wages Act and Labour Court, Raipur M.P., I.L.R. (1968) M.P. 12 (D.B.)*

– **Section 20** – Period of Limitation under – Not applicable to a claim under section 33-C(2), Industrial Disputes Act: *Manganesh Ore (India) Ltd., Nagpur Vs. Bisen, I.L.R. (1980) M.P. 813 (D.B.)*

– **Section 20 (3)** – Scope of: *Combined Transport Services Private Limited, Bilaspur Vs. Shri Shrikrishna Das Shah, Authority Under The Minimum Wages Act and Labour Court, Raipur M.P., I.L.R. (1968) M.P. 12 (D.B.)*

– **Sections 20 and 21** – Provide complete machinery for determining all claims regarding wages: *Gurusharansingh Vs. The Manager, Rewa Transport Service, Rewa, I.L.R. (1970) M.P. 756 (D.B.)*

– **Section 25 (c)** – Not applicable to ochre mine: *Harris Mineral Supply Co., Jaitwara Vs. Shri Salim M. Merchant, Presiding Officer of the Central Government Industrial Tribunal, Bombay, I.L.R. (1967) M.P. 860 (D.B.)*

– **Section 25 (c) to 25-F** – Not applicable to industrial establishments of seasonal character or on which work is done intermittently: *Harris Mineral Supply Co., Jaitwara Vs. Shri Salim M. Merchant, Presiding Officer of the Central Government Industrial Tribunal, Bombay, I.L.R. (1967) M.P. 860 (D.B.)*

– **Section 31-A** – Does not fix rates quite independently of Notification of 1958 – Violates fundamental Right – Section invalid: *M/s Dayalal Meghji & Co., Raipur Vs. The State of M.P. I.L.R. (1963) M.P. 985 (D.B.)*

– **Rule 27** – Application for recovery of over-time wages – Jurisdiction of Payment of Wages Authority to entertain application – Proper authority is one under Section 20 of Minimum Wages Act – Minimum Wages Act – Sections 20 and 21 – Provide complete machinery for determining all claims regarding wages – Duty time of conductor – Motor Transport Workers Act – Section 2(f) and Explanation under Section 2 – Keeping of cash – Does not fall within this provision – Conductor cannot be considered to be in employ because he remains in charge of cash: *Gurusharansingh Vs. The Manager, Rewa Transport Service, Rewa, I.L.R. (1970) M.P. 756 (D.B.)*

Minimum Wages Fixation Act, Madhya Pradesh (XVI of 1962)

– **Not invalid because rates fixed by itself:** *Narottamdas Vs. The State of MP, I.L.R. (1965) M.P. 70 (D.B.)*

– **Section 3** – Does neither validate rates fixed in notification nor attempts to fix rates under central Act: *Narottamdas Vs. The State of M.P., I.L.R. (1965) M.P. 70 (D.B.)*

– **Sections 3 and 4** – Validity of: *Narottamdas Vs. The State of M.P., I.L.R. (1965) M.P. 70 (D.B.)*

Mining Lease

– **Royalty payable under mining lease by the lessee to the lessor is rent or part of rent:** *Steel Authority of India Ltd., Bhilai Steel Plant, Bhilai Vs. Collector of Stamps, Bilaspur, I.L.R. (1986) M.P. 11 (D.B.)*

Minor Mineral Rules, Madhya Pradesh, 1961

– **No prohibition in rules to enter into contracts of raising and extraction of mineral:** *Shri Shanker Prasad Goenka Vs. State of M.P., I.L.R. (1966) M.P. 871 (D.B.)*

– **Rule 12 (2)** – Collector not obliged to refer every case to State Government but confers discretion in that respect: *Pt. Banarasi Dass Bhanot Vs. Devi Shanker, I.L.R. (1966) M.P. 554 (D.B.)*

– **Rule 12 (2)** – Collector, Power of, to make recommendation to Government to grant lease to a person applying subsequently – Rule 28 – Procedure to be followed in hearing review: *Pt. Banarasi Dass Bhanot, Jabalpur Vs. Shri Devi Shanker, I.L.R. (1970) M.P. 44 (D.B.)*

– **Rule 18** – Contemplates assignment, transfer or sub-letting in law – Does not prohibit a transaction which in law is not a transfer, assignment etc: *Shri Shanker Prasad Goenka Vs. State of M.P. I.L.R. (1966) M.P. 871 (D.B.)*

– **Rule 18** – Contemplates assignment transfer or sub letting in law – Does not prohibit a transaction which in law is not a transfer, assignment etc. – No prohibition in rules to enter into contracts of raising and extraction of mineral – Practical effect of transaction and not its legal position to be taken into consideration Rule 25, Clauses (VIII) and (xvi) – Condition in lease contrary to rule 25, Clauses (viii) and (xvi) – Conditions invalid – Power exercised under Clause (xvi) of rule 25 – State Government performs *quasi* judicial function – Constitution of India – Article 226 – Validity of the Act even if it is executive can be challenged under Article 226 – Lease – 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 great burden than imposed by lease – Writ of Mandamus – Not to issue for controlling discretion on but can be issued if authority fails to exercise discretion: *Shri Shanker Prasad Goenka Vs. State of M.P., I.L.R. (1966) M.P. 871 (D.B.)*

– **Rule 18 and condition 9 of the lease** – Practical effect of transaction and not its legal position to be taken into consideration: *Shri Shanker Prasad Goenka Vs. State of M.P., I.L.R. (1966) M.P. 871 (D.B.)*

– **Rule 24 (2)** – Amendment of schedule – Revised rates become rates in First Schedule – Lessee liable to pay revised rates: *Banku Bihari Saha Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 414 (D.B.)*

– **Rules 24 and 25** – Clause 3 in lease – To be read subject to these rules – Amounts to conferring additional power to revise rate of royalty in contract: *Banku Bihari Saha Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 414 (D.B.)*

– **Rules 24 and 25** – Obligation to pay royalty – Does not depend upon any term in lease-deed: *Banku Bihari Saha Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 414 (D.B.)*

– **Rules 24 and 25** – Rate of royalty – Not changeable more than once in every five years: *Banku Bihari Saha Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 414 (D.B.)*

– **Rule 25, Clauses (viii) and (xvi)** – Conditions in lease contrary to rule 25, Clauses (viii) and (xvi) – Conditions invalid: *Shri Shanker Prasad Goenka Vs. State of M.P., I.L.R. (1966) M.P. 871 (D.B.)*

– **Rule 25, Clause (xv)** – Power exercised thereunder – State Government performs *quasi* judicial function: *Shri Shanker Prasad Goenka Vs. State of M.P., I.L.R. (1966) M.P. 871 (D.B.)*

– **Rule 25 (1)** – Controls quarry lease – Quarry lease subject to condition contained in sub-rule (1) of rule 25: *Banku Bihari Saha Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 414 (D.B.)*

– **Rule 28** – Procedure to be followed in hearing review: *Pt. Banarasi Dass Bhanot, Jabalpur Vs. Shri Devi Shanker, I.L.R. (1970) M.P. 44 (D.B.)*

Mohammedan Law

– **Building on a demarcated distinct portion** – Portion distinct from the rest of the burial ground-whole portion cannot be considered to be grave-yard: *Mohammad Kasam. Vs. Abdul Gafoor, I.L.R. (1966) M.P. 418 (D.B.)*

– **Co-owner** – Right of, to alienate any specific item of property – Alienee from a co-owner of specific item of property – Has equity to claim that the specific item be allotted to the share of his vendor in a suit for general partition: *Abdur Rahman Vs. Syed Hamid, I.L.R. (1957) M.P. 463*

– **Dower** – 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*

– **De facto Mutawalli** – Power of, to make, arrangements for management of wakf property – *De facto Mutawalli – Can manage property: Abdul Raheem Khan Vs. Mamdu, I.L.R. (1973) M.P. 874*

– **Declaration about acknowledgment of legitimacy of son** – Proves not only legitimacy of son but also establishes marriage: *Mst. Rasool Bi Vs. Mst. Jaitoon Bi, I.L.R. (1979) M.P. 255*

– **Does not debar a Muslim from executing will of his property in favour of any one outside the community** – Custom limiting choice of legatee without affecting the right to execute will – Whether against public policy or against Mohammadan Law: *Illyas Vs. Badshah, I.L.R. (1990) M.P. 210*

– **Gift** – Delivery of possession of the subject matter of gift – An essential condition of validity of gift – Donor not in physical possession of property gifted – Delivery of document to donee and his recognition as owner – Sufficient to constitute delivery of possession: *Munni Bai Vs. Abdul Gani, I.L.R. (1958) M.P. 501 (D.B.)*

– **Gift – Donor in joint possession** – Some overt act by donor necessary to complete gift – *Pardanashin* lady – Burden to prove full understanding of execution, nature and effect of the transaction and where a document not in mother language of executant – Burden to prove that the executant understood the contents still further on the person taking benefit under the document: *Mst. Hussaina Bai Vs. Mst. Zohra Bai, I.L.R. (1959) M.P. 63 (D.B.)*

– **Gift** – Registration not enough in the absence of delivery of possession of property: *Saira Bai Vs. Assistant Custodian of Evacuee Property, M.B. Indore, I.L.R. (1960) M.P. 356*

Marriage – Acknowledgement can be used to prove marriage unless marriage disproved: *Mst. Rasool Bi Vs. Mst. Jaitoon Bi, I.L.R. (1979) M.P. 255*

– **Marriage** – 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*

– **Marriage** – Factum of marriage not proved – No inference that marriage has been disproved: *Mst. Rasool Bi Vs. Mst. Jaitoon Bi, I.L.R. (1979) M.P. 255*

– **Marriage is a contract** – Husband bound to maintain wife so long as she is faithful – Loses right if she willingly leaves husband's protection: *Munawarbai Vs. Sabir Mohammad, I.L.R. (1970) M.P. 125*

– **Marriage** – Person performing Nikah dead – Evidence of witness sufficient – Exact words of offer and acceptance need not be proved – Acknowledgement can be used to prove marriage unless marriage disproved – Factum of marriage not proved – No inference that marriage has been disproved – Declaration about acknowledgment of legitimacy of son – Proves not only legitimacy of son but also establishes marriage: *Mst. Rasool Bi Vs. Mst. Jaitoon Bi, I.L.R. (1979) M.P. 255*

– **Mutawalli** – Power of, to make, arrangements for management of wakf property: *Abdul Raheem Khan Vs. Mamdu, I.L.R. (1973) M.P. 874*

– **Partition** – Mahomedan minor through mother as guardian a party to partition deed – Partition is void and not binding though the arrangement followed for a long period – Does not contemplate formation of share in each single property – Alienation in favour of stranger by a tenant-in-common – Equities to which the alienee is entitled stated: *Tikam Chand Vs. Rahim Khan, I.L.R. (1974) M.P. 298 (D.B.)*

– **Wakf** – Land used for burial from time immemorial – No express dedication – Land is wakf – Grave yard vests in public – Cannot be divested by non-user – Can be transferred by public being public property – Accretion – Mutawalli building on part of Mosque – Building becomes accretion to the property – Mutawalli estopped from adopting any other attitude – Building on a demarcated distinct portion – Portion distinct from the rest of the burial ground – Whole portion cannot be considered to be grave yard: *Mohammad Kasam Vs. Abdul Gafoor, I.L.R. (1966) M.P. 418 (D.B.)*

– **Wakf** – Right of wakf when comes to an end: *The Commissioner of Wealth Tax, M.P., Nagpur and Bhandara, Nagpur Vs. Begum Hashmatbee, I.L.R. (1975) M.P. 742 (D.B.)*

– **Wakf** – Things which indicate that property is given in wakf – When can wakf be inferred: *The Commissioner of Wealth Tax, M.P., Nagpur and Bhandara, Nagpur Vs. Begum Hashmatbee, I.L.R. (1975) M.P. 742 (D.B.)*

Money Lenders Act, C.P. and Berar (XIII of 1934)

– **And Protection of Debtors Act, C.P. and Berar (IV of 1937)** – Do not confer power on anybody to seize account-books of Moneylender: *A.K. Sheikh ali Vs. The State of M.P., I.L.R. (1969) M.P. 914 (D.B.)*

– **Section 2 (vii) (b)** – For exemption from operation of Act, Society not required to be registered in State of MP: *Radhasoami Satsang Sabha, Vs. Shri Hanskumar, I.L.R. (1958) M.P. 523 (D.B.)*.

– **Section 3** – Is Welfare Legislation – Court to adopt beneficial rule of construction – If two views possible, one more beneficial to debtor to be preferred – Section 3 – Requirements mandatory – Non-compliance – Court empowered to re-open entire accounts of dealings and appropriate payments made towards principal amount: *Kapilnath Mistri Vs. Shyamkishorelal Agarwal, I.L.R. (1980) M.P. 1141 (D.B.)*

– **Section 3** – Money lender not complying with provisions of the section not entitled to interest: *Jaisukhlal Dave Vs. M/s Shanker Theatres (Firm), Amrawati, I.L.R. (1982) M.P. 335*

– **Section 3** – Requirements mandatory – Non-compliance – Court empowered to re-open entire accounts of dealings and appropriate payments made towards principal amount: *Kapilnath Mistri Vs. Shyamkishorelal Agarwal, I.L.R. (1980) M.P. 1141 (D.B.)*

– **Section 3** – To be construed narrowly: *Rajaram Bhiwaniwal Vs. Nandkishore, I.L.R. (1976) M.P. 660 (F.B.)*

– **Section 3 and Civil Procedure Code (V of 1908) Section 34** – Respondents not provided information according to the Rules framed under M.P. Money Lenders Act – Not entitled to get interest as mentioned in pronote – Section 34 gives a discretion to the Court for the purpose of determining the rate of interest – But at the time of using such discretion the benevolent aspect of the enactment like Money Lenders Act cannot be ignored: *Daluram Vs. Babulal, I.L.R. (1998) M.P. 760*

– **Sections 3 and 7, Money Lenders Rules and Civil Procedure Code (V of 1908), Section 34** – Provisions of Money Lenders Act are mandatory in nature – Compliance of important provisions of Sections and Rules should be in the spirit of the enactment – Court should not adopt mechanical or casual approach – Provisions are meant for wiping out exploitation of such debtors – Respondents not provided information according to the Rules framed under M.P. Money Lenders Act – Not entitled to get interest as mentioned in pronote – Section 34 of the Code gives a discretion to the Court for the purpose of determining the rate of interest – But at the time of using such discretion the benevolent aspect of the enactment like Money Lenders Act can not be ignored: *Daluram Vs. Babulal, I.L.R. (1998) M.P. 760*,

– **Section 7** – Does not invalidate interest already realised: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660 (F.B.)*

– **Section 7** – Provisions not enacted to benefit debtor – But enacted to penalize creditor: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660 (F.B.)*

– **Section 7** – Scheme of the Section – Section 7(b) – Word “found” in – Meaning of – Enables the Court to re-open the account – Interpretation of Statute – Construction of Welfare legislation – Language of Act clear and unambiguous – Effect to be given to it – Inconvenience and hardship can be no consideration – Doctrine of *satre decisis* – Implication of – Moneylenders Act, C.P. and Berar, 1934 – Section 7(b) and (c) – Word “Due” in – Meaning payable – Words “Interest Due” in – Means interest claimed as due and does not include interest already paid – Provisions not enacted to benefit debtor – But tried narrowly – Section 7 – Does not invalidate interest already realised: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660 (F.B.)*

– **Section 7 (b)** – Word “found” in – Meaning of – Enables the Court to re-open the account: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660 (F.B.)*

– **Section 7 (b) and (c)** – Word “Due” in – Meaning payable: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660 (F.B.)*

– **Section 7(b) and (c)** – Words “Interest Due” in – Means interest claimed as due and does not include interest already paid: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1976) M.P. 660 (F.B.)*

– **Section 7 (c)** – Court, power to re-open the transaction and appropriate the amounts paid towards interest towards principal: *Shrikisan Vs. Mahadeo, I.L.R. (1958) M.P. 516 (D.B.)*

– **Section 8** – “Before this Act Came into force” in – Must be given natural meaning – Refers to the date on which Act was brought into force in particular territory: *Seth Jeewanchand Vs. Smt. Kalibai, I.L.R. (1963) M.P. 468 (D.B.)*

– **Section 11-F** – Meaning of – To be gathered from all provisions of the Act – Prohibits collective carrying on of business and not individual advance of loan: *Smt. Jankibai Vs. Ratan, I.L.R. (1962) M.P. 1 (F.B.)*

– **Section 11-F and 11-H – Providing for imposing penalty** – Not declaring contract illegal or void – Does not amount to prohibition of contract—Intention of legislature to be determined on construction of statute – Object of imposing penalty is to protect general public or a class – Implication is prohibition of contract, if object of imposing the penalty is protection of revenue – Implication is prohibition of contract – Meaning of section 11-F to be gathered from all provisions of the Act – Prohibits collective carrying on of business and not individual advance of loan – Section 11-H prohibits proceeding with suit – Interpretation of Statute – 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 (F.B.)*

– **Section 11-H** – Prohibits proceedings with suit: *Smt. Jankibai Vs. Ratan, I.L.R. (1962) M.P. 1 (F.B.)*

Money Lenders Act, Madhya Bharat (LXII of 1950)

– **Execution of money decree** – Compromise agreement – Execution filed as satisfied – Judgment debtor's default in payment – Decree holder's suit for performance of agreement – Subject – Matter of suit not loan under Money Lenders Act – Incidents of Loan – Recalcitrant defendant not entitled to instalments – Grant of interest by way of damages on decretal amount maximum rate allowed under money Lenders Act viz. 9 p.c.p.a. – Permissibility: *Shivchand Vs. Bhagwan, I.L.R. (1960) M.P. 653 (D.B.)*

– **Sections 9 (1) (b) and 13 (c)** – Account made on old transaction – Pro-note executed for amount due – Suit on such pro-note – Court, power of, to re-open transaction because yearly accounts not sent: *Mangilal Vs. Abdul Hamid, I.L.R. (1966) M.P. 458*

Money Lenders Act, Madhya Pradesh (XIII of 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 – Dones amount to loan: *Parmanand Jain Vs. Firm Babulal Rajendra Kumar Jain, I.L.R. (1980) M.P. 743 (D.B.)*

– **Section 2** – Word “in the regular course of business” in – Signify certain degree of system and continuity: *Parmanand Jain Vs. Firm Babulal Rajendra Kumar Jain, I.L.R. (1980) M.P. 743 (D.B.)*

– **Section 2** – Word ‘Moneylender’ in – Definition of: *Parmanand Jain Vs. Firm Babulal Rajendra Kumar Jain, I.L.R. (1980) M.P. 743 (D.B.)*

– **Section 2 (v)** – Implication of moneylending – Isolated act of particular kind – Does not mean carrying on business of that kind – Occasional advances to friends or relatives or acquaintances or one or several isolated acts of lending money – Does not amount to business of money lending – Trust not a person – Does not fall within the

term moneylender – Trustees acting as such – Included in definition of moneylender – Trust registered as a public trust under M.P. Public Trusts Act, 1951 – Carrying on moneylending business is governed by M.P. Moneylenders Act – Section 2(vii)(b) – Not applicable to trust – Words “any other enactment” in – Refer to enactment for registration of society or association – Doctrine of “ejusdem generic” – Is not a rule of law – Is merely rule of construction to aid in finding out intention of legislature – Section 2(vii) – Loan advanced by trustees of trust registered under M.P. Public Trusts Act – Does not exempt the loan from the definition under this provision – Section 3(1)(a) – Confers discretion on Court in matter of non-compliance – Section 3(1)(b) – Confers no such discretion – Civil Procedure Code – Section 34 – Applicable to mortgage decrees – Order 34, rule 11(a)(i) – Power in Court to give direction for payment of interest at the contract rate from date fixed for redemption upto date of actual payment on aggregate sum due: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1980) M.P., 149 (D.B.)*

– **Section 2 (v)** – Isolated act of particular kind – Does not mean carrying on business of that kind: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1980) M.P., 149 (D.B.)*

– **Section 2 (v)** – Occasional advances to friends or relatives or acquaintances or one or several isolated acts of lending money – Does not amount to business of money lending: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1980) M.P., 149 (D.B.)*

– **Section 2 (vii)** – Loan advanced by trustees of trust registered under M.P. Public Trusts Act – Does not exempt the loan from the definition under this provision – : *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1980) M.P., 149 (D.B.)*

– **Section 2 (vii) (b)** – Not applicable to trust: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1980) M.P., 149 (D.B.)*

– **Section 2 (vii) (b)** – Words “any other enactment” in – Refer to enactment for registration of society or association: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1980) M.P., 149 (D.B.)*

– **Section 3 (1) (a)** – Confers discretion on Court in matter of non-compliance – Section 3(1)(b) – Confers no such discretion: *Rajaram Bhiwaniwala Vs. Nandkishore, I.L.R. (1980) M.P., 149 (D.B.)*

Motor Accidents Claims Tribunal Rules, 1958, Madhya Pradesh

– **Rule 14** – Rule not exhaustive – Not contrary to the rules of practice and procedure governing civil appeals: *Shrimati Manjula Devi Bhuxsta Vs. Shrimati Manjusri Raha, I.L.R. (1970) M.P. 462 (D.B.)*

Motor Parivahan Yano Par Pathkar Ka Udgrahan Adhiniyam, M.P., 1985

– **Section 3, Constitution of India, Article 14** – Equality before law – Constitutional validity of recovery of toll from goods vehicles and not from stage carriages being violative of Article 14 – Held – Reasonable classification – Goods vehicles and stage carriage vehicles are different – Goods vehicles carries heavier weight causing more wear and tear to the roads – Vehicles have been differentiated by virtue of operation undertaken by them – Provision not violative of Article 14 of Constitution: *All India Motor Transport Congress Vs State of Madhya Pradesh, I.L.R. (1994) M.P. 89 (D.B.)*

– **Section 3, Constitution of India, Articles 301, 304** – Levy of Toll Tax – Constitutional validity of Section 3 by which toll tax was levied on transport vehicles of other States challenged – Held – It does not restrict trade, commerce and intercourse and is compensatory in nature – It is for providing facilities for smooth operation of transport business by developing, regulating and constructing roads, bridges etc. – Toll tax levied under Section 3 is not violative of Articles 310, 304 of Constitution of India: *All India Motor Transport Congress Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 89 (D.B.)*

- **Section 3, MP motor Vehicles Taxation Act, 1947, Constitution of India, Article 265, Schedule 7 – Double Taxation** – Tax imposed under Motor Vehicles Taxation Act is for use of vehicle – It falls under entry 57 of list II – Toll Tax levied under Section 3 of Adhiniyam, 1985 is payment realized for benefit taken of roads, bridges, temporary use of land – It falls under entry 59 of list II – State Govt. possesses power to levy tax – Nothing in Constitution to prevent the legislature from exercising its powers under different entries: *All India Motor Transport Congress Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 89 (D.B.)*

Motor Transport Workers Act (XXVII of 1961)

– **Section 3, MP Moter Vehicles Taxation Act, 1997, Constitution** -Section 2 (f) and explanation under section 2 – Conductor cannot be considered to be in employ because he remains in charge of cash: *Gurusharansingh Vs. The Manager, Rewa Transport Service, Rewa, I.L.R. (1970) M.P. 756 (D.B.)*

– **Section 2 (f) and explanation under section 2** – Duty time of Conductor: *Gurusharansingh Vs. The Manager, Rewa Transport Service, Rewa, I.L.R. (1970) M.P. 756 (D.B.)*

– **Section 2 (f) and explanation under section 2** – Keeping of cash – Does not fall within this provision: *Gurusharansingh Vs. The Manager, Rewa Transport Service, Rewa, I.L.R. (1970) M.P. 756 (D.B.)*

– **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”: *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Industrial Court, Madhya Pradesh, Indore, I.L.R. (1975) M.P. 998 (D.B.)*

Motor Vehicle Rules, Madhya Bharat, Samvat 2006, 1949

– **Appeal** – Before coming into force of M.P. Transport Appellate Tribunal (Appeal and Revision) Rules, 1972 – No power in Transport appellate Tribunal to dismiss appeal in default: *Smt. Mustaq Bi Vs. State Transport Appellate Tribunal, Madhya Pradesh, Gwalior, I.L.R. (1976) M.P. 1008 (F.B.)*

– **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 (F.B.)*

– **Rule 80 (a)** – Appeal filed without copy – Order appealed against filed subsequently and within 30 days of receipt of order – Appeal not to be held out of time: *Baluram Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1965) M.P. 923 (D.B.)*

– **Rule 80 (a)** – Limitation for appeal – Limitation starts from date of receipt of order – Appeal filed without copy – Order appealed against filed subsequently and within 30 days of receipt of order – Appeal not to be held out of time – Motor Vehicles Act – Section 48(1) – Permit for return trip granted to one operator – Appellate authority granting single trip permits to two operators – Such modifications permissible – Constitution of India – Article 226 – High Court, jurisdiction of, to evaluate merits: *Baluram Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1965) M.P. 923 (D.B.)*

Motor Vehicles (National Permits) Rules, 1975

– **Rule 6(1)** – Requirement of petitioner affixed to ply vehicle of latest model – Road Transport Authority allotting marks to the petitioner on that account and petitioner became eligible for permit which was granted by R.T.A. – Tribunal misreading record of the case and holding petitioner not eligible for grant of permit – Order of tribunal not sustainable: *Lakhmichand Rathore Vs. The State Transport Appellate Tribunal, Gwalior, I.L.R. (1982) M.P. 865 (D.B.)*

Motor Vehicles (Taxation of Passengers) Act, Madhya Pradesh (XVII of 1959)

– **Casts a duty on the operator for collecting tax** – Section 5, rules 4, 6 and 7 – Provide for submission of return within prescribed time – Section 6, rule 7 – Casts duty to deposit tax amount in government treasury every month – Return submitted but tax not paid – Notice of demand under Section 10, rule 9 can legally be issued without quantifying amount of tax – Section 7 and 8 – Proceedings to be under taken within a period of one year – No jurisdiction in Tax Officer to determine liability for payment of tax to Government – Submission of statement in pursuance of notice in Form No.V – Such statement cannot be treated as a return submitted under Section 5 – Valuable right of the operator – Cannot be taken away by treating statements as return in proceedings started under section 7 – Section 8 – Period of limitation does not apply to passing of an order: *Anant Transport Co. Private Ltd. Raipur Vs. The Transport Commissioner, M.P., I.L.R. (1979) M.P. 18 (D.B.)*

– **Validity** – Effectiveness of the Act dependent on revision of Fare Tables: *Madhya Pradesh Transport Co., Private Ltd., Raipur Vs. The State of M.P., I.L.R. (1963) M.P. 45 (D.B.)*

– **Sections 2 and 4** – Vires of: *Madhya Pradesh Transport Company Private, Ltd. Raipur Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 875 (D.B.)*

– **Section 3** – Refers to tax which operator is required to deposit along with return – Other property of operator cannot be proceeded in recovery of such tax as arrears of land revenue: *M.P. Transport Co. (Private) Ltd., Vs. The Tax Officer-Cum-The Regional Transport Officer, Raipur, I.L.R. (1969) M.P. 198 (D.B.)*

– **Section 5** – Return filed by assessee – Assessment found to be correct – Act does not contemplate passing of order – Assessee has voluntarily to pay tax according to his return – Section 5 and 6 and Motor Vehicles (Taxation of Passengers) Rules, M.P. 1959 – Rules 4 and 7 – Filing or receipt for payment of tax – Is not made a part of the return – Section 10(2) – Tax is first charge on stage carriage and on its accessories and can be recovered by attachment and sale thereof as arrears of land revenue, but cannot be recovered as arrears of land revenue by attachment and sale of other property – Section 7 and 8 – Not applicable to a case of assessee whose return has been found to be correct and who has deposited tax according to his return – In such cases there is no question of escapement of assessment – Section 12 – Notice of demand under section 7, 8 and 9 is only appealable: *Rajnandgaon Roadways Pvt. Ltd. Rajnandgaon Vs. the Tax officer – Cum Regional Transport Officer, Raipur, I.L.R. (1973) M.P. 553 (F.B.)*

– **Sections 5 and 6 and Motor Vehicles (Taxation of Passengers) Rules, M.P. 1959 – Rules 4 and 7** – Filing or receipt for payment of tax – Is not made a part of the return: *Rajnandgaon Roadways Pvt. Ltd. Rajnandgaon Vs. the Tax officer – Cum Regional Transport Officer, Raipur, I.L.R. (1973) M.P. 553 (F.B.)*

– **Section 5, Rules 4, 6, and 7** – Provide for submission of return within prescribed time: *Anand Transport Co. Private Ltd. Raipur Vs. The Transport Commissioner, M.P. I.L.R. (1979) M.P. 18 (D.B.)*

– **Section 6, Rule 7** – Casts duty to deposit tax amount in Government treasury every month: *Anand Transport Co. Private Ltd. Raipur Vs. The Transport Commissioner, M.P. I.L.R. (1979) M.P. 18 (D.B.)*

– **Section 6, Rule 7** – Return submitted but tax not paid – Notice of demand under Section 10, rule 9 can legally be issued without quantifying amount of tax: *Anand Transport Co. Private Ltd. Raipur Vs. The Transport Commissioner, M.P., I.L.R. (1979) M.P. 18 (D.B.)*

– **Sections 7 and 8** – No jurisdiction in Tax Officer to determine liability for payment of tax to Government: *Anand Transport Co. Private Ltd. Raipur Vs. The Transport Commissioner, M.P., I.L.R. (1979) M.P. 18 (D.B.)*

– **Sections 7 and 8** – Not applicable to a case of assessee whose return has been found to be correct and who has deposited tax according to his return – In such cases there is no question of escapement of assessment: *Rajnandgaon Roadways Pvt. Ltd. Rajnandgaon Vs. The Tax officer – Cum Regional Transport Officer, Raipur, I.L.R. (1973) M.P. 553 (F.B.)*

– **Sections 7 and 8** – Proceedings to be undertaken within a period of one year: *Anand Transport Co. Private Ltd. Raipur Vs. The Transport Commissioner, M.P. I.L.R. (1979) M.P. 18 (D.B.)*

– **Sections 7 and 8** – Submission of statement in pursuance of notice in form no. V – Such statement cannot be treated as a return submitted under section 5: *Anand Transport Co. Private Ltd. Raipur Vs. The Transport Commissioner, M.P., I.L.R. (1979) M.P. 18 (D.B.)*

– **Sections 7 and 8** – Valuable right of the operator – Cannot be taken away by treating statement as return in proceedings started under section 7: *Anand Transport Co. Private Ltd. Raipur Vs. The Transport Commissioner, M.P., I.L.R. (1979) M.P. 18 (D.B.)*

– **Section 8** – Period of limitation does not apply to passing of an order: *Anand Transport Co. Private Ltd. Raipur Vs. The Transport Commissioner, M.P., I.L.R. (1979) M.P. 18 (D.B.)*

– **Sections 8 and 9** – In proceedings under section 9 – Same procedure as provided in Section 8 should be followed: *Sarguja Raigarh Roadways (Pvt.) Ltd. Ambikapur Vs. The Tax Officer (R.T.O.) Bilaspur, I.L.R. (1978) M.P. 857 (D.B.)*

– **Sections 8 and 9** – Ingredients of Section 8 not to be imported in Section 9: *Sarguja Raigarh Roadways (Pvt.) Ltd. Ambikapur Vs. The Tax Officer (R.T.O.) Bilaspur, I.L.R. (1978) M.P. 857 (D.B.)*

– **Section 9** – Fixes no limitation for imposition of penalty for non-payment of tax: *Sarguja Raigarh Roadways (Pvt.) Ltd. Ambikapur Vs. The Tax Officer (R.T.O.) Bilaspur, I.L.R. (1978) M.P. 857 (D.B.)*

– **Section 10** – Notice of demand without assessment – Validity: *Raipur Transport Co., Private Ltd., Raipur Vs. Shri M.P. Singh, Deputy Transport Commissioner, M.P.Gwalior, I.L.R. (1970) M.P. 260 (D.B.)*

– **Section 10** – Scope of – Sub-section (2) – Not restricted to the tax determined under section 7 or 8 or penalty under section 9 – Section 3 – Refers to tax which operator is required to deposit along with return – Other property of operator – Cannot be proceeded in recovery of such tax as arrears of land revenue – Constitution of India – Article 20 – Recovery of tax as arrears of land revenue – Cannot be equated with commission of offence or with imposition of penalty: *M.P. Transport Co. (Private) Ltd., Vs. The Tax Officer-Cum-The Regional Transport Officer, Raipur, I.L.R. (1969) M.P. 198 (D.B.)*

– **Section 10 (2)** – Not restricted to the tax determined under section 7 or 8 or penalty under section 9: *M.P. Transport Co. (Private) Ltd., Vs. The Tax Officer-Cum-The Regional Transport Officer, Raipur, I.L.R. (1969) M.P. 198 (D.B.)*

– **Section 10 (2)** – Tax is first charge on stage carriage and on its accessories and can be recovered by attachment and sale thereof as arrears of land revenue, but cannot be recovered as arrears of land revenue by attachment and sale of other property: *Rajnandgaon Roadways Pvt. Ltd. Rajnandgaon Vs. The Tax officer – Cum Regional Transport Officer, Raipur, I.L.R. (1973) M.P. 553 (F.B.)*

– **Section 12** – Notice of demand under sections 7, 8 and 9 is only appealable: *Rajnandgaon Roadways Pvt. Ltd. Rajnandgaon Vs. The Tax officer – Cum Regional Transport Officer, Raipur, I.L.R. (1973) M.P. 553 (F.B.)*

– **Section 12** – Provides appeal against notice of demand – Constitution of India – Article 226 – Rule of undue delay is not inflexible rule – Where principle involved, writ can be issued inspite of delay – Motor Vehicles (Taxation of Passengers) Act, Madhya Pradesh, 1959 – Section 9 – Fixes no limitation for imposition of penalty for

non-payment of tax – Ingredients of Section 8 not to be imported in Section 9 – Principle of natural justice – Not giving of notice and not giving opportunity for hearing – Violates principle of natural justice – Motor Vehicles (Taxation of Passengers) Act, Madhya Pradesh, 1959 – Sections 8 and 9 – In proceedings under section 9 – Same procedure as provided in Section 8 should be followed – Constitution of India – Article 226 – Existence of alternative remedy – No bar to exercise of prerogative powers – Order Prima facie illegal – Granting of relief is sound exercise of judicial discretion: *Sarguja Raigarh Roadways (Pvt.) Ltd. Ambikapur Vs. The Tax Officer (R.T.O.) Bilaspur, I.L.R. (1978) M.P. 857 (D.B.)*

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– **And Motor Vehicles Act (LIX of 1988)**, as amended – Appeal against award of Motor Accident Claims Tribunal – Section 147 of the 1988 Act – Liability of insurer – Insurer charging higher amount of premium raised the amount of liability per passenger to Rs. 1,00,000.00 – Addenda to the policy – Signed only by officers of the Insurer unilaterally – Plea that the liability in the sum mentioned in the policy was total liability – Not tenable – Appellant's own document showing raising of liability charging higher premium unilaterally – Tribunal rightly held the extent of liability of insurer to Rs. 1,00,000/- per passenger and not Rs. 15,000.00 only – Award of the M.A.C.T. confirmed: *New India Assurance Co. Ltd., Indore Vs. Smt. Jassi Bai, I.L.R. (2000) M.P. 1280*

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completion of enquiring licence of Driver cannot be assumed to be bogus – Evidence Act, Indian, 1872 – 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 – Cross appeal for enhancement – Victim suffered amputation of left hand from shoulder and left leg shortened by ½ inch – Advised to undergo another operation – Amount of compensation enhanced to Rs. 70,000/-: *New India Assurance Company Ltd., Vs. Motilal*, I.L.R. (2000) M.P. 1142 (D.B.)

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– **Chapter IV-A** – Scheme under – Has force of law: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority Rewa, I.L.R. (1973) M.P. 440 (D.B.)*

– **Chapter IV-A** – Scheme under – Has force of law – Scheme framed by order of Government – Is also an order – Has effect notwithstanding inconsistency with anything in Chapter IV – Its effect – Route or area in Chapter IV-A, or in any scheme Means actual road over which omnibuses run – A notified route falling within the scheme – Falls within two points of the route – Approved scheme cannot be avoided – Cannot have the colour of new route: *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Indore, I.L.R. (1973) M.P. 410 (D.B.)*

– **Chapter IV-A**, Sections 68-B and 68-F – Scheme No. 50 – Is of complete exclusion subject to existing partially overlapping permits being allowed to continue till their expiry – After expiry of permits – Applications for renewal of these permits not entertainable – Scheme under Chapter IV-A – Has force of Law – Order sanctioning scheme – Has effect notwithstanding anything inconsistent in Chapter IV – Route or area in Chapter IV-A or in scheme – Does not mean notional line between two points, but actual road over which buses run – A permit on sector of road covered by the scheme – Cannot be granted even with restriction – Constitution of India – Article 226 – Alternative remedy – No bar to exercise jurisdiction in appropriate cases – Order patently in excess of jurisdiction – High Court can issue writ under this provision: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority Rewa, I.L.R. (1973) M.P. 440 (D.B.)*

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– **Regional Transport Authority, Jurisdiction of, to defer consideration of pending application for stage** – Carriage permit and to invite fresh application of Constitution of India – Article 226 – Objection not raised before Appellate Authority – Can be raised in writ petition if it goes to the root of the matter: *Messrs Suganchand Ramnarain Ashok Nagar Vs. State Transport Appellate Authority M.P., Motimahal, Gwalior, I.L.R. (1967) M.P. 46 (D.B.)*

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– **Section 2 (3)** – No right to pick up passengers from intervening places where permit is contract carriage permit: *Sudershan Transport Service (Private) Ltd., Bilaspur Vs. The State Transport Appellate Authority, Madhya Pradesh, Gwalior, I.L.R. (1970) M.P. 245 (D.B.)*

– **Section 2 (8)** – Dumper is a motor Vehicle: *K.K. Jain Vs. Smt. Masroor Anwar, I.L.R. (1989) M.P. 643 (D.B.)*

– **Sections 2 (8), 95 (1) (b), 110-B, 110-CC and Motor Vehicles Rules M.P. 1974, Rule 111** – Application for compensation – Negligence of driver – Burden of proof – Extent of, on claimants – Duty of care to be taken by driver – Facts disclosing want of reasonable care on the part of driver Inference – Application of maxim *res ipsa loquitur* – Burden of proof on driver – Liability of insurance company – Insured vehicle used for carriage of goods – Owner of goods traveling with vehicle – Death of person as a result of accident – Insurance company liable for compensation – Quantum of compensation – Mode of assessment – Interest – Award of, on the amount of compensation: *Sardar Mahendra Pal Singh Vs. Prakash Chand Goyal, I.L.R. (1986) M.P. 259*

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– **Section 2 (19) and Motor Vehicles Act (LIX of 1988), Section 2(30)** – Definition clause – ‘Owner’ – Liability – At the relevant time vehicle in possession of hire purchaser and being plied and driven through his driver – Hire purchaser has to be taken to be ‘Owner’ and liable to pay the compensation though not registered owner: *Bhagwandas Tiwari Vs. Ratni Bai, I.L.R. (2000) M.P. 268 (D.B.)*

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– **Section 2 (28-A)** – Both termini outside the nationalised route – But small portion overlapping on nationalisation route – Such route saved from nationalisation if draft scheme is approved: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. State Transport Appellate Tribunal, Gwalior, I.L.R. (1981) M.P. 32 (D.B.)*

– **Section 2 (28-A)** – Definition of “route” – Meaning of: *Damodardas Sitaldas Vs. Regional Transport Authority, Rewa, I.L.R. (1978) M.P. 619 (F.B.)*

– **Section 3 (1) as amended** – Tax levied under – Not beyond legislative competence of legislature and not repugnant to Articles 19(1)(g), 301 and 304 of Constitution of India – Section 3(1-A) – Confers authority on operator to collect tax – Resort to Section 43 of Act is unnecessary – Constitution of India – Article 20(1) – “Law in force” in – Means law in fact in existence and operation at the time of commission of act charged as an offence – Provision of Section 3(1-A) not providing for retrospective penalization – Not hit by Article 20(1) – Motor Vehicles (Taxation of Passengers) Amendment and Validation Act, Madhya Pradesh, 1962 – Section 2 and 4 – Vires of: *Madhya Pradesh Transport Company Private, Ltd. Raipur Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 875 (D.B.)*

– **Section 3 (1-A)** – Confers authority on operator to collect tax – Resort to Section 43 of Act is unnecessary: *Madhya Pradesh Transport Company Private, Ltd. Raipur Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 875 (D.B.)*

– **Section 3 (1-A)** – Provision thereof not providing for retrospective penalization – Not hit by article 20(1): *Gowardhan Vs. Smt. Gangabai, I.L.R. (1964) M.P. 83 (D.B.)*

– **Sections 5, 42, 96 and 110-D** – Appeal against award and cross appeal for enhancement of compensation – Goods vehicle carrying passengers – Accident Resulting in death – Sections 96 and 103 – Onus of proving breach of terms of the policy is on the insurer – Section 42 – Permit of vehicle not produced – Court not in a position to know terms of permit – Unless fault of insured is proved insurer cannot escape liability – Rules 5, 111(2)(1) of the Motor Vehicles Rules 1974 – Goods Vehicles are allowed to carry passengers including six additional persons subject to provision of 3600 sq.

centimeter area for each passenger – Section 103 – Vehicle insured with the appellant – Alleged transfer of vehicle by the Registered Owner – No evidence on record to support such plea – In absence of any evidence it has to be held that the owner of the vehicle is the registered owner – Insurer cannot be absolved of its liability on ground that there was no privity between it and the alleged transferee – Earning of deceased from evidence on record re-assessed at Rs. 450/- per month – Deducting 1/3rd towards personal expenditure and applying multiplier of 14 award enhanced with 12% interest from the date of application – Award modified accordingly: *The National Insurance Co. Ratlam Vs. Uma Devi*, I.L.R. (2000) M.P. 502

– **Section 22** – Person using his private car for carrying his own goods for sale – Does not contravene the provisions of the Act – Section 32 – Private car used regularly as a vehicle for carrying even his own goods – Section 32 is contravened – Section 22, 32 and 38 – Circumstances in which provisions are contravened: *State of M.P. Vs. Pannalal*, I.L.R. (1969) M.P. 506

– **Sections 22, 32 and 38** – Circumstances in which provisions are contravened: *State of M.P. Vs. Pannalal*, I.L.R. (1969) M.P. 506

– **Section 31** – Heirs of deceased insured are entitled to benefit of Insurance Policy: *Mst. Laliya Bai Vs. Ramesh & Meshi*, I.L.R. (1990) M.P. 377

– **Section 31** – Liability of Insurance company – Death of insured – Vehicle passes to his heirs by operation of law – Heirs of deceased insured are entitled to benefit of Insurance Policy: *Mst. Laliya Bai Vs. Ramesh & Meshi*, I.L.R. (1990) M.P. 377

– **Sections 31, 42 (1) and 59 (1)** – Do not make partnership for carrying on transport business illegal: *Messrs Dayabhai and Co., Barwani Vs. The Commissioner of Income-Tax*, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1968) M.P. 495 (D.B.)

– **Sections 31, 96 (2), 103A, 110A, 110B** – Liability of Registered owner, real owner and Insurance Company – Deceased lost his wife in truck accident – Real owner impleaded as party in claim petition – Application for impleading registered owner and Insurance Company filed at fag end of trial – Application rejected by Tribunal – Award passed against real owner – Held – Tribunal committed error in rejecting application for impleading registered owner and Insurance Company – Real Owner cannot absolved of his individual and joint liability of payment of compensation – Matter remanded back with direction to implead registered owner and Insurance Company and to decide their joint liability for payment of compensation after affording opportunity to newly impleaded parties: *Har Charan Singh Vs. Smt. Turza Bai Wd/O Devaji Kunbi*, I.L.R. (1994) M.P. 168

– **Section 32** – Private car used regularly as a vehicle for carrying even his own goods – Section 32 is contravened: *State of M.P. Vs. Pannalal, I.L.R. (1969) M.P. 506*

– **Sections 42 and 123** – Offence of over-loading in the passenger bus – Owner of the bus not present – Owner if liable to be convicted – Criminal Trial – 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*

– **Section 43 (i) (iii)** – Scope of: *Raipur Transport Company Private Ltd., Raipur Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 822 (D.B.)*

– **Section 43 (1), Proviso** – Proposed increase in Bus fare published in M.P. Gazette, Objections and suggestions invited and date fixed for hearing – Requirements of Section 43(1) complied with – Proposed increase due to rise in cost of running and maintenance – Increase justified: *Upbhokta Hitchintak Samiti Vs State of M.P., I.L.R. (1988) M.P. 540 (D.B.)*

– **Section 44** – Proviso – Consistent to similar proviso to section 68 of new Act: *Gandhi Travels Churhat Vs. Secretary, Regional Transport Authority, Rewa, I.L.R. (1990) M.P. 84 (D.B.)*

– **Section 44** – Requirements of a valid notification under – Omission of section in the notification under which notification is issued – Does not invalidate notification – Authority validity appointed under – Authority exercises powers and functions conferred by Chapter IV – Constitution of India – Articles 226 and 227 – Point of jurisdiction not raised before the authority – That point cannot be raised in the proceedings under this provision: *Janta Motor Transport Co-Operative Society, Ltd, Durg Vs. State Transport Appellate Authority, M.P., Gwalior, I.L.R. (1965) M.P. 271 (D.B.)*

– **Sections 44 (3) (b) and (4)** – Authorises State Transport Authority to perform function of granting permit for inter-regional route – Does not authorize withdrawal of power from one regional authority and conferring it on another – Words “coordinate and regulate” – Do not include deprivation – Duty to dispose of application – Is judicial function – Cannot be regulated or coordinated by issue of direction of State Transport Authority: *Sher Singh Vs. The State Transport Authority, Gwalior I.L.R. (1973) M.P. 64 (D.B.)*

– **Sections 44 (3) (b) and (4)** – Does not authorize withdrawal of power from one regional Authority and conferring it on another: *Sher Singh Vs. The State Transport Authority, Gwalior, I.L.R. (1973) M.P. 64 (D.B.)*

– **Sections 44 (3) (b) and (4)** – Duty to dispose of application – Is judicial function – Cannot be regulated or coordinated by issue of direction to State Transport Authority: *Sher Singh Vs. The State Transport Authority, Gwalior, I.L.R. (1973) M.P. 64 (D.B.)*

– **Sections 44 (3) (b) and (4)** – Words “Coordinate and regulate” – Do not include deprivation: *Sher Singh Vs. The State Transport Authority, Gwalior, I.L.R. (1973) M.P. 64 (D.B.)*

– **Sections 44, 62 and 68 and Motor Vehicles (Amendment) Act, (LIX of 1988), Sections 68 and 217(2) (a)** – Section 44 – Appointment of Regional Transport Authority made under – Is valid in view of Section 217 (2) (a) if not inconsistent with provisions of section 68 – Word ‘inconsistency’ – Meaning of – Section 44, proviso – Consistent to similar proviso to section 68 of New Act – Section 62 – Grant of temporary permits under – Delegation of authority – Validity of, on enforcement of new Act – Motor Vehicles Act, 1939, Section 68 and Motor Vehicles Rules, 1974 – Limitation on powers of delegation by Regional Transport Authority: *Gandhi Travels Churhat Vs. Secretary, Regional Transport Authority, Rewa, I.L.R. (1990) M.P. 84 (D.B.)*

– **Section 45, Proviso II** – Application for permit for inter-State route covered by reciprocal agreement and falling within the regions of Regional Transport Authority, Bhopal – Principal place of business of applicants – Main consideration for grant of permit – Reciprocal agreement has not overriding effect on provision of the Act: *Mathuradas Regular Motor Service, Betul Vs. The State Transport Authority, M.P., Gwalior, I.L.R. (1965) M.P. 197 (D.B.)*

– **Section 45, Proviso II** – Principal place of business of applicants – Main consideration for grant of permit: *Mathuradas Regular Motor Service, Betul Vs. The State Transport Authority, M.P., Gwalior, I.L.R. (1965) M.P. 197 (D.B.)*

– **Section 45, Second proviso** – Word “resides” in – Meaning of: *Ratanlal Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1973) M.P. 42 (D.B.)*

– **Sections 45, 57(8), 63, 64 and 64-A** – Appeal by person providing for transport facilities and objecting to the variation in the conditions of permit – Maintainability – Person filing objections out of time – No right to file an appeal – Revision maintainable – if filed in time – Application for variation – Not an application for grant of new permit, but has to be treated as such – Variation in the permit by including new route lying outside of Regional Transport Authority – Jurisdiction of Regional Transport Authority to make such variation: *Jasaram Vs. The State Transport Authority M.P., Gwalior, I.L.R. (1960) M.P. 774 (D.B.)*

– **Sections 46, 54 and 62** – Application for new permit for any particular route or area – Temporary permit for same route during pendency of application not to be

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– **Section 47, and Motor Vehicles Rules M.P., 1977** Rules 78-A and 78-B – Amendments in Section 47 and Rules 78-A and 78-B – Are not ultra vires on grounds of discrimination and want of guidelines: *Kanhaiyalal Lunaji Padiyar Vs. Regional Transport Authority, Indore, I.L.R. (1987) M.P. 470 (D.B.)*

– **Section 47** – Application for permit – Public interest to be main consideration in the decision – Giving of timings – Meant to facilitate travelers and not for favoring one operator against another: *Gajadhar Singh Kushwah Vs. The State Transport Appellate Authority Madhya Pradesh, Gwalior, I.L.R. (1966) M.P. 732 (D.B.)*

– **Section 47, as amended by M.P. Act No. 47 of 1978 as Section 47 (1 A to 1 G), Motor Vehicles Rules, M.P., 1977**, Rules 78-A and 78-B and Constitution of India, Articles 46, 15(4) and 14 – Amendments in Section 47 and Rules 78-A and 78-B – Are not ultra vires on grounds of discrimination and want of guidelines – Rules 78-A and 78-B – Not locking guiding principles for implementation – Reservation of permits for Scheduled Castes, Scheduled Tribes, Society and economically weaker section – Such reservation is not discriminatory with general classes of society and is constitutional: *Kanhaiyalal Lunaji Padiyar Vs. Regional Transport Authority, Indore, I.L.R. (1987) M.P. 470 (D.B.)*.

– **Section 47** – Bad operational record of a partnership firm – Whether relevant when any partner or partners apply for grant of permit in their individual capacity: *Mohd. Hafeez Khan Vs. State Transport Appellate, Gwalior, I.L.R. (1979) M.P. 196 (F.B.)*

– **Section 47** – Envisages two stages of enquiry: *Madanmohan Vs. State Transport Appellate Tribunal, M.P. Gwalior, I.L.R. (1977) M.P. 409 (D.B.)*

– **Section 47** – Grant of stage carriage permit – Relevant considerations – Bad operational record of a partnership firm – Whether relevant when any partner or partners apply for grant of permit in their individual capacity – Partnership – Legal connotation of: *Mohd. Hafeez Khan Vs. State Transport Appellate, Gwalior, I.L.R. (1979) M.P. 196 (F.B.)*

– **Section 47** – Things to be considered for grant of permit – Service to public should be important factor for consideration – Section not exhaustive of matters required to be considered – Setting aside of grant of permit – Renewal thereof automatically set aside – Constitution – Article 226 – Proceedings in *certiorari* – Not proceedings in the nature of appeal – Inferences from material on record – Not liable to be disturbed: *Nazirbhai Vs. Phoolchand, I.L.R. (1963) M.P. 238 (D.B.)*

– **Section 47 (3)** – Has no application to inter-regional route – Section 57(8) – Application for extension of an existing permit amounts to variation of conditions of permit – Provides that such application shall be treated as application for grant of a new permit – Fiction created by the provision is only for purposes of procedure – Cannot be extended for applying section 45 to an application to vary the conditions of permit – Such application has to be made to an authority granting the permit – Section 60 – Confers no jurisdiction to cancel, suspend the permit or to reduce the route or the area – Section 64(1) (d) – Application for countersignature refused by Regional Transport authority – Appeal lies to appellate authority – Section 57(8) – Inclusion of a new route of 108 K.M. – Not a little change – Does not amount to variation of condition of permit – Section 48(3)(xxi), Proviso – Shows that variation by including a new route – Is not limited to a little change of the original route – Section 57(a) – Does not put any limit upon new route – Limit cannot be put by construing the word “vary” in narrow sense – Limit of 24 K.M. put by proviso to clause XXI of Section 48(3) – Not to be bodily lifted and engrafted in Section 57(8): *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1979) M.P. 325 (D.B.)*

– **Section 47 (3)** – If limit fixed under section 47 (3) – Grant of permit likely to exceed that limit – Regional Transport Authority can refuse permit *in limine*: *Madanmohan Vs. State Transport Appellate Tribunal, M.P. Gwalior, I.L.R. (1977) M.P. 409 (D.B.)*

– **Section 47 (3)** – Issue of number of stage carriage permits – May be determined in the context of new route: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974) M.P. 197 (F.B.)*

– **Section 47 (3)** – Procedure prescribed in – Applicable not only to new route but also to existing route: *Rambharose Anant Prasad, Bus Operator, Rewa Vs. State Transport Appellate Authority, Gwalior, I.L.R. (1977) M.P. 90 (F.B.)*

– **Section 47 (b)** – Application for permit for direct service between two places – Transport facilities between intermediate stations not conclusive – Advantages to public from direct service to be considered in determining grant of permit: *Public Transport Company, Seoni Vs. The State Transport Authority, M.P., I.L.R. (1962) M.P. 54 (D.B.)*

– **Section 47 (B)** – Part of route served by stage carriage – Not conclusive on question of scope for through service on route – Fact of route being circuitous or existence of service between two stations though shorter – Do not show absence of scope for through service – Fast running long distance train with insufficient accommodation and inconvenient timings – Need for passenger service fairly obvious: *Messrs Sheelchand & Co., Ashoknagar Vs. The State Transport Appellate authority, Madhya Pradesh, I.L.R. (1964) M.P. 66 (D.B.)*

– **Sections 47 and 48** – Conditions enumerated in, are meant for the benefit of the general public: *Sheel Chand & Co., Ashoknagar Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1965) M.P. 65 (D.B.)*

– **Sections 47 (3) and 57** – No order under section 47 (3) passed – Application made for a new route – Cannot be considered under Section 57 without calling fresh application: *Anand Ram Vs. The Regional Transport Authority, Rewa, I.L.R. (1973) M.P. 191 (F.B.)*

– **Sections 47 (3) and 57 (2)** – No notification inviting application for permit – Ceiling limit in respect of route under Section 47 (3) – Application if made would be valid and proper: *Madanmohan Vs. State Transport Appellate Tribunal, M.P. Gwalior I.L.R. (1977) M.P. 409 (D.B.)*

– **Sections 47, 48 and 64 and Rules under Section 68** – Regional Transport Authority exercising powers under – Acts in *Quasi-Judicial* capacity – Tribunal has to give reasons for decision – Civil Procedure Code – Applicability of, to proceedings under Chapter 4 of Motor Vehicles Act – Interpretation of Statute – Effect of rule to be determined on fair and reasonable construction of words used – 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 – In construing provisions regarding limitation – Equitable considerations out of place – Strict grammatical meaning of words to be seen – Section 64 and Motor Vehicles Rules, C.P. and Berar – Rules 73 – Starting point of limitation for appeal – Is date of receipt of order: *M/s Bundelkhand Motor Transport Company, Nowgaon Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1969) M.P. 901 (F.B.)*

– **Section 48** – Permit not granted – No question of its renewal arises: *Sardar Jogindersingh Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1967) M.P. 197 (D.B.)*

– **Section 48** – Regional Transport Authority, Power of, to impose condition regarding year of manufacture of carriage – Sections 47 and 48 – Conditions enumerated in, are meant for the benefit of the general public: *Sheelchand and Co., Ashoknagar Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1965) M.P. 65 (D.B.)*

– **Section 48 (1)** – Permit for return trip granted to one operator – Appellate Authority granting single trip permits to two operators – Such modifications permissible: *Baluram Vs. The State Transport Appellate Authority, Gwalior I.L.R. (1965) M.P. 923 (D.B.)*

– **Section 48 (1) and Rule 50 (b)** – Confers power on Regional Transport Authority to grant permit with modification as deemed fit – Power not to be used to

circumvent express prohibition contained in proviso to sub-section (1) of Section 48 – Authority not possessing jurisdiction initially – Cannot get jurisdiction conferred by making amendment in application – Appellate authority, functions and powers of, can exercise only those powers which original authority could exercise: *Madhya Pradesh State Road Transport Corporation, Bairagarh, Bhopal Vs. State Transport Appellate Authority, Madhya Pradesh, Gwalior, I.L.R. (1964) M.P. 687 (D.B.)*

– **Section 48 (3), Clause XXI, Proviso** – Limit of 24 K.M. Put by the proviso – Not to bodily lifted and engrafted in Section 47(8): *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1979) M.P. 325 (D.B.)*

– **Section 48 (3)** – Powers of Regional Transport Authority to vary timings, while granting route permits – Considerations – Words ‘Just ahead’ and ‘ahead’ – Distinction between – Narrow gap of 15 to 40 minutes is ‘ahead’ and not ‘Just ahead’: *Ramswaroop Shrivastava Vs. State Transport Appellate Tribunal, M.P., I.L.R. (1987) M.P. 686 (D.B.)*.

– **Section 48 (3) (iii)** – Fixing of time a quasi-judicial act – Cannot be delegated to Secretary in absence of rules: *Seth Kishorilal Agarwal, Vs. Secretary, RTA, Rewa, I.L.R. (1959) M.P. 719 (D.B.)*

– **Section 48 (3) (xxi), Proviso** – Shows that variation by including a new route – Is not limited to a little change of the original route: *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1979) M.P. 325 (D.B.)*

– **Sections 48 (3), 59 (3) and 64 (b)** – Conditions mentioned in section 59(3) and not exhaustive – Time mentioned in time table attached to a permit – Is a condition of the permit – Order changing timings – Order is appealable: *The New Jabalpur Transport (Private) Ltd. Jbp. Vs. The State Transport Appellate Authority, M.P., Gwalior, I.L.R. (1961) M.P. 247 (D.B.)*

– **Section 49** – Things to be considered for grant of permit: *Madhya Pradesh Transport Co. Private Ltd., Raipur Vs. The Regional Transport Authority Raipur, I.L.R. (1964) M.P. 346 (D.B.)*

– **Section 50** – Holding of contract carriage permit “in the region” – Sufficient for bringing person under this section: *Madhya Pradesh Transport Co. Private Ltd., Raipur Vs. The Regional Transport Authority Raipur, I.L.R. (1964) M.P. 346 (D.B.)*

– **Sections 50 and 57 (3) and (6)** – Contemplates giving of notice to persons and authorities: *Madhya Pradesh Transport Co. Private Ltd., Raipur Vs. The Regional Transport Authority Raipur, I.L.R. (1964) M.P. 346 (D.B.)*

– **Section 51** – Does not authorize Regional Transport Authority to impose condition: *Sudershan Transport Service (Private) Ltd., Bilaspur Vs. The State Transport Appellate Authority, Madhya Pradesh, I.L.R. (1970) M.P. 245 (D.B.)*

– **Section 51** – Holding of stage carriage permit for the same route – No ground for excluding operation of contract carriage: *Sudershan Transport Service (Private) Ltd., Bilaspur Vs. The State Transport Appellate Authority, Madhya Pradesh, I.L.R. (1970) M.P. 245 (D.B.)*

– **Section 51** – Possibility of misuse – No ground for refusing permit – Holding of stage carriage permit for the same route – No ground for excluding operation of contract carriage – Does not authorize Regional Transport Authority to impose condition – Section 2(3) – No right to pick up passengers from intervening places where permit is contract carriage permit: *Sudershan Transport Service (Private) Ltd., Bilaspur Vs. The State Transport Appellate Authority, Madhya Pradesh, I.L.R. (1970) M.P. 245 (D.B.)*

– **Section 57** – Makes no distinction between old and new routes: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974) M.P. 197 (F.B.)*

– **Section 57** – Procedure laid down by the Section – Not applicable to a case of counter – Signature when the permits are granted under an agreement between the States: *Abdul Majid Vs. The State Transport Authority, I.L.R. (1974) M.P. 96 (D.B.)*

– **Section 57 (a)** – Does not put any limit upon new route – Limit cannot be put by construing the word “vary” in narrow sense: *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1979) M.P. 325 (D.B.)*

– **Section 57 (2)** – Authority of Regional Transport Authority to grant fresh state carriage permit to new private permit holders: *M/s. M.M. Asati And Brothers, Lamta Vs. State Transport Appellate Authority, M.P., Gwalior, I.L.R. (1977) M.P. 894 (D.B.)*

– **Section 57 (2)** – Ceiling order in operation when application made – Subsequently ceiling pierced – Application made prior to piercing not maintainable: *Rameshwar Dayal Sharma Vs. Regional Transport authority, Gwalior, I.L.R. (1974) M.P. 936 (D.B.)*

– **Section 57 (2)** – Even in respect of existing route, Application can be invited – Power cannot be exercised so as to interfere with right of applicants who have made applications under section 57 (2) – Applications to be considered in accordance with Section 57: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974) M.P. 197 (F.B.)*

– **Section 57 (2)** – If fresh applications are not invited in advance – No, fresh Applications can be invited after applications have become ripe for consideration: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974) M.P. 197 (F.B.)*

– **Section 57 (2)** – Issue of notification under section 57 (2) – Not condition Precedent for application for permit: *Madanmohan Vs. State Transport Appellate Tribunal, M.P. Gwalior, I.L.R. (1977) M.P. 409 (D.B.)*

– **Section 57 (2)** – Once application is published – It cannot be kept pending for inviting fresh applications – Same procedure applies to a case of renewal: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974) M.P. 197 (F.B.)*

– **Section 57 (2)** – Route excluded from being taken over under operation of the scheme – Route not in exclusive operation of an operator – Authority of Regional Transport Authority to grant fresh stage carriage permit to new private permit holders – Not restricted: *M/s M.M. Asati And Brothers, Lamta Vs. State Transport Appellate Authority M.P., Gwalior, I.L.R. (1977) M.P. 894 (D.B.)*

– **Section 57 (3)** – Procedure laid down in Section 57 is mandatory – Authority bound to follow procedure while dealing with application made under Section 57 (2) – Section 47 (3) – Issue of number of stage carriage permits – May be determined in the context of new route – Section 57 – Makes no distinction between old and new routes – Section 57(2) – Even in respect of existing route, applications can be invited – Power cannot be exercised so as to interfere with right of applicants who have made applications under Section 57 (2) – Applications to be considered in accordance with Section 57 – If fresh applications are not invited in advance – No fresh applications can be invited after applications have become ripe for consideration – Once application is published, it cannot be kept pending for inviting fresh applications – Same procedure applies to a case of renewal: *Bipatlal Jaiswal Vs. Regional Transport Authority, Jabalpur, I.L.R. (1974) M.P. 197 (F.B.)*

– **Section 57 (5) and (7)** – Does envisage dismissal for default – Act contains no provision for restoration of the application – Authority does not possess inherent power except when given by statute – Section 64 and Rule 73 – Circumstances in which the case can be remanded to Regional Transport Authority by the appellate authority – Appeal – Is a continuation of proceedings before Regional Transport Authority – Rule 73 (c) – Does not exclude power to order remand – Power of remand is inherent in every appellate authority: *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior, I.L.R. (1972) M.P. 218 (F.B.)*

– **Section 57(7) and Motor Vehicles Rules, 1949, Rule 80(a)** – Day on which limitation for filing appeal starts: *Messrs Dhanrajmal And Co. Indore Vs. The State Transport Appellate Authority, MP Gwalior, I.L.R. (1963) M.P. 875 (D.B.)*

– **Section 57 (8)** – Extension of route by 19 miles – Extension cannot be said to be a title change – Extension of permit not permissible: *Abdul Mohi Siddiqui Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1972) M.P. 244 (D.B.)*

– **Section 57 (8)** – Scope of – Application for modification of condition in permit by including new route rejected – Appeal – Right of appeal to be expressly provided by statute – Section 64 – Procedure for disposal of application for modification of condition in the permit by inclusion of a route – Provision of appeal cannot be implied – No provision in Act for appeal against order refusing to modify condition of a permit: *Hazarilal Gupta Vs. The State Transport Appellate Authority, M.P., I.L.R. (1974) M.P. 84 (D.B.)*

– **Section 57 (3)** – Not attracted: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

– **Section 57 (8)** – Application for extension of an existing permit amounts to variation of conditions of permit – Provides that such application shall be treated as application for grant of a new permit: *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1979) M.P. 325 (D.B.)*

– **Section 57(8)** – Application to vary the conditions of permit – Has to be made to an authority granting the permit: *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1979) M.P. 325 (D.B.)*

– **Section 57 (8)** – Fiction created by the provision is only for purposes of procedure – Cannot be extended for applying Section 45 to an application to vary the conditions of permit: *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1979) M.P. 325 (D.B.)*

– **Section 57 (8)** – Inclusion of a new route of 108 K.M. – Not a title change – Does not amount to variation of condition of permit: *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1979) M.P. 325 (D.B.)*

– **Sections 57, 58, 43 (I), 45 and 63 (3) and Rule 61 (a) and States Re-organization Act, Section 110** – Route falling within jurisdiction of two states – Route allotted to one State according to agreement – Application for renewal made to the Regional authority of the State to which it is allotted – No power in Regional Transport Authority to refuse – Inquiry contemplated by section 58 to be made – Application valid at least for obtaining counter-signature – Applicant for renewal living in jurisdiction of Regional authority of the Transferor State – Jurisdiction of the said authority to grant

renewal – Determination of renewal application – Same procedure as for grant of fresh permit to be followed: *The S.H. Motor Transport Company Nagpur Vs. The Regional Transport Authority, Bhopal, I.L.R. (1962) M.P. 520 (D.B.)*

– **Section 58** – Addition of condition when granting permit – Condition is not invalid – Rule 73 (b), section 60 – Transport Authority taking action in penalising permit holder – There is no *lis* – Subsequent permit holder – Not a person interested in appeal – Not necessary to join him as party: *The Jabalpur Transport Development Company, Jabalpur Vs. The State Transport Appellate Authority M.P., Gwalior, I.L.R. (1960) M.P. 762 (D.B.)*

– **Section 58** – Operator not holding a permit – Application for renewal not accompanied by part A of the permit – Application for renewal misconceived: *Sardar Jogindersingh Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1967) M.P. 197 (D.B.)*

– **Section 58 (2)** – Grant of stage carriage permit in favour of M by order dated 24-8-1977 – Other Applicants including S, Feeling aggrieved filed appeals – Before expiry of 3 years period of permit, M applied for its renewal – Fresh Applications also invited under Section 58 (2) – Regional Transport Authority by order dated 27-6-1981 rejected application of M and granting application of one K – M filing appeal against order dated 27-6-1981 – Appeal of M allowed but order quashed in writ petition resulting in revival of grant of permit in favour of K – Subsequently state Transport Appellate Tribunal by order dated 4-6-1985 dismissed appeals of V and S and allowed appeal of present appellant resulting in setting aside grant of permit to M by order dated 24-8-1977 and regular stage carriage permit was granted to S who was appellant in one of the appeals – Aggrieved parties V and K filed writ petition in which order dated 30-11-1985 passed remitting the case to Tribunal for consideration as to whether there had been no *lis* in the *lis* which had to be adjudicated by Tribunal: *Satyendra Prakash Tiwari Vs. State Transport Appellate Tribunal, Gwalior, I.L.R. (1990) M.P. 39 (D.B.)*

– **Section 58 (4)**, (before amendment) – Grant of temporary permit – Has not the effect of continuation of expired permit: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

– **Section 58 (4)**, (before amendment) – Renewal – Operative from the date of renewal and not from date of expiry of permit – Does not extend the date of expiry of permit: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

– **Section 59 (I)** – Enquiry regarding permission for transfer of permit – There cannot be any question of new application for grant of permit – Rule 75(d) – Does not

authorize transport authority to ignore transfer application – Does not also authorize to call for fresh application – Words “the Regional Transport Authority may deal with application (for transfer) as if it were an application for a permit” in – Meaning of: *Poonamchand Vs. The Regional Transport Authority, Indore Region, Indore, I.L.R. (1963) M.P. 385 (D.B.)*

– **Section 60** – Confers jurisdiction to cancel, suspend the permit or to reduce the route or the area: *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1979) M.P. 325 (D.B.)*

– **Section 60 (1)** – Asking for maintenance of service – Not the same thing as asking to explain why permit should not be cancelled: *Madan Mohan Kunwar Vs. State Transport Appellate Authority Gwalior, M.P., I.L.R. (1968) M.P. 584 (D.B.)*

– **Section 60 (1)** – Permit of a person cancelled or suspended – Person must be made aware of allegation against him – Unless allegations are informed – No explanation can be given – Asking for maintenance of service – Not the same things as asking to explain why permit should not be cancelled: *Madan Mohan Kunwar Vs. State Transport Appellate Authority Gwalior, M.P., I.L.R. (1968) M.P. 584 (D.B.)*

– **Section 60, Rule 73(b)** Transport Authority taking action in penalizing permit holder – There is no *lis* – Subsequent permit holder – Not a person interested in appeal – Not necessary to join him as party: *The Jabalpur Transport Development Company, Jabalpur Vs. The State Transport Appellate Authority M.P., Gwalior, I.L.R. (1960) M.P. 762 (D.B.)*

– **Section 62** – Clause C – Route included in an approved scheme – Does not indicate The existence of particular temporary need: *Raipur Transport Company (Private)Limited, Raipur Vs. The Regional Transport Authority, Jabalpur, I.L.R. (1969) M.P. 207 (D.B.)*

– **Section 62** – Grant of temporary permits under – Delegation of authority – Validity of, on enforcement of new Act: *Gandhi Travels Churhat Vs. Secretary, Regional Transport Authority, Rewa, I.L.R. (1990) M.P. 84 (D.B.)*

– **Section 62 (c)** – Authority has to decide in each case about such existence and whether to issue temporary permit – Duty of Authority to decide grant of permit to private operator regarding permit on part of route covered by scheme even subject to condition: *M.P. State Road Transport Corporation, Bairagarh Vs. Regional Transport Authority, Raipur, I.L.R. (1971) M.P. 634 (D.B.)*

– **Section 62 (c)** – Existence of permanent need – Does not mean that particular temporary need also exists – Authority has to decide in each case about such existence and whether to issue temporary permit – Duty of Authority to decide grant of permit to

private operator regarding permit on part of route covered by scheme even subject to condition – Finding regarding temporary need – Not to be based on basis of mere difference in timings: *M.P. State Road Transport Corporation, Bairagarh Vs. Regional Transport Authority, Raipur, I.L.R. (1971) M.P. 634 (D.B.)*

– **Section 62 (c)** – Finding regarding temporary need – Not to be based on basis of mere difference in timings: *M.P. State Road Transport Corporation, Bairagarh Vs. Regional Transport Authority, Raipur, I.L.R. (1971) M.P. 634 (D.B.)*

– **Section 62 (c)** – Need contemplated in – Is external to the acts of operator himself – Personal need of operator due to his contract – Cannot be a reason for grant of temporary permit – Constitution – Article 226 – Alternative remedy – Ordinarily no bar to exercise discretion – Discretion not to be exercised where party deprived himself of remedy by his own fault: *Mahakoshal Transport Co-Operative Society Ltd., Raipur Vs. Regional Transport Authority, Raipur, I.L.R. (1963) M.P. 420 (D.B.)*

– **Section 62 (c)** – Temporary particular need – Essential condition for issue of temporary permit – Sections 46, 54 and 62 – Application for new permit for any particular route or area – Temporary permit for same route during pendency of application not to be granted – Section 48(3)(iii) – Fixing of time a quasi-judicial act – Cannot be delegated to Secretary in absence of rules: *Seth Kishorilal Agarwal, Vs. Secretary, RTA, Rewa, I.L.R. (1959) M.P. 719 (D.B.)*

– **Section 62 (c)** – Question regarding grant of temporary permit – Enquiry apart from the company going out of operator for non-renewal of permit to be made – Constitution of India – Article 226 – Illegality patent on face of record – Petition maintainable even though other remedy available: *Madhya Pradesh State road Transport Corporation Bhopal Vs. The Regional Transport Authority, Raipur, I.L.R. (1971) M.P. 227 (D.B.)*

– **Sections 62 (1) and 44 (5) and Motor Vehicle Rules, M.P., 1974** – Rule 70(i)(vi) – Regional Transport Authority delegating to Secretary power to grant temporary permit under sections 62 and 63(4) – Such power necessarily carries with it power to attach condition to the permit including timings attached to the permit: *Satyapal Bus Service Sagar Vs. Secretary, R.T.O. Sagar, I.L.R. (1981) M.P. 1003 (D.B.)*

– **Sections 62 (1) (C) and 68-F (1-C) and (1-D)** – Proposed scheme is under consideration and not finalized & published – Application for grant of temporary permit to a private party other than, State Transport undertaking/Corporation – Power of R.T.A. to Grant Temporary permit object of granting such period under – Circumstances in – The words “Any person” and “Covered by such Scheme” – Means and includes: *Arun Kumar Lath Vs R.T.A., Bilaspur, I.L.R. (1991) M.P. 323 (F.B.)*

– **Sections 62 (d) and 68 (2) a** – Application for renewal of permit on a route covered by scheme – Original permit on a route covered by scheme – Original permit

not proposed to be cancelled – Permit not liable to be included for cancellation in final scheme – Permit expiring by lapse of time – Application for renewal – Maintainability – Application for temporary permit during pendency of Application for renewal – Application not maintainable: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Indore, I.L.R. (1973) M.P. 448 (D.B.)*

– **Sections 62 (d) and 68-F (2) a** – Original permit not proposed to be cancelled – Permit not liable to be included for cancellation in final scheme: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Indore, I.L.R. (1973) M.P. 448 (D.B.)*

– **Sections 62 (d) and 68-F(2) a** – Permit expiring by lapse of time – Application for renewal – Maintainability – Application for temporary permit during pendency of application for renewal – Application not maintainable: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Indore, I.L.R. (1973) M.P. 448 (D.B.)*

– **Section 62 (1) (d)** – Application for renewal fulfilling all conditions – Application pending for more than four months – Applicant has right to apply for temporary permit: *Abdul Majid Vs. The State Transport Authority, I.L.R. (1974) M.P. 96 (D.B.)*

– **Section 62 (1), Proviso** – Authority to determine each time particular temporary need for grant of temporary permit: *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Sagar, I.L.R. (1978) M.P. 762 (D.B.)*

– **Section 62 (1), Proviso** – Confers no jurisdiction on Regional Transport Authority to issue temporary permit when application for grant of stage carriage permit is pending – Words “during the pendency of the application” in – Meaning of – Authority to determine each time particular temporary need for grant of temporary permit – Interpretation of Statutes – Statute to be construed according to intent of them that make it – Court has to act upon intention of legislature: *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Sagar, I.L.R. (1978) M.P. 762 (D.B.)*

– **Section 62 (1), Proviso** – Words “during the pendency of the application” in – Meaning of: *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority, Sagar, I.L.R. (1978) M.P. 762 (D.B.)*

– **Section 63 (3)** – Procedure applicable for renewal of permit – Applicable also to renewal of counter-signature of permit – Procedure laid down by Section 57 – Not applicable to a case of counter-signature when the permits are granted under an agreement between the States – Effect of proviso to sub-section (3) of section 63 – Section 62(1)(d) – Application for renewal fulfilling all conditions – Applicant has right to apply for temporary permit: *Abdul Majid Vs. The State Transport Authority, I.L.R. (1974) M.P. 96 (D.B.)*

– **Section 63 (3), Proviso** – Effect of: *Abdul Majid Vs. The State Transport Authority I.L.R. (1974) M.P. 96 (D.B.)*

– **Section 64** – Circumstances in which appellate Court can remand the case to Regional Transport Authority: *Capital Multipurpose Co-Operative Society, Ltd, Bhopal Vs. The Madhya Pradesh State Road Transport Corporation, Bhopal, I.L.R. (1968) M.P. 681 (D.B.)*

– **Section 64** – Distinction between remand order passed by appellate authority and quashing of order by High Court by a writ and giving direction to decide matter afresh – Constitution of India – Article 226 – Disputed question of fact – Cannot be assailed of in these proceedings for founding or sustaining the contention: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. R.C. Roy Poddar, I.L.R. (1968) M.P. 64 (D.B.)*

– **Section 64** – Point of time when limitation for filing appeal commences – Rule 50-A(3) – Tender of fee with application – Condition precedent for a valid application: *Azad Hind Motor Transport Co-Operative Society, Burhanpur Vs. the Regional Transport Authority, Indore, I.L.R. (1965) M.P. 420 (D.B.)*

– **Section 64** – Procedure for disposal of application for modification of condition in the permit by inclusion of a route – Provision of appeal cannot be implied: *Hazarilal Gupta Vs. The State Transport Appellate Authority, M.P., I.L.R. (1974) M.P. 84 (D.B.)*

– **Section 64 (1) (d)** – Application for countersignature refused by Regional Transport Authority Appeal lies to appellate authority: *Madhya Pradesh State Road Transport Corporation, Jabalpur Vs. The State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1979) M.P. 325 (D.B.)*

– **Section 64 (1) (f)** – Person objecting to grant of permit over extended route – Person has a right of appeal – Substantial extension of route – Amounts to a grant of a new permit as identity changed by such grant: *Tandon and Sons. Rewa Vs. State Transport Appellate Authority, Gwalior, I.L.R. (1975) M.P. 289 (D.B.)*

– **Section 64 (1) (f)** – Substantial extension of route – Amounts to a grant of a new permit as identity changed by such grant: *Tandon and Sons, Rewa Vs. State Transport Appellate Authority Gwalior, I.L.R. (1975) M.P. 289 (D.B.)*

– **Section 64 (a)** – Person not party to proceedings for grant of permit – Only remedy of person is revision to State Transport Authority: *Mohanlal Vs. State Transport Authority Gwalior, I.L.R. (1971) M.P. 46 (D.B.)*

– **Section 64 (f)** – Opposition to grant of permit by objectors – Is condition precedent to filing of an appeal – Section 64-A – Revision under – Section 5 of the

Limitation Act not made applicable to such revision petition – Section 50 – Holding of contract carriage permit “in the region” – Sufficient for bringing person under this section – Section 49 – Things to be considered for grant of permit – Sections 50 and 57(3) and (6) – Contemplates giving of notice to persons and authorities: *Madhya Pradesh Transport Co. Private Ltd., Raipur Vs. The Regional Transport Authority, Raipur, I.L.R. (1964) M.P. 346 (D.B.)*

– **Section 64 and Motor Vehicles Rules, C.P. and Berar – Rule 73** – Starting point of limitation for appeal – Is date of receipt of order: *M/s Bundelkhand Motor Transport Company, Nowgaon Vs. The State Transport Appellate Authority, M.P., Gwalior, I.L.R. (1969) M.P. 901 (F.B.)*

– **Section 64 and Rule 73** – Circumstances in which the case can be remanded to Regional Transport Authority by the appellate authority: *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior, I.L.R. (1972) M.P. 218 (F.B.)*

– **Section 64, Clause (b)** – Person affected by variation of timing – Person has right of appeal: *Gajadhar Singh Kushwah Vs. The State Transport Appellate Authority Madhya Pradesh, Gwalior, I.L.R. (1966) M.P. 732 (D.B.)*

– **Section 64, Clause (b)** – Timing is a condition attached to permit – Person affected by variation of timing – Person has right of appeal – Section 47 – Application for permit – Public interest to be main consideration in the decision – Giving of timings – Meant to facilitate travelers and not for favouring one operator against another: *Gajadhar Singh Kushwah Vs. The State Transport Appellate Authority Madhya Pradesh, Gwalior, I.L.R. (1966) M.P. 732 (D.B.)*

– **Section 64-A** – Limitation Act, Section 29(2) – Applicable to Motor Vehicles Act: *Beharilal Chourasia Vs. The Regional Transport Authority, Rewa, I.L.R. (1960) M.P. 569 (D.B.)*

– **Section 64-A** – Revision under – Section 5 of the Limitation Act not made applicable to such revision petition: *Madhya Pradesh Transport Co. Private Ltd., Raipur Vs. The Regional Transport Authority Raipur, I.L.R. (1964) M.P. 346 (D.B.)*

– **Sections 64-A and 47** – Compliance of Section 47(3) by Regional Transport Authority determining scope for two daily return trips by two buses – Notification mentioning 4 trips and not specifying number of stage carriages – Amounts to sufficient compliance: *Jairam Gaya Prasad Mishra Vs. The State Transport Appellate Tribunal, M.P., I.L.R. (1981) M.P. 559 (D.B.)*

– **Sections 64-A and 47** – Existing operator affected by order under section 47(3) – Can challenge it under section 64-A: *Jairam Gaya Prasad Mishra Vs. The State Transport Appellate Tribunal, M.P., I.L.R. (1981) M.P. 559 (D.B.)*

– **Sections 64-A and 47** – Revision – Scope of Order determining scope under section 47(3) is revisable – Right of Revision – Existing operator affected by order under section 47(3) – Can challenge it under Section 64-A – Compliance of section 47(3) by Regional Transport Authority determining scope for two daily return trips by two buses – Notification mentioning 4 trips and not specifying number of stage carriages – Amounts to sufficient compliance – Constitution of India – Article 226 – Revisional Authority not dealing with the objection regarding effect of Nationalization scheme – Order liable to be set aside: *Jairam Gaya Prasad Mishra Vs. The State Transport Appellate Tribunal, I.L.R. (1981) M.P. 559 (D.B.)*

– **Section 68-A** – Definition of “Road Transport Service” – Includes contract carriages: *Premchand Jain Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 214 (D.B.)*

– **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. State of Madhya Pradesh, I.L.R. (1972) M.P. 822 (D.B.)*

– **Sections 68-C and 68-D** – Various Schemes – Though Published in regional Language in one news – paper but their contents were in English – No prejudice caused to petitioners – Schemes not in valid – Power to hear objections and to approve or modify schemes – Such power can be conferred under Rule of Business: *Ali Ahmed & Sons, Rewa Vs. State of M.P., I.L.R. (1989) M.P. 345 (D.B.)*

– **Section 68-C** – And State Road Transport Services (Development) Rules, Madhya Pradesh, 1959 – Rule 3 – Does not impose obligation on State Transport undertaking to disclose material on which opinion was formed for framing a scheme: *Capital Multipurpose Co-operative Society Ltd., Bhopal Vs. The State of M.P., I.L.R. (1970) M.P. 532 (D.B.)*

– **Section 68-C** – After approval by State Government – Proposal becomes approved scheme under Section 68-D: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

– **Section 68-C** – Authority of Government to prepare a scheme to run services on proposed route to complete or partial exclusion of others: *Baluram Daluram Vs. The State of M.P., I.L.R. (1970) M.P. 9 (D.B.)*

– **Section 68-C** – Expression “Otherwise” – Wide enough to include proposal to operate on the route to the exclusion of some and not all: *Baluram Daluram Vs. The State of MP, I.L.R. (1970) M.P. 9 (D.B.)*

– **Section 68-C** – Necessity of mentioning permits to be cancelled: *Baluram Daluram Vs. The State of M.P., I.L.R. (1970) M.P. 9 (D.B.)*

– **Section 68-C** – No authority in Government to approve something not included in the scheme on the basis that it shall be declared to have been included in the Scheme: *Baluram Daluram Vs. The State of M.P., I.L.R. (1970) M.P. 9 (D.B.)*

– **Section 68-C** – Proviso Empowers grant of renewal for limited period upto publication of scheme: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

– **Section 68 (c)** – Scheme no. 30 framed under – Exempts vehicles plying on inter – statal route from its operation: *Sardar Jogender Singh Vs. The State Transport Appellate Tribunal, M.P., Gwalior, I.L.R. (1981) M.P. 636 (D.B.)*

– **Section 68-C** – Scheme under – Cannot be struck down merely for failure to notify in rajpatra appointment of Authorised Officer within 30 days of publication of scheme – Objector can approach Government itself: *Narula Transport Service, Hamidia Road, Bhopal Vs. State of M.P., I.L.R. (1980) M.P. 1131 (D.B.)*

– **Section 68-C** – Scheme under, is a proposal regarding certain matters: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

– **Section 68-C and D** – Interpretation of Statute – Saving Clause – To be liberally construed giving effect to saving provision – State Road Transport Services (Development) Rules, M.P., 1959, as amended in 1970 – Rule 4(2) – Government appointing Law Secretary as Special Secretary under – Appointment is Saved – Government failing to notify appointment in time under rule 136 of the Rules of 1974 – Rule 4(2) of 1959 Rules would still hold the field – Motor Vehicles Act – Section 68-C – Scheme under – Cannot be struck down merely for failure to notify in Rajpatra appointment of authorized Officer within 30 days of publication of Scheme – Objector can approach Govt. itself: *Narula Transport Service, Hamidia Road, Bhopal Vs. State of M.P., I.L.R. (1980) M.P. 1131 (D.B.)*

– **Section 68-C and Section 68-F (1-D)** – Route “covered” by a scheme – Implication of – When can route deemed to be covered by sub-section (1-D) – Section 68-F, Sub – Sections (1-A) and (1-C) – Lifts ban on temporary permits – Allows grant of temporary permits in respect of area or route or portion thereof specified in scheme – Section 68-F, sub-sections (1-A), (1-C) and (1-D) – Expression “specified in the scheme “ and “covered by the scheme” – Have same meaning – Section 2(28-A) – Definition of “route” – Meaning of: *Damodardas Sitaldas Vs. Regional Transport Authority, Rewa, I.L.R. (1978) M.P. 619 (F.B.)*

– **Section 68 (c) and 68-F (1-D)** – Right of operator – Petitioner holding permit on route later covered by scheme under section 68-C – Permit expiring after publication of Scheme – Petitioner entitled to its renewal – Section 68C – Scheme No. 30 framed under – Exempts vehicles plying on inter-statal route from its operation – Word “playing” – Meaning of Interpretation of documents – Cardinal rules of construction – Language not precise and its ambiguous – Aid from extraneous considerations may be taken: *Sardar Jogender Singh Vs. The State Transport Appellate Tribunal, M.P., Gwalior, I.L.R. (1981) M.P. 636 (D.B.)*

– **Section 68-D** – Approving and modifying scheme – Implies that the scheme is for efficient, adequate, economical and properly co-ordinated Road Transport Service and is in public interest: *Capital Multipurpose Co-operative Society Ltd., Bhopal Vs. The State of M.P., I.L.R. (1970) M.P. 532 (D.B.)*

– **Section 68-D** – Better and more efficient services by private operators – Not relevant objection for rejecting the scheme: *Premchand Jain Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 214 (D.B.)*

– **Section 68-D – Contemplates** – *quasi*-judicial enquiry regarding objections to scheme and not regarding examining of material on which opinion to frame scheme is based or adequacy of the material: *Capital Multipurpose Co-operative Society Ltd., Bhopal Vs. The State of M.P., I.L.R. (1970) M.P. 532 (D.B.)*

– **Section 68-D** – Delegation of *quasi*-judicial and *quasi*-legislative functions – Validity: *Raipur Transport Company Private Ltd. Raipur Vs. State of Madhya Pradesh I.L.R. (1972) M.P. 822 (D.B.)*

– **Section 68-D** – Distinction between goodness or badness of the scheme because of the correctness or incorrectness of the formation of opinion for initiation of the scheme and the opinion formed is correct or incorrect because the scheme formed is or is not in the nature spoken of in Section 68 – C: *Capital Multipurpose Co-operative Society Ltd., Bhopal Vs. The State of M.P., I.L.R. (1970) M.P. 532 (D.B.)*

– **Section 68-D** – Functions performed under – Are administrative functions, though the process is *quasi*-judicial: *Raipur Transport Company Private Ltd. Raipur Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 822 (D.B.)*

– **Section 68-D** – Functions under the Section 68-D are executive, *quasi*-judicial and also legislative – Functions can be regulated by rules of business: *Raipur Transport Company Private Ltd. Raipur Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 822 (D.B.)*

– **Section 68-D** – Power to hear objections and to approve or modify schemes – Such power can be conferred under Rule of Business: *Ali Ahmed & Sons, Rewa Vs. State of M.P., I.L.R. (1989) M.P. 345 (D.B.)*

– **Section 68-D**, Sub-section (1) – Explanation – *Vires of: Premchand Jain Vs. The State of Madhya Pradesh I.L.R. (1967) M.P. 214 (D.B.)*

– **Section 68-D, subsection 2(a)** – Enacted to provide for situation enabling conferring of authority on office not specified in rules of business – Does not exclude power of State Government to deal with matter in usual way: *Premchand Jain Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 214 (D.B.)*

– **Section 68-D** – Validity of the opinion to be decided by the adjudication of merits of scheme on tests laid down in Section 68 – C: *Capital Multipurpose Co-operative Society Ltd., Bhopal Vs. The State of M.P., I.L.R. (1970) M.P. 532 (D.B.)*

– **Section 68-D and State Road Transport Services (Development) Rules, Madhya Pradesh, 1959**, Rule 6 – Confer no power on Governor: *Raipur Transport Company Private Ltd. Raipur Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 822 (D.B.)*

– **Section 68-D and State Road Transport Services (Development) Rules, Madhya Pradesh, 1959**, Rule 6 – Functions of State Government – Can be discharged according to rules of business – Can be performed by a person duly authorized under rules of business: *Raipur Transport Company Private Ltd. Raipur Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 822 (D.B.)*

– **Section 68-D (1) and Motor Vehicles Rules, M.P., 1974** – Rule 135 (2) – Publication of scheme by M.P. road Transport corporation for exclusive operation of its carriages on certain routes stated in the Scheme in a newspaper of regional language – Purpose of – Non – Publication of the Scheme itself in regional language – Whether scheme liable to be rejected on that ground – Rule 135 (2) – Requirement of publishing scheme on notice board of ‘concern’ R.T. As. – Purposes of – Requirement whether mandatory – Constitution of India – Article 226 – Writ of certiorari – When can be issued – Scheme rejected on account of its non-Publication in proper manner – No prejudice shown to have been caused to permit holder – Order patently wrong and mistake apparent on the face of the record – Order liable to be quashed stare decisis – Principles of: *M.P. State Road Transport Corporation Bhopal Vs. State of M.P., I.L.R. (1984) M.P. 148*

– **Section 68-D (2) – And Supplementary Instructions, Para 3** – Minister, power of, to interfere with the order of Special Secretary: *Raipur Transport Company Private Ltd. Raipur Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 822 (D.B.)*

– **Section 68-D (2) – 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: *Raipur Transport Company Private Ltd. Raipur Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 822 (D.B.)*

– **Section 68-D (2)** – Enquiry under Section 68 D (2) – Cannot be regarding conclusion or otherwise of the requisite opinion formed under Section 68-C: *Raipur Transport Company Private Ltd. Raipur Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 822 (D.B.)*

– **Section 68-D (2)** – Lays down the nature of the matter which the objectors can show in connection with the scheme: *Capital Multipurpose Co-operative Society Ltd., Bhopal Vs. The State of M.P., I.L.R. (1970) M.P. 532 (D.B.)*

– **Section 68-D (2)** – Non Specification in a scheme of a permit proposed to be cancelled – Permit cannot be cancelled and hence scheme vitiated: *Raipur Transport Company Private Ltd. Raipur Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 822 (D.B.)*

– **Section 68-D (2)** – Question which can be considered under this provision: *Capital Multipurpose Co-operative Society Ltd., Bhopal Vs. The State of M.P., I.L.R. (1970) M.P. 532 (D.B.)*

– **Section 68-D (3)** – Circumstances in which finality to the Scheme is attached – Section 68 – C – Authority of Government to prepare a scheme to run services on proposed route to complete or partial exclusion of others – Expression “otherwise” – Wide enough to include proposal to operate on the route to the exclusion of some and not all – Necessity of mentioning permits to be cancelled – No authority in Government to approve something not included in the scheme on the basis that it shall be declared to have been included in the scheme: *Baluram Daluram Vs. The State of M.P., I.L.R. (1970) M.P. 9 (D.B.)*

– **Section 68-D (3) – Proviso** – Does not govern all sub-sections of Section 68(d) of the Act: *Premchand Jain Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 214 (D.B.)*

– **Section 68-D (3) – Proviso** – Does not govern all sub-Sections of 68(d) of the Act – Section 68-D, Sub-section (1) – Explanation – Vires of – Constitution of India – Article 166 (3) – Business of Government of a State – Includes statutory and *quasi* judicial functions of State, delegation of such functions to ministers and other subordinate officers – Does not amount to delegation in the sense of divestiture of responsibility – Section 68-D, subsection (2)(a) – Enacted to provide for situation enabling conferring to authority on office not specified in rules of business – Does not exclude power of State Government to deal with matter in usual way – Constitution of India – Article

166(2) – Validity of order of Governor – Not challengeable if two conditions satisfied – Does not preclude challenge on any other ground – Article 166(1) and (2) – Provisions of, directory – Order not made in accordance with clause (2) – Can be proved by other evidence that it was validly made – Section 68-D – Better and more efficient services by private operators – Not relevant objection for rejecting the scheme – Constitution of India – Article 14 – Scheme brought into effect in one area, or on one route or on a portion thereof – Scheme not effected on ground of discrimination – Section 68-A – Definition of “Road Transport Service” – Includes contract carriages: *Premchand Jain Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 214 (D.B.)*

– **Section 68-E** – After approval of scheme – Regional Transport Authority performs ministerial function of granting permit: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

– **Section 68-E** – Applicable where approved scheme needs cancellation or modification: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

– **Section 68-E** – Note in the scheme regarding alteration in the number of buses and their frequency – Is contrary to provisions of Section 68-E: *M.P. State Road Transport Corporation Vs. The Regional Transport Authority, Raipur., Gwalior, I.L.R. (1977) M.P. 1071 (D.B.)*

– **Section 68-E (1)** – Permits modification of scheme without following procedure under Section 68-C and 68-D: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

– **Section 68-E (2)** – Confers powers on State Government to modify approved scheme: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

– **Section 68-E (2)** – Proposal for modification or cancellation of approved scheme – Is treated as separate scheme for purposes of procedure – But is not a scheme in true sense of that term: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

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– **Section 68-F**, before amendment – Draft Scheme for inter – State route – Does not affect regional route – Sub-section (1-D) – Prohibits grant of permit or renewal

for a route or portion thereof till finalisation of scheme – Exceptions purpose and object behind amendment – Section 2(28-A) – Both termini of regional route lying on nationalized routes – Vehicles excluded – Word “route” – Meaning of – Both termini outside the nationalized route – But small portion overlapping on nationalized route – Such route saved from nationalisation if draft scheme is approved. The route being regional one, the draft scheme for inter – State route cannot affect the present route: *The Madhya Pradesh State Road Transport Corporation, Bhopal Vs. State Transport Appellate Tribunal, Gwalior, I.L.R. (1981) M.P. 32 (D.B.)*

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– **Section 68-F** – Distinction in cases of permit granted before publication of proposed scheme and permits after publication: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

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– **Section 68-F** – Implementation of approved scheme – Permits cease or are curtailed: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

– **Section 68-F** – Implementation of scheme – Is a continuing process – Private operators continuing operations and committing breach of Scheme – Regional Transport Authority can exercise jurisdiction to remedy breach: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

– **Section 68-F** – Issue of permit after publication of scheme – Affected by finally approved scheme – Section 68-F(1-D) – Publication of scheme – Regional Transport authority empowered to issue temporary permit either to State Transport Under taking or in its absence to private operator – Duration of such permit – Section 68-F (1-D) – Deals with all types of permit – Permit granted after publication of proposed scheme – Covered by the proviso – Distinction in cases of permit granted before publication of proposed scheme and permits after publication – Under the scheme route in conjoint operation – Regional Transport Authority can permit private operators to operate on the route – Scheme contemplating exclusive right to run on certain routes by

State Transport to complete exclusion of private operators except with one or two operators – Integrity of notified scheme not affected by grant of permit to private operators over-lapping over small portion of nationalised route – Grant of permit after publication of scheme – Is subject to ultimate shape of final scheme Implementation of approved scheme – Permits cease or are curtailed – Section 68-E – Applicable where approved scheme needs cancellation or modification – After approval of scheme – Regional Transport authority performs ministerial function of granting permit – Section 57(3) – Not attracted – Section 68-F(2) – Regional Transport authority has to exercise his mind in different ways – Regional Transport authority acts judicially in this respect – Private operators cannot complain about irregularity of permit in favour of State undertaking – Constitution of India – Article 226 – Private operators – Keeping silence for 2 years after issue of permit to State undertaking – High Court not to exercise discretion in favour of petitioner – Motor Vehicles Act – Section 68-F – Implementation of Scheme – Is a continuing process – Private operators continuing operations and committing breach of scheme – Regional Transport Authority can exercise jurisdiction to remedy breach – Scheme cancelling a particular permit – Regional Transport authority cannot be deemed to achieve the same object by saying that permit-holder shall not pick up or get down passenger from overlapping route: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

– **Section 68-F** – Scheme cancelling a particular permit – Regional Transport Authority cannot be deemed to achieve the same object by saying that permit-holder shall not pick up or get down passenger from over-lapping route: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

– **Section 68-F** – Scheme Contemplating exclusive right to run on certain routes by State Transport to complete exclusion of private operators except with one or two operators – Integrity of notified scheme not affected by grant of permit to private operators over-lapping over small portion of notionalised route: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

– **Section 68-F** – Under the scheme route in conjoint operation – Regional Transport Authority can permit private operators to operate on the route: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

– **Section 68-F (1)** – Application for grant of temporary permit – Not an application in pursuance of the scheme – Application can be treated as one under Chapter IV – Regional Transport Authority can exercise powers which he has in the matter of grant of temporary permit: *M.P. State Road Transport Corporation, Bhopal Vs. The Regional Transport Authority Raipur, Gwalior, I.L.R. (1977) M.P. 1071 (D.B.)*

– **Section 68-F (1)** – Application made in pursuance of an approved scheme – Application made according to chapter-IV – Regional Transport Authority Acts in

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– **Section 68-F (1)** – Permit granted on route of exclusive operation – May be extended over a route on conjoint operation also to avoid break in service to the public: *M.P. State Road Transport Corporation Vs. The regional Transport Authority Raipur, Gwalior, I.L.R. (1977) M.P. 1071 (D.B.)*

– **Section 68-F (1-A)** – Permits application for temporary permit only by a State Transport undertaking: *Dhanna Singh Vs. The Regional Transport Authority Gwalior, I.L.R. (1979) M.P. 795 (D.B.)*

– **Section 68-F (1-A)** – Temporary permits granted under sub-section (1-A) – Not to be effective when events under clauses (i) and (ii) of sub-section (1-B) came to happen: *Dhanna Singh Vs. The Regional Transport Authority Gwalior, I.L.R. (1979) M.P. 795 (D.B.)*

– **Section 68-F (1-A)** – Word “Issue” in – Used in the sense of grant: *Dhanna Singh Vs. The Regional Transport Authority Gwalior, I.L.R. (1979) M.P. 795 (D.B.)*

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sub-Section (1) – Permits modification of scheme without following procedure under Section 68-C and 68-D Section 68-E(2) – confers powers on State Government to modify approved scheme – Proposal of modification of approved scheme supplements approved scheme – Proposal amounts to a scheme – Proposal for modification or cancellation of approved scheme – Is treated as separate scheme for purposes of procedure – But is not a scheme in true sense of that term – Section 68-C Proviso – Empowers grant of renewal for limited period upto publication of scheme – Section 68-F (2) – Empowers authority to refuse, grant and renewal of permit and for rejection of pending applications – Section 68-F (1-D) – Does not authorise dismissal of grant or renewal of permit after publication of scheme under Section 68-C application for renewal of permit expiring before publication of scheme under Section 68-C – Application not to be dismissed till publication of approved scheme: *Madhya Pradesh State Road Transport Corporation, Gwalior Vs. The State Transport Authority, Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

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– **Section 68-F (1-C)** – Does not authorise dismissal of grant of renewal of permit after publication of scheme under Section 68-C: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

– **Section 68-F (1-C)** – Not to be read in isolation: *Dhanna Singh Vs. The Regional Transport Authority Gwalior, I.L.R. (1979) M.P. 795 (D.B.)*

– **Section 68-F (1-C)** – Scope of: *Dhanna Singh Vs. The Regional Transport Authority Gwalior, I.L.R. (1979) M.P. 795 (D.B.)*

– **Section 68-F (1-C)** – Temporary permit ceases to be effective on issue of permit to “State Transport Undertaking”: *Dhanna Singh Vs. The Regional Transport Authority Gwalior, I.L.R. (1979) M.P. 795 (D.B.)*

– **Section 68-F (1-C)** – Where a scheme is not approved or “unified effect” – Temporary permit issued under clause (1-C) – Must be for specific period: *Dhanna Singh Vs. The Regional Transport Authority Gwalior, I.L.R. (1979) M.P. 795 (D.B.)*

– **Section 68-F (1-D)** – Application for renewal of permit expiring before publication of scheme under Section 68-C – Application not to be dismissed till publication of approved scheme: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

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– **Section 68-F (1-D)** – Operates on publication under Section 68-E of scheme: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior, I.L.R. (1979) M.P. 627 (D.B.)*

– **Section 68-F (1-D)** – Permit granted after publication of proposed scheme Covered by the proviso: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

– **Section 68-F (1-D)** – Publication of scheme – Regional Transport Authority empowered to issue temporary permit either to State Transport Undertaking or in its absence to private operator – Duration of such permit: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa, I.L.R. (1979) M.P. 494 (D.B.)*

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– **Section 68-F (1-D)** – Clauses (i) and (ii) – Do not deal with situation when scheme is modified and approved: *Dhanna Singh Vs. The Regional Transport Authority Gwalior, I.L.R. (1979) M.P. 795 (D.B.)*

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– **Section 68-F (1-D)** – Clauses (i) and (ii) – Scheme as published does not cover route in respect of which temporary permit was granted: *Dhanna Singh Vs. The Regional Transport Authority Gwalior*, I.L.R. (1979) M.P. 795 (D.B.)

– **Section 68-F (1-E)** – Finding about satisfaction regarding need for temporary permit – Necessary to be recorded: *Dhanna Singh Vs. The Regional Transport Authority Gwalior*, I.L.R. (1979) M.P. 795 (D.B.)

– **Section 68-F (2)** – Cancellation of permits of other operators after scheme is automatic – The function is ministerial after scheme is approved: *The M.P. State Road Transport Corporation Biragarh Vs. State Transport Appellate Authority*, M.P. Gwalior, I.L.R. (1977) M.P. 971 (D.B.)

– **Section 68-F (2)** – Empowers authority to refuse, grant and renewal of permit and for rejection of pending applications: *Madhya Pradesh State Road Transport Corporation Gwalior Vs. The State Transport Authority Gwalior*, I.L.R. (1979) M.P. 627 (D.B.)

– **Section 68-F (2)** – Regional Transport Authority has to exercise his mind in different ways – Regional Transport Authority acts judicially in this respect – Private operators cannot complain about irregularity of permit in favour of State under-taking: *Gulab Chand Gupta Vs. Regional Transport Authority, Rewa*, I.L.R. (1979) M.P. 494 (D.B.)

– **Section 68-F (2)** – Transport authority does not perform any judicial or quasi-judicial function – Question of authorisation by rules does not arise: *The M.P. State Road Transport Corporation Biragarh Vs. State Transport Appellate Authority*, M.P. Gwalior, I.L.R. (1977) M.P. 971 (D.B.)

– **Section 68-F (1-D)**, as amended – Prohibits grant of permit or renewal for a route or portion thereof till finalisation of scheme – Exceptions: *The Madhya Pradesh State Road Transport Corporation Bhopal Vs. State Transport Appellate Tribunal, Gwalior*, I.L.R. (1981) M.P. 32 (D.B.)

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– **Section 68 and Motor Vehicles Rules, 1974** – Limitation on powers of delegation by regional Transport Authority: *Gandhi Travels Churhat Vs. Secretary, Regional Transport Authority, Rewa*, I.L.R. (1990) M.P. 84 (D.B.)

– **Section 68** – Objection regarding absence of permit with the operator applying for renewal not raised before regional Transport Authority – Objection raised before Appellate Authority – Appellate Authority bound to decide the objection: *Sardar*

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– **Section 68, Scheme no. 24** – Operators authorised under bilateral inter-State agreement can alone operate – Not permissible to grant permits to existing private operators – Section 68 F (2) – Cancellation of permits of other operators after scheme is automatic – The function is ministerial after scheme is approved – Transport authority does not perform any judicial or *quasi*-judicial function – Question of authorisation by rules does not arise: *The M.P. State Road Transport Corporation Biragarh Vs. State Transport Appellate Authority, M.P. Gwalior, I.L.R. (1977) M.P. 971 (D.B.)*

– **Section 68 (1)** – Conferral of rule making power by – Does not allowed imposition of fee on permit: *Lucky Bharat Garage (P) Ltd., Through Sardar Baldeo Singh, Raipur Vs. The Regional Transport Authority, Raipur, I.L.R. (1967) M.P. 381 (D.B.)*

– **Section 68 (1)** – Government can exercise rule making power under – Only for carrying into effect provisions of section 42 to 68: *Lucky Bharat Garage (P) Ltd., Through Sardar Baldeo Singh, Raipur Vs. The Regional Transport Authority, Raipur, I.L.R. (1967) M.P. 381 (D.B.)*

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– **Section 68 (2)** – Effect of: *Abdul Mohi Siddiqui Vs. State of M.P., I.L.R. (1965) M.P. 862 (D.B.)*

– **Section 68 (2)** – Publication of erroneous and defective scheme – Not to be regarded as publication of scheme as approved or modified under sub-section (2): *Capital Multipurpose Co-operative Society Ltd., Bhopal Vs. The State of M.P., I.L.R. (1970) M.P. 532 (D.B.)*

– **Section 68 (2) (g)**, amended – Takes away power from Government to prescribe fees for permits: *Lucky Bharat Garage (P) Ltd., Through Sardar Baldeo Singh, Raipur Vs. The Regional Transport Authority, Raipur, I.L.R. (1967) M.P. 381 (D.B.)*

– **Section 68 (2) (g) and Motor Vehicles Rules, C.P. and Berar, 1940, Rule 55** – Section 68(2) (g), amended – Takes away power from Government to prescribe fees for permits – Motor Vehicles Rules, C.P. and Berar, 1940 – Rule 55 – Now not a valid Rule – Fees for application for permit – Does not include fees for permits themselves – Motor Vehicles Act. – Section 68(1) – Conferral of Rule making power by – Does not allow imposition of fees on permit – Government can exercise rule making power under – Only for carrying into effect provisions of section 42 to 68 – Interpretations of Statute – Canon to taxation – No imposition of tax or fee by instrument of subordinate legislation – Not permissible unless specially authorised by statute – Words and phrases – “Taxation” and “Tax” – Distinction – Interpretation of Statute – Delegation – Delegation to subordinate authority by legislature to impose and assess a tax – Delegation to be specific and not in general terms – Tax or fee can be imposed by subordinate authority only when a statute specifically confers that authority: *Lucky Bharat Garage (P) Ltd. Raipur Vs. The Regional Transport Authority, Raipur, I.L.R. (1967) M.P. 381 (D.B.)*

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– **Section 92-A** – High Court has power to *suo motu* increase the amount of compensation awarded by Tribunal when found unjust and illegal: *Sardar Ishwar Singh Vs. Himachal Puri*, I.L.R. (1990) M.P. 166

– **Section 92-A** – Interim Award of compensation on principles of ‘no fault liability’ – Is an award within the meaning of Section 110-E – Else it will be impossible to make its recovery – Interpretation statute – Construction which makes it workable has to be preferred: *The Oriental Insurance Co. Ltd., Jabalpur Vs. Pritamlal*, I.L.R. (1992) M.P. 363 (D.B.)

– **Section 92-A** – No fault liability – At the time of accident vehicle covered by Insurance policy – Tribunal directing payment of interim compensation by owner & insurer jointly and severally – No fault liability – Plea of insurance company that the vehicle was being driven in breach of policy cannot be taken into consideration at the stage of interim compensation on ground of no fault liability – No interference with the order of tribunal called for – However insurance company is at liberty to plead and prove statutory defence at the stage of trial along with other issues in the claim case: *National Insurance Company, Jabalpur Vs. Smt. Savitri Bai*, I.L.R. (1992) M.P. 352

– **Section 92-A** – No fault liability – Plea of insurance company that the vehicle was being driven in breach of policy cannot be taken into consideration at the stage of

interim compensation on ground of No fault liability – No interference with the order of tribunal called for – However insurance company is at liberty to plead and prove statutory defence at the stage of trial along with other issues in the claim case: *National Insurance Company, Jabalpur Vs. Smt. Savitri Bai, I.L.R. (1992) M.P. 352*

– **Sections 92-A and 110-D** – No fault liability under section 92-A – Where vehicle insured, insurer jointly and severally liable along with the owner: *M/S Shastri Brothers Balaghat Vs. Smt. Parwati Bai Jain, I.L.R. (1989) M.P. 361*

– **Sections 92-A, 110-D** and Letters Patent (Nagpur), Clause 10 – Letters Patent Appeal – Claims Tribunal passed award granting compensation under *No Fault liability* – Appeal filed by Insurance Company dismissed by Single Judge – Whether Letters Patent Appeal maintainable – Held – Decision dismissing appeal by Single Judge is Judgment – Letters Patent Appeal against such judgment maintainable: *The Oriental Insurance Company Limited, Jabalpur Vs. Annamma Abraham, I.L.R. (1994) M.P. 305 (F.B.)*

– **Sections 93 (ba) and 95** – Liability of an insurer covers any liability arising out of the accident: *Mohammad Ilias Vs. Bodhani Bai, I.L.R. (1992) M.P. 516*

– **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 moto enquiry to ascertain whether insurer's liability was limited or unlimited: *Kaushal Bai Vs. Aabid Ali, I.L.R. (2001) M.P. 33 (D.B.)*

– **Section 95** – Separate insurance limits were provided for driver, employer of the owner and passengers of the vehicle – Motor Vehicles Act 1988 – Section 147 of the new Act – Such distinction has purposely been removed – Section 149(2) of the Act of 1988 – Defence of insurance Company is limited to the breach of condition of the policy – The plea that the owner is not vicariously liable for the acts of his servant is a defence not available to the insurance company – In absence of an appeal by the owner it is not necessary to decide whether the owner is vicariously liable or not – Where the servant committed some wrongful act in the course of his employment that the master become liable – As the insured did not commit any breach of the policy the insurer cannot avoid its liability: *United India Insurance Company Ltd., Raipur, Vs. Parekhin Bai, I.L.R. (1999) M.P. 583*

– **Section 95 (1) and Motor Vehicles Rules, M.P., 1974, Rule 111** – Liability of insurance company – Gratuitous travellers – Persons travelling in truck not presently loaded with their goods, but for purposes of fetching their goods from another place – Not deemed to be traveling for hire of reward – Accident occurring – Insurance Company not liable: *Kallu Maharaj Vs. Meena Bai, I.L.R. (1990) M.P. 67 (F.B.)*

– **Sections 95 (1) (a) (as amended)** – Private truck insured – Liability of Insurance Company enhanced to the tune of Rs. 1,50,000.00 – State Govt. liable to pay rest of the compensation amount – Enhanced amount also to carry interest @ 11% per annum from the date of appeal: *Smt. Sushila Vs. Rajendra Prasad Shukla, I.L.R. (2000) M.P. 1001 (D.B.)*

– **Sections 95 (1) (a), 110 and 110-D (as amended)** – Motor accident – Death – Award of compensation – Appeal for enhancement – Collision of Govt. vehicle with private truck – Death of victim – Deceased A – Class contractor – Earning assumed at Rs. 40,000/- per year – At the time of accident deceased aged about 44 years – Proper multiplier would be 15 – Award enhanced accordingly – Contributory negligence – Driver of Govt. vehicle not entering witness box – Adverse inference rightly drawn that both the drivers were negligent hence both the vehicle owners are liable – Section 95(1)(a) as amended from 1.10.1982 – Private truck insured – Liability of Insurance Company enhanced to the tune of Rs. 1,50,000.00 – State Govt. liable to pay rest of compensation amount – Enhanced amount also to carry interest @ 11% per annum from the date of appeal: *Smt. Sushila Vs. Rajendra Prasad Shukla, I.L.R. (2000) M.P. 1001 (D.B.)*

– **Sections 95 (1) (a), 110 and 110-D** – Contributory negligence – Driver of Govt. vehicle not entering witness box – Adverse inference – rightly drawn that both the drivers were negligent hence both the vehicle owners are liable: *Smt. Sushila Vs. Rajendra Prasad Shukla, I.L.R. (2000) M.P. 1001 (D.B.)*

– **Section 95 (1) (b)** – Liability of Insurance Company – Held – The deceased after hiring the truck not only was traveling in the truck along with his cloth bundles, but, the driver arranged by him who was engaged by the appellant to drive the truck, permitted about 12 persons to travel in the truck along with their goods, from which he charged the fare separately per passenger, besides the fare for carrying goods – It was not a case of lifting one or two persons and that claim relates to the person who dies in the accident, and the vehicle was being used for the purpose other than for the purpose it was adopted for its use and such passengers were carried in breach of the terms of the policy ‘a fundamental breach’ as the passengers could not have been lawfully carried out permitted to travel in the goods vehicle: *Shankar Prasad Vs. Malti Devi, I.L.R. (1997) M.P. 174 (D.B.)*

– **Sections 95 (1) (b) (ii) and 2 (8) and Motor Vehicles Rules, 1974 Rule III** – Goods Vehicle – Policy of insurance – Owner/ agent of goods accompanying goods traveling in goods vehicle would be deemed to be passengers being carried for hire or reward – Insurance company liable to cover risk of such hire/agent/or his employee: *Harishankar Tiwari Vs. Jagru, I.L.R. (1987) M.P. 1 (F.B.)*

– **Section 95 (2)** – Breach of condition of policy – Insurer to establish that insured was guilty of committing the breach – Insured not found to be at fault for the breach, Insurance company liable: *National Insurance Company, Nagpur Vs. Chitrakala Bai, I.L.R. (1989) M.P. 231*

– **Section 95 (2)** – Liability of Insurance Company under – Extent of: *Najibhai Patel Vs. Vishnuprasad Sharma, I.L.R. (1990) M.P. 511*

– **Section 95 (2)** – More than one person involved in one accident – Liability of the Insurance Company: *Smt. Sabira Begum Vs. The Raipur Transport Co. Private Ltd., Raipur, I.L.R. (1985) M.P. 617 (D.B.)*

– **Section 95 (2)** – Policy not indicating contract to contrary liability of insurer cannot exceed statutory liability: *K.K. Jain Vs. Smt. Masroor Anwar, I.L.R. (1989) M.P. 643 (D.B.)*

– **Section 95 (2)** – Policy regarding third party risk – Amount not specified in policy – Statute comes in Section 95(2) – Fixes both minimum and maximum – Section 96(4) – Not a provision fixing liability of the insurer, but confers a right on the insurer to recover amount – Section 110 – D – Circumstances under which insurer has a right of appeal: *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha, I.L.R. (1970) M.P. 462 (D.B.)*

– **Sections 95 (2), 110-A** – Motor Accident – Claim of compensation – Vehicle insured – Liability of Insurance Company – By amendment liability of insurance company increased to rupees 1,50,000/- in 1982 – Accident in 1986 justification in restricting liability of insurance company to Rs. 50,000/- only – Insurance Company liable to pay upto Rs. 1,50,000/- with interest thereon: *Maitri Koley Vs. New India Insurance Co., I.L.R. (2004) M.P. 228 (D.B.)*

– **Sections 95 (2), 110-A** and Motor Vehicles Act (LIX of 1988), Sections 166, 173 – Motor accident – Proof of involvement of Truck- – Independent witnesses deposed that they saw blood stains on wheel of the truck and also noted the number – Driver admitted having crossed said portion where accident occurred on the same date and time – Tribunal committed no error in holding that accident caused by the said truck – Liability of insurer with regard to third party risk – Would not be more than the statutory liability unless extra premium is paid by owner to cover unlimited liability: *Bhagwandas Gupta Vs. Mst. Gayatri Singh, I.L.R. (2005) M.P. 1076*

– **Sections 95 (2), 110-A** – Liability of insurer with regard to third party risk – Would not be more than the statutory liability unless extra premium is paid by owner to cover unlimited liability: *Ram Pukar Singh Vs. Bhimsen, I.L.R. (2005) 1176*

– **Section 95 (2) (a)** – Limits within which the Insurance Company can challenge decree: *New India Insurance Co. Ltd. Bombay Vs. Smt. Molia Devi, Satna, I.L.R. (1971) M.P. 546 (D.B.)*

– **Section 95 (2) (b)** – Adverse inference – Could be drawn against an insurance company only when it fails to produce the copy of the policy even after direction of Tribunal: *United India Fire and General Insurance Co. Ltd., Indore Vs. Natwarlal*, I.L.R. (1989) M.P. 69 (F.B.)

– **Section 95 (2) (b)** – Extent of liability of Insurance Company to pay compensation: *Kumari Swarnalata Vs. Jogendrapal*, I.L.R. (1972) M.P. 733 (D.B.)

– **Section 95 (2) (b)** – Liability of Insurance Company to pay in excess of statutory limit – Only when policy covers that liability – Such liability not to be decided on abstract doctrine of burden of Proof – Adverse inference – Could be drawn against an insurance company only when it fails to produce the copy of the policy event after direction of Tribunal: *United India Fire and General Insurance Co. Ltd., Indore Vs. Natwarlal*, I.L.R. (1989) M.P. 69 (F.B.)

– **Section 95 (2) (b)** – (Since repealed) – Third party risk liability – No special contract between company and owner of vehicle to cover unlimited liability – Premium paid by the owner as stated in tariff of company to cover legal liability of accident to passenger – Held, when premium paid covers only the statutory liability – Fact that insurance policy was comprehensive policy – Not material as comprehensive policy does not mean that liability of company for third party risk becomes unlimited or higher than the statutory liability: *New India Insurance Company Ltd. Vs. Smt. Shanti Bai*, I.L.R. (1995) M.P. 57 (F.B.)

– **Section 95 (2) (b) (ii)** – Insurance company charging extra premium – Its liability is not limited to statutory liability under the section: *New India Assurance Co. Ltd. Branch Office, Rewa Road Satna Vs. Ram Kumar Tamrakar*, I.L.R. (1990) M.P. 430

– **Section 95 (2) (b) (ii)** – Liability of Insurance company – Extent of – Production of Insurance policy by Insurance Company – Necessity of – Insurance Company charging extra premium – Its liability is not limited to statutory liability under section 95(2)(b)(ii): *New India Assurance Co. Ltd. Branch Office, Rewa Road Satna Vs. Ram Kumar Tamrakar*, I.L.R. (1990) M.P. 430

– **Section 95 (2) (b) (ii)** – Statutory liability of Rs. 15,000/- unless contract to contrary – Insurance policy shows liability upto Rs. 50,000/- is covered – Liability of Insurance Co. is upto Rs. 50,000/-Third party – Insurer is one party, Policy holder is second party – Claim is made by third parties: *New India Assurance Co. Ltd. Jabalpur Vs. Kishori*, I.L.R. (1991) M.P. 588

– **Sections 95 (2) (b) & 95 (5)** – Insurance policy provides “such amounts as is necessary to meet the requirements of Motor Vehicles Act, 1939” means insurer would be deemed to be liable to extend as provided U/ss 95(2)(b) and 140 of the Act – This is minimum liability – Insurer takes extra premium then cover the risk according to premium

– This is maximum liability: *The Oriental Fire And General Insurance Company Ltd. Vs. Smt. Shahjehan Begum*, I.L.R. (1996) M.P. 139

– **Section 95 (2) (b) (ii) (4)** – Liability of Insurance Co. – Limit of Rs. 5000/- may be increased to the maximum limit of Rs. 75,000/- for individual passenger: *United India Insurance Co., Nagpur Vs. Mst. Neelanbai*, I.L.R. (1988) M.P. 222

– **Sections 95 (5) and 96** – Policy containing clause about transfer – Transfer of policy to purchaser of car – Transfer assented to by insurance company – Transferee is person falling under category “the person or class of persons specified in the policy in respect of any liability “for purposes of sub-section (5) of section 95 – Would be “a person insured by the policy” for purposes of section 96 of the Act: *Gyarsilal Vs. Pt. Sitacharan Dubey*, I.L.R. (1964) M.P. 91 (D.B.)

– **Section 96** – Case of third party risk – Insurer’s liability is statutory – Has to pay the amount decreed – Liability does not exceed the sum assured: *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha*, I.L.R. (1970) M.P. 462 (D.B.)

– **Section 96** – Insurer not disclosing material facts – Insurance Company entitled to avoid contract – Insurer exempted from liability – Decree becoming final against insurer – Insurance Company is exempted from liability for payment: *The British India General Insurance Co. Ltd. Bombay Vs. Ramnath*, I.L.R. (1960) M.P. 88 (D.B.)

– **Section 96** – Suit for damages for accident – Insurance company not necessary party – Issue of notice through Court only necessary – Liability co-extensive with owner of car – Insurance Company can be joined as party even after limitations if claim against original defendants is filed in time: *Antoo Vs. Jagatsing*, I.L.R. (1963) M.P. 270 (D.B.)

– **Sections 96 and 103** – Onus of proving breach of terms of the policy is on the insurer – Section 42 – Permit of vehicle not produced – Court not in a position to know terms of permit – Unless fault of insured is proved insurer cannot escape liability: *The National Insurance Co. Ratlam Vs. Uma Devi*, I.L.R. (2000) M.P. 502

– **Sections 96 and 110** – Defence open to insurer in case of claim for compensation – Insured necessary party to claim proceedings: *Mangilal Vs. Parasram*, I.L.R. (1971) M.P. 986 (F.B.)

– **Sections 96 and 110** – Negligence of owner or driver – Condition precedent for impossible liability: *Mangilal Vs. Parasram*, I.L.R. (1971) M.P. 986 (F.B.)

– **Sections 96 and 110** – Power conferred on Tribunal to award compensation clothes Tribunal with necessary authority to use means to make grant effective: *Mangilal Vs. Parasram*, I.L.R. (1971) M.P. 986 (F.B.)

– **Sections 96 and 110** – Relate to liability of Insurer where liability has been incurred by the insured – Lays down when and to what extent Insurer is liable – Negligence of owner or driver – Condition precedent for imposing liability – Defence open to insurer in case of claim for compensation – Insured necessary party to claim proceedings – Power conferred on Tribunal to award compensation cloths Tribunal with necessary authority to use means to make grant effective – Words and phrases – Word “Negligence” – Meaning of – Standard to be applied to determine negligence – Test to be applied to determine fact of negligence – Burden of proof – Doctrine “res ipsa loquitur” – Applicability of – Mere happening of event – May be proof of negligence – Liability not avoided by providing possible compensation for accident: *Mangilal Vs. Parasram*, I.L.R. (1971) M.P. 986 (F.B.)

– **Section 96 (2)** – Owner transferring car – Car meeting with accident causing injury to third party – Owner cannot recover compensation from insurance company – Purchaser cannot recover unless there is assignment: *Gyarsilal Vs. Pt. Sitacharan Dubey*, I.L.R. (1964) M.P. 91 (D.B.)

– **Section 96 (4)** – Not a provision fixing liability of the insurer, but confers a right on the insurer to recover amount: *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha*, I.L.R. (1970) M.P. 462 (D.B.)

– **Section 103** – Vehicle insured with the appellant – Alleged transfer of vehicle by the Registered Owner – No evidence on record to support such plea – In absence of any evidence it has to be held that the owner of the vehicle is the registered owner – Insurer cannot be absolved of its liability on ground that there was no privity between it and the alleged transferee – Earning of deceased from evidence on record re-assessed at Rs. 450/- per month – Deducting 1/3rd towards personal expenditure and applying multiplier of 14 award enhanced with 12% interest from the date of application – Award modified accordingly: *The National Insurance Co. Ratlam Vs. Uma Devi*, I.L.R. (2000) M.P. 502

– **Section 103 and Motor Vehicles Act (LIX of 1988), Section 157** – Third party risks – Even in absence of intimation policy remains effective in respect of third party risks: *National Insurance Company Ltd. Vs. Kansram*, I.L.R. (2000) M.P., 526 (F.B.)

– **Section 103-A** – Transfer of certificate of Insurance upon transfer of Motor Vehicle insured with the Insurance Company – When deemed to take place – Liability of Insurance – Company upon such transfer continues: *Tarachand Nema Vs. Shri Chamar*, I.L.R. (1987) M.P. 322

– **Sections 103, 103-A, 110-D and Section 157 of Motor Vehicles Act, 1988** – Motor Accident – Transfer of vehicle before Accident without intimation to the insurer – Section 103 of Act, 1939 and Section 157 of Motor Vehicles Act 1988 – Third

party risk – Even in absence of intimation policy remains effective in respect of third party risk – Reference answered accordingly: *National Insurance Company Ltd. Vs. Kansram*, I.L.R. (2000) M.P., 526 (F.B.)

– **Section 110** – Accident arising from vehicle propelled or standing – Claims Tribunal gets jurisdiction to entertain claim under Section 110 of the Act – Interest on damages – Award of: *Sewaram Alias Sewan Vs. Nanhe Khan Alias Asgar Beg*, I.L.R. (1986) M.P. 525

– **Section 110** – Case of motor accident – First hand report of driver is important – Driving Regulations, Rules 6 and 7 – Driver not observing the rules – Presumption that driver is responsible for accident: *Rani Hemantkumariji Vs. New India Assurance Co. Ltd, Branch Office, Rampurwala Building, M.G. Road, Indore*, I.L.R. (1973) M.P. 336 (D.B.)

– **Section 110** – Duty of Court when claimant not represented by Advocate in Motor Accident claims cases: *Sewaram Alias Sewan Vs. Nanhe Khan Alias Asgar Beg*, I.L.R. (1986) M.P. 525

– **Section 110** – Motor Accident Claim for compensation – Application of doctrine of Res Ipsa Locquitur – Inference of negligence when can be drawn – Permanent Partial Disablement resulting from fracture of left os pubes bone of left ilium (hip) – Award of compensation Rs. 8000/- not excessive – Accident arising from motor vehicle propelled or standing – Claims Tribunal gets jurisdiction to entertain claim under Section 110 of the Act – Interest on damages Award of – Duty of Court when claimant not represented by Advocate in Motor Accident claims cases: *Sewaram Alias Sewan Vs. Nanhe Khan Alias Asgar Beg*, I.L.R. (1986) M.P. 525

– **Section 110** – Order refusing compensation for damage to car – Amounts to Award – Appeal against order – Maintainability – Word “compensation” in – Includes loss or damage to person or vehicle – Words “involving” preceded by “death of, or bodily injury to” and followed by “in respect of accidents” – Indicate that claim in respect of damage to vehicle alone barred from jurisdiction of Claims Tribunal – Remedy is a Civil suit – Section 110-A to 110-F – Scope of – Interpretation of Statutes – 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. JBP*, I.L.R. (1961) M.P. 1009 (D.B.)

– **Section 110** – Rule of jurisprudence – Expression “to any question relating to any claim for compensation which may be adjudicated upon by the claims tribunal” – Can be limited to claim which can be made under Section 110 but not otherwise: *Jayendra Singh Kushwaha Vs. M.P. Electricity Board, Through Divisional Engineer, M.P. Electricity Board, Gwalior*, I.L.R. (1980) M.P. 169

– **Section 110 (1)** – Constitution of Tribunal – Tribunal constituted on date when notification published and not on date when it is signed – Section 110-F – Cause of action accruing before constitution of tribunal – Right to file suit in Civil Court not affected – Suit maintainable in Civil Court – Tribunal has no jurisdiction to entertain claim – Interpretation of statute – 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 (D.B.)*

– **Section 110 (3)** – Additional District Judge appointed as Claims Tribunal acts as *persona designate* and not as civil Court – Proceedings of a civil nature – Tribunal does not work during summer vacation – Functions of tribunal assigned to civil Court – Practice of civil Court will apply – Will not function as tribunal when civil Court is closed – Application filed on opening day after vacation – Applicant entitled to benefit under Section 110-D (3) of the Act – Words and phrases: Word “negligence” – Meaning of – Both bus drivers not making room to pass by – Both are liable – Compensation for accident – Things to be considered in assessing compensation – Civil Procedure Code – Order 41, Rule 1 – Appeal against order of tribunal – Appellate Court to follow rules of practice and procedure applicable to civil appeal – Motor Accidents Claims Tribunal Rules, 1958, Madhya Pradesh – Rule 14 – Rule not exhaustive – Not contrary to the rules of practice and procedure governing civil appeals – Damages – Measure of damages – Civil Procedure Code – Order 41, Rule 33 – Discretion under – Is very wide – Enables Court to exercise power to prevent justice being defeated – Can be exercised in favour of a party who has not appealed – No unrestricted power to reopen decrees which have become final is conferred – Motor Vehicles Act – Section 96 – Case of third party risk – Insurer’s liability is statutory – Has to pay the amount decreed – Liability does not exceed the sum assured – Policy regarding third party risk – Amount not specified in policy – Statute comes in – Section 95(2) – Fixes both minimum and maximum – Section 96(4) – Not a provision fixing liability of the insurer, but confers a right on the insurer to recover amount – Section 110 – D – Circumstances under which insurer has a right of appeal: *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha, I.L.R. (1970) M.P. 462 (D.B.)*

– **Section 110 (3)** – Motor Accident claims Tribunal acts as *persona designate*: *New India Insurance Co. Ltd. Bombay Vs. Smt. Molia Devi, Satna, I.L.R. (1971) M.P. 546 (D.B.)*

– **Section 110 (3)** – Objection to jurisdiction – Can be raised by party to proceeding – Burden on him to show that person not qualified to hold the post: *New India Insurance Co. Ltd. Bombay Vs. Smt. Molia Devi, Satna, I.L.R. (1971) M.P. 546 (D.B.)*

– **Section 110 (3)** – Proceedings of a civil nature – Tribunal does not work during summer vacation – Functions of tribunal assigned to civil Court – Practice of

civil Court will apply – Will not function as tribunal when civil Court is closed: *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha, I.L.R. (1970) M.P. 462 (D.B.)*

– **Section 110 (3) And General Clauses Act (X of 1897)** – Section 15 – Notification appointing a person as a tribunal by official designation – Cannot be asserted that necessary qualifications for appointment have not been considered – Objection to jurisdiction – Can be raised by party to proceeding – Burden on him to show that person not qualified to hold the post – Motor Accident Claims Tribunal Acts as Persona designate – Civil Courts Act, Madhya Pradesh, 1958 – Section 7 (2) – Additional District Judge – Can be Court of original jurisdiction if empowered by general or Special order by District Judge – Civil Procedure Code – Section 115 – High Court, Power of, to quash notification – Motor Vehicles Act – Section 95 (2) (a) – Limits within which the Insurance Company can challenge decree – Civil Procedure Code – Order 41, Rule 33 – Not liable to be invoked by the insured – Would defeat the provision of the Act.: *New India Insurance Co. Ltd. Bombay Vs. Smt. Molia Devi, Satna, I.L.R. (1971) M.P. 546 (D.B.)*

– **Section 110-A** – Accident due to bursting of tyre – Burden of proof – Pleadings and proof required for discharging the burden – Tyre of front wheel and road condition bad – Speed of 60 Kms. per hour is excessive – Section 110-B – Amount of compensation – Deductions of Insurance amount and gratuity payable to L.Rs. of the deceased not permissible – Dependability of son, daughter and widow found at Rs. 700/- P.M. for a period of 15 years – Award of compensation at Rs. 9000/- to son, Rs. 9000/- to daughter and Rs. 45000/- to widow would be adequate – Section 95(2) – More than one person involved in one accident – Liability of the Insurance company: *Smt. Sabira Begum Vs. The Raipur Transport Co. Private Ltd., Raipur, I.L.R. (1985) M.P. 617 (D.B.)*

– **Section 110-A** – Action under – Is a representative action on behalf of all representatives of deceased: *Smt. Suman Singh Vs. General Manager, M.P. State Road Transport Corporation Bhopal, I.L.R. (1972) M.P. 1069 (D.B.)*

– **Section 110-A** – Burden of Proof – Initial burden to prove want of negligence is on defendant – Defendant has to prove that inspite of his reasonable care, accident occurred: *Kumari Swarnalata Vs. Jogendrapal, I.L.R. (1972) M.P. 733 (D.B.)*

– **Section 110-A** – Claim for compensation – Deduction of 10 to 20 percent from pecuniary benefit can be usually made: *Smt. Gulab Devi Sohaney Vs. Govt. of Madhya Pradesh, Bhopal, I.L.R. (1974) M.P. 677 (D.B.)*

– **Section 110-A** – Motor accident – Claim for compensation “Contributory negligence” and “Composite negligence” – “Distinction between” – Accident caused by negligence of drivers of two vehicles – Is a case of “Composite negligence” – Apportionment of compensation cannot be claimed: *M/s Oriental fire and General Insurance Co. Ltd. Vs. Kaduram Shukla, I.L.R. (1987) M.P. 384*

– **Section 110-A** – Presumptions that can be drawn from the nature and character of the accident – Burden of Proof – Initial burden to prove want of negligence is on defendant – Defendant has to prove that inspite of his reasonable care, accident occurred – Quantum of damages – Principles to be applied for determining compensation – Section 95 (2) – Extent of liability of Insurance Company to pay compensation: *Kumari Swarnalata Vs. Jogendrapal*, I.L.R. (1972) M.P. 733 (D.B.)

– **Section 110-A** – Quantum of damages – Principles to be applied for determining compensation: *Kumari Swarnalata Vs. Jogendrapal*, I.L.R. (1972) M.P. 733 (D.B.)

– **Section 110-A (3)** – In deciding question of delay – Humans and not mechanical view is to be taken – Some delay in filing application for claim after discharge from hospital – Delay liable to be condoned: *Raju Vs. Chogalal*, I.L.R. (1972) M.P. 585

– **Section 110-A (3)** – Some delay in filing application for claim after discharge from hospital – Delay liable to be condoned: *Raju Vs. Ghogalal*, I.L.R. (1972) M.P. 585

– **Section 110-A and Fatal Accidents Act, Indian (XIII of 1855), Sections 1-A and 2** – Claim for compensation – Mother of the deceased entitled to claim compensation under sections 1-A and 2 – Award of compensation – Damages – Assessment of damages for loss of dependency and loss of earning of the lost years – Mode of determination: *Ramesh Chandra Vs. M.P. State Road Transport Corporation*, I.L.R. (1982) M.P. 821 (D.B.)

– **Section 110-A and Fatal Accidents Act, Indian (XIII of 1855), Sections 1-A and 2** – Damanges – Assessment of damages for loss of dependency and loss of earning of the lost years – Mode of determination: *Ramesh Chandra Vs. M.P. State Road Transport Corporation*, I.L.R. (1982) M.P. 821 (D.B.)

– **Section 110-A and Section 110-F** – Claim for compensation in respect of damage to property including a vehicle – Claims tribunal has jurisdiction to entertain – Claim for compensation ‘for loss of business’ – Not entertainable by claims Tribunal – Section 110-F – Does not bar jurisdiction of civil Court for filing claim ‘for loss of business’: *Rajkumar Vs. Sardar Mahendra Singh*, I.L.R. (1984) M.P. 661 (D.B.)

– **Section 110-A and D** – Circumstances in which driver of Motor Vehicle can be held responsible for accident – Driver continues to be liable even if the other party to the accident is negligent – Action under – Is a representative action on behalf of all representatives of deceased: *Smt. Suman Singh Vs. General Manager, M.P. State Road Transport Corporation Bhopal*, I.L.R. (1972) M.P. 1069 (D.B.)

– **Section 110-A and D** – Driver continues to be liable even if the other party to the accident is negligent: *Smt. Suman Singh Vs. General Manager, M.P. State road Transport Corporation Bhopal*, I.L.R. (1972) M.P. 1069 (D.B.)

– **Section 110-A to 110-F** – Scope of: *Dr. Om Prakash Mishra Vs. National Fire and General Insurance Co., Ltd. JBP, I.L.R. (1961) M.P. 1009 (D.B.)*

– **Section 110-AA** – Father earning member, also supporting mother, both not entitled to any compensation as not dependent: *K.K. Jain Vs. Smt. Masroor Anwar, I.L.R. (1989) M.P. 643 (D.B.)*

– **Sections 110-A and 95-Motor Vehicles Rules, M.P., 1974** – Rule III – Injured traveling in the truck, not an employee of owner of vehicle – Not included in the category of persons who could be carried in the vehicle – Contract of Insurance also not covering the risk of such travelers – Injured being a gratuitous passenger not entitled to compensation against insurance company – Award against Insurance Company set aside: *The New India Assurance Company Ltd. Vs. Ashok Singh, I.L.R. (1990) M.P. 273 (D.B.)*

– **Sections 110-A to 110(F) and Section 2(19)** – Word ‘Owner’ – Definition of – Is inclusive one – Master and Servant – Vicarious liability – Vehicle though owned by UNICEF but loaned to State Govt. and under direct control and use of State govt. – Accident committed when it was being driven rashly and negligently by an employee of State Govt. in discharge of his official duties – State govt. vicariously liable – Vehicles owner’s liability not absolute – Civil Court, Jurisdiction of – When barred: *State of M.P. Vs. Prembai, I.L.R. (1981) M.P. 334 (D.B.)*

– **Sections 110-A to 110-F** – Civil Court, Jurisdiction of – When barred: *State of M.P. Vs. Prembai, I.L.R. (1981) M.P. 334 (D.B.)*

– **Sections 110-A to 110-F and Fatal Accidents Act (XIII of 1855), Section 1-A and 2** – Liability of Insurer – Vehicle driven in breach of terms of policy of insurance Insurance Company not liable: *Shanker Rao Vs. M/s Babulal Fouzdar, Hoshangabad, I.L.R. (1983) M.P. 634 (D.B.)*

– **Sections 110-A to 110-F and Fatal Accidents Act (XIII of 1855), Section 1-A and 2** – Nature of provisions – Motor Vehicles act contains only procedural law – Substantive law contained in Fatal Accidents Act – Claim for compensation has to be decided under general law of Torts and Fatal accidents Act – Distinction between section 1-A and 2 – Section 1-A permits award of compensation for pecuniary loss to relatives specified therein – Brother of the deceased not included – 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 – Liability of insurer – Vehicles driven in breach of terms of policy of insurance – Insurance Company not liable: *Shanker Rao Vs. M/s Babulal Fouzdar, Hoshangabad, I.L.R. (1983) M.P. 634 (D.B.)*

– **Sections 110-AA, 110-B, 2 (8), 2 (18), 95** – Choice of one of the two forums can be exercised before the claim adjudicated – Just compensation in case of death how to determine – Sum received from employer as a consequence of death, but not as voluntary or charitable payment, to be deducted – Dumper is a motor vehicle – Policy not indicating contract to contrary liability of insurer cannot exceed statutory liability – Father earning member, also supporting mother, both not entitled to any compensation as not dependent – Evidence Act – 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.)*

– **Section 110-B** – Accidental death-minimum amount of compensation to be awarded under – Section 92-A – Applicable to all pending claims before the Tribunal or the High Court – Normal expectancy of life – Consideration of, for determining just compensation – Section 95(2) – Liability of Insurance company under – Extent of – Section 110-CC – Interest, proper rate of, to be awarded under: *Najibhai Patel Vs. Vishnuprasad Sharma, I.L.R. (1990) M.P. 511*

– **Section 110-B** – Amount of compensation – Deduction of insurance amount and gratuity payable to L.Rs. of the deceased not permissible – Dependability of son, daughter and widow found Rs. 700/- P.M. for a period of 15 Years – Award of compensation at Rs. 9000/- to son Rs. 9000/- to daughter and Rs. 45000/- to widow would be adequate: *Smt. Sabira Begum Vs. The Raipur Transport Co. Private Ltd., Raipur, I.L.R. (1985) M.P. 617 (D.B.)*

– **Section 110-B** – Amount of compensation – Determination of – Pecuniary advantage to the claimant by reason of death of the deceased – Consideration of – Amount of Insurance, Provident Fund, Gratuity, Family Pension, Ex-Gratia payment – Not deductible from compensation – Acceleration of interest of that claimants – Consideration of – Burden of proof – Rests on the defendant – In case of doubt, benefit to go to the claimants: *Sardar Rajendra Singh Vs. Smt. Kashmiran Mathur, I.L.R. (1983) M.P. 1 (F.B.)*

– **Section 110-B** – Amount of Insurance, Provident Fund, Gratuity, Family Pension, Ex-Gratia payment – Not deductible from compensation: *Sardar Rajendra Singh Vs. Smt. Kashmiran Mathur, I.L.R. (1983) M.P. 1 (F.B.)*

– **Section 110-B** – Balance of loss and gain to the dependent must be properly ascertained – Just Compensation – Compensation to be assessed is the pecuniary loss caused to dependent Ex Gratia grant is deductible: *Smt. Malti Vishwakarma Vs. Sunder Transport Co. Rewa, I.L.R. (1991) M.P. 36 (D.B.)*

– **Section 110-B** – Claim under – Driving Regulations – Regulation No. 6 – The words “Slow Down” – Requirement of – Contributory negligence – Inference of – When can be drawn – Car driven at a speed of 15-20 miles an hour on highway – Road

wide enough to let two vehicles pass – Driver of car not further slowing down vehicle before approaching crossing – Truck came on main road from side lane in high speed and dashing against left side of car damaging it and causing personal injuries to inmates – No inference of contributory negligence against driver of car can be drawn – Non – Insurance of car – Whether sufficient to infer contributory negligence – Just compensation – Concept of – Interest – Award of – 12% per annum would be just and fair: *Sankhdhar Singh Vs. Kundanlal*, I.L.R. (1988) M.P. 15

– **Section 110-B** – Contributory negligence – At middle of inter section of two roads, truck and scooter collided – When Scooterist crossed half of inter-section – It cannot be said that truck driver could not have seen him – Truck driver, a novice without licence – Truck Driver unable to stop truck there and then after accident – Could stop it only after travelling distance of 70 feet – Indicates even at inter section, truck was running at high speed – Driver of truck alone guilty of negligence – No contributory negligence on the part of scooterist: *Smt. Sarla Dixit Vs. Balwant Yadav*, I.L.R. (1996) M.P. 17 (D.B.)

– **Section 110-B** – Contributory negligence – Inference of – When can be drawn – Car driven at a speed of 15-20 miles an hour on highway – Road wide enough to let two vehicles pass – Driver of car not further slowing down vehicle before approaching crossing – Truck came on main road from side lane in high speed and dashing against left side of car damaging it and causing personal injuries to inmates – No inference of contributory negligence against driver of car can be drawn: *Sankhdhar Singh Vs. Kundanlal*, I.L.R. (1988) M.P. 15

– **Section 110-B** – Damages – Circumstances in which damage on the count of expectation of life to be granted – Nature of proof necessary Rules regarding qualifications for non-pecuniary damage in terms of money – Interest Act, 1839 – Interest prior to suit – When can be granted – Interest not allowable on unliquidated damages prior to suit – Civil Procedure Code – Section 34 Interest from date of suit till realization – Payable even on unliquidated damages – Claims tribunal, Power of, to grant *pendent lite* and future interest: *Vinod Kumar Shrivastava Vs. Ved Mitra Vohra*, I.L.R. (1974) M.P. 121 (D.B.)

– **Section 110-B** – Determination of Compensation – Multiplier method – Deceased 27 years old army personnel with bright future – At time of death, monthly income Rs. 1,500 p.m. – Average future income would come to Rs. 2,200 p.m. – Proper multiplier would be 15 – Held, Rs. 2,85,000, was proper compensation: *Smt. Sarla Dixit Vs. Balwant Yadav*, I.L.R. (1996) M.P. 17 (D.B.)

– **Section 110-B** – Just compensation – Compensation to be assessed is the pecuniary loss cause to dependent – Ex-Gratia grant is deductible: *Smt. Malti Vishwakarma Vs. Sunder Transport Co. Rewa*, I.L.R. (1991) M.P. 36 (D.B.)

– **Section 110-B** – Just compensation – Concept of – Interest – Award of – 12% per annum would be just and fair: *Sankhdhar Singh vs Kundanlal*, I.L.R. (1988) M.P. 15

– **Section 110-B** – Just compensation – Contribution to the family not sole criteria – Bare minimum to support to be allowed if deceased was not earning – Motor Vehicles Act, 1939, Section 95(2)(b)(ii)(4) – Liability of Insurance Co-Limit of Rs. 5000/- may be increased to the maximum limit of Rs. 75,000/- for individual passenger – Pleading – Insurance Company is bound to take special plea in written statement and to file policy: *United India Insurance Co., Nagpur Vs. Mst. Neelanbai*, I.L.R. (1988) M.P. 222

– **Section 110-B** – Just compensation, in case of death how to determine – Sum received from employer as a consequence of death, but not as voluntary of charitable payment, to be deducted: *K.K. Jain Vs. Smt. Masroor Anwar*, I.L.R. (1989) M.P. 643 (D.B.)

– **Section 110-B** – Liability of Insurance Company to pay compensation under – Goods Vehicle carrying passengers meeting with an accident – Cannot Claim compensation from Insurance company – Insurance company does not cover risk contrary to law: *Sardar Ishwar Singh Vs. Himachal Puri*, I.L.R. (1990) M.P. 166

– **Section 110-B** – Non-Insurance of car – Whether sufficient to infer contributory negligence: *Sankhdhar Singh vs Kundanlal*, I.L.R. (1988) M.P. 15

– **Section 110-B** – Normal expectancy of life – Consideration of, for determining just compensation: *Najibhai Patel Vs. Vishnuprasad Sharma*, I.L.R. (1990) M.P. 511

– **Section 110-B** – Rules regarding qualifications for-non-pecuniary damage in terms of money: *Vinod Kumar Shrivastava Vs. Ved Mitra Vohra* I.L.R. (1974) M.P. 121 (D.B.)

– **Section 110-B** – Things which are to be considered in determining compensation: *Smt. Gulab Devi Sohaney Vs. Govt. of Madhya Pradesh, Bhopal* I.L.R. (1974) M.P. 677 (D.B.)

– **Section 110-B** – Tribunal has to determine “just compensation” – Not bound to follow and apply the basis of the assessment of compensation indicated by decisions under Fatal Accidents Act – Things which are to be considered in determining compensation – Interest – Not allowable on un-liquidated damages – Motor Vehicles Act—Section 110-A – Claim for compensation – Deduction of 10 to 20 percent from pecuniary benefit can be usually made: *Smt. Gulab Devi Sohaney Vs. Govt. of Madhya Pradesh, Bhopal*, I.L.R. (1974) M.P. 677 (D.B.)

– **Section 110-B** – Tribunal to determine compensation as contained in Fatal Accidents Act – Rules developed by English Courts – To be applied to cases arising under Indian Act: *Mst. Kamladevi Vs. Krishnchand*, I.L.R. (1974) M.P. 325 (D.B.)

– **Section 110-B and Fatal Accidental Act, (XIII of 1955)** – Negligence of Driver – Attempt to take the bus across the bridge when river was in spate – Rashness and negligence established – Assessment of damages – Principles – Selection of multiplier of 10 – Not justified – Gratutious services rendered by female members of the family – Loss of – Damages can be claimed – Death of daughter – in-law Damages can be awarded: *Madhya Pradesh State Road Transport Corporation Vs. Vishmbhardayal Agrawal*, I.L.R. (1987) M.P. 114

– **Section 110-B, read with Section 1-A** – Makes obligatory on Tribunal to award ‘just compensation’ – Quantum of ‘just compensation’ – Tribunal awarding compensation below the required minimum – Effect of: *Sardar Ishwar Singh Vs. Himachal Puri*, I.L.R. (1990) M.P. 166

– **Sections 110-B, 110-CC and 92-A**, As amended and fatal accidents Act, Indian (XIII of 1855), Section 1-A – Assessment of damages – Section 110-B read with Section 1-A – Makes obligatory on Tribunal to award ‘just compensation’ – Quantum of ‘Just compensation’ – Tribunal awarding compensation below the required minimum – Effect of – Section 92-A – Applicability and scope of – Words ‘any person’ in – Meaning of – Word ‘any’ – Connotation of – High Court has power to suo motu increase the amount of compensation awarded by Tribunal when found unjust and illegal – Section 110-CC – Award of interest under 12% interest to be treated as standard one – Section 110-B – Liability of Insurance company to pay compensation under – Goods vehicle carrying passengers meeting with an accident – Cannot claim compensation from Insurance company – Insurance company does not cover risk contrary to law: *Sardar Ishwar Singh Vs. Himachal Puri*, I.L.R. (1990) M.P. 166

– **Section 110-C** – and Motor Accident Claims Tribunal Rules, Madhya Pradesh, Rule 14 – Circumstances and conditions in which a commission to examine witness to be issued by tribunal: *Balubhai Vs. Mahila Sarjubai*, I.L.R. (1970) M.P. 838

– **Section 110-C** – and Motor Accident Claims Tribunal Rules, Madhya Pradesh, Rule 14 – Combined effect of both provisions – Circumstances and conditions in which a commission to examine witness to be issued by tribunal: *Balubhai Vs. Mahila Sarjubai*, I.L.R. (1970) M.P. 838

– **Sections 110-C (2A), 96 (2), Madhya Pradesh Motor Vehicles Rules, 1974**, Rule 277 – Claim Petition filed against owner and driver – Insurance Company not impleaded – No notice issued by Claims Tribunal to the Insurance Company – *Ex parte* award passed against driver and owner – Application filed for impleading insurance

company in execution proceedings – Held – Insurance Company not impleaded in claim petition – Cannot be allowed to be impleaded in execution proceedings: *Motilal Soni Vs. Issrani Bus Service, I.L.R. (1993) M.P. 333*

– **Section 110-CC** – Award of interest under – 12% interest to be treated as standard one: *Sardar Ishwar Singh Vs. Himachal Puri, I.L.R. (1990) M.P. 166*

– **Section 110-CC** – Interest, proper rate of, to be awarded under: *Najibhai Patel Vs. Vishnuprasad Sharma, I.L.R. (1990) M.P. 511*

– **Section 110-CC** – Quantum of compensation – Mode of assessment: *Sardar Mahendra Pal Singh Vs. Prakash Chand Goyal, I.L.R. (1986) M.P. 259*

– **Section 110-D** – Appeal against award by Motor Accidents Claims Tribunal – Claimant employees of private company owner of the vehicle – Would be an occupant gratuitously traveling in the car within the expression ‘any person’ – Insurer cannot escape the liability – Appeal for enhancement – Tribunal has awarded in all Rs. 60,000/- - Claimant suffered 50% disability and shortening of leg – An amount of Rs. 50,000/- would be just – Award enhanced: *United India Insurance Co. Ltd., Jabalpur Vs. Tribhuwan Nath Garg, I.L.R. (1999) M.P. 863 (D.B.)*

– **Section 110-D** – Burden of proving negligence on claimant – Speed of 45-50 miles – Not an excessive speed in a case of bus on a clear road – Evidence Act – Section 33 – Not attracted unless there is identity of parties – Maxim ‘res ipsa loquitur’ – Not a rule of law – Not applicable where cause of accident is known – Carrier – Liability of common carrier – Not insurer: *Ramdulare Shukla Vs. Madhya Pradesh State Road Transport Corporation Gwalior, I.L.R. (1973) M.P. 509 (D.B.)*

– **Section 110-D** – Carrier – Liability of common carrier – Not insurer: *Ramdulare Shukla Vs. Madhya Pradesh State Road Transport Corporation Gwalior, I.L.R. (1973) M.P. 509 (D.B.)*

– **Section 110-D** – Circumstances under which insurer has a right of appeal: *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha, I.L.R. (1970) M.P. 462 (D.B.)*

– **Section 110-D** – Duty of Truck Driver towards pedestrians – Care which is needed to be taken in certain circumstances – Extent of damages to which a victim is entitled: *Bishwanath Gupta Vs. Munna, I.L.R. (1975) M.P. 1076 (D.B.)*

– **Section 110-D (3)** – Application filed on opening day after vacation – Applicant entitled to benefit under this Section: *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha, I.L.R. (1970) M.P. 462 (D.B.)*

– **Section 110-D as Motor Vehicle Act (LIX of 1988), Section 173** – Appeal by owner against Award – High Court entertaining appeal and notices issued to claimants – Claimants filing cross-objection for enhancement, after service of notice as per rule – Owner withdrawing appeal – Cross-objection filed still survives: *Rooplal Vs. Smt. Maina Devi, I.L.R. (1998) M.P. 316 (D.B.)*

– **Section 110-D as Motor Vehicle Act (LIX of 1988), Section 173** – Appeal by owner against Award entertained – Cross-objection preferred by claimants for enhancement of compensation – Maintainable – Appeal by owner against Award – High Court entertaining appeal and notices issued to claimants – Claimants filing cross-objection for enhancement, after service of notice as per rule – Owner withdrawing appeal – Cross-objection filed still survives: *Rooplal Vs. Smt. Maina Devi, I.L.R. (1998) M.P. 316 (D.B.)*

– **Section 110-E** – Acceleration of interest of that claimants – Consideration of – Burden of proof – Rests on the defendant – In case of doubt, benefit to go to the claimants: *Sardar Rajendra Singh Vs. Smt. Kashmiran Mathur, I.L.R. (1983) M.P. 1 (F.B.)*

– **Section 110-F** – Bars Jurisdiction of Civil Court – Right to be enforced in the manner provided: *The Madhya Pradesh State Road Transport Corporation Jabalpur Vs. Jahiram, I.L.R. (1971) M.P. 329 (D.B.)*

– **Section 110-F** – Cause of action accruing before constitution of tribunal – Right to file suit in civil Court not affected – Suit maintainable in civil Court – Tribunal has no jurisdiction to entertain claim: *Kumari Sushma Mehta Vs. The Central Provinces Transport Services Ltd., Jabalpur, I.L.R. (1963) M.P. 688 (D.B.)*

– **Section 110-F** – Does not bar jurisdiction of civil Court for filling claim ‘for loss of business’: *Rajkumar Vs. Sardar Mahendra Singh, I.L.R. (1984) M.P. 661 (D.B.)*

– **Section 110-F** – Word “entertain” in – Meaning of – Not retrospective – Continuance of suit for compensation for accident filed before establishment of Claims Tribunal – Not barred: *Khatumal Vs. Abdul Qadir, I.L.R. (1961) M.P. 240 (D.B.)*

– **Sections 110 and 96(1) Motor Accidents Claims Tribunal Rules M.P., 1959** – Rules 5 and 14 and Civil Procedure Code (V of 1908), order 1, rule 9 – Vicarious liability of insurer when arises – Vehicle at the time of accident was neither being driven by its owner nor by his employee or agent nor for owner’s business – Owner of the vehicle and insurer not necessary parties in the claim petition – Claim petition cannot be summarily dismissed under rule 5 – Order 1, rule 9, C.P.C. Not applicable in claims cases – Hence, claim petition cannot be dismissed for non-joinder of the owner of

Vehicle – However, claim against insurer in the absence of owner of the vehicle not maintainable as insurer's liability co-extensive with the owner under section 96(1) of the Act: *B.D. Gupta Vs. Ratanlal, I.L.R. (1984) M.P. 456*

– **Sections 110 to 110-F** – Claim by persons other than those enumerated in Section 110-A – Can not be made under Section 110 – Claim not covered by Section 110-F: *Jayendra Singh Kushwaha Vs. Madhya Pradesh Electricity Board, Through Divisional Engineer, M.P. Electricity Board, Gwalior, I.L.R. (1980) M.P. 169*

– **Sections 110 to 110-F** – Do not deal with liability – Provide a new mode for enforcing the liability – Object of – Provide for a complete code regarding enforcing the liability arising from motor accident Liability has to be determined according to substantive law – Words “which appears to it to be just” – Implication of – Fatal Accidents Act – Governs determination of liability as substantive law – Section 110-B – Tribunal to determine compensation as contained in Fatal Accidents Act – Rules developed by English Courts – To be applied to cases arising under Indian Act – Mode of assessment of damages: *Mst. Kamladevi Vs. Krishnchand, I.L.R. (1974) M.P. 325 (D.B.)*

– **Sections 110 to 110-F** – Mode of assessment of damages: *Mst. Kamladevi Vs. Krishnchand, I.L.R. (1974) M.P. 325 (D.B.)*

– **Sections 110 to 110F** – object of: *Mst. Kamladevi Vs. Krishnchand, I.L.R. (1974) M.P. 325 (D.B.)*

– **Sections 110 to 110-F** – Provide a new mode for enforcing the liability: *Mst. Kamladevi Vs. Krishnchand, I.L.R. (1974) M.P. 325 (D.B.)*

– **Sections 110 to 110-F** – Provide for a complete code regarding enforcing the liability arising from motor accident – Liability has to be determined according to substantive law: *Mst. Kamladevi Vs. Krishnchand, I.L.R. (1974) M.P. 325 (D.B.)*

– **Sections 110 to 110-F** – Scheme of the provisions – Claim by persons other than those enumerated in section 110-A – Can not be made under section 110 – Claim not covered by Section 110-F – Rule of jurisprudence – Expression “to any question relating to any claim for compensation which may be adjudicated upon by the claims tribunal” – Can be limited to claim which can be made under section 110 but not otherwise: *Jayendra Singh Kushwaha Vs. M.P. Electricity Board, Through Divisional Engineer, M.P. Electricity Board, Gwalior, I.L.R. (1980) M.P. 169*

– **Sections 110 to 110-F** – Words “which appears to it to be just” Implication of: *Mst. Kamladevi Vs. Krishnchand, I.L.R. (1974) M.P. 325 (D.B.)*

– **Section 134** – Appellate authority – Power of, to stay operation of original order – Exercise of power not dependent upon determination of question about tenability of appeal – Question whether appeal is tenable or not – Solely within jurisdiction of appellate authority: *National Transport Co. Seoni Vs. The State Transport Authority, M.P. Gwalior, I.L.R. (1959) M.P. 357 (D.B.)*

– **Section 134(1)** – Appellate Court, Power of, to vary operation of condition attached to permit: *The Berar Regular Motor Service Union, Achalpur Vs. The Regional Transport Authority Bhopal, I.L.R. (1964) M.P. 496 (D.B.)*

– **Section 173** – Accident due to rash and negligent driving – Claimant suffered serious injuries – Disability to the extent 25% – Award of Rs. 1,15,000.00 as compensation on account of inconvenience and medical treatment – Justified – No interference called for: *National Insurance Co. Ltd, Hyderabad Vs. Sudhakar, I.L.R. (2001) M.P. 230 (D.B.)*

– **Rule 49-A** – Constitution of India, Articles 14, 19 (1) (g) – Rule 49-A framed under Motor Vehicles Act – Not *ultra vires* – Government or legislature – Power of, to lay down limit to create standard of efficiency for securing public comfort and convenience – Court – No power of, to scrutinize except when unreasonable or unrelated to public purposes: *Sardar Banta Singh Vs. The State of M.P., I.L.R. (1957) M.P. 117 (D.B.)*

– **Rule 50-A (3)** – Tender of fee with application – Condition precedent for a valid application: *Azad Hind Motor Transport Co-Operative Society, Burhanpur Vs. The Regional Transport Authority, Indore, I.L.R. (1965) M.P. 420 (D.B.)*

– **Rule 52** – Order directing fulfillment of condition within certain time Regional Transport authority, Power of, to extend time: *The Berar Regular Motor Service Union, Achalpur Vs. The Regional Transport Authority Bhopal, I.L.R. (1964) M.P. 496 (D.B.)*

– **Rule 73 as amended** – Hearing of appeal by tribunal – Is a matter of procedure – Does not affect substantive right of appeal – “Right of appeal” – Meaning of – Original appellate authority abolished by amended rule – New appellate authority constituted – Appeals pending before original appellate authority – New appellate authority – Power of, to hear and decide those appeals – Jurisdiction – Party failing to object to jurisdiction but submitting to jurisdiction – Party precluded from questioning jurisdiction – Tribunal suffering from want of inherent jurisdiction – Non-raising of objection to jurisdiction – Party not precluded from questioning jurisdiction subsequently: *Patny Transport (Private) Ltd., Jagdalpur Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1969) M.P. 16 (D.B.)*

– **Rule 73 as amended Jurisdiction** – Party failing to object to jurisdiction but submitting to jurisdiction – Party precluded from questioning jurisdiction: *Patny Transport (Private) Ltd., Jagdalpur Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1969) M.P. 16 (D.B.)*

– **Rule 73 as amended** – Original appellate authority abolished by amended rule – New appellate authority constituted – Appeals pending before original appellate authority – New appellate authority – Power of, to hear and decide those appeals: *Patny Transport (Private) Ltd., Jagdalpur Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1969) M.P. 16 (D.B.)*

– **Rule 73 as amended** – Tribunal suffering from want of inherent jurisdiction – Non-raising of objection to jurisdiction – Party not precluded from questioning jurisdiction subsequently: *Patny Transport (Private) Ltd., Jagdalpur Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1969) M.P. 16 (D.B.)*

– **Rule 75 (d)** framed thereunder – Does not authorize transport authority to ignore transfer application – Does not also authorize to call for fresh application: *Poonamchand Vs. The Regional Transport Authority, Indore Region, Indore, I.L.R. (1963) M.P. 385 (D.B.)*

– **Rules 111 and 147-A** – To be an offence under – Constituents necessary to be established – Statutory offences – *Mens rea* not necessary but proof of *actus reus* necessary – Ordinarily no vicarious liability arises in criminal law except when imposed by statute-words “cause” and “allow” – Import requirement of personal knowledge-words “use, sell, carry” etc. to be double content – One physical act and other legal relationship – Words used in both senses in criminal law: *The State of Madhya Pradesh Vs. The Bundelkhand Transport Co., I.L.R. (1964) M.P. 166*

Motor Vehicles Act (LIX of 1988)

– **Sections 2 (7), 2 (25), 102** – Permission to ply three wheeler tempos on part of nationalized route challenged – Motor Cab (three wheeler tempo) is “Contract Carriage” as defined under Section 2(7) – Nationalized scheme providing the routes on which Transport Services to be provided by Corporation – Permission to ply three wheeler tempos on part of nationalized route without complying with mandatory provisions of Section 102 – Modification of Scheme invalid: *Chhatisgarh Yatayat Sangh, Raipur Vs. State of M.P., I.L.R. (1993) M.P. 105 (D.B.)*

– **Sections 2 (10), 2 (35), 2 (47), 3, 166 and 173** – Motor Accident – Injuries – Death – Claim for compensation – Liability to pay – “Transport Vehicle” includes both heavy goods vehicle and heavy passenger motor vehicle – Driver possessing licence to drive “heavy goods vehicles” – Could also drive “heavy passenger motor vehicle” – Endorsement or authorization – Not necessary – No breach of insurance

policy – Liability to pay compensation shall be that of insurance company: *Smt. Kusumlata Vs. Lalaram, I.L.R. (2003) M.P. 219 (D.B.)*

– **Section 2 (21)** – Light Motor Vehicle – Definition of – Unladen weight of vehicle involved in accident was less than 7500 Kg. – Falls within the definition of Light Motor Vehicle under Section 2(21) of the Act: *The New India Insurance Co. Vs. Smt. Munnibai, I.L.R. (2001) M.P. 88 (D.B.)*

– **Sections 2 (21) and 173** – Appeal against award – Section 2(21) – Light Motor Vehicle – Definition of – Unladen weight of vehicle involved in accident was less than 7500 Kg. – Falls within the definition of Light Motor Vehicle under Section 2(21) of the Act – Driver holding LMV licence could drive the vehicle – Plea of violation in terms of policy devoid of substance: *The New India Insurance Co. Vs. Smt. Munnibai, I.L.R. (2001) M.P. 88 (D.B.)*

– **Section 2 (34)** – Public Place – Defined – Public place means a road, street, way or other place, whether a throughfare or not, to which the public have a right to access, and includes any place or stand at which passengers are picked up or set down by a stage carriage – It is not disputed that inside the mines area there are roads – Though the entry is restricted, but, the members of the public have also access on permission – That would not mean that it would cease to a public place. *National Insurance Co. Ltd. Vs. Sahiba Khatun, I.L.R. (1997) M.P. 201 (D.B.)*

– **Section 2 (34)** – Use of vehicle in Public Place – Accident occurring inside the Cement Factory – Place accessible to public and vehicle were going there for business purposes – Is a public place – Insurance Company Liable: Motor Vehicles Act (LIX of 1988)-Section 2(34)-Use of vehicle in Public Place-Accident occurring inside the Cement Factory-Place accessible to public and vehicle were going there for business purposes-Is a public place-Insurance Company Liable: *Rajendra Singh Vs. Tulsabai, I.L.R. (2002) M.P. 926 (D.B.)*

– **Section 88 (14)** – Central Motor Vehicles Rules (1989), Rule 85(6) of Central Motor Vehicles Rules prohibits parking of tourists bus in any bus-stand used by Stage Carriage – Notification directing tourists buses to be operated from bus-stand used by Stage Carriage – Violative of Rule 85(6): *Nandkishore Tiwari Vs. Collector-Cum-District Magistrate, I.L.R. (1993) M.P. 378 (D.B.)*

– **Sections 95, 147** – Liability of insurance Company – Comprehensive Policy – Comprehensive Insurance of the vehicle and payment of higher premium on this score, however, does not mean that the limit of the liability with regard to third party risk becomes unlimited or higher than the statutory liability fixed under sub-section (2) of Section 95 of the Act – For this purpose a specific agreement has to be arrived at between the owner and the insurance company and separate premium has to be paid on

the amount of liability undertaken by the insurance company in this behalf: *Oriental Insurance Co. Ltd. Vs. Smt. Radharani*, I.L.R. (1997) M.P. 488 (D.B.)

– **Sections 95 (1) (2), 149** – Workman Compensation Act – In the instant case compensation has been granted because the deceased was an employee of the owner of the tractor and policy in question is an Act only Policy, and, therefore, the compensation has to be fixed as per the provision of Workmen Compensation Act: *National Insurance Co. Ltd. Vs. Rainki Bai*, I.L.R. (1997) M.P. 204

Section 140, and Civil Procedure Code, 1908 Section 115, Constitution of India, Article 227-Maintainability of Civil Revision-Civil Revision filed by claimant against the order refusing to award interim compensation under Section 140 of Motor Vehicles Act-Held-Civil Revision against the order passed under Section 140 of Motor Vehicles Act not maintainable-Only remedy is to file writ petition under Article 227 of Constitution of India: *Renuka Bai Vs. Jai Prakash Sethy*, I.L.R. (1993) M.P. 294

– **Section 140** – Financer of vehicle neither owner, nor driver – Can not be saddled with the liability of paying interim award: *M/s. Pamecha Motor Finance Vs. Smt. Shakila Bano*, I.L.R. (1996) M.P. 134

– **Section 140** – Grant of interim relief – Medical practitioner certifying permanent disability – Detail evidence not necessary – Certificate of permanent disability sufficient to entitle applicant to relief: *Ashok Vs. Ashok Singh*, I.L.R. (1995) M.P. 365

– **Section 140** – Interim Award on – No fault liability – Accident causing loss of one teeth and impairment of another due to fracture – Whether amounts to permanent disablement – Concept of percentage of functional disability is immaterial if injury arising out of accident fulfils any one of the fact of Section 142: *Santosh Kumar Vs. Sanjay More*, I.L.R. (1998) M.P. 863

– **Section 140** – No fault liability – Claim petition filed by legal representatives of deceased who died in truck accident – Whether the defence of Insurance Company that passengers being gratuitous passengers were not covered by policy – Held – Statutory scheme envisages that if death or injury results from accident owners of vehicles involved shall be liable to pay prescribed compensation without proof of negligence – Permitting the Insurance Company to raise any defence except that there is no insurance policy, would frustrate legislative object in introducing concept of no fault liability – Insurance Company liable to pay compensation in basis of non fault liability: *National Insurance Company Vs. Thaglu Singh*, I.L.R. (1994) M.P. 115 (D.B.)

– **Sections 140, 142** – Compensation – No fault liability – Entitlement – Held – If the court is prima facie satisfied on the material produced by the claimant that the fracture of bone has resulted in any permanent disablement i.e. permanent privation of

the sight of either eye or the hearing of either ear, or privation of any member or joint certainly the compensation under section 140 of the Act will be granted – But from prima facie satisfaction is simple fracture does not show any permanent disability as defined in section 142 the claimant would not be intitled to the relief: *Saurab Kumar Shukla Vs. Hukumchand, I.L.R. (1997) M.P. 519 (D.B.)*

– **Sections 140 and 142** – No fault liability – Minor injury – Doctor Certified 8% partial disability – And not permanent one – Injured cannot claim the fixed amount of no fault liability as a matter of right: *Rajesh Vs. Dilip, I.L.R. (2000) M.P.1254 (D.B.)*

– **Sections 140, 147, 167 and Workmen’s Compensation Act, 1923, Section 3** – Motor accident – Death of driver – Legal representatives can claim compensation under either of those Acts but not under both – Policy obtained to cover liability under Workmen’s Compensation Act is valid and permissible under the Act of 1988 but liability of insurer will be restricted to that arising under W.C. Act, 1923 – Employer liable for the rest – Order/Award of Court below modified: *National Insurance Co. Vs. Prembai Patel, I.L.R. (2005) M.P. (S.C.) 467 (F.B.)*

– **Sections 140, 149, 166 and 173** – Motor Accident – Claim of compensation – No fault liability – No defence at this stage is available to the Insurance Company, except that the vehicle is not insured – Tribunal cannot either reject the application or defer it for consideration after recording evidence – Tribunal has to follow the mandate of law and decide application by a summary enquiry: *Smt. Runabai Vs. Mannalal, I.L.R. (2003) M.P. 979*

– **Sections 140, 168 and 173**, Constitution of India, Article 227 and Civil Procedure Code, 1908, Section 115 – Whether an appeal would lie against an order passed under Section 140 of Motor Vehicles Act or not – Civil Revisions and Writ Petition were filed against order passed under Section 140 of Motor Vehicles Act – Question whether Civil Revision or writ petition is maintainable was referred by Single Judge to Larger Bench – Special Bench constituted in view of judgment passed by larger Bench in *Gaya Prasad’s case* – Held – Order passed under Section 140 of Motor Vehicles Act is an award – Appeal would lie under Section 173 of Motor Vehicles Act – Civil Revision or writ petition under Article 227 of Constitution of India not maintainable: *The Oriental Insurance Company Limited Vs. Chitaman, I.L.R. (1994) M.P. 275 (F.B.)*

– **Sections 145, 147 and 173** – Motor Accident – Death – Claim Petition – Liability of Insurance Company against third party risk – Carrying of gratuitous passengers are to be covered in the Insurance Policy – Order of Motor Accident Claims Tribunal reversed: *Kunwariya Bai Vs. Mohan Lal, I.L.R. (2000) M.P. 1453 (D.B.)*

– **Sections 146 and 196** – Compulsory insurance of vehicles – Exemption to vehicles owned by State and its authorities subject to creation and maintenance of fund to meet any liability arising out of use of vehicle – Duty is cast on MPSRTC to satisfy the award without execution – MPSRTC directed to maintain the fund in such manner to meet the liability arising out of use of vehicles: *Smt. Kamla bai Vs. State of M.P.*, I.L.R. (2002) M.P. 869

– **Section 147** – Liability of insurer – Insurer charging higher amount of premium raised the amount of liability per passenger to Rs. 1,00,000.00 – Adenda to the policy – Signed only by officers of the Insurer unilaterally – Plea that the liability in the sum mentioned in the policy was total liability – Not tenable: *New India Assurance Co. Ltd., Indore Vs. Smt. Jassi Bai*, I.L.R. (2000) M.P. 1280

– **Section 147 of the new Act** – Such distinction has purposely been removed: *United India Insurance Company Ltd., Raipur, Vs. Parekhin Bai*, I.L.R. (1999) M.P. 583

– **Section 147** – Third party liability – Comprehensive policy – Any person – Held – The terms and conditions being wide enough, we are of the firm opinion that the policy of the present nature would cover on an occupant of jeep who is carried without hire or reward – The word “any person” is of wide amplitude and the liability accepted by insurance company can not be curtailed or restricted: *Oriental Insurance Co. Ltd. Vs. Smt. Radha Rani*, I.L.R. (1997) M.P. 488 (D.B.)

– **Section 147 (2) (b)** – Liability of Insurance Company – The policy shows that extra premium of Rs. 75/- has been accepted by the Insurance Company but did not score out necessary clauses limiting the liability – Insurance Company liable to pay the entire award amount alongwith interest at the rate of 12% from the date of claim petition: *Mohan Kumar Vs. The New India Assurance Co. Indore*, I.L.R. (2000) M.P. 266

– **Sections 147, 149** – Comprehensive policy – No separate premium paid – Insurance company insures the liability arising out of insured and does not insure the insured himself – Insurance Company not liable to compensate loss of life of the owner under the comprehensive policy except to the extent of damages to the vehicle of liability towards third party risk – Impugned award set aside: *Mst. Hemlata Sahu Vs. Ramadhar*, I.L.R. (2001) M.P. 395 (D.B.)

– **Sections 147, 149, 173** – Appeal against award of compensation – Scooter accident with cyclist – Death of scooterist – Scooter insured with insurance company – Sections 147, 149 – Comprehensive policy – No separate premium paid – Insurance Company insures the liability arising out of insured and does not insure the insured himself – Insurance Company not liable to compensate loss of life of the owner under the comprehensive policy except to the extent of damages to the vehicle or liability

towards third party risk – Impugned award set aside: *Mst. Hemlata Sahu Vs. Ramadhar*, I.L.R. (2001) M.P. 395 (D.B.)

– **Sections 147, 166, 173** – Motor accident – Award of compensation – Appeal by insurer – Insurance policy – Time of commencement – If there is no contract to the contrary becomes operative from previous mid-night when purchased during the day following – When specific time is mentioned policy becomes operative from such time – Policy taken at 2.30 – Neither a.m. nor p.m. is mentioned – Stands to prudence that it is 2.30 p.m. – Accident in the 9 o'clock in the morning same day – Insurance company not liable and exonerated: *United India Insurance Co. Ltd. Vs. Smt. Mamta Gupta*, I.L.R. (2005) M.P. 341 (D.B.)

– **Sections 147, 166, 173** – Motor accident – Vehicle insured as private vehicle – Used commercially when accident occurred – Terms and conditions of insurance policy violated – Insurer not liable – But liable to make payment and recover the same from insured in a proceeding before executing Court: *Smt. Meera Hurmade Vs. Shri Ram*, I.L.R. (2005) M.P. 1068 (D.B.)

– **Sections 147, 149, 163-A, 166, 173** – Motor Accident – Death – Award of compensation to dependants – Insurance policy – Liability of insurer – Cheque issued toward premium bounced dishonoured – Policy cancelled under intimation to insurer – Accident after cancellation of policy – Section 149 does not help claimants in such set of facts – Insurer not liable: *National Insurance Company Limited, Akola (Maharashtra) Through Divisional Manager National Insurance Company Limited, Divisional Office, Satna Vs. Smt. Khelli Bai*, I.L.R. (2005) M.P. 1071 (D.B.)

– **Sections 147, 149, 166, 173** – Appeal – Motor Accident – Death – Compensation – Award and liability of – Vehicular collision – Driver of both Vehicles responsible – Contributory negligence 50% each – Sale of vehicle not intimated to insurance Co. – Liability of insurance Company does not cease as far as third party/victim is concerned – Insurer of transferred vehicle jointly and severally liable: *Smt. Bari Bai Vs. Bhagwan Singh*, I.L.R. (2005) M.P. 504 (D.B.)

– **Sections 148, 149, 163-A, 173 and Schedule appended thereto** – Motor Accident – Award of compensation – Liability – Proof of insurance of the vehicle – Covernote issued by authorized agent – Genuineness of cover note not specifically denied by insurance company – Insurance company liable to pay compensation – Non-earning person – Notional Income has to be taken as Rs. 15000/- per year – Award enhanced to Rs. 1,17,000/-: *Sheikh Israj Vs. Smt. Rekha*, I.L.R. (2003) M.P. 969 (D.B.)

– **Section 149** – Accident – Liability of Insurance Company – Held – Once it is held that and accepted that deceased was an employee of the owner, mere sitting next to the driver of the tractor would not exonerate the Insurance Company from indemnifying the owner from paying compensation – Every breach is not a fundamental breach so

far as to enable the Insurer to escape from liability unless that is a factor for causing the Accident – Appeal Allowed: *National Insurance Co. Ltd. Vs. Rainki Bai, I.L.R. (1997) M.P. 204*

– **Section 149** – Accident – Liability of Insurer – Allegation of breach of terms of policy – Held – It is true that it was for the Insurer to have proved that there was breach of terms of the policy but it cannot be said that the breach could be shown only by summoning the document from the Licensing Authority – It can also be proved by the evidence produced by the owner or the driver: *The New India Assurance Company, Ltd. Vs. Smt. Prem, I.L.R. (1997) M.P. 505*

– **Section 149** – Breach of condition of policy – Deceased was traveling in vehicle for hire – Weather it amounted to a breach of condition of policy – No – Merely by lifting a person or more by driver, without the knowledge of owner can not be set to be such a fundamental breach that owner should in all events be denied indemnification: *Oriental Insurance Co. Ltd. Vs. Smt. Chamarin, I.L.R. (1996) M.P. 407 (D.B.)*

– **Section 149** – Insurance company will be absolved if the vehicle is being driven in breach of condition under Section 149(2) – Allegation that victim was travelling in the truck for hire or regard not proved – Insurer cannot escape liability: *Oriental Insurance Co. Ltd., Damoh Vs. Bhanumati Bai, I.L.R. (2004) M.P. 758 (D.B.)*

– **Section 149 (1)** – If any amount has been paid to claimants by owner and driver, they are entitled to recover it from insurance company under the contract of indemnity: *Imrat Jain Vs. Surja Bai, I.L.R. (2004) M.P. 674*

– **Section 149 (2)** – Defence of insurance Company is limited to the breach of condition of the policy – The plea that the owner is not vicariously liable for the acts of his servant is a defence not available to the insurance company – In absence of an appeal by the owner it is not necessary to decide whether the owner is vicariously liable or not – Where the servant committed some wrongful act in the course of his employment that the master become liable – As the insured did not commit any breach of the policy the insurer cannot avoid its liability: *United India Insurance Company Ltd., Raipur, Vs. Parekhin Bai, I.L.R. (1999) M.P. 583*

– **Section 149 (2) (a) (ii)** – Appeal by insurer on ground that driver had no valid licence – Where the owner has satisfied that the driver has a Licence and is driving competently there would be no breach of Section 149(2)(a)(ii) – Insurance Company continue to remain liable to the innocent third party: *Oriental Insurance Company Ltd. Vs. Smt. Gyatri, I.L.R. (2004) M.P. 664 (D.B.)*

– **Section 149 (2) (a) (ii)** – Insurance Company cannot be absolved of its liability to third party on ground that licence of the driver was fake: *Imrat Jain Vs. Surja Bai, I.L.R. (2004) M.P. 674*

– **Sections 149 (2) (a) (ii), 2(b)** – Liability of Insurance Company when alleged breach of policy proved – Owner was aware that the learners driving licence had expired, but permitted him to carry passengers – Held – The Insurer is not liable to pay compensation: *The New India Assurance Company, Ltd. Vs. Smt. Prem, I.L.R. (1997) M.P. 505*

– **Sections 149 (2) (a) (ii), 149 (4), 166, 173** – Motor Accident – Rash and negligence driving – Tractor ran over the child – Award of compensation – Insurance Company cannot be absolved of its liability to third party on ground that licence of the driver was fake – If able to prove that insured did to take adequate care and caution to verify genuineness of the driver licence – Insurance company will be entitled to recover the amount paid in a proceedings to be instituted by it – If any amount has been paid to claimants by owner and driver, they are entitled to recover it from insurance company under the contract of indemnity: *Imrat Jain Vs. Surja Bai, I.L.R. (2004) M.P. 674*

– **Sections 149 (4)** – If able to prove that insured did to take adequate care and caution to verify genuineness of the driver licence – Insurance company will be entitled to recover the amount paid in a proceedings to be instituted by it: *Imrat Jain Vs. Surja Bai, I.L.R. (2004) M.P. 674*

– **Sections 149, 166** – Driver's licence valid or fake – Burden of proving lied on the insurer – Not proved by insurer that owner was aware that driver's licence was fake and still he permitted him to drive the vehicle – No illegality in holding insurer liable for paying compensation: *Oriental Insurance Co. Ltd., Damoh Vs. Bhanumati Bai, I.L.R. (2004) M.P. 758 (D.B.)*

– **Sections 149, 166, 169, 170, 173** – Motor Accident – Vehicle insured with the appellant Insurance Company – Section 166 – Award of compensation for death of victim – Insurance company if desires to assail such an award before superior Court has a statutory remedy of appeal under Section 173 of the Act subject to restriction envisaged under Section 149 – Article 227 of the Constitution and section 115 of the Civil Procedure Code 1908 – Award passed by the Motor Accidents Claim Tribunal cannot be called in question by the insurer invoking either power of superintendence of the High Court under Articles 227 or in revisional jurisdiction under Section 115 of the Code – Section 169 of the 1988 Act – MACT deemed to be Civil Court only for limited purposes contemplated in sub-section (2) thereof – Would not make it subject to the revisional or Superintending power of the High Court under the Code or the Constitution – Section 170 – Restrictions imposed by the special Act of 1988 cannot be circumvented by the filing revision under the Code or petition under Article 227 – Departure if any can only be made with permission of the MACT under Section 170 and not otherwise – Section 115 of the Code – Revision against award of MACT – Not maintainable on the face of provisions of appeal under the Act of 1988: *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan, I.L.R. (2000) M.P. 1174 (F.B.)*

– **Sections 149, 166, 173** – Motor Accident – Award of compensation – Liability of insurance company – Driver and Owner ex-parte – Appeal by insurer on ground that driver had no valid licence – Where the owner has satisfied that the driver has a Licence and is driving competently there would be no breach of Section 149(2)(a)(ii) – Insurance Company continue to remain liable to the innocent third party – Dependency and compensation – Family pension amount not found to be a benefit accruing in the form of advantage resulting from death – Deduction not permissible – Delay in disposal of the claim case because of adjournments availed by insurer – Cannot be weighed for enhancing compensation: *Oriental Insurance Company Ltd. Vs. Smt. Gyatri, I.L.R. (2004) M.P. 664*

– **Sections 149, 166, 173** – Motor Accident – Death – Claim and award of compensation – Appeal by insurer – Driver's licence valid or fake – Burden of proving lied on the insurer – Not proved by insurer that owner was aware that driver's licence was fake and still he permitted him to drive the vehicle – No illegality in holding insurer liable for paying compensation – Insurance company will be absolved if the vehicle is being driven in breach of condition under Section 149(2) – Allegation that victim was travelling in the truck for hire or regard not proved – Insurer cannot escape liability: *Oriental Insurance Co. Ltd., Damoh Vs. Bhanumati Bai, I.L.R. (2004) M.P. 758 (D.B.)*

– **Sections 149, 166, 173** – Motor accident – Death – Claim for compensation – Award – Appeal – Breach of condition – Disqualification of driver or invalid driving licence – Even if proved the insurer cannot escape statutory liability to satisfy the decree in favour of third party – Finding of trial Court exonerating Insurance Company set aside: *Ladli Vs. Rohni Prasad, I.L.R. (2004) M.P. 769*

– **Sections 149, 166, 173** – Motor Accident – Death – Loss of dependency – Award of Compensation – Appeal – Income of deceased – Where no income could be assessed notional income may be deemed to be Rs. 15000/- per annum – Death of original claimant – Entitle to Compensation for her life time – Civil Procedure Code 1908 – Order 41 Rule 33 – Power of appellate to pass appropriate order – Power discretionary – Cannot be declined to be exercised merely because the party has not filed an appeal – Policy of insurance operative after the occurrence of accident – Insurance company not liable to pay compensation: *Ram Singh Vs. Ashok Sharma, I.L.R. (2003) M.P. 974 (D.B.)*

– **Sections 149, 170** – Quantum of compensation – Driver and owner remained ex-parte – Insurance company could have sought permission to raise defence available to owner or driver – No such step taken at trial stage – Permission to challenge the quantum of compensation can be granted only in case of collusion – Appeal fails: *New India Assurance Company Ltd., Korba Vs. Smt. Prabhadevi Verma, I.L.R. (2001) M.P. 1563 (D.B.)*

– **Sections 149, 170 and 173** – Motor Accident – Death – Claim of compensation – Appeal – Offending vehicle insured in the name of a firm – Insurance Company issued policy knowing that the firm was not the registered owner of the vehicle – Inference that it was a partnership firm and therefore policy was issued not liable to be dislodged – Quantum of compensation – Driver and owner remained ex-parte – Insurance Company could have sought permission to raise defence available to owner or driver – No such step taken at trial stage – Permission to challenge the quantum of compensation can be granted only in case of collusion Appeal fails: *New India Assurance Company Ltd., Korba Vs. Smt. Prabhadevi Verma, I.L.R. (2001) M.P. 1563 (D.B.)*

– **Section 157** – Motor Accident – Transfer of vehicle before Accident without intimation to the insurer: *National Insurance Company Ltd. Vs. Kansram, I.L.R. (2000) M.P., 526 (F.B.)*

– **Sections 163-A and 173** – Appeal – Motor Accident – Personal injuries – Compensation – Claimant aged 26 years suffered permanent disability to the extent of 30% – Section 163-A applies not only in death cases but also in case of injuries sustained – Yearly income assessed Rs. 12,000/- – Multiplier 18 proper – Compensation enhanced to Rs. 80,000/-: *Kailash Vs. Om Prakash Yadav, I.L.R. (2003) M.P. 533*

– **Sections 165 and 162** – Tribunal has jurisdiction to adjudicate Compensation for damages to the property – Bus damaged – Compensation of Rs. 21,000/- awarded: *Parasmal Vs. Jagmit Singh, I.L.R. (1998) M.P. 700*

– **Section 166** – (as amended) – Application filed after the amending Act came in to force omitting limitation clause – Claim application not barred by limitation by virtue of retrospective effect intended to be given to the Amending Act: *Oriental Insurance Company Vs. Balwant Singh, I.L.R. (2001) M.P. 725*

– **Section 166** – (as amended) – Claim petition – By Amending Act sub-section (3) deleted omitting limitation for filing claim petition: *Oriental Insurance Company Vs. Balwant Singh, I.L.R. (2001) M.P. 725*

– **Section 166** – Compensation – Evidence established driving of scooter with due care and caution – Appellant cannot be held guilty of contributory negligence merely because he had no driving licence-: *Chandrakant Goswami Vs. Ramesh Patel, I.L.R. (2005) M.P. 840 (D.B.)*

– **Section 166** – Composite Negligence – Victim has a choice of proceeding against all or any one of more than one wrongdoers – Every joint tort-feasor liable for the whole damage: *National Insurance Co. Ltd. Vs. Kamla Pd, I.L.R. (2002) M.P. 919 (D.B.)*

– **Section 166** – Dependency and compensation – Family pension amount not found to be a benefit accruing in the form of advantage resulting from death – Deduction not permissible: *Oriental Insurance Company Ltd. Vs. Smt. Gyatri, I.L.R. (2004) M.P. 664 (D.B.)*

– **Section 166** – Doctrine of *Res Ipsa Loquitur* – 11 persons including driver of mini bus died and 6 injured in accident – Impact was heavy, bus was completely smashed – Doctrine applies – No witness including driver of offending vehicle examined to prove contributory negligence of driver of mini bus – Finding of Tribunal holding driver of offending vehicle negligent – Unassailable: *National Insurance Company Limited Vs. Kamla Pd., I.L.R. (2002) M.P. 919 (D.B.)*

– **Section 166** – Motor Accident – Death – Claim for compensation – Deceased travelling in private vehicle paying fare – Sale of Vehicle by Ex-Owner – Sale is complete the moment price is paid and possession delivered – Immaterial whether in Registration Certificate whether name of purchaser is recorded or not – Ex-owner not liable: *M/s. Ravi Borewell Services Vs. Smt. Chandraprabha Saxena, I.L.R. (2004) M.P. 1077 (D.B.)*

– **Section 166** – Motor accident – Death – Claim of compensation by widow – On remarriage dependency shifted to the new husband – After remarriage widow not entitled to any compensation: *Anju Mukhi Vs. Satish K. Bhatia, I.L.R. (2003) M.P. 863 (D.B.)*

– **Section 166 (3)** – Application for condonation of delay rejected – Tribunal has taken totally wrong approach and ignored the benevolent spirit of the enactment of Motor Vehicles Act – Motor Vehicles Act, 1988 – Section 166(2) – Delay condonation – Application can not be rejected on improper ground looking to the evidence and circumstances and keeping in view of the benevolent spirit of the Amendment Act No. 54 of 1994 – Application should have been accepted – Limitation Act – In the absence of any specific provision in any special Law the provision of the Limitation Act would be attracted: *Rakesh Kumar Vs. Shambhoo Singh, I.L.R. (1998) M.P. 496 (D.B.)*

– **Sections 166 and 173** – Award and Appeal against award – Civil Procedure Code, 1908 – Order 41, Rule 22 – Cross Appeal for enhancement – Negligence – Adverse inference – Driver not entering the Witness Box to controvert allegation of rash and negligent driving – Adverse inference rightly drawn – Plea and contributory negligence rightly repelled – Rule 242(3) of the Motor Vehicle Rules 1994 – Provisions apply to Appeal under Section 173 of the Act mutates mutandis – Order 41, Rule 22, C.P.C. – Cross appeal competent – Deceased 17 years of age at the time of accident – Award of Rs. 70,000/- passed by Tribunal enhanced to Rs. 1,00,000/- on the ration of recent trend of Courts: *M.P. State Road Transport Corporation Vs. Rajnikant, I.L.R. (2000) M.P. 863*

– **Sections 166, 173** – Appeal – Claim rejected on ground that involvement of claimant in accident not proved – Name of claimant mentioned in F.I.R. – Not controverted by respondent in evidence – Assessment of evidence and finding by Tribunal erroneous – Case of 100% permanent disability – Compensation of Rs. 2 lacs awarded – Impugned award set aside: *Onkar Alias Panjilal Vs. Chandrika Prasad, I.L.R. (2002) M.P. 686 (D.B.)*.

– **Sections 166, 173** – Appeal – Defence that driver did not possess licence – Burden of proof is on insurer – Not discharged by satisfactory evidence – Insurer could not be exonerated from liability: *Ramlaval Alias Ram Lakhan Vs. Smt. Simiya Bai, I.L.R. (2002) M.P. 668*

– **Sections 166, 173** – Appeal – Motor Accident – Death – Compensation – Deceased a labour earning Rs. 2,100/- p.m. – Maintaining himself and a family of six members – Could not have afforded to spend more than Rs. 500/- on himself – Deduction of one-third unreasonable – Award modified: *Damenti Bai Vs Virendra, I.L.R. (2005) M.P. 421 (D.B.)*

– **Sections 166, 173** – Appeal – Motor Accident – Death – Deceased earning Rs. 600 p.m. – Loss of dependency rightly calculated at Rs. 5000 p.a. – Claimant/ father 55 years of age – Multiplier of 14 is proper – Award modified and enhanced: . *Man Singh Vs. Vidar Prakash, I.L.R. (2005) M.P. 346*

– **Sections 166, 173** – Appeal – Motor accident—Identity of vehicle – Bus driver would have been the best person to depose that appellant's bus was not involved – Driver not examined – Appeal dismissed – Deceased aged 50 years at the time of accident – Multiplier of 10 would be appropriate – Award enhanced and cross-appeal allowed: *M.P. State Road Transport Corporation Vs. Smt. Saraswati Shende, I.L.R. (2005) M.P. 60 (D.B.)*

– **Sections 166, 173** – Appeal – Motor accident—Liability – Truck was stopped, seized and driver arrested by police at the place of accident – Identification of truck sufficiently established – Tribunal ought to have saddled respondents jointly and severely – Carry home salary Rs. 2943/- p.m. – Adult male member aged about 26 years not dependent – Deceased aged little more than 50 years – Multiplier of 11 is suitable – Award modified accordingly: *Premlata Singh Vs. Makarram, I.L.R. (2004) M.P. 1153 (D.B.)*

– **Sections 166, 173** – Motor accident – Contributory negligence – Evidence proved driver of offending truck more negligent – Liability apportioned accordingly – Award modified: *Arun Kumar Vs. Jeevad Khan, I.L.R. (2005) M.P. 879 (D.B.)*

– **Sections 166, 173** – Motor Accident – Death – Award of compensation to dependant – No documents on record as to income of deceased – Tribunal rightly held yearly income Rs. 15000/-p.a. – Multiplier – Victim's mother aged 40 years – Proper

multiplier would be 15 – Award enhance accordingly: *Smt. Rekha Chouksey Vs. Shabir Khan, I.L.R. (2005) M.P. 142 (D.B.)*

– **Sections 166, 173** – Motor Accident – Death – Claim for compensation by dependants – Sister aged about 23 years – Nothing to show she is dependent of the deceased – Not entitled to compensation for death of her brother – Multiplier – Deceased aged about 26 years at the time of accident and was a driver of the jeep – Applicants claim that his salary was Rs. 3000/- – No room for doubt that his salary was not less than 2400/- p.m. – Deducting 1/3rd dependency assessed at Rs. 19,200/-p.a. – Multiplier of 18 rightly applied – Compensation enhanced accordingly: *Smt. Vandana Soni Vs. Tej Singh, I.L.R. (2004) M.P. 1073 (D.B.)*

– **Sections 166, 173** – Motor Accident – Death – Claim for compensation – Plea that deceased intoxicated – Deceased travelling in a motor cycle on the High way – The offending heavy vehicle hit them – Driver fled the spot learning the vehicle – Shows driver was at fault – On High way higher duty is cast on drivers of the heavy vehicles to drive them careful to avoid accident with light vehicles – Care not taken by the driver – Post-mortem of deceased does not support the plea that deceased were intoxicated – Claim petition allowed: *Mrs. Satyabhama Bai Vs. Anil Kumar, I.L.R. (2003) M.P. 822 (D.B.)*

– **Sections 166, 173** – Motor Accident – Death – Compensation – Age of victim's parents 55 and 50 years respectively- – 50 years is on lower side – Should be taken into consideration – Proper multiplier would be 13 – Award enhanced accordingly: *Mattu Lal Vs. Peer Mohammad, I.L.R. (2005) M.P. 510 (D.B.)*

– **Sections 166, 173** – Motor Accident – Death – Compensation – -Appeal – Claimants getting family pension on account of death of victim and not on account of death in accident – Deduction of family pension not sustainable – Deceased 70 years of the age at the time of incident – Proper multiplier would be 5 – Award enhanced accordingly: *Smt. Arti Sen Gupta Vs. Gurudev Singh, I.L.R. (2005) M.P. 247 (D.B.)*

– **Sections 166, 173** – Motor accident – Death – Compensation – Appeal for enhancement of award – Deceased Govt. servant – Future promotion – No evidence led by claimants – Loss of dependency rightly assessed on basis of salary – Multiplier of 16 applicable – Award modified accordingly: *Smt. Kumud Gurjar Vs. Dhanilal, I.L.R. (2005) M.P. 973 (D.B.)*

– **Sections 166, 173** – Motor Accident – Death – Compensation – Deceased non-earning member – Notional Income may be deemed Rs. 15000/- p.a. – Definite evidence also available – Mother aged about 55 years – Multiplier of 10 would subserve justice – Award enhanced accordingly: *Hassena Begum Vs. Kanchan Singh Deshmukh, I.L.R. (2005) M.P. 425 (D.B.)*

– **Sections 166, 173** – Motor accident – Death – Compensation – Deceased was driver – In absence of clear evidence his income can be assessed at Rs.15000/- per annum – Aged 52 Years – Proper multiplier would be 11 – Award modified accordingly: *Smt. Jamnabai Vs. Gendalal, I.L.R. (2005) M.P. 971 (D.B.)*

– **Sections 166, 173** – Motor Accident – Death – Contributory negligence – Compensation – Appeal for enhancement – Boy of 12 years – Requested to stop the vehicle to get down – Vehicle stopped but drove in high speed before he alighted – Driver was overall responsible and not the deceased – Award modified and compensation enhanced: *Gaya Prasad Pandey Vs. Yatindra Kumar Chaturvedi, I.L.R. (2005) M.P. 836 (D.B.)*

– **Sections 166, 173** – Motor Accident – Driver negligence – Death of driver – Remedy lay under the Act of 1923 – Claim by relatives under the Motor Vehicle Act – Tribunal rightly rejected claim petition: *Sidamma Vs. V. Vikaram Reddy, I.L.R. (2005) M.P. 831 (D.B.)*

– **Sections 166, 173** – Motor Accident – Injury – Permanent disability – Award of compensation – Appeal for enhancement – Driving licence – Evidence established driving of scooter with due care and caution – Appellant cannot be held guilty of contributory negligence merely because he had no driving licence – Driver of truck did not enter witness box to controvert evidence of appellant – Tribunal erred in holding that there was contributory negligence – Left leg fractured – Shortening by 2” – Permanent disability to the extent of 18% – Age 36 years – Total compensation enhanced to Rs. 99,900/- rounded to Rs. 1 Lakh: *Chandrakant Goswami Vs. Ramesh Patel, I.L.R. (2005) M.P. 840*

– **Sections 166, 173** – Motor Accident – Injury leading to permanent disability of victim claimant – If such accident and injuries are proved compensation should be awarded and such claim cannot be left on the result of criminal case or its papers – Accident and 30% disability to victim proved – Order of Tribunal set aside – Compensation awarded: *Yashwant Singh Baghel Vs. Shri Shiv Prasad Vishwakarama, I.L.R. (2005) M.P. 843*

– **Sections 166, 173** – Motor Accident – Permanent disability – Application for compensation – Limitation – By amending Act No. 54/1994, Sub-section (3) of Section 166 deleted – Since appeal was pending appellant entitled benefit of amendment – Application for compensation allowed with interest: *Chimanlal Rawal Vs. Aslam, I.L.R. (2003) M.P. 963 (D.B.)*

– **Sections 166, 173** – Motor Accident – Young girl aged about 10 years – Right hand amputated from shoulder joint – May face problem in her marriage and also may require artificial limb – Lump sum amount of Rs. 2,50,000/- would be just and proper: *Munni @ Munia Vs. Jagdish, I.L.R. (2005) M.P. 147 (D.B.)*

– **Sections 166, 173** – Motor Accidents – Claim for compensation – Rejection on ground that deceased was drunken at the time of accident – Witness a pillion rider not stating if the deceased consumed liquor – Doctor also not deposing to what extent deceased was intoxicated – Evidence as to drunkenness of deceased not dependable – Compensation can not be denied on ground of drunkenness – Minimum earning assessed to 15000/- p.a. – With multiplier of 17 compensation @ Rs. 1,84,500.00 awarded: *Umashankar Pacholi Vs. Mahendra Singh, I.L.R. (2003) M.P. 960 (D.B.)*

– **Sections 166 (3), 173** – (as amended) – Appeal – Deletion of sub-Section (3) of Section 166 – Retrospective – Accident taking place before deletion of sub-section (3) – Claim petition filed before amendment and pursued – Can not be thrown on ground of limitation: . *Bhogiram Vs. Ehsan Khan, I.L.R. (2002) M.P. 723 (D.B.)*

– **Sections 166, 174** – Motor accident – Death – -Claim of Compensation – Conflicting police report – Tribunal committed error in relying on alleged police report which is not related to accident in question and in dismissing the claim – Claim allowed with interest @ 6% per annum: *Smt. Maya Kewat Vs. Sukram Dwivedi, I.L.R. (2005) M.P. 1065 (D.B.)*

– **Section 167** – Death of Driver of Truck – Claimants electing Section 167 of Motor Vehicles Act – Claimants discharging the burden proving the accident due to negligence of owner of the Vehicle – Claims Tribunal has to award ‘just’ compensation – Norms of Workmen Compensation Act cannot be pressed into service to determine the amount of compensation – Motor Vehicles Act – Sections 167 and 173 – Accident – Due to latent mechanical defect – Burden of proof is on the owner – Motor Vehicles Act – Section 147 – Liability of insurance Company: *Ramji Porte Vs. Prem Bai Patel, I.L.R. (1998) M.P. 118 (D.B.)*

– **Section 167** – Liability of Insurance Company: *Ramji Porte Vs. Prem Bai Patel, I.L.R. (1998) M.P. 118 (D.B.)*

– **Section 167**, Workman’s Compensation Act, 1923, section 3(5)(a) – Motor Accident – Claimants claimed compensation before claims tribunal – Also made application for disbursement of amount deposited by employer before the commissioner for workman’s compensation – objection regarding jurisdiction of claims tribunal – Rejection – Held – Words “may claim such compensation” used in both acts shows claimants must take cautious decision and opt for compensation under one statute – Merely receiving amount deposited by employer before commissioner of workman’s compensation can never tantamount to the option being exercised by claimants – Claimants not debarred from claiming compensation under Motor Vehicle Act – Objection rightly rejected – Appeal dismissed: *Oriental Insurance Co. Ltd. Vs. Gouribai, I.L.R. (1997) M.P. 461*

– **Sections 167 and 173** – Accident – Due to latent mechanical defect – Burden of proof is on the owner: *Ramji Porte Vs. Prem Bai Patel, I.L.R. (1998) M.P. 118 (D.B.)*

– **Section 168** – Accident – Contributory negligence on the part of a child of tender age there is no doubt that the concept of contributory negligence cannot be made applicable to a child – A child functions according to his own reasoning and his intelligence – Logicality and rationality are not expected from a child as a child offender age has no continuous thinking process and is governed by his impulse, instinct and innocence – Can one ever conceive that a child, if would have been aware of the peril, would ever commit an act which is dangerous or hazardous for him – The answer has to be categorical no because a child's action is child-like and really innocent – Appeal Allowed: *M.P. State Road Transport Corporation Vs. Abdul Rahman, I.L.R. (1997) M.P. 157 (D.B.)*

– **Section 168** – Compensation – Fifty percent permanent disability – Shortening of leg by one inch – Claimant unable to carry on his business of sale of cloth by taking place to place – Held – Considering all circumstances compensation enhanced from Rs. 59,000/- to Rs. 84,000/- with interest 12% p.a. on enhanced amount: *Shafiq Vs. Pramod Kumar Bhatia, I.L.R. (1996) M.P. 416 (D.B.)*

– **Section 168**, Motor Vehicle Rules (1994) Rule 240 – Ex parte award – Application for setting aside – ‘Sufficient Cause’ for non appearance could be decided in accordance with provisions of order 9 Rule 13 of C.P.C. – Without recording evidence dismissal of application – Tribunal not only violated the Order 9 Rule 13 C.P.C. but also principles of natural justice: *Ram Shiromani Mishra Vs. Shiv Mohan Singh, I.L.R. (1996) M.P. 528*

– **Section 168**, Motor Vehicle Rules (1994) Rule 240, Limitation Act, 1963, Section 12(4) – Exclusion of time for obtaining the certified copy of decree or judgment – Time requisite in obtaining copy has to be included even though it was not necessary to file a certified copy of decree or judgment alongwith appeal: *Ram Shiromani Mishra Vs. Shiv Mohan Singh, I.L.R. (1996) M.P. 528*

– **Section 168**, Motor Vehicle Rules (1994) Rule 240, Limitation Act, 1963, Section 12(4) – For setting aside ex – parte award – Article 123 of Limitation Act applies – So also Section 12 & Section 5 of Limitation Act applies: *Ram Shiromani Mishra Vs. Shiv Mohan Singh, I.L.R. (1996) M.P. 528*

– **Section 168**, Motor Vehicle Rules (1994) Rule 240 – Revision – Application for setting aside ex-parte awarded – Rejected by tribunal – Against the order revision before High Court – Maintainable: *Ram Shiromani Mishra Vs. Shiv Mohan Singh, I.L.R. (1996) M.P. 528*

– **Section 168** – Res Ipsa Loquitur – Dumper colliding with stationary Jeep – Held – The fact that the driver of the dumper was rash and negligent who collided with the Stationary Jeep which smashed as a result of which driver of the Jeep died on the

spot – It is a case where principal of Res Ipsa Loquitur that accident speaks for itself and tells its own story full applied: *National Insurance Co. Ltd. Vs. Sahiba Khatun*, I.L.R. (1997) M.P. 201 (D.B.)

– **Sections 168, 173** – Appeal – Compensation – Permanent disability in left leg despite several operations – Appellant aged 27 years unmarried girl was working as an Accountant and earning Rs. 2000/-p.m. – Compensation for personal injuries is higher as compared to fatal cases – Compensation enhanced from Rs. 1,40,000/- to Rs. 2,85,000/- – Driver denied involvement in accident – Torn log book and other evidence not supporting his case – Driver's involvement confirmed: *Ku. Binoti Patnaik Vs. State*, I.L.R. (2002) M.P. 335 (D.B.)

– **Sections 168 and 173** – Motor Accident – Award of compensation – Appeal for enhancement – Just compensation – No rigid mechanical formula can be adopted for just compensation – Death – Compensation – Income of son after death of victim – Note a relevant factor – Compensation enhanced: *Smt. Urmila Deora Vs. M.P. State Road Transport Corporation*, I.L.R. (2003) M.P. 432 (D.B.)

– **Sections 168, 173** – Permanent disability in left leg despite several operations – Appellant aged 27 years unmarried girl was working as an Accountant and earning Rs. 2000/- p.m. – Compensation for personal injuries is higher as compared to fatal cases: *Kumari Binoti Patnaik Vs. State*, I.L.R. (2002) M.P. 335

– **Section 169**, Civil Procedure Code, Order 47 Rule 1 – Power of review – Though rule 240 of the M.P. Motor Vehicle Rules, 1994 has not expressly provided for application of order 47 C.P.C. – Power of review vests with the tribunal in its inherent power u/s. 169 of the Act – Tribunal can review of a procedural defect or inadvertent error committed to prevent abuse of process – A review application is maintainable – Case remanded to tribunal for deciding review application on merits: *National Insurance Co. Pvt. Ltd., Jabalpur Vs. Lachhibai*, I.L.R. (1996) M.P. 201

– **Sections 169 and 173** – Appeal – Motor Accident – Claim for compensation – No duty or obligation is cast on Tribunal to take upon it self the burden of ensuring attendance of witnesses – It is for the parties to do so by seeking assistance from Tribunal for proving their case – Evidence Act, 1872 – 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 170** – Restrictions imposed by the Special Act of 1988 cannot be circumvent by filing revision under the Code or petition under Article 227 – Departure if

any can only be made with permission of the MACT under Section 170 and not otherwise: *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan, I.L.R. (2000) M.P. 1174 (F.B.)*

– **Section 173** – Appeal – Motor Accident – Death – Just compensation – Deceased keen to further studies – Doing M.B.A. – Expected to settle in service after completing studies and earn reasonable salary – 23 years of age at the time of accident – Looking to all ponderables and imponderables lumpsum amount of Rs. 3,00,000.00/- just and proper – Award enhanced: *M.S. Varghese Vs. Rajeev Kumar Khare, I.L.R. (2003) M.P. 899 (D.B.)*

– **Section 173** – Appeal – Motor Accident – Death – Just compensation – Deceased 39 years at the time of accident – Junior scientist with good future – Earning Rs. 10,600/- p.m. – Life expectancy upto 75 years – Proper multiplier would be 16 – Yearly dependency assessed at Rs. 81,264/- - Award enhanced to Rs. 13,16,724/-: *Nandini Verma Vs. Devendra Nath, I.L.R. (2003) M.P. 815 (D.B.)*

– **Section 173** – Appeal – Motor Accident – Death – Deceased at the time of accident aged about 32 years – Owned two trucks – Earning Rs. 2000/- p.m. – Multiplier 17 should be applied instead of 15 – reasonable compensation – Deducting personal expenses of deceased from his monthly income dependency come to Rs. 1,500.00 per month – Compensation enhanced accordingly – Funeral expenses and consortium also allowed: *Smt. Sikandar Kaur Vs. Mukhtyar Singh, I.L.R. (2000) M.P. 394 (D.B.)*

– **Section 173** – Appeal – Motor Accident – Death – Deceased VCR & TV Repairer and also used work in Medical Stores – Earning of Rs. 2400/- per month – Dependency of family consisting of wife and mother – Deceased aged about 24 at the time of death – Age of dependents taken into consideration for arriving at proper multiplier of 18 – Dependency assessed at Rs. 1000/- p.m. – Award enhanced accordingly alongwith award of loss of consortium to widow and funeral expenses – Death – Appeal of enhancement – Deceased aged about 25 years at the time of death and Advocate by profession – More practice mere income – Reasonable compensation – Parents age taken into consideration – Multiplier of 16 Proper – Deceased at time of death earning Rs. 1500 p.m. – Dependency of claimants would be Rs. 1000/- per month – Award enhanced accordingly alongwith funeral expenses: *Smt. Anjali Kevlarmani Vs. Shri Keshavram, I.L.R. (2000) M.P. 390 (D.B.)*

– **Section 173** – Appeal – Motor Accident – Death of bypasser – Not a gratuitous passenger – Tribunal awarded compensation with finding that deceased was not a passenger in the vehicle – Failure to show any breach of terms of the policy – Insurer cannot escape the liability: *New India Assurance Co. Ltd., Jabalpur Vs. Kiran Jain, I.L.R. (2000) M.P. 516 (D.B.)*

– **Section 173** – Appeal against award – Disability proved by claimant by leading evidence – Owner examined driver to show passenger was negligent by putting hand outside the window – Conductor was the best witness who can prove negligent part of claimant but not examined by appellant – Adverse inference rightly drawn by Motor Accident Claims Tribunal – Award of Rs. 72,000/ – with 12% interest right, correct, proper and justified: *M.P. Rajya Parivahan Nigam, Dhar Vs. Omprakash, I.L.R. (2000) M.P. 184*

– **Section 173** – Appeal against Award – Section 166 – Motor Accident – Death – Claim Petition – Deceased 16 years of age – Claims Tribunal resorting to schedule II under Section 163-A rightly applied multiplier of 15 while awarding compensation – Section 163-A as incorporated by Amending Act No. 54 of 1994 – Though came in force after the date of accident but prevailed on the date of decision – Tribunal bound to take resort to Section 163 – A and the schedule thereunder – Not illegal: *New India Assurance Company Ltd., Indore Vs. Prakash Narayan Agnihotri, I.L.R. (2000) M.P. 1283 (D.B.)*

– **Section 173** – Appeal for enhancement – Both legs paralyzed and complicated the working of internal organs like kidney etc. – Claimant entitled to Rs. 56,000 for pain and suffering – Appeal allowed: *Naresh Bhargava Vs. Mohandas, I.L.R. (2005) M.P. 734*

– **Section 173** – Appeal against award – Motor accident – Vehicle not subjected to mechanical examination – Conductor of the Vehicle depose that steering of the vehicle started vibrating and the accident occurred having no chance for application of brake to avoid accident – No other evidence available on record as to cause of accident or attributing negligence to the driver – Vehicular accident due to sudden mechanical default not uncommon – Driver cannot be held to be negligent in absence of any evidence to that effect – Finding of MACT reversed – Just compensation – Deceased driver aged 30 years and earning Rs. 600/- per month – Leaving 1/3rd of the sum he must have spent Rs. 400/- on his parents claimants – Multiplier of 11 would be proper: *Sadhu Vs. Mahesh Prasad Soni, I.L.R. (2001) M.P. 92 (D.B.)*

– **Section 173** – Appeal by Insurance Company – Liability under Award sought to be avoided on the ground of fraud as the policy of the offending vehicle continued in the name of a dead person, though premium was paid by the insured person and accepted by the Insurance Company – Plea negatived – Appeal dismissed: *New India Assurance Co. Ltd, Jabalpur Vs. Ojha, I.L.R. (1998) M.P. 114*

– **Section 173** – Appeal by non-claimants and Cross – Appeal for enhancement by claimants – Objection to maintainability of non-claimants appeal for non-compliance of mandatory provision of first proviso to Section 173 – Position should be governed by the law existing on the date of incident – First proviso to Section 173 of the Act –

Mandatory for maintaining an appeal but it came in to force after the date of accident – Non-compliance thereof not a bar to maintainability of this Appeal – Reasonable compensation – Deceased doctor by occupation – Tribunal assessed monthly income of deceased at Rs. 2500/- per month – Absence of any other satisfactory evidence – Assessment of Trial Judge cannot be dislodged – Dependency – Deducting 1/3rd of this amount towards personal expenses of deceased, annual dependency of claimants comes to Rs. 19,992/- Deceased aged about 46 years at the time of incident – Multiplier of 13 reasonable – Amount of compensation enhanced to Rs. 2,74,896/- Motor Vehicles Act, 1939, Section 2(19) corresponding to Section 2(30) of the Act of 1988 – Definition clause – ‘Owner’ – Liability – At the relevant time vehicle in possession of hire purchaser and being plied and driven through his driver – Hire purchaser has to be taken to be ‘Owner’ and liable to pay the compensation though not registered owner: *Bhagwandas Tiwari Vs. Ratni Bai, I.L.R. (2000) M.P. 268 (D.B.)*

– **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: *Mariyam Bai Vs. Kishan Lal, I.L.R. (2002) M.P. 69 (D.B.)*

– **Section 173** – Appeal for enhancement of award – Motor Accident – Death – Deceased aged about 25 years at the time of accident Earning Rs. 2500/- to 3000/- per month – Dependent parent’s age taken into consideration – Multiplier of 13 would be reasonable in view of normal life expectancy – Monthly dependency assessed at Rs. 1800/- Award enhanced to Rs. 2,80,800 plus Rs. 2000/- for funeral expenses and Rs. 2000/- for Damage to the scooter – Evidence Act, Indian, 1872 – 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 173** – Insurance Company if desires to assail such an award before superior Court has a statutory remedy of appeal under Section 173 of the Act subject to restriction envisaged under Section 149: *New India Insurance Co. Ltd., Bhopal Vs. Smt. Rafeeka Sultan, I.L.R. (2000) M.P. 1174 (F.B.)*

– **Section 173** – Motor Accident – Award of compensation – Appeal – Offending vehicle registered as private vehicle – Carrying marriage party when accident occurred – Passengers known to owner – Owner and driver are the best witnesses to depose whether vehicle was plying on hire or fare – Owner and driver stated that no fare was charged – Inference would be that no fare was charged by owner and there was no violation of the conditions of insurance policy – Order exempting insurance company set aside – Insurance company liable to satisfy the award: *Ramnath Vs. Shri Prasanna Kumar Jain, I.L.R. (2003) M.P. 1025 (D.B.)*

– **Section 173** – Motor Accident – Death – Claim of compensation – Appeal – Offending vehicle insured in the name of a firm – Insurance Company issued policy knowing that the firm was not the registered owner of the vehicle – Inference that it was a partnership firm and therefore policy was issued not liable to be dislodged: *New India Assurance Company Ltd., Korba Vs. Smt. Prabhadevi Verma, I.L.R. (2001) M.P. 1563 (D.B.)*

– **Section 173** – Motor Accident – Death – Claim of compensation – Appeal – Offending vehicle insured of the name of a firm was not the registered owner of the vehicle – Inference that it was a partnership firm and therefore policy was issued not liable to be dislodged: *New India Assurance Company Ltd., Korba Vs. Smt. Prabhadevi Verma, I.L.R. (2001) M.P. 1563 (D.B.)*

– **Section 173** – Motor Accident – Death – Compensation – Appeal for enhancement – Deceased twenty two years of age at the time of accident – Proper multiplier would be seventeen – Award enhanced – Hindu Adoption and Maintenance Act, 1956, Section 21(iii) – Hindu Succession Act, 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 re-marriage 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 (D.B.)*

– **Section 173** – Motor Accident – Death – Compensation – Income of son after death of victim – Not a relevant factor – Compensation enhanced: *Smt. Urmila Deora Vs. M.P. State Road Transport Corporation, I.L.R. (2003) M.P. 432 (D.B.)*

– **Section 173** – Motor Accident – Death – Deceased aged about 25 years at the time of accident – Earning Rs. 2500 to Rs. 3000 per month – Dependent parent's age taken into consideration – Multiplier of 13 would be reasonable in view of normal life expectancy – Monthly dependency assessed at Rs. 1800/- Award enhanced to Rs. 2,80,800 plus Rs. 2000/- for funeral expenses and Rs. 2000/- for damage to the scooter: *Dhanraj Vs. Jeewan Singh, I.L.R. (2000) M.P. 998 (D.B.)*

– **Section 173** – Motor Accident – Delay in disposal of the claim case because of adjournments availed by insurer – Cannot be weighed for enhancing compensation: *Oriental Insurance Co. Ltd., Vs. Smt. Gyatri Bai, I.L.R. (2004) M.P. 664 (D.B.)*

– **Section 173** – Motor Accident – Personal injury – Three major fractures on right leg – Deformity assessed to 33% – Claimant not able to run and walk without a stick – Leg shortened by 2/3 inch – Award enhanced to Rs. 1,00,000: *Nokhelal Vs. Shiv Pujan, I.L.R. (2003) M.P. 530 (D.B.)*

– **Section 173, Succession Act, Indian (XXXIX of 1925), Section 306 and Evidence Act, Indian (I of 1872), Section 114** – Appeal – Injured claimant dies as a result of injuries during pendency of claim – Legal representatives would be entitled to pursue the claim – None examination of driver – Raises adverse inference under illustration (g) of Section 114 of the Evidence Act: *Smt. Kartar Kaur Vs. Dayal Singh*, I.L.R. (1999) M.P. 1173 (D.B.)

Motor Vehicles Rules, M.P., 1940

– **Rule 73 (c)** – Appellate Court when can record a finding itself: *Mulkraj Vs. The State Transport Appellate Authority, Gwalior* I.L.R. (1977) M.P. 308 (D.B.)

– **Rule 73 (c)** – Power of appellate authority to remand a case when lower tribunal has not recorded a finding – Appellate Court when can record a finding itself – Power of remand – Inherent in every appellate authority or tribunal: *Mulkraj Vs. The State Transport Appellate Authority, Gwalior* I.L.R. (1977) M.P. 308 (D.B.)

– **Rule 73 (c)** – Power of remand – Inherent in every appellate authority or tribunal: *Mulkraj Vs. The State Transport Appellate Authority, Gwalior* I.L.R. (1977) M.P. 308 (D.B.)

– **Rule 73 (c)** – Does not exclude power to order remand – Power of remand is inherent in every appellate authority: *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior*, I.L.R. (1972) M.P. 218 (F.B.)

Motor Vehicles Rules, 1974

– **Rules 5, 111 (2) (1)** – Goods vehicles are allowed to carry passengers including six additional persons subject to provision of 3600 sq. centimeter area for each passenger: *The National Insurance Co. Ratlam Vs. Uma Devi*, I.L.R. (2000) M.P. 502

Motor Vehicles Rules, 1994

– **242 (3)** – Provisions apply to Appeal under Section 173 of the act mutatis mutandis: *M.P. State Road Transport Corporation Vs. Rajnikant*, I.L.R. (2000) M.P. 863

Motor Vehicles Rules, C.P. and Berar, 1940

– **And Motor Vehicles Rules, Madhya Bharat, 1949** – Do not make ownership of vehicle a condition precedent for grant of permit: *Messrs Dayabhai and Co., Barwani Vs. The Commissioner of Income-Tax, M.P., Nagpur and Bhandara, Nagpur*, I.L.R. (1968) M.P. 495 (D.B.)

– **And Motor Vehicles Rules, Madhya Bharat, 1949** – Partnership business of transport – Permit in the name of partner with vehicles belonging to him or to the

partnership – Validity: *Messrs Dayabhai and Co., Barwani Vs. The Commissioner of Income-Tax, MP, Nagpur and Bhandara, Nagpur, I.L.R. (1968) M.P. 495 (D.B.)*

– **Rules 51, 52 and 61** – Rules mandatory – Must be treated for construction or obligation as if they were in the Act – Authorisation cannot be regarded as valid permit in the form prescribed by Rule 51 – Permit not granted – No question of its renewal arises – Motor Vehicles Act – Section 58 – Operator not holding a permit – Application for renewal not accompanied by Part A of the Permit – Application for renewal misconceived – Section 68 – Objection regarding absence of permit with the operator applying for renewal not raised before Regional Transport Authority – Objection raised before Appellate Authority – Appellate Authority bound to decide the objection: *Sardar Joginder Singh Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1967) M.P. 197 (D.B.)*

– **Rule 55** – Now not a valid rule – Fees for application for permit – Does not include fees for permit themselves: *Lucky Bharat Garage (P) Ltd. Through Sardar Baldeo Singh, Raipur Vs. The Regional Transport Authority, Raipur, I.L.R. (1967) M.P. 381 (D.B.)*

– **Rule 73-A** – Does not mention “State Transport Appellate Authority” – Prescribes no fee for appeal – State Transport Appellate Authority and State Transport Authority – Different entities – Constitution of India – Article 226 – Case remanded to appellate Court – Only case of the petitioner has to be considered: *Shitaldas, Partner, Damodardas Shitaldas, Bus Operator, Rewa Vs. State Transport Appellate Authority, M.P., Gwalior, I.L.R. (1970) M.P. 751 (D.B.)*

– **Rule 73-A** – Prescribes no fee for appeal: *Shitaldas, Partner, Damodardas Shitaldas, Bus operator, Rewa Vs. The State Transport Appellate Authority, MP, Gwalior, I.L.R. (1970) M.P. 751 (D.B.)*

– **Rule 73-A** – State Transport Appellate Authority and State Transport Authority – Different entities: *Shitaldas, Partner, Damodardas Shitaldas, Bus operator, Rewa Vs. The State Transport Appellate Authority, M.P., Gwalior, I.L.R. (1970) M.P. 751 (D.B.)*

Motor Vehicles Rules, M.P., 1974

– **Rule 25 (1), Clause (XIX)** – In domestic enquiry, respondent-driver was found to be driving the passenger bus in a state of intoxication and amounting to major misconduct, resulting in termination of his service by the corporation – Labour Court in exercise of its powers under section 31(3) of the M.P. Industrial relations Act And Industrial Court in revision under section 66 of the Act, setting aside the order of

termination of service holding that mere consumption of liquor while on duty in the absence of any evidence about his incapability of driving does not amount to misconduct: *M.P. State Road Transport Corporation Bhopal Vs. The State Industrial Court, Indore, I.L.R., (1984) M.P. 80*

– **Rule 25 (1), Clause (XIX)** – Prohibition against driving a passenger bus in a state of intoxication – Importance of: *M.P. State Road Transport Corporation Bhopal Vs. The State Industrial Court, Indore, I.L.R. (1984) M.P. 80*

– **Rule 135 (2)** – Requirement of publishing scheme on notice board of ‘concerned’ R.T.As. – Purpose of – Requirement whether mandatory: *M.P. State Road Transport Corporation Bhopal Vs. State of M.P., I.L.R. (1984) M.P. 148*

– **Rule 135 (2)** – Scheme rejected on account of its non-publication in proper manner – No prejudice shown to have been caused to permit holder – Order patently wrong and mistake apparent on the face of the record – Order liable to be quashed: *M.P. State Road Transport Corporation Bhopal Vs. State of M.P., I.L.R. (1984) M.P. 148*

Motor Vehicles Rules, M.P. 1977

– **Rules 78-A and 78-B** – Not lacking guiding principles for implementation: *Kanhaiyalal Lunaji Padiyar Vs. Regional Transport Authority, Indore, I.L.R. (1987) M.P. 470 (D.B.)*

– **Rules 78-A and 78-B** – Reservation of permits for Scheduled Castes, Scheduled Tribes, Society and economically weaker sections – Such reservation is not discriminatory with general classes of society and is constitutional: *Kanhaiyalal Lunaji Padiyar Vs. Regional Transport Authority, Indore, I.L.R. (1987) M.P. 470 (D.B.)*

Motor Vehicles Taxation Act, M.P. (VI of 1947)

– **As amended by the Motor Vehicles Taxation (Amendment) Act, M.P., 1965** – Vires of – Did not require assent of President: *Phoolchand Vs. The State of M.P., I.L.R. (1968) M.P. 347 (D.B.)*

– **As amended by the Motor Vehicles Taxation (Amendment) Act, M.P., 1978**, Section 3-A (1) and Nagar Tatha Gram Nivesh Adhiniyam, M.P. 1973, Section 69 – Words “Municipal Area” – No additional tax payable for operating stage carriage within that area: *M/s Bundelkhand Travels, Bus Operators, Chhatarpur Vs. State of Madhya Pradesh, Through Chief Secretary M.P., Bhopal I.L.R. (1983) M.P. 222 (D.B.)*

– **As amended by the Motor Vehicles Taxation (Amendment) Act, M.P., 1978**, Section 3-A(1) and Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973 –

Section 69 – Words “Municipal area” – Meaning of – Area under the Development Authority can be described to be a Municipal area in the popular sense – No additional tax payable for operating stage carriage within that area: *M/s Bundelkhand Travels, Bus Operators, Chhatarpur Vs. State of Madhya Pradesh, Through Chief Secretary M.P., Bhopal, I.L.R. (1983) M.P. 222 (D.B.)*

– **Sections 3, 6 Municipalities Act, M.P., 1961, Section 127(i)(iii), Contonment Act, 1924, Section 60** – Entry tax – Imposition of entry tax on motor vehicles entering in to contonments limits – There is no inconsistency or repugnancy between section 3 of the Taxation Act and section 127 (i)(iii) of Municipalities Act – Both provision operate in deferent field and remain operative – Held – Contonment Board can imposed entry tax municipality can levy such tax on motor vehicle entering in to its limits: *Contonment Board, Mhow Vs. M.P. State Road Transport Corporation, I.L.R. (1997) M.P. 32 (D.B.)*

– **Section 3 (2)** – Deletion of, Effect: *Phoolchand Vs. The State of M.P., I.L.R. (1968) M.P. 347 (D.B.)*

– **Section 3 (2-A) as inserted by Motor Vehicles Taxation (Amendment) Act, M.P., 1985 and Motor Vehicles Taxation (Amendment) Act, M.P., 1986,** Constitution of India, Entry 57 Of List II of Seventh Schedule – Road-tax to fulfill the test of being regulatory and compensatory – Sub-section (2-a) of section 3, held to be ultra vires as enacted legislature: *M/s G.D. Anklesaria & Co., Ratlam Vs. State of M.P., I.L.R. (1989) M.P. 79 (D.B.)*

– **Section 3-A, Schedule III, Item I, Clause (C) and Motor Vehicles Act (IV of 1939)** – Sections 63 (1) and 134(1-A) – Stage carriage permit for inter state route – Expiry of period of permit – Application for renewal rejected and order challenged in appeal before Transport Appellate Tribunal Which Allowed permit to operate till disposal of the appeal under section 134(1-A) and ultimately allowing appeal refusing renewal – Additional tax on the ground that the bus was plied without permit not payable in view of order allowing permit to operate under Section 134 (1-A): *Natwar Transport Co. Pvt. Ltd., Nagpur Vs. Regional Transport Officer And Tax Officer, Jabalpur, I.L.R. (1991) M.P. 545 (D.B.)*

– **As amended by the Motor Vehicles Taxation (Amendedment) Act, M.P., (VI of 1989) – Section 3A, Schedule III** – Levy of additional tax on public service vehicles – Increase in rate of tax – Increase of third schedule by notification is in nature of legislative action – Notice published in gazette showing intention to increase rate of tax – Notice complies with second proviso to sub-section 3 of Section 3A – Individual notice to operators not necessary – Tax levied uniformly on all motor vehicles carrying more than 6 passengers – No discretion – Nothing to demonstrate that tax increased is so exorbitant that it transgressed the limits embodied in Article 14 of Constitution: *M/s*

R.J. Fouzdar Bus Service, Hoshangabad Vs. State of M.P., Through Chief Secretary, Vallabh Bhawan, Bhopal, I.L.R. (1994) M.P. 25 (D.B.)

Section 3A – Proviso and Schedule II – Increase of additional tax by more than fifty percent – Increase of tax from 12 paise to 20 paise struck down being violative of Proviso to sub-section 3 of Section 3(A): *M/s R.J. Fouzdar Bus Service, Hoshangabad Vs State Of M.P., Through Chief Secretary, Vallabh Bhawan, Bhopal, I.L.R. (1994) M.P. 25 (D.B.)*

– **Section 3 (3)** – Embodies presumption – Presumption is rebuttable – Liability for payment of Taxes regarding vehicle for which there is certificate of fitness and certificate of registration: *Phoolchand Vs. The State of M.P., I.L.R. (1968) M.P. 347 (D.B.)*

– **Section 3 (4)** – Intention with which the Vehicles has been kept is material: *Phoolchand Vs. The State of M.P., I.L.R. (1968) M.P. 347 (D.B.)*

– **Section 3 (4)** – Words “kept for use” – Meaning of – Intention with which the Vehicle has been kept is material – Section 3 (3) – Embodies presumption – Presumption is rebuttable – Liability for payment of taxes regarding vehicle for which there is certificate of fitness and certificate of registration – Section 3 (2) – Deletion of, effect – Amending Act – Vires of – Did not require assent of president – Constitution of India – Articles 301 and 304(b), proviso – Tax prohibitive or excessive if it hinders free flow of trade and commerce – Tax is prima facie compensatory – Does not come within purview of Article 301 so as to attract proviso to Article 304(b): *Phoolchand Vs. The State of M.P., I.L.R. (1968) M.P. 347 (D.B.)*

– **Section 6** – Prohibits imposition of tax, toll or fee in respect of Motor Vehicle: *Sindhi Sahiti Multipurpose Transport Co-Operative Society Ltd., Bairagarh, Bhopal Vs. Municipal Council, Bhopal, I.L.R. (1970) M.P. 234 (D.B.)*

– **Sections 6 and 7** – Bar created on Municipalities by section 6 of Motor Vehicles Taxation Act, 1947 in the matter of levy of entry tax on motor vehicles: *Madhya Pradesh State Road Transport Corporation, Habib Ganj, Bhopal, Through Divisional Manager, MPSRTC, Indore Vs. Cantonment Board, Mhow, I.L.R. (1988) M.P. 654 (D.B.)*

– **Sections 6, 7** – It can not be said that Contonment Board was entitled to imposed tax on motor vehicles used or kept for use notwithstanding the bar under section 6 of Taxation Act:: *Contonment Board, Mhow Vs. M.P. State Road Transport Corporation, I.L.R. (1997) M.P. 32 (D.B.)*

– **Section 11 (2)** – Exemption of Motor Vehicles from tax thereunder – Motor Vehicles belonging to a company exclusively used for agricultural Puposes – Entitled to

exemption from tax: *The Bhopal Sugar Industries Ltd., Sehore Vs. The State of M.P., I.L.R. (1984) M.P. 86 (D.B.)*

– **Section 11 (2), Land revenue code, M.P. (XX of 1959)**, Section 2 (b), (e) and 2(z-2) and general clauses Act, M.P., 1957 (III of 1958), section 2(31) – Company is a ‘person’ for the purposes of the provision contained in the M.P. Land Revenue Code – A company can be a “Bonafide agriculturist” and can also “cultivate personally” 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 – Motor vehicles taxation act, 1947 – Section 11(2) – Exemption of motor vehicles from tax there under – Motor vehicles belonging to a company exclusively used for agricultural purposes – Entitled to exemption from tax: *The Bhopal Sugar Industries Ltd., Sehore Vs. The State of M.P., I.L.R. (1984) M.P. 86 (D.B.)*

Motor Yan Karadhan Adhiniyam, M.P. (XXV of 1991)

– **Sections 16, 20** – Alternative and Efficacious Remedy – Private vehicle being used for carrying passengers on hire or reward – Owner of vehicle has efficacious and alternative remedy to file appeal: *Rajesh Laxman Hirodkar Vs. State of M.P., I.L.R. (1994) M.P. 80 (D.B.)*

– **Sections 16 and 20** – Seizure – Under Section 16(3), Section 451 of Cr. P.C. is in a applicable till stage of inquiry or trial in a criminal court and Section 457 of the Cr. P.C. cannot be invoked unless seizure is by a police officer and is reported under the Code and some one is “entitled” person: *State of M.P. Vs. Rakesh Kumar Gupta, I.L.R. (1998) M.P. 721 (F.B.)*

– **Section 16 (3)**, Scheduled 1 Item IV, Clause (g), Explanations (7),(8), Constitution of India, Article 14 – Delinking of tax liability from absence of criminal prosecution or pendency thereof – Private Vehicle was being used to carry passengers for hire and reward – Tax paid by owner on the basis that it is private vehicle and not as public service vehicle – Seizure for non-payment of tax due – Held – Taxable event is use of vehicle as Public Service Vehicle – Satisfaction of authority is implicit in the act of enquiry leading to seizure – Explanation (7) and (8) are not arbitrary or violative of Article 14 of Constitution: *Rajesh Laxman Hirodkar Vs. State of M.P., I.L.R. (1994) M.P. 80 (D.B.)*

– **Sections 16 (6), 16 (7), 16 (8), 20-A and 20-B – (as amended)** – Factor weighs with the authority for which the M. V. Act sets out nature and degree of punishment but does not include confiscation – Impinges upon Article 254 of the Constitution – Provision of Section 16 (6) and consequential provision of Sections 16

(7), 16 (8), 20-A and 20-B of the State Law invalid – Order of High Court set aside: *M.P.A.I.T. Permit Owners Assn. Vs. State of M.P.*, I.L.R. (2004) M.P. 102 (D.B.)

– **Sections 16 (6), 16 (7), 16 (8), 20-A and 20-B – (as amended) – Validity**
– Union Law & State Law – Offences substantially identical but additional penalties imposed by State Law – Would be inconsistent with the law of the Union and therefore invalid: *M.P.A.I.T. Permit Owners Assn. Vs. State of M.P.*, I.L.R. (2004) M.P. 102 (D.B.)

MP Extension of Laws Act, 1958

– **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) M.P. 828 (D.B.)

Muafi and Inam Tenants and Sub-tenants Protection Act (XXXII of 1954), (Madhya Bharat)

– **Sections 3 and 4** – Tenancy coming to an end by efflux of time prior to coming into force of the Act – Tenant dying before the Act – His heirs in possession not entitled to protection: *Diwan Ramrao Krishnarao Palsikar Vs. Shivgovind Pranprasad*, I.L.R. (1957) M.P. 585 (D.B.)

Municipal Act, Central Provinces, 1903

– **Bye-law regarding grant of licence for practicing profession or trade** – Bye-law enures for benefit of all persons irrespective of public place where they practice within municipal limits: *Ramanlal Vs. Municipal Committee, Piparia*, I.L.R. (1962) M.P. 351 (D.B.)

– **Imposition of tax** – Imposition of tax by council which has no power under statute – Imposition illegal and *ultra vires*: *Municipal Committee/Council, Balaghat Vs. Meghraj*, I.L.R. (1966) M.P. 475

– **Rule 17 (b) framed under Section 150 (2)** – Provision for recovery of double duty in – Not *ultra vires* – Intentional evasion or short payment – Person in charge of articles manages to avoid the route of the outpost or Officers of Committee – Municipal Committee – Power to levy double duty – C.P. and Berar Municipalities Act – Section 48 (1) – Scope of – Claim arising during course of proceedings by the act of committee – Claim not to be defeated because suit not formally withdrawn and reinstituted after expiry of 2 months next after notice: *The “Secretary, M.C. Sagar Vs. M/S. Vrajlal Manilal*, I.L.R. (1957) M.P. 291 (D.B.)

Municipal Act, Madhya Pradesh (XXXVII of 1961)

– **Act contains no provision for excluding the period wasted on account of illegal interference by State or other authority:** *Niranjanprasad Keshrwani Vs. The State of M.P., I.L.R. (1977) M.P. 1189 (D.B.)*

– **Election Petition Rules, 1947** – Rule 3 (b) – Provision in, directory – Non-joinder of a candidate, who has withdrawn from the contest, as a party to election petition – Does not entail dismissal of petition: *Govardhanlal Vs. Ramcharan, I.L.R. (1962) M.P. 182 (D.B.)*

– **Section 62** – Meeting for no confidence motion against president or vice president – Meeting preceded over by – One of the Councillors elected by councillors present including vice president – Held, proceedings not vitiated: *The State of M.P. Through Local Self Govt. Deptt. Bhopal Vs. Beni Pd. Rathore, I.L.R. (1995) M.P. 491 (F.B.)*

– **Section 62** – Recording of minutes of proceedings – No confidence motion brought against President and Vice President – It is mandatory to record number of votes cast either way – Recording of names of councillors however is directory: *The State of M.P. Through Local Self Govt. Deptt. Bhopal Vs. Beni Pd. Rathore, I.L.R. (1995) M.P. 491 (F.B.)*

– **Section 164** – Lease for recovery of cattle registration fee and market fee – Certain facilities were supposed to be provided by the Municipal Council in cattle fair – Contractor failed to pay entire lease amount – Municipality sought to recovered amount – Petition filed in High Court by contractor and not by any tax payer on ground of absence of service – Contractor cannot bemoan about absence or deficiency in services at the site – Cannot be allowed to say that he had wrongly collected the fee and therefore would not pay the contracted money – Contractor had no locus to challenge the valid imposition of fees – Petition filed by him, against recovery not maintainable: *Municipal Council, Waraseoni Vs. Satish Chandra Jain, I.L.R. (1995) M.P. 449 (D.B.)*

Municipal Corporation Act, Madhya Bharat (XXIII of 1956)

– **Contains no provision for initiation or passing motion of no-confidence by Corporation against Standing Committee:** *Shri Balaram Vs. Corporation For The City of Jabalpur, I.L.R. (1965) M.P. 395 (D.B.)*

– **Powers of statutory body created by the Act** – Contains no provision for initiation or passing motion of no-confidence by Corporation against Standing Committee – Sections 66 and 67 – No relation between a resolution expressing no-confidence and any duty a corporation performs under the Act – Test to be applied to determine whether subject-matter of resolution has any relation to the business or duties which corporation can discharge: *Shri Balaram Vs. Corporation For The City of Jabalpur, I.L.R. (1965) M.P. 395 (D.B.)*

– **Test to be applied to determine whether subject-matter of resolution has any relation to the business or duties which corporation can discharge:** *Shri Balaram Vs. Corporation For The City of Jabalpur, I.L.R. (1965) M.P. 395 (D.B.)*

– **Section 58** – Main enactment casts duty on corporation to employ officers and servants: *Shankerlal Choubey Vs. The Municipal Corporation, Jabalpur, I.L.R. (1965) M.P.286 (D.B.)*

– **Section 58, Proviso** – Power to appoint secretary is in Standing Committee and not in Corporation: *Shankerlal Choubey Vs. The Municipal Corporation, Jabalpur, I.L.R. (1965) M.P.286 (D.B.)*

– **Section 58, Proviso** – Vests power on authorities mentioned therein of appointing officer and servants: *Shankerlal Choubey Vs. The Municipal Corporation, Jabalpur, I.L.R. (1965) M.P.286 (D.B.)*

– **Section 58, Proviso I** – Appointment of employee to a post carrying maximum salary exceeding Rs. 150/-per month – Difference between opinion of Standing Committee and corporation and the Public Service Commission – Appointment to be made with the sanction of Government – Section 442(2) – Does not validate the appointment of employee to a new and permanent post – Does not do away with requirements of section 58 – Appointment made contrary to the provisions of Section 58 – Appointment will be contrary to Article 16 of the Constitution: *Narayan Keshav Dandekar Vs. R.C. Rathi, I.L.R. (1966) M.P. 698 (D.B.)*

– **Section 58 and Constitution of India** – Article 16 – Appointment made contrary to the provisions of Section 58 – Appointment will be contrary to Article 16 of the Constitution: *Narayan Keshav Dandekar Vs. R.C. Rathi, I.L.R. (1966) M.P. 698 (D.B.)*

– **Sections 66 and 67** – No relation between a resolution expressing no-confidence and any duty a corporation performs under the Act: *Shri Balaram Vs. Corporation For The City of Jabalpur, I.L.R. (1965) M.P. 395 (D.B.)*

– **Section 132 (f) and Entry Nos. 52 and 56 of State List** – Imposition of octroi duty on goods imported – Is not a tax and does not restrict freedom of trade – Tax hindering movement of trade – Tax can be regarded as restricting freedom of trade for purposes of Article 304(b) of the Constitution: *M/s Transport Corporation of India, Indore, Vs. Chairman Municipal Council, Municipal Corporation, Indore, I.L.R. (1965) M.P. 522 (D.B.)*

– **Section 401** – Notice addressed to commissioner of the Municipal Corporation – Notice not valid: *MST. Putli Bai Vs. Municipal Corporation, Gwalior, I.L.R. (1964) M.P. 287*

– **Section 442 (2)** – Does not validate the appointment of employee to a new and permanent post – Does not do away with requirements of Section 58: *Narayan Keshav Dandekar Vs. R.C. Rathi, I.L.R. (1966) M.P. 698 (D.B.)*

Municipal Corporation Act, Madhya Pradesh (XXIII of 1956)

– **Amended by Act of 1966 – Section 423**, Clauses (e) and (c) to be read as independent clauses (b) and (c) of sub-section (1) and not as part of clause (a): *Laxmidas Patel Vs. The Indore Municipal Corporation, Indore, I.L.R. (1980) M.P. 206 (D.B.)*

– **As amended – Section 423** – Powers which Administrator can exercise in cases of superceded Corporation: *Laxmidas Patel Vs. The Indore Municipal Corporation, Indore, I.L.R. (1980) M.P. 206 (D.B.)*

– **As amended – Section 423(1)(b)** – Administrator appointed continues till corporation is re-constituted: *Laxmidas Patel Vs. The Indore Municipal Corporation, Indore, I.L.R. (1980) M.P. 206 (D.B.)*

– **Bye law 19 (a)** of the bye laws framed under section 427 of the Act – Essentials necessary to be fulfilled for imposition and assessment of a tax: *M/s Shewaram and Sons, Indore City Vs. Indore Municipal Corporation, Indore City I.L.R. (1964) M.P. 373 (D.B.)*

– **Bye law 19 (a)** of the bye laws framed under section 427 of the Act – Vires of: *M/s Shewaram and Sons, Indore City Vs. Indore Municipal Corporation, Indore City I.L.R. (1964) M.P. 373 (D.B.)*

– **Contains no provision invalidating the proceedings of meeting in which the Councillor having interest has taken part:** *Ras Bihari Pande Vs. The Municipal Corporation, Jabapur, I.L.R. (1968) M.P. 904 (D.B.)*

– **Contain no provision for merely censuring Mayor or Deputy Mayor** – No confidence against Chairmen of the Standing committee – Motion necessary to be moved before Standing committee: *Ram Sharan Bari, Municipal Councillor, Jabalpur Vs. Dr. K.L. Dube Mayor, Municipal Corporation, Jabalpur, I.L.R. (1978) M.P. 126 (D.B.)*

– **Regarding bar of Civil Court challenging an assessment** – Certain principles have to be kept in view: *Administrator of Corporation City of Jabalpur Vs. M/s Sekseria Sons and Co. Jabalpur, I.L.R. (1978) M.P. 1140*

– **Standing Committee, Power of, to frame bye** – law regarding retirement of officers or servants: *Bhagwat Prasad Choube Vs. The State of M.P. I.L.R. (1971) M.P. 487 (D.B.)*

– **Sections 7, 8, 9 and 400** – Implication of – Who can represent municipal corporation – Order 1, rule 10, Civil Procedure Code – Proceedings for quashing the proceedings of Corporation – Corporation is necessary party – Municipal Corporation Act, M.P. – Section 300 – Special Meeting under – Can be called by Mayor or Deputy Mayor only – Section 24 (2) – Person who can call meeting for removal of Mayor or Deputy Mayor – Motion of no-confidence against Mayor or Deputy Mayor can be moved only under this provision – Municipal Corporation Act – Contains no provision for merely censuring Mayor or Deputy Mayor – No-confidence against Chairman of the Standing committee – Motion necessary to be moved before Standing Committee – Section 24(2) and 39 – A – Vest no power in Deputy Mayor to call meeting for considering motion of censure against Mayor or Chairman of Standing Committee – 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 – Municipal Corporation Act, M.P. – Section 30 – Seven days notice only given of meeting – Meeting cannot consider no – confidence motion – Section 34(2) – Original Meeting itself not in order – Meeting cannot be convened under this provision – Parliamentary practice – To be followed only when Act does not contain provision: *Ram Sharan Bari, Municipal Councillor Jabalpur Vs. Dr. K.L. Dube, Mayor Municipal Corporation, Jabalpur: I.L.R. (1978) M.P. 126 (D.B.)*

– **Section 11, Constitution of India, Articles 14, 15, 16, 19, 21, 243-T(6)** – Reservation of seats – Notification of certain class/communities as Socially backward challenged on the ground that no opportunity was given to object – Held – Right to contest election is statutory right and not fundamental right – Mahajan Commission invited objections while cataloguing the backward classes – No objection regarding over inclusion of communities was raised before Madhya Pradesh Commission for backward classes – No opportunity of hearing is required as law does not provide for giving the same – Authority of State Govt. providing for reservation for backward classes also not questioned – Notification valid: *Subodh Kumar Awasthy Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 323 (D.B.)*

– **Section 11 (Explanation)** – As notified – Words as notified used in explanation does not mean notified by Govt. under the act – Words indicate that there should be a notification but not under act or Explanation: *Subodh Kumar Awasthy Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 323 (D.B.)*

– **Sections 13 and 14 (2) and Madhya Pradesh Municipal Corporation (Preparation, Revisions and Publication of Electoral Rolls, Election and selection of Councillors) Rules, 1962, Rules 4 to 7** – Assembly rolls as modified to be electoral rolls prepared in accordance with the Act: *Prahlad Dutt Vs. State of M.P., I.L.R. (1969) M.P. 214 (D.B.)*

– **Section 14 (1)** – The word “Adopt” in – Significance and implication of – Sections 13 and 14(2) and Madhya Pradesh Municipal Corporation (Preparation, Revision and Publication of Electoral Rolls, Election and selection of Councillors) Rules, 1962, Rules 4 to 7 – Assembly rolls as modified to be electoral rolls prepared in accordance with the Act – Rule 8 – Contemplates a case and provides for a situation in which no action has been taken in accordance with Section 13 and Section 14(2) – Does not limit the effect of Sections 13 and 14(2) – Rules – Principle applicable for construing them: *Prahlad Dutt Vs. State of M.P., I.L.R. (1969) M.P. 214 (D.B.)*

– **Section 17 (1) (i)** – Disqualification is incurred if two conditions are fulfilled: *Sheonath Vs. Khalifa Chhidamilal, I.L.R. (1977) M.P. 270*

– **Section 17 (1) (i)** – Tax does not become payable only when a bill is presented – Amount of tax remaining due must be recorded in the register of taxes as due – Provision to be strictly construed: *Sheonath Vs. Khalifa Chhidamilal, I.L.R. (1977) M.P. 270*

– **Section 17 (1) (i)** – To be construed as it stands according to grammatical meaning of words used: *Sheonath Vs. Khalifa Chhidamilal, I.L.R. (1977) M.P. 270*

– **Section 18** – Order of State Govt. does not require to be sanctioned in exercise of extra ordinary jurisdiction: *Municipal Corporation, Bhopal Vs. State, I.L.R. (1999) M.P. 632*

– **Sections 19 and 19-B, as amended by M.P., Nagar Palika Vidhi (Sanshodhan) Adhiniyam, 1997** – Constitutional validity – Removal of an elected Councillor or Mayor by the Revenue Commissioner – Not arbitrary or violative of Article 14 – Municipal Corporation Act, M.P., 1956 – Section 24, as amended by M.P. Nagar Palika Vidhi (Sanshodhan) Adhiniyam, 1997 – Constitutional Validity – Removal of directly elected Mayor by No – Confidence motion – Not anti-democratic – State Legislature can provide the method to cut short the tenure – Validity of provision upheld – Municipal Corporation Act, M.P., 1956 – Sections 23-A and 24 – Majority required for removal of Mayor and Speaker – Validity of provisions upheld – Nagar Palika Vidhi (Sanshodhan) Adhiniyam, M.P., 1997 – Section 4 thereof constitutional validity – It is a transitional provision so as to bring the existing Municipal Corporation Act in conformity with the amendments introduced by the M.P. Nagar Palika Vidhi (Sanshodhan) Adhiniyam, 1997 and to make functional by avoiding vacuum or hiatus – Not arbitrary: *Atul Kumar Patel Vs. State, I.L.R. (1998) M.P. 204 (D.B.)*

– **Sections 19 (1) (b), 422, 423 and M.P. Pashu (Niyantaran) Adhiniyam, Sections 4, 6** – Shifting of dairies – Power conferred on Municipal Corporation – Can not be sub-delegated to its Standing Committee: *Manohar Singh Marwaha Vs. State of M.P., I.L.R. (2002) M.P. 546 (D.B.)*

– **Section 20 (2)** – Sections 20(2), 28 and 423 and municipal Corporation, Madhya Pradesh (Preparation, Revision and Publication of Electoral Rolls and selection of councillors) Rules, Rule 47 – First meeting of elected and selected councillors held on 27th February, 1980 – Term of councilors would expire on 26th February 1984 – Notification dated 16th March 1983 appointing Administrator on the assumption that Corporation dissolved on 15th March 1983 quashed: *Mohammad Ali Khan Vs. State of M.P., I.L.R. (1983) M.P. 560 (D.B.)*

– **Section 20 (2)** – The expression “first general meeting” occurring in – Connotation of: *Mohammad Ali Khan Vs. State of M.P., I.L.R. (1983) M.P. 560 (D.B.)*

– **Sections 20 (2), 28 and 423 and Municipal Corporation, Madhya Pradesh (Preparation, Revision and Publication of Electoral rolls and selection of councilors) Rules, 1963, Rule 47** – Term of office of councilors – Starting point of – The expression “first general meeting” occurring in section 20(2) – Connotation of – First meeting of elected and selected councilors held on 27th February, 1980 – Term of councilors would expire on 26th February 1984 – Notification dated 16th March 1983 appointing administrator on the assumption that corporation dissolved on 15th March, 1983 quashed – Constitution of India – Article 226 – Petitioner having sufficient interest can invoke jurisdiction of High Court even though Mayor and all councilors not made parties: *Mohammad Ali Khan Vs. State of M.P., I.L.R. (1983) M.P. 560 (D.B.)*

– **Sections 20 and 26** – Election Petition – Invalid ballots – Allegation that five rupees note was tagged with five ballots in favour of elected candidate – No pin-hole found in any of the ballots – Election petition misconceived – Appeal dismissed: *Vinod Kumar Vs. Trilokinath, I.L.R. (2004) M.P. 812 (F.B.)*

– **Section 23 (1) – Meeting for purposes of election** – Is a first meeting – Meaning which becomes clear when provision is read with explanation – Time from which period of twelve months has to be computed – Provision is directory – Circumstances from which substantial compliance can be inferred – Section 51 – Object and purpose of the section – Natural justice – Aim of the principles of natural justice – Natural justice – Can not over-ride statutory provision – But can operate in areas not covered by any law – Section 23 (4) and (6) – Scope of – Candidate not eligible on date of election – Election is a nullity – Conditions in which writ of quo-warranto can be issued: *Rajendra Singh Vs. N.K. Shejwalker, I.L.R. (1976) M.P. 836 (D.B.)*

– **Section 23 (4) and (6)** – Candidate not eligible on date of election – Election is a nullity: *Rajendra Singh Vs. N.K. Shejwalker, I.L.R. (1976) M.P. 836 (D.B.)*

– **Section 23 (4) and (6)** – Scope of: *Rajendra Singh Vs. N.K. Shejwalker, I.L.R. (1976) M.P. 836 (D.B.)*

– **Sections 23-A and 24** – Majority required for removal of mayor and speaker
 – Validity of provisions upheld: *Atul Kumar Patel Vs. State, I.L.R. (1998) M.P. 204 (D.B.)*

– **Section 24**, as amended by M.P. Nagar Palika Vidhi (Sanshodhan) Adhiniyam 1997 – Constitutional validity – Removal of directly elected mayor by no – Confidence motion – Not anti-democratic – State – Legislature can provide the method to cut short the tenure – Validity of provisions upheld: *Atul Kumar Patel Vs. State, I.L.R. (1998) M.P. 204 (D.B.)*

– **Section 24 (2)** – Person who can call meeting for removal of Mayor or Deputy Mayor – Motion of no-confidence against Mayor or Deputy Mayor can be mover only under this provision: *Ram Sharan Bari, Municipal Councillor Jabalpur Vs. Dr. K.L. Dube, Mayor Municipal Corporation, Jabalpur, I.L.R. (1978) M.P. 126 (D.B.)*

– **Section 24 (2) and 39-A** – Vest no power in Deputy Mayor to call meeting for considering motion of censure against Mayor or Chairman of Standing Committee: *Ram Sharan Bari, Municipal Councillor Jabalpur Vs. Dr. K.L. Dube, Mayor Municipal Corporation, Jabalpur, I.L.R. (1978) M.P. 126 (D.B.)*

– **Section 30** – Seven days notice only given of meeting – Meeting cannot consider no-confidence motion: *Ram Sharan Bari, Municipal Councillor Jabalpur Vs. Dr. K.L. Dube, Mayor Municipal Corporation, Jabalpur, I.L.R. (1978) M.P. 126 (D.B.)*

– **Section 34 (2)** – Original Meeting itself not in order – Meeting cannot be convened under this provision: *Ram Sharan Bari, Municipal Councillor Jabalpur Vs. Dr. K.L. Dube Mayor Municipal Corporation, Jabalpur, I.L.R. (1978) M.P. 126 (D.B.)*

– **Section 51** – Object and purpose of the section: *Rajendra Singh Vs. N.K. Shejwalkar, I.L.R. (1976) M.P. 836 (D.B.)*

– **Section 54** – Chief Municipal Officer can be appointed as Commissioner: *Ram Pratap Dubey Vs. State of M.P., I.L.R. (1993) M.P. 451 (D.B.)*

– **Section 58** – Appointment of Lecturer without consulting public service commission – Appointment not invalid: *Ras Bihari Pande, Vs. The Municipal Corporation, Jabapur, I.L.R. (1968) M.P. 904 (D.B.)*

– **Section 58** – Lecturer in Higher Secondary School of Corporation – Is not an office specified in this section: *Ras Bihari Pande, Vs. The Municipal Corporation, Jabapur, I.L.R. (1968) M.P. 904 (D.B.)*

– **Section 58 (1)** – Confers on Corporation power to determine by bye-laws framed under Section 427 pensions and gratuities – This power includes power to fix

age of retirement – Power not conferred on Standing Committee Municipal Corporation Law (Extension) Act, Madhya Pradesh, 1960 – Section 7(2) – Words “any rule or bye law made thereunder” in the non-obstante clause therein – Means any rule or bye – law already existing at the date of coming into force of the Extension Act: *Chandra Sheikhar Khamparia Vs. Shri L.P. Tiwari Administrator, Municipal Corporation, Jabalpur*, I.L.R. (1971) M.P. 476 (D.B.)

– **Section 58 (1)** – Appointment made without consultation of State Public Service Commission for a period exceeding six months – Validity of – Such appointment within six months in temporary only: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur*, M.P., I.L.R. (1979) M.P. 186 (F.B.)

– **Section 58 (1)** – Disagreement between Corporation and state Public Service Commission – State Government is final authority to take decision: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur* M.P., I.L.R. (1979) M.P. 186 (F.B.)

– **Section 58 (1)** – Framing of Rules not a condition precedent for operation of the Section: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur* M.P., I.L.R. (1979) M.P. 186 (F.B.)

– **Section 58 (1) – Non-framing of Rules** – Whether fatal to the exercise of mandatory requirement of consultation with the State Public Service Commission – Powers can be exercised in a reasonable manner: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur* M.P., I.L.R. (1979) M.P. 186 (F.B.)

– **Section 58 (1)** – Requirement of consultation with State Public Service Commission for making permanent appointment – Mandatory – Disagreement between corporation and State Public Service Commission – State Government is final Authority to take decision – Appointment made without consultation of State Public Service Commission for a period exceeding six months – Validity of – Such appointment within six months is temporary only – Section 58 (1), second Proviso – Words “In the manner prescribed” in – Meaning of – Non-framing of Rules – Whether fatal to the exercise of mandatory requirement of consultation with the State Public Service Commission – Powers can be exercised in a reasonable manner – Framing of Rules not a condition precedent for operation of Section 58(1): *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur* M.P., I.L.R. (1979) M.P. 186 (F.B.)

– **Section 58 (1)** – Second proviso – Words “In the manner prescribed” in – Meaning of: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur* M.P., I.L.R. (1979) M.P. 186 (F.B.)

– **Sections 58 (1) and 427** – Power to determine amount of Pension and gratuity – Includes power to fix age of retirement: *Bhagwat Prasad Choube Vs. The State of M.P.*, I.L.R. (1971) M.P. 487 (D.B.)

– **Sections 58 (1) and Section 427** – 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 Choube Vs. The State of M.P., I.L.R. (1971) M.P. 487 (D.B.)*

– **Section 58 (a), Proviso 2 and Section 423** – Supersession of Municipal Corporation – Appointment of Administrator for puposes of section 423 – Administrator entitled to exercise all powers and duties of corporation and standing Committee – Constitution of India – Article 226 – Writ of quo warranto – When can be issued – Requisites of – Petition maintainable at the instance of private persons, though he may not be personally aggrieved or interested – High Court, Jurisdiction of, to control executive action in matter of appointment to public office against statutory provision – Usurper in office continuous to be an usurper each day he remains in office – Inappropriate to dismiss petition on ground of delay: *Sudhir Kumar Mishra Vs. Municipal Corporation, Jabalpur, Through Its Commissioner, Jabalpur, I.L.R. (1980) M.P. 536 (D.B.)*

– **Section 58 (5) and (6) and Constitution of India**, Articles 14 and 16 – Enactment of sub-sections (5) and (6) of section 58 is within Legislative competence of State Legislature *vide* Entry 5, List II of Seventh Schedule – Petitioner's transfer from Municipal Corporation, Indore to Municipal Corporation, Ujjain as Assistant Health Officer in pursuance of amended provisions of sub-sections (5) and (6) of section 58 – Transfer not challenged as *mala fide* or as a measure of punishment or victimization – Not violative of Articles 14 and 16 – Absence of unified cadre in Corporations – But petitioner's Lien to the post In Indore Corporation ensured – Right of promotion not taken away – Transfer of petitioner from one corporation to another – Validity of: *Dr. Vasant Vs. State of Madhya Pradesh, I.L.R. (1986) M.P. 55 (D.B.)*

– **Section 66 (1)** – Imposes not only duty to fulfill any obligation imposed by Act but also obligation imposed by any other Act for the time being in force: *Laxmidas Patel Vs. The Indore Municipal Corporation, Indore, I.L.R. (1980) M.P. 206 (D.B.)*

– **Section 66 (1)** – Imposition of duty to give relief to destitute by other Act becomes duty of corporation – Authorises imposition of cess for the purpose though imposed on corporation by another Act – Becomes duty and power imposed and conferred by corporation Act: *Laxmidas Patel Vs. The Indore Municipal Corporation, Indore, I.L.R. (1980) M.P. 206 (D.B.)*

– **Sections 66 and 67** – Running of Higher Secondary School – Neither a mandatory nor permissive function of Corporation: *Ras Bihari Pande Vs. The Municipal Corporation, Jabapur, I.L.R. (1968) M.P. 904 (D.B.)*

– **Section 80 (5)** – Sanction from State Govt. – Not necessary in the present case as the allotment of shop is in the nature of transfer by lease – Decree of lower

appellate court affirmed: *Municipal Corporation, Satna Vs. Badri Prasad, I.L.R. (2001) M.P. 72*

– **Sections 87, 427 and 430, Bhopal Municipal Corporation Terminal Tax, assessment and collection bye** – Laws, 1970, bye-law no. 12-A – Collection of terminal tax – Auction of right to collect tax under bye-law – Deposit of bid amount in municipal fund by successful bidder can be said to be amount credited to fund in compliance of section 87 – Bye-law providing for auction – Not legal – Recovery of terminal tax – Corporation auctioning its rights in favour of contractor under amended bye-law – Contractor and his staff required to work under authority of corporation – For violation of bye-laws, can be dealt with like municipal servants – Bye-law is therefore not in excess of authority conferred on corporation bye-law: *Sindhi Sahiti Multipurpose and Transport Co-Operative Society Ltd., Bhopal Vs. State of M.P., I.L.R. (1995) M.P. 149 (F.B.)*

– **Section 132** – Tax on export of goods from within the area of Municipal Corporation – Entry I – Interpretation of taxing statutes – Resort should be had not to the scientific or technical meaning but to their popular meaning – Export tax on ‘all types of cement’ – A dealer would not supply refractory to any one wanting to buy cement – Refractory cement does not fall within the entry ‘all types of cement’ – Not exigible to levy of export tax – Judgment of High Court to this extent set aside: *Associated Cement Co. Ltd. Vs. State of M.P., I.L.R. (2004) M.P. 537 (D.B.)*

– **Section 132 (2) (c) and Northern India Ferries Act, (XVII of 1878), Section 4** – ‘Path Kar’ – Levy of, by Municipal Corporation, Bilaspur on mechanically propelled vehicles passing across the Rapta to be constructed by constructor under authority from Municipal Corporation – Not authorized by law – Imposition of tax quashed – Bridge ‘or’ ‘Rapta’ – Is not a Ferry under the Northern India Ferries Act, 1878: *Jagdish Prasad Soni Vs. State of M.P., I.L.R. (1985) M.P. 139 (D.B.)*

– **Section 132 (2) (n)** – Levy of tax under – Validity: *Delite Talkies, Jabalpur Vs. The City of Jabalpur Corporation, Jabalpur, I.L.R. (1969) M.P. 791 (D.B.)*

– **Section 132 (2) (n)** – Power to levy tax on cinema shows and theatrical performances and also local or municipal authority – Tax by both not invalid: *Delite Talkies, Jabalpur Vs. The City of Jabalpur Corporation, Jabalpur, I.L.R. (1969) M.P. 791 (D.B.)*

– **Section 132 (2) (n)** – Tax on cinema show – Is a tax on every instance of the exercise of profession of giving cinema show – Leviable having due regard to incidence of taxation by reasonable classification of cinema shows: *Delite Talkies, Jabalpur Vs. The City of Jabalpur Corporation, Jabalpur, I.L.R. (1969) M.P. 791 (D.B.)*

– **Section 132 (2) (n)** – Tax on cinema shows and theatrical performances – A tax on act of entertainment – Not a tax on profession or trade – Not invalid because impose on giver of entertainment – Power to levy such tax possessed by state and also local or municipal authority – Tax by both not invalid – Tax on cinema show – Is a tax on every instance of the exercise of profession of giving cinema show – Leviable having due regard to incidence of taxation by reasonable classification of cinema shows – Words “theatre” and “Theatrical performance” – Meaning of – Cinema falls under theatrical performance – “Other shows for public amusement” – Includes cinema show – Levy of tax under – Validity: *Delite Talkies, Jabalpur Vs. The City of Jabalpur Corporation, Jabalpur, I.L.R. (1969) M.P. 791 (D.B.)*

– **Sections 132 and 138** – Liability of lessor for payment of tax – Method of calculating tax: *Municipal Corporation, Indore Vs. Shri S.R. Fadnis, I.L.R. (1970) M.P. 339*

– **Sections 132, 133 and 427(1)**, clause 1 (m) and Indore Municipal corporation cess Bye-Laws, 1961 – Bye law 19(a) – Essentials necessary to be fulfilled for imposition and assessment of a tax – Bye-law 19(a) – Vires of – Rule or Bye-law – Not to override provision of Act: *M/s Shewaram and Sons, Indore City Vs. Indore Municipal Corporation, Indore City I.L.R. (1964) M.P. 373 (D.B.)*

– **Sections 135, 136, 147, 149 and Civil Procedure Code, 1908** – Section 115 – Revision – Property tax – Exemption – Educational institutions exempted – Not defined – Ascertained with reference to function and duties discharged – Board of Secondary Education is an educational institution – Administrative office building in actual use of Board – Not generating income by rent – Not liable for assessment/recovery of property tax: *Board of Secondary Education, Bhopal Vs. Municipal Corporation, Bhopal, I.L.R. (2004) M.P. 1174*

– **Section 136** – Board of Secondary Education is an educational institution – Administrative office building in actual use of Board – Not generating income by rent – Not liable for assessment/recovery of property tax: *Board of Secondary Education, Bhopal Vs. Municipal Corporation, Bhopal, I.L.R. (2004) M.P. 1174*

– **Section 138** – Cess to be imposed with reference to annual letting value determined according to this provision: *Laxmidas Patel Vs. The Indore Municipal Corporation, Indore, I.L.R. (1980) M.P. 206 (D.B.)*

– **Section 138 (b)** – Actual rent received – Not to be the basis for determining annual value of building – Hypothetical rent has to be accepted as basis – That is rent which willing tenant may be expected to pay: *Smt. Ratnaprabha Vs. Municipal Corporation, Indore, I.L.R. (1974) M.P. 145 (D.B.)*

– **Section 138 (b)** – Annual value of building – Notwithstanding anything contained in any other law for the time being in force, if would be deemed to be gross annual rent for which the building might reasonably at time of assessment be expected to be let from year to year – Held – Where standard rent is fixed under section 7 of M.P. Accommodation Control Act – It is permissible to fix its reasonable rent without regard to provisions of M.P. Accommodation Control Act: *Indian Oil Corporation Ltd. Vs. Municipal Corporation, I.L.R. (1995) M.P. 83 (D.B.)*

– **Section 138 (b)** – Hypothetical rent of a hotel building – Has to be treated as a unit – Annual value or hypothetical rent of residential business premises – Not used for hotel purposes – Is altogether irrelevant: *Smt. Ratnaprabha Vs. Municipal Corporation, Indore, I.L.R. (1974) M.P. 145 (D.B.)*

– **Section 138 (b)** – Words “Notwithstanding anything contained in any other law for the time being in force” – Do not override effect of expression “which might reasonably at the time of assessment be expected to be let from year to year”: *Smt. Ratnaprabha Vs. Municipal Corporation, Indore, I.L.R. (1974) M.P. 145 (D.B.)*

– **Section 138 (b) and (c)** – Scope of – Actual rent received – Not to be the basis for determining annual value of building – Hypothetical rent has to be accepted as basis – That is rent which willing tenant may be expected to pay – Words “Notwithstanding anything contained in any other law for the time being in force” – Do not override effect of expression “Which might reasonably at the time of assessment be expected to be let from year to year” – Hypothetical rent of a hotel building – Building has to be treated as a unit – Annual value or hypothetical rent of residential building or non-residential business premises – Not used for hotel purposes – Is altogether irrelevant: *Smt. Ratnaprabha Vs. Municipal Corporation, Indore, I.L.R. (1974) M.P. 145 (D.B.)*

– **Sections 143, 146** – Assessment – Procedure – Opportunity of hearing – In case of any alteration of assessment the authority is obliged to give opportunity of hearing by way of notice: *Smt. Ratna Prabha Dhanda Vs. Indore Municipal Corporation, I.L.R. (2000) M.P. 913*

– **Section 146 and Constitution of India, Article 226** – Notice dated 13-9-1983 proposing increase in valuation of building retrospectively from 1-1-1981 and stating inconsistent reasons for increase and also not mentioning the properties about which increase was proposed – Notice not legal or proper – Commissioner has no jurisdiction to enhance valuation and impose tax on that basis-impugned notice quashed and direction issued: *J.C. Mills Ltd., Gwalior Vs. Municipal Corporation Gwalior, I.L.R. (1986) M.P. 585 (D.B.)*

– **Section 146 and Constitution of India, Article 226** – Notice for assessment of property tax thereunder – Valuation cannot be altered retrospectively – Notice dated

13-9-1983 proposing increase in valuation of building retrospectively from 1-1-1981 and stating inconsistent reasons for increase and also not mentioning the properties about which increase was proposed – Notice not legal or proper – Commissioner has no jurisdiction to enhance valuation and impose tax on that basis – Impugned notice quashed and direction issue: *J.C. Mills Ltd., Gwalior Vs. Municipal Corporation Gwalior, I.L.R. (1986) M.P. 585 (D.B.)*

– **Section 148** – Objection can be to the determination of the annual value of land or building for purposes of assessment of property tax – Does not include objection to assessment of conservancy tax – Section 149 – Appeal lies against only property – tax and not conservancy tax – Word “tax” in phrase “as to the amount of tax assessed” in – Means property tax and no other tax: *The Municipal Corporation Jabalpur Vs. Sri Radhakrishna Pandey, I.L.R. (1971) M.P. 160*

– **Section 149** – Appeal lies against only property tax and not conservancy tax: *The Municipal Corporation Jabalpur Vs. Sri Radhakrishna Pandey, I.L.R. (1971) M.P. 160*

– **Section 149** – Word “tax” in phrase “as to the amount of tax assessed” in – Means property-tax and no other tax: *The Municipal Corporation Jabalpur Vs. Sri Radhakrishna Pandey I.L.R. (1971) M.P. 160*

– **Section 149** – Dispute relating to assessment of property – Already put to rest by Hon. Supreme Court in the year 1976 – No objection needs to be invited: *Smt. Ratna Prabha Dhanda Vs. Indore Municipal Corporation, I.L.R. (2000) M.P. 913*

– **Sections 173 and 174** – Demand made on the basis of earlier assessment without any alteration – Cannot be said to be retrospective assessment – Corporation not required to follow the procedure do novo in absence of fresh assessment – Demand notice does not call for any interference in writ jurisdiction: *Smt. Ratna Prabha Dhanda Vs. Indore Municipal Corporation, I.L.R. (2000) M.P. 913*

– **Sections 173, 174 and 184** – Demand and Appeal against – Objection filed by petitioner against the demand revised by the Corporation kept undecided: *Dhanya Kumar Vs. State, I.L.R. (2001) M.P. 160*

– **Section 184** – Provision for Appeal – Cannot be invoked – Corporation directed to decide the objection of petitioner: *Dhanya Kumar Vs. State, I.L.R. (2001) M.P. 160*

– **Section 189** – Corporation authority, Power of, to determine whether dutiable article falls in one entry or the other: *Administration of Corporation City of Jabalpur Vs. M/s Sekseria Sons and Co. Jabalpur, I.L.R. (1978) M.P. 1140*

– **Sections 293, 299 and Bhumi Vikas Rules, M.P. 1984, Rules 11(1) and 25** – Power’s of Revocation of permission can be exercised by the Commissioner or

his delegate before the work commences – No such powers under Section 299 were exercised – Powers under Rule 11(1) of M.P. Bhumi Vikas Rules 1984 were exercised but notice was never served upon the petitioners according to Rule 25 – Subsequent notice canceling sanction and stopping the construction – Contrary to law and quashed – Proper opportunity – Previous notice issued under Rule 11 not properly served according to Rule 25 – Neither proper notices were issued nor proper opportunity was ever granted to petitioners to submit their case – Notices quashed: *Dharmendra Vs. Indore Municipal Corporation, Indore, I.L.R. (1999) M.P. 10*

– **Sections 293, 299 and Bhumi Vikas Rules, M.P. 1984, Rules 11(1) and 25** – Proper opportunity – Previous notice issued under Rule 11 not properly served according to Rule 25 – Neither proper notices were issued nor proper opportunity was ever granted to petitioners to submit their case – Notices quashed: *Dharmendra Vs. Indore Municipal Corporation, Indore, I.L.R. (1999) M.P. 10*

– **Sections 293, 300** – Building permission – Conditions for – Construction to commence within one year and to complete in two years – on failure to commence and also to complete construction within time stipulated that the legal fiction ‘deemed lapse of sanction’ can be invoked: *Mahadeo Prasad Vs. Municipal Corporation, Jabalpur, I.L.R. (2001) M.P. 631*

– **Section 300** – Special Meeting under – Can be called by Mayor or Deputy Mayor only: *Ram Sharan Bari, Municipal Councillor Jabalpur Vs. Dr. K.L. Dube, Mayor Municipal Corporation, Jabalpur, I.L.R. (1978) M.P. 126 (D.B.)*

– **Sections 307 (2), (3) and 308-A** – Notice to show cause for removal of structure and for compounding – Failure on the part of the Corporation to communication to petitioner for its right to apply for fresh sanction or for compounding – Two years not expired after sanction – Action of Corporation in demolishing the structure – Illegal and erroneous: *Mahadeo Prasad Vs. Municipal Corporation, Jabalpur, I.L.R. (2001) M.P. 631*

– **Section 307 (5)** – Non-application under Section 307(5) before District Court for removal of construction raised by appellant – Application resisted by applicant being not maintainable – District Court allowing the application by holding the same as maintainable – Section 307(5) does not create any new right – Civil suit along with application for temporary injunction has to be filed – Separate M.J.C. cannot be founded on the basis of Section 307(5) – Application under Section 307(5) simplicitor without there being any suit not maintainable: *Malkhandas Chagandas Vs. Om Prakash Lalaram Ameria, I.L.R. (1993) M.P. 299*

– **Section 307 (5)** – Powers of District Court under section 307(5) – Can be invoked by Municipal Corporation or any other person effected except the owner of

work or building: *Laxmiprasad Vs. Municipal Corporation Raipur, I.L.R. (1981) M.P. 68*

– **Section 307 (5)** – Right to seek injunction from District Court against erection or re-erection of building in contravention of any Scheme, bye-laws or requirements of Chapter XXIV – Conferred on Municipal Corporation only or any other person effected by such construction – Such right cannot be claimed by owner of work or building – Power of District court under section 307(5) – Can be invoked by Municipal Corporation or any other person affected except the owner of work or building-words ‘any other person’ in sub-section (5) – Does not include owner of the work or building: *Laxmiprasad Vs. Municipal Corporation Raipur, I.L.R. (1981) M.P. 68*

– **Section 307 (5)** – Words ‘any other person’ in sub-section (5) – Does not include owner of the work or building: *Laxmiprasad Vs. Municipal Corporation Raipur I.L.R. (1981) M.P. 68*

– **Section 341 (1) (a)** – Constitution of India, Articles 21, 301 schedule VII List I, Entry 52 – Emposition of terminal tax – Petitioner engaged in manufacture of bidis – Respondent no. 2 a notified area committee – Notification issued by State Government imposing terminal tax in the notified area committee – Held – Imposition of terminal tax on bidi is within legislative competence of State Government – Power under section 341(1)(a) of the act to imposed terminal tax not curtailed by Tobacco Board Act, 1975, and Tobacco Cess Act, 1975 – Petition dismissed: *M/s. Parbhu Das Kishore Das Vs. State of M.P., I.L.R. (1994) 307 (D.B.)*

– **Section 366 (3)** – Authorises Corporation to charge fee for grant of building permission – Bye-law in – Effective as bye-law – Effect can be given to it as order of commissioner, fixing fee for grant of building permission – Practice – Order quoting wrong provision order not invalid – Exercise of power can be referable to a jurisdiction which confers validity upon it – Distinction between Tax and fee and their implication – Wrong crediting of fund – Does not change nature of the amount – Co-relation between total collections and expenditure incurred for rendering service established – Absence of uniformity will not make the amount a tax – Co-relation necessary to sustain fee – Need not be arithmetical exactitude: *Loonkaran Parak Vs. State of M.P., I.L.R. (1980) M.P. 403 (D.B.)*

– **Section 366 (3)** – Bye-law in – Effective as bye-law – Effect can be given to it as order of commissioner, fixing fee for grant of building permission: *Loonkaran Parak Vs. State of M.P., I.L.R. (1980) M.P. 403 (D.B.)*

– **Section 387 (3)** – Power of district Court to determine compensation – It acts like an original Court on reference made under Land Acquisition Act: *Teli Panchas Through Kanhaiyalal Vs. Indore Municipal Corporation, Indore, I.L.R. (1967) M.P. 814*

– **Section 387 (4)** – Appeal under; wider than an appeal provided under section 96, Civil Procedure Code – Power of District Court to determine compensation – It acts like an original Court on reference made under Land Acquisition Act – District Court not making reference to award of Panchayat – Order of District Court does not call for interference – Section 392 – Power of revision of High Court under – Is the same as under Section 115, Civil Procedure Code: *Teli Panchas Through Kanhaiyalal Vs. Indore Municipal Corporation, Indore, I.L.R. (1967) M.P. 814*

– **Section 387 (4)** – District Court not making reference to award of Panchayat – Order of District Court does not call for interference: *Teli Panchas Through Kanhaiyalal Vs. Indore Municipal Corporation, Indore, I.L.R. (1967) M.P. 814*

– **Section 387 (4)** – Possession of property taken before fixing of compensation – Owner entitled to reasonable rate of interest on compensation amount: *Rajabai Vs. Municipal Corporation, Indore, I.L.R. (1970) M.P. 164*

– **Section 387 (4)** – Proceedings under – Procedure of Land Acquisition Act applicable but not principle of Section 25 of that Act – Right of Municipal Corporation to apply for reduction of compensation amount – Possession of property taken before fixing of compensation – Owner entitled to reasonable rate of interest on compensation amount: *Rajabai Vs. Municipal Corporation, Indore, I.L.R. (1970) M.P. 164*

– **Section 387 (4)** – Right of Municipal Corporation to apply for reduction of compensation amount: *Rajabai Vs. Municipal Corporation, Indore, I.L.R. (1970) M.P. 164*

– **Section 392** – Power of revision of High Court under – Is the same as under Section 115, Civil Procedure Code: *Teli Panchas Through Kanhaiyalal Vs. Indore Municipal Corporation, Indore, I.L.R. (1967) M.P. 814*

– **Section 401 and Natural Justice** – Limitation – Six months plus one months notice time – Cause of action – No cause of action for suit accrue unless right threatened or denied – Order passed resulting in pecuniary loss – No show cause notice given – Order wholly unjustified and against principles of natural justice: *Jawaharlal Jain Vs. The Administrator Municipal Corporation, Jabalpur, I.L.R. (1988) M.P. 432*

– **Section 403 (1)** – Order passed by Octroi Moharrir – Octroi Superintendent or Assistant Superintendent Appealability – Section 403(2)(c) – Second appeal maintainable if byelaws so provide – First appeal heard by Commissioner – Second appeal lies to Appeal Committee – No appeal or revision maintainable against order of Appeal Committee – Section 189 – Corporation authority, power of, to determine whether dutiable article falls in one entry or the other – Regarding bar of Civil Court challenging an assessment – Certain principles have to be kept in view – Civil Procedure Code – Section 9 – Civil Court has jurisdiction to decide all suits of Civil nature unless jurisdiction

is barred – Civil suit when lies to challenge the imposition of Octroi duty: *Administraton of Corporation City of Jabalpur Vs. M/s Sekseria Sons and Co. Jabalpur, I.L.R. (1978) M.P. 1140*

– **Section 403 (2) (c)** – Second appeal maintainable if byelaws so provide – First appeal heard by Commissioner – Second appeal lies to Appeal Committee – No appeal or revision maintainable against order of Appeal Committee: *Administraton of Corporation City of Jaabalpur Vs. M/s Sekseria Sons and Co. Jabalpur, I.L.R. (1978) M.P. 1140*

– **Section 420** – Employee of Corporation – Commissioner or Standing Committee has power to suspend or take punitive action: *Shankeral Vs. L.P. Tiwari, Commissioner Municipal Corporation, Jabalpur, I.L.R. (1967) M.P. 907 (D.B.)*

– **Section 421** – Life Insurance Corporation Act (XXXI of 1956), Sections 30 and 44(f) and Insurance Act (IV of 1938), Section 2(ii) – “Life Insurance business” – Meaning of – 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” – Sections 30 and 44(f) of the life Insurance Corporation Act, 1956 and Section 421 of the Municipal Corporation Act – Not applicable to Scheme not involving Municipal Corporation’s 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 (D.B.)*

– **Section 421 (3)** – Powers under section 421 have to be exercised in a *quasi-Judicial* manner – Principle of natural justice applies – Reasonable opportunity to be heard must be given – State Govt. withdrawing its earlier order without hearing the petitioner – Order is vitiated: *Dr. Girishkumar Vyas Vs. State of M.P., I.L.R. (1985) M.P. 78 (D.B.)*

– **Section 422** – Hearing necessary to be given before dissolving municipal council: *Suresh Seth Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 17 (D.B.)*

– **Section 422** – Natural Justice – Oral hearing not an essential attribute: *Suresh Seth Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 17 (D.B.)*

– **Section 422** – Nature of opportunity – Dependent upon facts of each case – Is in the discretion of tribunal or authority passing final order: *Suresh Seth Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 17 (D.B.)*

– **Section 422** – Non-supply of copy of report on which final order is based – Amounts to denial of adequate opportunity – Oppornunity contemplated is adequate opportunity to show cause – All adverse material used to be disclosed to Corporation: *Suresh Seth Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 17 (D.B.)*

– **Section 422** – Power conferred by – Power is *quasi* judicial in nature: *Suresh Seth Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 17 (D.B.)*

– **Section 422** – Order of super-session challenged on ground of *mala fides* – Facts showing lack of good faith to be pleaded – The word “competent” in – Meaning of – Word does not refer to legal qualification but to skill and ability to perform duties – Hearing necessary to be given before dissolving municipal council – The notice necessary to be given before ordering super-session and order to give reasons for super-session – Power conferred by – Power is quasi-Judicial in nature – Non-Supply of copy of report on which final order is based – Amounts to denial of adequate opportunity – Opportunity contemplated is adequate opportunity to show cause – All adverse material used – To be disclosed to corporation – Natural justice – Oral hearing not an essential attribute – Nature of opportunity – Dependent upon facts of each case – Is in the discretion of tribunal or authority passing final order – Order of super-session – To contain the necessary reasons – Order of super-session is nullity or void – Councillor is aggrieved party and can file petition: *Suresh Seth Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 17 (D.B.)*

– **Section 422** – Order of Super-session is nullity or void – Councillor is aggrieved party and can file petition: *Suresh Seth Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 17 (D.B.)*

– **Section 422** – Order of super-session – To contain the necessary reasons: *Suresh Seth Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 17 (D.B.)*

– **Section 422** – The notice necessary to be given before ordering supersession and order to give reasons for super-session: *Suresh Seth Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 17 (D.B.)*

– **Section 422** – The word “competent” in – Meaning of – Word does not refer to legal qualification, but to skill and ability to perform duties: *Suresh Seth Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 17 (D.B.)*

– **Sections 422-A, 23, 38 and 421(3)** – First general meeting after election of councilors to elect Mayor, Deputy Mayor and Selection Committee – In the previous year meeting held on 26-3-1983 to elect Mayor and Deputy Mayor – Term of one year expired on 25-3-1984 and next year commenced on 26-3-1984 – In subsequent year, general meeting held on 31-3-1984 to elect Mayor, Deputy Mayor and Standing Committee – Such meeting being first meeting in the year in question provisions of section 422-A not attracted and there is no automatic dissolution of the Corporation – Section 421(3) – Powers under section 421 have to be exercised in a quasi-Judicial manner – Principle of natural justice applies – Reasonable opportunity to be heard must be given – State Govt. withdrawing its earlier order without hearing the petitioner –

Order is vitiated: *Dr. Girishkumar Vyas Vs. State of M.P., I.L.R. (1985) M.P. 78 (D.B.)*

– **Sections 423 (1) (b), 423 (2) and Madhyastham Adhikaran Adhiniyam, M.P. (XXIX of 1983), Section 2(1)(g)** – Administrator is fully under if the control of Government – Administrator is statutory body controlled by state Government – Tribunal Has Jurisdiction to decide the dispute: *Administrator, Municipal Corporation, Durg, M.P. Vs. M/s Jainco, Designers And Executors, Hatri Bazar, Durg, I.L.R. (1991) M.P. 417 (F.B.)*

– **Section 423 (1) (c), M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, Rule 9(1)** – Executive Engineer appointed by Standing Committee of Municipal Corporation – Municipal Corporation superseded – Administrator is competent to suspend the Executive Engineer: *Ram Pratap Dubey Vs. State of M.P., I.L.R. (1993) M.P. 451 (D.B.)*

– **Section 441** – Absence of mark of indelible ink on the fingers of voters claiming tendered votes – value of: *Komalchand Vs. Smt. Pushpa Jain, I.L.R. (1986) M.P. 344*

– **Section 441** – Revision – Power and jurisdiction of the High Court to interfere: *Komalchand Vs. Smt. Pushpa Jain, I.L.R. (1986) M.P. 344*

– **Sections 441, 441-A (1) (b), 441-B (1) (d) (iii), 441-F (2), Municipal Corporation (Preparation, Revision and Publication of Electoral Rolls and Selection of Councilors) Rules, M.P. 1963, Rules 23, 26, 27 and 36 and Municipal Corporation (Election Petition) Rules, M.P., 1963, Rule 10** – Election Petition Challenging election of a Councillor on ground of improper reception or improper rejection of votes – Burden of proof – Election petitioner has to establish that election of returned candidate has been materially affected – Returned candidate securing 573 votes while respondent No. 5 securing 572 votes – Allegation that two votes Nos 21 and 37 were not casted by real voters and tendered votes cast by them were not counted by the Election Officer – Method of enquiry into such allegations – Presumption – Disputed votes not found to have been cast in favour of returned candidate – Result of election of the returned candidate is not materially affected – Absence of mark of indelible ink on the fingers of voters claiming tendered votes – Value of – **Section 441-A(1)(b)** – Declaration Contemplated therein can be claimed only if the election petitioner himself is a candidate – Recrimination – Necessary to be claimed only when a candidate is an election petitioner – **Section 441-F** – Revision – Power and jurisdiction of the High Court to interfere: *Komalchand Vs. Smt. Pushpa Jain, I.L.R. (1986) M.P. 344*

– **Sections 441, 441-A (1) (b), 441-B (1) (d) (iii), 441-F(2), Municipal corporation (Preparation, Revision and Publication of Electoral Rolls and Selection of Councilors) Rules, M.P. 1963, Rules 23, 26, 27 and 36 and Municipal Corporation (Election Petition) Rules, M.P., 1963, Rule 10** – Returned candidate securing 573 votes while respondent no. 5 securing 572 votes – Allegation that two votes No. 21 and 37 were not casted by real voters and tendered votes cast by them were not counted by the Election Officer – Method of enquiry into such allegations – Presumption – Disputed votes not found to have been cast in favour of returned candidate – Result of election of the returned candidate is not materially affected: *Komalchand Vs. Smt. Pushpa Jain, I.L.R. (1986) M.P. 344*

– **Sections 441 and 441-F (2)** – Election petition and Revision arising therefrom – Section 441-H – Corrupt Practice – Pleading and proof – Election Petitioner though led evidence but not pleaded material fact in the petition constituting corrupt practice – Section 441(5) – Provision mandatory – Election petitioner has to plead material facts on which he/she would rely – In absence of pleading, evidence alone would not be sufficient to set aside the election of returned candidates – Section 441-H and representation of Peoples Act, 1951 – Section 123(4) – Alleged circulation of pamphlets not containing name of printer and publisher – Person behind such circulation not proved to be agent of returned candidate nor it is pleaded that returned candidate herself indulged in distribution of such pamphlets or that it was done with her consent – Conduct of returned candidate cannot form the basis for upsetting her election: *Smt. Shushila Lavhathre Vs. Smt. Shobha Diwedi, I.L.R. (2000) M.P. 878*

– **Sections 441 and 441-F(2)** – Section 441(5) – Provision mandatory – Election petitioner has to plead material facts on which he/she would rely – In absence of pleading, evidence alone would not be sufficient to set aside the election of returned candidates: *Smt. Shushila Lavhathre Vs. Smt. Shobha Diwedi, I.L.R. (2000) M.P. 878*

– **Section 441-A (1) (b)** – Declaration contemplated therein can be claimed only if the election petitioner himself is a candidate: *Komalchand Vs. Smt. Pushpa Jain, I.L.R. (1986) M.P. 344*

– **Section 441-A (1) (b)** – Recrimination – Necessary to be claimed only when a candidate is an election petitioner: *Komalchand Vs. Smt. Pushpa Jain, I.L.R. (1986) M.P. 344*

– **Section 441-B, Clause (a)** – “Date of election” in – Meaning of – Date of filing nomination or date of scrutiny not material – Section 17 (1) (i) – To be construed as it stands according to grammatical meaning of words used – Tax does not become payable only when a bill is presented – Amount of tax remaining due must be recorded in the register of taxes as due – Provision to be strictly construed – Disqualification is incurred if two conditions are fulfilled: *Sheonath Vs. Khalifa Chhidamilal, I.L.R. (1977) M.P. 270*

– **Section 441-B, Clause (a)** – Date of filing nomination or date of scrutiny not material: *Sheonath Vs. Khalifa Chhidamilal, I.L.R. (1977) M.P. 270*

– **Section 441-H and Representation of Peoples Act (XLIII of 1951)** – Section 123-(4) – Alleged circulation of pamphlets not containing name of printer and publisher – Person behind such circulation not proved to be agent of returned candidate nor it is pleaded that returned candidate herself indulged in distribution of such pamphlets or that it was done with her consent – Conduct of returned candidate cannot form the basis for upsetting her election: *Smt. Shushila Lavhathre Vs. Smt. Shobha Diwedi, I.L.R. (2000) M.P. 878*

– **Section 441-H** – Corrupt Practice – Pleading and proof – Election petitioner though led evidence but not pleaded material fact in the petition constituting corrupt practice: *Smt. Shushila Lavhathre Vs. Smt. Shobha Diwedi, I.L.R. (2000) M.P. 878*

Municipal Corporation law (Extention) Act Madhya Pradesh 1960 (XIII of 1961)

– **Section 7 (2)** – Words “any rule or bye-law made there under” in the non-obstante clause therein – Means any rule or bye-law already existing at the date of coming into force of the Extension Act: *Chandra Sheikhar Khamparia Vs. Shri L.P. Tiwari Administrator Municipal Corporation Jabalpur, I.L.R. (1971) M.P. 476 (D.B.)*

Municipal Council Act, C.P. and Berar

– **Section 25 (7) (2) and Rule 2-A** framed thereunder – Inaction on the part of municipal council in the matter of deduction of provident Fund amount in relation in the petitioner even though she was entitled to be a member of contributory Fund under Rule 2-A – Petitioner cannot be denied benefit of counting her entire past services for entitlement to pensionary benefits: *Smt. C.A. Bhakhare Vs. State of M.P., I.L.R. (1986) M.P. 382*

– **Section 25 (7) (2) and Rule 2-A** framed thereunder – Local Authorities School Teachers (Absorption in Govt. Service) Act, M.P. (XXV of 1963), Section 10 and New Pension Rules, 1951 – Circular dated 15/21-1-72 issued by State Govt. giving an absorbed Govt. Servant and absorbed teacher benefit of their past services for which they made contribution to Provident Fund – Constitution of India, Articles 41 and 226 – Clauses (1)(4) of the circular applies only to cases where past service were not governed by any Provident Fund Scheme – In action on the part of Municipal Council in the matter of deduction of Provident fund amount in relation to the petitioner even though she was entitled to be a member of contributory Fund under Rule 2-A – Petitioner cannot be denied benefit of counting her entire past services for entitlement to pensionary benefits: *Smt. C.A. Bhakhare Vs. State of M.P., I.L.R. (1986) M.P. 382.*

Municipal Courts

– **Act of State** – Meaning of – Action of State Government – Not justiciable in the civil court – Contract by Ex-Ruler not binding on State government, unless accepted or ratified by it: *Smt. Thailendra Kishore Das Vs. The State of M.P., I.L.R. (1958) M.P. 542 (D.B.)*

Municipal Rules, MP 1968

– **Rule 13** – Employee completed maximum period of probation – Rules do not prescribe extension of probation beyond the maximum – Continuance of such employee shall give rise to the presumption that they have been confirmed: *Municipal Council, Sabalgarh Vs. Munnalal, I.L.R. (1992) M.P. 744*

– **Rules 49, 52** – Termination – One of the major punishments – Show cause notice alleging misconduct served but subsequently termination order passed without conducting any inquiry or proceeding further under the Rules – Termination is for an order of dismissal for misconduct – Court below rightly set aside the order of termination: *Municipal Council, Sabalgarh Vs. Munnalal, I.L.R. (1992) M.P. 744*

Municipalities (Amendment) Act, Madhya Pradesh (XXXI of 1963)

– **Section 2 (2) (ii)** – Amendment – Not to affect substantive and vested rights: *Sardar Harisingh Jhelumi Vs. State of M.P., I.L.R. (1965) M.P. 453 (D.B.)*

– **Section 2 (2) (ii)** – Term “casual vacancy” in – Meaning of – Section 9 – Does not give retrospective effect as from the date when principal Act itself came into force – Difference between phraseology “certain statutory provision shall be read from a particular date in a particular manner” and the “deemed” reading – Amendment of Section 2(2)(ii) – Not to affect substantive and vested rights: *Sardar Harisingh Jhelumi Vs. State of M.P., I.L.R. (1965) M.P. 453 (D.B.)*

– **Section 9** – Does not give retrospective effect as from the date when principal Act itself came into force: *Sardar Harisingh Jhelumi Vs. State of M.P., I.L.R. (1965) M.P. 453 (D.B.)*

Municipalities (Election Petition) Rules, Madhya Pradesh, 1962

– **Rules 11 to 15, 17 and 18** – Do not curtail ordinary procedure – Confer procedural powers already vested – Rules superfluous and redundant: *Babulal Vs. Dattatraya, I.L.R. (1971) M.P., 412 (F.B.)*

– **Rule 16** – Setting aside of election of a member or President – Results in creation of temporary vacancy: *Shri Ramlal Vs. The Collector, Satna, I.L.R. (1978) M.P. 247 (D.B.)*

Municipalities (Preparation, Revision and Publication of Electoral Rolls, Election and Section of Councillors) Rules Madhya Pradesh, 1962

– **Form IV** – Distinction between the words “in accordance with Form IV” and “in Form IV” – Mention of the ward in nomination paper – Essential condition – Non-compliance is fatal: *Shivkaran Vs. Supervising Officer, Tehsildar Jaora, I.L.R. (1968) M.P. 204 (D.B.)*

– **Identity of ward to be established with reference to name and not number** – Non-mention of the name of the ward in nomination paper – Omission is fatal: *Shivkaran Vs. Supervising Officer, Tehsildar Jaora, I.L.R. (1968) M.P. 204 (D.B.)*

– **Rule 13 (1), clause (iv) (a), proviso** – Gives mandatory direction to supervising officer to permit corrections of clerical or technical error – Permits such errors to be overlooked: *Kishanchand Vs. The Supervising Officer, Municipal Committee, Kurwai, I.L.R. (1974) M.P. 758 (D.B.)*

– **Rule 13 (1), clause (iv)** – Non-mention of name of municipality in nomination paper – Omission is not of substance – Is of mere form and technical in character – Rule 13 (1), clause (iv) (a), Proviso – Gives Mandatory direction to supervising officer to permit corrections of clerical or technical error – Permits such errors to be overlooked – Constitution of India – Article 226 – No interference by High Court in election matter when remedy by election petition available – Powers of High Court under – Cannot be taken away except by amendment of Constitution – Section 20(1) of Municipalities Act, Madhya Pradesh, 1961 – Does not take away power of High Court under this provision – Remedy by way of election petition not equally efficacious and cannot prevent the mischief being done – High Court has power to issue – writ – Section 45 – Councillors deemed to have entered upon the office from the date of election for purposes of selection of councilors under section 19 and of President and Vice – President under section 43 – Constitution of India – Article 226 – Allegations made against party to the petition – Duty of that party to acquaint Court with factual position by filing return: *Kishanchand Vs. The Supervising Officer, Municipal Committee, Kurwai, I.L.R. (1974) M.P. 758 (D.B.)*

– **Rule 13(1), Clause (v) (c)** – Compliance defective – Not sufficient to reject nomination paper: *Shivkaran Vs. Supervising Officer, Tehsildar Jaora, I.L.R. (1968) M.P. 204 (D.B.)*

– **Rule 13(1), Clause (v) (c)** – Supervising Officer, Power of, to reject nomination paper: *Shivkaran Vs. Supervising Officer, Tehsildar Jaora, I.L.R. (1968) M.P. 204 (D.B.)*

– **Rule 13(1) (i)** – Provision mandatory: *Shivkaran Vs. Supervising Officer, Tehsildar Jaora, I.L.R. (1968) M.P. 204 (D.B.)*

– **Rule 13(1) (i)** – Provision mandatory – Clause (v)(c) – Supervising Officer, Power of, to reject nomination paper – Compliance defective – Not sufficient to reject nomination paper – Form IV – Distinction between the words “in accordance with Form IV” and “in Form IV” – Mention of the ward in nomination paper – Essential condition – Non-compliance is fatal – Identity of ward to be established with reference to name and not number – Non-mention of the name of the ward in nomination paper – Omission is fatal: *Shivkaran Vs. Supervising Officer, Tehsildar Jaora, I.L.R. (1968) M.P. 204 (D.B.)*

– **Rule 13 (1) (i) (vi) and Rule 15 (1) (a)** – Absence of declaration in nomination paper – Supervising Officer free to allot symbol: *Kanakmal Vs. Supervising Officer, Tehsildar, Jaora, I.L.R. (1968) M.P. 215 (D.B.)*

– **Rule 13 (1) (i) (vi) and Rule 15 (1) (a)** – Requirement regarding declaration of symbol – Is only directory – Omission not of a substantial character – No ground for rejecting nomination paper – Absence of declaration in nomination paper – Supervising Officer free to allot symbol: *Kanakmal Vs. Supervising Officer, Tehsildar, Jaora, I.L.R. (1968) M.P. 215 (D.B.)*

– **Rule 13 (1) (i) (vi) and Rule 15 (1) (a)** – Requirement regarding declaration of symbol – Is only directory – Omission not of a substantial character – No ground for rejecting nomination paper: *Kanakmal Vs. Supervising Officer, Tehsildar, Jaora, I.L.R. (1968) M.P. 215 (D.B.)*

– **Rule 13 (1) (v) (a)** – Power of supervising officer to go into question of “ineligibility of candidate” – Word “ineligible” in – Comprehensive enough to include both “disqualified” as well as “not qualified”: *Satya Narayan Vs. Mahesh Chandra Jain, I.L.R. (1975) M.P. 582 (D.B.)*

– **Rule 13 (1) (v) (a)** – Word “ineligible” in – Comprehensive enough to include both “disqualified” as well as “not qualified”: *Satya Narayan Vs. Mahesh Chandra Jain, I.L.R. (1975) M.P. 582 (DB)*

– **Rule 51 and Municipalities Act, Madhya Pradesh (XXXVII of 1961), Sections 20 and 22 (1) (d)** – Selection of Councilors – Voting should be for all the candidates, male and women, in one phase only – Constitution of India – Article 226 –

Remedy of election petition under section 20 available – Result of election not shown to be materially affected if proper procedure would have been adopted – Discretion in the matter of entertaining writ petition challenging selection of councilors not exercised: *Shreekrishn Vs. State of M.P., I.L.R. (1985) M.P. 660 (D.B.)*

Municipalities (President and Vice-President) Election Rules Madhya Pradesh 1962

– **Rule 3** – Notice not fixing time for filing nomination papers according to rule – Notice does not cease to be one according to rule though hours not mentioned in consonance with Rule 4: *Govind Rao Vs. The State of M.P., I.L.R. (1970) M.P. 207 (D.B.)*

– **Rule 4 (1) and Form A** – Do not require proposer to fill in the form himself – Can be filled at his direction – His putting signature is sufficient compliance: *Vasant Rao Parhate Vs. Ghanshyam, I.L.R. (1974) M.P. 558 (D.B.)*

– **Rule 9 (2)** Vires of: *Vasant Rao Parhate Vs. Ghanshyam, I.L.R. (1974) M.P. 558 (D.B.)*

Municipalities (Reservation of Wards of Scheduled Caste, Scheduled Tribe, O.B.C., and women) Rules M.P. 1994

– **Rules 3 and 4** – Reservation of wards in Municipal Election – Principle of rotation – Not Applicable in case of reservation of wards for S/C and S/T: *Sunil Vs. State of M.P., I.L.R. (2004) M.P. 1055*

Municipalities (Second Amendment) Act, 1956, Madhya Bharat

– **Sections 2 and 3** – Legislature – Power of, to supply lacuna in the matter of jurisdiction – But no power to direct a decision in a particular way – Sections 2 and 3 are not *ultra vires*: *Biharilal Vs. Ramcharan, I.L.R. (1957) M.P. 226 (D.B.)*

Municipalities Act (Wards) Rules, Madhya Pradesh, 1963

– **Rules directory** – Rules substantially complied with – Final Notification under Section 29(1)(b) can not be challenged: *Bhagwat Prasad Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 204 (D.B.)*

Municipalities Act, C.P. and Berar (II of 1922)

– **Byelaw No. 18** – “Railway Station enclosures” in – Meaning of: *Municipal Committee, Bhatapara Vs. The Board of Revenue, M.P., I.L.R. (1960) M.P. 212 (D.B.)*

– **Electoral Rules** – Rule 2 – Period of 3 months – Not rigid – Section 20-A – Election not to be set aside for mere non-compliance or contravention of procedural rules – Complaint regarding scrutiny or allotment of symbols – A ground for election petition – Constitution, Article 226 – Existence of alternative remedy – Not an absolute bar: *Ballabhdas Vs. The Collector, Mandla, I.L.R. (1959) M.P. 367 (D.B.)*

– **Mutation** – Does not have the effect of transfer of title: *Tukaram Vs. Smt. Anjanibai, I.L.R. (1959) M.P. 573 (D.B.)*

– **Mutation Register** – Entries in mutation register only a piece of evidence – Not conclusive: *Smt. Nanhi Bai Vs. Badri Prasad, I.L.R. (1959) M.P. 559 (D.B.)*

– **Octroi Refund Rules** – Rule 38 proviso (b) – Not *ultra vires* – Interpretation of statute – Rule when can be said to be *ultra vires* and when not: *Municipal Committee, Raipur Vs. M/s Punjab Oil Mills, Ramsagarpara Raipur, I.L.R. (1959) M.P. 14 (D.B.)*

– **Octroi Rules** – Items 42 to 45 in schedule of rates – The Phrase “woolen and mixed with woolen and cotton cloth” in – To be read conjunctively – The words “cotton cloth” in item 45, not a distinct category – Not liable to be taxed at the rates provided in item 45 – Cotton cloth covered by item 43 – Interpretation of statutes – Statute ought to be interpreted rationally – Reasonableness or otherwise is immaterial – Two interpretations possible – Interpretation in favour of subject to be referred: *Kanhaiyalal Vs. The Municipal Committee, Mungeli, I.L.R. (1959) M.P. 448*

– **Octroi Rules – Rules 22(a) (b) (c) and (d) are mandatory** – Others are for strict compliance and not mandatory: *Municipal Committee, Champa Vs. M/s Moolji Sikka and Co., I.L.R. (1960) M.P. 425 (D.B.)*

– **Rules framed thereunder – Rule 13 and 43** – Person not paying tax under bona fide and honest belief reasonably entertained regarding particular interpretation of Act or the rules – Persons does not come within the mischief of those provisions: *The Municipal Committee, Harda, District Hoshangabad, M.P., Vs. Banshilal Agrawal Proprietor of the Shop M/s Baijnath Banshilal Harda, I.L.R. (1972) M.P. 935 (D.B.)*

– **Rules framed thereunder – Rule 43 Mens rea** – An essential constituent of offence: *The Municipal Committee, Harda, District Hoshangabad, M.P., Vs. Banshilal Agrawal Proprietor of the Shop M/s Baijnath Banshilal Harda, I.L.R. (1972) M.P. 935 (D.B.)*

– **Rules framed thereunder – Rule 9 and 10 – Word “Evade”** – Implication of: *The Municipal Committee, Harda, District Hoshangabad, M.P., Vs. Banshilal*

Agrawal Proprietor of the Shop M/s Baijnath Banshilal Harda, I.L.R. (1972) M.P. 935 (D.B.)

– **Rules framed thereunder – Rules 9 and 10** – Words “consumption or use” in – Meaning of: *The Municipal Committee, Harda, District Hoshangabad, M.P., Vs. Banshilal Agrawal Proprietor of the Shop M/s Baijnath Banshilal Harda, I.L.R. (1972) M.P. 935 (D.B.)*

– **Rules framed thereunder – Rules 9 and 10** – Goods brought within municipal area for sale – Liable to payment of octroi tax: *The Municipal Committee, Harda, District Hoshangabad, M.P., Vs. Banshilal Agrawal Proprietor of the Shop M/s Baijnath Banshilal Harda, I.L.R. (1972) M.P. 935 (D.B.)*

– **Rules framed under section 25(6)** – Rule 2 – Provides for appeal in case of persons drawing Rs. 20/- per mensem or more – Rule 2(i) – “Drawing Rs. 50/- per mensem or over” – Not limited to case where substantive salary is of that amount but includes cases where salary and dearness allowance come to that figure or exceed it: *Municipal Committee, Kawardha Vs. Ambikaprasad Gupta, I.L.R. (1959) M.P. 715 (D.B.)*

– **Rules framed under Section 25(6)** – Rules cannot abrogate right of appeal granted under city of Jabalpur Corporation Act: *V.S. Jasani, Vs. The City of Jabalpur Corporation, I.L.R. (1958) M.P. 799 (D.B.)*

– **Rules framed under the Act – Rules 1, 19 and the Schedule** – Octroi duty when liable to be levied – Grains and pulses received by rail reaching railway station – Grains and pulses reached octroi limits – Liable to octroi duty – Grains and pulses brought by bullock carts from station to city – Octroi duty chargeable is at the rate of four annas per maund and not per cart – Constituion, Article 226 – Another remedy – Not absolute bar to grant of writ of *certiorari* – Another remedy must be legal remedy not less convenient, beneficial and effective in order to be bar to the issue of writ – Estoppel – No estoppel against statute: *Municipal Committee, Pandhurna Vs. M/s Shah Raisi Hirji & Co., I.L.R. (1959) M.P. 734 (D.B.)*

– **Rules under – Rule 6** – Not applicable to a temporary appointment for a period not exceeding six months: *Shankerlal Choubey Vs. The Municipal Corporation, Jabalpur, I.L.R. (1965) M.P. 286 (D.B.)*

– **Schedule to the Octroi Rules framed under section 66(e)** – Items 4 and 44 – *Sarso* Not specifically mentioned elsewhere in the class in which item no. 4 is included – Mention outside class I would not be specific mention elsewhere – *Sarso* comes under item 4 and not under item 44 – Liable to be taxed at the rate Provided for item no. 4 in the schedule attached to the rules framed under: *Phoolchand Vs. Municipal Committee, Raipur, I.L.R. (1959) M.P. 745 (D.B.)*

– **Section 2 (iv) (a) and (b)** – Continuity of employment guaranteed – Provision in Section 2 (iv) (b) was of transitory nature – Old service conditions were to be continued till they were altered – Section 95 – Confers powers on Government to make rules regulating conditions of services governing persons on their appointment to posts – Authority to frame Rule 7 of M.P. Municipal Services (Scales of pay and allowances) Rules, 1967, cannot be challenged: *Nathusingh Couhan Vs. The State of Madhya Pradesh I.L.R. (1974) M.P. 89 (D.B.)*

– **Section 7** – Election not completed prior to coming in force of Amending Act – Election stands annulled – Right to vote for election of President – Not a fundamental right: *Ramdas Vs. The State of M.P., I.L.R. (1959) M.P. 343 (D.B.)*

– **Section 10**, Rule 9 framed thereunder – Omission to mention candidate's number in voters' list – Amounts to substantial defect – Provision in rule 9 under Section 10 – Mandatory: *Jhalkansingh Vs. Seth Jasrajmal, I.L.R. (1960) M.P. 336*

– **Section 10 (4)** – Selection of Harijan member – Separate from selection of other members – Setting aside of selection of other members – Does not affect selection of Harijan member: *Radhakishan Vs. Shri R.R. Dube, Collector, I.L.R. (1959) M.P. 1023*

– **Section 15 (I)** – Words “has directly or indirectly any share or interest” in – Apply both to a contract which has been performed and also to a contract which is executory: *Shri Ballabh Vs. The State of M.P., I.L.R. (1961) M.P. 1 (F.B.)*

– **Section 15 (I)** – Words “while owning such share or interest” in – Show that for purposes of ineligibility for election, contract which is enduring at the time of election or which remains to be performed at that time: *Shri Ballabh Vs. The State of M.P., I.L.R. (1961) M.P. 1 (F.B.)*

– **Section 15 (I)** – Word “contract” in, should have wider meaning – Words “has directly or indirectly any share or interest” in – Apply both to a contract which has been performed and also to a contract which is executory – Words “while owning such share or interest” in – Show that for purposes of ineligibility for election, contract which is enduring at the time of election or which remains to be performed at that time – Section 22 – Effect of section is automatic – Existence of interest for however a short time it may be produces the effect of section 22(2) – Does not contemplate that contract to be of some duration in point of time – Contemplates only incurring of disqualification after entering into office: *Shri Ballabh Vs. The State of M.P., I.L.R. (1961) M.P. 1 (F.B.)*

– **Section 15 (j)** – “Any local authority” in – Meaning of: *Thakur Kisansingh Vs. The State of Madhya Pradesh, I.L.R. (1957) M.P. 50 (F.B.)*

– **Section 16 (2)** – MP Municipalities Act 1961 – Section 2(2)(ii) and Section 38(1)(b) – Member elected under C.P. and Berar Municipalities Act – Continues to be member for 5 years – Not liable to be disqualified for not attending meeting during 3 consecutive months – Section 38(1)(b), MP Municipalities Act not applicable – Right preserved by Section 2 (2)(ii) of Act of 1961: *Shri K.G. Ansari Vs. Collector, Bilaspur, I.L.R. (1965) M.P. 216 (D.B.)*

– **Section 18 as amended** – Vires of: *Ramdas Vs. The State of M.P., I.L.R. (1959) M.P. 343 (D.B.)*

– **Section 18** – Filling of the offices under the provision – Each is independent and separate – President – Power of, to appoint Vice-presidents after amendment: *Wasudeo Yeshwantrao Rajimwale, Pleader, President, Municipal Committee, Rajnandgaon Vs. The Collector, Durg, I.L.R. (1959) M.P. 228 (D.B.)*

– **Section 20-A** – Judge mentioned in – Functions as Court and does not act as *persona designate* – District Judge – Power to transfer election petition from one Court to another – Incorrect description of Court in the heading of petition – Amounts to mere technical defect not going to the root of jurisdiction of Court trying it: *Ramchander Vs. The Second Additional District Judge, Raigarh, I.L.R. (1959) M.P. 863 (D.B.)*

– **Section 20-A** read with rule 12 – Does not confer power upon judge to stay the holding of statutory meeting called for selecting members – Pendency of Election Petition – Right of elected members to attend meeting not taken away – Court has no ancillary or inherent powers which do not flow from provisions of law: *Gyaniram Vs. Shri I.N. Saksena, I.L.R. (1958) M.P. 645 (D.B.)*

– **Section 20-A (2)** – Words “Especially empowered by the Provincial Government in this behalf” in – Qualify the words “a Civil Judge” and not “the District Judge or additional District Judge” – Courts of Civil Judicature – Exercise power as part of their general jurisdiction: *Bhojraj Vs. The State of M.P., I.L.R. (1958) M.P. 147 (D.B.)*

– **Section 20-A (5)** – Rule 9 framed under section 10 – Omission to mention candidate’s number in voters’ list – Amounts to substantial defect – Provision in rule 9 under section 10 – Mandatory: *Jhalkansingh Vs. Seth Jasrajmal, I.L.R. (1960) M.P. 336*

– **Section 22** – Effect of section is automatic – Existence of interest for however a short time it may be produces the effect of section 22(2) – Does not contemplate that contract to be of some duration in point of time – Contemplates only incurring of disqualification after entering into office: *Shri Ballabh Vs. The State of M.P., I.L.R. (1961) M.P. 1 (F.B.)*

– **Section 25** – Municipality, power of, to appoint and to dismiss its employee – Section 48 – Applicability to a case of dismissal of employee – Rules framed under Municipal Act – Rule 1, Explanations 1 and 2 – Rule subject to power in the Act – Removal of employee after due notice without fault – Removal not within the scope of rules – Master and servant – Termination of service after reasonable notice but not for any failure – Matter governed by ordinary law of master and servant – Not governed by section 25 (7) (i) of Municipal Act: *The Municipal Committee Dongargarh Vs. Smt. Maina Bai, I.L.R. (1962) M.P. 123*

– **Section 25 (1), Proviso and Rule 1(a) framed under Section 25(6)** – Conditions under which appeal is barred – Words “Like approval” and “shall be subject to like approval” in Section 25(1), Proviso – Meaning and construction of: *Mannilal Gupta Vs. Municipal Council, Piparia, I.L.R. (1965) M.P. 246 (D.B.)*

– **Section 25 (6)** – Scope of – Empowers Government to prescribe officers who can appeal: *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P. 579 (F.B.)*

– **Sections 25 (6) and 176 (2) (vii) and Rule 2 (vii)** – Rules regarding appeals – Are rules framed under the sections: *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P. 579 (F.B.)*

– **Sections 25 (6), 172 and 176 (2) (vii) and Rule 2 (ii) – Section (25) (6)** – Scope of – Empowers government to prescribe officers who can appeal – Rules regarding appeals – Are rules framed under section 25(6) and section 176(2) (vii) – Rules – Validity of rules – How to be determined – Rule 2(ii) – Second Appeal by Municipality – Competency – Appeal – Right of appeal – Creature of statute: *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P. 579 (F.B.)*

– **Section 34** – Meeting consisting of 9 members – Three members talking part in voting – Resolution is invalid committee delegation 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.)*

– **Section 34-B** – Object of – Words “in which he has directly or indirectly any pecuniary interest” in – Postulates an interest of a more personal character not shared by public generally, or by a class of inhabitants of town concerned – Traders in goods – Trader not disqualified in taking part in meeting considering imposition of octroi tax: *Bachu Singh Vs. The Municipal Committee of Ramanujgan, I.L.R. (1963) M.P. 1 (D.B.)*

– **Section 37** – Committee has separate corporate existence apart from members of it – Section 57 – “Committee” in – Refers to corporate body and not to members individually – Section 168(1) – Words “Specially authorized in this behalf” in – Qualify

the words “by any other officer or member” and do not go with the words “vice-president or secretary”: *Shri Radheshyam Khare Vs. The State Government of M.P.*, I.L.R. (1960) M.P. 399 (D.B.)

– **Section 38 (1)** – Land over which street exists owned by Government – Street does not vest in the municipality – Municipality has no ownership over streets – Has no power to lease the streets – Streets vesting in municipality – Committee can manage and can sue trespassers for possession – Owner of soil can also maintain suit for possession – Land Revenue Code, Madhya Pradesh, 1959 – Section 248 – Condition under which Tahsildar can exercise powers under the provision – Section 2(5) – Area of village – Is a revenue unit though included within municipal limits – Road is land – Land held by *Bhumiswami* a tenant, a Government lessee – Is unoccupied land – Lands fall under Sections 237 and 248 – Section 248 – Tahsildar under this provision acts on behalf of State – Sections 93 and 94 – Do not bar jurisdiction of Tahsildar – Interpretation of Statute – Two laws covering same subject – Later Act prevails over previous Act – Nazul rules – Not statutory rules: *The State of M.P. Vs. Atmaram*, I.L.R. (1970) M.P. 452

– **Section 38 (1)** – Streets vesting in municipality – Committee can manage and can sue trespassers for possession – Owner of soil can also maintain suit for possession: *The State of M.P. Vs. Atmaram*, I.L.R. (1970) M.P. 452

– **Section 42** – Conditions to be fulfilled for transfer of immoveable property by municipal committee power under – Cannot be further curtailed under rule making power – Section 42, Proviso – Effect of – Rules framed by State Government prescribing conditions in matter of grant of leases for period not exceeding three years – Rules are in excess of rule making power: *Municipal Committee, Raipur Vs. Kanhaiyalal*, I.L.R. (1967) M.P. 966

– **Section 42, Proviso** – Effect of: *Municipal Committee, Raipur Vs. Kanhaiyalal*, I.L.R. (1967) M.P. 966

– **Section 42** – Power under – Cannot be further curtailed under rule making power: *Municipal Committee, Raipur Vs. Kanhaiyalal*, I.L.R. (1967) M.P. 966

– **Section 42** – Rules framed by State government prescribing conditions in matter of grant of leases for period not exceeding three years – Rules are in excess of rule making power: *Municipal Committee, Raipur Vs. Kanhaiyalal*, I.L.R. (1967) M.P. 966

– **Sections 42 and 53 and rules under section 176** – Provisions in – Mandatory – Mandatory duty cannot be got rid of by a bye-law – Bye-law in conflict with statutory duty – Bye-law invalid: *The Municipal Committee, Seoni Vs. The State of M.P.*, I.L.R. (1961) M.P. 252 (D.B.)

– **Sections 42 and 53 and rules framed under section 176** – Section 42 and rule under section 176 – Provisions in – Mandatory – Mandatory duty cannot be got rid of by a bye-law – Bye-law in conflict with statutory duty – Bye-law invalid – Section 53 – Order under – Administrative – Fulfilment of conditions – Pre-requisite for order – Satisfaction of Collector regarding fulfilment of conditions – A subjective satisfaction – Constitution, Article 226 – Administrative order based on extraneous matter – Liable to be quashed by a writ – Words and Phrases – Word “Injury” – Meaning of: *The Municipal Committee, Seoni Vs. The State of M.P., I.L.R. (1961) M.P. 252 (D.B.)*

– **Section 48** – Applicability to a case of dismissal of employee – Rules framed under Municipal Act – Rule I, Explanations 1 and 2 – Rule subject to power in the Act – Removal of employee after due notice without fault – Removal not within the scope of rules: *The Municipal Committee Dongargarh Vs. Smt. Maina Bai, I.L.R. (1962) M.P. 123*

– **Section 48** – Not applicable to a case where action of council is prohibited by law: *Municipal Committee/Council, Balaghat Vs. Meghraj. I.L.R. (1966) M.P. 475*

– **Section 48 (1)** – Omission to pay money due under contract – Is not act done or purporting to be done under the Act – Section not applicable to suit for recovery of such money: *Bhaiyalal Vs. The Municipal Committee, Murwara, I.L.R. (1957) M.P. 529 (D.B.)*

– **Sections 48 and 57** – Civil Procedure Code (V of 1908) – Section 80 – Supersession of municipality – No transformation into Government Department – Suit against Municipality – Notice under section 80, CP Code not necessary – Supersession does not result in extinction – Extinction can be legislature: *The Municipal Committee Raigarh Vs. Ramkaran Ganeshilal Agarwal, I.L.R. (1958) M.P. 414 (D.B.)*

– **Section 48(2)** – Suit filed after six months for refund of tax – Suit is barred by time: *National Tobacco Co. of India Ltd. Jabalpur Vs. City of Jabalpur Corporation, I.L.R. (1960) M.P. 832 (D.B.)*

– **Section 53** – Order under – Administrative – Fulfilment of conditions – Pre-requisite for order – Satisfaction of Collector regarding fulfilment of conditions – A subjective satisfaction: *The Municipal Committee, Seoni Vs. The State of M.P., I.L.R. (1961) M.P. 252 (D.B.)*

– **Section 57 (2)** – Article 226 of Constitution supersession of Municipal Committee by Government – Government to give reasons there for – High Court, Power of, to examine the reasons to determine reasonableness and sufficiency – Test to be applied not entirely to be subjective unless the law says so: *Municipal Committee, Kareli Vs. The State of M.P., I.L.R. (1958) M.P. 13 (F.B.)*

– **Section 57 (3) (b) and (c)** – Officer-in-charge appointed after supersession – Has same duties and powers as of committee – Ownership in property of Municipal

Committee after supersession vests in Government – Officer-in-charge has no right to sell property – Sale is void – Damages – Trespasser making improvements – Not entitled to compensation for ejectment: *Dagdulal Vs. The Municipal Committee Burhanpur*, I.L.R. (1960) M.P. 82 (D.B.)

– **Section 66 (1) (b)** – Tax on persons carrying on trade of ginning and pressing cotton by means of steam or mechanical process – Is a tax on profession, trade calling or employment – Professions Tax Limitation Act, 1941 – Effect of – Government of India Act, 1935 – Section 142-A(2) and Proviso – Construction and effect of – “The rate or the maximum rate of tax” – Meaning in – Normal natural sense – Not the same thing as the amount calculated as 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 – Sub-Section (2) and Proviso – Deal with rating per annum of the tax – Section 142-A(2) and Proviso – Combined effect of: *Manoharrao Vs. The Municipal Council, Pandhurna*, I.L.R. (1968) M.P. 725 (D.B.)

– **Section 66 (1) (e)** – “Goods in Transit” – Cannot be said to be brought within limits of Municipal Council for purposes of use or consumption: *Municipal Council, Pandhurna Vs. Shri R.P. Dube S.D.O., Sausar*, I.L.R. (1970) M.P. 1 (F.B.)

– **Section 66 (1) (e)** – Clause envisaged bringing in goods for repetitive use – Vehicles brought in Municipal limits for registration – Not liable to pay octroi tax: *The Anand Transport Co. (Private) Ltd., Raipur Vs. The Board of Revenue, M.P., Gwalior*, I.L.R. (1963) M.P. 811 (D.B.)

– **Section 66 (1) (e)** – Goods brought within Municipal limits – Imposition of octroi tax not leviable: *The Anand Transport Co. (Private) Ltd., Raipur Vs. The Board of Revenue, M.P., Gwalior*, I.L.R. (1963) M.P. 811 (D.B.)

– **Section 66 (1) (e)** – Expression “Brought within the limits of Municipality” – Implications of: *Municipal Council, Pandhurna Vs. Shri R.P. Dube S.D.O., Sausar*, I.L.R. (1970) M.P. 1 (F.B.)

– **Section 66 (1) (e)** – Stoppage of Bus within municipal limits – Does not amount to bringing it for sale, use or consumption: *Municipal Council, Pandhurna Vs. Shri R.P. Dube S.D.O., Sausar*, I.L.R. (1970) M.P. 1 (F.B.)

– **Section 66 (1) (e)** – Essentials of Octroi-Tax – Expression “Brought within the limits of Municipality” – Implications of – “Goods in Transit” – Cannot be said to be brought within limits of Municipal Council for purposes of use or consumption – Stoppage of Bus within municipal limits – Does not amount to bringing it for sale, use or consumption – Octroi Rules – Class VIII – Rule 1, Item 70 – Words “carriages and all sorts of conveyances” in – Include Motor Bus: *Municipal Council, Pandhurna Vs. Shri R.P. Dube S.D.O., Sausar*, I.L.R. (1970) M.P. 1 (F.B.)

– **Section 66 (1) (K) and Assessment Rules** – Rule 9 – Imposition of compulsory water rate on buildings – Validity: *Munshi Surajprasad Vs. Corporation of the City of Jabalpur*, I.L.R. (1960) M.P. 669 (D.B.)

– **Section 66 (I) (b) and (j)** – Assessment Rules-rule 10 – Imposition of conservancy tax under – Rental assessment could be a valid basis for determining the same – Person using private latrine – Liability to pay conservancy tax – Assessment Rules – Rule 11 – Imposition of compulsory tax under clause (j) of section 66(1) on garages and godowns – Not *ultra vires* – Section 66(1) (k) and assessment Rules – Rule 9 – Imposition of compulsory water rate on buildings – Validity: *Munshi Surajprasad Vs. Corporation of the City of Jabalpur*, I.L.R. (1960) M.P. 669 (D.B.)

– **Section 66** – House divide into six blocks – Right of Municipality to demand tax regarding each block from its respective tenant or of all blocks from the owner of the house: *Smt. Sonabai Vs. The Municipal Committee, Sagar*, I.L.R. (1957) M.P. 611 (D.B.)

– **Section 67** – Proposal of Municipal Committee to impose tax – Proposal submitted to Government – Government returning proposal for reconsideration – Not necessary for Municipal Committee to go again through same procedure if only proposal is reiterated: *Ramchand Vs. The State of M.P.*, I.L.R. (1960) M.P. 444 (D.B.)

– **Section 77 (1) and Municipalities Act, Madhya Pradesh (XXXVII of 1961)**, Section 2(2)(iii) – Presentation of bill under old Act – A step in recovery of tax – Amounts to taking of “action” within the meaning of section 2 (2) (iii), M.P. Municipalities Act – Subsequent action to be governed by the old Act – Constitution of India – Article 227 Magistrate acting under section 77 (1) of C.P. Municipalities Act – Magistrate through a *persona designata*, still amenable to jurisdiction of High Court under this provision: *The State Vs. Municipal Council, Harda*, I.L.R. (1974) M.P. 518 (D.B.)

– **Section 83 (1-A)** – Word “Person” in – Includes Municipal Committee – Section 66(1) (e) – Goods brought within Municipal limits – Imposition of octroi tax not leviable – Word “use” in – Cannotes employment of goods brought to any similar purpose to which such goods are ordinarily used – Clause envisages bringing in goods for repetitive use – Vehicles brought in Municipal limits for registration – Not liable to pay octroi tax: *The Anand Transport Co. (Private) Ltd., Raipur Vs. The Board of Revenue, M.P., Gwalior*, I.L.R. (1963) M.P. 811 (D.B.)

– **Section 85 of Municipalities Act, Madhya Pradesh (XXXVII of 1961)**, Section 133 – Relates to taxes which council has power to impose but have been imposed in an irregular manner: *Municipal Committee/Council, Balaghat Vs. Meghraj*, I.L.R. (1966) M.P. 475

– **Section 95** – Confers powers on Government to make rules regulating conditions of service governing persons on their appointment to posts – Authority to frame Rule 7

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– **Section 98** – Contemplates obtaining of permission for erecting or re-erecting any building – No permission necessary for effecting repairs – Refusal by President of permission for repairs – Damage caused – President not responsible: *The Municipal Council, Khandwa Vs. Shrimati Sangibai, I.L.R. (1975) M.P. 515*

– **Section 98** – No permission necessary for effecting repairs – Refusal by President of permission for repairs – Damage caused – President not responsible: *The Municipal Council Khandwa Vs. Shrimati Sangibai, I.L.R. (1975) M.P. 515*

– **Sections 140 and 141** – Use of meat in hotel by hotel-keeper – Is a personal use – Meat dressed and cooked – Quite different from raw meat: *Pyarasingh Vs. The Municipal Committee Raipur, I.L.R. (1958) M.P. 51 (D.B.)*

– **Section 176 (2) (i)** – Rule 4 – Rule does not require strict compliance – Appropriation of deposit by the Judge trying the petition – Amounts to sufficient compliance of the Rule – Non-sealing of Ballot Box – Does not affect secrecy – Occurrence of dotted line below the name of candidate – Does not interfere with secrecy of ballot – Things which do not destroy secrecy of ballot – Contravention of provision regarding secrecy of ballot – Not sufficient to vitiate election unless it is proved that the election has been materially affected: *Shri Jamuna Prasad Vs. Satya Prakash, I.L.R. (1963) M.P. 323*

– **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. Municipal Committee, Piparia, I.L.R. (1962) M.P. 351 (D.B.)*

– **Rule 2 (ii)** – Second Appeal by Municipality – Competency: *Prem Shankar Sharma Vs. The Collector, Khandwa, I.L.R. (1963) M.P. 579 (F.B.)*

– **Rule 4 of Rules under Section 176(2) (1)** – Rule does not require strict compliance – Appropriation of deposit by the Judge trying the petitions – Amounts – Amounts to sufficient compliance of the Rule: *Shri Jamuna Prasad Vs. Satya Prakash, I.L.R. (1963) M.P. 323*

– **Rule 19-A (3)** – Candidate Expressing his willingness in writing for nomination – Amounts to substantial compliance – Words “agreeing to the nomination” in Rule 19-A(3) – Meaning of C.P. Municipalities Act, section 10(4) – Selection of Harijan member Separate from selection of other members – Setting aside of selection of other members – Does not affect selections of Harijan member: *Radhkishan Vs. Shri R.R. Dube, Collector, I.L.R. (1959) M.P. 1023*

Municipalities Act, Central Provinces (XVI of 1903)

– **Word “circumstances”** in – Is equivalent to “Means” – Taxation has to be according to means and property of rate-payer within the municipality: *Janardan Rao Vs. Municipal Council, Sausar, I.L.R. (1977) M.P. 502*

– **Section 35 (a) (ii)** – *Haisiyat* Tax – Meaning of – Word “circumstances” in – Is equivalent to “Means” – Taxation has to be according to means and property of rate payer within the municipality – *Haisiyat* – Tax – Is combination of the property-tax and professional tax – Principles of professional Tax – Applicability – *Haisiyat* – Tax – Validity – Professional Tax – Can be levied irrespective of the fact whether it earns profit or not – Constitution of India – Article 276 – Saves *Haisiyat* Tax which was being levied prior to coming into force of the Constitution – Article 277 – Municipal Committee, Power of, to raise the rate of tax as prevailing immediately before 1-1-1937: *Janardan Rao Vs. Municipal Council, Sausar, I.L.R. (1977) M.P. 502*

– **Section 35 (a) (ii)** – *Haisiyat* – Tax – Validity: *Janardan Rao Vs. Municipal Council, Sausar, I.L.R. (1977) M.P. 502*

Municipalities Act, Madhya Bharat (I of 1954)

– **Collector** – Power of – To decide question of title: *The Municipal Council, Mandsaur Vs. Mukutbiharilal, I.L.R. (1963) M.P. 612 (D.B.)*

– **Section 2 (c), Proviso 1**, Madhya Pradesh Taxation Laws (Extension) Act (XXVIII of 1957) – Section 6 – C.P. and Berar Entertainment Duty Act (XXX of 1936) and Entertainment Tax Bye-laws framed under Section 52(j) of Gwalior State Municipalities Act, Samvat 1993 – Validity: *Nagar Palika Sabalgarh, Vs. Laxminarayan, I.L.R. (1966) M.P. 735 (D.B.)*

– **Section 3 (14)**, Ratlam Bhavan Kar Niyam Wa Upvidhi, 1956, Bye-law 2 (Cha)(Aa) – Annual Letting Value – Section 3 (14) of the Act defines Annual Letting Value mean the annual rent which might reasonably be expected to let from year to year – Bye-Law 2 (Cha)(Aa) reckoned annual letting value as equal to 10% of actual cost of construction – Formula prescribed in Bye-Law is only method of ascertaining reasonable annual letting value – No conflict between bye-law and Section 3 (14) of the Act.: *Mohita Ispat Limited, Ratlam, M. P. Vs. Ratlam Municipal Corporation, I.L.R. (1994) M.P. 122 (D.B.)*

– **Section 11 (b) (iii)** – Government notification, prescribing one seat reserved for Scheduled Tribes – Inspector General’s notification thereafter – Rule 4 made under sections 9, 10 and 11 of the Act prescribing one reserved seat for ‘Scheduled Castes and Scheduled Tribes’ – Election held as under Inspector General’s Notification – Mistake detected after election – Inspector General’s third notification correcting error and holding election invalid – Government could correct error retrospectively – No vested

interest and no divesting – Petitioner’s election held rightly invalid – Government notification prevails: *Bhuralal Vs. State of M.P., I.L.R. (1960) M.P. 543*

– **Section 14 (1) (f)** – Person in service of Life Insurance Corporation – Not disqualified from standing for election as councilor – M.B. General Clauses Act, 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 (D.B.)*

– **Section 14 (2) and (3)** – Decision of Government that Councilor has incurred disability and vacancy has occurred Councilor ceases to be councilor from that date – Effect not liable to be arrested or discontinued – So long as decision stands – No power in Government to suspend operation of decision- Municipalities Act, Madhya Pradesh, 1961 – Section 332 – No Power in Government to suspend operation of order under review: *Akbarali Arif Vs. The Government of M.P., I.L.R. (1971) M.P. 30 (D.B.)*

– **Section 16 (1) and (2)** – Petition under Articles 226 and 227 of the Constitution – Petitioner’s removal from the office of councilor under section 16 (1) – Further disability imposed delaring him ineligible to become councillor for four years under section 16 (2) – No notice to show cause for imposing this disability – Such notice not necessary – Declaration of ineligibility not an independent disability – It is derivative of the removal order – Statute enabling this not against principles of natural justice: *Bhairavlal Vs. The Inspector General of Municipalities M.P., I.L.R. (1960) M.P. 555 (D.B.)*

– **Section 112** – Deals with unauthorised construction and not with any particular specified construction – Construction not covered by authority – Amounts to an offence – Committee producing copy of plan showing refusal of permission for the construction – Burden shifts on accused to prove sanction for the construction: *The Engineer and Land Acquisition Officer, Indore City Improvement Trust, Indore Vs. Hakimuddin, I.L.R. (1963) M.P. 126 (D.B.)*

– **Section 112 (2)** – Constitution, Article 19(5) – Municipalities Act, Section 112(2) imposes reasonable restriction – Provision not *ultra vires* – Limitation Act, 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 Committtee, Mandsaur Vs. Ahmadkhan, I.L.R. (1960) M.P. 139 (D.B.)*

– **Section 112 (7)** – Purpose of he provision in – Alteration neither a nuisance nor a danger – Alteration not of the nature set out in latter part of the provision – Only thing to be seen is whether it is external or internal: *Brahatnagar Palika Parishad, Ratlam Vs. Abdul Rehman Shah, I.L.R. (1966) M.P. 332 (D.B.)*

– **Section 191** – Does not govern appeals arising out of proceedings initiated when Kanoon Municipality-hay-Riya-sat, Gwalior was in force – Collector – Power of

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– **Provisions contemplate creation of casual vacancy when election of President is set aside** – Municipalities (Election Petition) Rules, Madhya Pradesh, 1962 – Rules 16 – Setting aside of election of a member or President – Results in creation of temporary vacancy – Section 44 – Fresh election of President – His term is only for the unexpired period: *Ramlal Vs. The Collector, Satna*, I.L.R. (1978) M.P. 247 (D.B.)

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– **Section 2 (2)** – First explanation makes distinction between “anything done” and “the procedure followed. in doing such thing” – Procedure cannot be regarded as

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– **Section 2 (2)** – Words “Imposed under the said Acts” and “or any enactment thereby repealed” – Wide to save taxes imposed under Act of 1922 or 1903 – Section 130(1) – Confers power on the council to abolish tax with previous sanction of Government – Government of India Act, 1935 – Section 143(2) and Constitution of India – Article 277 – Do not bar abolition of tax already imposed – Tax imposed in 1916 – Continued by virtue of Article 277 and not by virtue of section 127(4) of the Municipalities Act, 1961 – Imposition of octroi tax – Validity in case octroi limits not fixed: *Gourishankar Vs. The Municipal Council, Narsinghpur, I.L.R. (1970) M.P. 727 (D.B.)*

– **Section 2 (2) (i)** – Deemed bodies – Not bodies under the Act – Have been fictionally treated as bodies so constituted: *Sayebal Vs. State of M.P., I.L.R. (1978) M.P. 1003 (D.B.)*

– **Section 2 (2) (i)** – Municipal bodies constituted under repealed Act – Deemed to be constituted under this Act – They are fictionally treated as constituted under this Act – Section 3(8) – Does not exclude fictional bodies – Section 328 – Applicable to bodies constituted under the Act as well as to fictionally constituted bodies – Functions performed by deemed bodies under repealed Act – Are functions and duties imposed by this Act – Section 328(5), Proviso – Effect of proviso in the case of deemed councils: *Municipal Council Kota Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 350 (D.B.)*

– **Section 2 (2) (i) And (ii)** – To be construed together with the provisos: *Sayebal Vs. State of M.P., I.L.R. (1978) M.P. 1003 (D.B.)*

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– **Sections 2 (2) (i) and 2 (2) (iv) (b)** – Municipal Committee, power of, to change age of superannuation by resolution: *B. Singh Vs. The Administrator, Municipal Corporation, Raipur, I.L.R. (1971) M.P. 826 (D.B.)*

– **Sections 2 (2) (i) and 2 (2) (iv) (b)** – No rules framed under Section 95 – Conditions of service of Municipal Employee governed by Bye-law framed under repealed Act – Municipal Committee, Power of, to change age of superannuation by resolution – Resolution regarding change of age of superannuation – Vires of – Under Municipalities Act, 1961 – Age of Superannuation – Changeable only by framing Bye-law under Section 427 (1-c) (b) – Shashkiya Sevak (Adhivarshiki Ayu) Adhiniyam, Madhya Pradesh, 1967 Applicable to Municipal Servants: *B. Singh Vs. The Administrator, Municipal Corporation, Raipur, I.L.R. (1971) M.P. 826 (D.B.)*

– **Sections 2 (2) (i) and 2(2) (iv) (b)** – Resolution regarding change of age of superannuation Vires of: *B. Singh. Vs. The Administrator, Municipal Corporation, Raipur I.L.R. (1971) M.P. 826 (D.B.)*

– **Section 2 (2) (ii) and Section 38 (1) (b) – Member elected under C.P. and Berar Municipalities Act** – Continues to be member for 5 years – Not liable to be disqualified for not attending meeting during 3 consecutive months – Section 38(1)(b), MP Municipalities Act not applicable – Right preserved by Section 2 (2)(ii) of Act of 1961: *Shri K.G. Ansari Vs. Collector, Bilaspur, I.L.R. (1965) M.P. 216 (D.B.)*

– **Section 2 (2) (iv)** – Terms fixed under the repealed Act – That is “Normal term”: *Sayebal Vs. State of M.P., I.L.R. (1978) M.P. 1003 (D.B.)*

– **Section 3 (8)** – Does not exclude fictional bodies: *Municipal Council Kota Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 350 (D.B.)*

– **Section 6** – Corporation are created for welfare of citizens – Expected to apprise citizens of their rights before taking herh action of pulling down structure: *Mahadeo Prasad Vs. Municipal Corporation, Jabalpur, I.L.R. (2001) M.P. 631*

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– **Section 17 (2) (c)** – Disqualification of mayor for being absent during six consecutive months from the meetings of corporation without leave of corporation – Judicial review: *Brijendra Mishra Vs. State, I.L.R. (2001) M.P. 1623*

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– **Sections 19, 43 (5) and 63** – President of a Municipality is deemed to be a councilor even though not an elected or selected councilor – President even after expiry of his term continues in office till election of his successor and has a right to vote in the election of the new President: *Balwant Singh Vs. Kailash Chandra Dubey, I.L.R. (1983) M.P. 648*

– **Section 19 (1)** – General elction of Councillors – Does not include selection of Councilors – General election – Embraces procedure whereby elected councilors are returned – Madhya Pradesh Sthaniya Pradhikaran (Nirvachaa Sthagana) Adhyadesh,

1965 – Sections 3(1) and 5 – Not applicable to selection of councilors – Words and Phrases – Word “General Election” – Does not include notification in the Gazette under section 45 of elected councilors – Notification not a step towards election of a councilors – Section 5 – Does not touch the selection of councilors or issue of a notification of elected and selected councilors – Municipalities Act, Madhya Pradesh, 1961, Section 2(2)(i) and Ordinance, Section 3(1) and 5 – Scope and effect of – Interpretation of Statute – 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 (D.B.)*

– **Section 20** – Confers powers on that authority for the disposal of the petition: *Baulal Vs. Dattatraya, I.L.R. (1971) M.P. 412 (F.B.)*

– **Section 20** – District Judge, in – Not a persona designata: *Mahadeo Prasad Vs. The State of M.P., I.L.R. (1971) M.P. 470 (D.B.)*

– **Section 20** – Election Petition challenging the appointment/election of a duly elected councilors as a member of standing committee – Maintainability of – Construction of statute – Setting of a particular section in a Statute and chapter headings are admissible for reference to whole statute to ascertain the meaning of a particular clause permissible: *Bhushanlal Sahu Vs. Jamunadas Sukhwani, I.L.R. (1983) M.P. 458*

– **Section 20** – Petitioner not a candidate for election – Has no right to file election petition regarding election of President or Vice-President – Can challenge election under Article 226 of the Constitution: *Govind Rao Vs. The State of M.P., I.L.R. (1970) M.P. 207 (D.B.)*

– **Section 20** – Petitioner not a candidate for election – Has no right to file election petition regarding election of President or Vice-President – Can challenge election under Article 226 of the Constitution – Municipalities (President and Vice-President) Election Rules, Madhya Pradesh, 1962 – Rule 3 – Notice not fixing time for filling nomination papers according to rule – Notice does not cease to be one according to rule though hours not mentioned in consonance with Rule 4 – Grounds for challenging elections under Article 226 – Not any way higher than those under section 22 of Municipalities Act – Section 22 – Non-compliance with some provision – Election not liable to be set aside unless result has been materially affected: *Govind Rao Vs. The State of M.P., I.L.R. (1970) M.P. 207 (D.B.)*

– **Section 20** – Presentation of Election Petition before District Judge instead of Additional District Judge under whose jurisdiction the Municipality is located: *Malik Singh Chawla Vs. Surendra Kumar Lakhera, I.L.R. (1998) M.P. 894*

– **Section 20** – Recount of votes permissible only after recording evidence and a finding that recounting is necessary – Evidence yet to be adduced by election petitioner

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– **Section 20** – Remedy of Election Petition – Available only when candidate is elected or selected – Madhya Pradesh Sthaniya Pradhikaran (Nirvachan Sthagan) Adhyadesh, 1965 – Sections 3 and 5 – General election of local body before ordinance – Selection of councilor or his notification not barred: *Goverdhanlal Vs. State of M.P.*, I.L.R. (1969) M.P. 224 (D.B.)

– **Section 20 (1)** – Does not take away power of High Court under this provision – Remedy by way of election petition not equally efficacious and cannot prevent the mischief being done – High Court has power to issue writ: *Kishanchand Vs. The Supervising Officer, Municipal Committee, Kurwai* I.L.R. (1974) M.P. 758 (D.B.)

– **Section 20 (2)** – Person who can file an election petition challenging the election of President or Vice-President: *Ramabai Vs. The Sub-Divisional Officer, Balaghat*, I.L.R. (1968) M.P. 228 (D.B.)

– **Section 20 (2)** – Confers jurisdiction to try election petition on district Judge within the revenue district where such election or selection held – Civil Courts Act, M.P., 1958 – Section 7(2) – Additional District Judge empowered to discharge functions of District Judge Assigned to him by General of Special Order – Election Petition Presented to District Judge outside the revenue District – Such Court has no Jurisdiction to entertain or try – It has also no jurisdiction to transfer the petition to Additional District Judge – section 24, Civil Procedure Code – Does not empower the District Judge situated outside the Revenue District to make valid transfer of Election petition to additional District Judge within the revenue District – Defect of jurisdiction cannot be cured by such transfer – District Judge handing over petition to counsel for its presentation to additional District Judge along with order of its transfer – Counsel acts as agent of District Judge and not of petitioner – District Judge or Additional District Judge exercising jurisdiction to entertain Election petition – Does not act as parsona designata but as an established court – Civil Procedure Code – Order 3, Rule 1 – General rules of procedure in – When applicable-presentation of Election Petition by counsel – Validity of: *Anup Vs. Baboolal*, I.L.R. (1980) M.P. 269

– **Section 20 (2)** – Petitioner Challenging election of President or Vice-President not a candidate – Has no right to file election petition: *Raghuvansh Prasad Vs. Mahendra Singh*, I.L.R. (1971) M.P. 213 (D.B.)

– **Section 20 (5)** – Election Petition challenging election of councilor on ground of corrupt practice – Has to contain precise statement of facts with exactitude constituting corrupt practice – Alleged circulation of pamphlets affecting election – Express consent of returned candidate not proved by leading cogent evidence – Consent cannot be inferred merely because publisher has not been examined by returned candidate: *Ashok Bajhal Vs. Mohd. Yakub*, I.L.R. (2000) M.P. 1481

– **Sections 20, 21, 22, 26, 27, 28 and 35** – Election Petition Councillor after election receiving payment arising out of contract with the council – Contract surviving with the council – Councillor/candidate not qualified to contest election – Non-performance on the part of Municipal Council or Nagar Panchayat not an exception for purposes of Section 35(1) of the Act unlike section 9-A of the Representation of People Act, 1951 – Corrupt practice – Mock ballot papers got published by candidate not containing name and address of printer and publisher – Corrupt practice committed by candidate – More than two contesting candidates for one seat – Notice to voters may assume significance – Declaration of election petitioner as elected not proper: *Chhotelal Rai Vs. Shyam Kishore*, I.L.R. (1999) M.P. 985

– **Section 22** – Non-compliance with some provision – Election not liable to be set aside unless result has been materially affected: *Govind Rao Vs. The State of M.P.*, I.L.R. (1970) M.P. 207 (D.B.)

– **Section 26 and Municipalities (Election Petition) Rules, M.P., 1962, Rule 19** – Election of President, Nagar Palika Parishad – Recount of votes allowed by interlocutory order – Revision challenging interlocutory order dismissed by High Court as not maintainable and merits of the case not considered – Writ petition may be entertained: *Mubarak Master Vs. Hansraj Tanwar*, I.L.R. (2004) M.P. 643

– **Section 26** – Revision – Section 20(5) – Election Petition challenging election of councilor on ground of corrupt practice – Has to contain precise statement of facts with exactitude constituting corrupt practice – Alleged circulation of pamphlets affecting election – Express consent of returned candidate not proved by leading cogent evidence – Consent cannot be inferred merely because publisher has not been examined by returned candidate – Section 28 – Burden of proof – Burden lies on election petitioner to prove commission of corrupt practice – In absence of pleadings – Neither issues could be framed nor evidence on such issue could be accepted – Order of Trial Court set aside: *Ashok Bajhal Vs. Mohd. Yakub*, I.L.R. (2000) M.P. 1481

– **Section 27 (2) (iii)** – Meeting presided over by a person elected by Councilors – Meeting not invalid: *Baboolal Chaubey Vs. Municipal Council, Chhuikhadan*, I.L.R. (1966) M.P. 905 (D.B.)

– **Section 28** – Burden of proof – Burden lies on election petitioner to prove commission of corrupt practice – In absence of pleadings – Neither issues could be framed nor evidence on such issue could be accepted – Order of Trial Court set aside: *Ashok Bajhal Vs. Mohd. Yakub*, I.L.R. (2000) M.P. 1481

– **Section 29 (1) (b)** – Intention of the provision not to take away right of State Government to divide municipality into wards, but to channelise that power in accordance with rules when framed: *Bhagwat Prasad Vs. The State of Madhya Pradesh*, I.L.R. (1967) M.P. 204 (D.B.)

– **Section 29 (1) (b)** – Words “subject to” in-introduce a condition or proviso – This is not universal rule – Intention of the provision not to take away right of State Government to divide municipality into wards, but to channelise that power in accordance with rules when framed – The words “subject to rules framed under this Act” – Meaning of – Municipalities Act (Wards) Rules, Madhya Pradesh 1963 – Rules directory – Rules substantially complied with – Final notification under section 29(1)(b) cannot be challenged – Constitution of India – Article 226 – Power under, discretionary – Not claimable as of right when petition inordinately delayed – Conduct of party relevant consideration – Power not to be exercised in case of undue delay: *Bhagwat Prasad Vs. The State of Madhya Pradesh*, I.L.R. (1967) M.P. 204 (D.B.)

– **Section 29 (1) (b) (iii) and Constitution of India, Article 332(3)** – Reservation of seats for Scheduled Castes and Scheduled Tribes – Has to be fixed with reference to the total number of elected councilors only: *Ram Ratan Sharma Vs. State of M.P.*, I.L.R. (1985) M.P. 391 (F.B.)

– **Section 32** – Re-formation of wards of Municipality – Assembly rolls relatable to those areas taken as basis for preparing new rolls: *Hafiz Mohammad Anwar Khan Vs. State of M.P.*, I.L.R. (1969) M.P. 183 (D.B.)

– **Section 32-C and Election Expenses (Maintenance and Lodging of Account) Order, M.P., 1997**, paragraphs 7, 10 – Disqualification – Failure to lodge account of election expenses – Proper opportunity not afforded to explain defect in affidavit – Failure to notice whether there is substantial compliance by candidate – Order impugned quashed: *Jawahar Lal Gupta Vs. The Rajya Nirvachan Ayog, Bhopal*, I.L.R. (2002) M.P. 575

– **Sections 34, 35 and 41-A** – Is applicable to an elected office bearer – Removal of President, Nagar Panchayat – Words ‘Public intrest of in the intrest of the council are intended to cover a wide variety of situation incapable of clear delineation – Petitioner found gambling near the Panchayat office – Conduct had to be held against public interest – Opinion framed by State Government cannot be held to be wholly unreasonable: *Rajendra Prasad Soni Vs. State*, I.L.R. (1999) M.P. 844

– **Section 35 (c)** – A lawyer engaged by Municipal office – Does not hold an office of profit – Does not suffer from a dis-qualification – Section 55 (2) and (3) – In case of class II Municipality – Collector can call the meeting for election and preside over it – person officiating in the post and person holding the current duties of that post – Difference in powers of the two – General Clauses Act, Madhya Pradesh, 1957, Section 2 (6) and Land Revenue Code, Madhya Pradesh, 1959 Section 26 – Functions of Collector can be performed by Additional Collector or Sub-Divisional Officer in the absence of prohibition – 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 – Officer holding the current charge of post and person holding a particular post and officer not vested with powers attached to that post – Difference – person holding current charge of post – Person can do only administrative functions – Land Revenue code, Madhya Pradesh, 1959 – 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 of person holding rank of Collector: *Girja Shanker Shukla Vs. Sub-Divisional Officer, Harda*, I.L.R. (1974) M.P. 885 (F.B.)

– **Section 35 (c)** – Counsel appearing for municipality in litigation – Does not suffer from a disqualification: *Girja Shanker Shukla Vs. Sub-Divisional Officer, Harda* I.L.R. (1974) M.P. 885 (F.B.)

– **Section 35 (j)** – Candidate not paying taxes within time prescribed – Candidate ceases to be eligible for election – Contemplates payment of dues in full Dues not equivalent to tax – Conditions for removal of disqualification – Mandatory and must be fulfilled exactly: *Sheikh Mahboob Vs. Barkatulla*, I.L.R. (1977) M.P. 492

– **Sections 35 (k), 38 and 41** – Provisions operate at the time of election – Power of State Government under Section 41 – Not controlled by adjudication under section 38: *Laxminarayan Vs. State of M.P.* I.L.R. (1978) M.P. 346 (D.B.)

– **Section 36 (1), proviso** – Confers discretion on State government to extend terms of council – Act contains no provision for excluding the period wasted on account of illegal interference by state or other authority – Section 36(3) – Term of Council expired before new elections are held – Council is deemed to be dissolved – Provision of Section 328 became applicable – Section 328 (6) – Effect of constitution of India – Article 226 – Discretion vesting in public authority – No writ of Mandamus can be issued to authority to exercise discretionary power: *Niranjanprasad Keshrwani Vs. The State of M.P.*, I.L.R. (1977) M.P. 1189 (D.B.)

– **Section 36 (3)** – Term of council expired before new elections are held – Council is deemed to be dissolved – Provision of Section 328 become applicable: *Niranjanprasad Keshrwani Vs. The State of M.P.* I.L.R. (1977) M.P. 1189 (D.B.)

– **Sections 36 and 328 (1)** – Council standing dissolved by efflux of time – Second part of sub-section (1) of Section 328 comes into operation: *Mukutdhari Sharma Vs. State of M.P.*, I.L.R. (1981) M.P. 665 (D.B.)

– **Sections 36 and 328(6)(b) and Constitution of India, Article 226** – Duty to hold fresh election of Municipal Council before expiry of the old term – State Govt. postponing fresh elections of Municipal Council many times without assigning any reason and appointing administrator and then constituting a Committee under section 328(6)(b) without disclosing compelling reasons therefore – Committee consisting members of the ruling party – Is a colourable exercise of power by State Govt. and is *malafide* –

Impugned order struck down and directions given: *Hargovind Tamrakar Vs. State of M.P.*, I.L.R. (1985) M.P. 473 (D.B.)

– **Section 38** – Councillor can be removed only by state government: *Surendra Mohan Chaurasiya Vs. State Transport Appellate Authority, Gwalior*, I.L.R. (1972) M.P. 218 (F.B.)

– **Section 38 (1) and (2)** – Provision of sub-section (1) of Section 38 – Is subject to sub-section (2): *Laxminarayan Vs. State of M.P.*, I.L.R. (1978) M.P. 346 (D.B.)

– **Section 38 (2)** – Contemplates adjudication by prescribed authority: *Laxminarayan Vs. State of M.P.*, I.L.R. (1978) M.P. 346 (D.B.)

– **Section 41 – Sub-section (3)** – Word ‘explanation’ – When a proper opportunity is not given to a person then he is certainly prejudiced – Impugned order quashed – Petitioner’s status of a councilor restored: *Badri Prasad Chikwa Vs. State of Madhya Pradesh*, I.L.R. (1999) M.P. 287

– **Section 40 (1)** – Communication cannot be regarded as a valid resignation – Writing about resignation to be addressed to the President: *Raghuvansh Prasad Vs. Mahendra Singh* I.L.R. (1971) M.P. 213 (D.B.)

– **Section 41 (2)** – Contemplates two distinct categories of legal proceedings – Words “relating to any matter in which council is or has been concerned” – Refers to proceedings against State – Counsel who is a councilor appearing against Municipal Council – Comes under the mischief of this provision – State Government not required to state reasons when removing a councilor – Sections 35(k), 38 and 41 – Provisions operate at the time of election – Power of State Government under Section 41 – Not controlled by adjudication under Section 38 – Section 38(1) and (2) – Provision of sub-section (1) of Section 38 – Is subject to sub-section (2) – Section 38, Sub-section (2) contemplates adjudication by prescribed authority – Presumption – Mala-fide exercise of power – Power conferred by statute – Exercise of power cannot be inferred readily to be mala-fide unless supported by strong circumstances – Section 41(4) – Power of removal is coupled with duty to specify period of disqualification: *Laxminarayan Vs. State of M.P.*, I.L.R. (1978) M.P. 346 (D.B.)

– **Section 41 (2)** – Counsel who is a councilor appearing against Municipal Council – Comes under the mischief of this provision: *Laxminarayan Vs. State of M.P.*, I.L.R. (1978) M.P. 346 (D.B.)

– **Section 41 (2)** – State Government not required to state reasons when removing a councillor: *Laxminarayan Vs. State of M.P.*, I.L.R. (1978) M.P. 346 (D.B.)

– **Section 41 (2)** – Words “relating to any matter in which council is or has been concerned” – Refers to proceedings against State: *Laxminarayan Vs. State of M.P. I.L.R. (1978) M.P. 346 (D.B.)*

– **Section 41 (4)** – Power of removal is coupled with duty to specify period of disqualification: *Laxminarayan Vs. State of M.P., I.L.R. (1978) M.P. 346 (D.B.)*

– **Section 43** – Does not contain provision for convening of a meeting for election of president or Vice – President for filling vacancy caused by death or resignation – Section 43(2)(e) – Meeting at which a new President or Vice President is to be elected – Not a first meeting after the general election – Filling in the vacancy of the President or Vice President – will be in the meeting other than first meeting after general election – The election has to be in accordance with rules framed under sub-section (4) of section 43 – Section 59 – Not applicable ; to a meeting convened for election of President or Vice President – Section 56(3) – Notice of meeting – Is mandatory – In computing the period of 7 days notice – Both terminal days are to be excluded: *Awadh Behari Pandey Vs. The State of Madhya Pradesh, I.L.R. (1972) M.P. 263 (D.B.)*

– **Section 43** – Provision mandatory – Notice to every councilor has to be issued: *Narayandas Sharma Vs. State, I.L.R. (2000) M.P. 771*

– **Sections 43 and 45** – Notifications regarding selected councilors not published – Right of selected councilors to vote in the election of President and Vice – President – Section 45, Proviso – The word “councilor” in – Means only elected councilors – Words “from the date of his election” – Refers to elected councilor – The words or “selection” – Cannot be read in the proviso – Proviso to be read in accord with provisions in section 43(1) and (2) and 55(2) – Effect of such a reading – Section 20(2) – Person who can file an election petition challenging the election of president or Vice-President: *Ramabai Vs. The Sub-Divisional Officer, Balaghat, I.L.R. (1968) M.P. 228 (D.B.)*

– **Section 43-A** – No confidence motion held – Petitioner present – But choose to keep silent and not raising voice against the illegalities – Despite irregularities and illegalities petitioner cannot be granted relief on equitable jurisdiction of writ Court: *Narayandas Sharma Vs. State, I.L.R. (2000) M.P. 771*

– **Section 43 (2), Proviso and Section 328(6)** – Applicability and scope of – Section 328(1) – Dissolution on supersession of council under – Effect of – Sections 36 and 328 (1) – Standing council dissolved by efflux of time – Second part of sub-section (1) of Section 328 comes into operation – Sections 15, 36 and 328 (1) and (6) – Vesting of power in a person or committee under section 328 (6) (b) – Interim measure – Government must hold fresh elections within reasonable time – Constitution of India – Article 226 – Government not holding election for 3 years after dissolution of council but attributing cause of delay to emergency and its business in socio-economic programmes

– Explanation acceptable – No breach of duty – No writ can issue: *Mukutdhari Sharma Vs. State of M.P., I.L.R. (1981) M.P. 665 (D.B.)*

– **Section 43 (2) (b)** – Meeting convened under Section 43 (2) (b) – Meeting convened under Section 43 (2) (b) – Is ordinary meeting and not special meeting: *Raghuvansh Prasad Vs. Mahendra Singh, I.L.R. (1971) M.P. 213 (D.B.)*

– **Section 43 (2) (b)** – Meeting not convened within the period prescribed for electing President and Vice-President – Meeting not invalid if held after that period – Time limit even if imperative – Non-compliance can be excused – Section 43 (2) (c) and Section 55 (3) – Combined effect of the provisions – Meeting convened under Section 43 (2) (b) – Is ordinary meeting and not special meeting – Provision of 7 days notice mandatory – Method of calculating 7 days – Section 40 (1) Communication cannot be regarded as a valid resignation – Writing about resignation to be addressed to the President Section 20 (2) – Petitioner Challenging election of President or Vice President not a candidate – Has no right to file election petition: *Raghuvansh Prasad Vs. Mahendra Singh, I.L.R. (1971) M.P. 213 (D.B.)*

– **Section 43 (2) (b)** – Notification of the result of election held before expiry of time – Amounts to substantial compliance: *Bir Govind Singh Vs. The Chief Municipal officer Municipal Committee, Jora, I.L.R. (1972) M.P. 1000 (D.B.)*

– **Section 43 (2) (b)** – Provision as to time in – Is directory: *Bir Govind Singh Vs. The Chief Municipal officer Municipal Committee, Jora, I.L.R. (1972) M.P. 1000 (D.B.)*

– **Section 43 (2) (b)** – Provision of 7 days notice mandatory – Method of calculating 7 days: *Raghuvansh Prasad Vs. Mahendra Singh, I.L.R. (1971) M.P. 213 (D.B.)*

– **Section 43 (2) (b)** – Time limit even if imperative – Non compliance can be excused: *Raghuvansh Prasad Vs. Mahendra Singh, I.L.R. (1971) M.P. 213 (D.B.)*

– **Section 43 (2) (c) and Section 55(3)** – Combined effect of the provisions: *Raghuvansh Prasad Vs. Mahendra Singh, I.L.R. (1971) M.P. 213 (D.B.)*

– **Section 43 (2) (e)** – Meeting at which a new President or Vice President are to be elected – Not a first meeting after the general election – Filling in the vacancy of the President or Vice-President – Will be in the meeting other than first meeting after general election – The election has to be in accordance with rules framed under sub-section (4) of section 43: *Awadh Behari Pandey Vs. The State of Madhya Pradesh, I.L.R. (1972) M.P. 263 (D.B.)*

– **Section 43 (4)** – Empowers Government to prescribe by rules the manner of holding election of President and Vice-President: *Vasant Rao Parhate Vs. Ghanshyam, I.L.R. (1974) M.P. 558 (D.B.)*

– **Section 43 (7)** – Registration by President – Notice in writing necessary: *Smt. Prabha Rani Vishwakarma Vs. State, I.L.R. (2000) M.P. 716 (D.B.)*

– **Section 43 (7)** – Registration 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. Prabha Rani Vishwakarma Vs. State, I.L.R. (2000) M.P. 716 (D.B.)*

– **Section 44** – Fresh election of President – His term is only for the unexpired period: *Shri Ramlal Vs. The Collector, Satna, I.L.R. (1978) M.P. 247 (D.B.)*

– **Section 45, Proviso** – Proviso to be read in accord with provisions in section 43(1) and (2) and 55(2) – Effect of such a reading: *Ramabai Vs. The Sub-Divisional Officer, Balaghat, I.L.R. (1968) M.P. 228 (D.B.)*

– **Section 45, Proviso** – The word “councilor” in – Means only elected councilors: *Ramabai Vs. The Sub-Divisional Officer, Balaghat, I.L.R. (1968) M.P. 228 (D.B.)*

– **Section 45, Proviso** – The words or “selection” – Cannot be read in the proviso: *Ramabai Vs. The Sub-Divisional Officer, Balaghat, I.L.R. (1968) M.P. 228 (D.B.)*

– **Section 45, Proviso** – Words “from the date of his election” – Refers to elected councilors: *Ramabai Vs. The Sub-Divisional Officer, Balaghat, I.L.R. (1968) M.P. 228 (D.B.)*

– **Section 45** – Councillors deemed to have entered upon the office from the date of election for purposes of selection of councillors under section 19 and of President and Vice-President under section 43: *Kishanchand Vs. The Supervising Officer, Municipal Committee, Kurwai, I.L.R. (1974) M.P. 758 (D.B.)*

– **Section 47** – Chief Municipal Officer not calling a meeting – Councillors have no authority to call the meeting: *Tejral Vs. Nandkishore, I.L.R. (1969) M.P. 943 (D.B.)*

– **Section 47** – Meeting called for deciding any specific question – Meeting must be called in the particular manner provided and in no other – Chief Municipal Officer not calling a meeting – Councillors have no authority to call the meeting – Section 47(2) – Provisions are mandatory and not directory: *Tejral Vs. Nandkishore, I.L.R. (1969) M.P. 943 (D.B.)*

– **Section 47** – New council elected whether under M.B. Municipalities Act, 1954 or new Act of 1961 – Council deemed to be council under Act of 1961 – Resolution regarding no-confidence – Resolution governed by this provision – Resolution of no-

confidence – Takes effect from the moment it is passed – Section 323 – Collector, Power of, to stop the operation of the resolution – Section 331 – Government, Power of, regarding same matter – Section 330-A motion of no confidence – Is not a case pending before or disposed of by the council – No power in Government to examine the regularity of the proceedings of meeting in which no-confidence motion is passed: *Babulal Jain Vs. The State of M.P.*, I.L.R. (1969) M.P. 928 (D.B.)

– **Section 47** – Resolution of no-confidence – Takes effect from the moment it is passed: *Babulal Jain Vs. The State of M.P.*, I.L.R. (1969) M.P. 928 (D.B.)

– **Section 47** – Resolution regarding no-confidence – Resolution governed by this provision: *Babulal Jain Vs. The State of M.P.*, I.L.R. (1969) M.P. 928 (D.B.)

– **Section 47** – Restricted meaning not to be given to the word “removal” in: *J.M. Pendse, Advocate, Kannod Vs. Chandra Gopal*, I.L.R. (1972) M.P. 381

– **Section 47 (2)** – Provisions are mandatory and not directory: *Tejral Vs. Nandkishore*, I.L.R. (1969) M.P. 943 (D.B.)

– **Section 47 (2) (iii)** – Prohibition on the President to preside at a meeting at which motion of no confidence against him is moved – Cannot be construed as a vacancy in the Office of President: *Baboolal Chaubey Vs. Municipal Council, Chhuikhadan*, I.L.R. (1966) M.P. 905 (D.B.)

– **Section 47 (2) (ii)** – Service of notice ten days before meeting not necessary – Section 47(2)(iii) – Meeting presided over by a person elected by Councilors – Meeting not invalid – Section 52(a) – Operates only when president absent and Vice President not prevented by reasonable cause from presiding over the meeting – Section 47(2)(iii) – Prohibition on the president to preside at a meeting at which motion of no-confidence against him is moved – Cannot be construed as a vacancy in the office of President: *Baboolal Chaubey Vs. Municipal Council, Chhuikhadan*, I.L.R. (1966) M.P. 905 (D.B.)

– **Sections 47 and 57** – Meeting held for a motion of no-confidence – Meeting adjourned *sine die* – Requisition of meeting sent after new Act came into force – Fresh notice as required by section 47(2) of Act necessary – Section 57 cannot be resorted to – Adjourned meeting – A continuation of old meeting – Fresh notice necessary if meeting adjourned *sine die*: *Shri Sheokumar Shastri Vs. The Municipal Committee, Rajnandgaon*, I.L.R. (1963) M.P. 1053 (D.B.)

– **Sections 47 and 62** – Voting on motion of no-confidence not to be by ballot: *Sojharmal Vs. Municipal Council, Kharsia*, I.L.R. (1965) M.P. 438 (D.B.)

– **Section 51 (1) (b)** – President, Power of, to decide which office shall be located where: *Madanlal Vs. The State of M.P.*, I.L.R. (1968) M.P. 577 (D.B.)

– **Section 52 (a)** – Operates only when president absent and Vice President not prevented by reasonable cause from presiding over the meeting: *Baboolal Chaubey Vs. Municipal Council, Chhuikhadan, I.L.R. (1966) M.P. 905 (D.B.)*

– **Section 55 (1)** – Words “as far as may be” in – Meaning of Section 62 (3) (iii) – Not applicable to the meeting of election of President and Vice – President – Municipalities (President and Vice Presidents) Election Rules, Madhya Pradesh, 1962 – Rule 9(2) Vires of – Statute prescribing a particular method in which votes on particular subject is to be taken – That method only has to be followed – Municipalities Act, Madhya Pradesh, 1961 – Section 43 (4) – Empowers Government to prescribe by rules the manner of holding election of President and Vice-President – Municipalities (President and Vice-President) Election Rules, Madhya Pradesh, 1962 Rule 4(1) and Form A – Do not require proposer to fill in the form himself – Can be filled at his direction – His putting signature is sufficient compliance.: *Vasant Rao Parhate Vs. Ghanshyam, I.L.R. (1974) M.P. 558 (D.B.)*

– **Section 55 (2) and (3)** – In case of class II Municipality – Collector can call the meeting for election and preside over it: *Girja Shanker Shukla Vs. Sub-Divisional Officer, Harda, I.L.R. (1974) M.P. 885 (F.B.)*

– **Section 55 (2) and (3)** – Person officiating in the post and person holding the current duties of that post – Difference in power of the two: *Girja Shanker Shukla Vs. Sub-Divisional Officer, Harda, I.L.R. (1974) M.P. 885 (F.B.)*

– **Section 56** – Consideration of any other subject not on agenda – Proved – Entire service record not considered – No enquiry conducted into the allegation – Order manifestly illegal – Cannot become valid by supplying additional reason in the return: *Smt. Kamla Bai Vs. Nagar Panchayat, Jatar, I.L.R. (2003) M.P. 759*

– **Section 56** – Service Law – Compulsory retirement – Matter not decided by the President – in – Council – Cannot be added in General Council in the guise of confirmation of minutes of President – In – Council: *Smt. Kamla Bai Vs. Nagar Panchayat, Jatar, I.L.R. (2003) M.P. 759*

– **Section 56 (3)** – In computing the period of 7 days notice – Both terminal days are to be excluded: *Awadh Behari Pandey Vs. The State of Madhya Pradesh, I.L.R. (1972) M.P. 263 (D.B.)*

– **Section 56 (3)** – Notice of meeting – Is mandatory: *Awadh Behari Pandey Vs. The State of Madhya Pradesh I.L.R. (1972) M.P. 263 (D.B.)*

– **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. Chandai Bai Vs. Smt. Gulab Kali Singh, I.L.R. (1999) M.P. 464 (D.B.)*

– **Section 59** – Not applicable to a meeting convened for election of President or Vice-President: *Awadh Behari Pandey Vs. The State of Madhya Pradesh I.L.R. (1972) M.P. 263 (D.B.)*

– **Section 62** – Applicability to minutes of proceedings of motion of no-confidence – Voting on motion of no-confidence not to be by ballot – Bye-law 16(d) – *Vires of* – Interpretation of Statute – 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 (D.B.)*

– **Section 62 (3) (iii)** – Not applicable to the meeting of election of President and Vice-President: *Vasant Rao Parhate Vs. Ghanshyam, I.L.R. (1974) M.P. 558 (D.B.)*

– **Section 68(1) and 401** – Municipal Corporation derives its authority under the act – Delegation of powers to renew licence under ‘the rules of 1996’ can not be apart from the power of municipal corporation under the act – Conferral of power to grant or renew licence is covered by Section 68(1) of Act – Section 401(1) applicable – No suit could be filed without serving notice – No provision in Section 401 for taking permission of Court for relaxation of notice – Complaint filed without prior notice rejected in Revisional jurisdiction by High Court: *Municipal Corporation, Murwara, Katni Vs. Lalchand Jaiswal, I.L.R. (2001) M.P. 555*

– **Sections 86, 87, 89, 90, 94 and Madhya Pradesh State Municipal Services (Executive) Rules, 1973** – Appointments of C.M.O. are made by the State Govt. unlike other staff for which only confirmation by the State Govt. is required: *Suresh Chandra Sharma Vs. State, I.L.R. (2000) M.P. 645 (F.B.)*

– **Section 94(1) and (4)** – Octroi Superintendent not a Revenue Officer for the purpose of those provisions: *Abdul Hafeez Khan Vs. The Government of M.P., I.L.R. (1965) M.P. 747 (D.B.)*

– **Section 94(6)** – Power of Standing Committee to appoint octroi superintendent – Power of Standing Committee to decide legality of appointment and revert the person to substantive post: *Abdul Hafeez Khan Vs. The Government of M.P., I.L.R. (1965) M.P. 747 (D.B.)*

– **Section 94 (7)** – State Government, Power of, to transfer officers and Servants other than those mentioned in sub-sections (1) and (2): *Shankarlal Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 995 (D.B.)*

– **Section 97 – Fiction under** – Makes money or property misappropriated etc. as property of State Government – Suit by State Government against Municipal employee – Maintainable – Suit by Municipal Committee against employee for loss – Not a suit

under this provision, but under general law – Section 176 – Applicable to suits for recovery of money due under the Act – Limitation starts from the date when sum became due – Limitation Act, Indian, 1963 – Article 4 – Applicable to suits against agents for neglect or misconduct – Employee of Municipal Committee entrusted with money – Is in a position of agent – Article applicable to a suit against Agent – Starting point of limitation: *Ramjilal Vs. Municipal Committee, Sarangarh, I.L.R. (1976) M.P. 976*

– **Section 97** – Suit by Municipal Committee against employee for loss – Not a suit under this provision, but under general law: *Ramjilal Vs. Municipal Committee, Sarangarh, I.L.R. (1976) M.P. 976*

– **Sections 105, 3 (37), M.P. Municipalities Terminal Tax on Passengers (Regulation of Assessment and Collection) Rules, 1988, Rule 12** – Municipal Council in violation of Section 105 of the Act cannot transfer the right to recover a Municipal Tax to any other person or body – No lease of assessment or collection of terminal tax on passengers can be granted without imposing condition to deposit the entire money in Municipal Fund – Contractor entitled for expenses and reasonable margin of profit: *Ibadatali Abbas Ali Vs. Municipal Council, Khargone, I.L.R. (1993) M.P. 137 (D.B.)*

– **Sections 110-D, 110-C, (2-A)** – Person aggrieved, who is – Driver and owner are person aggrieved even if they are able to avoid payment of compensation on account of Insurance policy – They have right of appeal: *Parmanand Vs. Manohardas Somani, I.L.R. (1989) M.P. 545 (D.B.)*

– **Section 124** – Establishment of college – Not a statutory duty: *Dr. Shankar Dayal Chourishi Vs. The Administrator, Municipal Council, Dhamtari, I.L.R. (1970) M.P. 869 (D.B.)*

– **Section 127** – Executive instruction of State Govt. reducing rate of terminal tax from 0.5% to .02% – 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 (D.B.)*

– **Sections 127 (i) (viii), 160 and Constitution of India, Article 14** – Auction for lease of collection of fee on Municipal market – Condition 26 of auction notice – After conclusion of auction, higher offer of any person could be considered – ‘Any person’ not limited to bidders, strangers could also participate – Failure to give notice to bidders of such offer – Violation of Article 14 of Constitution: *Kishorilal Jaiswal Vs. Municipal Council, Sakti Distt. Bilaspur, I.L.R. (1988) M.P. 412 (D.B.)*

– **Section 127 (2) (c)** – Framing of rules fixing maximum and minimum of rate of tax: *Sunderlal Dharamdas Keshadas, Bidi Merchants, Tikamgarh Vs. State of M.P., I.L.R. (1977) M.P. 537 (D.B.)*

– **Section 127 (2) (c)** – Non-framing of rules under – Does not make notification levying octroi invalid – There is no unbridled power with municipality in matter of levy of octroi tax: *Sunderlal Dharamdas Keshadodas, Bidi Merchants, Tikamgarh Vs. State of M.P., I.L.R. (1977) M.P. 537 (D.B.)*

– **Section 127 (2) (c)** – Object to be achieved under this provision – Section 129 – Power under, for initial impost – Not obliged or dependable on prior framing of rules – Section 129(5) – Acts as a check on the power of the council – Object of framing rules – Object can be achieved by exercising power and control under this provision – Framing of rules fixing maximum and minimum of rate of tax – Not mandatory before levy of tax – Section 127(2)(c) – Non-framing of rules under – Does not make notification levying octroi invalid – There is no unbridled power with municipality in matter of levy of octroi tax: *Sunderlal Dharamdas Keshadodas, Bidi Merchants, Tikamgarh Vs. State of M.P., I.L.R. (1977) M.P. 537 (D.B.)*

– **Section 127 (2) (c)** – Prescribe ample safe-guard against arbitrary exercise of power in the matter of increase in rate of tax: *Firm Madanlal Kishangopal Tarana Vs. Municipal Council, Tarana, I.L.R. (1979) M.P. 111 (D.B.)*

– **Section 127 (3) (ii)** – Exemption from tax – House let out to tenant – Tenant not using it for charitable purpose – House not exempted from tax even though rent received is use for charitable purpose – Word “used” in – Meaning of: *Swami Shivanand Vs. Municipal Council, Satna, I.L.R. (1980) M.P. 227 (D.B.)*

– **Section 127 (4)** – Difference between toll tax and terminal tax: *Swaroopchand Jain Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 232 (D.B.)*

– **Section 127 (4)** – Octroi tax and toll tax can exist together: *Swaroopchand Jain Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 232 (D.B.)*

– **Section 127 (4)** – Saves toll tax imposed under Rewa Act even after its repeal – Toll Tax – Implication of Difference between toll tax and terminal Tax – Octroi tax and Toll tax can exist together: *Swaroopchand Jain Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 232 (D.B.)*

– **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: *Chief Municipal Officer Kymore Vs. Eternit Everest Ltd., I.L.R. (2001) M.P. 1867 (D.B.)*

– **Sections 127, 129** – Imposition of tax by the Municipalities – Rider – Subject to the approval of the State Government – The State Government has power to lay down the guide-lines – Once the State Govt. exercises such power the council cannot make demand of tax fixed by it – Municipality is bound by the notification issued by the State Govt.: *Associated Cement Companies Ltd., Bombay Vs. State, I.L.R. (2000) M.P. 136*

– **Sections 127, 129** – Imposition of terminal tax by Municipalities – Power has to be exercised by the council of course, subject to any general or special order of the State Govt. – State Govt. can direct modification but the same cannot be given effect to unless and until accepted by the council in a meeting: *The Associated Cement Co. Ltd. Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 667 (F.B.)*

– **Sections 127, 130** – Power of Municipality to impose tax is subject to the general or special order passed by the State Govt. in this behalf – Order of State Govt. fixing maximum or minimum rate of tax already in vague – Also binding on the prescribed authority under Section 130 – Municipality cannot enhance the rate of tax until the earlier order of State Govt. is withdrawn: *M/s. Alpana Theatre, Raipur Vs. Nagar Palika Parishad, Raipur, I.L.R. (2001) M.P. 303*

– **Sections 127 (1), 127-A** – Proviso Interpretation of statute – No word of statute be brushed aside, normally – Word having no appropriate application in circumstance conceivable within contemplation of statute – Word can be construed in opposite surplusage – Imposition of property tax by Nagod Municipality quashed: *Brijraj Kumar Tandon Vs. Municipal Council, Nagod, I.L.R. (1989) M.P. 218 (D.B.)*

– **Sections 127 (1), 127-A, 341(1)(a), Proviso, Municipal Laws (Amendment) Act, M.P. (L of 1976)**, Interpretation of Statute – Imposition of property tax – Could not be imposed by Class V Municipality – Interpretation of Statute – No word of statute be brushed aside, normally – Word having no appropriate application in circumstances conceivable within contemplation of statute – Word can be construed in opposite surplusage – Imposition of property tax by Nagod Municipality quashed: *Brijraj Kumar Tandon Vs. Municipal Council, Nagod, I.L.R. (1989) M.P. 218 (D.B.)*

– **Section 127 (i) (xvi)** – Tax imposed by one Municipality and not by others – Provision not discriminatory – Considerations for imposing tax may differ from Municipal council to Municipal council: *Monji Kalyanji Vs. State of M.P., I.L.R. (1989) M.P. 133 (D.B.)*

– **Sections 127 (i)(xvi) 129 (7) and constitution of India, Seventh Schedule list I, Entries 89, 97 List II, Entry 56, Articles 301 and 304** – Terminal tax imposed by Vidisha Municipality on goods or animals imported into or exported from its limits – Entry 89 or 97 of List I not attracted – Covered by Entry 56 of list II – Municipality competent to impose such terminal tax – No averment in petition that petitioners carry

on inter – State trade – Effect of Articles 301 and 304 of Constitution, need not be gone into Tax imposed by one Municipality and not by others – Provision not discriminatory-considerations for imposing tax may differ from Municipal council to Municipal council – No date fixed in the notification as to from which date the tax shall come into effect – Notification not in effective – Notification came into force on expiry of 30 days of publication of it: *Monji Kalyanji Vs. State of M.P.*, I.L.R. (1989) M.P. 133 (D.B.)

– **Section 129** – Applies to initial imposition of a new tax – Not to increase in the rate of tax: *Firm Madanlal Kishangopal, Tarana Vs. Municipal Council, Tarana*, I.L.R. (1979) M.P. 111 (D.B.)

– **Section 129** – Power under, for initial impost – Not obliged or dependable on prior framing of rules: *Sunderlal Dharamdas Keshadodas, Bidi Merchants, Tikamgarh Vs. State of M.P.*, I.L.R. (1977) M.P. 537 (D.B.)

– **Section 129 (5)** – Acts as a check on the power of the council – Object of framing rules – Object can be achieved by exercising power and control under this provision vide municipalities act, Section 127 (2)(c): *Sunderlal Dharamdas Keshadodas, Bidi Merchants, Tikamgarh Vs. State of M.P.*, I.L.R. (1977) M.P. 537 (D.B.)

– **Section 129 (As amended by M.P. Nagar Palik Vidhi (Sanshodhan) Adhiniyam 12 of 1995), Section 127(1)(xvi)** – Vires of provisions of Section 129 challenged – Imposition of export tax – Procedure laid down under amended Section 129 – Not violative of Articles 14, 19(1)(g) and 301 – Essential powers to executive not delegated – Municipal Council competent to impose tax: *Smt. Meera Khandelwal Vs. State of M.P.*, I.L.R. (1996) M.P. 83 (D.B.)

– **Section 129 (1) and (2) section 130, Section 71 (1) (i) and Municipalities (Executive Committee) Rules, M.P., 1963, Rule 10 (iii)** – Levy of tax – Requirement of section 129 (1) are mandatory in nature – Matter of publication of notice as required under sub-section (2) of section 129 is directory – Hence, publication of proposal and draft rules separately and not simultaneously as required by form of notice not invalid and therefore imposition of tax on basis in circumstances could not be annulled on account of such irregularity – Charges of water rate on basis of diameter of service pipe and number of taps by complying with requirement of section 129 afresh – Water rate levied earlier on basis of annual letting value need not be first abolished under section 130 before making the charges – Levy of latrine tax by revision of annual letting value – Objection heard and decided by Finance Committee and not by Municipal Council – Revision by of annual letting value not illegal inasmuch as Finance committee had statutory sanction to hear and decide the objections in view of Section 71(1) (1) (i) of the Act and Rule 10 (iii) of the rules: *Kamaldhar Badgaiyan Vs. The Municipal Council, Raigarh*, I.L.R. (1991) M.P. 428 (D.B.)

– **Section 129 (7)** – No date fixed in the notification as to from which date the tax shall come into effect – Notification not in effective – Notification came into force on expiry of 30 days of publication of it: *Monji Kalyanji Vs. State of M.P., I.L.R. (1989) M.P. 133 (D.B.)*

– **Section 130 (after amendment)** – Power of Municipal Committee to raise the rate of tax – Limits within which it can be increased: *Firm Madanlal Kishangopal Tarana Vs. Municipal Council, Tarana, I.L.R. (1979) M.P. 111 (D.B.)*

– **Section 130 (after amendment) – Vires of** – Power of Municipal Committee to raise the rate of tax – Limits within which it can be increased – Section 127(2)(c) – Prescribes ample safe-guard against arbitrary exercise of power in the matter of increase in rate of tax – Executive act of State Government – Cannot be equated with legislative function – Section 129 – Applies to initial imposition of a new tax – Not to increase in the rate of tax: *Firm Madanlal Kishangopal, Tarana Vs. Municipal Council, Tarana, I.L.R. (1979) M.P. 111 (D.B.)*

– **Section 130** – Enhancement of tax and sanction by prescribed Authority during subsistence of State Govt. order u/s. 127(1) – Without jurisdiction – Petitioner entitled to get refund of the amount paid in addition to the amount of tax fixed earlier: *M/s. Alpana Theatre, Raipur Vs. Nagar Palika Parishad, Raipur, I.L.R. (2001) M.P. 303*

– **Section 130 (1)** – Confers power on the council to abolish tax with previous sanction of Government: *Gourishankar Vs. The Municipal Council, Narsinghpur, I.L.R. (1970) M.P. 727 (D.B.)*

– **Section 137 (2) and (3) and Constitution of India, Article 226** – Revision of assessment of market value of property in occupation of tenant – Whether tenant as occupier of the property is entitled to special notice of such reassessment – Remedy of the person aggrieved: *M/s Ashok Printing Works, Raigarh Vs. Rent Control Officer, Raigarh, I.L.R. (1986) M.P. 61 (D.B.)*

– **Section 139 (5)** – Decision of District Judge under – Revisable by High Court: *Municipal Council, Khandwa Vs. Santosh Kumar, I.L.R. (1976) M.P. 104 (F.B.)*

– **Section 139 (5)** – Order of revision of District Judge – Order is of a Court subordinate to High Court: *Municipal Council, Khandwa Vs. Santosh Kumar, I.L.R. (1976) M.P. 104 (F.B.)*

– **Section 139 (5)** – Ordinary incidents of procedure of appeal or revision applicable: *Municipal Council, Khandwa Vs. Santosh Kumar, I.L.R. (1976) M.P. 104 (F.B.)*

– **Section 139 (5)** – Revisional authority under, functions as a Court and not *persona designata* – Ordinary incidents of procedure of appeal or revision applicable – Word “final” in – Means there is no further appeal – Revision not excluded – Decision of district Judge under – Revisable by High Court – Order of revisions of District Judge – Order is of a Court subordinate to High Court – Revision under Section 115, Civil Procedure Code – Maintainable against order of District Judge under Section 139 (5) of Madhya Pradesh Municipalities Act: *Municipal Council, Khandwa Vs. Santosh Kumar, I.L.R. (1976) M.P. 104 (F.B.)*

– **Section 139 (5)** – Word “final” in – Means there is no further appeal – Revision not excluded: *Municipal Council, Khandwa Vs. Santosh Kumar, I.L.R. (1976) M.P. 104 (F.B.)*

– **Section 164, Clause (c)** – Market fees due under repealed Act – Covered by clause (c) of this Section: *M/s Ramchandra Laxmichand, Satna Vs. Municipal Council, Satna I.L.R. (1964) M.P. 504 (D.B.)*

– **Section 164** – Market fees due under repealed Act – Covered by clause (c) of Section 164 – Word “Tax” in clause (b) not used in restricted sense – Means compulsory exaction of money by Municipal Council – Bye laws – Not parts of statute – Section 164(b) and 176 – Bills issued within 6 years after its becoming due – Bill not barred – Bills containing amount barred by time – Bills and notice of demand issued on its basis do not become void – the word “distrain” in – Means seizure whether of movable or immovable property: *M/s Ramchandra Laxmichand, Satna Vs. Municipal Council, Satna, I.L.R. (1964) M.P. 504 (D.B.)*

– **Section 164 (b) and 176** – Bills issued within 6 years after its becoming due – Bills not barred – Bills containing amount barred by time – Bills and notice of demands issued on its basis do not become void: *M/s Ramchandra Laxmichand, Satna Vs. Municipal Council, Satna, I.L.R. (1964) M.P. 504 (D.B.)*

– **Section 165 (1) and Criminal Procedure Code, 1973 (II of 1974), Section 3(3) and (4)** – Realization of taxes by discess or by attachment and sale of immovable property – Functions being executive in nature cannot be performed by Judicial Magistrate: *Nagarpalika Parisad, Begamganj Vs. Judicial Magistrate, First Class, Begamganj, I.L.R. (1987) M.P. 466 (D.B.)*

– **Section 165 (1)** – Functions to be performed u/s 165(1) executive in nature – Functions to be performed by Executive Magistrate and not by Judicial Magistrate: *Nagar Palika Parisad, Begumganj, Raisen Vs. Judicial Magistrate Ist Class, Begumganj, Raisen, I.L.R. (1989) M.P. 272 (D.B.)*

– **Section 176** – Applicable to suits for recovery of money due under the Act: *Ramjilal Vs. Municipal Committee, Sarangarh, I.L.R. (1976) M.P. 976*

– **Section 176** – Limitation starts from the date when sum became due: *Ramjilal Vs. Municipal Committee, Sarangarh, I.L.R. (1976) M.P. 976*

– **Section 213 (1) (4)** – Bye-Laws framed by municipality for regulating flour Mill – Vires of: *Mahadeo Prasad Vs. The State of M.P., I.L.R. (1971) M.P. 470 (D.B.)*

– **Sections 268, 357 and 358** – Licensing and conditions of sale of food within Municipal area and powers of Municipality to form bye laws – Vegetable ghee is an article intended to be used for human food – Section 268 though deals with regulation in respect of sale in food and drinks yet in exercise of power under Section 358 Municipality empowered to make by laws regulating sale of Vegetable ghee within the Municipal areas: *Kirana Association, Datia Vs. State, I.L.R. (1992) M.P. 318 (D.B.)*

– **Section 279** – Municipal authorities suppose to act as trustees and should see – That open spaces should not be converted into shopping complexes – In fact open spaces are lungs of city – Resolution passed by Municipal Council – Open space between two rows of building sought to be converted into shopping complex – Not in consonance with the judicial pronouncement – Resolution quashed: *Yogendra Singh Tomar Vs. State of M.P., I.L.R. (1996) M.P. 360 (D.B.)*

– **Section 283 (1) (4)** – Power of Municipality of frame bye-laws for regulating the use of any place for carrying on business of flour mill – Vires of: *Mahadeo Prasad Vs. The State of M.P., I.L.R. (1971) M.P. 470 (D.B.)*

– **Section 283 (1) and (4)** – Scope and effect of – Power of Municipality to frame bye-laws for regulating the use of any place for carrying on business of flour mill – Bye-laws framed by Municipality for regulating flour mill: *Mahadeo Prasad Vs. The State of M.P., I.L.R. (1971) M.P. 470 (D.B.)*

– **Sections 283, 349 and 358** – Licence fee for industry engaged in business employing electrical or mechanical energy within the municipal area – Is a “Fee” charged for regulating dangerous and offensive trades – Must correspond to principle of quid pro quo: *M/S Mohta Ispat Ltd., 7072, Industrial Area, Ratlam Vs. The Chief Municipal Officer, Ratlam, Nagar Palika, Ratlam, I.L.R. (1982) M.P. 111 (F.B.)*

– **Sections 283, 349 and 358** – Licence fee – No justification shown for its enhancement – Notification enhancing such licence fee liable to be struck down: *M/s Mohta Ispat Ltd., 7072, Industrial Area, Ratlam Vs. The Chief Municipal Officer, Ratlam, Nagar Palika, Ratlam, I.L.R. (1982) M.P. 111 (F.B.)*

– **Sections 283, 349 and 358** – “Tax” and “Fee” distinction between and determination thereof – Licence fee for industry engaged in business employing electrical or mechanical energy, within the Municipal area – Is a “Fee” charged for regulating

dangerous and offensive trades – Must correspond to principle of quid pro quo – Licence fee – No justification shown for its enhancement – Notification enhancing such licence fee liable to be struck down: *M/s Mohta Ispat Ltd., 7072, Industrial Area, Ratlam Vs. The Chief Municipal Officer, Ratlam, Nagar Palika, Ratlam, I.L.R. (1982) M.P. 111 (F.B.)*

– **Section 308** – Appeal – Collector upholding order of termination after holding that appeal is not maintainable – Held – Once Tribunal comes to conclusion that it has no jurisdiction any adjudication of dispute by it is totally ineffective: *Chief Municipal Officer, Municipal Council Govindgar, Rewa, Vs The Presiding Officer, Labour Court, Rewa, I.L.R. (1993) M.P. 496 (D.B.)*

– **Section 313 (1)** – Person who can direct prosecution – Section 313 (2) – Confers jurisdiction on Magistrate to try offence – Criminal Trial – Circumstances in which the order of conviction or acquittal will be void in a summons case – Circumstances in which the word “discharge” can be read as “acquittal”: *Nagarpalika Office, Bhandar Vs. Rajendrasingh Senger, I.L.R. (1973) M.P. 162 (D.B.)*

– **Section 313 (2)** – Confers jurisdiction on Magistrate to try offence: *Nagar Palika Office, Bhandar Vs. Rajendrasingh Senger, I.L.R. (1973) M.P. 162 (D.B.)*

– **Section 319** – Notice given for the benefit of the Committee – Committee can waive the notice – Agriculture Produce Markets Act, Madhya Pradesh, 1960 Section – 3 (5) and Rule 54 – Recovery of registration fee by Municipality – Amounts to infringement of the right of marketing committee – Amounts to violation of these provisions – Rule 54, Bye-law 5 – Right of marketing committee to control market yard – Interpretation of Statute – Special Act to override general Act – *Non-obstante* Clause when used – To be given full effect: *Municipal Council, Khurai Vs. Agricultural Produce Marketing Committee, Khurai, I.L.R. (1968) M.P. 93*

– **Section 319 (2)** – Tax recovered being wholly outside the provision of Act – Committee cannot be said to purport to act under the Act – Limitation Act, 1908, Article 96 and Limitation act, 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 – Limitation Act, 1963 – 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. Khan Sons and Co. Katni, I.L.R. (1979) M.P. 920*

– **Section 323** – Collector, Power of, to stop the operation of the resolution: *Babulal Jain Vs. The State of M.P., I.L.R. (1969) M.P. 928 (D.B.)*

– **Section 323** – Circumstances in which the resolution, order or act of council, or of any of its committees or of any authorities cannot be suspended – Section 51(1)(b)

– President, Power of, to decide which office shall be located where – Section 323 – Conditions necessary to be satisfied for suspending resolution, order or act – President passing order for carrying out a statutory duty – Action cannot be said to cause injury or annoyance to public, any class or body of persons – Section 323(2) – Order of Collector illegal and invalid – Submission of order to government for action cannot cure illegality: *Madanlal Vs. The State of M.P., I.L.R. (1968) M.P. 577 (D.B.)*

– **Section 323** – Conditions necessary to be satisfied for suspending resolution, order or act: *Madanlal Vs. The State of M.P., I.L.R. (1968) M.P. 577 (D.B.)*

– **Section 323** – President passing order for carrying out a statutory duty – Action cannot be said to cause injury or annoyance to public, any class or body of persons: *Madanlal Vs. The State of M.P., I.L.R. (1968) M.P. 577 (D.B.)*

– **Section 323 (2)** – Order of Collector illegal and invalid – Submission of order to government for action cannot cure illegality: *Madanlal Vs. The State of M.P., I.L.R. (1968) M.P. 577 (D.B.)*

– **Section 328** – Applicable to bodies constituted under the Act as well as to fictionally constituted bodies: *Municipal Council Kota Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 350 (D.B.)*

– **Section 328** – Dissolved municipal council can be restored by review of order – Power of review of order under Section 328 – Power is wide: *Balbhadr Prasad Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 272 (D.B.)*

– **Section 328** – Grounds on which order can be reviewed Power to be exercised in exception cases: *Balbhadr Prasad Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 272 (D.B.)*

– **Section 328** – Order dissolving municipal council – Review – Maintainability *Balbhadr Prasad Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 272 (D.B.)*

– **Section 328 (1)** – Dissolution or super-session of Council under – Effect of: *Mukutdhari Sharma Vs. State of M.P., I.L.R. (1981) M.P. 665 (D.B.)*

– **Section 328 (5), Proviso** – Effect of Proviso in the case of deemed councils: *Municipal Council Kota Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 350 (D.B.)*

– **Section 328 (6)** – Effect of: *Niranjanprasad Keshrwani Vs. The State of M.P., I.L.R. (1977) M.P. 1189 (D.B.)*

– **Section 330** – A motion of no confidence – Is not a case pending before or disposed of by the council – No power in Government to examine the regularity of the proceedings of meeting in which no-confidence motion is passed: *Babulal Jain Vs. The State of M.P., I.L.R. (1969) M.P. 928 (D.B.)*

– **Section 331** – Government, Power of, to stop the operations of the resolution: *Babulal Jain Vs. The State of M.P., I.L.R. (1969) M.P. 928 (D.B.)*

– **Section 332 and Constitution of India, Article 226** – Review – Powers of State Govt. – Extent of – Reviewing authority feeling that punishment inflicted upon petitioner is harsh and excessive and needed modification but still rejecting review application – Order not in accordance with law – Liable to be quashed and respondents are directed to reconsider review application in accordance with law: *Himayat Ullah Lakhnavi Vs. State of Madhya Pradesh, I.L.R. (1985) M.P. 421*

– **Section 332** – No power in Government to suspend operation of order under review: *Akbarali Arif Vs. The Government of M.P., Bhopal, I.L.R. (1971) M.P. 30 (D.B.)*

– **Section 332** – Words “Parties interested” in Section 332 – Mean parties interested in maintaining the order under review – Include councilors: *Balbhadra Prasad Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 272 (D.B.)*

– **Section 332 (1) Scope of** – Order dissolving municipal council – Review – Maintainability – Dissolved municipal council can be restored by review of order – Power of review of order under Section 328 – Power is wide – Words “Parties interested” in Section 332 – Mean parties interested in maintaining the order under review – Include councillors – Grounds on which order can be reviewed – Power to be exercised in exceptional cases: *Balbhadra Prasad Vs. State of Madhya Pradesh, I.L.R. (1972) M.P. 272 (D.B.)*

– **Section 337 A** – Issue of notification under Section 68 (v) and (vi) – Principles of natural justice not attracted: *Municipal Council, Harda Vs. State of M.P., I.L.R. (1986) M.P. 175 (D.B.)*

– **Section 337 A** – Not *ultra vires*: *Municipal Council, Harda Vs. State of M.P., I.L.R. (1986) M.P. 175 (D.B.)*

– **Sections 337 A and 328** – Distinction between: *Municipal Council, Harda Vs. State of M.P., I.L.R. (1986) M.P. 175 (D.B.)*

– **Section 341** – Committee of nominated members only – Requirements of stating the reasons provided for the second proviso are mandatory: *Dr. Shrikrishna Rajoria Vs. State of M.P., I.L.R. (1980) M.P. 11 (D.B.)*

– **Section 341** – Object of – Committee of nominated members only – Requirements of stating the reasons provided for in second proviso are mandatory – Constitution of India – Article 226 – Failure of state Govt. to state reasons for exercise of powers under section 341(1)(d) – Notification liable to be quashed – writ of certiorari – Exercise of statutory power without complying with its mandatory requirements –

Writ of certiorari may be issued – Constitution of India – Article 226 – Administrative Act of public authority – Done in excess of jurisdiction – Writ of certiorari can be issued: *Dr. Shrikrishna Rajoria Vs. State of M.P.*, I.L.R. (1980) M.P. 11 (D.B.)

– **Section 357 (4)** – Bye laws not published in manner prescribed by rules – Bye-laws cannot take effect bye-laws published in Rajpatra – Not sufficient to render them valid – Section 2(2) – First explanation makes distinction between “anything done” and “the procedure followed. in doing such thing” – Procedure cannot be regarded as “anything done” under repealed Act: *Gangadas Vs. The Municipal Council, Bhopal* I.L.R. (1964) M.P. 238 (D.B.)

– **Section 358, Clause 7(f) – Scope of:** *Sindhi Sahiti Multipurpose Transport Co-Operative Society Ltd., Bairagarh, Bhopal Vs. Municipal Council, Bhopal*, I.L.R. (1970) M.P. 234 (D.B.)

– **Section 358 (2) (f)** – Imposition of octroi tax – Validity in case octroi limits not fixed: *Gourishankar Vs. The Municipal Council, Narsinghpur*, I.L.R. (1970) M.P. 727 (D.B.)

– **Section 358 (7) (M)** – Does not empower Municipal Committee to impose fees: *Sindhi Sahiti Multipurpose Transport Co-Operative Society Ltd., Bairagarh, Bhopal Vs. Municipal Council, Bhopal*, I.L.R. (1970) M.P. 234 (D.B.)

– **Rules framed under – Rule 51(2) and (1)** – Scope of: *Jeewanlal Vs. Ku. Shanta Pathak*, I.L.R. (1977) M.P. 606

– **Rule 10(4) of the rules framed under** – Phrase “against the name of the candidate” – Meaning of – Word “Against” – Meaning of – Civil Procedure Code – Order 6, rule 17 – Amendment allowed in ignorance of question of limitation – Question of limitation can be considered later on: *Ganpatlal Sharma Vs. Surya Prasad*, I.L.R. (1977) M.P. 1119

Municipality Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1998

– **Rule 5(7)** – Relaxation in educational qualification not provided in the advertisement – Appointment made relaxing prescribed qualification – Bad in law and quashed: *R.S. Sisodiya Vs. State*, I.L.R. (2000) M.P. 924

– **Rule 12** – Alternative remedy of Appeal to Collector – Averment made in the petition that wife of appointee being President of Nagar Panchayat secured interview through Collector by undue influence – Collector himself is also a party to the petition – Remedy of appeal in such a case – Cannot be said to be efficacious – Hence not a bar to writ jurisdiction: *R.S. Sisodiya Vs. State*, I.L.R. (2000) M.P. 924

Muslim Women (Protection of Right on Divorce) Act (XXV of 1986)

– **Provisions come in to play as soon as divorce/ ‘Talaq’ takes place:**
National Insurance Co. Ltd. Vs. Kansram, I.L.R. (2000) M.P. 526 (F.B.)

– **Section 3** – Whether under Section – 3(1)(a) of the Act an additional amount over and above the amount of maintenance, is required to be paid by the former husband to his divorced wife, by way of a ‘reasonable and fair’ provision, during the period of Iddat – No – Muslim personal law does not speak of two separate things – One, by way of a reasonable and fair provision, and two, payment of maintenance – The words “Provision and maintenance” seem to convey the same meaning – Section 3(1)(a) “a reasonable and fair” provision and maintenance in Section 3(1)(a) though may appear to be distinct but in reality they are one and same thing: *Abdul Haq Vs. Yasmin Talat, I.L.R. (1998) M.P. 435*

– **Section 3** – Maintenance – Magistrate directed the applicant to pay his divorced wife a reasonable and fair provision in addition to maintenance during period of Iddat – Although such amount was not made in the application or in evidence – Held – Word a reasonable and fair provision and maintenance are one and the same thing – No separate amount in addition to maintenance could be awarded – Direction for payment as a fair and reasonable provision set aside – Revision allowed: *Abdul Haq Vs. Yasmin Talat, I.L.R. (1997) M.P. . 603*

– **Section 3 (1) (a)** – “A reasonable and fair” provision and maintenance in Section 3(1)(a) though may appear to be distinct but in reality they are one and same thing: *Abdul Haq Vs. Yasmin Talat, I.L.R. (1998) M.P. 435*

– **Section 3 (1) (a) & (b)** – Maintenance to divorced wife and son – Son born on 23-10-1989 – Wife divorced on 8-8-1990 – Application of realization of mahr as well for maintenance for wife and son filed – Mahr awarded by Court below already paid by husband – As per section 3(1)(a) divorced wife only entitled for maintenance during Iddat period – As application for maintenance was filed after Iddat period, therefore wife not entitled for maintenance – Son entitled for maintenance for a period of two years from the date of birth – As application was filed before two months and 10 days before expiry of period of two years, therefore son entitled for maintenance for period of two months and 10 days: *Smt. Noorunnisha Vs. Maqsood Ahmad, I.L.R. (1994) M.P. 220*

– **Sections 3, 4 and 5** – Non-obstante clause – After period Iddat the liability of such divorce muslim woman lay on her relatives or on the Wakf Board: *Julekha Bi Vs. Mohammad Fazal, I.L.R. (2000) M.P. 631*

– **Sections 3, 4 and 5** – Right to get maintenance from her husband is a vested right of a women in any religion – No provision in the Act of 1986 so as to give it

retrospective operation – Substantive law relating to vested rights – Such laws 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.: *Wali Mohammad Vs. Batul Bi*, I.L.R. (2004) M.P. 37 (F.B.)

Mutation Register

– **Entries in mutation register only a piece of evidence – Not conclusive:** *Smt. Nanhibai Vs. Badriprasad*, I.L.R. (1959) M.P. 559 (D.B.)

Nagar Palika Vidhi (Sanshodhan) Adhiniyam, M.P. (XVIII of 1997)

– **Section 4 thereof Constitutional Validity** – It is a transitional provision so as to bring the existing Municipal Corporation Act in conformity with the amendments introduced by the M.P. Nagar Palika Vidhi (Sanshodhan) Adhiniyam, 1997 and to make functional by avoiding vacuum or hiatus – Not arbitrary: *Atul Kumar Patel Vs. State of M.P.*, I.L.R. (1998) M.P. 204 (D.B.)

Nagar Tatha Gram Nivesh Adhiniyam, MP (XXIII of 1973)

– **Section 29** – Petitioner, a Govt. company incorporated under Companies Act owning property has a legal entity of its own – Govt. subscribing entire share capital does not own the company – Property not exempt from the operation of the section: *Central India Coalfields Ltd., Through Deputy Chief Personal Manager (Admn.), Ranchi Vs. State of Madhya Pradesh*, I.L.R. (1985) M.P. 650 (D.B.)

– **Section 29 and Constitution of India, Article 226 and Entry 54 of List I, Schedule VII** – Construction made before the constitution of SADA – Permission not required – Disputed questions of facts as to whether constructions made prior to or after constitution of SADA – Cannot be decided in writ jurisdiction: *Central India Coalfields Ltd., Through Deputy Chief Personal Manager (Admn.), Ranchi Vs. State of Madhya Pradesh*, I.L.R. (1985) M.P. 650 (D.B.)

– **Section 29 and Constitution of India, Article 226 and Entry 54 of List I, Schedule VIII** – Special Area Development Authority discharges its municipal functions in the matter of building constructions etc. under Adhiniyam of 1973 and not under Coal Bearing Area (Acquisition and Development) Act, 1957 or Mines and Minerals (Regulation and Development) Act, 1957 – Hence doctrine of occupied filed' not relevant – Permission of SADA necessary for construction of building etc. in that are – Exemption of Petitioner, a Govt. company incorporated under Companies Act owning property has a legal entity of its own – Govt. subscribing entire share capital does not own the company – Property not exempt from the operation of section 29 – Construction made

before the constitution of SADA – Permission not required – Disputed questions of fact as to whether constructions made prior to or after constitution of SADA – Cannot be decided in writ jurisdiction: *Central India Coalfields Ltd., Through Deputy Chief Personal Manager (Admn.), Ranchi Vs. State of Madhya Pradesh*, (1985) M.P. 650 (D.B.)

– **Section 38 – Constitution of the authority ‘Nagar Tatha Gram Vikas Pradhikaran Jabalpur’ thereunder** – Flowing of scheme by the authority for allotment of plots residential houses and shops and publication of a booklet entitled panjiyan Jama Yojna’ – Right of a registered purchaser to allotment of a shop thereunder extent of – fixation of sale price of shops on the basis of sample sale is valid: *Sardar Satwant Singh Anand Vs. The Jabalpur Development Authority, Jabalpur*, I.L.R. (1984) M.P. 614(D.B.)

– **Sections 38, 76-BB and Nagar Tatha Gram Nivesh (Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanranchaon ka Vyapar Niyam), M.P., 1975, Rule 19** – General Order waiving requirement of prior approval of State Government on allotment of developed land on concessional rates to educational institutions on no loss no profit basis – Such allotment caused huge loss to Development Authority – Criteria of no Loss no profit not followed by keeping on record particulars of expenditure incurred in acquisition and development: *Adhartal Shiksha Samiti (Saraswati Shishu Mandir) Vs. State*, I.L.R. (2001) M.P. 1470

– **Section 50** – Person aggrieved – Meaning of: *The Hind Housing Co-operative Society Ltd., Jabalpur Vs. State of M.P.*, I.L.R. (1988) M.P. 162 (D.B.)

– **Section 50** – Provisions mandatory – Final publication of scheme under section 50(7) – Person aggrieved – Meaning of Natural justice, opportunity of being heard – Only Town and Country Authority has right of hearing under section 52 of the Act – Estoppel – The Govt. not estopped to take action under section 52(1) (c) before coming into force of the scheme: *The Hind Housing Co-operative Society Ltd., Jabalpur Vs. State of M.P.*, I.L.R. (1988) M.P. 162 (D.B.)

– **Section 50 (7)** – Details of land etc. given in the notification with further notice to general public to inspect the scheme during office hours – Opportunity made available to all concerned to file objection – Challenge of *vires* on ground of violation of Section 50(7) – Not tenable: *Achlashrya Developers Vs. The Bhopal Development Authority*, I.L.R. (2004) M.P. 487 (D.B.)

– **Sections 50 and 54** – Final notification issued but no steps taken to implement the scheme within three years statutory period – Section 54 would be attracted and the scheme would stand lapsed: *Burhani Griha Nirman Sahkari Sanstha Maryadit, Indore Vs. State*, I.L.R. (2000) M.P. 342

– **Section 52** – Natural justice opportunity of being heard – Only Town and Country Authority has right of hearing under section 52 of the Act: *The Hind Housing Co-operative Society Ltd., Jabalpur Vs. State of M.P., I.L.R. (1988) M.P. 162 (D.B.)*

– **Section 52 (1) (c)** – Estoppel – The Govt. not estopped to take action under section 52(1) (c) before coming into force of the scheme: *The Hind Housing Co-operative Society Ltd., Jabalpur Vs. State of M.P., I.L.R. (1988) M.P. 162 (D.B.)*

– **Sections 54** – No steps taken to implement the scheme within the stipulated period – Scheme stand lapsed: *Sunder Lal Gandhi Vs. State, I.L.R. (2000) M.P. 150*

– **Section 64**, Air (Prevention and Control of Pollution) Act (XIV of 1981), Sections 19, 21 and Evidence Act, Indian (I of 1872), Section 115 and Constitution of India, Article 14 – Permission and lease granted by district Industries Centre to manufacturer hydrated and burnt lime in industrial area – Petitioner acting thereon and constructing factory – Special Area Development of that area refusing no objection certificate – Principle of promissory estoppel not applicable – Refusal of permission to manufacture hydrated lime in industrial area to petitioner – Other industry granted permission before area was declared as are pollution control area – Refusal of permission to Petitioner not discriminatory: *M/s Chhatisgarh Hydrate Lime Industries Korba Vs. Special Area Development Authority, Korba, I.L.R. (1991) M.P. 263 (D.B.)*

– **Sections 68 (v), (vi) and 64 and Municipalities Act, Madhya Pradesh (XXXVII of 1961), Section 337-A and 328 and Constitution of India, Articles 14 and 226** – State Govt. empowered to issue notification for entrustment of Municipal Council on special Area Development Authority – No reason required to be given – Section 337-A – Issue of notification under section 68(v) and (vi) – Principles of natural Justice and attracted – Section 337-A and 328 – Distinction between – Section 337-A - Not *ultra vires*: *Municipal Council, Harda Vs. State of M.P., I.L.R. (1986) M.P. 175 (D.B.)*

– **Section 73** – 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: *State Vs. Gautam Nagar Housing Society, Bhopal, I.L.R. (2004) M.P. 274 (D.B.)*

– **Section 73** – Power of State Government to give direction – Can only be exercised in the matter of administration and supervision: *State Vs. Gautam Nagar Housing Society, Bhopal, I.L.R. (2004) M.P. 274 (D.B.)*

– **Section 76-BB** – State Govt. has power to hold enquiry into the working of Development Authority as it is a statutory authority – Allotment of land void ab initio –

Other persons' application not considered for allotment – Opportunity of hearing not required for cancellation of such allotment: *Adhartal Shiksha Samiti (Saraswati Shishu Mandir) Vs. State*, I.L.R. (2001) M.P. 1470

Nagariya Sthawar Sampatti Kar Adhiniyam, Madhya Pradesh (XIV of 1964)

– **Levy by the Act** – Falls under entry 49, List II of Seventh Schedule of Constitution – Is not *Ultra Vires*: *Seth Devkumarsinghi Vs. The State of Madhya Pradesh*, I.L.R. (1970) M.P. 215 (D.B.)

– **Levy by the Act** – Is neither a tax on income nor tax on capital value of assets – But is tax on lands and buildings – Falls under entry 49, List II of Seventh Schedule of Constitution – Is not *ultra vires* – Colorable Legislation – Motives impelling levy of tax Is irrelevant and have no bearing – Power of State Legislature to impose tax for general revenue – Not taken away because corporations authorised to impose tax on lands and building – State and Corporation possessing power to impose taxes – No hindrance in subjecting same person or object being subjected to over taxation – Section 4(4) – *Vires* of – Tax when can be said to be confiscatory and invalid – Constitution of India – Article 14 – Act applicable to urban immovable property – Creates no discrimination by itself – Not invalid: *Seth Devkumarsinghi Vs. The State of Madhya Pradesh*, I.L.R. (1970) M.P. 215 (D.B.)

– **Not invalid**: *Seth Devkumarsinghi Vs. The State of Madhya Pradesh*, I.L.R. (1970) M.P. 215 (D.B.)

– **Power of State Legislature to impose tax for general revenue** – Not taken away because corporation authorised to impose tax on lands and buildings: *Seth Devkumarsinghi Vs. The State of Madhya Pradesh*, I.L.R. (1970) M.P. 215 (D.B.)

– **State and Corporation possessing power to impose taxes** – No hindrance in subjecting same person or object being subjected to over taxation: *Seth Devkumarsinghi Vs. The State of Madhya Pradesh*, I.L.R. (1970) M.P. 215 (D.B.)

– **Tax when can be said to be confiscatory and invalid**: *Seth Devkumarsinghi Vs. The State of Madhya Pradesh*, I.L.R. (1970) M.P. 215(D.B.)

– **Sections 1 (4), 2 (b) and 6 and Constitution of India, Articles 258 and 226** – Notification of state Government specifying 'Bhilai Nagar Industrial Township in Durg District' and "rajhara-Jharandalli Mining colony in Durg District" as urban areas of commercial and industrial Importance for the purposes of section 1(4) of the Act – District census book of 1961 for Durg district not indicating as to what areas and villages are included in Bhilai Nagar Industrial township – No other Material on Record

Indicating its Areas – Notification cannot be given effect to that extent – Petitioner not liable to pay property tax in respect of lands and buildings in Bhilai Nagar – Notification clear in respect of “Rajahaara – Jharandalli (mining Colony)” area – Buildings situated within that area liable to property tax – Lands situated within that area vested in the central Government till their assignment in favour of the petitioner on 27-8-1978 – Lands exempted from taxation under Article 258 of the constitution and section 6 of the Act – Petitioner liable to pay property tax on lands for the period after 27-08-1978 only: *Hindustan Steel Ltd., Ranchi Vs. State of M.P., I.L.R. (1984) M.P. 218 (D.B.)*

– **Section 2 (c)** – Chimneys of a factory are ‘building’ – Section 5(ii), proviso (a) – Chimneys are not ‘Machinery’ – Section 4 – Each building has to be taken as a separate unit for application of rate of tax – Section 5(i), Proviso and section 5(ii)(a) – Re-determination of annual letting values of lands or buildings – Omission to record opinion of Property-tax Officer – Does not invalidate assessment proceedings – Determination of annual letting value of a building – Various modes of – Hotel building and factory building – Mode of determining annual letting value – Hypothetical rent not possible – Assessment can be made on the basis of capital value – Classification reasonable and not discriminatory – Present cost of erecting the building is relevant and not the original costs of erecting the building is relevant and not the original costs of erection – Valuation given in balance sheet cannot be the basis 1/20th of estimated present costs of erection and estimated value of land appurtenant determines annual letting value of factory building – Constitution of India – List II, Entry 49 – The word ‘factory’ in Section 5(ii)(a) – Connotation of – Imposition of taxes on lands and buildings – Not beyond competence of Legislature – Aggrieved party can challenge the assessment: *The Municipal Council, Satna Vs. M/s Birla Jute Manufacturing Co. Ltd., Satna, I.L.R. (1983) M.P. 366 (D.B.)*

– **Section 4** – Each building has to be taken as a separate unit for application of rate of tax: *The Municipal Council, Satna Vs. M/s Birla Jute Manufacturing co. Ltd., Satna, I.L.R. (1983) M.P. 366 (D.B.)*

– **Section 4 (4)** – *Vires of: Seth Devkumarsinghi Vs. The State of Madhya Pradesh, I.L.R. (1970) M.P. 215(D.B.)*

– **Section 5 (i) (ii) (a), Proviso** – 1/20th of estimated present costs of erection and estimated value of land appurtenant determines annual letting value of factory building: *The Municipal Council, Satna Vs. M/s Birla Jute Manufacturing co. Ltd., Satna, I.L.R. (1983) M.P. 366 (D.B.)*

– **Section 5 (i) (ii) (a), Proviso** – Classification reasonable and not discriminatory: *The Municipal Council, Satna Vs. M/s Birla Jute Manufacturing co. Ltd., Satna, I.L.R. (1983) M.P. 366 (D.B.)*

– **Section 5 (i) (ii) (a), Proviso** – Determination of annual letting value of a building – Various modes of – Hotel building and Factory building – Mode of determining annual letting value: *The Municipal Council, Satna Vs. M/s Birla Jute Manufacturing co. Ltd., Satna, I.L.R. (1983) M.P. 366 (D.B.)*

– **Section 5 (i) (ii) (a), Proviso** – Hypothetical rent no possible – Assessment can be made on the basis of capital value: *The Municipal Council, Satna Vs. M/s Birla Jute Manufacturing co. Ltd., Satna, I.L.R. (1983) M.P. 366 (D.B.)*

– **Section 5 (i) (ii) (a), Proviso** – Present cost of erecting the building is relevant and not the original costs of erection – Valuation given in balance-sheet cannot be the basis: *The Municipal Council, Satna Vs. M/s Birla Jute Manufacturing co. Ltd., Satna, I.L.R. (1983) M.P. 366 (D.B.)*

– **Section 5 (i) (ii) (a), Proviso** – Re-determination of annual letting value of lands or buildings – Omission to record opinion of property-tax Officer – Does not invalidate assessment proceedings: *The Municipal Council, Satna Vs. M/s Birla Jute Manufacturing co. Ltd., Satna, I.L.R. (1983) M.P. 366 (D.B.)*

– **Section 5 (ii) Proviso (a)** – Chinmeys are not ‘machinary’: *The Municipal Council, Satna Vs. M/s Birla Jute Manufacturing co. Ltd., Satna, I.L.R. (1983) M.P. 366 (D.B.)*

– **Section 5 (ii) Proviso (a)** – Imposition of taxes on lands and buildings – Not beyond competence of Legislature – Aggrieved party can challenge the assessment: *The Municipal Council, Satna Vs. M/s Birla Jute Manufacturing co. Ltd., Satna, I.L.R. (1983) M.P. 366 (D.B.)*

– **Section 9** – Objection preferred against notice of demand – Opportunity to produce evidence not given – Order passed liable to be quashed: *Munnalal Vs. B.S. Baswan, Addl. Property Tax Commissioner, M.P., Gwalior, I.L.R. (1980) M.P. 197 (F.B.)*

– **Rule 4 (9)** – Is a special rule of evidence exclusively for the purpose of the Act – Oral Partition among members of joint Hindu Family not rendered invalid – Rule is not invalid – Nagariya Sthawar Sampatti Kar Adhiniyam, M.P., 1964 – Section 9 – Objections preferred against notice of demand – Opportunity to produce evidence not given – Order passed liable to be quashed – Section 9 – Objection preferred against notice of demand – Opportunity to produce evidence not given – Order passed liable to be quashed: *Munnalal Vs. B.S. Baswan, Addl. Property Tax Commissioner, M.P., Gwalior, I.L.R. (1980) M.P. 197 (F.B.)*

– **Rule 4 (9)** – Oral Partition among members of joint Hindu Family not rendered invalid: *Munnalal Vs. B.S. Baswan, Addl. Property Tax Commissioner, M.P., Gwalior, I.L.R. (1980) M.P. 197 (F.B.)*

– **Rule 4 (9)** – Rule is not invalid: *Munnalal Vs. B.S. Baswan, Addl. Property Tax Commissioner, M.P., Gwalior, I.L.R. (1980) M.P. 197 (F.B.)*

Narcotic Drugs and Psychotropic Substances Act (LXI of 1985)

– **Sections 8, 18** – Illegal possession of opium – Duty of prosecution to prove intelligent and actual possession of accused – Seizure from house of accused not proved – Officer making seizure contradicted by police constable – Conviction and sentence set aside. *Ghanshyam Vs. State of M.P., I.L.R. (2005) M.P. 554*

– **Sections 8, 18 and 25** – Conviction of accused under – Justification of – Section 18 – Word ‘Possession’ contemplated in Elements of – Sections 8 and 25 – Mere evidence against accused about his ownership of car used in transporting contraband articles – Not sufficient to sustain charge under – Term ‘Knowingly’ in – Significance of in offence punishable under – Evidence Act, Indian – Section 8 – Conduct of accused – When considered as material – Criminal procedure Code, 1973 – Section 313 – Scope of – Statement of accused recorded under Not alone sufficient to base conviction – Defense taken by one accused – Not to be treated as evidence against the co-accused: *Dinesh Vs. Union of India, I.L.R. (1990) M.P. 450*

– **Sections 8, 18, 50** – Seizure of contraband – Accused not informed about right to get himself searched in presence of a gazetted officer or a Magistrate – Seizure witness admitted pendency of litigation between him and the accused – Not an independent witness – Prosecution case doubtful – Accused entitled to be acquitted. Narcotic Drugs and Psychotropic Substances Act (LXI of 1985)–Sections 8, 18, 50 - Seizure of contraband - Accused not informed about right to get himself searched in presence of a gazetted officer or a Magistrate- Seizure witness admitted pendency of litigation between him and the accused - Not an independent witness - Prosecution case doubtful-Accused entitled to be acquitted. *Devilal Vs. State of M.P., I.L.R. (2002) M.P. 728*

– **Sections 8, 20 (b) (i), 42 and 50** – **Seizure of 32 kg. and 17 kg. of Ganja** – Conviction and sentence of R.I. for 3 years and fine Rs. 2000/- – Appeal – Illegal possession of contraband “Ganja” – Entry, search, seizure and arrest without authorization or warrant – Pre-conditions compliance of – Provision comes into play where the offence is committed in any building, conveyance or enclosed premises – Search and seizure in the public place – Perse section 42 has no application – Right to be searched in presence of prescribed authority – Applies only in case of personal search of a person – Does not extend to search of a vehicle or a container or a bag – Seizure in huge quantity – No substance in the plea for altering sentence to the period already under gone – No infirmity in the conclusion of trial court and the High Court – Appeal dismissed: *Rajendra Vs. State of M.P., I.L.R. (2004) M.P. 212 (D.B.)*

– **Sections 8, 20 (b) (1), 50** – Appellant convicted under Section 20(b)(1), read with Section 8 – Compliance of mandatory provision of Section 50 of the Act was not fully made – Panch witness not supported the statement that the accused was apprised of his right to be searched before a Magistrate or a Gazetted Officer – Witness not declared hostile by the prosecution – Weighment Panchnama raises serious doubt – Conviction of accused/appellant cannot be sustained: *Anil Kumar Gupta Vs. State, I.L.R. (1999) M.P. 501*

– **Sections 8, 21, 50** – Possession of contraband – Search and seizure – Consent to search given in writing by accused in Hindi – Though not in fluent manner but does not mean that he did not know Hindi or its contents – Conviction affirmed sentence modified: *Sheetal Dev Vs. State of M.P., I.L.R. (2005) M.P. 890*

– **Sections 8 and 25** – Mere evidence against excused about his ownership of car used in transporting contraband articles Not sufficient to sustain charge under: *Dinesh Vs. Union of India, I.L.R. (1990) M.P. 450*

– **Sections 9, 76 and Narcotic Drugs and Psychotropic Substances Rules, 1985, Rule 2 (c)** – Chemical Examiner – No provision debarring chemical analysis of unlawfully possessed opium by any other laboratory except mentioned in rule 2(C) – Chemical analysis can be made at any laboratory in country to expedite investigation and trial : *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) M.P. 358 (F.B.)*

– **Section 18** – Accused alleged to be in possession of opium – Recovered substances sent in sealed packet to Chemical Laboratory – But, nomenclature of seal missing in seizure memo and forwarding letter – Sealed substances reached laboratory after more than one month – No disclosure by any witness where it remained in the meantime were – Contradiction in place where substances was sealed – Held – prosecution failed to establish beyond reasonable doubt that article recovered from the accused remained in properly sealed condition and without interference reached the laboratory – Conviction accused liable to be set-aside: *Charanlal @ Veeralal Vs. State of M.P., I.L.R. (1997) M.P. 588*

– **Section 18** – 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 intact till delivery to the chemical Examiner: *Anand Bairagi Vs. State of M.P., I.L.R. (2004) M.P. 72*

– **Sections 18, 37, 50** – Grant of Bail – Offence under Section 18 – Plea in terms of Section 50 raised by accused – Court must decide the question of bonafides of plea and hold an enquiry in that regard before coming to conclusion that jurisdiction to release accused is not curbed by limitations contemplated under Section-37: *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) M.P. 358 (F.B.)*

– **Sections 18, 55** – Seals broken, packets of 24 gms. and 26 gm. prepared and again sent to FSL Sagar – Variation of date – Cannot be ignored as typographical error in such a grave case: *Anand Bairagi Vs. State of M.P., I.L.R. (2004) M.P. 72*

– **Sections 18, 55 and Criminal Procedure Code, 1973, Section 374(2)** – 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*

– **Sections 20 (a) (6) (i)** – Direction issued to prosecute the land owner – Director Police directed to take action against those responsible for miscarriage of justice: *Harnarayan Vs. State, I.L.R. (2004) M.P. 389*

– **Sections 20 (a) (6) (i)** – Seizure of 33 Kg. of ‘Ganja’ and unlawful cultivation of ganja – Conviction and sentence – Appeal – None of the accused present in the house at the time of seizure: *Har Narayan Vs. State, I.L.R. (2004) M.P. 389*

– **Section 20 (b) (a)** – Even in respect of offence relating to Ganja, the regours contained in Section 37(i)(b) would apply: *Munnalal Tiwari Vs. State of M.P., I.L.R. (1998) M.P. 147 (D.B.)*

– **Sections 20 (b) (i), 50, 57 and Criminal Procedure Code, 1973 – Section 374 (2)** – 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*

– **Sections 20, 28, 29 and 57** – Seizure of ‘Ganja’ from the possession of appellant – Report of arrest and seizure sent to superior officer by investigation officer who was also present at the time of seizure – Substantial compliance of Section 57 – Chemical analysis shows samples contained contraband – Conviction and sentence upheld: *Kallu Alias Dhruv Kumar Rai Vs. The State of M.P., I.L.R. (2002) M.P. 975*

– **Section 32-A** and M.P. Prisoner's Release on Probation Act, 1954 – Question whether person convicted under N.D.P.S. Act is governed by provisions of Act, 1954 – Petitioner convicted under Section 8 read with Section 18 of N.D.P.S. Act – Application for release on license under Act, 1954 was made before Govt. – Writ Petition of habeas corpus and release on bail filed during pendency of application for release on license – Held – Word Suspension in Section 32-A cannot be given restricted meaning – While suspension cannot be suspended before it attains finality then it cannot be suspended after it attains finality – Judgment passed in Jagtar Singh approved – Petitioner not entitled to be released on probation: *Rajendra Singh Vs. State of M. P., I.L.R. (1994) M.P. 289 (F.B.)*

– **Section 36-A (1) (c)**, Criminal Procedure Code, 1973 – Section 167(2) Proviso – Charge sheet not filed within 90 days of the arrest of accused – Accused not entitled for bail as per provision of Section 167(2) of Criminal Procedure Code – Special Court and High Court equally placed in respect of competence under Section 37 of NDPS Act – Proviso to Section 167(2) of Criminal Procedure Code not applicable: *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) M.P. 358 (F.B.)*

– **Section 36-D** – Cognizance – Means taking judicial notice of an offence which implies application of judicial mind for the purpose of finding out whether an offence has been committed or not – Transitory provision – Session Court trying offence under the transitory provisions of Section 36-D of the N.D.P.S. Act – Can be said to be have taken cognizance thereof only when they have applied their mind for the purpose of framing charge: *Alpesh Vs. Central Narcotic Bureau, Ratlam, I.L.R. (1999) M.P. 59*

– **Section 36-D** – 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.)*

– **Section 36-D** – Transitory provision – Session Court trying offence under the transitory provisions of Section 36-D of the N.D.P.S. Act – Can be said to be have been cognizance thereof only when they have applied their mind for the purpose of framing charge: *Alpesh Vs. Central Narcotic Bureau, Ratlam, I.L.R. (1999) M.P. 59*

– **Sections 36 and 36-D** – Constitution of Special Court and transitional provisions – Notification issued in super session of earlier one constituting Special Court in all Sessions Divisions 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: *Barji Vs. State, I.L.R. (2000) M.P. 1018 (D.B.)*

– **Sections 36, 36-D**, Criminal Procedure Code, 1974, Section 9 – Constitution of Special Court to try offences – Letters received for establishment of Court to deal

with cases under S.T. & S.C. (Prevention of Atrocities) Act and for direction that in absence or leave of Special Judge, other A.S.J. may hear bail petitions under N.D.P.S. Act – Held – Section 36-D of Act, 1985 empowers Sessions Court to try offences until Special Court is established – Sessions Court would include Additional Sessions Judge – A.S.J. has jurisdiction to try offence under the 1985 Act: *Bar Association Jhabua Vs. State of M.P.*, I.L.R. (1994) M.P. 344 (D.B.)

– **Sections 36, 37** – Powers of Special Court and High Court – Not effected by provisions of Section 36-A: *Ramdayal Vs. Central Narcotic Bureau*, I.L.R. (1993) MP 358 (F.B.)

– **Section 37 and Cr. P.C., 1973 (II of 1974), Sections 437 & 439** – Jurisdiction – While deciding the jurisdiction the most important point would be the place where the alleged offence has taken place and not the Court which has to conduct the trial in respect of such offence – Criminal Procedure Code, 1973 – Sections 437 and 438 – Bail – Applicant has preferred an application for bail before the Special Court at Bhopal – That would not restrict his right to approach this Bench (at Indore) for bail: *Motilal Vs. State of M.P.*, I.L.R. (1998) M.P. 793

– **Section 37** – Bail-Grant of – Reasonable ground – Judicial discretion has to be exercised independently – Burden is not on accused to prove his innocence – Court has to act on the basis of material available in the Case Diary: *Ramdayal Vs. Central Narcotic Bureau*, I.L.R. (1993) MP 358 (F.B.)

– **Section 37, Criminal Procedure Code, 1973, Section 437** – Bail – House from where opium seized, belongs to applicant's father-in-law – At the time of incident applicant's husband ran away – Opium not seized at instance of applicant – There are reasonable grounds for believing that applicant is not guilty of such offence – Entitled for bail: *Smt. Jintabi Vs. State of M.P.*, I.L.R. (1996) M.P. 563

– **Sections 37 and 50, Criminal Procedure Code, 1973, Section 439** – Compliance or non-compliance of Section 50 of the Act does not come up for consideration as a relevant factor at the stage of bail plea – Bail plea has to rest on Section 439 of the Code read with Section 37 of the Act: *Salim Vs. State of M.P.*, I.L.R. (1996) M.P. 232

– **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

– **Sections 37, 50** – Waiver of limitations contemplated under Section 37 – Neither High Court, nor Special Court has jurisdiction to accept the plea without

investigating its truth and validity: *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) M.P. 358 (F.B.)*

– **Sections 42, 50** – Appeal against conviction under section 20(b)(ii)/8(c) – Conviction challenged on ground of non compliance of procedure prescribed under Sections 42, 50 – ASI raiding the house of the appellant on the information of sale of illicit liquor – Recovery of charas from the pocket of accused during search – No prior information to police officer regarding commission of offence under Act – Provisions of Sections 42, 50, not applicable: *Mansharam Vs. The State of M.P., I.L.R. (1993) M.P. 279*

– **Sections 42, 50** – Search and seizure – Ganja seized from accused by Sub Inspector – As per prosecution, consent of accused was obtained and consent letter was also prepared – No oral evidence on record that consent was obtained after informing accused about her right under section 50(1) of the Act – Held – Compliance of Section in Mandatory – Non Compliance would be fatal to the prosecution and accused is entitled to acquittal – Appeal Allowed: *Shanta Bai Vs. State of M.P., I.L.R. (1997) M.P. 558*

– **Section 50** – Search and seizure – Nothing on record to so that right of accused to get himself searched before Magistrate or Gazetted Officer was explained to him – Neither accused was informed of his right in a language known to him – Provisions of Section 50 are mandatory – Its non-compliance makes conviction of accused, improper: *Raju S/o Balaji Kulkarni Vs. State of M.P., I.L.R. (1995) M.P. 337*

– **Sections 52, 57** – Grounds of arrest not disclosed to the accused – Charas seized not forwarded to officer incharge of police station or officer empowered under Section 53 – Full report of arrest and seizure not forwarded to Superior Officer within forty eight hours – Provisions of Sections 52 and 57 are mandatory in nature – Accused entitled for acquittal: *Mansharam Vs. The State of M.P., I.L.R. (1993) M.P. 279*

– **Section 53, Evidence Act Indian, 1872, Section 25** – Police Officer – Officer invested with the powers of an Officer-in-Charge of a police station under Section 53 of the Act – Is not a police officer: *Ramdayal Vs. Central Narcotic Bureau, I.L.R. (1993) M.P. 358 (F.B.)*

– **Section 55** – Illegal posse ssion 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: *Anand Bairagi Vs. State of M.P., I.L.R. (2004) M.P. 72*

– **Section 55** – 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*

National Council for Teacher's Education Act (XXV of 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: *National Council For Teachers Education Vs. Chouhan Education Society, I.L.R. (2000) M.P. 569 (D.B.)*

National Highways Act (XLVIII of 1956)

– **Sections 4 and 2, Municipal Corporation Act, M.P. (XXIII of 1956)**, Section 82 (1)(G) and Motor Vehicles Act (IV of 1939), Section 74 read with Rule 287 of the Motor Vehicles Rules, M.P., 1974 – Collector putting ban on movement of heavy vehicular traffic on Great Eastern Road, Raipur passing through Municipal Corporation area during day time – Justification of – Alternative place for earning their livelihood being made available to petitioners – Grievance does not subsist: *Rajbandha Maidan Vyavasayee Samiti, Raipur Vs. Collector, Raipur, I.L.R. (1986) M.P. 111 (D.B.)*

– **Sections 4 and 2, Municipal Corporation Act, M.P. (XXIII of 1956)**, Section 82 (1) (G) and Motor Vehicles Act (IV of 1939), Section 74 read with Rule 287 of the Motor Vehicles Rules, M.P., 1974 – Constitution of India – Article 21 – Parts of National Highway passing through Municipal Corporation area vest in Municipal Corporation – State Govt. or authority authorized by it has power to regulate traffic on it – Collector putting ban on movement of heavy vehicular traffic on Great Eastern Road, Raipur passing through Municipal Corporation area during day time – Justification of – Alternative place for earning their livelihood being made available to petitioners – Grievance does not subsist: *Rajbandha Maidan Vyavasayee Samiti, Raipur Vs. Collector, Raipur, I.L.R. (1986) M.P. 111 (D.B.)*

National Security Act (LXV of 1980)

– **Sections 2 and 3** – Detenue acquitted in 13 out of 14 cases and only one criminal case pending against him – That fact was not placed before detaining authority – Order of detention bad: *Smt. Geeta Sahu Vs. District Magistrate, I.L.R. (2002) M.P. 26*

– **Sections 2 and 3** – Maintenance of public order – Offence committed in the year 1985 as also the Rojnamcha report cannot be made foundation for preventive

detention under the Act – If any serious offence is committed the same would be matter of Law and Order but not that of preventive order – Case not proximate to the date of order – Could not be taken into consideration: *Smt. Geeta Sahu Vs. District Magistrate, I.L.R. (2002) M.P. 26*

– **Section 3 and Criminal Procedure Code, 1973 (II of 1974)**, Sections 107, 116 and 151 – Person against whom detention order passed is already in Jail pursuant to interlocutory order passed in proceedings under Section 107 and 116 – Detention order not disclosing awareness of this fact – Order cannot be justified and liable to be quashed: *Dharmendra Singh Vs. The District Magistrate, Satna, I.L.R. (1983) M.P. 297 (D.B.)*

– **Section 3** – Detention order – Duty of state to mention details in return to justify compliance with provision of statute: *Smt. Zebunnisa Vs. District Magistrate, Jabalpur, I.L.R. (1994) M.P. 157 (D.B.)*

– **Section 3** – Detenu in jail for last 14 months immediately before his detention – Fact that detenu was already in jail and likely to be released on bail – Not placed before Magistrate passing an order of detention – If State thinks that he does not deserve bail – The State could oppose the grant of bail – Subjective satisfaction – Bald statement that the person would repeat his criminal activities would not be enough – There must be credible information or cogent reasons on record that it would be prejudicial to the interest of public order if detenu, is released on bail – Detention order quashed: *Kamla Pandey Vs. State of M.P., I.L.R. (1995) M.P. 578 (D.B.)*

– **Section 3** – Order of Preventive Detention – Affidavit filed by District Magistrate mentioning “Prevent such unlawful activities and to maintain Public Law and Order in the interest of Public at large” – Public Law and Public Order foreign to detention jurisprudence – Use of above expression do not suggest that order was passed to prevent detenu acting in manner prejudicial to maintenance of Public Order – Satisfaction of District Magistrate regarding disturbance of Public Order not revealed in affidavit – There is complete non-application of mind – Order of detention quashed: *Smt. Zebunnisa Vs. District Magistrate, Jabalpur, I.L.R. (1994) M.P. 157 (D.B.)*

– **Section 3** – Preventive detention – Grounds are not duly supported by relevant documents – Only entries from the Crime Register not sufficient to substantiate and even disclose, prima facie, that the allegations against the detenu were true: *Veerendra Singh Vs. State of M.P., I.L.R. (1996) M.P. 93 (D.B.)*

– **Section 3** – Preventive detention – Preventive and prohibitory proceedings were taken against detenu under Criminal Procedure Code – That would not sufficient to take action against the detenu: *Veerendra Singh Vs. State of M.P., I.L.R. (1996) M.P. 93 (D.B.)*

– **Section 3** – Preventive detention – Public Order – Act directed against the individuals and not the public in general – Cannot be said to be a case of public disorder: *Shishupal Singh Vs. The District Magistrate Damoh, I.L.R. (2004) M.P. 51 (D.B.)*

– **Section 3** – Time lag of seven months between the last alleged prejudicial activity and the date of detention order – No continuity or proximity proved – Detention order vitiated – Cannot be allowed to stand: *Shishupal Singh Vs. The District Magistrate Damoh, I.L.R. (2004) M.P. 51 (D.B.)*

– **Section 3 (2)** – Detenu threatened presiding officers of the Courts – Creating an atmosphere of panic – Desiring they should work as per his wishes – Acts prejudicial to maintenance of public order – Such persistent actions – Detrimental to functioning of Court – Grave repercussions and feeling of alarm in large Sections of society created – Undermined dignity of Courts – Plea of false complaints against detenu – Not believed – Cumulative effect of such actions – Not only amounts to being prejudicial to law and order but also to public order – Held – Subjective satisfaction leading to detention order is justified: *Raghubar Dayal Sharma Vs. State of M.P., I.L.R. (1995) M.P. 569 (D.B.)*

– **Section 3 (2)** – Preventive detention – Affidavit of District Magistrate Exhibits sorry state of affairs – Neither FIR nor entries in crime register produced before detaining authority – Alleged report of Superintendent of Police that detenu is absconding after committing murder also found to be incorrect and misleading – Subjective satisfaction – Detention vitiated as one of the ground of detention is factually wrong and misleading: *Smt. Raheeman Bi Vs. District Magistrate, Jabalpur (M.P.), I.L.R. (1995) M.P. 187 (D.B.)*

– **Section 3 (2)** – Previous conduct, ground of detention – Validity – No satisfactory explanation given for undue and long delay in passing of detention order – Alleged report of superintendent of Police that detenu is absconding after committing murder fails to disclose the period since he was absconding – No proximity between crime committed and order of detention – Detention order quashed: *Smt. Raheeman Bi Vs. District Magistrate, Jabalpur (M.P.), I.L.R. (1995) M.P. 187 (D.B.)*

– **Sections 3 (2), 3 (3), 3 (4) and 8** – Report to State Govt. forthwith, whether detenu taken into custody or not – Similarly State Govt. to grant approval within the short period prescribed – Report to State Govt. and its approval before detenu taken in custody in execution of order of detention not illegal or invalid – Constitution of India – Article 22(5) and Section 11 of the National Security Act – Advisory Board not duty bound to ask detenu as to why representation not made to state Govt.: *Hira Bai Vs. State of Madhya Pradesh, I.L.R. (1988) M.P. 61 (D.B.)*

– **Sections 3 (2), 8 (1), 9 and 12 (1) and constitution of India, Article 22 (5)**
– Detenu's representation has to be disposed of expeditiously and with utmost

promptitude – Undue delay renders detention illegal and invalid – Consideration of representation by detaining authority is deferent from its consideration by advisory Board at the time of reference under section 9 – Detenu's representation not disposed of by detaining authority for want of comments from District magistrate for about a month detention order by detaining authority as well as confirmatory order by state Govt. declared inoperative and un-enforceable: *Alok Pratap Singh Vs. State of M.P.*, I.L.R. (1990) M.P. 416 (D.B.)

– **Sections 3 and 8 (2)** – Preventive detention – Detenu has to be informed of the reason for his detention – If any statement recorded for subjective satisfaction that has also to be supplied to petitioner – Non compliance of mandatory provision – Statement recorded not supplied to petitioner – High Court constitutionally bound to set aside preventive detention howsoever notorious detenu may be: *Makkhan Vs. District Magistrate, Gwalior*, I.L.R. (1992) M.P. 824 (D.B.)

– **Sections 10 and 11 and Constitution of India, Article 22 (4) (a) and (5)** – Failure of Advisory Board to discharge its duties as contemplated under sections 10 and 11 of the Act and continued detention of detenu petitioner under the Act – Is unconstitutional and Void: *Siroman Singh Chouhan Vs. State of M.P.*, I.L.R. (1991) M.P. 217 (D.B.)

– **Sections 10, 11 and 13** – Order confirming detention passed only on the basis of recommendation of Advisory Board and without considering the record of Advisory Board – Violation of mandatory requirement – Order of confirmation illegal: *Lala @ Ahmed Vs. State*, I.L.R. (2002) M.P. 35 (D.B.)

– **Section 11 – Constitution of India – Articles 14, 21, 22, 22 (3), 22 (4), 22 (5) and 39A** – Procedure of Advisory Board – Petitioner detained under National Security Act – Grounds of detention served on him – Petitioner did not make a written representation – Advisory Board after giving personal hearing held that there is sufficient cause for detention – State Govt. confirmed the detention – Detention challenged on the ground that Board had an obligation to ask whether he requires assistance of a friend to submit a written representation – Held – Absence of assistance of a friend where the detenu has not made such demand cannot import unreasonableness or arbitrariness in the proceedings of Board – Board has not failed to perform its statutory duty by not putting questions in relation to presentation of representation and requirement of friend: *Shakir Vs. State of M.P., Through Collector Morena*, I.L.R. (1994) M.P. 19 (F.B.)

– **Sections 12, 13** – Prevention detention is distinct for punitive detention – Underlying object is to prevent detenu from activities prejudicial to the maintenance of public order and not to punish him – Impugned order quashed: *Sharad Dadu Vs. District Magistrate, Bhopal*, I.L.R. (1992) M.P. 4 (D.B.)

– **Section 15** – Temporary release of detainee on parole has to fail within the period of detention already fixed: *Sharad Dadu Vs. District Magistrate, Bhopal*, I.L.R. (1992) M.P. 4 (D.B.)

National Transport Service Co-operative Society

– **Bye-law 19** – Does not take away power to call meeting at any time – Bye-laws 19 and 21 – To be read together – Posting of notice in sufficient time to give notice of 15 days – Complaint of non-receipt on notice not valid – Bye-law 19 – Provision mandatory as regards period of notice: *Bahorilal Gupta Vs. Keshav Prasad Dubey*, I.L.R. (1963) M.P. 1007 (D.B.)

– **Bye-law 19** – Provision mandatory as regards period of notice: *Bahorilal Gupta Vs. Keshav Prasad Dubey*, I.L.R. (1963) M.P. 1007 (D.B.)

– **Bye-laws 19 and 21** – To be read together – Posting of notice in sufficient time to give notice of 15 days – Complaint of non-receipt of notice not valid: *Bahorilal Gupta Vs. Keshav Prasad Dubey*, I.L.R. (1963) M.P. 1007 (D.B.)

Natural Justices

– **Aim of the principles of natural justice:** *Rajendrasingh Vs. N.K. Shejwalker*, I.L.R. (1976) M.P. 836 (D.B.)

– **Cannot over** – Ride statutory provision – But can operate in areas not covered by any law: *Rajendrasingh Vs. N.K. Shejwalker*, I.L.R. (1976) M.P. 836 (D.B.)

– **Function administrative** – Reasons for order to be given if statute requires: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh*, I.L.R. (1969) M.P. 550 (D.B.)

– **Impartiality is essential characteristic:** *Ramnetra Vs. The District Superintendent of Police, Chhindwara*, I.L.R. (1967) M.P. 879 (D.B.)

– **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 (D.B.)

– **Order passed resulting in pecuniary loss** – No show cause notice given – Order wholly unjustified and against principles of the natural justice: *Jawaharlal Jain Vs. The Administrator Municipal Corporation, Jabalpur*, I.L.R. (1988) M.P. 432

– **Personal hearing not an essential postulate of natural justice:** *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh*, I.L.R. (1969) M.P. 550 (D.B.)

– **Principle not applicable to administrative functions:** *Sardar Ajitsingh Vs. The Chief Conservator of Forests, M.P. Rewa, I.L.R. (1967) M.P. 850 (D.B.)*

– **Principles of** – Applicable to administrative orders also order of state Govt. must contain reasons state Govt. holding an experte inquiry against the petitioner material collected by enquiry officer not disclosed to petitioner report of inquiry also not given petitioner denying charges leveled against him and submitting explanation – No further inquiry held – Order of removal not containing reasons for rejection of petitioner's explanation – Procedure violative of principles of natural justice – Order liable to be quashed: *Bansmani Prasad Vs. State of M.P., I.L.R. (1982) M.P. 328 (D.B.)*

– **Principles of** – Applicable to *Quasi-Judicial* and administrative functions – Rule of reasons – Connotation of: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450 (F.B.)*

– **Principles of** – Applies also to cases of termination to appointments already made: *M.P. Khadya Avam Nagrikpurti (Karyapalik) Karmchari Sangh, South T.T. Nagar, Bhopal Vs. State of M.P., I.L.R. (1985) M.P. 602*

– **Principles of** – Essential requirements – Rules of natural justice very according to circumstances: *Surendra Kumar Patel Vs. The University of Jabalpur, I.L.R. (1973) M.P. 587 (D.B.)*

– **Principles of** – Hearing must be by the authority passing the order: *M/s Kumar Krishnadas Firm, Indore Vs. The Divisional Engineer Telephone, Indore, I.L.R. (1985) M.P. 205 (D.B.)*

– **Principles of** – Its applicability to orders passed by Govt. in administrative capacity – state Govt. passing an order Revoking allotment of land made in favour of the petitioner society earlier, without affording opportunity to society – Order violates principles of natural justice and cannot be sustained: *Awat Rahat Griha Nirman Sahkari Samiti Maryadit Bhopal Vs. State of M.P., I.L.R. (1984) M.P. 496 (D.B.)*

– **Principles of** – Not applicable to the exercise of legislative power: *Hemant Kumar Gupta Vs. The President, District, Co-Operative Central Bank Ltd., Ambikapur, District Surguja, I.L.R. (1982) M.P. 694 (D.B.)*

– **Principles of** – 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. State of M.P., I.L.R. (1963) M.P. 1021 (D.B.)*

– **Question whether requirements of natural justice have been met** – Depends upon facts and circumstances of the case and procedure adopted in the background of statute and the rules framed: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Requirements** – No inflexible rule of universal application: *Rameshwar Datta Mehta Vs. Union of India*, I.L.R. (1974) M.P. 938 (D.B.)

– **Requirements of** – Central Excise and Salts Act, 1944 – Section 4(a) – Assessable value how to be determined – Sales of defective rods – Could not be basis for finding whole sale cash price of good quality rods – Things to be considered in determining assessable value of proper rods – Central Excise Rules, 1944 – Rule 173 (Q) and 173(c) – Rule 173(Q)(1)(a) and (d) – Conditions necessary for applicability – Rule 173-C – Does not make a person liable to penalty when information supplied is false – Omission to enter correct price – Is not contravention of rule 173-C within meaning of Rule 173-Q – Central Excise and Salt Act – Section 40(2) – Expression “other legal proceedings” in – Ambit and scope of – Conditions under which rule applies – provision not applicable to proceedings taken under Rule 173-Q read with Section 33 of the Act – Section 35(2) – Word “Final” in – Meaning of – Does not prohibit taking of original proceedings – Excise Authorities – In assessing excise duty – Authorities perform quasi-judicial power – Can fix valuation only according to Section 4 of the Acts and directions of Board regarding valuation not binding on them – Constitution of India – Article 226 – Existence of alternative remedy – Can be a circumstances to be considered in exercising – Discretion – Does not take away jurisdiction of High Court of interference in suitable cases: *Universal Cables Ltd. Satna Vs. Union of India*, I.L.R. (1978) M.P. 406 (D.B.)

– **Rule of** – Applicable to administrative order – Also require reasons in support of the orders passed by quasi-judicial authority or Tribunal: *M.G. Panse Vs. S.K. Sanyal*, I.L.R. (1980) M.P. 718 (D.B.)

– **Rule of** – Opportunity to be heard orally given but not availed of – Grievance cannot be made: *Mohammad Yakub Ansari Vs. Devi Ahilya Vishwavidyalaya, Indore*, I.L.R. (1987) M.P. 617 (D.B.)

– **Rule of**, not codified: *Balkrishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University, Rewa*, I.L.R. (1979) M.P. 289 (F.B.)

– **Rules of** – Order having adverse consequences – Appealable – Reasons should be given: *Kankar Munjare Vs. State of M.P.*, I.L.R. (1985) M.P. 1 (D.B.)

– **Rules of natural justice** – Vary according to constitution of statutory bodies and rules prescribed by legislature under which they act – Rules under Stamp Act – Rule 27 – Order of revocation – Collector not obliged to act judicially – Order not open to appeal or revision – Order only executive or administrative – Not open to review by writ of certiorari – Power of revocation – Not subject to any pre-condition – No notice necessary – Matter rests on subjective satisfaction of Collector – Stamp Vendor’s licence – Does not create right but is a mere privilege – Rule 27 – Vires of: *Sohanlal Gupta Vs. Collector Raipur*, I.L.R. (1971) M.P. 627 (D.B.)

– **Show cause notice held to be obligatory:** *Hukumchand Jain Vs. State of M.P., I.L.R. (1988) M.P. 143 (D.B.)*

– **Termination of appointments without affording reasonable opportunity to represent against it violates principles of natural justice** – Termination order liable to be quashed: *M.P. Khadya Avam Nagrikpurti (Karyapalik) Karmachari Sangh, Sough T.T. Nagar Vs. State of M.P., I.L.R. (1985) M.P. 602*

Nazul Rules

– **Not statutory rules:** *The State of M.P. Vs. Atmaram, I.L.R. (1970) M.P. 452*

– **Rule 17** – Plaintiff in possession of land – Municipal Board cannot take action except by a suit for dispossession unless action is justified under some law Rule applies when encroachment is on public street or public place – Notice can be issued only in that circumstances – Bhopal State Municipalities Act – Section 2(1) and (1) – Land owned by Government but vested in the Board for management – Land does not become public place or public street – Section 330 – Order or direction in excess of statutory powers of Board – Such order or direction can be challenged in a suit and the section will not apply – Board issuing notice without considering whether erection of building is offence under section 174 – Notice and direction in the notice are unauthorized – Statutory discretion how to be exercised: *Moulvi Sarruddin Vakil Vs. The Municipal Board, Bhopal, I.L.R. (1975) M.P. 1068*

– **Rule 17** – Rule applies when encroachment is on public street or public place – Notice can be issued only in that circumstances: *Moulvi Sarruddin Vakil Vs. The Municipal Board, Bhopal, I.L.R. (1975) M.P. 1068*

Negligence

– **A new duty situation can be recognised by Courts** – To determine whether such duty exists – Guidance can be taken from principles stated by Lord atkin: *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. Mst. Basantibai, I.L.R. (1976) M.P. 508 (D.B.)*

– **Both bus drivers not making room to pass by** – Both are liable: *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha, I.L.R. (1970) M.P. 462 (D.B.)*

– **Collision of two Cars** – Two Parties moving in relation to one another as to involve risk of collision – Each owes duty to move with care – Bailor and Bailee – Bailor not liable for negligence or bailee in the use of chattle – Car given to friend for use – Owner not liable for negligence of friend in using car – Owner however liable if bailee is his Agent: *Gyarsilal Vs. Pt. Sitacharan Dubey, I.L.R. (1964) M.P. 91 (D.B.)*

– **Diagnosis by a doctor** – When doctor can be said to be negligent – Mistaken diagnosis – Whether inference of negligence can be drawn – Surgeon on the basis of Clinical symptoms mistaken appendicitis for cholecystitis performing operation – Appendix found to be normal but gall bladder in diseased condition – Surgeon removing gall bladder to save life of patient, patient dying subsequently – Whether surgeon can be held negligent and liable for damages – Consent for operation – Whether imperative in cases of emergency – Whether negligence can be inferred for want of consent: *Dr. J.N. Shrivastava Vs. Rambeharilal*, I.L.R. (1982) M.P. 516

– **Distinction between negligence and gross negligence** – Condition necessary for imposing liability under the provision: *Nanhelal Vs. The Assistant Registrar, Co-operative Societies, Narsingpur*, I.L.R. (1974) M.P. 40 (D.B.)

– **Doctrine “res ipsa loquitur” when applies:** *Madhya Pradesh State Road Transport Corporation, Bairagarh Vs. Sudhakar*, I.L.R. (1969) M.P. 631 (D.B.)

– **Doctrine res ipsa loquitur is a rule of evidence affecting on us** – Does not alter general rule of evidence affecting on us: *Sunderlal Vs. Firm Dayalal Meghji & Co., Raipur*, I.L.R. (1962) M.P. 681 (D.B.)

– **Driver while acting in the course of his employment giving lift to a person in disregard of statutory rule of prohibition** – Accident occurring – Owner is vicariously liable: *Narayan Lal Vs. Rukmani Bai*, I.L.R. (1980) M.P. 807 (F.B.)

– **Employer owes duty to take care for safety of his employee:** *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. Mst. Basantibai*, I.L.R. (1976) M.P. 508 (D.B.)

– **In abnormal circumstances employer owes a duty to provide for safety of employee when coming to place or employment:** *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. Mst. Basantibai*, I.L.R. (1976) M.P. 508 (D.B.)

– **Maxim “res ipsa loquitur” not applicable:** *Balmukund Lakhani Vs. The Union of India*, I.L.R. (1973) M.P. 650

– **Normally employer owes no duty to employee while he is proceeding from his house to place of work in normal circumstances:** *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. Mst. Basantibai*, I.L.R. (1976) M.P. 508 (D.B.)

– **Proof of care which a motor driver has to take when children playing on road** – The standard of care applicable in case of accident to adult – Not applicable in case of children of tender age – Defence of contributory negligence not open: *Antoo Vs. Jagatsingh*, I.L.R. (1963) M.P. 270 (D.B.)

– **Standard to be applied to determine negligence:** *Mangilal Vs. Parasram, I.L.R. (1971) M.P. 986 (F.B.)*

– **State when liable for negligence:** *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. Mst. Basantibai, I.L.R. (1976) M.P. 508 (D.B.)*

– **Suit for damages** – Contributory negligence by plaintiff – Damages liable to be reduced: *Shankarrao Vs. Union of India, I.L.R. (1958) M.P. 710 (D.B.)*

– **Test to be applied to determine fact of negligence:** *Mangilal Vs. Parasram, I.L.R. (1971) M.P. 986 (F.B.)*

Negotiable Instruments Act (XXVI of 1881)

– **Section 4** – Essentials of promissory note – Stamp Act, Indian, 1899 – Section 2(5) – Essentials of Bond – Distinguishing features between bond and promissory note – Peculiar features of bond – Instrument falling within both categories – Instrument chargeable with higher duty – Negotiable Instruments Act – Section 13(1) – Explanation 1 – Effect of – Answers to questions referred: *Santsingh Vs. Madandas, I.L.R. (1977) M.P. 1059 (F.B.)*

– **Section 4** – Promissory Note – Instrument containing condition that amount shall be payable on demand and interest would be payable only after 180 days and for every block of 180 days – Instrument is Promissory note as there is no uncertainty about sum of money: *Goel Industries Vs. Om Prakash Mittal, I.L.R. (1993) M.P. 288*

– **Section 4** – Would an instrument cease to be a promissory note in terms of Section 4 of the Negotiable Instrument Act – Where it provided for payment of interest which was ascertainable – Even though the payment of a certain sum was an essential attribute of a promissory note under Section 4, provision of interest of specified rate in it would not make the sum any less uncertain as it could involve the process of calculation to ascertain the sum payable and thus would not dilute its nature or invalidate it – Likewise it is incorrect to suggest that section 79, only provided for the date from which the interest was to be calculated – On the contrary this by itself allowed provision of interest in promissory note: *Ghisalal Vs. Ratan Lal, I.L.R. (1999) M.P. 35 (D.B.)*

– **Sections 8 and 78** – Not applicable to cases when promissory note, a Bill of Exchange or any other negotiable instrument devolves by operation of law or transferred by assignment – Contract Act – Section 45 – Death of holder of pro-note – Right vests in all the heirs – Suit must be brought by all heirs some heirs not joining in suit – Those to be made defendants – Transfer of Property Act – Section 130 – Applicable to assignment of a promissory note as a chose in action: *Champalal Vs. Padam Chand, I.L.R. (1969) M.P. 850*

– **Sections 8 and 78** – Real owner not mentioned as holder in negotiable instrument – Has no right to bring a suit – Circumstances in which, however, he can bring a suit: *Barkatali Vs. Shrimant Krishnajirao Pawar, I.L.R. (1971) M.P. 908 (D.B.)*

– **Section 13 (1)** – Explanation 1 – Effect of – Answers to questions referred: *Santsingh Vs. Madandas, I.L.R. (1977) M.P. 1059 (F.B.)*

– **Sections 35 and 29** – Both sections overlap to a certain extent – Section 35 imposes liability – Section 29 determines extent of liability – Circumstances under which endorser of negotiable instrument becomes personally liable and under which he is not liable at all: *Radhakishan Vs. Smt. Narinibai, I.L.R. (1963) M.P. 86 (D.B.)*

– **Section 80** – Grant of interest at 6% P.A. reasonable as that is the normal rate allowed: *Ali Hussain Vs. Pessumal, I.L.R. (1973) M.P. 1081*

– **Section 87** – Alteration in the instrument brought about by plaintiff, or by any one with his consent or on account of his negligence – Makes instrument void-suit on basis of such instrument – Maintainability Burden of providing how alteration came to be made – Burden on plaintiff – Suit on altered instrument found not maintainable – Relief on the basis of original consideration cannot be granted: *Shri Narayn Prasad Rai Vs. Shri Ghanshyamlal, I.L.R. (1960) M.P. 999 (D.B.)*

– **Section 118** – Statutory presumption under, rebuttable by direct or circumstantial evidence or even presumption of law or fact – Admission – Principle that Admission to be taken as a whole – Limited in application to facts and not to the plea of law – Contract Act – Section 2(d) – Fresh promise of fulfilling executor contract for sale – Can be a good consideration for a pro-note: *Indermal Vs. Ramprasad, I.L.R. (1972) M.P. 536 (D.B.)*

– **Section 138** – Dishonour of Cheque – Cheque issued by accused dishonoured by Bank due to insufficient funds – Complaint filed after serving notice on accused – Fact of issuing cheque and dishonour of the cheque not disputed by accused by replying notice – Open to accused to prove during trial that cheque was not dishonoured for any reason other than insufficient fund – Complaint cannot be dismissed at the stage of framing of charges on the ground that there is no proof of insufficiency of funds – Revision Dismissed. *M/s Swaroop Vegetables Product Industries Ltd. Vs. M/s Vindhya Soya Limited, I.L.R. (1994) M.P. 493*

– **Section 138 and Criminal Procedure Code, 1973 – Sections 357(3), 397 – Revision** – Dishonour of cheque – No limit prescribed for providing amount of compensation – Suspension of sentence subject to depositing half of fine amount not unreasonable: *Trilok Kumar Agarwal Vs. Mansukhlal, I.L.R. (2005) M.P. 171*

– **Section 138, Proviso (b)** – And Limitation Act, 1963 Sections 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 14-04-2000 – Not tenable as there is no particular mode of service of notice prescribed – Notice could go by courier or Fax: *Devendra Kumar Surana Vs. Lalit Porwal, I.L.R. (2003) M.P. 564*

– **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 Singh, I.L.R. (2003) M.P. 153*

– **Section 138, Proviso (b)** – Notice not send within 15 days – Lapse is fatal – Complaint has to be dismissed – Order of magistrate set aside: *Devendra Kumar Surana Vs. Lalit Porwal, I.L.R. (2003) M.P. 564*

– **Sections 138 and 142** – Cheque upon presentation by the payee dishonored by the drawer's Bank for lack of funds – In response to demand Notice, drawer directing payee to represent the Cheque – Cheque once again bounced for lack of funds – Complaint filed within one month of second demand notice – Rejection of Complaint as time barred under section 142 (b) is illegal – Appeal allowed: *Ku.Premalata Chaddha Vs. Surendra Kumar Soni, I.L.R. (1998) M.P. 132*

– **Sections 138 and 142** – Cheque upon presentation by the payee dishonored by the drawer's Bank for lack of funds – Despite services of stipulated demand notice payment not forthcoming – Payee filed complaint at his place of business – Drawer in response to process issued by Court raised objection regarding territorial jurisdiction of Court – Rejection of complaint for want of territorial jurisdiction – Rejection of Complaint is illegal: *M/S. Hindustan Mills and Electricals Stores Vs. Kedia Castle Delan Industries Ltd., I.L.R. (1998) M.P. 253*

– **Sections 138 and 142 and Criminal Procedure Code, 1973 (II of 1974), Section 482** – Limitation – Cheque in question could be presented to the Bank any time during Six months and the cause of action would arise when the amount of money remains unpaid to the payee for fifteen days even after service of demand notice under clause (b) – Cheque be represented to the Bank any number of times within the period stipulated under Clause (a) – Therefore cause of action would arise on presentation of Cheque last time and consequent to its dishonoring – A.S.J. was clearly wrong in quashing the complaint as time barred: *Ramesh Vs. Mukesh, I.L.R. (1998) M.P. 900*

– **Sections 138, 141** – Cheque issued by co-accused individually in re-payment of loan returned unpaid – Section 141, Negotiable Instruments Act cannot make all the petitioners liable for the act of co-accused: *Sudhir Vs. Smt. Sushila, I.L.R. (2005) M.P. 1110*

– **Sections 138, 141**, Penal Code Indian, 1860 Sections 420, 422, 427 & 120-B and Criminal Procedure Code, 1973, Section 482 – Complaint against company – Handnote executed as security of Loan – No allegation that petitioners ever prevented complainant from realising the amount in accordance with law – Ingredients of Section 422, IPC not made out – Registration of offence under Sections 427, 120-B, IPC misconceived – Cheque issued by co-accused individually in re-payment of loan returned unpaid – Section 141, Negotiable Instruments Act cannot make all the petitioners liable for the act of Co-accused: *Sudhir Vs. Smt. Sushila*, I.L.R. (2005) M.P. 1110

Negotiable Instruments Act (XXXVII of 1955)

– **Section 138** – Premature complaint – It can await maturity or can be returned to complainant Mere presentation or entertaining of the complaint would not mean that Magistrate has taken cognizance – Process issued after expiry of 15 days No interference called for in the impugned order: *Rajesh Kumar Vs. Manoj*, I.L.R. (2003) M.P. 857

New Pension Rules, M.P., 1951

– **Application of, on ground of consent, express or implied:** *Ghanshyam Das Shrivastava Vs. Chief Conservator of Forests (General)*, M.P., Bhopal, I.L.R. (1980) M.P. 1121 (D.B.)

– **Matter of retirement or compulsory retirement after qualifying period of service** – Not governed by Madhya Pradesh Shasakia Sevak Anivarya Sevavivriti ka Vidhimanyatakaran Adhiniyams 1967 and 1972 – Matter governed by New Pension Rules as amended from time to time: *Parmeshwar Dayal Pandey Vs. State of Madhya Pradesh*, I.L.R. (1981) M.P. 466 (D.B.)

– **Scope of:** *Parmeshwar Dayal Pandey Vs. State of Madhya Pradesh*, I.L.R. (1981) M.P. 466 (D.B.)

– **Section 1, Rule 2, Sub-rule (2)** – Notice under – Not of the same type as notice under Article 311 of the constitution – Constitution, Article 311(2) – Servant compulsorily retired before qualifying service for proportionate pension on ground of inefficiency – Does amount to punishment: *Mir Khurshed Ali Vs. Inspector General of Police*, M.P. Bhopal, I.L.R. (1959) M.P. 351 (D.B.)

– **Rule 2, Sub-rules (2) and (3) (ii)** – Scope of – Distinction between – Constitution of India – Article 311 – Retirement does not amount to punishment of removal from service: *Ram Narain Pyasi Vs. State of M.P.*, I.L.R. (1965) M.P. 719 (D.B.)

– **Rule 2 (2)** – Petitioner not applying for permission to retire on completing of qualifying service of 25 years – Rule 2(3)(i) Not attracted: *Ayodhya Prasad Shrivastava Vs. State of M.P.*, I.L.R. (1985) M.P. 751

– **Rule 2 (3) (i)** and Constitution of India, Article 226 – Writ petition, when liable to be rejected on account of delay – Petitioner made representation against impugned order but not approaching higher authority for threats of being detained under MISA – After lifting of emergency again making representation – Delay excusable – Petition not liable to be thrown out on the ground of delay: *Ayodhya Prasad Shrivastava Vs. State of M.P., I.L.R. (1985) M.P. 751*

– **Rule 2 (3) (ii)** – and Rule 2(3) (i) and Constitution of India, Article 226 – Deletion of Rules 2 (3) (ii) vide notification, dated 18-3-72 published in M.P. Rajpatra, dated 28-4-72 – Petitioner retired on completion of qualifying service of 25 years in pursuance of the repealed rule, by the impugned order dated 13-11-75 – Impugned order not sustainable in law – Petitioner not applying for permission to retire on completing of qualifying service of 25 years – Rule 2(3)(i) – Not attracted – Writ petition, when liable to be rejected on account of delay – Petitioner made representation against impugned order but not approaching higher authority for threats of being detained under MISA – After lifting of emergency again making representation – Delay excusable – Petition not liable to be thrown out on the ground of delay: *Ayodhya Prasad Shrivastava Vs. State of M.P., I.L.R. (1985) M.P. 751*

– **New Pension Rules as amended in 1966** – Notification stating that new provision substituted after consultation with Central Government under Section 115 of States Reorganisation Act – Connotation of: *Ghanshyam Das Shrivastava Vs. Chief Conservator of Forests (General), M.P., Bhopal, I.L.R. (1980) M.P. 1121 (D.B.)*

New plea

– **Plea regarding illegality of contract** – Plea not raised in pleading – Plea can be considered: *Hariprasad Vs. Mst. Beni Bai, I.L.R. (1970) M.P. 804*

Nirashriton Avam Nirdhan Vyaktiyon ki Sahayata Adhiniyam, MP (XII of 1970)

– **Sections 4 (i) (i), 4 (i) (ii) and Krishi Upaj Mandi Adhiniyam, MP 1972 (XXIV of 1973), Sections 32, 33** – Levy – Falling within purview of tax (within Entry 54, List II of 7th Schedule of Constitution – Section 4(i)(ii) of 1970, Adhiniyam applies – Section 4(i)(ii) is constitutionally valid – Licence granted under Mandi Act – Cannot be cancelled or suspended for non-payment of levy under 1970 Adhiniyam: *Sagar Anaj Avam Tilhan Vyapari Sangh Vs. Krishi Upaj Mandi Samiti, Sagar, I.L.R. (1988) M.P. 424 (D.B.)*

– **Section 7 and Constitution of India, Article 19 (1) (f)** – Cess imposes burden on owners of lands and buildings – Is not unreasonable restriction on property rights of owners – Reasonableness of rate – Not open to judicial review unless the tax

confiscatory or extortionate – Constitution not providing guarantee against multiple taxation – Imposition of cess under Adhiniyam – Not invalid on this ground – Constitution of India – Article 14 – Cess – Is a tax on land and building under entry 49, List II – Other properties not liable to tax – Act is hence not discriminatory and does not offend this article – *Nirashriton Ki Sahayata Adhiniyam, M.P., 1970* – Section 25 – Rules framed under ordinance No 17/69 – Deemed to be rules framed under the Act until superseded – Municipal Corporation Act, M.P., 1956, as amended by Act (XI of 1966) – Section 423, Clauses (e) and (c) to be read as independent clauses (b) and (c) of subsection (1) and not as part of clause (a) – Section 423 (1) (b) – Administrator appointed continues till corporation is re-constituted – Section 66 (1) – Imposes not only duty to fulfill any obligation imposed by Act but also obligation imposed by any other Act for the time being in force – Imposition of duty to give relief to destitute by other Act becomes duty of corporation – Authoresses imposition of cess for the purpose though imposed on corporation by another Act – Becomes duty and power imposed and conferred by Municipal Corporation Act – Powers which Administrator can exercise in cases of superseded Corporation – Municipal Corporation Act – Section 138 – Cess to be imposed with reference to annual letting value determined according to this provision: *Laxmidas Patel Vs. The Indore Municipal Corporation, Indore, I.L.R. (1980) M.P. 206 (D.B.)*

– **Section 7 And Constitution of India, Article 19 (1) (f)** – Constitution not providing guarantee against multiple taxation – Imposition of cess under Adhiniyam – Not invalid on this Ground: *Laxmidas Patel Vs. The Indore Municipal Corporation, Indore, I.L.R. (1980) M.P. 206 (D.B.)*

– **Section 7 and Constitution of India, Article 19 (1) (f)** – Reasonableness of rate – Not open to judicial review unless the tax confiscatory or extortionate: *Laxmidas Patel Vs. The Indore Municipal Corporation, Indore, I.L.R. (1980) M.P. 206(D.B.)*

– **Section 25** – Rules framed under ordinance no. 17/69 – Deemed to be rules framed under the Act until superseded vide: *Laxmidas Patel Vs. The Indore Municipal Corporation, Indore, I.L.R. (1980) M.P. 206(D.B.)*

Nistar Officer

– **Power of, to set aside order of Deputy Commissioner, Land Reforms:** *The State of M.P. Vs. Ramrijhawan, I.L.R. (1960) M.P. 481*

Non-Gazetted Class-III Educational Service (Non-Collegiate)

– **Recruitment and Promotion Rules M.P. 1973**, Rule 10 and Schedule IV and Constitution of India, Articles 14, 16 and 309 – Petitioners appointed as regular teachers/Assistant teachers by their selection by District selection committee formed under Executive Instruction only and not in accordance with rule 10 – Read with Schedule

IV – Petitioners appointments not valid – Subsequently State Govt. changed petitioner’s appointments from regular to ad-hoc – Petitioners have no right to challenge such change as their appointments are not valid – Promissory Estoppels – When operates – Word Ad-hoc – Meaning of – Appointments not falling within the meaning of ad-hoc – Liable to be treated as regular: *Bheru Singh Vs. State of M.P., I.L.R. (1987) M.P. 549 (D.B.)*

Northern India Ferries Act, Madhya Pradesh (XVII of 1878)

– **Is not a Ferry under:** *Jagdish Prasad Soni Vs. State of M.P., I.L.R. (1985) M.P. 139 (D.B.)*

Notaries Act (53 of 1952)

– **Section 15** – Notaries Rules, 1956 – Rule 7 – Appointment of notaries – Rule Provides that competent authority shall hold inquiry and recommend to appropriate Government more suitable candidate – Competent authority forwarded all application without any recommendation – Selection – Held – Competent authority should not act as a post office and forward applications to State – Appointment by State Government without determining question of more suitable candidate – Appointment quashed – Petition allowed: *Ashok Kumar Chowdhary Vs. State of M.P., I.L.R. (1997) M.P. 437*

Notaries Rules, 1956

– **Rule 7 (3) (e)** – Memorial becomes pending after it is published – Action of competent authority – Action has to be in a *quasi-judicial* manner: *Narayanlal Vs. State of M.P., I.L.R. (1968) M.P. 520 (D.B.)*

– **Rule 7 (3) (e)** – Word “pending” in – Means pending for decision – Memorial becomes pending after it is published – Action of competent authority – Action has to be in a *quasi-Judicial* manner: *Narayanlal Vs. State of M.P., I.L.R. (1968) M.P. 520 (D.B.)*

Notice

– **Notice by firm** – Suit by firm and the partners – Notice not invalid: *Union of India Vs. Gendlal, I.L.R. (1957) M.P. 504(D.B.)*

– **Notice claiming compensation for non-delivery** – Suit for damages for deterioration of goods and late delivery – Earlier notice not rendered invalid: *Firm Dhanraj Samrathmal, Balaghat Vs. Union of India, I.L.R. (1959) M.P. 18 (D.B.)*

– **Notice given by endorsee under Section 77** – Suit by consignor after service of notice under Section 80, Civil Procedure Code – Maintainability: *Union of India Vs. Gangaji, I.L.R. (1958) M.P. 691 (D.B.)*

– **Notice under section 34** 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) M.P. 156 (D.B.)*

– **Notice under Section 77-A** - Condition precedent – Can not be dispensed with because its object otherwise served: *The Managing Agents (M/s martin & co.) Vs. Seth Deokinandan, I.L.R. (1958) M.P. 842 (D.B.)*

– **Notice under Article 311 (2)** – Constitutional protection Cannot be whittled down on ground of immaterial irregularity or absence of prejudice: *Benimadhav Vs. The State of Madhya Bharat, I.L.R. (1958) M.P. 435 (D.B.)*

– **Validity of** – Not dependent on hyper technical and other considerations: *Tolaram Vs. Ayaldas, I.L.R. (1965) M.P. 824*

Notification

– **Dated 31-12-1960 in item No. 10. of the schedule** – The words “Generation” “transmission” and “distribution” used in: *The M.P. Electricity Board, Jabalpur Vs. Industrial Court, State of M.P., Indore, I.L.R. (1984) M.P. 583*

– **Enhancement of tax under** – Notification not retrospective – Difference in duty in existing stock not liable to be recovered: *Shri J.F. Shroff Vs. The Government of Madhya Pradesh, I.L.R. (1961) M.P. 785 (D.B.)*

– **No. 189-XVI58, d/-18-8-58 and Notification No. 307.-XVI-58, d/30-12-58-Validity:** *Narottamdas Vs. Shri P.B. Gawarikar, I.L.R. (1960) M.P. 970 (D.B.)*

– **Notification issued under statutory power exempting from general provisions of statute** – Has force of law: *State of Madhya Pradesh Vs. Ramcharan, I.L.R. (1978) M.P. 601 (F.B.)*

– **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: *The State of M.P. Vs. Mumtazali S/o Fazalali, I.L.R. (1959) M.P. 427 (D.B.)*

– **Under Section 4** of the Essential Supplies (Temporary Powers) Act, 1946 Order delegating authority by Governor General to Chief Commissioner to administer province – Is in the nature of legislative provision such order becomes law in force – Falls under Article 372 of Constitution – Notification No. 132/29/1701 (50), dated 5-1-51 – Validity – Contravention of such Notification punishable: *The State Vs. Gokulchand, I.L.R. (1957) M.P. 168 (D.B.)*

Nuisance

– **Building adjoining highway** – Buildings not properly maintained – Omission to keep buildings in repair amounts to nuisance – Owner liable for nuisance and for continuing the same after knowledge: *Kalloolal Vs. Hemchand, I.L.R. (1957) M.P. 275 (D.B.)*

– **Nuisance injurious to physical comfort of neighbours** – Amounts to physical discomfort of community: *The State of M.P. Vs. Manji, I.L.R. (1965) M.P. 173*

Oaths Act, Indian (X of 1873)

– **Section 4 and Criminal Procedure Code (V of 1898) – Section 145** – Magistrate of any class can administer oaths and affirmation – Such affidavit evidence can be received as evidence in proceedings under Section 145, Criminal procedure Code – Words “having authority to receive evidence” in Section 4(a), Oaths Act – Refer to jurisdiction or authority conferred on Court either by law or consent of parties – Criminal Procedure Code – Section 145 – Court has to decide question of actual possession and not the right to possession: *Bholanath Vs. Rama Shanker, I.L.R. (1973) M.P. 535*

– **Section 4** – Power of Court to administer oath in a matter pending before it: *State of M.P. Vs. Triveni Prasad, I.L.R. (1972) M.P. 959*

– **Section 4** – Words “in discharge of the duties” in – Modify “administer: *State of M.P. Vs. Triveni Prasad, I.L.R. (1972) M.P. 959*

– **Section 4 (a)** – Words “having authority to receive evidence” in – Refer to jurisdiction or authority conferred on Court either by law or consent of parties: *Bholanath Vs. Rama Shanker, I.L.R. (1973) M.P. 535*

– **Section 8** – No formalities of procedure prescribed thereunder – Offer and acceptance by parties to be bound by special oath sufficient – No separate deposition of party taking oath necessary – Record thereof in order sheet and signed by the parties enough – Special oath in any form *e.g.* taking Ganges water, enough – Decree passed on special oath not consent decree – Such decree can be appealed against – Civil procedure Code, Order 41, Rule 23 – Decree on special oath – It is on preliminary point – Remand order in appeal is under Order 41, rule 23 and appealable: *Ratanlal Vs. Nathulal, I.L.R. (1962) M.P. 968*

– **Section 9** – Offer of special oath – Not necessary that offer must come from party – Can be made also by a counsel: *Smt. Tapeswari Devi Vs. Shri S.N. Sinha, I.L.R. (1963) M.P. 936*

Obiter dicta

– **Of supreme Court Binding on High Court** – Two reasons given for conclusion – None Can be regarded as Obiter: *Seth Surajmal Vs. The State of M.P.*, I.L.R. (1957) M.P. 507 (F.B.)

Occupancy or absolute occupancy land

– **Does not lose the Character because of diversion to non-agricultural purposes:** *Thakur Bhagwansingh Vs. Supyarsingh*, I.L.R. (1958) M.P. 657 (D.B.)

Octroi Rules

– **Amended rule 9 (c) (i) (a) and Rule 10 (a)** – Goods brought within municipal limits for temporary detention and subsequent export – Goods liable to pay octroi duty – Jabalpur Corporation Act, 1948 and Octroi Rules – Provide for remedy for claiming refund – Suit for claiming refund – Maintainability: *The City of Jabalpur Corporation, Jabalpur Vs. Smt. Narbada Devi*, I.L.R. (1969) M.P. 498

– **Class VIII – Rule 1, Item 70** – Words “carriages and all sorts of conveyances” in – Include Motor Bus: *Municipal Council, Pandhurna Vs. Shri R.P. Dubey S.D.O., Sausar*, I.L.R. (1970) M.P. 1 (F.B.)

– **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 (D.B.)

– **New rule enhancing octroi duty in supersession of old rule by State Government** – Validity: *Municipal Council, Raigarh Vs. Pahawa Trading Company, Raigarh*, I.L.R. (1975) M.P. 833 (D.B.)

– **Rule 38 Proviso (b)** – Not *ultra vires*: *Municipal Committee, Raipur Vs. Messrs Punjab Oil Mills, Ramsagarpara, Raipur*, I.L.R. (1959) M.P. 14 (D.B.)

Official Languages Act (XIX of 1963)

– **and Official Languages Act of M.P. 1957 (V of 1958) – Oath/affirmation in Hindi Language** – Is valid: *Ajeem Khan Vs. Mathura Prasad*, I.L.R. (1987) M.P. 352

– **and Official Languages Act of M.P. 1957 (V of 1958) – Oath/affirmation made and subscribed before Additional Collector/Assistant Returning Officers** – Are legal: *Ajeem Khan Vs. Mathura Prasad*, I.L.R. (1987) M.P. 352

– **and Official Languages Act of M.P. 1957 (V of 1958) – Oath/affirmation** through not in prescribed form but not departing from prescribed form in any material aspect – Is valid: *Ajeem Khan Vs. Mathura Prasad*, I.L.R. (1987) M.P. 352

– **Section 3 and 4** – Does not prohibit English to be regarded as a compulsory subject in any Departmental examination – Concept of discrimination is attracted if there is inequality between the equals: *Raghvendra Prasad Gautam Vs. Union Bank of India*, I.L.R. (1999) M.P. 103 (D.B.)

Official Languages Act, Madhya Pradesh, 1957 (V of 1958)

– **Does not bar entertainment of complaint in any language** – Confers discretion on Magistrate whether to entertain Complaint written in any Other language than Hindi: *Narayan Vs. The State*, I.L.R. (1969) M.P. 1041

– **Effect of:** *Narayan Vs. The State of M.P.*, I.L.R. (1968) M.P. 333

– **Empowers use of Hindi as a matter of right:** *Narayan Vs. The State*, I.L.R. (1969) M.P. 1041

– **Section 3 and High Court Rules, Rule 15** – Empowers use of Hindi as a matter of right – Does not bar entertainment of complaint in any language – Confers discretion on Magistrate whether to entertain complaint written in any other language than Hindi: *Narayan Vs. The State*, I.L.R. (1969) M.P. 1041

– **Section 3** – Filing of complaint in Hindi – Not prohibited: *Narayan Vs. The State of M.P.*, I.L.R. (1968) M.P. 333

Oil Seeds (Forward Contracts Prohibition) Order, 1943

– **Clauses 3 and 4** – Notification of Government of India, C.D., No. P.& S.C. 75 (2)/43 dated 31-5-1943 – The word “And” is conjunction and not disjunctive – Types of forward delivery contracts regarding oilseeds exempted by the said Notification – Interpretation of Statutes—Interpretation advancing the spirit of order to be accepted in preference to doubtful interpretation: *Shop Babulal Mangilal Vs. Firm Mangilal Balkishan*, I.L.R. (1957) M.P. 6 (D.B.)

Opium Act, Indian (I of 1878)

– **as amended** – Madhya Bharat Opium (Amendment) Act, 1955 becomes invalid because of inconsistency: *Bisahulal, Vs. State of M.P.*, I.L.R. (1969) M.P. 683

– **as amended – Sections 9(a) and 20 (G)** – Criminal Procedure Code – Sections 190 (1) (a) (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 Madhya Pradesh*, I.L.R. (1966) M.P. 1 (F.B.)

– **Object of:** *Organon (India) Ltd., Calcutta Vs. Collector of Excise, Mandsaur*, I.L.R. (1981) M.P. 644 (D.B.)

– **Section 5** and Poppy Husk Rules, M.P. 1959 – Vires of: *Organon (India) Ltd., Calcutta Vs. Collector of Excise, Mandsaur*, I.L.R. (1981) M.P. 644 (D.B.)

– **Section 9-A** and Criminal Procedure Code, 1973 (II of 1974), Section 378 (1) and (3) – Offence regarding possession of opium – Magistrate acquitting accused by disbelieving evidence of one witness as witness was an ordinary person and another as he was a police constable – Propriety of – Powers of appellate court is appeals against such judgment of acquittal – Judgment of acquittal set aside – Social Crime Connotation of – Quantum of Sentence – Consideration of: *State of M.P. Vs. Ghulam Nabi*, I.L.R. (1987) M.P. 253

– **Section 9 (a)** – as amended by the M.B. Act XV of 1955 – Amendment not *ultra vires* – Criminal Procedure Code, section 251(a) – Procedure thereunder applicable to a case on an Excise Officer's report, the report being on same footing as police report: *Laxinarayan Vs. The State of M.P.*, I.L.R. (1960) M.P. 1090

– **Section 9(a)** – Question whether possession of accused is joint – Question depends upon circumstances of each case: *State of Madhya Pradesh Vs. Nanda*, I.L.R. (1966) M.P. 650 (D.B.)

– **Section 9 (a) and (b)** – Conviction under, for carrying opium – Subjecting article (opium) to chemical test not always necessary – Opinion of experienced Excise Officers based on colour, taste and smell can be relied on for basing conviction: *Poona Vs. The State of Madhya Pradesh*, I.L.R. (1964) M.P. 447

– **Section 9, 9 (a) and 10** – Possession of opium – Presumption – Onus is on accused to prove that he did not knowingly possess it: *Om Prakash Vs. State of M.P.*, I.L.R. (1987) M.P. 719

– **Section 11 (d)** – and Constitution of India, Article 19(5) – Provision imposing reasonable restriction – Provision saved by clause (5) of Article 19: *Mehtab Singh and Sons, Motor Hire Purchaser Pvt. Ltd. New Delhi Vs. State of M.P.*, I.L.R. (1965) M.P. 1007 (D.B.)

– **Section 11 (d)** – Draws no distinction whether conveyance belongs to accused or to any other person: *Mehtab Singh and Sons, Motor Hire Purchaser Pvt. Ltd. New Delhi Vs. State of M.P.*, I.L.R. (1965) M.P. 1007 (D.B.)

– **Section 11 (d)** – Provision in, regarding confiscation of property is ex-proprietary – Hit by the provision in Article 19(1)(f): *Mehtab Singh and Sons, Motor Hire Purchaser Pvt. Ltd. New Delhi Vs. State of M.P.*, I.L.R. (1965) M.P. 1007 (D.B.)

– **Section 11 (d)** – Restriction in the form of confiscation of property – Is a reasonable restriction in interest of general public: *Mehtab Singh and Sons, Motor Hire Purchaser Pvt. Ltd. New Delhi Vs. State of M.P., I.L.R. (1965) M.P. 1007 (D.B.)*

– **Section 11 (d)** – Vires of: *Mehtab Singh and Sons, Motor Hire Purchaser Pvt. Ltd. New Delhi Vs. State of M.P., I.L.R. (1965) M.P. 1007 (D.B.)*

Order

– **Order dismissing a petition in motion hearing** – *Has a binding force: Balkishandas Vs. Harnarayan Das, I.L.R. (1982) M.P. 1 (F.B.)*

Ordinance of Saugar University

– **Ordinance 1, Paragraph 11 and Ordinance 2, Paragraph 2** – Circumstances in which a student can get benefit of compartment – Student clearing the paper in supplementary – Student not securing 40 percent marks in the aggregate of all theory papers – Student cannot be declared as having passed: *Sudesh Kumar Arora Vs. The Vice Chancellor, Ravishankar University, Raipur, I.L.R. (1970) M.P. 778 (D.B.)*

– **Ordinance 1, Paragraph 2** – Student not securing 40 per cent marks in the aggregate of all theory papers – Student cannot be declared as having passed: *Sudesh Kumar Arora Vs. The Vice Chancellor, Ravishankar University, Raipur, I.L.R. (1970) M.P. 778 (D.B.)*

– **Ordinance 6** – Proctor – Powers of punishment: *Radhey Lal Maheshwari Vs. Dr. Dwarka Prasad Mishra, Vice-Chancellor, University of Saugar, I.L.R. (1961) M.P. 21 (D.B.)*

– **Ordinances 6, 12 and 13** – Distinction between Statute and Ordinance: *Radhey Lal Maheshwari Vs. Dr. Dwarka Prasad Mishra, Vice-Chancellor, University of Saugar, I.L.R. (1961) M.P. 21 (D.B.)*

Ordinance No. IV of 1948 (under Rewa Code)

– **Clause 2 – Scope of Rewa Code of 1935** – Does not affect the revenue and tenancy of other regions of the State – Rewa Code, Section 57(1) – Tenant not being *Pachpan Paintalis* tenant or *pattedar* tenant is *ghairhaqdar* tenant – Rewa Code, Sections 160(4) and 85 – Assessment payable by *ghairhaqdar* tenant under Section 85 – Not controlled by Section 160(4): *Dewan Bahadur Major Raghurajsingh Vs. Vindhya Pradesh State, I.L.R. (1958) M.P. 785 (D.B.)*

Paddy Procurement (Levy) Order, Madhya Pradesh, 1965

– **Clause 4** – Validity of – Clause 4 and Essential Commodities Act, 1955, Section 3(2)(f) and (g) – Provision of clause 4 – Not in excess of authority of the Government – Constitution of India – Article 19(5) – Clause 4 of the Paddy Procurement (Levy) Order not unconstitutional – Clause made in the interest of general public – Reasonableness of restraint – To be judged by magnitude of evil sought to be curbed – To be determined from stand point of view of general public – Constitution of India – Article 14 and Clause 4(2) of the Paddy procurement (Levy) Order – Does not make distinction between dealers – Canalisation of purchase or possession of paddy through owner of sheller type rice mill – *Per se* reasonable restriction on right of trade – Had reasonable relation to object of order – Clause 4(2) – The word “dealer” in – To be understood in ordinary and general connotation and not in the sense given in definition: *Bajinath Prasad Gupta Vs. State of M.P., I.L.R. (1970) M.P. 576 (D.B.)*

– **Clause 4 (2)** – Canalisation of Purchase or possession of paddy through owner of sheller type rice mill – *Per se* reasonable restriction on right or trade – Has reasonable relation to object of Order: *Bajinath Prasad Gupta Vs. State of M.P., I.L.R. (1970) M.P. 576 (D.B.)*

– **Clause 4 (2)** – The word “dealer” in – To be understood in ordinary and general connotation and not in the sense given in definition: *Bajinath Prasad Gupta Vs. State of M.P., I.L.R. (1970) M.P. 576 (D.B.)*

– **Clause 4 and Essential Commodities Act, 1965 – Section 3(2) (f) and (g)** – Provision of clause 4 – Not in excess of authority of the Government: *Bajinath Prasad Gupta Vs. State of M.P., I.L.R. (1970) M.P. 576 (D.B.)*

Panchayat (Appeal and Revision) Rules, M.P. 1995

– **Collector had no jurisdiction to consider the matter either in his appellate jurisdiction or power of revision** – No reliance can be placed on the conclusion drawn by him – Orders are totally without jurisdiction: *Ramnath Kaushik Vs. State, I.L.R. (1999) M.P. 835*

– **Resolution carrying motion set aside for procedural defect** – Motion can be reconsidered: *Kandhilal Patel Vs. State, I.L.R. (2000) M.P. 49*

– **Revision and suo moto power of revision** – Does not extend to interfere in election matter under the Act – Order of Collector setting aside petitioner’s election in exercise of suo moto revisional power – Without jurisdiction – Not maintainable in law – Order quashed: *Amar Singh Vs. State, I.L.R. (2000) M.P. 933*

Panchayat (Election Petition Corrupt Practices & Disqualification for Membership) Rules, M.P., 1991

– **Rules 7 & 8** – Effect of non-deposit of security amount at the time of presentation of election petition – Cognizance of the matter taken after the security deposit made within the period of limitation – Held – The security cost can be deposited within the period of limitation & if cognizance is not taken, before the deposit of the security cost, the election petition does not suffer from fatal defect: *Ravi Thakur Vs. Shivshankar Patel, I.L.R. (1996) M.P. 317*

– **Rule 13** – Prescribed authority has not given any reason for refusing to grant the leave to withdraw the election petition – Parties are closely related, it was not a case of corrupt practice but a case of recounting of ballot papers – There is nothing which may entitle refusal to withdraw the election petition – Order impugned cannot be allowed to be sustained: *Smt. Meena Singh Vs. The Prescribed Authority-Cum-Collector, Sidhi M.P., I.L.R. (1999) M.P. 407*

– **Rules 86 (12) 86 (14) 86 (2)** – Effect of not putting the prescribed mark on the ballot paper – Held – Putting of prescribed mark is mandatory and failure to do the same renders the vote invalid – Petition dismissed: *Ravi Thakur Vs. Shivshankar Patel, I.L.R. (1996) M.P. 317*

Panchayat (Election Petitions Corrupt Practices and Disqualifications for Membership) Rules, M.P. 1995

– **Rules 3 and 7** – Election petition – Filing of – Prerequisites – Deposit of Security amount along with Election Petition – Provision Mandatory – Non-compliance fatal to maintainability of the Election Petition: *Ramnath Patel Vs. Sub-Divisional Officer (Revenue), I.L.R. (2001) M.P. 1348*

– **Rule 21** – Election petition pending without progress though issues have been framed – Specified officer directed recounting on ground to avoid delay – There was nothing beyond pleadings of parties to enable the Specified Officer to form an opinion that there was in fact an improper acceptance rejection and counting of votes – Indicates that specified officer had not formed any opinion but with a view to form such an opinion Specified Officer had passed the order for recounting – Secrecy of votes should be the paramount consideration – Order passed by Specified Officer suffers from patent illegality and impropriety of the procedure and deserves to be quashed: *Kailash Singh Vs. Narayan Singh, I.L.R. (1999) M.P. 441*

Panchayat (Gram Panchayat Ke Sarpanch Tatha Up-Sarpanch, Janpad Panchayat Tatha Zila Panchayat Ke President Tatha Vice-President Ke Virudha Awishwas Prastav) Niyam, M.P. 1994

– **Rule 3** – 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: *Smt. Somvati Soni Vs. Gram Panchayat Padwar, I.L.R. (2001) M.P. 1684 (D.B.)*

– **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 dispatched by him should not necessarily mean notice should be signed by prescribed authority: *Smt. Somvati Soni Vs. Gram Panchayat Padwar, I.L.R. (2001) M.P. 1684 (D.B.)*

– **Rule 3 (3)** – Motion of no-confidence moved to the Sub-Divisional Officer/ Prescribed authority who followed the procedure laid down – Not obliged on sign the notices himself – No illegality in the motion of no-confidence – S.D.O. present in Court deserves appreciation for his promptitude in Court proceedings: *Smt. Somwati Soni Vs. The Gram Panchayat, Padwar (Barela), I.L.R. (2000) M.P. 213*

– **Rule 3 (3)** – Whether mandatory or directory – Notice for no-confidence – Use of word “shall” in the context of democracy makes the provision mandatory – Panchayat Raj Adhiniyam, M.P., 1993 – Motion for no-confidence – Can be taken up and passed at the adjourned meeting: *Smt. Muku Bai Vs. State of M.P., I.L.R. (1998) M.P. 666 (D.B.)*

Panchayat (Sarpanch, Up-Sarpanch, President, Vice President) Nirvachan Niyam, 1995

– **Rules 2 (c) 17 and 22**, Panchayat Raj Adhiniyam, 1993 (I of 1994) Sections 19, 26 and 33 – “Returned candidate” – Means a candidate whose name has been published under Section 19, 26 or 33 of the Act as duly elected – Unless notification is issued there cannot be any returned candidate hence no election petition could be filed on the basis of certificate issued under Rule 17 of the Election Rule: *Chandra Bhan Singh Vs. State, I.L.R. (2001) M.P. 291 (F.B.)*

Panchayats Act, Madhya Pradesh (VII of 1962)

– **Not violative of Article 14 of the Constitution:** *Khachu Vs. The State of M.P., I.L.R. (1965) M.P. 681 (D.B.)*

– **Sections 5 and 21 (1)** – Voters list prepared under section 5 is for election to Gram Panchayat only: *Rajendra Singh Vs. State of M.P., I.L.R. (1980) M.P. 115 (D.B.)*

– **Section 6-A (1) (a) Panchayats (Amendment) Act, M.P. (IV of 1978) and Panchayat (Amendment) ordinance, M.P. (III of 1978)** – Amendment reducing qualifying age of voter from 21 years to 18 years – Validity of – Section 21(2) proviso and Constitution of India, Article 14 – Validity of – Proviso not violative of Article 14 – Classification reasonable – Section 5 and 21 (1) – Voters list prepared under section 5 is for election to Gram Panchayat only – Section 17(5) and constitution of India, Article 20 – Disqualification not amounting to *ex-post-facto* criminal law – Prohibition under Article 20 not attracted – Section 11(4) 318, 319 and Gram Panchayat Nirwahan Tatha Sahyog Niyam, 1978 – Rules 3 and 8 – Rule are valid – Absence of provision of appeal in the Rules – Does not invalidate them – Preamble – Validity of – Rules mention Section 5(2) in preamble – Whether sufficient – General Clauses Act, M.P. – Section 24(e) – Publication of Rules in official Gazettee – Presumption Publication of draft rules is Newspaper not necessary: *Rajendra Singh Vs. State of M.P., I.L.R. (1980) M.P. 115 (D.B.)*

– **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-opted member – Not entitled to participate in the co-option of other Members: *Idandas, Vs. The Election Officer (Gram Panchayat Election) East Nimar, Khandwa, I.L.R. (1968) M.P. 48 (D.B.)*

– **Sections 11 and 19 (2)** – Date of declaration of co-option or appointment of members under section 11 whichever is later – Is starting point for period of one month under section 19(2): *Bhagwan Singh Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 208 (D.B.)*

– **Section 11 (ii) proviso and section 117 and constitution of India, Articles 226 and 227** – ‘Appointment’ of petitioner as Panch under section 11(ii) for ward No. 4 – Respondent No. 2(s) election petition u/s 117 against rejection of his nomination paper from ward No.4 allowed by prescribed authority and Respondent No.2 declared as elected Panch from ward No.4 – Thereupon, ‘Appointment’ of Petitioner as Panch for ward No. 4 does not survive – Election petition – Scope of in such situation: *Lagan Singh Vs. Sub-Divisional Officer, I.L.R. (1990) M.P. 371 (D.B.)*

– **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 or appointed: *Idandas, Vs. The Election Officer (Gram Panchayat Election) East Nimar, Khandwa, I.L.R. (1968) M.P. 48 (D.B.)*

– **Sections 11 (4) 318, 319 and Gram Panchayat Nirwahan Tatha Sahyog Niyam, 1978** – Rules 3 and 8 – Rules are valid: *Rajendra Singh Vs. State of M.P.* I.L.R. (1980) M.P. 115 (D.B.)

– **Section 12** – Requisites necessary for applicability – Provisions of section 360 – Not to be engrafted on section 12: *Ramnarain Vs. State of M.P.*, I.L.R. (1978) M.P. 223 (D.B.)

– **Section 14** – Relates to qualification at the time of election: *Halke Mehte Vs. H.C. Kamthan, Sub Divisional Officer, Karera*, I.L.R. (1974) M.P. 260 (D.B.)

– **Section 17** – Village Patel – A person in the service of Government disqualified from being elected as panch: *Manoharlal Vs. Gangaram*, I.L.R. (1972) M.P. 1026 (D.B.)

– **Section 17 (1) (i)** – Comes into play only when “all taxes due by him to the Gram Panchayat” are not paid by candidate: *Mata Prasad Vs. Election Officer, Morena*, I.L.R. (1975) M.P. 468 (D.B.)

– **Section 17 (1) (k)** – Panch under Madhya Bharat Panchayats act, 1949 removed by director – Panch cannot be considered to be subject to any disqualification under this provision – Office cannot be declared vacant: *Laxminarayan Vs. Director, Panchayat Avam Samaj Sewa, Madhya Pradesh*, I.L.R. (1968) M.P. 34 (D.B.)

– **Section 17 (1) and (2)** – Distinction between the two provisions: *Mata Prasad Vs. Election Officer, Morena*, I.L.R. (1975) M.P. 468 (D.B.)

– **Section 17 (1) to (3)** – Collector, Power of, to declare whether panch is subject to any disqualification – Section 17 (1) (k) – Panch under Madhya Bharat Panchayats Act, 1949 removed by Director – Panch cannot be considered to be subject to any disqualification under this provision – Office cannot be declared vacant: *Laxminarayan Vs. Director, Panchayat Avam Samaj Sewa, Madhya Pradesh*, I.L.R. (1968) M.P. 34 (D.B.)

– **Section 17 (5) and Constitution of India, Article 20** – Disqualification not amounting to *ex post facto* criminal law – Prohibition under Article 20 not attracted: *Rajendra Singh Vs. State of M.P.*, I.L.R. (1980) M.P. 115 (D.B.)

– **Section 17 (i)** – Word “being” in – Is of “wider import”, not limited to stage of election – Meaning of: *Halke Mehte Vs. H.C. Kamthan, Sub Divisional Officer, Karera*, I.L.R. (1974) M.P. 260 (D.B.)

– **Sections 18, 19 (1) and (2) and 21** – Panchas enter upon office from the date of first meeting – Does not depend upon notification under section 20: *Bhotey Vs. The Collector, Gwalior*, I.L.R. (1977) M.P. 203 (D.B.)

– **Sections 18, 19 (2) and 21** – Time when panchas enter upon the offices: *Mahendra Singh Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 862 (D.B.)*

– **Section 19 (1)** – Contemplates meeting of elected members only for co-option under section 11 – Meeting is first meeting after general election: *Bhagwan Singh Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 208 (D.B.)*

– **Section 19 (1)** – First meeting under section 19(1) different from first meeting under section 21(1): *Bhagwan Singh Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 208 (D.B.)*

– **Section 19 (1) and Rule 78, framed under Act** – Notice required to be issued by “prescribed authority”: *Bhotey Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 203 (D.B.)*

– **Section 19 (1) and (2) and Rules 78 and 79, framed under Act** – Prescribed authority only can call meeting under sub-section (2) of section 19: *Bhotey Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 203 (D.B.)*

– **Section 19 (2)** – Applies to first meeting under section 21(1): *Bhagwan Singh Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 208 (D.B.)*

– **Section 21** – “First meeting” in – Means meeting of all members of Gram Panchayat: *Bhagwan Singh Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 208 (D.B.)*

– **Section 21 (2) Proviso and Constitution of India, Article 14** – Validity of – Provision not violative of Article 14 – Classification reasonable: *Rajendra Singh Vs. State of M.P., I.L.R. (1980) M.P. 115 (D.B.)*

– **Section 22 (1) (2)** – Effect of election of new Sarpanch being notified – The word “office” in – Used in the tangible sense – Refers to “capacity to function” – Section 22(3) – Word “office” in – Refers to a place of the transaction of business – Section 35(2) – Resignations handed over to up-Sarpanch in the absence of Sarpanch – Validity – Time from which resignation takes effect: *Champalal Vs. The State of M.P., I.L.R. (1977) M.P. 101 (D.B.)*

– **Section 22 (1) (2)** – The Word “office” in – Used in the tangible sense – Refers to “capacity to function”: *Champalal Vs. The State of M.P., I.L.R. (1977) M.P. 101 (D.B.)*

– **Section 22 (3)** – Word “office” in – Refers to a place of the transaction of business: *Champalal Vs. The State of M.P., I.L.R. (1977) M.P. 101 (D.B.)*

– **Section 24** – No-confidence motion against Sarpanch – Mode of counting actual number of panchas therefore – Constitution of India – Article 226 – Civil suit

filed by Panchas challenging their resignations pendency thereof does not operate as a bar to decision of writ Petition – Panchayats Act, 1962 – Section 299 – Presiding Officer holding failure of motion – The Section does not afford an alternative remedy – Petition maintainable: *Rameshwar Dayal Vs. B.N. Tripathi*, I.L.R. (1981) M.P. 292 (D.B.)

– **Section 27 (2) and Rule 24(3)** – Disqualification for rejecting nomination paper contemplated in – Does not mean disqualification arising from subsequent deletion of the name from voters' list: *Nemichand Vs. Block Development Officer (Returning Officer) Jabera*, I.L.R. (1967) M.P. 502 (D.B.)

– **Sections 29 and 30** – Are general provisions for meetings of Gram Panchayat and the procedure of meeting – Interpretations of Statute – General Statute to yield to special statute Panchayats Act, M.P. – Section 19(1) and Rule 78 – Notice required to be issued by “prescribed authority” – Section 19(1) and (2) – Rules 78 and 79 – Prescribed authority only can call meeting under sub-section (2) of section 19 – Rule 79 – Word “procedure” in – Includes manner of proceedings, acting and conduct in relation to meeting – Sections 18, 19 (1) and (2) and 21 – Panchas enter upon office from the date of first meeting – Does not depend upon notification under section 20: *Bhotey Vs. The Collector, Gwalior*, I.L.R. (1977) M.P. 203 (D.B.)

– **Section 35 (2)** – Resignations handed over to Up-Sarpanch in the absence of Sarpanch – Validity – Time from which resignation takes effect: *Champalal Vs. The State of M.P.*, I.L.R. (1977) M.P. 101 (D.B.)

– **Section 116 (1)** – Order of State Govt. based on cumulative effect of all charges – Findings regarding serious charges not sustainable – Order on comparatively in significant charge alone – Not maintainable: *Bansmani Prasad Vs. State of M.P.*, I.L.R. (1982) M.P. 328 (D.B.)

– **Section 116 (1)** – Power of State government to remove a person from Presidentship – Quasi-Judicial nature – Opportunity to show cause must be given – Must be a real opportunity – Natural Justice – Principles of – Applicable to administrative orders also – Order of State Govt. Must contain reasons – State Govt. holding an ex parte Inquiry against the petitioner – Material collected by Enquiry Officer not disclosed to petitioner – Report of inquiry also not given – Petitioner denying charges leveled against him and submitting explanation – No further inquiry held – Order of removal not containing reasons for rejection of petitioner's explanation – Procedure violative of principles of natural Justice – Order liable to be quashed – Order of State Govt. based on cumulative effect of all charges – Finding regarding serious charges not sustainable – Order on comparatively in significant charge alone – Not maintainable: *Bansmani Prasad Vs. State of M.P.*, I.L.R. (1982) M.P. 328 (D.B.)

– **Sections 157 (b), 104 (1) Proviso** – Taxation by Panchayat *vis-a-vis* Municipalities – Imposition of tax on theatres falling within municipal area and also within territorial limits of Panchayat – Cinema tax already imposed on theatres by municipality – Held – Janapada Panchayat can still impose theatre tax on them – Legislative intention appears clear that taxing power conferred on Janapada Panchayat within its territory is not excluded and can be exercised: *Radhakisan Rathi Vs. Additional Collector, Durg, I.L.R. (1995) M.P. 91 (D.B.)*

– **Section 159** – Appeal lies only against assessment and not against decision to levy tax: *Janpad Panchayat, Rehli Vs. Collector, Sagar, I.L.R. (1980) M.P. 1 (D.B.)*

– **Section 159** – Does not include the initial stage of decision to levy tax or acquisition of that power – Means stage commencing with assessment or quantification of tax with reference to a particular person: *Janpad Panchayat, Rehli Vs. Collector, Sagar, I.L.R. (1980) M.P. 1 (D.B.)*

– **Sections 159 and 158** – Word ‘imposition’ in Section 159 – Meaning of – Does not include the initial stage of decision to levy tax or acquisition of that power – Means stage commencing with assessment or quantification of tax with reference to a particular person – Appeal lies only against assessment and not against decision to levy tax – Constitution of India – Article 226 – Impugned order wholly without authority – Question involved of frequent occurrence – Petition not liable to be thrown out of the ground that the petitioner gave consent to impugned order – Words and Phrases – Word “impose” – Meaning of: *Janpad Panchayat, Rehli Vs. Collector, Sagar, I.L.R. (1980) M.P. 1 (D.B.)*

– **Section 223** – Order-sheets signed by presiding panch only – No contravention of this provision takes place: *Jiwan Prasad Vs. Maha Singh, I.L.R. (1976) M.P. 626 (D.B.)*

– **Sections 228, 233, 238, 246 and 278, Criminal Procedure Code (V of 1898)** – Section 529 (F) and Criminal Procedure Code, 1973, (II of 1974) Section 460 (F) Cases falling within exclusive jurisdiction of Nyaya Panchayat filed before Magistrate – Can be transferred by Magistrate to Nyaya Panchayat even after taking cognizance: *State of M.P. Vs. Wasudeo, I.L.R. (1979) M.P. 560*

– **Sections 228, 233, 238, 246 and 278, Criminal Procedure Code (V of 1898) Section 529 (F) and Criminal Procedure Code, 1973 (II of 1974) Section 460 (F) and Trial of offences specified in schedule** – Jurisdiction of Nyaya Panchayat and regular Criminal Court is not concurrent – Nyaya Panchayat has exclusive criminal jurisdiction notwithstanding anything contained in the Criminal Procedure Code – Cases falling within exclusive jurisdiction of Nyaya Panchayat filed before Magistrate – Can be transferred by Magistrate to Nyaya Panchayat even after taking cognizance – C.P.

and Berar Panchayats Act, 1946 and Madhya Pradesh Panchayats Act, 1962 – Difference between analogous provisions of: *State of M.P. Vs. Wasudeo*, I.L.R. (1979) M.P. 560

– **Section 299** – Presiding Officer holding failure of motion – The section does not afford an alternative remedy – Petition maintainable: *Rameshwar Dayal Vs. B.N. Tripathi*, I.L.R. (1981) M.P. 292 (D.B.)

– **Section 318** – M.P. Panchayat Raj (Election Petitions Corrupt Practices and Disqualification for Membership) Rules (1990) Rule 3(2) Validity of Election petition – As required by Rule 3 (2) Petitioner not attested the election petition – Attestation by advocate would not save petitioner – Rules in question mandatory in nature – Its non-compliance would lead to summary dismissal of election petition: *Dr. Omprakash Soni Vs. Ashok Kumar Bhargava*, I.L.R. (1995) M.P. 224

– **Section 356** – Scope of: *Halke Mehte Vs. H.C. Kamthan, Sub Divisional Officer, Karera*, I.L.R. (1974) M.P. 260 (D.B.)

– **Section 357** – Does not provide remedy for challenging the holding of office: *Halke Mehte Vs. H.C. Kamthan, Sub Divisional Officer, Karera*, I.L.R. (1974) M.P. 260 (D.B.)

– **Section 357 (1)** – Alternative remedy of an Election Petition – Not less convenient, beneficial and effectual: *Malam Singh Vs. Collector, Sehore*, I.L.R. (1973) M.P. 371 (F.B.)

– **Section 357 (1)** – Improper rejection of a nomination paper – Can be urged as a ground in election petition for setting aside election: *Malam Singh Vs. Collector, Sehore*, I.L.R. (1973) M.P. 371 (F.B.)

– **Section 357 (1)** – Rejection of nomination cannot be challenged in any other way: *Malam Singh Vs. Collector, Sehore*, I.L.R. (1973) M.P. 371 (F.B.)

– **Section 357 (1)** – Word “Election” in – Meaning and scope of – Improper rejection of a nomination paper – Can be urged as a ground in election petition for setting aside election – Rejection of nomination cannot be challenged in any other way – Alternative remedy of an election petition – Not less convenient, beneficial and effectual – Constitution of India – Articles 226 and 227 – Do not contain any bar to exercise writ jurisdiction in respect of elections to local bodies – High Court will not like to exercise writ jurisdiction in such election matter if alternative remedy of election petition is available: *Malam Singh Vs. Collector, Sehore*, I.L.R. (1973) M.P. 371 (F.B.)

– **Section 357 and Constitution of India, Article 226 (3)** – Improper acceptance and rejection of nomination papers for election to office of Sarpanch –

Aggrieved party – Remedy of: *Laxman Singh Vs. State of M.P., I.L.R. (1979) M.P. 861 (D.B.)*

– **Section 357 and Constitution of India, Article 226 (3)** – Word “Election” – Includes whole process commencing with announcement of Election programme to declaration of final result – Improper acceptance and rejection of nomination papers for election to office of Sarpanch – Aggrieved party – Remedy of – Article 226 – “Any other remedy” under – Includes remedy of Election petition – Writ petition not entertainable: *Laxman Singh Vs. State of M.P., I.L.R. (1979) M.P. 861 (D.B.)*

– **Section 360 (a)** – Not applicable where gram Sabha is included in the area of Municipality – Section 12 – Requisites necessary for applicability – Provisions of section 360 – Not to be engrafted on section 12: *Ramnarain Vs. State of M.P., I.L.R. (1978) M.P. 223(D.B.)*

– **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 (D.B.)*

– **Rules framed under the Act** – Rule 78(4) – Delivery of notice 5 days before meeting necessary and not only dispatch before 5 days – Section 19 (1) – Contemplated meeting of elected members only for co-option under section 11 – Meeting is first meeting after general election – Section 21 – “First meeting” in – Means meeting of all members of Gram Panchayat – First meeting under Section 19(1) different from first meeting under section 21 (1) – Section 19 (2) – Applies to first meeting under section 21 (1) – Sections 11 and 19 (2) – Date of declaration of co-option or appointment of members under section 11 whichever is later – Is starting point for period of one month under Section 19 (2) – Rule 78 (17) and (18) – Provides for secrecy an extent of secrecy: *Bhagwan Singh Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 208 (D.B.)*

– **Rules 78 (17) and (18) of the Rules framed under the Act** – Provides for secrecy and extent of secrecy: *Bhagwan Singh Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 208 (D.B.)*

– **Rule 79 framed there under-word “procedure” in** – Includes manner of proceedings, acting and conduct in relation to meeting: *Bhotey Vs. The Collector, Gwalior, I.L.R. (1977) M.P. 203 (D.B.)*

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– **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: *Munnalal Lachhiram & Sons, Vs. The Gram Panchayat, Susari, I.L.R. (1964) M.P. 199 (D.B.)*

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– **Section 75** – Does not offend Article 14 of the Constitution – Not *ultra vires* – Panchayat Rules, Madhya Bharat – Not violative of Article 14 of the Constitution: *Khachu Vs. The State of M.P., I.L.R. (1965) M.P. 681 (D.B.)*

– **Sections 115 and 116** – Authorise government to further delegate power by the rule itself: *Munnalal Lachhiram & Sons, Vs. The Gram panchayat, Susari, I.L.R. (1964) M.P. 199 (D.B.)*

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– **And Panchayat Raj (Sanshodhan) Adhiniyam, M.P. (III of 2001)** – Sections 6, 7 – Constitutional validity of Amending Act – Provision for Constitution of Gram Panchayat Sabha for every village of Panchayat introduced by way of amendment – Provision aims at discharging well defined functions in different areas as envisaged in the Act of 1993 and to enable people to participate in development of village – Provision not *ultra vires*: *Jankidas Bairagi Vs. State, I.L.R. (2001) M.P. 1490 (D.B.)*

– **Motion for no-confidence** – Can be taken up and passed at the adjourned meeting: *Smt. Muku Bai Vs. State of M.P., I.L.R. (1998) M.P., 666 (D.B.)*

– **Section 2 (xxi)** – ‘Prescribed authority’ mean such officer or authority as the State Govt. by notification direct to discharge the function of a prescribed authority under the provisions of the Act: *Ashok Kumar Kaurav Vs. State, I.L.R. (2000) M.P. 1057*

– **Section 2 (xxi)** – Words “Prescribed authority” – Mean the officer or authority as the State Government by notification direct to discharge the functions of a prescribed authority: *Smt. Somwati Soni Vs. The Gram Panchayat, Padwar (Bareilly), I.L.R. (2000) M.P. 213*

– **Section 21**, 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 5 – No-confidence motion against Sarpanch of Gram Panchayat – Validity – Held – The Sarpanch or Up-Sarpanch against whom the motion of no-confidence is discussed has a right to speak at or otherwise to take part in the proceeding of the meeting – The object of this right is to satisfy and impress upon the members during the course of discussion about his confidence – Therefore, even if the motion of no-confidence is passed by majority as required under Section 21(1) it

cannot be said to have been validly passed – Petition Allowed: *Nagsai Vs. State of M.P.*, I.L.R. (1997) M.P. 67

– **Section 21, Procedure as provided in Law** – When a statute provides for a mode of doing an act, it has to be done in that manner alone, other modes of doing the act are not permissible. Therefore, the statutory right of the Sarpanch under sub-section (2) of Section 21 cannot be whittled down by any means, including the majority of members: *Nagsai Vs. State of M.P.*, I.L.R. (1997) M.P. 67

– **Section 21 (3)** – Motion of no-confidence – Meeting convened and resolution passed as required under Section 21(3) of the Act – Provision has nothing to do so far as prescribed authority is concerned: *Smt. Somwati Soni Vs. The Gram Panchayat, Padwar (Barela)*, I.L.R. (2000) M.P. 213

– **Section 21 (4)** – Collector could not decide it as an appeal: *Kandhilal Patel Vs. State*, I.L.R. (2000) M.P. 49

– **Section 39** – Suspension of an office bearer – Principles of Natural Justice – Not attracted – Neither the competent authority nor the State Government before issuing suspension order or confirmation thereof are required to afford prior opportunity of hearing, but once the notice to appear in person issued, the authority has to afford opportunity: *Ballabh Das Satal Vs. State of Madhya Pradesh*, I.L.R. (1998) M.P. 12

– **Section 39** – Suspension of Sarpanch – Sub-section (2) requires confirmation by State Government – Power delegated to the Collector by State Government – Order of suspension confirmed by Additional Collector – Assailed on the ground that power of State Government delegated to the Collector could not be validly exercised by the Additional Collector – General Clauses Act, 1957 – Section 17 – Substitution of functionaries – Land Revenue Code, M.P., 1959 – Section 17(2) & (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

– **Section 39 (1) (b)** – No Show Cause notice is required to be given before passing an order of suspension – Prescribed authority gets jurisdiction to pass such order only when an office bearer has been served with a notice alongwith a charge sheet to show cause against his removal from the office – Section 40 – Removal of an office bearer – Opportunity to show cause – Form and mode of – Left to the discretion of the State Govt. or the prescribed authority – Word “alongwith” in Section 39(1)(b) – Cannot be read to mean that notice to show cause have to be separately given – Show Cause Notice itself containing article of charges – Satisfies the requirement of Section 39(1)(b) of the Act – It is not only substantial compliance but full adherence to the aforesaid provision – It is not the assertion of the appellant that order of suspension has not been confirmed but his assertion is that the same has not been served on him –

Learned Single Judge rightly declined to express any opinion: *H.S. Patel Vs. State, I.L.R. (1999) M.P. 29 (D.B.)*

– **Sections 39 (1) (b) and 40** – Report of suspension of Sarpanch to State Govt. within 10 days – Mandatory – Non-compliance – Suspension stands revoked automatically though charge sheet issued: *Smt. Asha Dwivedi Vs. Sub-Divisional Officer, Sidhi, I.L.R. (2000) M.P. 1033*

– **Section 40** – Repeal of – Effect – Intention of legislature is not to place an office bearer under suspension against whom charge sheet is issued – Provisions of repealing act would have prospective effect by the very intention clearly expressed by the legislature while enacting the Repealing Act: *Smt. Asha Dwivedi Vs. Sub-Divisional Officer, Sidhi, I.L.R. (2000) M.P. 1033*

– **Section 40** – Removal from office of Sarpanch – Petitioner's request to produce documents, oral evidence and examination of witnesses denied by S.D.O. – Charges against were of such nature which can be proved or disproved by evidence – Enquiry behind the back – Denial of fair hearing resulted in serious prejudice – Order of removal and disqualification is un-reasonable arbitrary and violative of principles of natural justice: *Kailash Kumar Dangi Vs. State, I.L.R. (2002) M.P. 9*

– **Section 69 (1)** – Appointment of 'Panchayat Secretary' has to be made by the State Govt. or by the prescribed authority – In absence of statutory approval petitioner's appointment as Panchayat Secretary cannot be sustained: *Ashok Kumar Kaurav Vs. State, I.L.R. (2000) M.P. 1057*

– **Sections 69, 70, 70 (1) and 95** – Petitioner appointed as Panchayat Karmi as per instruction of prescribed authority – Cannot be invalidated as prior approval under Section 70(1) was already there: *Ashok Kumar Kaurav Vs. State, I.L.R. (2000) M.P. 1057*

– **Sections 69 and 70** Panchayat Raj (Amendment) Act, 1996 (II of 1997) – Appointment of Panchayat Secretary and Panchayat Karmis – By the amending Act legislature incorporated prohibition on appointment of Panchayat Secretary if he happens to be relative of any of the office bearers of Panchayat – No distinction can be made between persons appointed prior to coming into force of amending Act or thereafter – Panchayat Secretary and Panchayat Karmi – Separate entities – Amending Act not intended to affect the right of a person to continue in office of Panchayat Karmi as their removal can only be done by following procedure laid down in Panchayat Karmi Yojna – Decision of State Govt. as regard disqualification of Panchayat Secretary not laible to be interfered with: *Prahlad Singh Patel Vs. State, I.L.R. (2001) M.P. 1437*

– **Section 91** – Appeal or Revision under – Only lies against an order or proceeding of a Panchayat and other authorities – Cannot be invoked to challenge Panchayat Election: *Amar Singh Vs. State, I.L.R. (2000) M.P. 933*

– **Section 91 and Panchayat (Appeal and Revision) Rules, M.P. 1995**, 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 & Revision Rules 1995: *Harijan Matsyodhyog Sahkari Sanstha Maryadit, Sajvaya Vs. State, I.L.R. (2001) M.P. 1173 (D.B.)*

– **Section 91 and Panchayat (Appeal & Revision) Rules, M.P., 1995** Rule 5 – 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: *Harijan Matsyodhyog Sahkari Sanstha Maryadit, Sajvaya Vs. State, I.L.R. (2001) M.P. 1173 (D.B.)*

– **Section 91, Panchayat (Appeal & Revision) Rules, M.P., 1995 Rule 5 and Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, M.P., 1997 – Rule 12** – Expression Appeal used in Rule 12 of the recruitment Rules has to be read to mean revision also – Revision does not lie against appealable order but lies against appealable order – Alternative remedy of revision available to petitioner – Liberty granted to avail remedy of revision in thirty days: *Jai Dinesh Verma Vs. State, I.L.R. (2001) M.P. 1103*

– **Section 91, Panchayat (Appeal & Revision) Rules, M.P., 1995** Rules, M.P., 1995 Rule 5 – Suo-motu revision power – Lease granted in violation of statutory provisions – Additional Commissioner in suo motu revision setting aside the same – Revisional Jurisdiction of Commissioner: *Harijan Matsyodhyog Sahkari Sanstha Maryadit, Sajvaya Vs. State, I.L.R. (2001) M.P. 1173 (D.B.)*

– **Sections 92 and 122** – Petition – Improper rejection of nomination proper – Candidate facing action in exercise of power to recover records, articles and money – Rejection of nomination paper by Returning Officer – Correct and justified: *Uttam Singh Vs. Bharatlal Yadav, I.L.R. (2003) M.P. 747*

– **Section 95** – Rule making power – Rules not framed – Panchayat Secretary – Appointment of – Can only be made by the State Govt. or the prescribed authority: *Ashok Kumar Kaurav Vs. State, I.L.R. (2000) M.P. 1057*

– **Sections 95, 122, M.P., Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, M.P., 1995, Rule 3** – Election petition – Recounting of votes – Difference between votes secured was only 17 – Electricity failed and candle light used for counting – Sufficient to provide opportunity

for incorrect counting – Order of recounting proper: *Rakib Mohammad Vs. The District Collector And Specified Officer, Raisen, I.L.R. (2002) M.P. 655 (D.B.)*

– **Section 122 and Panchayat Nirvachan Niyam, M. P., 1995** – Rule 80 – Adequate and cogent evidence has to be adduced to make out a case for recounting – Application for recount of votes submitted to the Presiding Officer not authorised by Returning Officer – Not sufficient to order recounting of votes – Matter remanded for fresh decision on evidence to be adduced by the parties: *Smt. Sushila Dixit Vs. Shri Ram Prakash, I.L.R. (2002) M.P. 41*

– **Section 122** – Election Petition – An Election under the Act can only be called in question by way of Election Petition in accordance with provision of the Act: *Amar Singh Vs. State, I.L.R. (2000) M.P. 933*

– **Section 122** – Election Petition – In absence of notification of election no Election Petition can be filed – Election Petition filed prior to notification under Rule 22 – Nirvachan Niyam Not liable to be taken up for consideration as being incompetent: *Chandra Bhan Singh Vs. State, I.L.R. (2001) M.P. 291 (F.B.)*

– **Section 122** – Election petition on ground of improper acceptance, rejection and counting of votes – Procedure laid down: *Kailash Singh Vs. Narayan Singh, I.L.R. (1999) M.P. 441*

– **Section 122 (2)** – Election Petition filed within thirty days from the date of notification under Rule 90 – Not time barred: *Smt. Pramila Bai Vs. Sub-divisional Officer, Bareilly, I.L.R. (2000) M.P. 1115 (D.B.)*

– **Section 122 (2)** – Election Petition Limitation of thirty days: *Smt. Pramila Bai Vs. Sub-divisional officer, Bareilly, I.L.R. (2000) M.P. 1115 (D.B.)*

– **Section 123** – Election Petition – Must disclose prima facie material indicating irregularity to justify scrutiny and recounting of ballot papers – In absences of necessary details and cogent material, there is no justification for scrutiny and recounting of ballot papers: *Smt. Suman Patel Vs. Smt. Bhanwati, I.L.R. (1998) M.P. 583*

– **Section 123, read with Sub-rule (1) of Rule 3 of M.P. Panchayat (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1991** – Election Petition – Presentation – By Advocate authorized in this behalf – Effect – Section 123 – Election Petition – Must disclose prima facie material indicating irregularity to justify scrutiny and recounting of ballot papers – In absences of necessary details and cogent material, there is no justification for scrutiny and recounting of ballot papers: *Smt. Suman Patel Vs. Smt. Bhanwati, I.L.R. (1998) M.P. 583*

Panchayats Act, M.P. (XXXV of 1981)

– **Sections 4 (1) and 120, Panchayats Ordinance, M.P. (VI of 1981)** Section 121 and Panchayats Act M.P. (VII of 1962) – Gram Panchayat constituted under 1962 Act, though saved under 1981 ordinance but not saved under 1981 Adhiniyam – Collector constituting Gram Panchayat for the first time under 1981 Adhiniyam – Provisions of Section 120 of 1981 Adhiniyam – Not applicable – Collector publishing notification purporting to be under section 120 of 1981 Adhiniyam inviting objections and rejecting them – Whether can be challenged: *Bhaiyalal Vs. State of M.P., I.L.R. (1984) M.P. 253 (D.B.)*

– **Section 18** – No confidence resolution against Sarpanch – Effective from the movement it is passed – Cannot be defeated for technical reasons – Its effect cannot be arrested even by stay order – Revision against no-confidence motion lies before Additional Collector – No interference in writ jurisdiction: *Bal Krishna Patel Vs. Brijendra Patel, I.L.R. (1985) M.P. 599 (D.B.)*

– **Section 18 and Constitution of India, Article 226** – Revision against no-confidence motion lies before Additional Collector – No interference in writ jurisdiction: *Bal Krishna Patel Vs. Brijendra Patel, I.L.R. (1985) M.P. 599 (D.B.)*

– **Section 30 (1) (e) and Constitution of India, Article 14** – Disqualifying a person, dismissed from Govt. Service and other services mentioned therein, from being an office bearer of a panchayat, imposes unreasonable restriction – Violates Article 14 – Provision struck down: *Gorelal Vs. State of M.P., I.L.R. (1990) M.P. 241(D.B.)*

– **Section 30 (1) (a) (ii) Rules framed under section 357 of Gram Panchayat Act (VII of 1962) Rules 22, 24** – Person elected suffers from disqualification on the date of election – Election has to be declared void – Power of Govt. is not of rectification – Only two candidates in the election – One is disqualified – Other is to be declared duly elected: *Jagdish Prasad Vs. Omkar Singh, I.L.R. (1991) M.P. 140 (D.B.)*

– **Section 30 (1) (D)** – Village Health Guide is not an “Office of Profit” – Not disqualified to hold office of a Panch: *Atar Singh Vs. State of M.P., I.L.R. (1985) M.P. 528 (D.B.)*

– **Sections 31 (2) and 31 (3-A) (1)** – Cancellation or stay of election of election preceding by state Govt. – Administrative action whether fair of reasonable and within the four corners of law – Consequence of section 31 (3-A)(1) – Election of all office bearers stands canceled – Power in public interest to be exercised sparingly – Show cause notice held to be obligatory: *Hukum Chand Jain Vs. State of M.P., I.L.R. (1988) M.P. 143 (D.B.)*

– **Section 32 (1) and Panchayat (Resignation by office Beares) Rules, M.P., 1982, Rule 5** – Resignation when effective – Resignation – Meaning of – Section 81 Panchayata Act, 1981 and Section 37(2) of the Act – Dissolution – Notice under section 80(2) when not required: *Hridayashwer Singh Chauhan Vs. State of M.P., I.L.R. (1988) M.P. 69 (D.B.)*

– **Section 38** – Prescribed authority granting ‘anumati’ for reconsideration of second resolution of no-confidence – It is in substance a command a direction: *Bhikam Singh Vs. State of M.P., I.L.R. (1986) M.P. 68 (D.B.)*

– **Section 38** – Reconsideration of second resolution of no-confidence within six months of previous resolution – Direction of prescribed authority – What is – The word ‘Anumati’ – Connotation of – The word ‘direction’ in section 38 – Meaning of – Prescribed authority granting ‘anumati’ for reconsideration of second resolution of no confidence – It is in substance a command a – direction: *Bhikam Singh Vs. State of M.P., I.L.R. (1986) M.P. 68 (D.B.)*

– **Section 80 (3) (b)** – Administrator appointed by the State Government to exercise powers and duties of a Panchayat until its reconstitution – Panchayat reconstituted by election of Panchayat, Sarpanch and Up-Sarpanch and duly published and notified by the collector – Pendency of revision against the order of dismissal of election petition against the Sarpanch – Refusal by administrator to hand over charge of the panchayat to the Sarpanch – Amounts to interference with the functioning of panchayat in accordance with law – Writ can be issued: *Gram Panchayat, Kanwan Vs. Administrator Gram Panchayat, Kanwan, I.L.R. (1983) M.P. 73 (D.B.)*

– **Section 81 and Section 37 (2)** – Dissolution – Notice under section 80 (2) when not required: *Hridayashwer Singh Chauhan Vs. State of M.P., I.L.R. (1988) M.P. 69 (D.B.)*

– **Section 117 and constitution of India, article 226**– Provides complete and efficacious remedy for challenging election or co-option held under 1981 Adhiniyam – Writ petition not entertainable: *Daya Prasad Vs. Election Officer-Cum B.D.O., Gairatgunj, I.L.R. (1984) M.P. 163 (D.B.)*

– **Sections 117 and 124 Panchayats Act, M.P. (VII of 1962) Section 357 and Rules framed thereunder** – Rules made under – Are saved and continue till new rules under section 117 or 1981 Adhiniyam are framed: *Daya Prasad Vs. Election Officer-Cum B.D.O., Gairatgunj, I.L.R. (1984) M.P. 163 (D.B.)*

– **Sections 117 and 124 Panchayats Act, M.P. (VII of 1962) Section 357 and Rules framed thereunder** – Rules regarding election petition under – Not inconsistent with the provisions under: *Daya Prasad Vs. Election Officer – Cum B.D.O., Gairatgunj, I.L.R. (1984) M.P. 163 (D.B.)*

– **Sections 117 and 124 Panchayats Act, M.P. (VII of 1962) Section 357 and Rules framed thereunder, General Clauses Act, M.P., 1957 (III of 1958) section 25 and constitution of India – Article 226** – 1981 Adhiniyam is re-enactment of old Panchayat Law with some modifications and to make it simple – Not altogether a new law – Provisions of section 25, M.P. General Clauses Act attracted – Rule made under Panchayats Act, 1962 are saved and continue till new rules under section 117 of 1981 Adhiniyam are framed – Rules regarding election petition under 1962 Act are not inconsistent with the provision under 1981 Adhiniyam – Section 117 of 1981 Adhiniyam provides complete and efficacious remedy for challenging election or co-option held under 1981 adhiniyam – writ petition not entertainable: *Daya Prasad Vs. Election Officer-Cum B.D.O., Gairatgunj, I.L.R. (1984) M.P. 163 (D.B.)*

– **Section 120** – Collector publishing notification purporting to be under the section inviting objections and rejecting them – Whether can be challenged: *Bhaiyalal Vs. State of M.P., I.L.R. (1984) M.P. 253 (D.B.)*

– **Rule 24 – Only two candidates in the election** – One is disqualified – Other is to be declared duly elected: *Jagdish Prasad Vs. Omkar Singh, I.L.R. (1991) M.P. 140 (D.B.)*

Panchayat Avam Gram Swaraj Adhiniyam, M.P., 1993

– **Sections 21–A (4) and Panchayat (Appeal and Revision) Rules, M.P., 1994, Rule 3-** – Writ Petition – Proposal for recalling – Dispute maintainable before Collector and at the behest of a person against whom motion is passed – S.D.O. not competent: *Hariao Jangde Vs. State of M.P., I.L.R. (2004) M.P. 1043*

– **Sections 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: *Roshanlal Maravi Vs. Shambhoo Singh, I.L.R. (2005) M.P. 53 (D.B.)*

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: *Smt. Pramila Bai Vs. Sub-divisional Officer, Bareilly, I.L.R. (2000) M.P. 1115 (D.B.)*

Panchayat Nirvachan Niyam, 1995

– **Rules 7 and 29-A** – Reservation chart under Rule 29-A attaches finality to the notification under Rule 7 – Election Petitioner made aware of the reservation of seat for backward classes by publication of notification under Rule 7 of the Rules, and not

for woman candidates before filing nomination form: *Ramnath Patel Vs. Sub-Divisional Officer (Revenue)* I.L.R. (2001) M.P. 1348

– **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: *Lakhan Lal Patel Vs. State*, I.L.R. (2003) M.P. 52 (D.B.)

– **Rule 80** – Recount of votes – Candidate or his agent or his election agent has to apply in writing to the returning officer or such officer authorized by him for recounting of all or any of the votes already counted – No such application filed by election petitioner under Rule 80 – Specified officer could not have passed the order of recounting of votes – Order impugned set aside: *Yograj @ Khanjar Wankhede Vs. State*, I.L.R. (2001) M.P. 341

Panchayats Act, C.P. & Berar, 1946 (I of 1947)

– **And Panchayat Act, M.P. (VII of 1962)** – Difference between analogous provisions of: *State of M.P. Vs. Wasudeo*, I.L.R. (1979) M.P. 560

– **Chapter XXXVII, Rules 1 and 2 Panchayat Rules, 1948** – Expression “the purport of the resolution for information of the persons affected by such proposal” – Connotes that the resolution must contain something more than the decision to impose tax – Valid imposition of tax – Necessary things required to be satisfied: *Laxminarayan Vs. The Gram Panchayat of Khirkiya*, I.L.R. (1959) M.P. 727 (D.B.)

– **Magistrate starting and enquiry** – Provision of Section 72 of the Act cannot be invoked: *State of Madhya Pradesh Vs. Shankerlal*, I.L.R. (1968) M.P. 654

– **Section 8 and Rule 1 framed under the Act** – Computation of period of seven days – Two terminal days to be excluded: *Shri Mohammad Sadiq Vs. The State of M.P.*, I.L.R. (1966) M.P. 709 (D.B.)

– **Section 69** – Cognizance taken by Magistrate on the complaint filed by Station Officer – Jurisdiction of Nyaya Panchayat to entertain the complaint is barred – Criminal Procedure Code – 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” – Panchayats Act – Section 69 – Proviso – Police officer making a complaint of an offence under Section 323 read with section 34 – Though not an aggrieved party is a complainant – Nyaya Panchayat, jurisdiction of, to take cognizance of offences under Section 323 read with Section 34, Indian Penal Code: *Narmada Prasad Vs. Moorat Singh*, I.L.R. (1969) M.P. 332

– **Section 69** – Proviso – Nyaya Panchayat, Jurisdiction of, to take cognizance of offences under Section 323 read with Section 34, Indian penal Code: *Narmada Prasad Vs. Moorat Singh*, I.L.R. (1969) M.P. 332

– **Section 69** – Proviso – Police Officer making a complaint of an offence under Section 323 read with Section 34 – Though not an aggrieved party is a complainant: *Narmada Prasad Vs. Moorat Singh, I.L.R. (1969) M.P. 332*

– **Section 72** – Offence apparently not triable by Nyaya Panchayat – Magistrate after enquiry finds that accused committed an offence triable by Nyaya Panchayat – Not necessary to return complaint to Nyaya Panchayat – Ordinary jurisdiction of criminal Court not ousted – Magistrate starting an enquiry – Provision of Section 72 of the Act cannot be invoked: *State of Madhya Pradesh Vs. Shanker Lal, I.L.R. (1968) M.P. 654*

– **Sections 73, 84, 85(I) and (2)** – Complaint dismissed by Nyaya Panchayat as barred by time – First complaint filed before ordinary criminal Court before period of limitation prescribed by section 73 – Magistrate has no jurisdiction to entertain – Dismissal of complaint not got set aside by appellate or revisional Court – Fresh complaint not maintainable: *The State of M.P. Vs. Mehtar, I.L.R. (1961) M.P. 431*

– **Section 128** – Dissolution of Gram Panchayat – Janapada Sabha – Power to act under Panchayats Act and perform the duties under that Act – Assessment under Panchayats Act – Can be done by Janapada Sabha or by sub-committee appointed by Janapada – Cannot be done by Deputy Chief Executive Officer – Even after dissolution, machinery of Gram Panchayat can function: *Sardar Gyansingh Vs. The State of M.P., I.L.R. (1963) M.P. 6 (D.B.)*

– **Section 144 (2) (ii)** – Rules framed thereunder – Contains no provision for setting aside election of the ground of improper acceptance or rejection of nomination paper – Words and Phrases – “Illegal practice” – Meaning of – Act of President in rejecting nomination paper – Act does not amount to illegal practice – Remedy of person whose nomination paper is rejected – Remedy is suit in Civil Court: *Shri Hitjorilal Vs. The Deputy Commissioner, Hoshangabad, I.L.R. (1963) M.P. 65 (D.B.)*

– **Rules 1 to 5** – Objections to Electoral Roll – Objector to be given opportunity – Rule 5 – Words “on the spot” in – Mean at the place in the Ward the electoral roll of which is under revision – Section 8 and Rule 1 – Computation period of seven days – Two terminal days to be excluded – Interpretation of Statute – Interpretation to be given to harmonise with object of enactment and object which legislature has in view: *Shri Mohammad Sadiq Vs. The State of M.P., I.L.R. (1966) M.P. 709 (D.B.)*

– **Rules framed under Section 144 (2) (ii)** – Rule 2 – The words “corrupt or illegal practice” in – Equivalent to “corrupt practice or illegal practice” – Question whether candidate qualified to contest office – Question relates to process of election – Period of election – Election starts from the time of proposing name of candidate and ends with declaration of result – Election petition – Contravention of law or any rule – Can from subject matter of a challenge in election petition – Constitution, Article 226 –

Election matter – Dispute relating to controverted facts – Election petition proper remedy – Words and phrases – Term “illegal practice” – Meaning of: *Sheo Kumar Vs. Shri M.A. Khan, Deputy Commssioner, Bilaspur, I.L.R. (1959) M.P. 527 (D.B.)*

– **Rules 1 and 5** – Scope of – Refusal of Supervising Officer to receive nomination paper after fixed hour though tendered before – Refusal not justified – Order refusing to take nomination paper – Amounts to order of rejection – Expression “as order rejecting a nomination – Wide enough to include order refusing to receive nomination paper as well as order rejecting nomination paper after scrutiny – Order refusing to receive or register nomination paper in the absence of opposite party – Can be reviewed without notice to persons whose papers have been accepted or rejected after scrutiny – Provisions directory and not mandatory: *Pandit Shiv Prasad Vs. The State of M.P., I.L.R. (1963) M.P. 28 (D.B.)*

– **Rules 1 to 5 of the Rules framed thereunder** – Objections to Electoral Roll – Objector to be given opportunity: *Shri Mohammad Sadiq Vs. The State of M.P., I.L.R. (1966) M.P. 709 (D.B.)*

– **Rule 2, Clause IX**, of the rules – Places for keeping electoral roll for inspection mentioned in the rule are illustrative – Keeping of electoral roll at other places – Rule not breached – Rule directory and not mandatory: *Narbadaprasad Vs. Shri Q.M.A. Wahab, I.L.R. (1958) M.P. 802 (D.B.)*

– **Rule 5 of the Rules framed thereunder** – Words “on the spot” in – Mean at the place in the Ward the electoral roll of which is under revision: *Shri Mohammad Sadiq Vs. The State of M.P., I.L.R. (1966) M.P. 709 (D.B.)*

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: *Lakhandhar Vs. State of M.P., I.L.R. (1965) M.P. 264 (D.B.)*

Panchayats (Election Petitions, Corrupt Parctices and Dis – qualification for membership) Rules, Madhya Pradesh, 1962

– **Rule 6** – Permits relief of declaration about election of returned candidate to be void and other candidate to be duly elected – Rule 24 – Confers power on prescribed authority to make declaration under rule 6 – Constitution of India – Article 27 – High Court, Power of, to make declaration contemplated udner Rule 6 – Panchayats Act, Madhya Pradesh, 1962 – Section 14 – Relates to qualification at the time of election – Section 17(1) – Word “being” in – Is of “wider import”, not limited to stage of election – Meaning of – Words “eligible to be” in – Meaning of – Section 357 – Scope of – Does not provide remedy for challenging the holding of office – Constitution of India – Article

226 – High Court, Power of, to issue *quo warranto* against person disqualified in holding office even if other alternative remedy open: *Halke Mehte Vs. H.C. Kamthan, Sub-Divisional Officer, Karera, I.L.R. (1974) M.P. 260 (D.B.)*

– **Rule 24** – Confers power on prescribed authority to make declaration under rule 6: *Halke Mehte Vs. H.C. Kamthan, Sub-Divisional Officer, Karera, I.L.R. (1974) M.P. 260 (D.B.)*

Paradanashin Lady

– **Burden to prove full understanding of execution, nature and effect of the transaction and where a document not in mother language of executant** – Burden to prove that the executant understood the contents still further on the person taking benefit under the document: *Mst. Hussaina Bai Vs. Mst. Zohra Bai, I.L.R. (1959) M.P. 63 (D.B.)*

Part B States (Taxation Concessions) Order, 1950

– **And Income Tax Act (XI of 1922) Section 4 (1) (a)** – Payment made outside part B State – Part B States (Taxation Concessions) order not Applicable: *Gabhabhai Velji Vs. The Commissioner of Income Tax M.P., I.L.R. (1976) M.P. 655 (D.B.)*

– **And Income Tax Act (XI of 1922) – Saction 4 (1) (a)** – Person purchasing the Hundis – Not accepted by the drawee regarding assignment – Assignee not liable to sue on hundi – Amount would be deemed to have been received by the drawee at the place where money is paid – Payment made outside part B State – Part B State (Taxation Concessions) Order not applicable: *Gabhabhai Velji Vs. The Commissioner of Income Tax M.P., I.L.R. (1976) M.P. 655 (D.B.)*

– **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 (D.B.)*

– **Paragraph 12** – Scope and applicability of: *The Commissioner of Income Tax M.P. Vs. M/s Trilokchand Kalyanmal, Indore, I.L.R. (1960) M.P. 182 (D.B.)*

Part C States (Laws) Act (XXX of 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: *Mst. Bhagwan Kunwar Vs. Mst. Nanhidulaiya, I.L.R. (1980) M.P. 490*

Partition

– **Appointment of arbitrators to divide property by members of family** – Causes severance of joint status: *Ramadin Vs. Gokulprasad*, I.L.R. (1958) M.P. 674 (D.B.)

– **Does not contemplate formation of share in each single property:** *Tikam Chand Vs. Rahim Khan*, I.L.R. (1974) M.P. 298 (D.B.)

– **Joint family property** – *Karta* – Power of, to effect partition: *Mahajan Dwarka Prasad Vs. The Sub-Registrar, Narsimhapur*, I.L.R. (1971) M.P. 1 (F.B.)

– **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. Lalabai Vs. Krishnarao*, I.L.R. (1958) M.P. 669 (D.B.)

– **Mutation entries** – Relevant evidence – Possession – Nature of – Depends upon intention of parties and overt acts which follow: *Mst. Jhunkaribahu Vs. Phoolchand*, I.L.R. (1957) M.P. 531 (D.B.)

– **Partial partition** – Wrong to dismiss the suit, opportunity to be given to include entire property: *Munnulal Vs. Munnulal*, I.L.R. (1990) M.P. 681

– **Partition between son and grand-sons** – Paternal grand-mother entitled to share: *Seth Narsinghdas Kanhaiyalal, Hanumantal, Jabalpur Vs. The Commissioner of Wealth-Tax*, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1970) M.P. 845 (D.B.)

– **Partition of joint family property** – Alters mode of enjoyment – Does not result in acquisition of property: *Tribhuwandas Vs. Premchand*, I.L.R. (1965) M.P. 1003

– **Suit** – Existence of property constitutes cause of action in a partition suit – Court within whose jurisdiction property to be partitioned situated has jurisdiction: *Mujtabai Begum Vs. Mehboob Rehman*, I.L.R. (1959) M.P. 256 (D.B.)

– **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: *Harcharan Vs. Deokinandan*, I.L.R. (1960) M.P. 644 (D.B.)

Partition Act (IV of 1893)

– **Not applicable to joint Hindu family only** – Provision is of general nature applicable to all – Section 4 – “Undivided family” in – Means family not divided qua the

dwelling house – Object of the Provision – Applicable even though house can be partitioned – Right under – Can be exercised before final decree is passed: *Bharatsingh Vs. Rishi Kumar, I.L.R. (1977) M.P. 576*

– **Right under** – Can be exercised before final decree is passed: *Bharatsingh Vs. Rishi Kumar, I.L.R. (1977) M.P. 576*

– **Section 4** – Decree for partition defining shares of each party – Offer by one party to purchase the share of the other party – Mode of valuation – Relevant date for determination of valuation – Expression “make a valuation of such share in such manner as it thinks fit” in – Leaves discretion on court to adjust equities: *Kamalchandji Vs. Chhaganlal, I.L.R. (1980) M.P. 607*

– **Section 4** – Expression “make a valuation of such share in such manner as it thinks fit” in – Leaves discretion on court to adjust equities: *Kamalchandji Vs. Chhaganlal, I.L.R. (1980) M.P. 607*

– **Section 4** – Object of the provision – Applicable even though house can be partitioned: *Bharatsingh Vs. Rishi Kumar, I.L.R. (1977) M.P. 576*

– **Section 4** – Price to determined is market price – No Price which is paid by transferee: *Laxman Prasad Vs. Babulal, I.L.R. (1968) M.P. 103*

– **Section 4** – Test to be applied to determine whether house is residential house Phrase “sues” in – Meaning of – What amounts to suing under this provision – Price to be determined in market price – No price which is paid by transferee: *Laxman Prasad Vs. Babulal, I.L.R. (1968) M.P. 103*

– **Section 4** – “Undivided family” in – Means family not divided qua the dwelling house: *Bharatsingh Vs. Rishi Kumar, I.L.R. (1977) M.P. 576*

Partnership

– **Circumstances when sub-partnership becomes partnership at will:** *Gulab Singh Vs. Gattulal, I.L.R. (1973) M.P. 857 (D.B.)*

– **Distinct entity from that one of the partners:** *Trilok Singh Vs. Ramprasad, I.L.R. (1971) M.P. 702*

– **Distinction between illegality of partnership and illegality of acts done in the course of its business by firm or its members:** *Messrs Dayabhai and Co., Barwani Vs. The Commissioner of Income Tax, M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1968) M.P. 495 (D.B.)*

– **In partnership every partner becomes principal with reference to paid manager or partner who is bodily present:** *Sadhuram Vs. State, I.L.R. (1967) M.P. 837*

– **Legal Connotation of:** *Mohd. Hafeez Khan Vs. State Transport Appellate, Gwalior, I.L.R. (1979) M.P. 196 (F.B.)*

– **Nature of relation of partners inter se** – Equitable relief of dissolution when can be defeated: *GulabSingh Vs. Gattulal, I.L.R. (1973) M.P. 857 (D.B.)*

– **Partnership firm** – Minor admitted to the benefits of 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: *Madanlal Vs. Commissioner of Income Tax, Bhopal, I.L.R. (1980) M.P. 691 (D.B.)*

Partnership Act, Indian (IX of 1932)

– **Decree binding on firm property even though on partner is declare insolvent** – Not necessary to join insolvency Court as party: *Smt. Vraj Kuwar Bai Vs. Kunjbeharilal, I.L.R. (1972) M.P. 722 (D.B.)*

– **Does not require that partnership should carry on business with property of firm:** *Messrs Dayabhai and Co., Barwani Vs. The Commissioner of Income Tax, M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1968) M.P. 495 (D.B.)*

– **In case of solvent partners not executing sale-deed** – Court can execute on their behalf: *Smt. Vraj Kuwar Bai Vs. Kunjbeharilal, I.L.R. (1972) M.P. 722 (D.B.)*

– **One partner cannot transfer partnership property for his own benefit:** *Smt. Vraj Kuwar Bai Vs. Kunjbeharilal, I.L.R. (1972) M.P. 722 (D.B.)*

– **Partners individually parties to suit** – The property of partner can be Proceeded against – Not necessary when proceedings are to be taken against partnership property: *Smt. Vraj Kuwar Bai Vs. Kunjbeharilal, I.L.R. (1972) M.P. 722 (D.B.)*

– **Partnership entering into contract of sale of property** – Transaction can be completed by two solvent partners on behalf of the firm: *Smt. Vraj Kuwar Bai Vs. Kunjbeharilal, I.L.R. (1972) M.P. 722 (D.B.)*

– **Partnership property** – Nature of – Rights of partner in that property – Principles of co-ownership do not apply to such property – Partners individually parties to suit – The property of partner, can be proceeded against – Not necessary when proceedings are to be taken against partnership property – Decree binding on firm property even though one partner is declared insolvent – Not necessary to join insolvency Court as party – Partnership entering into contract of sale of property – Transaction can be completed by two solvent partners on behalf of the firm – In case of solvent

partners not executing sale – deed – Court can execute on their behalf – One partner cannot transfer partnership property for his own benefit – Transfer of Property Act – Section 52 – Transfer of property during pendency of suit for specific performance – Transfer affected by lis pendens: *Smt. Vraj Kuwar Bai Vs. Kunjbeharilal*, I.L.R. (1972) M.P. 722 (D.B.)

– **Pleading** – Fraud – Nature of the plea: *Gulab Singh Vs. Gattulal*, I.L.R. (1973) M.P. 857 (D.B.)

– **Principles of co-owner ship do not apply to partnership property:** *Smt. Vraj Kuwar Bai Vs. Kunjbeharilal*, I.L.R. (1972) M.P. 722 (D.B.)

– **Section 4** – Agreement by partner to divide partnership profits amongst others after they are received – Validity: *The Commissioner of Income-Tax M.P., Nagpur and Bhandara, Nagpur Vs. Sir Hukumchand Mannalal and Co., Indore*, I.L.R. (1967) M.P. 457 (D.B.)

– **Section 4** – Contract Act – Section 23 – Circumstances which render partnership illegal – Presumption regarding legality of partnership – Motor Vehicles Act – Sections 31, 42(1) and 59(1) – Do not make partnership for carrying on transport business illegal – Partnership Act – Does not require that partnership should carry on business with property of firm – Motor Vehicles Rules, C.P. and Berar, 1940 and Motor Vehicles Rules, Madhya Bharat, 1949 – Do not make ownership of vehicle a condition precedent for grant of permit – Partnership business of transport – Permit in the name of partner with Vehicle belonging to him or to the partnership – Validity – Distinction between illegality of partnership and illegality of acts done in the course of its business by firm or its members: *Messrs Dayabhai and Co., Barwani Vs. The Commissioner of Income Tax, M.P. Nagpur and Bhandara, Nagpur*, I.L.R. (1968) M.P. 495 (D.B.)

– **Section 4** – Does not prohibit formation of partnership with person not a citizen of India – Foreigners Act, 1946 – Section 5 – Prohibits changing of name or assume a different name without permission of Central Government – Partnership does not mean assumption of a different name – Agreement of partnership in the circumstances – Not against public policy – Constitution of India – Article 19 – Fundamental right available only against state – Not for violation of any such right by private individual except where State supports such private action – Does not forbid an alien from enforcing right which could be claimed under ordinary law of land – Court-fees Act – Section 13 – Case remanded for trial on merits by order in Second Appeal – Court-fees paid in first and second appeals are to be refunded: *M/s Bachomal Sadoromal, Raipur Vs. Milkiram*, I.L.R. (1979) M.P. 162

– **Section 4** – Members of joint family becoming partners – Other members do not become partners – Their remedy against members entering into partnership: *The*

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– **Section 4** – Partnership between stranger on one hand and members of joint Hindu family on other – Validity – Members of joint family becoming partners – Other members do not become partners – Their remedy against members entering into partnership – Agreement by partner to divide partnership profits amongst others after they are received – Validity – Section 22 – *Karta* entering into partnership – Share in partnership not partitioned – *Karta* or coparcener partner to be assessed as representing Hindu undivided family – Income Tax Act, Indian, 1922 – 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 purposes – 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 – 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 and Co., Indore, I.L.R. (1967) M.P. 457 (D.B.)*

– **Section 4** – Partnership deed putting restriction on rights of partners – Does not necessarily vitiate partnership – Act does not make registration compulsory – Income Tax Act – Section 26-A – Does not require that partnership must be registered under Partnership Act – Income Tax Act – 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, Madhya Pradesh, Nagpur and Bhandara, Nagpur, I.L.R. (1964) M.P. 466 (D.B.)*

– **Section 16** – Suit by one partner against other partner without asking for dissolution of firm and accounts or for accounts of dissolved firm – Maintainability: *Gowardhan Vs. Bhawaniprasad, I.L.R. (1961) M.P. 272 (D.B.)*

– **Section 22** – *Karta* entering into partnership – Share in partnership not partitioned – *Karta* or coparcener partner to be assessed as representing Hindu undivided family: *The Commissioner of Income-Tax M.P., Nagpur and Bhandara, Nagpur Vs. Sir Hukumchand Mannalal and Co., Indore, I.L.R. (1967) M.P. 457 (D.B.)*

– **Section 22** – Promissory note executed by one of the partner in the name and on – behalf of the firm – Express authority in favour of the partner to raise loan and execute documents – Transaction binding on the firm – All partners liable to repay: *Jaisukhlal Dave Vs. M/s Shanker Theaters (firm) Amrawati, I.L.R. (1982) M.P. 335*

– **Section 22 and Negotiable Instruments Act (XXVI of 1881) Sections 4, 5 and 80** – Promissory note and bill of exchange – Distinction between – Partnership Act, Indian – Section 22 – Promissory note executed by one of the partners in the name and on behalf of the firm – Express authority in favour of the partner to raise loan and execute documents – Transaction binding on the firm – All partners liable to repay – Money Lenders Act, 1934 – Section 3 – Money lender not complying with provisions of the section – Not entitled to interest: *Jaisukhlal Dave Vs. M/s Shanker Theatres (firm) Amrawati, I.L.R. (1982) M.P. 335*

– **Section 29** – No presumption about duration of sub-partnership being co-extensive with the main partnership – Section 42(b) – Sub-partnership for a single venture – Sub-partnership lasts till completion of that venture – Starting point of limitation for suit for account of sub-partnership – Sub-partnership for single venture – Duration not necessarily limited to the period of that venture but may continue for a longer period with consent – Circumstances when sub-partnership becomes partnership at will – Section 42 – Partner withholding his obligation – Does not ipso facto terminate partnership – Is a circumstances to be taken into account at stage of final settlement of account – Partnership – Nature of relation of partners *inter-se* – Equitable relief of dissolution when can be defeated – Pleading – Fraud – Nature of the plea: *GulabSingh Vs. Gattulal, I.L.R. (1973) M.P. 857 (D.B.)*

– **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 in property and profits of firm: *Messrs Chimanlal Umaji and Sons, Indore, Vs. The Commissioner of Income –Tax, Madhya Pradesh, Nagpur and Bhandara, I.L.R. (1969) M.P. 130 (D.B.)*

– **Section 34** – Partner continues to be partner till date of his adjudication as insolvent – Determination of his interest does not relate back to the date of insolvency petition: *Laxminarayan Vs. Dwarkaprasad, I.L.R. (1963) M.P. 263 (D.B.)*

– **Section 37** – Applicable to cases where partnership firm is dissolved and a new firm re-constituted: *Mohammad Iqbal Vs. Mohammad Hanif, I.L.R. (1977) M.P. 336*

– **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: *Bhawarlal Vs. Seth Mathuraprasad, I.L.R. (1960) M.P. 458 (D.B.)*

– **Section 42** – Partner withholding his obligation – Does not *ipso facto* terminate partnership – Is a circumstance to be taken into account at stage of final settlement of account: *Gulab Singh Vs. Gattulal, I.L.R. (1973) M.P. 857 (D.B.)*

– **Section 42 (b)** – Sub-partnership for a single venture – Sub-partnership last till completion of that venture: *Gulab Singh Vs. Gattulal, I.L.R. (1973) M.P. 857 (D.B.)*

– **Sections 46 and 37** – Strict enforcement of Section 46 when should not be resorted to – Section 37 applicable to cases where partnership firm is dissolved and a new firm reconstituted – Section 53 – Is ancillary to section 46 – Injunction not to be granted where it will be detrimental to one party without benefit to other party – Dissolution of partnership – Partners hold assets more or less as co-owners and entitled to possession of that property for common benefit – Outgoing partner entitled to share of profits in that business: *Mohammad Iqbal Vs. Mohammad Hanif, I.L.R. (1977) M.P. 336*

– **Section 47** – 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: *Sajjan Singh Vs. M/s Nadeali And Brothers, Through Ajaib Husain Yaseen Ali, Behind Bank of Baroda, Hamidia Road, Bhopal, I.L.R. (1978) M.P. 1134*

– **Section 47** – Decree – Decree in favour of firm – Decree executable by any partner even after dissolution: *Sajjan Singh Vs. M/s Nadeali And Brothers, Through Ajaib Husain Yaseen Ali, Behind Bank of Baroda, Hamidia Road, Bhopal, I.L.R. (1978) M.P. 1134*

– **Section 47** – Dissolution of firm – Mutual rights and obligation of partners continue till partnership fully wound up – Partnership property does not cease to be so because of dissolution of firm – Partnership property – Mode of appropriation after dissolution of firm – Provincial Insolvency Act, Section 28 – Receiver appointed after partner declared insolvent – Rights and obligations of such receiver – What and when property vests in him – Partnership Act, Section 34 – Partner continues to be partner till date of his adjudication as insolvent – Determination of his interest does not relate back to the date of insolvency petition: *Laxminarayan Vs. Dwarkaprasad, I.L.R. (1963) M.P. 263 (D.B.)*

– **Section 47** – Dissolution of partnership – Debt assigned to one partner – Debtor has notice of assignment – Debtor can pay only to the assignee: *Sajjan Singh Vs. M/s Nadeali And Brothers, Through Ajaib Husain Yaseen Ali, Behind Bank of Baroda, Hamidia Road, Bhopal, I.L.R. (1978) M.P. 1134*

– **Section 47** – Pending suit for evictions transaction begun but un-finished – Partner has a right to prosecute – His right continues till assets are placed in hands of partner to whom they are allotted mutual agreement: *Sajjan Singh Vs. M/s Nadeali And Brothers, Through Ajaib Husain Yaseen Ali, Behind Bank of Baroda, Hamidia Road, Bhopal, I.L.R. (1978) M.P. 1134*

– **Sections 47 and 49** – Partnership dissolved – Partnership still continues for winding up purposes and payment of liability – Assessment can be made against dissolved firm – Notices could be issued to the firm: *Ghanshyamdas Vs. Sales Tax Officer, Durg, I.L.R. (1965) M.P. 221 (D.B.)*

– **Section 49** – Payment of partnership debt – A part of winding up process: *Ghanshyamdas Vs. Sales Tax Officer, Durg, I.L.R. (1965) M.P. 221 (D.B.)*

– **Section 53** – Dissolution of partnership – Partners hold assets more or less as co-owners and entitled to possession of that property for common benefit – Outgoing partner entitled to share of profits in that business: *Mohammad Iqbal Vs. Mohammad Hanif, I.L.R. (1977) M.P. 336*

– **Section 53** – Is ancillary to section 46 – Injunction not to be granted where it will be detrimental to one party without benefit to other party: *Mohammad Iqbal Vs. Mohammad Hanif, I.L.R. (1977) M.P. 336*

– **Sections 58 and 69(1) and (2) – Object of:** *Firm Laxmi Oil Mills, Raipur Vs. Firm M/s Liladhar Chhaganlal, I.L.R. (1966) M.P. 773*

– **Sections 68, 69 and Civil Procedure Code, 1908, Order 41, Rule 27** – Suit on behalf of registered partnership firm for recovery of cheque amount – Suit not arising out of contract to enforce right – Bar under Section 69(2) not applicable – Additional evidence – Plaintiff did not file certified copy of entry – Acknowledgement cannot be treated as proof of registration – Plaintiff can be permitted to file certified copy as additional evidence in appellate stage – Such permission however cannot be granted in absence of an application: *Narendra Kumar Saxena Vs. M/s Paper Traders, I.L.R. (2002) M.P. 679*

– **Section 69 (3)** – Litigation between partners *inter se* for dissolution and accounts and between the so-called partners and third parties – Nature and quantity of proof required to prove partnership: *Seth Narayandas Vs. Sharda Prasad Nigam, I.L.R. (1958) M.P. 177 (D.B.)*

– **Section 71** – Provisions regarding fees and form for registration of partnership – Provisions merely directory and not mandatory – In the absence of rules regarding the provisions – Registration not invalid: *Firm Laxmi Oil Mills, Raipur Vs. Firm M/s Liladhar Chhaganlal, I.L.R. (1966) M.P. 773*

– **Section 71** – Provisions regarding fees and forms prescribed by – Are only directory and not mandatory – Sections 58 and 69(1) and (2) – Object of – Test to determine whether Provision directory or mandatory – Provisions regarding fees and form for registration of partnership – Provisions merely directory and not mandatory –

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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*

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– **Sections 3, 4** – Labour law – Liability to make payment of – Gratuity – Legality of – Termination not involved in proceedings – Appellate authority justified in ordering payment of gratuity: *Bank of India Vs. Yeshwant Singh Chandel, I.L.R. (2005) M.P. 47*

– **Section 4** – Maximum limit of Gratuity enhanced to Rs. 1 lakh by amending – Employee retired prior to amendment – In absence of any specific intention expressed by the legislation provision cannot be given retrospective effect: *District Co-Operative Central Bank Ltd., Jabalpur Vs. The Controlling Authority Under Payment of Gratuity Act, I.L.R. (2000) M.P. 114*

– **Sections 7 (3) and 7 (7)** – Appeal against order under Section 7(3) of the Controlling authority for grant of deferential amount of Gratuity – Filed after 120 days – Rightly rejected as barred by limitation: *Western Coalfields Ltd. Vs. Controlling Authority, I.L.R. (2001) M.P. 927*

– **Section 7 (7)** – Appellate Authority can condone the delay beyond period of 60 days if sufficient cause is shown by extending the period by further sixty days – Authority being quasi judicial cannot condone delay of extend limitation beyond, statutory period: *Western Coalfields Ltd. Vs. Controlling Authority, I.L.R. (2001) M.P. 927*

Payment of Bonus (XXI of 1965)

– **Provides complete machinery** – Payment of Wages Act has no application to a case falling thereunder: *Junior Labour Inspector (Central) Jabalpur Vs. The Authority Under The Payment of Wages Act, Presiding Officer Labour Court No. 2, Jabalpur, I.L.R. (1975) M.P. 978 (D.B.)*

– **Section 21** – Mode for recovery under this provision – Available only if Bonus is claimable under a settlement or an Award or agreement: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842 (F.B.)*

– **Sections 21 and 22** – Claim would be determinable by normal procedure: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842 (F.B.)*

– **Sections 21 and 22** – Complicated questions in proceedings before the authority – Authority has no jurisdiction to decide the question: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842 (F.B.)*

– **Sections 21 and 22** – Dispute covered under Section 22 – Remedy would not be under payment of wages Act – Question to be referred for adjudication under Industrial Disputes Act – Complicated questions in Proceedings before the authority – Authority has no jurisdiction to decide the question – Claim would be determinable by normal procedure – Does not provide any mode for recovery of amount payable under the Act – Section 21 – Mode for recovery under this provision – Available only if Bonus is claimable under a settlement or an award or agreement – Section 22 – Bonus covered under this provision if two tests are fulfilled: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842 (F.B.)*

– **Sections 21 and 22** – Does not provide any mode for recovery of amount payable under the Act: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842 (F.B.)*

– **Sections 21 and 22** – Question to be referred for adjudication under Industrial Disputes Act: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842 (F.B.)*

– **Section 22** – Bonus covered under this provision if two tests are fulfilled: *Junior Labour Inspector (Central) Jabalpur Vs. Authority Under The Payment of Wages Act, Presiding Officer, Labour Court No. 2, Jabalpur, I.L.R. (1977) M.P. 842 (F.B.)*

Payment of Wages Act (IV of 1936)

– **“Bonus” excluded from definition of “salary or wages”** – Wages earned by labourer – Wages are wholly exempt but in case of other employees, exemption is partial: *Jagan Nath Vs. Gurbachan Singh, I.L.R. (1977) M.P. 78*

– **Confers three rights:** *Madanlal Tiwari Vs. The Superintendent and Manager, The Bengal Nagpur Cotton Mills Ltd., Rajnandgaon, I.L.R. (1964) M.P. 145*

– **Definition of Wages** – Does not include bonus which is not part of remuneration payable under terms of employment – Bonus payable under payment of Bonus Act and not under terms of employment – Payment of Bonus Act, 1965 – Provides, complete machinery – Payment of Wages Act has no application to a case falling thereunder: *Junior Labour Inspector (Central) Jabalpur Vs. The Authority Under The Payment of Wages Act, Presiding Officer Labour Court No. 2, Jabalpur, I.L.R. (1975) M.P. 978 (D.B.)*

– **Jurisdiction of Authority thereunder to decide claim under Section 25FFF of the Industrial Disputes Act of 1947:** *Fajale Hussain Vs. Authority Under the Payment of Wages Act, Ujjain, I.L.R. (1965) M.P. 893 (D.B.)*

– **Wages** – Wages earned by labourer – Wages are wholly exempt but in case of other employees, exemption is partial: *Jagan Nath Vs. Gurbachan Singh, I.L.R. (1977) M.P. 78*

– **Section 2** – Definition of wages – Includes good muster wages: *Madanlal Tiwari Vs. The Superintendent and Manager, The Bengal Nagpur Cotton Mills Ltd., Rajnandgaon, I.L.R. (1964) M.P. 145*

– **Section 2 (vi)** – Value of house accommodation – Not part of “Wages” – Section 7(2)(d) – Rent for house accommodation – Is permissible deduction – Absence about payment of rent in allotment order – Does not mean that quarters were allotted free of rent: *Hindustan Steel Ltd. Bhilai Etc. Vs. Presiding Officer, Central Government Industrial Tribunal Cum – Labour Court, Jabalpur, I.L.R. (1976) M.P. 15 (D.B.)*

– **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: *Fajale Hussain Vs. Authority Under the Payment of Wages Act, Ujjain, I.L.R. (1965) M.P. 893 (D.B.)*

– **Section 2 (vi) (d)** – Sum payable to workman because of termination of employment – Included in 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 (D.B.)*

– **Sections 2(vi) (d) and 15(3) and Industrial disputes Act, Sections 25-FF and 33C(2) – Section 25-FF** – Person discharged from service consequent on transfer of undertaking – Person cannot be regarded as retrenched – Section 33C(2) – Circumstances in which it comes into play – Labour Court – Competency of, to determine amount of monetary or non-monetary benefit – Section 33C(1) – Recovery under – Can be only when amount is determined – Payment of Wages Act – Section 15 – What are questions incidental to main question – Depend upon circumstances of each case – Section 2(vi)(d) – Sum payable to workman because of termination of employment –

Included in definition of wages – A claim to compensation under Section 25-FF of the Industrial Disputes Act – Does not fall in the definition of wages – Provisions of both Acts 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 – Difference between Section 33C(2) of Industrial Disputes Act and Section 15, Payment of Wages Act: *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 (D.B.)*

– **Section 2(vi) (d)** – Includes retrenchment compensation payable because of termination of employment – Retrenchment – Compensation not a retirement benefit – Tribunal – Jurisdiction to determine and decide retrenchment compensation and incidental questions regarding employment of servant and whether services terminated or still continue: *Ramcharan Tiwari Vs. The District Judge, Jabalpur, I.L.R. (1962) M.P. 187 (D.B.)*

– **Section 7, Explanation II** – Loss of wages on ground of suspension – Is not deduction from wages: *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*

– **Section 7 (2) (d)** – Absence about payment of rent in allotment order – Does not mean that quarters were allotted free of rent: *Hindustan Steel Ltd. Bhilai Etc. Vs. Presiding Officer, Central Government Industrial Tribunal- Cum-Labour Court, Jabalpur, I.L.R. (1976) M.P. 15 (D.B.)*

– **Section 7 (2) (d)** – Rent for house accommodation – Is permissible deduction: *Hindustan Steel Ltd. Bhilai Etc. Vs. Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, I.L.R. (1976) M.P. 15 (D.B.)*

– **Section 15** – Application by employee for arrears of wages – Death of employee during pendency of application – Legal representatives whether can continue proceedings: *Messrs Motilal Omprakash, Indore Vs. Jagjiwan, I.L.R. (1969) M.P. 621 (D.B.)*

– **Section 15** – Authority under Payment of Wages Act, jurisdiction of, to determine potential wages or the wages that ought to be paid to an employee: *Hiralal Shrimal, Factory Manager, The Gwalior Rayon Silk Manufacturing and Weaving Co., Ltd., Birlanagar, Gwalior Vs. Rambharose, I.L.R. (1965) M.P. 360 (D.B.)*

– **Section 15** – Expression “Delayed Wages” in – Includes “Refused Wages” – Authority under Act, Jurisdiction of, to decide dispute regarding wages – Section 22 – Jurisdiction of Civil Courts barred: *Jiwajirao Sugar Co. Ltd. Daloda Vs. J.M. Banrji, I.L.R. (1963) M.P. 142*

– **Section 15** – 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

– **Section 15** – What are questions incidental to main question – Depend upon circumstances of each case: *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 (D.B.)

– **Section 15 (2)** – Application of employee under section 15(2) of the Act rejected in toto – Appeal against the order – Maintainability: *P.L. Singh Vs. Shri C.B. Kekre, District Judge, Chhindwara*, I.L.R. (1959) M.P. 835(D.B.)

– **Section 15 (3)** – Existence of a manager who is responsible to the employer for supervision and control of factory – Liability for payment for a claim for delayed wages – Employer, right of to file appeal: *The Hindusthan Manganese Mines Ltd. Vs. P.L. Singh*, I.L.R. (1959) M.P. 212 (D.B.)

– **Sections 15 (2) and 22** – Jurisdiction to decide claim for delayed wages and incidental questions – Question whether applicant's employment was terminated is an incidental one – Authority has jurisdiction to decide – Industrial Relations Act, MP, 1960 – Section 1 – Does not take away jurisdiction of Authority under section 15 of Payment of Wages Act – Constitution of India – Article 226 – Writ of *certiorari* – When can be issued – Erroneous decision on a finding of fact – Cannot be quashed by a writ of *Certiorari* – Termination of Service – Order effective only when it is communicated: *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Industrial Court, Indore*, I.L.R. (1981) M.P. 298 (D.B.)

– **Section 17 (1) (b)** – Application of employee under section 15(2) of the Act rejected in *toto* – Appeal against the order – Maintainability – Condition requisite for filing appeal – Section 17(1) – Word “direction” in – Includes refusal to make a direction: *P.L. Singh Vs. Shri C.B. Kekre District Judge, Chhindwara*, I.L.R. (1959) M.P. 835 (D.B.)

– **Section 17 (4)** – Industrial Court has no jurisdiction to pronounce upon validity of a law: *P.C. Adhikari Vs. The Manager, The Brait Waite Burn and Jossop Construction Co. Ltd. Bhilai*, I.L.R. (1985) M.P. 161

– **Section 22** – Jurisdiction of Civil Courts barred: *Jiwajirao Sugar Co. Ltd. Daloda Vs. J.M. Banrji*, I.L.R. (1963) M.P. 142

– **Section 23** – Contract of service modified as regards wages – Contract not hit by Section – Does not amount to contracting out – Parties can change scale of wages

by mutual agreement: *Madanlal Tiwari Vs. The Superintendent and Manager, The Bengal Nagpur Cotton Mills Ltd., Rajnandgaon, I.L.R. (1964) M.P. 145*

– **Section 23** – Payment of Wages Authority, Jurisdiction of, to adjudicate upon subsistence of rival contracts set up by parties – Contract between management and union or unions – Contract binding on workers irrespective of the fact that they do not approve or ratify: *Madanlal Tiwari Vs. The Superintendent and Manager, The Bengal Nagpur Cotton Mills Ltd., Rajnandgaon, I.L.R. (1964) M.P. 145*

Penal Code Indian (XLV of 1860)

– **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. State of M.P., I.L.R. (2005) M.P. 524 (D.B.)*

– **Appeal against conviction u/s. 302, I.P.C.** – Sentence Life Imprisonment – On the basis of allegation in earlier dying declaration recorded by Doctor – Subsequent dying declaration on next day by Naib – Tehsildar – Deceased denied the allegation/ contents made in earlier dying declaration though not signed or bearing any thumb impression – Doctor certified that the deceased was in a position to make statement before it was recorded by Naib – Tehsildar: *Ramadhar Vs. State of M.P., I.L.R. (1998) M.P. 611 (D.B.)*

– **Apprehension not regarding causing of grievous hurt or death** – Excessive use of force for defending person or property not justified: *State of M.P. Vs. Salikram, I.L.R. (1978) M.P. 1061(D.B.)*

– **Circumstances in which the right to private defence can be said to have be on exceeded:** *Saitua Vs. State of M.P., I.L.R. (1975) M.P. 351*

– **Circumstances proving the guilt of accused persons** – Nature of: *Onkarnath Vs. State of M.P. I.L.R. (1980) M.P. 1053 (D.B.)*

– **Force, Short of Grievous hurt** – Can be used in defense of right to property – Apprehension not regarding causing of grievous hurt or death – Excessive use of force for defending person or property not justified: *State of M.P. Vs. Salikram, I.L.R. (1978) M.P. 1061 (D.B.)*

– **Officer detaining a person** – Liable for offence under Penal Code: *Ramdhani Vs. State of Madhya Pradesh, I.L.R. (1974) M.P. 841*

– **Possession** – Person entitled to land but not in possession – Person has no right even to dispossess a trespasser – Trespasser entitled to defend possession even against rightful over: *The State of M.P. Vs. Shaligram, I.L.R. (1973) M.P. 889 (D.B.)*

– **Principles on which law of private defence is founded** – The right is of defence not of retribution – Section 141 and 146 – Persons trying to take forcible possession by criminal force – Persons constitute unlawful assembly – If force is used – Offence of rioting is committed – Person entitled to land but not in possession – Person has no right even to dispossess a trespasser – Trespasser entitled to defend possession even against rightful over: *The State of M.P. Vs. Shaligram, I.L.R. (1973) M.P. 889 (D.B.)*

– **Right is of private defence is the right of defence, not of retribution:** *The State of M.P. Vs. Shaligram, I.L.R. (1973) M.P. 889 (D.B.)*

– **Right of private defence ends where victim leaves the place and fled for safety:** *Lalman Vs. State of M.P., I.L.R. (1973) M.P. 519 (D.B.)*

– **Section 3(1)** – Ingredients – If the accident arose out of and during the course of employment – Deceased could have been killed anywhere because of his enmity with the murderer – Murder had no relation with the employment – Cannot be held that accident arose out of the employment: *Bharat Heavy Electricals Ltd., Bhopal Vs. Smt. Gyan Kaur, I.L.R. (2000) M.P. 518*

– **Section 8** – Postulates that the pronoun he and its derivatives are used for any person male or female: *Madhuri Bai Vs. Minor Surendra Kumar, I.L.R. (2000) M.P. 289*

– **Section 21** – Chairman of the Municipal Board – Is a public servant: *Dayachand Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 473 (D.B.)*

– **Section 30** – Valuable security – Tabulation chart register of marks obtained by a student of university – Valuable security: *A.V. Rao Vs. State of M.P., I.L.R. (2005) M.P. 1223*

– **Sections 30, 467, 468, 471 and Criminal Procedure Code, 1973, 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*

– **Sections 31 and 149** – Difference between: *Jaganlal Vs. The State of M.P., I.L.R. (1964) M.P. 419 (D.B.)*

– **Section 34** – Accused persons sharing common intention – All of them equally liable – Deals with liability for offence likely to be committed in course of carrying out their in: *Jaganlal Vs. The State of M.P., I.L.R. (1964) M.P. 419 (D.B.)*

– **Section 34** – Common intention – Court to take recourse to Section 34 of I.P.C. even if the said Section was not specifically mentioned in the charge and instead Section 149 I.P.C. has been included – Of course a finding that the assailant concerned had a common intention with the other accused is necessary for resorting such a course: *Dhanna Vs. State of M.P., I.L.R. (1996) M.P. 264 (D.B.)*

– **Section 34** – Common intention – Facts from which it can be inferred – Object and applicability of: *Shyamsingh Vs. The State, I.L.R. (1958) M.P. 395 (D.B.)*

– **Section 34** – Common intention – Gatherable from nature of weapons and gestures or words used – Not necessary that all must be carrying similar weapons: *The State Vs. Hukuma, I.L.R. (1968) M.P. 972 (D.B.)*

– **Section 34** – Common intention – Mere distance from the scene of crime cannot exclude culpability – Criminal sharing overt or covert by active presence or by distant direction, making out a certain measure of jointness in the commission of the act is essence of Section 34 – In absence Section 107 comes into play: *Ramkhilawan Kushwaha Vs. State of M.P., I.L.R. (1995) M.P. 693*

– **Section 34** – Common intention – While 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 : *Brijesh Singh Vs. State of M.P., I.L.R (2005) M.P. 266 (D.B.)*.

– **Section 34** – Persons jointly giving chase and all knowing the weapons others are carrying – No scope for doubt about commonness of intention: *The State Vs. Hukuma, I.L.R. (1968) M.P. 972 (D.B.)*

– **Section 34** – Unity of purpose, time and place – Indicative of common intention: *The State Vs. Hukuma, I.L.R. (1968) M.P. 972 (D.B.)*

– **Sections 34 and 302** – Common intention and murder – Appeal against Confirmation of conviction & sentence by High Court – Common intention – Both accused armed with guns awaiting the deceased and his companions – Both indulged in firing aiming at deceased – Common intention to commit murder of deceased established – Medical evidence supports the role assigned by eye witnesses to the accused persons – Positive evidence that deceased was lying prostate on the ground having sustained injuries – Gun fired placing it on his buttocks resulting into fatal injury – Verdict of guilty recorded by courts below maintained: *Gyasiram Vs. State, I.L.R. (2003) M.P. 569 (S.C.)*

– **Sections 34 and 342** – Ingredients of offence put to accused when examined under Section 342 and every factual element put to him – Common intention or its

equivalent Hindi words not put to accused – No prejudice can be said to be caused to accused: *The State Vs. Hukuma*, I.L.R. (1968) M.P. 972 (D.B.)

– **Sections 34, 105, 302, Evidence Act Indian, 1872, Sections 3, 27 and Criminal Procedure Code, 1973, Section 378** – State appeal against acquittal – 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 – Accused can discharge burden by proving preponderance of probability – To ward of splashing of acid deceased was struck on head by accused – Would not be guilty of offence charged – Order of acquittal confirmed: *State of Madhya Pradesh Vs. Shrikrishna*, I.L.R. (2005) M.P. 1004 (D.B.)

– **Sections 34, 107, 306 and Criminal Procedure Code, 1973** – Section 374 (2) and Evidence Act, Indian, 1872 – Section 32 – 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. Tarabai Vs. State of M.P.*, I.L.R. (2004) M.P. 1161

– **Sections 34, 120-B, 302 and Criminal Procedure Code, 1973, Section 374(2)** – 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.)

– **Sections 34, 149, 302 and Criminal Procedure Code 1973, Section 378 (1)** – **State appeal against acquittal** – Murder – Common intention or common object – Guns in Possession of accused would not by itself mean common object – Accused persons sitting in the tractor when A-4 got down and shot at deceased – Other accused fled and did not hold A-4 to shot at deceased – Offence under Section 149/302 or Section 34/302 IPC not made out – No other material to hold common object – Benefit of doubt should go to the co-accused : *State Vs. Hisamuddin*, I.L.R. (2004) M.P. 287 (D.B.)

– **Sections 34, 201, 302 and Criminal Procedure Code, 1973, Section 378** – State appeal against acquittal- – In such an appeal presumption in innocence of accused in enhanced – Clinching and un-impeachable evidence should exist to prove the guilt – Last seen together – In which months accused was last seen together not clear – Judgment of acquittal confirmed: *State of M.P. Vs. Rajaram, I.L.R. (2005) M.P. 895 (D.B.)*

– **Sections 34, 294, 302 and 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: *Om Prakash Vs. State, I.L.R. (1992) M.P. 484 (D.B.)*

– **Sections 34, 300, Exceptions 2, 302, 304, Part II** – Incident occurring at a place different from that as claimed by prosecution – Discrepancies in evidence of all prosecution witnesses– Trial Court observing that deceased and others assaulted appellant and he may have acted in retaliation – Genesis of the incident, place of incident and manner in which it took place not established by cogent and credible evidence – No scope for taking a different view so far as the appellant is concerned– Conviction set aside – Appeal allowed: *Narain Vs. State of Madhya Pradesh, I.L.R. (2004) M.P. 315 (S.C.)*

– **Sections 34, 300, Exceptions 2, 302, 304, Part II** – Seven out of eight accused acquitted by trial court record indicates assault by deceased and some of the prosecution witness – Incident occurring at a place diffence from that as claimed by prosecution – Discrepancies in evidence of all prosecution witnesses – Trial Court observing that deceased and others assaulted appellant and he may have acted in retaliation – Genesis of the incident, place of incident and manner in which it took place not established by cogent and credible evidence – No scope for taking a different view so far as the appellant is concerned– Conviction set aside – Appeal allowed: *Narain Vs. State of Madhya Pradesh, I.L.R. (2004) M.P. 315 (S.C.)*

–**Sections 34, 302**–Evidence Act Indian, 1872–Section 32–Burn injury–Death–Dying declaration that burn injury was accidental–Promptly recorded by Magistrate in presence of doctor–No reason to disbelieve it–Autopsy Surgeon did not find smell of kerosene–Mitigates prosecution story–Trial Court erred in basing conviction on evidence of solitary hostile eye witness–Accused deserves benefit of doubt: *Gopal Singh Vs. State of M. P., I.L.R. (2005) M.P. 155 (D.B.)*

– **Sections 34, 302** – Evidence Act Indian, 1872 – Sections 3, 60 and Criminal Procedure Code, 1973 – Sections 154 and 374(2) – Appeal against conviction and sentence – Murder – First Information Report – Not substantive piece of evidence – Evidence – Oral evidence must be direct – It must be evidence of a person who says that he witnessed it – Hearsay evidence is no evidence and not admissible – Not proper

to base conviction – Prosecution failed to bring home the guilt – Accused acquitted: *Beniram S/o Ramchander Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 150 (D.B.)*

– **Sections 34, 302** – No effort was made to collect evidence on truth of facts and motive behind murder – Case requires further investigation: *Dr. Smt. Sulekha Mishra Vs. Purushottam Lal Sharma, I.L.R. (2005) M.P. 1105*

– **Sections 34, 302** – 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*

– **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 enmity – 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 Singh Vs. State, I.L.R. (2001) M.P. 1570 (D.B.)*

– **Sections 34, 302 and 326** – Murder and grievous injury – Serious doubt as to whether appellants alone were responsible for causing the injuries which ultimately proved fatal to deceased – Evidence only shows appellants responsible for certain grievous injuries – Conviction under Section 302/34, IPC set aside and appellants convicted under section 326 r/w Section 34 IPC: *Nathuram Tiwari Vs. State of M.P.; I.L.R. (2004) M.P. 411 (S.C.)*

– **Sections 34, 302 and Criminal Procedure Code, 1973 – Section 319** – Application under – Rejection by Trial Court – Power to proceed against a person not accused – Order is not required to be made mechanically – No overt act attributed to the appellants – High Court not justified in taking a different view than the trial Court: *Kailash Dwivedi Vs. State of M.P., I.L.R. (2005) M.P. 99 (S.C.)*

– **Sections 34, 302 and Evidence Act Indian, 1872** – 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 34, 302, 304 Part II** – Murder – Conviction and sentence – Appeal to High Court – By brief judgment High Court altered the conviction to one under Section 304 – Part II IPC and reduced the sentence to RI for 9 years – Accused already undergone the sentence – Substantial justice has been done – Incident of 11.10.1982 and State appeal in 1995 – At this distance of time not equitable to upturn

the judgment of High Court even assuming that the same is erroneous: *State of MP Vs. Harilal*, I.L.R. (2003) M.P. 12 (S.C.)

– **Sections 34, 302, 304 -Part II, Criminal Procedure Code, 1973, Section 374(2) and Evidence Act, Indian 1872, Sections 3 and 32 – 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 (D.B.)

– **Sections 34, 302, 304 Part-I and Criminal Procedure Code, 1973, Section 374(2)** – Appeal against conviction and sentence – Culpable homicide – 13 injuries inflicted – None on any vital part – Intention to cause death cannot be inferred – Offence would fall under Section 304 Part-I of the IPC: *Bhagirath Singh Vs. State of Madhya Pradesh*, I.L.R. (2005) M.P. 645 (D.B.)

– **Sections 34, 302, 304 Part-II 323 and Criminal Procedure Code 1973, Section 374(2)** – Appeal against conviction – Murder – Common intention – Co-accused not armed with any weapon nor caused any injury – Difficult to conclude that co-accused formed common intention – Single blow of ordinary stick inflicted – No enmity with the deceased- Offence would come under Section 304 Part-II, I.P.C: *Bhawla @ Dhav Singh Vs. State of Madhya Pradesh*, I.L.R. (2005) M.P. 758 (D.B.)

– **Sections 34, 302, 452 and Criminal Procedure Code, 1973, Section 374 (2)** – Appeal – Murder – Conviction and sentence – Death due to decapitation by sharp cutting instrument – Prompt FIR – Since inception injury ascribed to accused – Eye witness statement that co-accused took farsa from out of hand of A-1 and assaulted – Omission of this fact in PCD statement – Not safe to rely – Appeal partly allowed: *Rajjan Vs. State of M.P.*, I.L.R. (2005) M.P. 354 (D.B.)

– **Sections 34, 307, 323, 325 and 327** – Criminal Procedure Code, 1973 (II of 1974) – Section 319 – 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*

– **Sections 34, 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*

– **Sections 34, 325, 333 and Criminal Procedure Code, 1973, (II of 1974) Sections 320(2) and 374(2)** – 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*

– **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: *Lakhan Vs. State of M.P., I.L.R. (2005) M.P. 928 (S.C.)*

– **Sections 34, 97, 100, 104 and 300, 302** – Evidence Act, Indian 1872, Section 27 – Murder – Right of Private Defence – Deceased was in possession of property – Appellant No.1 trying to dispossess the deceased – Held – Since Appellant No. 1 was not in possession of the property and was a trespasser trying to forcibly oust and dispossess the deceased from the disputed land, therefore he cannot be said to have any right of self defence – A trespasser cannot certainly have a right of private defence against a person in actual settled possession of the land and the trespasser cannot forcibly oust him – Appeal Dismissed: *Rajendra Tiwari Vs. State of M.P., I.L.R. (1997) M.P. 214 (D.B.)*

– **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. State of MP, Through Police Station Kohefiza, Bhopal District, Bhopal, I.L.R. (2005) M.P. 1020*

– **Section 42** – Word “illegal” in – Has artificial conception consisting of the negation of particular act which may be due to pure and simple passivity or due to commission of same act inconsistency with act committed: *Ganeshgir Vs. The State of M.P., I.L.R. (1967) M.P. 843*

– **Section 75** – Condition necessary for applicability of the provision: *Ghisulal Vs. State of M.P., I.L.R. (1977) M.P. 157*

– **Section 75** – Restricted to offences under Chapters XII and XVII of the Code – Not applicable to offences under other Acts – Public Gambling Act, 1867 – Section 15 – Essentials for its applicability – Punishment – A creation of statute and so also its enhancement – Conviction to be based on facts of the case – Not to be based on previous conviction: *Manaklal Vs. State, I.L.R. (1966) M.P. 833*

– **Section 84** – Antecedent and subsequent conduct – Relevant to show the state of mind at the time the act was committed: *State of M.P. Vs. Godhe, I.L.R. (1976) M.P. 361 (D.B.)*

– **Section 84** – Burden to prove that case falls under the provision – Burden is on accused – Difference between burden on accused under section 105, evidence Act and the burden that lies on prosecution to prove guilt – Doubt created in mind of Court – Accused entitled to acquittal: *State of M.P. Vs. Godhe, I.L.R. (1976) M.P. 361 (D.B.)*

– **Section 84** – Every person mentally diseased – *Ipso-facto* not exempted from criminal liability – Circumstance in which exemption is allowed – To claim exemption, unsoundness of mind must be such that its cognitive faculties are affected in such a way as not to know the nature of the Act he is doing – Antecedent and subsequent conduct – Relevant to show the state of mind at the time the act was committed – Burden to prove that case falls under the provision – Burden is on accused – Difference between burden on accused under section 105, Evidence Act and the burden that lies on prosecution to prove guilt – Doubt created in mind of court – Accused entitled to acquittal – Nature of evidence necessary to prove defence of insanity: *State of M.P. Vs. Godhe, I.L.R. (1976) M.P. 361 (D.B.)*

– **Section 84** – Gives wider protection to accused as compared to English law: *Rambharose Vs. State of M.P., I.L.R. (1976) M.P. 1041 (D.B.)*

– **Section 84** – Law presumes a man of age of discretion to be sound: *Rambharose Vs. State of M.P., I.L.R. (1976) M.P. 1041 (D.B.)*

– **Section 84** – Plea of insanity – Burden of proof – Burden how discharged – Burden shifts on prosecution to prove *mens rea* of accused: *Rambharose Vs. State of M.P., I.L.R. (1976) M.P. 1041 (D.B.)*

– **Section 84** – Plea of insanity – Presumption of law is that every person is of sound mind – Burden of proving insanity on person who sets up the plea – Things to be proved to substantiate the plea of insanity: *Ramdulare Vs. State, I.L.R. (1958) M.P. 596 (D.B.)*

– **Section 84** – Things accused has to prove to claim benefit of insanity – The test to be applied: *Rambharose Vs. State of M.P., I.L.R. (1976) M.P. 1041 (D.B.)*

– **Section 84** – To Claim exemption, unsoundness of mind must be such that its cognitive faculties are affected in such a way as not to know the nature of the Act he is doing: *State of M.P. Vs. Godhe, I.L.R. (1976) M.P. 361 (D.B.)*

– **Section 84** – To Determine whether accused was insane at the time of commission of crime – The state of mind before and after commission of offense is relevant – Law presumes a man of age of discretion to be sound – Word “wrong” in – Means morally wrong – Gives wider protection to accused as compared to English law – Things accused has to prove to claim benefit of insanity – The test to be applied – Section 84 – Plea of insanity – Burden of proof – Burden how discharged – Burden shifts on prosecution to prove *mens rea* of accused: *Rambharose Vs. State of M.P., I.L.R. (1976) M.P. 1041 (D.B.)*

– **Section 84** – Word “wrong” in – Means morally wrong – Does not mean contrary to law – Implies that there can be no insane criminal – Evidence Act. Indian – Section 105 – Nature of Burden of proof of insanity on accused – Antecedent and subsequent mental condition of mind relevant to determining insanity of accused – Sheer abnormalities in behaviour – Does not prove Tnsanity – Totality of circumstance 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 84** – Word “wrong” in – Means morally wrong: *Rambharose Vs. State of M.P., I.L.R. (1976) M.P. 1041 (D.B.)*

– **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, I.P.C. – Conviction and sentence set aside: *Dhani Ram Vs. State, I.L.R. (2001) M.P. 127*

– **Section 86** – Offence committed under intoxication – There is nothing on record that appellant was intoxicated by some body else – Appellant not entitled for benefit of – Section 86 of Indian Penal Code: *Divakar Mishra Vs. State of M.P., I.L.R. (1994) M.P. 393*

– **Sections 94 and 96** – Distinction between these provisions – Section 96 – Empowers magistrate to issue search warrant – There is no direction to accused to produce document or thing: *Ramesh Kumar Patel Vs. Kodu Ram Garg, I.L.R. (1974) M.P. 159*

– **Section 96** – Empowers magistrate to issue search warrant – There is no direction to accused to produce document or thing: *Ramesh Kumar Patel Vs. Kodu Ram Garg, I.L.R. (1974) M.P. 159*

– **Section 96** – Right of self defence when not available: *Victor Alias Kalloo Vs. The State of M.P., I.L.R. (1967) M.P. 601 (D.B.)*

– **Sections 96, 100 and 300 Exception 2 and Evidence Act, Indian (I of 1872) – 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 – Section 96 – Right of self defence when not available – Section 300, Exception 2 – Mere ground that another lying in wait to take life – Does not warrant killing that another – Actual danger at the time necessary – Pre-supposes existence of right of private defence – Apprehension of danger by the accused is the criterion – Apprehension must be of a reasonable man: *Victor Alias Kalloo Vs. The State of M.P., I.L.R. (1967) M.P. 601 (D.B.)*

– **Sections 96, 103, 104 and 441** – 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: *Krishan Kumar Vs. State, I.L.R. (2000) M.P. 619 (D.B.)*

– **Sections 96 to 98, 100 to 106** – Plea of right of private defence – Essentially a finding of fact – Due weightage has to be given to what happens on the spur of the moment on the spot in view of normal human reaction and conduct: *Shriram Vs. State of M.P., I.L.R. (2004) M.P. 221 (S.C.)*

– **Sections 96 to 98, 100 to 106, 147, 149, 302, 304 Part-II and 323** – Murder – Prosecution – Plea of right of private defence – Essentially a finding of fact – Due weightage has to be given to what happens on the spur of the moment on the spot in view of normal human reaction and conduct – Injuries on accused – Non-explanation by prosecution – Not always a safe criterion – Witnesses believed by the Court in proof of guilt of the accused – Question of obligation of prosecution to explain injuries sustained by the accused will not arise – More so when the injuries are simple or superficial in nature – Appellants rightly convicted under Section 304 Part-II – Sentence of 5 years RI not harsh: *Shriram Vs. State of M.P., I.L.R. (2004) M.P. 221 (S.C.)*

– **Sections 96, 300, Exception I and II, 302, 304-Part-I, 338 and Evidence Act, Indian. 1872** – Sections 105 and 114 – Murder – Right of private defence – Whether legitimately exercised – Is a question of fact – Courts must consider surrounding circumstances – 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 – No evidence that boys including deceased attacked accused – Conclusion of High Court not based on evidence – High Court not justified to alter the conviction to Section 304 Part-I, IPC – Judgment of High Court set aside and that of Trial Court restored: *State of Madhya Pradesh Vs. Ramesh, I.L.R. (2004) M.P. 1001 (S.C.)*

– **Sections 97, 302, Evidence Act, Indian 1872, Section 114** – Right of Private Defence – Patta in respect of gochar land granted in favour of accused's party – Name of accused party recorded in revenue record – Grant of patta challenged in revenue court by complainant party – Both accused and complainant claims possession over land in dispute – Evidence available on record shows that complainant party was in possession of land in dispute – Presumption attached to revenue entry as regards possession stood rebutted by evidence – Accused persons opened fire at complainant party killing four persons – Right of private defence not available: *State of M.P. Vs. Vishal Singh, I.L.R. (1994) M.P. 249 (D.B.)*

– **Section 99** – Things to be established for making out right of private defence – Distinction between “defending right to possession” and “enforcing right to possession” – Defence available in former and not later category – Criminal Procedure Code – Section 342 – Explanation of accused in a statement recorded under the section – Need not necessarily to be accepted – Penal Code – Section 34 – Accused persons sharing common intention – All of them equally liable – Deals with liability for offence likely to be committed in course of carrying out their intention – Does not contemplate knowledge – Penal Code — Sections 34 and 149 – Difference between: *Jaganlal Vs. The State of M.P., I.L.R. (1964) M.P. 419 (D.B.)*

– **Sections 99, 103** – 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: *Latel Vs. State, I.L.R. (2000) M.P. 72 (D.B.)*

– **Section 100** – Right of private defence cannot be weighed in golden scales: *Dhaniram Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 152*

– **Section 100** – Right to private defence – When available to accused – Accused sustaining simple injuries caused by the deceased by Lathi – Accused assaulted and killed five persons by axe – Right of private defence not available to accused: *Mahesh Vs. State of M.P., I.L.R. (1987) M.P. 49 (D.B.)*

– **Section 100** – Woman being abducted by force – Person defending the woman has a right to private defence – Right could be extended upto causing of death – Right of private defence cannot be weighed in golden scales: *Dhaniram Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 152*

– **Sections 100, 101** – Self defence – Accused received minor injuries – Had there been an assault they would have sustained some serious injuries – The well spoken about by the witness close to his own house – House of accused at 1½ furlong away – Not possible to assume that PW – 1 came to the house of appellant and appellants acted in self defence: *Karan Singh Vs. State of M.P., I.L.R. (2003) M.P. 1110 (S.C.)*

– **Sections 100, 101, 148, 149, 307 and Evidence Act, 1872, 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 – Self defence – Accused received minor injuries – Had there been an assault they would have sustained some serious injuries – The well spoken about by the witness close to his own house – House of accused at 1½ furlong away – Not possible to assume that PW – 1 came to the house of appellant and appellants acted in self defence: *Karan Singh Vs. State of M.P., I.L.R. (2003) M.P. 1110 (S.C.)*

– **Section 103** – Private defence – Restrictions – Complainant party not carrying any arm except normal agricultural implements and wielding lathis to escape further onslaught – No evidence of persistence in ploughing the field – 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: *Latel Vs. State, I.L.R. (2000) M.P. 72 (D.B.)*

– **Section 105** – Private defence – Accused can discharge burden by proving preponderance of probability – Toward of splashing of acid deceased was struck on head by accused – Would not be guilty of offence charged – Order of acquittal confirmed: *State of M.P. Vs. Shrikrishna, I.L.R. (2005) M.P. 1004 (D.B.)*

– **Section 105** – Right of private defence – A mere reasonable apprehension is enough to put the right into operation: *Jagdish Vs. State, I.L.R. (2001) M.P. 402*

– **Sections 105, 147, 148, 149, 307** and Criminal Procedure Code, 1973 (II of 1974) Section 374(2) – Appeal against conviction – Section 105 I.P.C. – Right of private defence – A mere reasonable apprehension is enough to put the right into operation – Complainant rushing towards one of the accused hurling abuses and also dealing lathi blows causing grievous injury – Co-accused apprehension imminent danger to life of his brother caused the injury on complainant to overcome him – Can not be expected to modulate the right of private defence step by step – Sections 307/147, 148, 149 I.P.C. –

Complainant party in aggressor – One accused sustained grievous injury at the hand of complainant – Apprehending imminent danger to life complainant was injured – Case would not fall under Section 307 I.P.C.– Conviction and sentence set aside: *Jagdish Vs. State, I.L.R. (2001) M.P. 402*

– **Sections 105, 307** – Complainant rushing forwards one of the accused hurling abuses and dealing lathi blows causing grievous injury – Co-accused apprehending imminent danger to life of his brother caused the injury on complainant to overcome him – Can not be expected to modulate the right of private defence step by step: *Jagdish Vs. State, I.L.R. (2001) M.P. 402*

– **Section 107** – Abutment – Meaning of abutment – Active Suggestion or support to the commission of offense: *Girjashankar Vs. State of M.P., I.L.R. (1988) M.P. 638*

– **Sections 107 and 306** – Charged framed under for abetment of suicide by victim – Allegation that accused persons threatened the deceased with dire consequences which led to commission of suicide by victim – No overt act attributed that the accused in any manner aided the commission of suicide – Ingredients of abetment as defined under Section 107, I.P.C. are not present – Even if allegation taken on their face value not warrant conviction of accused – Charge under Section 306, I.P.C. liable to be quashed: *Ram Sewak Vs. State, I.L.R. (2001) M.P. 273*

– **Sections 107, 306** – Abetment of suicide – Nothing to show that harassment or maltreatment was with a view to instigate suicide – No wilful conduct on part of accused which could drive the deceased to commit suicide – Accused cannot be held to have abetted commission of suicide – Conviction and sentence set aside: *Daulat Singh Vs. State of M.P., I.L.R. (2005) M.P. 764*

– **Sections 107, 306** – Commission of abetment of suicide – Definition of abetment – Doing a thing by illegal omission amounts to abetment – Individuals act differently in same situation – Act of appellant in not making any endeavour to save life of deceased – Does not come within the expression ‘illegal omission’ – Appellant can not be held guilty for abetment of the offence – Words meaning – “Illegal omission” – ‘Illegal’ means against or not authorized by law – ‘Omission’ means something that has not been done either deliberately or accidentally – Impugned judgment of conviction and sentence set aside : *Surendra Agnihorti Vs. State of M.P., I.L.R. (1999) M.P. 251*

– **Sections 107, 306 and 498-A** – 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*

– **Sections 107, 306, Evidence Act, Indian (I of 1872) Sections 113-A and 114 and Criminal Procedure Code, 1973 (II of 1974) Sections 397, 401** – Revision against charge – Sections 107 and 306, I.P.C – Charge framed under for abetment of suicide by victim – Allegation that accused persons threatened the deceased with dire consequences which led to commission of suicide by victim – No overt act attributed that the accused in any manner aided the commission of suicide – Ingredients of abetment as defined under Section 107, I.P.C. are not present – Even if allegations taken on their face value would not warrant conviction of accused – Charge under Section 306, I.P.C. liable to be quashed – Evidence Act – 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*

– **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: *Dr. Kanhaiyalal Modi Vs. Dwarka Prasad Modi, I.L.R. (1992) M.P. 696*

– **Sections 120-B, 465, 469, 471 and Gram Panchayat (Election and Co-option) Rules, M.P. 1982** – Rule 28 – Nomination form of complainant got withdrawn by forgery – *Prima facie* case made out – Magistrate ought to hence issued process: *Bachchu Vs Ashok Kumar Tiwari, I.L.R. (1992) M.P. 433*

– **Section 120-B** – Criminal Conspiracy – Unless any other accused is convicted appellant alone cannot be convicted for this offence: *Shankarlal Vsihwakarma Vs. State, I.L.R. (1992) M.P. 791 (D.B.)*

– **Sections 120-B, 409, 420, 467** – 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 Vsihwakarma Vs. State, I.L.R. (1992) M.P. 791 (D.B.)*

– **Sections 120-B, 409, 420, 467 and Prevention of Corruption Act (II of 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: *Shankarlal Vishwakarma Vs. State, I.L.R. (1992) M.P. 791 (D.B.)*

– **Sections 120-B and 420 and Criminal Procedure Code, 1973 (II of 1974)**
– **Section 482** – Quashment of complaint – Inordinate delay – In all Criminal Prosecutions the right of speedy public trial which has a wide amplitude is now in alienable fundamental rights of the citizen under Article 21 of the Constitution of India

and is available in all criminal prosecutions irrespective of the nature of offence involved – Complaint deserves to be quashed: *R.G. Patil Vs. Omprakash, I.L.R. (1998) M.P. 988*

– **Section 124-A** – Expressions “for the maintenance of public order” and “in the interests of public order” – Distinction between: *Gangadhar Vs. The State of M.P., I.L.R. (1962) M.P. 449 (D.B.)*

– **Section 124-A** – Vires of – Essentials to be proved – What constitutes offence of sedition – Criticism or ridicule of conviction – Does not amount to sedition – Expression “for the maintenance of public order” and “in the interests of public order” – Distinction between – Word “class” in – Means definite class of citizens of India – Criminal Procedure Code, 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 124-A** – Vires of: *Gangadhar Vs. The State of M.P., I.L.R. (1962) M.P. 449 (D.B.)*

– **Sections 141 and 146** – Persons trying to take forcible possession by criminal force – Persons constitute unlawful assembly – If force is used – Offence of rioting is committed: *The State of M.P. Vs. Shaligram, I.L.R. (1973) M.P. 889 (D.B.)*

– **Section 147** – Absence or injuries on vital parts of body – Inference that assembly did not want to kill: *Lalman Vs. The State, I.L.R. (1974) M.P. 339 (D.B.)*

– **Section 147** – Common object or common intention of unlawful assembly – question of fact to be inferred from various circumstances under which offence was committed – Absence of injuries on vital parts of body – Inference that assembly did not want to kill – Section 300, clause 3 – Applicable when intention was to cause such injuries which would cause death – Section 149 – Knowledge of assembly that some members would cause injuries for achieving that common object, which would cause death – Later part of Section 149 applies – Persons who did not cause injuries become vicariously liable: *Lalman Vs. The State, I.L.R. (1974) M.P. 339 (D.B.)*

– **Sections 147, 148, 149** – 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: *Ramlal Vs. State of M.P., I.L.R. (2004) M.P. 869 (D.B.)*

– **Sections 147, 148, 149, 302** – Murder – 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 – 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 – Ocular evidence clear and convincing – Role of accused persons established – Charge under Section 149 IPC – Even if no overt act is imputed to a particular accused his presence as part of unlawful assembly is sufficient for conviction: *Yunis @ Kariya Vs. State of Madhya Pradesh, I.L.R. (2003) M.P. 362 (S.C.)*

– **Sections 147, 148, 149, 302, Arms Act, Indian (LIV of 1959) Sections 25, 27 and Criminal Procedure Code, 1974, Section 374 (2)** – 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.)*

– **Sections 147, 149** – ‘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 147, 149** – 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 (S.C.)*

– **Sections 147, 149, 300 and 302, Criminal Procedure Code, 1973, Section 378(1) 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 (S.C.)*

– **Sections 147, 149, 302** – Murder – Appellants and deceased on inimical term over non payment of part consideration amount of she buffalo sold by deceased to

appellants – Deceased did not return back and gum insane report was lodged by his son – Dead body was found in a paddy field on the next date – Matter reported to police who registered the case of unnatural death – Statements of eye witnesses recorded after three day of incident – Held – Witnesses admitted that they were aware that son of deceased was making hectic search for his father – Did not disclose to son about murder of deceased – Explanation that they were terror stricken cannot be accepted as they were meeting people regularly – Divergent version of arms used by assailants – Witnesses held not reliable – Appeal Allowed: *Laxman Vs. State of M.P., I.L.R. (1994) M.P. 462 (D.B.)*

– **Sections 147, 149, 302, 304 Part-II and 323** – Injuries on accused – Non-explanation by prosecution – Not always a safe criterion – Witnesses believed by the Court in proof of guilt of the accused – Question of obligation of prosecution to explain injuries sustained by the accused will not arise—More so when the injuries are simple or superficial in nature: *Shriram Vs. State of M.P., I.L.R. (2004) M.P. 221 (S.C.)*

– **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 death was homicidal – Charges under Section 302 Indian Penal Code cannot be sustained: *Shobhanlal Vs. State, I.L.R. (2001) M.P. 1052 (D.B.)*

– **Sections 147, 429 and 436 and Evidence Act, Indian (I of 1872) Section 3** – Prosecution alleging that accused persons started hurling abuses at P.W.1 and others collected at the house of one of the accused persons and after firing of some pistol – shots and throwing of hand – Grenades emerged armed with lathi, weapons and buckets filled with kerosene oil and and burnt houses of bhils and others – Occurrence in a village involving rival fractions – Appreciation of evidence – Most of P.Ws. Victims and eye witnesses –Evidence of partisan and inimical witnesses not liable to be rejected – Care and caution to be taken in appreciating such evidence – Principle of falsus in uno falsus in omnibus – Applicability of – Criminal Procedure code, 1973 – Section 357 as amended by M.P. Act No. 29 of 1978 – Constitution of India – Article 366, Clauses (24) and (25) and the constitution (Scheduled Tribes) Order, 1950 – Accused persons committing aforesaid 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 M.P., I.L.R. (1984) M.P. 443*

– **Sections 148, 149 and 307** – Unlawful assembly and attempt to commit murder – Conviction and sentence – Criminal Procedure Code, 1973 – Section 374(2) – Appeal – Evidence Act, Indian, 1872 – Section 3 – Appreciation of Evidence – Injuries on persons of accused appellants – 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 – Sections 148, 149, 307, 324 and 325 – Injuries on victim found to be simple in nature and does not inspire that they intended to cause death of victim – Offence altered to ones under Sections 148, 324/149 and 325/147 IPC – Constitution of India – Article 21 – Right to speed trial – Accused also sustained injuries and appeal pending for about ten years – Appellate Court has power to reduce sentence in such a case – Conviction altered and sentence reduced to RI for one year on two counts both to run concurrently: *Dhaniram Vs. State, I.L.R. (2001) M.P. 874*

– **Sections 148, 149, 307, 324 and 325** – Injuries on victim found to be simple in nature and does not inspire that they intended to cause death of victim – Offence altered to ones under Sections 148, 324/149 and 325/147 IPC: *Dhaniram Vs. State, I.L.R. (2001) M.P. 874*

– **Sections 148, 300** – Murder – Unlawful Assembly – The evidence on record shows that the appellants chased the deceased until the field and then they again assaulted him with deadly weapons – It is thus clear that the appellants formed an unlawful assembly and the object of the said assembly was to commit the murder of the deceased: *Madru Singh Vs. State of M.P., I.L.R. (1997) M.P. 288 (S.C.)*

– **Sections 148, 302 read with Section 149 and Evidence Act, Indian, 1872** – A related witness would not shield the real culprit because of his affinity with the deceased and therefore, evidence of a related witness is much more reliable than the evidence of an interested witness or inimical witness – Variations in the language or manner of incident are natural and do not cast any doubt about the correctness of version, Indeed, absence of these variations, could lead that they are tutored witness – -A parrot like reproduction is not expected from the independent witness – Held – Appreciation of evidence done by trial court with meticulous care and keeping in view the minute detail meet the requisite test of proof beyond reasonable doubt: *Rokad Singh Vs. State of M.P., I.L.R. (1993) M.P. 632 (D.B.)*

– **Sections 148, 302/149** – Appeal against acquittal – High Court has to be very slow in disturbing the finding recorded by trial judge who had the opportunity of assessing the evidence – Dying declaration – To base 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.)*

– **Sections 148, 149, 300, Explanation 4, 302, 304 Part I, 307 and Criminal Procedure Code 1973 (II of 1974) – Section 28** – 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 (S.C.)*

– **Section 149** – Knowledge of assembly that some members would cause injuries for achieving that common object, which would cause death – Later part of Section 149 – applies – Persons who did not cause injuries become vicariously liable: *Lalman Vs. The State, I.L.R. (1974) M.P. 339 (D.B.)*

– **Section 149** – Ocular evidence clear and convincing – Role of accused persons established – Charge under Section 149 IPC – Even if no overt act is imputed to a particular accused his presence as part of unlawful assembly is sufficient for conviction: *Yunis @ Kariya Vs. State of Madhya Pradesh, I.L.R. (2003) M.P. 362 (S.C.)*

– **Section 149** – 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: *Hari Singh Vs. State of Madhya Pradesh, I.L.R. (2004) M.P. 1157 (D.B.)*

– **Sections 149, 302 and Prisoner's Release on Probation Rules, M. P., 1964** – Brutal murder committed by petitioner – Petitioner may be innocent before the crime was committed but if the crime committed brutally the said circumstances is to be weighed in a proper manner – One of the petitioners caught hold of the deceased and the other pierced ballam in stomach region – Probation Board considering brutality rejected the application – No interference called for: *Sushil Kumar Vs. State, I.L.R. (2002) M.P. 61*

– **Sections 149, 302, 324** – 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 Section 302/149, 324 IPC.: *Rajalal Vs. State of M.P., I.L.R. (2003) M.P. 461 (D.B.)*

– **Sections 149, 34** – Proof of formation unlawful assembly – Firstly, wordy dual and thereafter armed clash took place between the parties resulting into free fight – It cannot be held that there was common intention and any formation of unlawful assembly – Each accused thus would be responsible for individual act committed by him: *Mangalsingh Vs. State of M.P., I.L.R. (1995) M.P. 626 (D.B.)*

– **Section 153** – Essential ingredients – Word “Malignantly” in – Meaning of – Trespass – When it occurs in case of authorized use – Putting down a National Flag – Amounts to trespass: *The State of M.P., Vs. Indarsingh, I.L.R. (1961) M.P. 633 (D.B.)*

– **Section 153-A** – Order of forfeiture passed under section 99-A, Criminal Procedure Code – Cannot be maintained on grounds not mentioned in the order: *Ramlal Puri Vs. State of M.P., I.L.R. (1973) M.P. 1 (F.B.)*

– **Sections 154, 320, 482** – High Court can quash criminal proceeding and F.I.R.
– Section 320 does not limit the powers under Section 482 Cr.P.C.: *Smt. Farhona Khan Vs. State of M.P., I.L.R. (2003) M.P. 475*

– **Section 161 and Prevention of Corruption Act, 1947** – Section 5(2) Acceptance of illegal gratification for mutation of land – Trap: *Shyamlal (Since Deceased) Through His L.R. Arun Kumar Pandey Vs. State, I.L.R. (2000) M.P. 870*

– **Sections 161 and 5 (1) (d) read with Section 5 (2) of Prevention of Corruption Act 1947** – 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 undergo two years S.I.: *Vishwanath Pd. Dubey Vs. State, I.L.R. (2000) M.P. 1146*

– **Section 166 and Criminal Procedure Code (V of 1898) Section 197** – Complaint against tax Recovery Officer and Inspector of income tax for offence under Section 166 – Issue of warrant of attachment by Tax Recovery Officer – Is an act done in discharge of his official duty – Prosecution not maintainable without requisite sanction of central Government under Section 197 of the Criminal Procedure Code – Income Tax Act, 161 – 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 – Good faith – Execution of warrant of attachment by Inspector of Income Tax – Absence of any illegality or irregularity in act done in good faith – Immunity from prosecution – Criminal Procedure Code, 1898 – Section 482 – Complaint liable to be quashed: *C.G. Sangamnerkar Vs. Suresh Chandra Modi, I.L.R. (1979) M.P. 1133*

– **Section 166 and Criminal Procedure Code (V of 1898) Section 197** – Good faith – Execution of Warrant of attachment by Inspector of Income Tax – Absence of any illegality or irregularity in act done in good faith – Immunity from prosecution: *C.G. Sangamnerkar Vs. Suresh Chandra Modi, I.L.R. (1979) M.P. 1133*

– **Sections 166, 120-B, 196 and Criminal Procedure Code, 1973 (II of 1974) Section 197** – Cocercion 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 188 and 195(1) (a) and Criminal Procedure Code – Section 537(a)** – Complaint by District Magistrate or officer to whom he is subordinate – A condition precedent for taking cognizance – Complaint not by competent authority – Irregularity cannot be cured under Section 537(a) Criminal Procedure Code: *Loknath Mishra Vs. The State of M.P., I.L.R. (1964) M.P. 978*

– **Section 193 – Criminal Procedure Code (V of 1898) – Section 236** – The existence of the contradictory statements in the same deposition or different depositions – Framing of alternative charges under Section 193 – Not necessary to prove which statement is false: *The State Vs. Dhanna, I.L.R. (1958) M.P. 589 (D.B.)*

– **Sections 193 and 211 and Criminal Procedure Code, 1973 (II of 1974) Section 340** – Powers under – Should be exercised very sparingly with circumspection only in case of deliberate falsehood: *Ashok Kumar Bhandari Vs. State, I.L.R. (2000) M.P. 294*

– **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 201** – Accused making false report to police to screen himself – Act falls within the ambit of Section 201 and rightly convicted under this Section: *Madan @ Madhu Vs. State, I.L.R. (2001) M.P. 1235 (D.B.)*

– **Section 201** – Charge – Criminal Procedure Code, 1973 – Sections 397, 401 – Revision against charge – Accused charge sheeted for having given an opinion in post mortem report that deceased died as a result of shock and haemorrhage resulting from burn injuries – Expert opinion that the burns were post mortem – It is not opined what was the mode of killing – Report of autopsy surgeon is entitled to its weight and truth – Two contrary reports – Best course is that Trial Court should watch their veracity at the Trial: *Dr. Amin Bhabha Vs. State, I.L.R. (1999) M.P. 791*

– **Section 201** – Requirements of: *Jamna das Vs. The State of M.P. I.L.R. (1963) M.P. 730 (D.B.)*

– **Section 201** – What action of the person tantamounts to screen the offender under: *Ghurriya @ Rohini Baiswar Vs. State of M.P., I.L.R. (1990) M.P. 218 (D.B.)*

– **Sections 201 and 302** – Sentence – Minimum sentence under Section 302 I.P.C. is life imprisonment and 5 years R.I. under Section 201, I.P.C. – Sentence not excessive – Conviction and sentence confirmed: *Madan @ Madhu Vs. State, I.L.R. (2001) M.P. 1235 (D.B.)*

– **Sections 201, 313 and 376** – Offence committed at a place other than the place of trial under Section 376 – Offence can also be tried together under this provision: *Dr. Nisha Malviya Vs. State, I.L.R. (2001) M.P. 742*

– **Sections 201, 313 and 376** – Rape case – Doctors abetting mis-carriage without consent of minor prosecutrix and her mother – Charges under Section 201, 313 and I.P.C. rightly framed: *Dr. Nisha Malviya Vs. State, I.L.R. (2001) M.P. 742*

– **Sections 208, 302, 364** – Deceased abducted and later found dead – Murder established by autopsy surgeon's report – Discrepancies in statements of witnesses and Investigating Officer – Discovery of dead body on disclosure memo of accused becomes doubtful – Cannot be acted upon – Murder by appellant not proved beyond reasonable doubt – Appellant abducted the deceased – Proved beyond doubt – Conviction under Section 302/201, I.P.C. set aside – Conviction under Section 364 are maintained: *Lattora Vs. State of M.P., I.L.R. (1999) M.P. 773 (D.B.)*

– **Sections 218, 447/34, 465, 466** – Offences under – Not compoundable – Complaint case – Magistrate taking cognizance – Sessions Judge requisitioned record – 21 years elapsed thereafter – Record missing and complainant also died: *Ramesh Chandra Singh Vs. Kailash, I.L.R. (2001) M.P. 1261*

– **Section 224 and Prison Act, 1990, Section 31-D – Life convict** – Granted Leave but failed to report – Conviction and Sentence u/s 224 I.P.C. read with Section 31-D of Prison Act, 1990 – Conviction attained finality – Forfeiture of Remission earned – Does not amount to double jeopardy: *Dibbu Alias Devendra Vs. State of M.P., I.L.R. (2004) M.P. 925*

– **Section 228** – Asking the magistrate to be a gentleman and not to abuse the power – Does not justify conviction: *Pranlal Thakkar Vs. State of M.P., I.L.R. (1966) M.P. 665*

– **Section 228** – Essential ingredients of the offence under – Insult or interruption to be intentional – Accused must know that Court was doing judicial work and intentionally insults or interrupts the work – Stay in retiring room of a magistrate – Not a stage of judicial proceeding – Asking the magistrate to be gentleman and not to abuse the power – Does not justify conviction – Contempt of Court – What is the essence of crime: *Pranlal Thakkar Vs. State of M.P., I.L.R. (1966) M.P. 665*

– **Section 228** – Insult or interruption to be intentional – Accused must know that Court was doing judicial work and intentionally insults or interrupts the work: *Pranlal Thakkar Vs. State of M.P., I.L.R. (1966) M.P. 665*

– **Section 228** – Stay in retiring room of a magistrate – Not a stage of judicial proceeding: *Pranlal Thakkar Vs. State of M.P., I.L.R. (1966) M.P. 665*

– **Sections 279, 337 and Criminal Procedure Code, 1973, Section 397 and 401** – 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 279, 338 and Criminal Procedure Code, 1973, (II of 1974) Section 320 (2)** – Offense under section 279 is and offense against public safety while offense under section 338 is to take account on injury to individual – Both offenses are of different categories and offense under section 279 which not compoundable, is not lesser offense than offense u/s 338 – Sentence – Discretion in refusing permission to compound the offense under section 338, not 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*

– **Section 287** – Requirements of: *Jiwanlal Vs. Devi Luhar, I.L.R. (1972) M.P. 766 (D.B.)*

– **Section 294** – Allegation of using obscene language – Specific words used or the act done is the substance of that offence – Specific words allegedly used not mentioned in the complaint – Amounts of vague allegation – Change under Section 294 cannot be sustained: *Amir Ullah Khan Vs. Anand Chandra Mishra, I.L.R. (2001) M.P. 282*

– **Sections 294, 307, 333 and 506** – Conviction order – Sentence – Object should be to protect the Society and deter the criminals – Aggravating and mitigating factors are to be delicately balance – Attempt to commit murder – The determinative question is intention or knowledge – Sufficient to justify a conviction if there is present an intent coupled with some overt act is execution thereof: *State of Madhya Pradesh Vs. Saleem @ Chamaru, I.L.R. (2005) M.P. 782 (S.C.)*

– **Sections 294, 307, Arms Act, Indian, 1955** – Section 27 and Criminal Procedure Code, 1973 – Sections 397, 401 – 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 294, 323 and 506-B** – 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*

– **Sections 294, 323, 506, Part II and Dowry prohibition Act (XXVIII of 1961) Sections 3 and 4** – Offences alleged – Complaint case – Issue of process – On appearance of 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 294, 325, 506** – 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 294, 352 and Criminal Procedure Code, 1973 (II of 1974) Sections 197, 482** – Petition for quashing prosecution in complainant case – Section 294, I.P.C. – Allegation of using obscene language – Specific words used or the act done is the substance of that offence – Specific words allegedly used not mentioned in the complaint – Amounts to vague allegation – Charge under Section 294 cannot be sustained – Section 197, Cr.P.C. – Sanction for prosecution – Petitioners/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*

– **Sections 294, 506–B** – Reasonable period of trial should not normally exceed beyond the one year in such cases: *Chhotelal Misra Vs. State of M.P., I.L.R. (2004) M.P. 1097*

– **Section 295-A** – Ingredients of section 295-A – Test to be applied to determine whether matter is provocative – Test is not of an abnormal or hypersensitive man but of ordinary man of ordinary common-sense: *Ramlal Puri Vs. State of M.P., I.L.R. (1973) M.P. 1 (F.B.)*

– **Section 295-A** – Motive even though proselytisation cannot be considered as objectionable – To determine intention of author – Couplets not to be read in isolation but in the context of the entire story: *Ramlal Puri Vs. State of M.P., I.L.R. (1973) M.P. 1 (F.B.)*

– **Section 295-A** – Requirement of – Criminal Procedure Code – Section 99-A – High Court, Power of, to review action of Government in the matter of forfeiture of book – 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

– Conditions necessary for exercise of power of forfeiture – Ingredients of section 295-A – Test to be applied to determine whether matter is provocative – Test is not of an abnormal or hypersensitive man but of ordinary man of ordinary common-sense – Motive even though proselytisation cannot be considered as objectionable – To determine intention of author – Couplets not to be read in isolation but in the context of the entire story – Indian Penal Code – Section 153-A – Order of forfeiture passed under section 99-A, Criminal Procedure Code – Cannot be maintained on grounds not mentioned in the order – Constitution of India – Article 25 – Guarantee under, does not take away power of State to legislate and act for maintenance of peace: *Ramlal Puri Vs. State of M.P.*, I.L.R. (1973) M.P. 1 (F.B.)

– **Section 295-A & Hindu Law** – Born Hindu – Does not cease to be Hindu unless he renounces the religion or adopts another religion – Accused writing forward containing offending passage – Guilty of offence under section 295-A, Indian Penal Code – 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

– **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 body or to hurt religions feelings: *Surdarshan Kumar Vs. Gangacharan Dubey*, I.L.R. (2000) M.P. 1489

– **Section 299** – Deceased beating accused – Incident completing then Accused and his men going in body and attacking deceased – Defence of provocation or right of private defence not available to accused – Criminal Trial – Evidence – Small difference and variation about small matter – A matter of little consequence – Indicative of the fact about – Witness speaking the truth – Penal Code, Indian – Section 34 – Unity of purpose, time and place – Indicative of common intention – Persons jointly giving chase and all knowing the weapons other are carrying – No scope for doubt about commonness of intention – Common intention – Gatherable from nature of weapons and gestures or words used – Not necessary that all must be carrying similar weapons – Ingredients of offence put to accused when examined under Section 342 and every factual element put to him – Common intention or its equivalent – Hindi words not put to accused – No prejudice can be said to be caused to accused: *The State Vs. Hukuma*, I.L.R. (1968) M.P. 972 (D.B.)

– **Sections 299 (2) and (3)** – Difference between the two – Difference one of degree – “Intention” and “knowledge” – Meaning of – When can be inferred – Difference between the two – Section 300 – Deceased struck in vulnerable part with force and with dangerous weapon – Accused can be credited with nature of injury – Injury sufficient in ordinary course to cause death – Case falls under 3rd clause of Section 300: *Ram Prasad Vs. State of M.P.*, I.L.R. (1961) M.P. 891 (D.B.)

– **Sections 299 (2) and (3)** – Difference between the two – Difference one of degree: *Ram Prasad Vs. State of M.P., I.L.R. (1961) M.P. 891 (D.B.)*

– **Section 299** – Supervening condition or disease immediate cause of death – Original injury not effaced from chain of causes and events if death results – Circumstance in which inflicting of injury cannot be regarded as cause of death – Test to be applied – Cause of death to be reasonably approximate – To connect injury with death two things to be shown – Injury sufficient in ordinary course of cause death – Absence of skillful treatment cannot be defense – Section 302 – Injuries sufficient in ordinary course of nature to cause death – Accused guilty of murder: *Babulal Vs. State of M.P., I.L.R. (1972) M.P. 339 (D.B.)*

– **Sections 299, 300, 307, 308 and 324 and Criminal Procedure Code, 1973 (II of 1974), Sections 374, 377, 378** – Appeal against conviction not pressed by appellant – State appeal for enhancement of sentence – Victim suffered six injuries on chest abdomen, back and buttock – Medical evidence – Injuries sufficient to cause death – Mens rea required under Section 300, I.P.C. not established – Act of accused would be an attempt to commit culpable homicide not amounting to murder – Offence falls under Part II of Section 308 – Punishable with imprisonment upto 7 years or fine or both – Accused 18 years of age at the time of incident faced trial for 10 years – Conviction altered to Section 308, I.P.C. and sentence enhanced to fine of Rs. 5,000/- in place of Rs. 3,000/-: *Mittulal Vs. State, I.L.R. (1999) M.P. 1078 (D.B.)*

– **Section 300** – Accused alleged to have dealt axe blow on head of deceased resulting into death – No material on record showing FIR was lodged on account of some ill-will or enmity – FIR can not be said to be created or concocted – FIR not a spurious document, if it contains more facts than the facts narrated before the Court – Merely because witness saw only one injury being inflicted on person of deceased – Testimony of witness can not be held contrary to medical evidence – Evidence showing accused alone inflicted injuries on body of deceased – Insignificant or superficial injury found on person of accused – Prosecution not duty bound to explain it – Conviction of accused proper: *Ramadhan Vs. State of M.P., I.L.R. (1995) M.P. 636 (D.B.)*

– **Section 300** – Accused alleged to have poured kerosene and set fire on deceased – Immediate conduct of deceased after incident – Not disclosing that accused had set fire on her – Dying declaration doubtful and suspicious – No independent corroboration to dying declaration – Circumstance shows that incident not took place in manner stated by prosecution – Conviction solely on basis of dying declaration set aside: *Pamni Bai Vs. State of M.P., I.L.R. (1995) M.P. 657 (D.B.)*

– **Section 300** – Accused entering house of deceased at night and firing at him – Only wife of deceased witnessing the incident – Admittedly, she was having illicit relations with the accused – No corroboration of her evidence therefore, not beyond

suspicion – Evidence of other witnesses also not reliable – Recovery of Chappals of accused from place of occurrence – Not conclusive, as accused was on visiting terms with wife of deceased – Possibility of false implication can not be ruled out – Unsafe to hold appellant guilty – Entitled to benefit of doubt: *Udai Bhan Vs. State of M.P., I.L.R. (1995) M.P. 632 (D.B.)*

– **Section 300** – Accused persons armed with weapons alleged to have assaulted deceased and his family members – Testimony of eye-witnesses that deceased and injured were assaulted with sharp cutting weapons – Whereas medical evidence shows that deceased having injured by blunt weapon only – Quite unsafe to rely upon the ocular version of four witnesses against the objective finding of medical expert – Conviction set aside: *Niranjan Prasad Vs. State of M.P., I.L.R. (1996) M.P. 28(D.B.)*

– **Section 300** – As per Medical evidence, three incised injuries of different dimensions were found on the person of deceased at three different places – Eye witness however, discloses that accused had inflicted injury only once – Evidence of other witnesses also not establishing offence – Acquittal upheld: *State of M.P. Vs. Surbhan, I.L.R. (1996) M.P. 47 (D.B.)*

– **Section 300** – Deceased struck in vulnerable part with force and with dangerous weapon – Accused can be credited with nature of injury – Injury sufficient in ordinary course to cause death – Case falls under 3rd clause of Section 300: *Ram Prasad Vs. State of M.P., I.L.R. (1961) M.P. 891 (D.B.)*

– **Section 300** – Dying declarations – Disputed – No evidence led to prove mental and physical fitness of deceased while making dying declaration – Omissions and material contradictions in statements of witnesses present when it was made – Gun seized from accused and bullet found in body of deceased not sent to ballistic expert – Dying declarations cannot be relied upon – Conviction based thereon, therefore not sustainable: *Amarsingh Vs. State of M.P., I.L.R. (1995) M.P., 340 (D.B.)*

– **Section 300 – Evidence Act 1872, Sections 154, 155** – Murder – Credibility of Hostile Witness – Held – The said witness informed that deceased had met with death with the hands of the appellant – Held – This witness cannot be permitted to get out of his admission, this must cast reflection on the evidence relating to the occurrence in full measure. Therefore in our view, the conviction of the appellant on the reasoning adopted by the High Court was well based and in our view unshakable: *Dagdu Vs. State of M.P., I.L.R. (1997) M.P. 287 (S.C.)*

– **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: *Latel Vs. State, I.L.R. (2000) M.P. 72 (D.B.)*

– **Section 300** – FIR lodged swiftly and not ante-timed or doctored one – Report also sent swiftly to concerned Magistrate – FIR corroborated by eye-witnesses – Eye-witnesses resident of same locality reached the spot on their own – They were known to complainant could not be a ground to say that they would depose falsely – Medical evidence supporting prosecution version regarding injuries inflicted by accused – Contusions on arm or palm not noticed by doctor – Insufficient to discard testimonies of eye-witnesses – Conviction of accused proper: *Girish Yadav Vs. State of M.P., I.L.R. (1996) M.P. 34 (D.B.)*

– **Section 300** – Murder – Appreciation of evidence – Eye witnesses – Held – There may be slightest variation in the evidence of eye witnesses on minor details but such variations on fringes cannot damage the core of their evidence which lends assurance sufficient enough to hold it beyond a reasonable doubt that none else but the Appellant had caused those injuries to the deceased which resulted in his death – Appeal Dismissed: *Narayan Vs. State of M.P., I.L.R. (1997) M.P. 211 (D.B.)*

– **Section 300** – Murder – Appreciation of evidence – It is no doubt true that there was no motive for these eye witnesses to implicate the appellants in the present crime – That by itself would not lend any fill proper proof assurance that their evidence is credible and trustworthy – It has also come on the record that because of notorious character of the deceased, he had many enemies in and around the village and if that be so the probability of somebody else other than the appellants being the assailant cannot be ruled out, the Court below, in our opinion, had failed to read the evidence of these eyewitnesses in a proper perspective and had fallen into error in accepting their evidence as credible and truthful: *Rambilas Vs. State of M.P., I.L.R. (1997) M.P. 356 (S.C.)*

– **Section 300** – Murder – Circumstantial Evidence – Accused husband alleged to have caused death of his wife by causing injury to her womb by introducing some external hard object or weapon – The said allegation based only on suspicion that accused was with his wife on the fateful night – Held – The accused and his wife were having intimate closeness on fateful night not proved – The circumstances not sufficient to hold accused guilty for the reason he happens to be the husband – The possibility that victim herself or some other person may have caused injury is not ruled out – Accused entitled to benefit of doubt. Appeal Allowed: *Ravi Shankar Vs. State of M.P., I.L.R. (1997) M.P. 278 (D.B.)*

– **Section 300** – MURDER – Circumstantial evidence – Reliability of Extra judicial confession – Accused not only uttered the words confessing the guilt but by his over act in handing over the blood stain towel to the witness he assured him word of his mouth are true – Held – The court has to look into the surrounding circumstances and to find whether the Extra Judicial confession is not inspired by any improper or collateral considerations or circumvention of law suggesting that may not be true – Appeal Dismissed: *Phoolsai Vs. State of M.P., I.L.R. (1997) M.P. 226 (D.B.)*

– **Section 300** – Murder – Dying declaration – Reliability – Allegation that accused husband poured kerosene oil on deceased wife – Dying declarations recorded without Doctor certifying mental fitness and physical condition of deceased – In absence of any other reliable evidence except doubtful dying declaration conviction can not be sustained – Appeal allowed – Accused acquitted: *Bhagwandas Vs. State, I.L.R. (1998) M.P. 774 (D.B.)*

– **Section 300** – MURDER – Evidence – Some omissions and contradictions but the same are trivial in nature and, therefore, in our considered view would not affect the substratum of the prosecution case – (PW 1) has given all necessary details as regards the assault the weapons and the role played by each of the accused – It is in these circumstances, we do not see any error when the Courts below have accepted the evidence of (PW 1) as trustworthy – The Court below have very carefully scrutinized their evidence bearing in mind the stained relations between the appellants and these witnesses and after careful scrutiny of the their evidence accepted the same to the limited extent that the presence of (PW 1) was proved at the place of incident and carried injured in Matador the Police Station at Hatod: *Madru Singh Vs. State of M.P., I.L.R. (1997) M.P. 288 (S.C.)*

– **Section 300** – Murder – Eye-witness – Unusual behaviour of the witness – Witness became so perplexed on witnessing incident that he reported the matter to brother of accused instead of family of deceased – Otherwise credible and convincing evidence of the witness – Cannot be discarded on ground of his unusual behaviour – Conviction upheld: *Narayan Singh Vs. State of M.P., I.L.R. (1995) M.P. 69 (D.B.)*

– **Section 300** – Murder – Intention to Kill – Appellants opened the attack on the deceased killing him mercilessly by brutally causing him 17 injuries – More than half of the injuries were serious and two of them were fatal – Two fatal injuries on head of deceased resulted in extensive fractures of scalp and injury to brain tissues – Other - injuries on vital as well as non – vital parts of body of deceased involving grievous fractures – Accused could not be held guilty for lesser offence – Conviction for offence of murder upheld: *Juthel Vs. State of M.P., I.L.R. (1995) M.P. 17 (D.B.)*

– **Section 300** – Murder – Proof – Accused shot dead a police Head Constable – Evidence of other constable, who had no axe to grind against accused, present at time of incident reliable and unimpeachable – His evidence corroborated by medical evidence – Non-mentioning detailed particulars of incident in F.I.R. or delay in sending it to Court – Not fatal – When F.I.R. was lodged within 30 minutes of incident and clearly described basic prosecution case – Conviction upheld: *Betal Singh Vs. State of M.P., I.L.R. (1995) M.P. 71 (D.B.)*

– **Section 300** – Murder – Reliable testimonies by eye-witnesses – Neighbours not examined as witnesses – Not fatal to prosecution: *Girish Yadav Vs. State of M.P.*, I.L.R. (1996) M.P. 34 (D.B.)

– **Section 300** – 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 persons 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 (D.B.)

– **Section 300** – Validity of Death Sentence – Accused, in the night, killed his sleeping wife with a sword – Accused inflicted wounds on his daughter trying to save her mother – He also inflicted injuries to another daughter and to other children – Wife and two children died on the spot and other three children survived – Attack premeditated and unprovoked and not on account of any mental derangement – Considering the manner crime was committed, weapon used brutality of crime, number of persons murdered and helplessness of victims – Death sentence only seems proper therefore not interfered with: *Umashankar Panda Vs. State of M.P.*, I.L.R. (1996) M.P. 9 (D.B.)

– **Section 300 ‘Thirdly’, 302, 304, Part-II** – Culpable homicide – Murder or not amounting to murder – Whether accused shared a particular knowledge or intent – Always a question of fact – Death caused on account of rib bone puncturing the liver – What happened was not premeditated – No special preparation for the assault – Injury in liver was at best accidental – Section 300 ‘Thirdly’ IPC not attracted – Conviction under Section 302 IPC set aside: *Khuman Singh Vs. State of M.P.*, I.L.R. (2004) M.P. 1112 (S.C.)

– **Section 300, Clause 3** – Applicable when intention was to cause such injuries which would cause death: *Lalman Vs. The State*, I.L.R. (1974) M.P. 339 (D.B.)

– **Section 300, Clause 4** – Culpable homicide when amounts to murder: *Mst. Thagani Bai Vs. The State*, I.L.R. (1974) M.P. 506 (D.B.)

– **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 300, Exception 1** – Essentials to be proved to attract the provision – Essentials must be related to each other in point of time – Evidence Act – Section 105 – Burden of proving 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 300, Exception 2** – Mere ground that another lying in wait to take life – Does not warrant killing that another – Actual danger at the time necessary – pre-supposes existence of right of private defence – Apprehension of danger by the accused is the criterion – Apprehension must be of a reasonable man: *Victor Alias Kalloo Vs. The State of M.P., I.L.R. (1967) M.P. 601 (D.B.)*

– **Section 300, Exception Clause I, 302, 304 Part I and Criminal Procedure Code, 1974 Section 374 (2)** – 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 300, Exception I** – Grave and sudden provocation – Wife’s infidelity with the employer caused provocation resulting in rebukes – Subsequently on protest to employer accused terminated from service and asked to vacate premises – Wife remained silent spectator, not expressing any sorrow or repentance – Accused setting fire on wife – Provocation under the circumstance grave and sudden: *Ramakant Vs. State of M.P., I.L.R. (1988) M.P. 446 (D.B.)*

– **Section 300, Exception I, Section 304 part-I, Evidence Act, Indian (I of 1872) Section 32 (1)** – Dying declaration – Coherent and trustworthy – Conviction can be based on sole testimony of dying declaration – Grave and sudden provocation – Wife’s infidelity with the employer caused provocation resulting in rebukes – Subsequently on protest to employer accused terminated from service and asked to vacate premises wife remained silent spectator, not expressing any sorrow or repentance – Accused setting fire of wife – Provocation under the circumstances grave and sudden: *Ramakant Vs. State of M.P., I.L.R. (1988) M.P. 446 (D.B.)*

– **Sections 300 & 84 – Evidence Act, Indian 1872, Section 105 & Criminal Procedure Code, Section 329** – Plea of insanity – Evidence on record that earlier also, accused occasionally suffered from fits of mental disorder – Without any reason or motive, accused committing gruesome murder of two females, by cutting their heads off with an axe – Provision of Section 329 Cr.P.C. mandates the Court to try the fact of on soundness and incapacity that it shall be deemed to be part of his trial before the Court – Prosecution agency also appeared to be not fair in matter of investigation – Plea of insanity accepted and accused directed to be kept in mental hospital: *Niman Sha Vs. State of M.P., I.L.R. (1995) M.P. 647 (D.B.)*

– **Sections 300 and 302** – Murder – Conviction and sentence – Criminal Procedure Code, 1973, Section 374(2) – 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 be 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.)*

– **Sections 300 and 302** – Nature of offence – Has to be 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.)*

– **Sections 300, 302** – Murder – Reliability of Extra Judicial Confession – Held – The Extra Judicial Confession alleged to have been made by the accused was not true and voluntary, the recovery of the dead body of the deceased in consequence of information given by the accused and at his instance is doubtful, the circumstance relating to last seen is not proved and the motive could not be established – The circumstantial evidence does not unerringly and conclusively lead to the only hypothesis that accused Narain has caused the death of Gopal – In the absence of any direct evidence and clinching circumstantial evidence the accused cannot be convicted of the serious offence of murder – Suspicion and conjecture cannot take the place of legal proof – Appeal Allowed: *Narain Vs. State of M.P., I.L.R. (1997) M.P. 237*

– **Sections 300, 302** – Murder – Reliability of Interested witness – The accused alleged have caused death of the deceased due to previous grudge and enmity – Held – Testimony of eye-witnesses who are interested and chance witnesses not corroborated by any reliable and independent evidence – FIR ante-timed and ante-dated and there was delay in sending FIR to Magistrate – Conviction of the accused cannot be upheld – Appeal allowed: *Dhannu Singh Vs. State of M.P., I.L.R. (1997) M.P. 230 (D.B.)*

– **Sections 300, 302** – 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: *Shaligram Vs. State, I.L.R. (2003) M.P. 141 (D.B.)*

– **Sections 300, 302, 304, Clause IV** – Act of accused in abandoning the child was imminently so dangerous that in all probability it would have caused death or such bodily injury as is likely to cause its death – Act of accused not excepted nor would fall under Section 304, I.P.C. – Impugned Judgment of conviction and sentenced under Section 302 I.P.C. upheld: *Pawan Vs. State, I.L.R. (2001) M.P. 549 (D.B.)*

– **Sections 300, 302, 304, Part-I** – Murder – Grave and sudden provocation – The accused saw his having sexual relation with another man and not responding to his persuasion for withdrawal from wrong path on next day – The said occurrence can be said to have caused grave and sudden provocation to the accused – The court must look into the socio economic back ground of the accused to ascertain whether the case is covered by the plea of grave and sudden provocation – The accused belonged to aboriginal tribe and his case is covered by Exception I to section 300 I.P.C. – Appeal Partly allowed: *Sukka Vs. State of M.P.*, I.L.R. (1997) M.P. 244 (D.B.)

– **Sections 300, 302, 317, Evidence Act, Indian (I of 1872) Section 3 and Criminal Procedure Code, 1973 (II of 1974) Section 374(2)** – Appeal against conviction – Accused father snatched 2 years old child from its mother and went away – Later dead body of the child found in a pond – Section 3, Evidence Act – Inference favourable to accused has to be taken into account – No eye witness to show that accused threw the child into the pond – Witnesses reasonably proved that there was a quarrel between husband and wife might before the incident and in the morning accused 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 – Section 317 I.P.C. and explanation thereto – Provision not intended to prevent trial for murder or culpable homicide if death of the child is caused by such exposure – Section 300, 302 and 304, clause IV I.P.C. – Act of accused in abandoning the child was imminently so dangerous that in all probability it would have caused death or such bodily injury as is likely to cause its death – Act of accused not excepted nor would fall under Section 304, I.P.C. – Impugned Judgment of conviction and sentenced under Section 302 I.P.C. upheld: *Pawan Vs. State*, I.L.R. (2001) M.P. 549 (D.B.)

– **Sections 300, 302, 394, 397** – Murder – Robbery – Evidence – Circumstantial evidence – Accused persons last seen coming down from house of deceased and immediately thereof deceased was found lying dead – Held – The Hon’ble High Court was satisfied that these incriminating circumstances stand fully proved – Unhesitatingly hold that these circumstances are of a conclusive nature and they form a complete chain against the appellants – On the above evidence, the Hon’ble High Court hold that the acts of robbery and murder of deceased were committed by the appellants and the appellants alone – The act of the accused persons, of committing robbery of her ornaments and cash amount, and the accused persons in perpetrating their design, gave her repeated blows resulting in 22 external injuries on her body – The above act of the appellants, in causing as many as 22 external injuries on the deceased, in the opinion of Hon’ble High Court would not amount to anything short of ‘murder’ and would make them liable under Section 302 of the Indian Penal Code – The prosecution has failed in establishing that both the appellants were armed with deadly weapons, or both of them had caused grievous hurt, or had attempted to cause death, or, grievous hurt – The injuries found on the body of deceased, undoubtedly establish that at least one of the two appellants were

armed with a deadly weapon, like knife – However, as there is not even an iota of evidence to establish as to which of the two appellants was armed with deadly weapon, and had caused grievous injuries to deceased, in the opinion of Hon'ble High Court, none of them can be convicted with the aid of Section 397 of the IPC: *Ashok Kumar Vs. State of M.P., I.L.R. (1997) M.P. 551 (D.B.)*

– **Sections 300, 302, 404** – Murder – Circumstantial evidence – Recovery of highly decomposed at the instance of the accused as well as the belonging of the deceased – Reliability – Held – The recovery of gold and silver articles at the instance of the accused, which have been identified as that of the deceased, the accused has not claimed these ornaments to be his own, in the opinion of this Court, the accused would only be liable to be convicted under Section 404 of the Indian Penal Code for removing dishonestly the said articles knowing that such property was in possession of the deceased and was on the person of the deceased at the time of the death and the accused was not legally entitled to such possession – The conviction of the appellant – accused cannot be maintained under Section 302 of the Indian Penal Code while he cannot escape his conviction under Section 404 of the Indian Penal Code and the sentence awarded to him, which he has already served: *Shobhau @ Shubhau Vs. State of M.P., I.L.R. (1997) M.P. 240 (D.B.)*

– **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 commulatively 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: *State of M.P. Vs. Punaji Dhurve, I.L.R. (2004) M.P. 688 (D.B.)*

– **Sections 300, 304** – Murder or culpable homicide – Proof – Free fight between parties – Fatal injury on deceased caused by accused in course of sudden quarrel – Injuries found not sufficient in ordinary course to cause death – Offence would be of culpable homicide and not of murder: *Mangalsingh Vs. State of M.P., I.L.R. (1995) M.P. 626 (D.B.)*

– **Sections 300, 304 (I)** – Murder – Culpable Homicide not amounting to murder – Held – The accused and the deceased were living amicably – An altercation and quarrel took place – The deceased slapped the accused, at that juncture, the accused under the immediate impulse of grave and sudden provocation lost the self-control, took out his arrow and shot it so as to inflict injury on the deceased – That act was not premeditated, nor from the circumstances, there was any intention to kill his wife – In the circumstances, principle, test of grave and sudden provocation, whether a reasonable man belonging to the same class of society, as the accused, placed in the situation, in

which the accused was placed, would be so provoked as to lose his self-control, and the provocation must be such as would upset not merely a hot tempered or highly sensitive person but one of ordinary calmness is attracted – Therefore, the appellant is entitled to benefit of – Exception I to Section 300, IPC – The offence committed by him will not be a case of murder but a case of culpable homicide not amounting to murder: *Sukhlal Vs. State of M.P., I.L.R. (1997) M.P. 541 (D.B.)*

– **Sections 300, 304 Part-II** – Murder – Distinction – Accused alleged to have caused death to the brother of his wife – He was having strained relation with his wife and they were living separately – Accused tried to bring his wife to his house but the deceased said he will send her after 2-3 days – Accused leaving the house of the deceased alone and then in jungle assaulting him blows after blows – There was no sudden quarrel or heat of passion but assault in silence – The evidence of interested witnesses is reliable – Conviction of accused for murder held to be proper–Appeal Dismissed: *Mohan Vs. State of M.P., I.L.R. (1997) M.P. 250 (D.B.)*

– **Sections 300, 304, Part-II** – Murder – Culpable Homicide – Distinction – Accused misbehaved with the sister of deceased and there was a animosity between them but the incident occurred 3-4 years back – Accused gave knife blow on chest of deceased and thereafter assaulted another with same knife – Held – There was no sudden provocation and the overt act was done in cool and calculated manner – The age of the appellant cannot be a mitigating factor – He had wielded a dangerous weapon and had chosen that part of the body where the injury could be fatal – Appellant rightly held guilty of section 302 I.P.C. – Appeal Dismissed: *Dosha Alias Awadesh Prasad Vs. State of M.P., I.L.R. (1997) M.P. 246*

– **Sections 300, 376** – Murder – Conviction and sentence – Appeal against-Death as a result of injury inflicted during dacoity – Act of miscreants amounted to murder: *Gomda Vs. State of M.P., I.L.R. (2004) M.P. 779 (D.B.)*

– **Sections 300, 84** – Accused inflicted axe-injuries on vital organs of body of deceased – Absence of plea of legal insanity – Murder committed under sudden impulse and for no discoverable motive – Mere abnormality of mind, partial delusion, irresistible impulse or compulsive behaviour of a psychopath can not afford protection U/s 84 I.P.C. – Mens rea for committing offence can be inferred: *Ramadhin Vs. State of M.P., I.L.R. (1995) M.P. 636 (D.B.)*

– **Sections 300, 97** – Right of private defence – Allegations that complainant and deceased were assaulted by accused persons armed with lathi and farsa – Delay in recording statement of eye-witness though present when FIR was lodged – Possibility cannot be ruled out that genesis and origin of occurrence have been suppressed by prosecution – Prosecution also failed to provide any explanation regarding nature of serious injuries inflicted on person of both accused – Accused entitled to right of private

defence – Conviction, not proper: *Arjun Vs. State of M.P., I.L.R. (1995) M.P. 354 (D.B.)*

– **Sections 300, Cls. 2 and 4, Exception Fourth** – 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: *Shahadat Noor Vs. State of M.P., I.L.R. (2004) M.P. 186 (D.B.)*

– **Sections 300, Cls. 2 and 4, Exception Fourth and 302** – 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 M.P., I.L.R. (2004) M.P. 186 (D.B.)*

– **Section 302** – Accused chased an other deceased to considerable distance from the disputed field 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 (D.B.)*

– **Section 302** – Accused knowing the dead body being concealed – Not sufficient to sustain conviction: *Mangusingh Vs. State of M.P., I.L.R. (1977) M.P. 73 (D.B.)*

– **Section 302** – Allegation that husband has set wife to fire – Prosecution evidence inadmissible in absence of substantive evidence – Dying declaration recorded by Magistrate shows, burn injuries due to accidental fire from stove – Accused sustained burn injuries on face and palm of both hands, indicates that he has tried to extinguish the fire – Accused extended benefit of doubt: *Lallusingh Vs. State of M.P., I.L.R. (1996) M.P. 162 (D.B.)*

– **Section 302** – Appellant allegedly assaulted deceased by farsi – Two dying declarations one recorded by Police Officer and second recorded by Doctor – In second DD name and overt act of appellant not mentioned – Second DD more reliable – Is in favour of appellant and goes to prove innocence of appellant – Ought to be accepted – Presence of human blood is not confirmed – Recovery of farsi by itself would not be sufficient to connect appellant with crime – Appellant acquitted of all charges: *Raghosingh Vs. State of M.P., I.L.R. (1996) M.P. 453 (D.B.)*

– **Section 302** – Appreciation of evidence – Evidence not probable, presence of the appellants not established, not supported by medical evidence – Appellants entitled for benefit of doubt: *Bapusingh Vs. State of M.P., I.L.R. (1996) M.P. 170 (D.B.)*

– **Section 302** – Appreciation of evidence – The maxim “*falsus in uno, falsus in omnibus*” is neither a sound rule of law nor a rule of practice – If a part of evidence

of a witness is found truthful it can be acted upon while rejecting the rest of it: *Bapusingh Vs. State of M.P., I.L.R. (1996) M.P. 170 (D.B.)*

– **Section 302** – Capital punishment – Accused charged with double murder – His elder brother’s wife and innocent child aged 7 years – Offence committed in cold blooded manner without provocation – After gruesome murders accused acting like a demon with exceptional depravity – Established facts and circumstances bring the case within the test of the Rarest of rare cases – Conviction and sentence of Capital Punishment – Confirmed – Criminal reference accepted and criminal Appeal of accused dismissed: *State of M.P. Vs. Jai Kumar, I.L.R. (1998) M.P. 518 (D.B.)*

– **Section 302** – Circumstantial evidence – Death caused by poisonous dal – No evidence collected who had prepared the dal either both the appellants or any one of them – Dal was served by appellant No.1 to deceased – It cannot be inferred that poison was mixed by both appellants or any one of them – Motive to commit the murder not proved with certainty – Circumstances do not totally exclude the hypothesis of innocence of appellants – Only grave suspicion arises against them – Entitled to get benefit of doubt: *Smt. Haribai Vs. State of M.P., I.L.R. (1996) M.P. 165 (D.B.)*

– **Section 302** – 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: *Jagdish Vs. State, I.L.R. (1992) M.P. 931(D.B.)*

– **Section 302** – Death sentence – Award of – Accused killing five innocent persons – Acts of the accused extremely brutal, revolting and gruesome shocking Judicial conscience – No mitigating circumstances in favour of accused – Rarest of rare-cases – Maximum punishment of Death sentence justified: *Mahesh Vs. State of M.P., I.L.R. (1987) M.P. 49 (D.B.)*

– **Section 302** – Evidence Act, Indian, (I of 1872) Sections 3, 8 and Criminal Procedure Code, 1973, Sections 311, 366, 374(2)- – Murders – Conviction and Death Sentence – Reference for confirmation and appeal – Motive – Three Murders in a series – Direct evidence available – Importance of motive recedes into background – Recall of witnessess – On all conceivable points witnesses cross examined – Recall of witnesses rightly refused – No miscarriage of justice – Not a case of any economic consideration where death penalty would be justified – Conviction upheld – Death sentence converted to life imprisonment on each count of murder: *Basant Alias Basant Singh Lodhi Vs. State of M.P., I.L.R. (2005) M.P. 255 (D.B.)*

– **Section 302** – Evidence proves commission of murder by only one of the two appellants – Charge altered to Section 302 IPC simplicitor – Co-accused given benefit of doubt and acquittal: *Anantilal Vs. State, I.L.R. (2000) M.P. 397 (D.B.)*

– **Section 302** – Extra-judicial confession of both husband and wife each taking responsibility upon himself or herself to save the other – Husband states he shot at the deceased – Does not say why and under what circumstances – Wife states she shot because the deceased was forcibly dragging her to make her his wife – That would be self defence – In case of husband it could be grave and sudden provocation if these respective stories believed – No evidence of common intention – No evidence who out of two committed the act – Benefit of doubt to be given to both accused: *Chima Vs. State of Madhya Pradesh, I.L.R. (1968) M.P. 954 (D.B.)*

– **Section 302** – Head severed from the body by axe – Eye witnesses corroborated by medical and other witness 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’: *Purushottam Vs. State, I.L.R. (2004) M.P. 393 (D.B.)*

– **Section 302** – 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 302** – Murder – Appellant shot deceased Ram Kripal as deceased had not removed carcass of his ox from the field of appellant – Mother of Deceased was also shot dead as she tried to protest – Most of eye-witnesses inmates of house of deceased – Incident took place at 7 in morning – Their presence in house not unnatural – Name of independent eye-witness figures in promptly lodged F.I.R. – His statement fully corroborates F.I.R. and medical evidence – Story of single accidental shot by defence not found probable in the light of medical evidence – Appellant guilty of committing murder – Appeal dismissed: *Ram Kripal @ Bhallu Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 209 (D.B.)*

– **Section 302** – Murder – Circumstantial Evidence – Deceased was looking after the work of construction on behalf of contractor – Residents of nearby village had raised objection as to proposed construction – Appellant compelled labourers to stop work – Appellant accompanied deceased on motor cycle and crossed P.W. 5 on road – P.W. 5 heard the stopping sound of motor cycle followed by gun shot fire – P.W. 5 looked behind and saw appellant running and deceased was lying on ground – Within hours of incident appellant was arrested and Country made pistol and live misfired cartridges were seized from his possession – Ballistic expert found pistol in working order with signs of discharge – Held – All these circumstances leaves no doubt that it was appellant who fired the fatal shot at deceased – Appeal dismissed: *Jiwanlal Vs. State of M.P., I.L.R. (1994) M.P. 205 (D.B.)*

– **Section 302 – Murder** – Conviction and sentence – Appeal against – Sole eye witness – Improvement made in deposition made in the Court – Not corroborated by medical evidence – Unsafe to rely upon his testimony to uphold conviction – Conviction

and sentence set aside: *Narendra Singh Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 1014 (D.B.)*

– **Section 302** – Murder – Deceased, A blind lady became pregnant from appellant – On the pressure of Panchayat, deceased was brought to the house of appellant only 15 days earlier – Deceased was beaten by the appellant in his courtyard proved by evidence – Blood and broke bangles found in the courtyard – Bangles in courtyard were similar as the bangles found on dead body – Dragging marks found from house of the appellant to the place where dead body was found – Held – Large number of injuries were found and they were sufficient to cause death – It is established beyond doubt that appellant had caused death of deceased by assaulting her with lathi – Intentional murder – Conviction u/s 302 and life imprisonment upheld – Appeal dismissed: *Samalu Vs. State of M.P., I.L.R. (1996) M.P. 483 (D.B.)*

– **Section 302** – Murder – Prosecution witness did not refer to any role played by accused when he gave statement to police – A conviction for offence of murder can not be passed against accused on the strength of improvement made at the trial: *Dhanna Vs. State of M.P., I.L.R. (1996) M.P. 264 (D.B.)*

– **Section 302** – Murder by administering poison – No marks of injury on the body to indicate that poison was administered to her forcibly – No evidence to prove complicity – Acquittal recorded by High Court – Not a fit case to interfere with: *State of M.P. Vs. Nand Kishore, I.L.R. (2004) M.P. 320 (S.C.)*

– **Section 302** – Murder cases – Award of lesser sentence of life imprisonment – Considerations of: *Bhansingh Vs. State of M.P., I.L.R. (1990) M.P. 517 (D.B.)*

– **Section 302** – Murder of father by son – Motive – Evidentiary value of – Evidence Act – Section 25 – Village chowkidar – Not a police officer – Extra-judicial confession made to a 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 302** – 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 302** – Offence of murder – Conviction of accused based on testimony of sole eye-witness a girl of 13-14 years – Witness not disclosing names of assailants and about theft for $1\frac{1}{2}$ days – Testimony of witness required close scrutiny and corroboration in material particulars and in its absence accused entitled to benefit of doubt: *Deokinandan @ Drona Prasad Vs. State of M.P., I.L.R. (1987) M.P. 777 (D.B.)*

– **Section 302** – Offence of murder – Proof of – Criminal procedure Code, 1973, Section 294 and Evidence Act, 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 can not be convicted on the basis of post-mortem report: *Bahadaria Vs. State of Madhya Pradesh, I.L.R. (1980) M.P. 1169 (D.B.)*

– **Section 302** – Plea of right of private defence of person and property – Direct confrontation – Possibility can not be ruled out that appellant becoming apprehensive of danger to himself and his family members chaos to be defensive in becoming offensive, because of the first incident without having the requisite intention to cause the murder of any particular person – Appellant therefore fired out only once and the fire was not repeated – The Act would be termed as one in exercises of right of private defence of person – Entitling him to acquittal: *Harish Kumar Vs. State of M.P., I.L.R. (1996) M.P. 245 (D.B.)*

– **Section 302** – Seizure of fire-arm – No evidence that bullet found in skull of deceased was fired from it – Does not establish guilt against appellant – Illegal possession of – Fire-arm – Conviction and sentence under Section 302 IPC. cannot be upheld: *Rajan Tripathi Vs. State of M.P., I.L.R. (2005) M.P. 546 (D.B.)*

– **Section 302** – 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 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 M.P., I.L.R. (1978) M.P. 873(D.B.)*

– **Section 302** – There was provocation which supplied immediate motive – Takes the case out of the category of “rarest of rare cases”: *State of M.P. Vs. Punaji Dhurve, I.L.R. (2004) M.P. 688 (D.B.)*

– **Section 302** – Un-assailable – Admittedly accused husband was present in the house at the time of incident – Defence plea that deceased committed suicide – Not acceptable – Circumstances also show that accused was un-happy with deceased as his demand of dowry was not met by in laws – Accused rightly convicted under Section 302, Indian Penal Code: *Madan @ Madhu Vs. State, I.L.R. (2001) M.P. 1235 (D.B.)*

– **Section 302** – Want of motive in committing murders not sufficient to infer insanity: *Bhansingh Vs. State of M.P., I.L.R. (1990) M.P. 517 (D.B.)*

– **Section 302 and Arms Act, Indian (LIV of 1959) – Sections 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 302 and Arms Act, Indian (XI of 1878) Sections 25 and 27** – Conviction – Witness father of the accused turned hostile – His evidence needs to be discarded from consideration totally – Witnesses corroborating on material particulars cannot be ignored while assessing guilt or innocence of accused – Corroboration by Doctor who performed the postmortem – Two blows of sword – Cardio respiratory failure on account of excessive bleeding – Shock and damage caused by the injuries – There cannot be any other conclusion than that injuries caused with intention of causing such bodily injuries which are sufficient to cause death of human being in ordinary course of nature – Act committed is definitely murder – Does not fall under Section 304, Part – II – Conviction under Section 302, I.P.C. and 25/27 Arms Act is correct – Conviction and sentence maintained: *Manohar Singh Vs. State, I.L.R. (1999) M.P. 597 (D.B.)*

– **Section 302 and Arms Act, Indian Section 25 (I) (a)** – 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: *Girbal Vs. State of M.P., I.L.R. (2003) M.P. 456 (D.B.)*

– **Section 302 and Bal Adhiniyam M.P. (XV of 1970) Sections 2 (c) and 26** – Accused a “child” as defined in section 2(c) charged with offence of murder in Raisen area – Adhiniyam made applicable in Raisen area on 15-2-1981 – Magistrate Committing the case to Sessions and Sessions Court proceeding against the accused in accordance with Chapter 18 of the Cr. P.C. on 17-2-1981 – Sessions Judge has no power to pass final order imposing sentence after finding the accused guilty – Procedure under section 26 of the Adhiniyam ought to have been followed – Plea of accused that he is “Child” as defined in the Adhiniyam can be permitted to be raised before appellate Court: *Khalilullah Vs. State of M.P., I.L.R. (1984) M.P. 713 (D.B.)*

– **Section 302 and Criminal Procedure Code 1973 (II of 1974) Section 378(1)** – 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 302 and Criminal Procedure Code, 1973** – Appeal against acquittal – The presumption of innocence is a basic tenet of our criminal jurisprudence – Duty of appellate court is not to adopt a computerized approach but screen and scan the evidence diligently and critically – The position emerging from the cumulative effect of all facts

and circumstances, there is no acceptable much less sufficient evidence connecting the respondent with the crime – Appeal dismissed: *State of M.P. Vs. Bhagirath Bherusingh*, I.L.R. (1993) M.P. 627 (D.B.)

– **Section 302 and Criminal Procedure Code, 1973 – Sections 161, 378**

(3)– 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 MP Vs. Mannu @ Manohar*, I.L.R. (2004) M.P. 1184 (D.B.)

– **Section 302 and Criminal Procedure Code, 1973 (II of 1974) – Section**

360 – 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 (D.B.)

– **Section 302 and Criminal Procedure Code, 1973 (II of 1974) Sections**

161, 374(2) – Appeal against conviction – Nature of evidence required – Evidence Act, Indian, 1872 – 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 – Benefit of doubt – Investigating Officer admitted in examination in Chief that another dying declaration was recorded by Executive Magistrate but the same was withheld by prosecution – Adverse inference drawn against prosecution – Accused entitled to benefit of doubt – Conviction and sentences set aside: *Manohar Vs. State*, I.L.R. (2001) M.P. 100 (D.B.)

– **Section 302 and Criminal Procedure Code, 1973 (II of 1974) Sections**

366 and 374(2) – Appeal against conviction – Death sentence – Reference – Murder of two innocent boys – Police station at 30 km away – Delay in F.I.R. – No negative effect – Child witness of sufficient understanding and memory – Version is natural – Mere fact that they are boys of 11 and 14 years respectively does not discredit them – Accused rightly convicted – Sentence – Not a case of pre-planning or wrecking vengeance – Does not fall in the category or rarest of rare cases – Death reference dismissed – Sentence altered to life imprisonment: *State Vs. Tantoo*, I.L.R. (1999) M.P. 1089 (D.B.)

– **Section 302 and Evidence Act Indian 1872, Section 3** – Murder of

infant- – Circumstantial evidence – Prosecution failed to establish motive – On the

contrary strong motive established against his wife – Two views possible – Court is obliged to accept the view in favour of accused – Conviction and sentence set aside: *Pawan Kumar Vs. State of Chhattisgarh, I.L.R. (2005) M.P. 925 (S.C.)*

– **Section 302 And Section 84** – Benefit of Section 84 when available to accused
Crucial Point of time is the time of the commission of offence – Antecedent attending and subsequent conduct of accused is relevant but not per se enough to show state of mind at the time of commission of offence – Want of motive in committing murders not sufficient to infer insanity – Evidence Act, Indian (I of 1872) – 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 – Murder cases – Award of lesser sentence of life imprisonment – Consideration of: *Bhansingh Vs. State of M.P., I.L.R. (1990) M.P. 517 (D.B.)*

– **Section 302 or Section 304 Part-I** – Appellant gave a single blow with farsa on head of deceased – During a sudden quarrel without any premeditation – Case falls U/s 304 Part-I -I.P.C : *Mahesh Vs. State of M.P., I.L.R. (1996) M.P. 282 (D.B.)*

– **Section 302, Arms Act Indian, 1959, Sections 25,27, Evidence Act Indian, 1872, Section 3 and Criminal Procedure Code, 1973, Section 374 (2)** – Appeal – Murder – Conviction and sentence – Circumstantial evidence – Last seen together – More than one person last seen – Not sufficient to hold accused alone guilty – Seizure of –Fire-arm – No evidence that bullet found in skull of deceased was fired from it – Does not establish guilt against appellant – Illegal possession of – Fire-arm – Conviction and sentence under Section 302 IPC. *cannot be upheld: Rajan Tripathi Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 546 (D.B.)*

– **Section 302, Criminal Procedure Code, 1973 (II of 1974) Section 374(2) and Evidence Act, Indian (I of 1872) Section 27** – Appeal against conviction – Circumstantial evidence – Mere contents of memorandum will not be evidence unless supported by statement on oath – Absence of specific evidence of disclosure made by accused – F.S.L. report not tendered as exhibit nor put to accused in Section 313 statement – Disclosure not proved – Circumstantial evidence – No body has seen accused with deceased – Mere suspicion not sufficient to achieve the standard of proof beyond reasonable doubt – Accused entitled to benefit of doubt – Conviction set aside: *Laxman Vs. State, I.L.R. (1999) M.P. 1070 (D.B.)*

– **Section 302, Evidence Act Indian, 1872 Section 3 and Criminal Procedure Code, 1974, Section 174 and 378(1)** – 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 – Up-turning the order of acquittal – Would not be proper: *State Vs. Rajaram, I.L.R. (2003) M.P. 645 (D.B.)*

– **Section 302, Evidence Act, Indian, (I of 1872) Section 32** – Murder – Deceased first wife – After pouring Kerosene set ablaze by accused husband and his second wife – 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 302, Evidence Act, Indian, 1872, Sections 3, 9 and Criminal Procedure Code, 1973, Section 374(2)** – 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 then 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 302, Section 302 read with section 34, section 325 read with section 34** – Common Intention – Has to be inferred from the acts and conduct of the accused – totality of circumstances to be considered: *Awadh Narain Vs. State of M.P., I.L.R. (1988) M.P. 234 (D.B.)*

– **Section 302/34** – Deceased giving dying declaration to police another to Doctor and yet another to Executive Magistrate – In all of them she has said that Kerosene Oil was poured over her and she was burnt by accused – Completely rules out even a remote possibility of her giving committed suicide – Thumb impression of deceased obtained after considerable blank space – Doctor has a habit of drawing vertical lines above signature also noticed in medical reports of accused – No inference discrediting the dying declaration can be drawn – Successive dying declarations including F.I.R. – The first in point of time, inspires confidence and trust – Worthiness – No positive act attributed to two of the accused persons – They deserve benefit of doubt – The plea of alibi discarded by Trial Judge as it appeared to be fabricated – Since case of prosecution is even otherwise doubtful, it is not necessary to dwell on the subject – Report of forensic science laboratory shows that traces of Kerosene oil were not found in nail clippings: *Narayan Vs. State, I.L.R. (1999) M.P. 48 (D.B.)*

– **Section 302/34** – Murder – Conviction and sentence – Criminal Procedure Code, 1973 – Section 374(2) – Appeal – Evidence Act, Indian 1872 – 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 – Evidence proves commission of murder by only one of the two appellants – Charge altered to Section 302, IPC simplicitor – Co-accused given benefit of doubt and acquittal: *Anantilal Vs. State, I.L.R. (2000) M.P. 397 (D.B.)*

– **Section 302/34** – Statement under Section 164 Cr. P.C. eye witness has not attributed the role of appellant No.2 – The manner in which appellant No.2 is alleged to have caught hold of deceased from front sounds not only unnatural but improbable also – She deserves to be given benefit of doubt – Ex.D-5 establishes transfer of possession in favour of appellant's father – Burden was not on accused but on prosecution to establish that such possession was disturbed subsequently – Right of private defence of property available to appellant No.1 as deceased was trespasser – Complainant party unarmed – Two injuries caused by appellant in quick succession on the chest of deceased – Appellant exceeded right of private defence Cannot be exonerated altogether – Conviction of appellant No.1 altered to one under Section 304 – I of the I.P.C. – Appellant acquitted: *Deepa Vs. State, I.L.R. (1999) M.P. 152 (D.B.)*

– **Section 302/34 and Criminal Procedure Code, 1973 (II of 1974) Sections 378, 397/401** – Appeal and Revision against acquittal – Murder – Incident occurred at 8.00 P.M. – Witnesses claimed to be present purely by chance – Testimony of partition witnesses – As per prosecution report of the incident was lodged immediately and police had come to the spot and had sent the deceased to hospital but statements were recorded on the next day – Presence of three eye witnesses doubtful – Hazardous to act on their testimony – There are circumstances to indicate that assailant could not be seen with the result – Situation could be capitalized to falsely implicate the persons, on whom the suspicion fell on account of past enmity – No case is made out calling for interference in the consequent acquittal of the respondents: *State Vs. Rajendra, I.L.R. (1999) M.P. 872 (D.B.)*

– **Sections 302 & 304 Part-1** – 13 injuries inflicted – None on any vital part – Intention to cause death cannot be intended – Offence would fall under Section 304 Part-I of the IPC: *Bhagirath Singh Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 645 (D.B.)*

– **Sections 302 & 97** – Right of Private defence – Person and Property – Onus – A plea of self defence, the onus to establish that plea lies on accused – Accused is not required to prove that plea beyond reasonable doubt but has merely to show it as probable – It can be proved by facts and circumstances appearing in the prosecution case or by the defence evidence: *Bhaiya Bahadur Singh Vs. State of M.P., I.L.R. (1996) M.P. 239 (D.B.)*

– **Sections 302 and 100** – Murder - Offence of – Right of private defence – When available to accused - Accused sustaining simple injuries caused by the deceased by lathi – Accused assaulted and killed five persons by axe – Right of private defence not available to accused – Death sentence – Award of the accused extremely brutal, revolting and gruesome shocking judicial conscience – No mitigating circumstances in favour of accused – Rarest of rare cases – Maximum punishment of death sentence justified: *Mahesh Vs. State of M.P., I.L.R. (1987) M.P. 49 (D.B.)*

– **Sections 302 and 304** – Circumstances when the action of accused amounts to culpable homicide not amounting to murder or murder – Three contingencies possible – Which contingency will amount to an offence of murder: *Sarathi Vs. State of M.P., I.L.R. (1977) M.P. 1016 (D.B.)*

– **Sections 302, 149 and 148** – Offences thereunder – Accused were charged with offenses of common object to cause assault – Not charged with common object to kill – Accused found to have caused injuries by deadly weapons practically simultaneously – Are guilty of offence under section 148- Absence of charge about common object to kill – Whether accused can be convicted for offences under section 302 read with section 149-Doctor's evidence not specific as to which particular injury resulting in death was antemortem or post mortem – Accuse cannot be held guilty under section 302, but are guilty under section 326 read with section 148: *Teja alias Tejram Vs. State of M.P., I.L.R. (1990) M.P. 47 (D.B.)*

– **Sections 302, 149 and 34** – Absence of charge about common object to kill – Whether accused can be convicted for offenses under section 302 read with section 149: *Teja alias Tejram Vs. State of M.P., I.L.R. (1990) M.P. 47 (D.B.)*

– **Sections 302, 149, 307 read with section 34 and 396 and Arms Act, Indian (XI of 1878) section 25** – Convictions of the accused persons thereunder – Evidence – Expert evidence – When acceptable – Medical evidence and the evidence of eye witnesses – Contradiction between the two – Effect of – Evidence of eye-witnesses not to be rejected – Identification – Accused persons' objection that their photographs were shown to the prosecution witnesses and hence identification not proper – Tenability of Circumstances proving the guilt of accused persons – Nature of – Section 396 – Implication of: *Onkarnath Vs. State of M.P., I.L.R. (1980) M.P. 1053 (D.B.)*

– **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: *Kunwarji Vs. State, I.L.R. (2000) M.P. 749 (D.B.)*

– **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*

– **Sections 302, 201** – Murder of wife by strangulating and further attempt to destroy the evidence by setting fire to the dead body – Conviction and sentence – Criminal Procedure Code, 1973 – 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 – Un-assailable – Admittedly accused husband was present in the house at the time of incident – Defence plea that deceased committed suicide – Not acceptable – Circumstances also show that accused was un-happy with deceased as his demand of dowry was not met by in laws – Accused rightly convicted under Section 302, Indian Penal Code – Accused making false report to police to screen himself – Act falls within the ambit of Section 201 and rightly convicted under Section 302, Indian Penal Code – Accused making false report to police to screen himself – Act falls within the ambit of Section 201 and rightly convicted under this Section – Sentence – Minimum sentence under Section 302, I.P.C. is life imprisonment and 5 years R.I. under Section 201, I.P.C. – Sentence not excessive – Conviction and sentence confirmed: *Madan @ Madhu Vs. State, I.L.R. (2001) M.P. 1235 (D.B.)*

– **Sections 302, 201 and Evidence Act, Indian (I of 1872) Section 3 and Criminal Procedure Code, 1973 (II of 1974) Section 374(2)** – Appeal against conviction and sentence – Evidence Act, 1872 – Section 3 – Circumstantial evidence – Investigating 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.)*

– **Sections 302, 201, Evidence Act Indian, 1872, Section 3 and Criminal Procedure Code, 1973, Section 374 (2)** – 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.)*

– **Sections 302, 302/149, 149, Criminal procedure Code, 1973 (II of 1974)**

Section 313 – Section 149, Indian Penal Code creates specific and distinct Offence – Accused charged under section 302/149, Indian Penal Code – Other accused except one acquitted – Conviction of remaining on under section 302 without jurisdiction – 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.)

– **Sections 302, 302/149, 325/149, 147, 149 Criminal Procedure Code, 1973 (II of 1974) Sections 162, 294, 215, 313, 464 and Evidence Act, Indian (I of 1872) Section 5, 114(g)** – Delay in lodging F.I.R. – Not unreasonable – Eye-witnesses of actual incident inside house examined, some witnesses present outside the house not examined – No adverse inference – Injuries of the accused persons – Only those injuries caused at the time of occurrence are to be explained – Injury reports of the accused's with corresponding requisition forms admitted by prosecution – Contents of requisition forms not hit by section 162, Criminal Procedure Code – Accused's not mis-lead 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 – Cross – Examination – Failure to challenge part of evidence – Acceptance of that part can be inferred – First shot fired in the air and the utterance to the effect 'Maro sale ko Bahut Sath Deta Hai chamaron ka' – Common object to cause grievous hurt and not to kill: *Jagdish Singh Vs. State of M.P.*, I.L.R. (1989) M.P. 664 (D.B.)

– **Sections 302, 304 (II)** – No prior ill will – Reason of assault shrouded in mystery – Stick used to cause injury – Offence of culpable homicide not amounting to murder – Conviction altered to one punishable under Section 304(II) I.P.C.: *Bhagat Singh Vs. State*, I.L.R. (2004) M.P. 60 (D.B.)

– **Sections 302, 304 Part I** – 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.: *State of M.P. Vs. Ghanshyam Singh*, I.L.R. (2003) M.P. 1058 (S.C.)

– **Sections 302, 304 Part-II** – Accused could not control himself on account of negative attitude of tenant – Cannot be credited with knowledge – Conviction altered to Section 304, Part-II, I.P.C.: *Kundanlal Vs. State of Madhya Pradesh*, I.L.R. (2005) M.P. 540 (D.B.)

– **Sections 302, 304 Part-II, Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 3(2) (v) and Evidence Act, Indian, 1872, Section 3** – Murder – No evidence that offence was committed because deceased was member of scheduled castes – Offence U/s 3(2) (v) not proved – Circumstantial

evidence – Piece of accused shirt removed from fist of deceased – Clinching evidence though circumstantial – Accused could not control himself an account of negative attitude of tenant – Cannot be credited with knowledge – Conviction altered to Section 304, Part-II, I.P.C.: *Kundanlal Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 540 (D.B.)*

– **Sections 302, 304 Part-II, Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 3(2) (v) and Evidence Act, Indian, 1872, Section 3** – Murder – No evidence that offence was committed because deceased was member of scheduled castes – Offence U/s 3(2) (v) not proved: *Kundanlal Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 540 (D.B.)*

– **Sections 302, 304, Part I and Criminal Procedure Code, 1974, Section 374 (2)** – Appeal – Conviction & sentence – Murder – Single blow of knife on abdomen – Single blow would not in all cases attract leniency exonerating accused from clutches of Section 302 I.P.C. – It depends upon facts of each case – Single blow inflicted with force without provocation – Imposition of an act of supremacy without reason – Conviction and sentence under Section 302, I.P.C. concurred with: *Mahesh @ Tulsi harijan Vs. State of Madhya Pradesh, I.L.R. (2002) M.P. 966 (D.B.)*

– **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: *Madanlal Vs. State of M.P., I.L.R. (2004) M.P. 383 (D.B.)*

– **Sections 302, 304, Part II** – 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 (DB)*

– **Sections 302, 304, Part II and 324** – Mother of appellant was beaten by deceased and another – In heat of passion injury was inflicted on deceased – Injury sustained by appellants mother proved – Offence would fall under exception 4 of Section 300- I.P.C. – Conviction altered to under Section 304, Part II of the I.P.C: *Madan Gopal Alias Pappu Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 997 (D.B.)*

– **Sections 302, 304, Part II and 324, I.P.C. and Criminal Procedure Code, 1974, Section 374(2)** – Appeal against Conviction and Sentence – Murder – Mother of appellant was beaten by deceased and another – In heat of passion injury was inflicted on deceased – Injury sustained by appellants mother proved- – Offence would fall under exception 4 of Section 300- – Conviction altered to under Section 304,

Part II of the I.P.C.: *Madan Gopal Alias Pappu Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 997 (D.B.)*

– **Sections 302, 304, Part II and Criminal Procedure Code, 1973, Section 374 (2)** – 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.)*

– **Sections 302, 304, Part-II** – 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 (S.C.)*

– **Sections 302, 304, Part-II, 330, 331, Evidence Act, Indian, 1872-Sections 3 and 9 and Criminal Procedure Code, 1973 – Sections 162, 313**– 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 occular 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 indentification 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 (S.C.)*

– **Sections 302, 304-B** – Dowry death – Ingredients for farming of charge – Death within seven years of marriage and that she was subjected to cruelty or harassment soon before death for or in connection with dowry: *Rajiv Kumar Singh Vs. State, I.L.R. (2000) M.P. 410*

– **Sections 302, 304-B** – Dowry Death or Murder – Appellant sprinkled kerosene oil on her wife and set her to fire – Demand of dowry from parents of deceased and pressuring her and harassing her proved by prosecution witnesses – Dying declaration of deceased implicating appellant – Held – Ingredient of Section 302 may not be cogently established – Case of dowry death and conviction could be justified u/s 304-B – Considering young age and poverty of appellant sentence of imprisonment for life reduced to 10 years rigorous imprisonment – Appeal partly allowed: *Sallo @ Salim Khan Vs. State of M.P., I.L.R. (1996) M.P. 449 (D.B.)*

– **Sections 302, 304-B** – Though some of the accused reside at a distant place from the place of incident but evidence collected prima facie indicate nexus between the accused persons and the death of deceased – Charge framed by Trial Court needs no interference: *Rajiv Kumar Singh Vs. State, I.L.R. (2000) M.P. 410*

– **Sections 302, 304-I, 307, 307/149** – 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: *Latel Vs. State, I.L.R. (2000) M.P. 72 (D.B.)*

– **Sections 302, 304-Part-I** – Murder – Sudden and grave provocation – Accused saw his wife having intercourse with her lover – Short duration of five minutes – Not in a position to garner self control – Offence would fall under Section 304 – Part-I, IPC. *Paramlal Vs. State of M.P., I.L.R. (2002) M.P. 959 (D.B.)*

– **Sections 302, 307, 307 and 307** – Petitioner convicted and sentenced to life – Released on licence – Not an absolute ‘release’ envisaged under Section 8(3) of the Representation of People Act read with Article 102(1)(e) of the Constitution of India – Expiry of six years from such release – Would not wipe out disqualification attached to petitioner: *Chhatar Singh Vs. Gajendra Singh, I.L.R. (2000) M.P. 943*

– **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-examined: *Moti Singh Vs. State I.L.R. (2001) M.P. 1074*

– **Sections 302, 326, 323 and 149** – Offences thereunder – Discrepancy between ocular and medical evidence – When material – Accused also sustaining injuries in the occurrence – Effect on the prosecution – Non cross – Examination of P.Ws on certain facts – Inference – Appellants mounting a joint assault armed with farsa by on and others with sticks – Origin and genesis of occurrence show appellants to be aggressors forming unlawful assembly with common object – Deceased receiving fatal

blows with farsa and died on the spot and others sustained grievous hurt and simple injuries – Conviction of appellants armed with lathis u/s 326/149 and main accused armed with farsa u/s 302 proper: *Motilal Vs. State of M.P., I.L.R. (1990) M.P. 436 (D.B.)*

– **Sections 302, 34, Criminal Procedure Code, 1973 (II of 1974) Section 374(2) and Evidence Act, Indian (I of 1872) Section 118** – Child witness – Court to satisfy itself that the said child is not prevented from understanding the question or from giving rational answer – No infirmity in the statement – Strong corroboration by other witness – Trial Court rightly put reliance – Immediate F.I.R. where in accused are named – 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 302, 380 and 457 and Evidence Act, Indian, 1872, 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 – 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 – 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 of M.P. Vs. Ghudan, I.L.R. (2003) M.P. 1121 (S.C.)*

– **Sections 302, 394** – Accused leading to recovery of ornaments belonging to deceased – Absence of explanation how it come to his possession – Possession soon after the incident is proved – Accused rightly convicted for murder and robbery: *Sudesh Vs. State, I.L.R. (2001) M.P. 233 (D.B.)*

– **Sections 302, 394, 411, Evidence Act, Indian (I of 1872) Sections 27, 114 and Criminal Procedure Code, 1973 (II of 1974) Sections 374(2)** – Appeal against conviction and sentence – Murder and robbery – Section 27 Evidence Act – 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 – Section 114, Evidence Act – 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 can not be drawn – Sections 302, 394, I.P.C. – Accused leading to recovery of ornaments belonging to deceased – Absence of explanation how it came to his possession – Possession soon after the incident is proved – Accused rightly convicted for murder and robbery: *Sudesh Vs. State, I.L.R. (2001) M.P. 233 (D.B.)*

– **Sections 302, 394, Evidence Act, Indian, 1872 Sections 3, 9, 27** – Murder and robbery – Circumstantial evidence – Last seen together, recovery of ornaments and identification thereof – Death not on the date of last seen together – 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 – High Court committed serious illegality in relying on the recovery despite coming to the conclusion that ornaments had not been duly identified were signing at the instance of dotted lines – Recovery statement and the recovery not admissible in evidence – 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 – Chain of circumstances incomplete – Conviction and sentence set aside: *Bharat Vs. State of M.P., I.L.R. (2003) M.P. 100 (S.C.)*

– **Sections 302, 397 and 404** – Offences committed in the course of same transaction – Accused found guilty of offences under Section 302 and 404 – Passing of separate sentences for each offence is necessary – Gwalior State Protection of Children Act – Constitution, Article 254 (1) – Section 10 of Protection of Children Act of Gwalior repugnant to provisions of Indian Penal Code made applicable to Gwalior by Act 3 of 1951 – Section 10 void under Article 25(1) of Constitution: *Lalla Vs. the State, I.L.R. (1959) M.P. 125 (F.B.)*

– **Sections 302, 498-A** – No separate sentence under Section 498-A of I.P.C. need be passed: *Smt. Surjeet Kaur Vs. State of M.P., I.L.R. (1993) M.P. 265 (D.B.)*

– **Sections 302/149, 147, 323/149, 323** – Acquittal of accused persons – Criminal Procedure Code, 1973 – Section 378(1) – State Appeal against acquitting – High Court should be slow in disturbing the finding of Trial Court who has the opportunity to watch demeanour of witness – Evidence Act, Indian, 1872 – 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 – Trial Court rightly disbelieved prosecution witnesses while recording judgment of acquittal – No interference called for: *State Vs. Balu, I.L.R. (2000) M.P. 613 (D.B.)*

– **Sections 302/149, 147, 323/149, 323** – Trial Court rightly disbelieved prosecution witnesses while recording judgment of acquittal – No interference called for: *State Vs. Balu, I.L.R. (2000) M.P. 613 (D.B.)*

– **Sections 302/149, 324/149 and Criminal Procedure Code, 1973 (II of 1974)** – Murder grievous hurt and unlawful assembly – Conviction – Eye witnesses – Minor discrepancies are bound to come as memory and expression differ from person to person – Allibi – Accused claim to have been admitted in hospital as indoor patient – Indoor patient register not in printed and prescribed proforma – Cannot be relied upon

for accepting plea of alibi – Common object and unlawful assembly – All accused had gone in action armed with fire arms and farsha – Caused murder and injuries and fled the place – All would be liable with the aid of Section 149 – Conviction and sentence maintained: *Devi Singh Vs. State, I.L.R. (1999) M.P.1180 (D.B.)*

– **Section 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: *Tulsiram Vs. State, I.L.R. (1992) M.P. 295*

– **Sections 302/34 & 324/34** – Eye witness – It is the duty of the prosecution to examine all material witness for the purpose of unfolding the event – In the present case said eye – witness not examined by prosecution – Other two witness has exaggerated while giving evidence in the Court – When grilled in the cross – examination they had admitted that whatever they had stated in their examination – in-chief was not stated by them either in the F.I.R. or the statement recorded during course of investigation – Voice of witness will not create the tune of truth – It has to be intrinsically proved from its care – Trial Judge has not appreciated the evidence in its proper perspective – Order of conviction is set aside: *Amar Singh Vs. State of M.P., I.L.R. (1998) M.P. 876 (D.B.)*

– **Sections 302/34, 302/149** – Murder – Common intention or common object – Guns in Possession of accused would not by itself mean common object – Accused persons sitting in the tractor when A-4 got down and shot at deceased – Other accused fled and did not held A-4 to shot at deceased – Offence under Section 149/302 or Section 34/302 IPC not made out: *State Vs. Hisamuddin, I.L.R. (2004) M.P. 287 (D.B.)*

– **Sections 302/34, 307** – Murder and attempt to commit murder – Plea of private defence and criminal trespass: *Krishan Kumar Vs. State, I.L.R. (2000) M.P. 619 (D.B.)*

– **Section 304, Part- I** – 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 Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 439 (D.B.)*

– **Section 304, Part I** – Murder – Culpable homicide – Property dispute between deceased and accused – After dismissal of accused's application for temporary injunction, deceased alleged to be started ploughing field – Revenue records showing name and continuous possession of accused party – Accused party armed with lethal weapons started ploughing field – On being protested by unarmed deceased, accused caused grievous injuries causing death – Companions of deceased came to rescue – Both parties suffered injury – Held – The Act of accused party was in defense of their

property at initial stage and in defense of their person after deceased fell – Accused have exceeded their right of defense of private property as there was no justification to state away open attack with lethal wapons – No Special leniency can be shown – Sentence of two accused of four years rigorous imprisonment and fine of Rs. 1000/- each enhanced to ten years rigorous imprisonment with fine of Rs. 5000/-: *State of M.P. Vs. Harisingh, I.L.R. (1997) M.P. 564 (D.B.)*

– **Section 304, Part I** – Sentence – Sentence of 2 years and fine Rs. 500/- for the offence U/s 304 Part-I I.P.C. was grossly inadequate and unreasonable – Proper sentence i.e. 6 years imprisonment and fine Rs. 1000/- passed by Supreme Court: *Mahesh Vs. State of M.P., I.L.R. (1996) M.P. 282 (D.B.)*

– **Section 304, Part I** – Wife charged with adultery – Wife threatening to do the very act hereafter when questioned by husband – Action of wife creating surprise and sudden moral repulsion – Husband striking wife in a manner resulting in her death – offence falls under this section: *Daulatrao Vs. The State of M.P., I.L.R. (1962) M.P. 973 (D.B.)*

– **Section 304, Part I and Section 302** – 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.: *Krishan Kumar Vs. State, I.L.R. (2000) M.P. 619 (D.B.)*

– **Section 304, Part I, Section 99** – Plea of self defence – Property dispute between brothers – Assault – Death of victim – Injuries sustained by accused minor in nature and needs no explanation – Entire prosecution evidence cannot be discarded on that ground – Dispute not very serious – Lathi injuries caused on head of deceased did not commensurate with apprehension that could reasonably arise – Injuries disproportionately severe and un-justified – Accused found to have exceeded right of self defence – Conviction under Section 302 altered to one under Section 304, Part I: *Man Bharan Singh Vs. State of M.P., I.L.R. (1995) M.P. 679 (D.B.)*

– **Section 304, Part II** – Circumstantial Evidence – Hairs seized from between blade and handle of axe sent for examination to FSL alongwith hairs of deceased – No definite opinion given about origin from one and the same person – No conclusive evidence that hairs were that of deceased – Seizure of blood stained Baniyan, Lungi and Lathi sent to F.S.L. – Absence of any evidence in the form of blood group – Absence of corroborative – Cannot be made the basis for conviction – Accused deserves benefit: *Gangaram Vs. State, I.L.R. (1999) M.P. 495*

– **Section 304, Part II** – Culpable Homicide – Land cultivated by complainant party – Accused committed trespass and conducted sowing operation – On being protest, accused gave an arrow shot causing death of deceased – Since accused was not in settled possession hence no right of self defence of person or property – After sudden

altercations and exchange of hot words the accused gave arrow shot – Therefore, intention of commission of murder can not be inferred – Accused convicted for offence u/s 304-Part-II – Appeal partly allowed: *Hemta Vs. State of M.P., I.L.R. (1996) M.P. 458 (D.B.)*

– **Section 304, Part II** – 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. State of M.P., I.L.R. (2004) M.P. 773*

– **Section 304, Part II** – Murder – Culpable homicide – Accused special armed force official involved in antisocial activities – Deceased planned to submit a representation to higher officers complaining about the accused – To wreak their vengeance, accused searched her house on false pretext – Forcibly dragged her to police station beating her – Death after 6 days of assaulted due to rupture of liver, shock and excessive bleeding – Held – Offence established by evidence of eyewitnesses – No reason to disturb concurrent finding of courts below – Accused should compensate members of family of deceased by paying Rs 20,000/- and 10,000/- rigorous imprisonment of 5 years reduced to three years: *Sukhpal Vs. State of M.P., I.L.R. (1997) M.P. 1 (S.C.)*

– **Section 304, Part II, Part 323** – Culpable homicide not amounting to murder – Sentence – Accused alleged to have assaulted deceased grandmother with an axe – Altercation between deceased and accused for non-availability of food at home – In absence of criminal antecedents of the accused are certain aspects to be taken into consideration while imposing sentence – On overall consideration of the factual matrix, the Hon'ble High Court was of the considered opinion that a sentence of five years RI for the offence under Section 304-II would be meet and proper - Accordingly, the custodial sentence of seven years for the aforesaid offence is reduced to five years: *Kalang Vs. State of M.P., I.L.R. (1997) M.P. 545*

– **Section 304-A** – Absence of driving license – Reasonable inference of rash and negligent driving of heavy vehicle not to be reasonably drawn contributory negligence – No defence – Mere mistake or intellectual defect – Does not constitute rashness: *The State Government of M.P. Vs. Bhawanesh Kumar, I.L.R. (1957) M.P. 357 (D.B.)*

– **Section 304-A** – Case not falling under section 304-A – Accused may be guilty of any other offence under Indian Penal Code or under any special enactment: *Jiwanlal Vs. Devi Luhar, I.L.R. (1972) M.P. 766 (D.B.)*

– **Section 304-A** – Conviction and sentence – Appeal against – There must be a nexus between act of the accused and death of deceased – Appellant administered one

injection to the child- Autopsy surgeon found number of punctured wounds which could be of injection and were possible by the bites of some poisonous insects – No definite opinion given as to cause of death – No report of chemical analysis produced by the prosecution – Absence of proof of direct link between the act of the accused and the death of the child – Appellant cannot be convicted for the charge U/s. 304-A IPC. – Conviction and sentence set aside: *Hans Kumar Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 769*

– **Section 304-A** – Death must be the direct result of rashness or negligence: *The State of M.P. Through Rly. Police Indore Vs. Ranjitekumar Chatarjee, I.L.R. (1959) M.P. 411 (D.B.)*

– **Section 304-A** – For conviction under, there must be proof that rash or negligent act was proximate cause of death – Direct nexus between the act and consequence is necessary: *State of M.P. Vs. Ghanshyamdas, I.L.R. (1977) M.P. 609*

– **Section 304-A** – Ingredient of: *Jiwanlal Vs. Devi Luhar, I.L.R. (1972) M.P. 766 (D.B.)*

– **Section 304-A** – No definite opinion given as to cause of death – No report of chemical analysis produced by the prosecution – Absence of proof of direct link between the act of the accused and the death of the child – Appellant cannot be convicted for the charge U/s. 304-A, IPC – Conviction and sentence set aside: *Hans Kumar Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 769*

– **Section 304-A** – Overman and Sirdar appointed in Mine – Omitting to make periodical inspection – Roof of mine collapsing and killing two persons – Omission is illegal and makes them liable to a penalty under this provision – Two enactments – Act or omission is punishable under two enactments – Option with prosecuting agency to press in service either of them – Section 304 – A and Section 32 – The word “Act” in Section 304-A – Includes “illegal omission” unless contrary intention appears – Section 43 – Word “illegal” in – Has artificial conception consisting of the negation of particular act which may be due to pure and simple passivity or due to commission of same act inconsistent with act omitted: *Ganeshgir Vs. The State of M.P., I.L.R. (1967) M.P. 843*

– **Section 304-A** – Release of vehicle involved in the case under, on interim custody – Power of court to impose condition – Extent and justifications of such conditions: *Khempal Singh Vs. State of M.P., I.L.R. (1990) M.P. 395*

– **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: *B.P.Ram Vs. State, I.L.R. (1992) M.P. 221*

– **Section 304-A and Section 32** – The word “Act” in Section 304-A – Includes “illegal omission” unless contrary intention appears: *Ganeshgir Vs. The State of M.P., I.L.R. (1967) M.P. 843*

– **Section 304-B** – Dowry death – Accused had made a demand of money for starting business and it was fulfilled – There being no further specific allegations and proof regarding further demand by the accused or any cruelty or harassment being meted out to the deceased by him – Earlier demand cannot be termed as unlawful – Therefore it does not stand established that the appellant treated the deceased with cruelty – Charge u/s 304-B not proved – Appeal Allowed: *Anil Kumar Jain Vs. State of M.P., I.L.R. (1996) M.P. 193*

– **Section 304-B** – Dowry Death – Section 304-B, I.P.C. came into force on 9.11.1986 – Offence committed on 6.4.1986 – Charge framed under Section 304-B of I.P.C. – Held – Section 304-B of I.P.C. has no retrospective effect – No charge under Section 304-B of I.P.C. can be framed for commission of offence on 6.4.1986 – Order framing charge under Section 304-B of I.P.C. set aside: *Pradeep Kumar Dhawan Vs. State of M.P., I.L.R. (1994) M.P. 492*

– **Section 304-B, Criminal Procedure Code, 1973, Section 227** – Framing of – Charges – Deceased gave birth to a male child in the hospital – She died after 3 days of giving birth due to septicemia and complications arising out of it – Allegation that husband had given a blow on her abdomen not corroborated by witnesses – Death was due to disease and was not homicidal or unnatural death or death in abnormal circumstances – No evidence that she was subjected to cruelty or harassment soon before her death – Complaint made after 40 days of death – Charge under Section 304B of I.P.C. not made out: *Manmohan Laxminarain Vs. State of M.P., I.L.R. (1993) M.P. 655*

– **Section 304-B, Evidence Act, 1872, Section 113-B** – Dowry Death – Deceased committing suicide by consuming poisonous substance – Appellants convicted under Section 304-B of I.P.C. – Appeal against conviction – Deceased died on 9-12-1989 – Statement of one witness that marriage was performed in summer of 1982 – Statement of another witness that marriage was performed on 8-12-1982 – To raise presumption under Section 113-B prosecution should establish conclusively that death occurred within 7 years of marriage – Marriage card not produce to prove exact date of marriage – Prosecution failed to prove that death occurred within 7 years of marriage – No offence under Section 304-B made out: *Ratanlal Vs. State of M.P., I.L.R. (1993) M.P. 252*

– **Section 304-Pt. II** – 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 Masdhya Pradesh, I.L.R. (2005) M.P. 349 (D.B.)*

– **Sections 304-A, 314, 315** – Negligence leading to death – Accused nurse administered medicine for abortion of two months old pregnancy – Death of victim – Prima facie offence under Sections 314, 315 Indian Penal Code made out: *Smt. Nirmala Bai Vs. State, I.L.R. (2001) M.P. 1775*

– **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 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*

– **Sections 304-B, 306, 498-A** – As deceased was the second wife of the accused – At the time of the second marriage the accused appellant had his first wife alive – Whether charges u/s. 304-B and 498-A would be sustained – No – Because both Section cover legally wedded woman – Hindu Marriage Act, 1955, 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, I.P.C.: *Ramnarayan Vs. State of M.P., I.L.R. (1998) M.P. 887*

– **Section 306** – Abatement to commit suicide – Applicant and deceased in love with one married woman – Quarrel between applicant and deceased over keeping the lady – Applicant taunted at deceased to go and die – Held – Taunt passed by applicant caused depression in mind of deceased to take extreme step – *Prima facie* it amounts to abatement – No infirmity in order taking cognizance under Section 306 of I.P.C. – Revision dismissed: *Prahlad Das Chela Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 488*

– **Section 306** – Abatement to commit suicide – Applicants had advanced loan to deceased – Applicant demanded money back and filthily abused him – On failure to repay loan amount, applicants obtained signatures of deceased on blank paper as well

as on cheque – Deceased committed suicide – Held – Instigate means to goad or urge forward or to provoke, incite, urge or encourage to do an act – Applicant merely goaded the deceased to repay the loan amount – No aid was provided by accused to commit suicide – No case of offence under Section 306 made out – Applicant discharged – Revision allowed: *Vedprakash Tarachand Bhaiji Vs. State of M.P., I.L.R. (1994) M.P. 224*

– **Section 306** – Abatement to commit suicide – Demand of Dowry – Complaint in that regard never made by parents of deceased to any body before her death – Objection by appellants to the visit of deceased to Mangilal’s house admitted by mother of deceased – Offer of marriage of second daughter by parents of deceased with brother in law of deceased shows cordial relations – No evidence to show abatement or enticement to commit suicide – No offence under Section 306 of I.P.C. made out: *Ratanlal Vs. State of M.P., I.L.R. (1993) M.P. 252*

– **Section 306** – Abetment – “Domestic quarrels” do not take the place of abetment – Prosecution is obliged to prove beyond reasonable doubt that overt act of the accused was the main cause of suicide committed by deceased – Evidence on record very much insufficient to lead to such a conclusion – Order of acquittal proper: *State Vs. Babulal, I.L.R. (2001) M.P. 95*

– **Section 306** – Abetment of suicide – In order to constitute abetment, the prosecution has to prove that there was some positive steps taken by the accused – A suggestion or overt act is must – Then the accused can be held guilty U/s 306 IPC: *State of M.P. Vs. Matadeen alias Mata Prasad, I.L.R. (1996) M.P. 176*

– **Section 306** – Abetment of suicide – Wife died of drowning – No evidence on record that husband took any positive step with a view to induce his wife to commit suicide – Offence U/s 306 I.P.C. not made out – Appeal against acquittal dismissed: *State of M.P. Vs. Ganeshram, I.L.R. (1996) M.P. 174*

– **Section 306** – Abetment of which acts can be regarded as abetting so as to attract the culpability to constitute the offence ingredients as envisaged under Section 107 of IPC are to be satisfied – Section 113-A of the Evidence Act is not applicable when the person concerned is neither the husband nor related to the deceased in any manner – In absence of any presumption under Section 113-A of the Evidence Act, petitioner cannot be roped in – Petitioner discharged: *Anurudh Prasad Tiwari Vs. State, I.L.R. (1999) M.P. 163*

– **Section 306** – Conviction of person under – Abetment – What constitutes the offence of – Delay in lodging F.I.R. – Effect – Narration of incidents of cruelty to witnesses much prior to date of incident – Value of: *Basant Kumar Vs. State of M.P., I.L.R. (1990) M.P. 173*

– **Section 306** – Delay in lodging F.I.R. – Effect of: *Basant Kumar Vs. State of M.P., I.L.R. (1990) M.P. 173*

– **Section 306** – Narration of incidents of cruelty to witnesses much prior to date of incident value of: *Basant Kumar Vs. State of M.P., I.L.R. (1990) M.P. 173*

– **Section 306** – Sentence in extreme case maximum sentence should be awarded – Sentence reduced to 7 years R.I. – Appeal partly allowed: *Vijay @ Baijnath Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 989*

– **Section 306** – Victim constantly ill-treated and beaten, target of taunts and utterance meaning ‘batter she is dead’ – Studied and systematic course of conduct resulting in commission of suicide: *Sampatlal Vs. State of M.P., I.L.R. (1988) M.P. 697*

– **Section 306 and Criminal Procedure Code (II of 1974) Section 374 (2)** – 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 306, Criminal Procedure code, 1973 (II of 1974) Section 107, Evidence Act, Indian (I of 1872) Sections 32(1) 113-A and Criminal Law second Amendment Act, 1983** – Two dying declarations – Facts vary but not inconsistent – Can be considered – No rule of law or prudence for corroboration of dying declaration – New section 113-A, Evidence Act – 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 of conduct resulting in commission of suicide: *Sampatlal Vs. State of M.P., I.L.R. (1988) M.P. 697*

– **Sections 306 and 498-A** – 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: *Harish Chandra Vs. State, I.L.R. (2000) M.P. 276*

– **Sections 306, 107** – Abatement to commit suicide – Marriage was performed 20 years back – Wife committed suicide by consuming poison in the intervening night of 7 and 8th January 1990 – Appellant acquitted by Trial Court under Section 498A of Indian Penal Code – No finding that appellant treated his wife with cruelty prior to 7th January – Appellant convicted by Trial Court for abatement to commit suicide – Held – No evidence on record to show that appellant abated his wife to commit suicide – Liability for offence under Section 306 of Indian Penal Code is dependent on act of abatement which must be for committing suicide – Appellant acquitted – Appeal Allowed. *Devi Singh Vs. State of M.P., I.L.R. (1994) M.P. 450*

– **Sections 306, 107** – Appeal against conviction for abatement to commit suicide – Accused persons outraging the modesty of an unmarried girl and threatening to defame her – Girl committed suicide by immolating herself – Cannot be held that accused persons had abetted the commission of suicide, as there was no positive act of instigation or aiding the girl to commit suicide – Cannot be held guilty of committing offence under Section 306: *Deepak Vs. State of M.P., I.L.R. (1993) M.P. 613*

– **Sections 306, 107 and 498-A** Suicide by Wife – Dying declaration disclosing that it was because of refusal of husband to send her with her brother to her parental home and as husband used to give her trouble - No offence under Section 306 read with Section 107 – Trial of non-applicant for offence under section 498-A, I.P.C. Whether proper: *State of M.P. Vs. Om Prakash, I.L.R. (1987) M.P. 391*

– **Sections 306, 498-A -and Criminal Procedure Code (II of 1974) 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 – Sections 306, IPC – Abetment – “Domestic quarrels” do not take the place of abetment – Prosecution is obliged to prove beyond reasonable doubt that overt act of the accused was the main cause of suicide committed by deceased – Evidence on record very much insufficient to lead to such a conclusion – Order of acquittal proper: *State Vs. Babulal, I.L.R. (2001) M.P. 95*

– **Sections 306, 498-A and Criminal Procedure Code, 1973 (II of 1974) Section 107** – Different between sections 498-A and 306 explained – In Section 306, suicide is abetted & intended – Actual result within purpose and contemplation of abettor – Meaning of abetment – Active suggestion of support to the commission of offence: *Girjashankar Vs. State of M.P., I.L.R. (1988) M.P. 638*

– **Sections 306, 498-A and Criminal Procedure Code, 1973, Section 374 (2)** – Criminal Appeal – 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 – In extreme case maximum sentence should be awarded – Sentence reduced to 7 years R.I. – Appeal partly allowed: *Vijay @ Baijnath Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 989*

– **Section 307** – Attempt to commit murder – The determinative question is intention or knowledge – Sufficient to justify a conviction if there is present an intent coupled with some overt act is execution thereof : *State of Madhya Pradesh Vs. Salim @ Chamaru, I.L.R. (2005) M.P. 782 (S.C.)*

– **Section 307** – Attempt to murder – Injured playing Jhoola in a keertan – Appellant came there and took Jhoola from injured and started playing himself – Injured

objected to it – Appellant took out knife and caused two stab wounds on scapular region and one on left side of chest – Held – Manner in which incident took place shows that appellant had no intention and knowledge to cause death – Conviction of appellant under Section 307 of Indian Penal Code set aside: *Babloo @ Sujeet Vs. State of Madhya Pradesh*, I.L.R. (1994) M.P. 441

– **Section 307, Evidence Act, 1872, Section 9 and Criminal Procedure Code, 1973, Section 374(2)** – 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 307/34** – Case committed to the Sessions Judge for Trial – Permission seeking withdrawal of prosecution by Public Prosecutor – Refusal by Sessions Judge: *Mahendra Vs. State*, I.L.R. (2000) M.P. 640

– **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: *Gopal Tiwari Vs. State*, I.L.R. (2002) M.P. 146

– **Sections 307, 336** – Attempt to Murder and Act endangering life – Appellant knocked the door of complainant at 3 A.M. at night – Both had altercations as a result of which both and other witnesses who had gathered there to pacify received injuries – Accused under impression that he was got beaten by one of the witnesses went to his house and brought a gun – Accused fired through the window of the house of the witness but no one was injured – Held – Act of the accused would fall under Section 336 of Indian Penal Code in view of the background of the incident specifically in absence of any enmity: *Divakar Mishra Vs. State of M.P.*, I.L.R. (1994) M.P. 393

– **Sections 307/147, 148, 149** – Complainant party is aggressor – One accused sustained grievous injury at the hand of complainant – Apprehending imminent danger to life complainant was injured – Case would not fall under Section 307 I.P.C. – Conviction and sentence set aside: *Jagdish Vs. State*, I.L.R. (2001) M.P. 402

– **Section 308 and Criminal Procedure Code, 1973 – Section 397** – Revision against charge – Intention or knowledge to commit culpable homicide is normally determined from weapon used and number & nature of injuries caused – One injury measuring 1/2” x 1/2” caused by stone – Trial Court erred in framing charge under Section 308 IPC: *Pawan Vs. State of M.P.*, I.L.R. (2005) M.P. 169

– **Section 317** – Provision not intended to prevent trial for murder or culpable homicide if death of the child is caused by such exposure: *Pawan Vs. State, I.L.R. (2001) M.P. 549 (D.B.)*

– **Sections 320, 326** – Grievous hurt – Doctor not stating anything regarding nature of injury – Court cannot usurp function of expert and to express its own opinion regarding nature of injury – Injured discharged from hospital on 20th day – Day of discharge cannot be counted as a day of his hospitalization – Nothing on record that during this period injured suffered severe bodily pain – Nothing on record that sufferer was unable to follow his ordinary pursuits – No offence under Section 326 of Indian Penal Code made out – Offence punishable under Section 324 of Indian Penal Code made out – Appellant convicted and sentenced for period of 1 year and 2 months which is already undergone – Appeal partly allowed: *Babloo @ Sujeet Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 441*

– **Section 320, Clause 8** – The term ‘grievous hurt’ in – interpretation of – conviction for causing injury mentioned therein – Can be made under section 325: *Ghurriya @ Rohini Baiswar Vs. State of M.P., I.L.R. (1990) M.P. 218 (D.B.)*

– **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: *Ku. Reena Vs. Vallabhdas, I.L.R. (2004) M.P. 1100*

– **Sections 323, 352, 294, 506 – B and 34** – Mass agitation against Govt. for not taking up relief work for 1997 earthquake victims at Jabalpur – Few persons including petitioner though arrested but prosecution dropped as deemed not desirable – Act of petitioner should not be termed as misconduct as there is absence of motive to commit any serious offence: *Ram Ratan Yadav Vs. Kendriya Vidyalaya Sangathan, New Delhi, I.L.R. (2000) M.P. 1243 (D.B.)*

– **Section 325** – Act of pressing the neck till deceased became unconscious – Falls under the definition of grievous hurt – Sections 302 and 304 Circumstances when the action of accused amounts to culpable homicide not amounting to murder or murder – Three contingencies possible – Which contingency will amount to an offence of murder: *Sarathi Vs. State of M.P., I.L.R. (1977) M.P. 1016 (D.B.)*

– **Section 325** – Conviction for offence thereunder – When can be made – Injuries on the person of accused – Duty of prosecution to explain – Non explanation of such injuries by the prosecution and suppression of such injuries by prosecution witnesses – Inferences to be drawn against prosecution – Conviction and sentence not found to be legal in revision filed by one of the accused – Non-Petitioning accused also entitled to its benefit as findings are inter dependent and inextricably integrated: *Lachhiram Vs. State of M.P., I.L.R. (1990) M.P. 390*

– **Section 326/149 and section 302** – Appellants mounting a joint assault armed with farsa by one and others with sticks – Origin and genesis of occurrence shows appellants to be aggressors forming unlawful assembly with common object – Deceased receiving fatal blows with farsa and died on the spot and others sustained grievous hurt and simple injuries – Conviction of appellants armed with lathis u/s 326/149 and main accused armed with farsa u/s 302 proper: *Motilal Vs. State of M.P., I.L.R. (1990) M.P. 436 (D.B.)*

– **Section 326** – Jurisdiction of Magistrate to grant bail: *State of Madhya Pradesh Vs. Laxminarayan, I.L.R. (1971) M.P. 1082*

– **Sections 326/326, 34** – Conviction and sentence under – Criminal Procedure Code, 1973 – 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 doubtful – Section 157, Cr. P.C. – 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 Singh Vs. State, I.L.R. (2000) M.P. 1288*

– **Sections 328, 302** – Circumstantial evidence – Death of deceased/wife on account of administration of Dhatura seeds – Same found in full hard form in stomach of deceased – Could have been administered without being noticed by deceased – Accused went to village of in-laws and inform in time about his wife's illness – Indicates no ill intention on his part – Letter sent by accused to in-laws containing threat not sufficient to hold that accused committed murder of his wife – As he was disturbed by ill-treatment given to him by in-laws – Offences U/s. 328, 302 not made out against accused: *Kaushal Prasad Vs. State of M.P., I.L.R. (1995) M.P. 668 (D.B.)*

– **Sections 333/34** – 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, I.L.R. (2003) M.P. 1100*

– **Sections 336, 427/34** – Copies of complaint sent to Constitutional Dignitaries like Chief Justice of India and Chief Justice of the State: *B.R. Nikunj Vs. Vipin Tiwari, I.L.R. (2000) M.P. 362 (D.B.)*

– **Sections 340-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 341, 294 and Scheduled Caste, Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(x)** – Case diary not revealing prima facie

evidence of Commission of offence as alleged – Bar under Section 18 would not come into play: *Suresh Kumar Tyagi Vs. State, I.L.R. (2000) M.P. 413*

– **Sections 353 and 506, Part-II** – Patwari assaulted and threatened while performing his official duties – Conviction proper – Land Revenue Code, Madhya Pradesh, 1959 – Section 28, Proviso – When attracted: *Mansingh Vs. State, I.L.R. (1981) M.P. 251*

– **Sections 354 and 366** – Mere catching hold of hand of prosecutrix would not make out a case of outrage of modesty in absence of any other evidence – No intent of criminality proved dispute of dowry debt admitted case for conviction not made out: *Nanka Vs. State, I.L.R. (1992) M.P. 286*

– **Section 354 and Criminal Procedure Code, 1973, Sections 397, 401 – Revision** – Outrage of modesty of woman – Eye witness account that complainant and accused were in compromising position – Cannot be said that applicant assaulted or used Criminal force – Error of jurisdiction and perversity apparent – Conviction and sentence set aside: *Chandrabhan paw Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 460*

– **Sections 354, 376 and 511** – Attempt to commit rape – Victim tender aged – Not expected to distinguish between ‘urinated’ and ‘ejaculated’ – Corroborated by medical evidence – -Under garments not removed when ejaculated – Sufficient to outrage modesty – Conviction and sentence altered: *Santosh Vs. The State of M.P., I.L.R. (2005) M.P. 443*

– **Section 354 and Evidence Act Indian, 1872 Section 32(1)** – Dying Declaration – Girl committing suicide by immolating herself – Stated that accused persons outraged her modesty and threatened that they will defame her – Immolating herself within short period thereafter – Narration of incident is a relevant fact – Accused persons convicted under Section 354: *Deepak Vs. State of M.P., I.L.R. (1993) M.P. 613*

– **Sections 361 and 363** – Proof of age of prosecutrix – Evidentiary value of the entries in the school admission register – Non-examination of the person making the entry – Father and mother not stating the month or the year in which prosecutrix was born – Father not stating in evidence that he got the prosecutrix admitted in the school and specified her date of birth – Radiological examination report not produced – Best evidence not forthcoming – Age of the prosecutrix not proved below 18 years – No offence made out – Section 376 – Whether prosecutrix was subjected to any forcible sexual intercourse by the accused – Prosecutrix completing the age of 16 years – Conduct of the prosecutrix establishing her sexual relations with the accused of her

own free will and with her consent – No offence made out – Criminal Trial – Sentence – Principles of awarding the same: *Munnalal Vs. State of M.P., I.L.R. (1978) M.P. 973 (D.B.)*

– **Section 362** – Abduction as defined – Is not punishable unless it is done with certain intention punishable under Section 364 to 366 of Indian Penal Code: *Shobhanlal Vs. State, I.L.R. (2001) M.P. 1052 (D.B.)*

– **Section 363** – Essentials of offence under this section to be fulfilled: *The State of M.P., Vs. Tarachand, I.L.R. (1965) M.P. 152 (D.B.)*

– **Section 363** – For offence under – Element of force or violence to minor girls wholly immaterial – Essentials of offence under this section to be fulfilled: *The State of M.P. Vs. Tarachand, I.L.R. (1965) M.P. 152 (D.B.)*

– **Section 363** – Minor always under guardianship of some one – Employment of minor without guardian's consent or of his previous employer amounts to taking him out of lawful guardianship and hence constitutes an offence – Section 367 – For offence under – Proof of intention to commit offence at the time of removal of minor from custody of guardianship necessary: *Dinanath Prasad Vs. The State of M.P., I.L.R. (1961) M.P. 754*

– **Section 363** – Minor leaving protection of guardian – Does not amount to putting her out of guardian's keeping – Minor abandoning guardian with intention not to return back – Amounts to abandonment of guardian – Abandonment of guardian to be determined on facts and circumstances of each case: *Taj Mohammad Vs. The State of M.P., I.L.R. (1960) M.P. 885*

– **Sections 363, 366 and 368** – Conviction and Sentence – Criminal Procedure Code, 1973 – Section 374(2) – Appeal against conviction – Age of prosecutrix alleged to be below 16 years based on Kotwar's record – Entry in Kotwar's record found interpolated – Section 35 of the Evidence Act 1892 – 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 of I.P.C. demolished – Sections 366 and 368 I.P.C. – Kidnapping and concealment of kidnapped person – Prosecutrix herself accompanying with the accused person – Despite opportunities did not raise hue & cry – Traveled in bus from one place to another – Conduct of prosecutrix doubtful – Conviction cannot be based on doubtful testimony of prosecutrix – Conviction and Sentence set aside: *Rafique Khan Vs. State, I.L.R. (2000) M.P. 1006*

– **Sections 363, 366, 376 (2) (g)** – Abduction and gang rape – Plea of false implication on ground that one of the accused person 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: *Miyan Lal Vs. State, I.L.R. (2001) M.P. 715*

– **Sections 363, 366, and 376, and Criminal Procedure Code, 1973, Sections 379, 380** – 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 (S.C.)*

– **Sections 363, 375 (6)** – Rape – Kidnapping – Prosecutrix Age – Ossification test – Reliability – Held – Ossification Test is one of the tests to find out the age – It is well known that the determination of age by ossification test is neither absolute nor exact – The variation of age in the ossification test can be up to 3 years in either way – It is observed that the error in the case of age based on ossification test may be three years – It is also noticed that the learned trial Judge had placed reliance on school leaving certificate – It can be safely concluded that at the time of occurrence the girl was more than 16 years of age – Once it is determined that the victim is more than 16 years and there was free consent, the question of commission of offence under 376 does not arise – The Hon'ble High Court has held that the accused is not guilty under Section 376, IPC but it cannot be said that the learned trial Judge is incorrect that he is guilty of the offence under Section 363 IPC: *Akeel Vs. State of M.P., I.L.R. (1997) M.P. 548*

– **Sections 364 & 302** – Abduction & Murder – Circumstantial evidence – Both accused, alleged to have took deceased in the car in jungle and strangled her and dead body was thrown in jungle – No reliable evidence that the deceased was travelling in the car alongwith accused persons – Belonging of deceased – Chappals, clothes and hairpin recovered from open place accessible to all – No reliable evidence to connect the accused persons with the offence – Judgment of acquittal upheld: *State of M.P. Vs. Manoj Gupta, I.L.R. (1996) M.P. 183 (D.B.)*

– **Sections 364 and 366** – Prosecution miserably failed to prove that death was homicidal – Essential ingredient of intention to murder or to put the persons in danger of being murdered not established – Accused cannot be convicted under Section 364, I.P.C. – 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 I.P.C. set aside instead convicted under Section 363, read with Sections 147, 149: *Shobhanlal Vs. State, I.L.R. (2001) M.P. 1052 (D.B.)*

– **Section 366** – 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: *State of Chhattisgarh Vs. Malti Bai, I.L.R. (2004) M.P. 218 (S.C.)*

– **Section 366** – Kidnapping – Victim aged about 16 years seduced and kidnapped by promising her to marry and then deserted – R.I. for 4 years is inadequate – Conviction not challenged – Order of High Court further reducing jail sentence set aside: *State of Madhya Pradesh Vs. Rameshwar, I.L.R. (2005) M.P. 97 (S.C.)*

– **Section 366** – 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 (S.C.)*

– **Sections 366, 368** – Kidnapping and concealment of kidnapped person – Prosecutrix herself accompanying with the accused persons – Despite opportunities did not raise hue & cry – Traveled in bus from one place to another – Conduct of prosecutrix doubtful – Conviction cannot be based on doubtful testimony of prosecutrix – Conviction and sentence set aside: *Rafique Khan Vs. State, I.L.R. (2000) M.P. 1006*

– **Sections 366, 376** – Kidnapping and rape – Prosecutrix minor – Consent immaterial – She was taken from lawful guardian-ship of her parents and kept by accused for eight days – Age – Entry in Birth Register maintained in discharge of public duty is conclusive proof – Seminal stains found on the Sari and saya of prosecutrix – It is not the plea of accused that he took her to worship her – Kidnapping and Rape proved – Prosecutrix having venereal disease – Accused contacting the same not necessary – In case of rape Court should examine broader probabilities and not get swayed by minor contradiction: *Mohandas Suryavanshi Vs. State, I.L.R. (1999) M.P. 693*

– **Sections 366, 511, 354 and 323** – Conviction and sentence – Criminal Procedure Code, 1973 – Section 374(2) – Appeal – Accused persons alleged to have been marked – 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 – Sections 354, 366, I. P. C. – Mere catching hold of hand of prosecutrix would not make out a case of outrage of modesty in absence of any other evidence – No intent of criminality proved dispute of dowry debt admitted case for conviction not made out – Section 165 of the Evidence Act, 1872 – Court power to examine witness not an absolute power – Rule 269, Rules & Order (Criminal) – Customs prevalent in Tribes should be taken into consideration – Conviction and sentence set aside – Accused acquitted.: *Nanka Vs. State, I.L.R. (1992) 286*

– **Section 367** – For offence under – Proof of intention to commit offence at the time of removal of minor from custody of guardianship necessary: *Dinanath Prasad Vs. The State of M.P., I.L.R. (1961) M.P. 754*

– **Section 375** – Age of Prosecutrix – Appellant having continuous physical relations with prosecutrix – Criminal machinery put in motion only when the prosecutrix reached advanced stage of pregnancy – Trial Court convicted appellant holding that prosecutrix was below 16 years of age – Held – Father of prosecutrix failed to state year of birth of prosecutrix – School Certificate also not trustworthy as grand father who got the prosecutrix admitted not examined – Ossification report suggests that prosecutrix could be between 14 to 16 years of age – Medical opinion not corroborated by any substantial piece of evidence – Benefit of margin of 2 years must go to the accused – Prosecution failed to prove that prosecutrix was below 16 years of age – As act was voluntary and out of volition of parties – Accused entitled for acquittal – Appeal Allowed: *Narendra Singh Vs. State of M.P., I.L.R. (1994) M.P. 418*

– **Section 375 – Evidence Act, 1872, Section 118** – Rape of Minor Girl – Reliability of her Testimony – Held – The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable – Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding – Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances: *Mangilal Vs. State of M.P., I.L.R. (1997) M.P. 534*

– **Section 375** – Rape – Appreciation of Evidence – Appellant entered into hut in the night – No possibility of receiving external injuries as prosecutrix was sleeping on a cot – Evidence of – Prosecutrix truthful and worth reliance – Merely because prosecutrix had changed husband would not mean that she was of loose character – Bleeding from private part of prosecutrix – Presence of blood stains on cloths of accused who was arrested within hours not explained – Conviction proper: *Jhingai @ Chingai Vs. State of M.P., I.L.R. (1994) M.P. 403 (D.B.)*

– **Sections 375, 376, 376--A, 376-B, 376-C, 376-D, 450 (1) Criminal Law (Amendment) Act 1983** – Rape – Conviction – Sentence – In operating, sentencing system law should adopt corrective machinery or deterrence based on factual matrix – Undue sympathy would do more harm to justice system – It is duty of every court to award proper sentence – Offence of rape established – Direction for reduction of sentence should not have been given: *State of Madhya Pradesh Vs. Munna Choubey, I.L.R. (2005) M.P. 18 (S.C.)*

– **Sections 375, 376, 511** – Attempt to rape – Sentence – Matter pending since last 16 years – Sentence of 2 years R. I. and fine of Rs. 5,000 – Held, sufficient: *State of M.P. Vs. Udhelal, I.L.R. (1995) M.P. 348 (D.B.)*

– **Section 376** – 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 M.P. , I.L.R. (2004) M.P. 792*

– **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 376** – Appreciation of evidence – Defective investigation – If the investigation is designedly defective – The court has to be circumspect in evaluating the evidence – It would not be right in acquitting an accused solely on account of the defect: *Karnel Singh Vs. State of M.P., I.L.R. (1995) M.P. 414 (D.B.)*

– **Section 376** – Appreciation of evidence – Evidence of prosecutrix need not be tested with the same amount of suspicion as that of an accomplice – Prosecutrix evidence is not in the category of a child witness – Her evidence must get the same weight as of an injured witness – The rule of prudence that her evidence must be corroborated in material particulars has no application – At the most court may look for some evidence which lends assurance: *Karnel Singh Vs. State of M.P., I.L.R. (1995) M.P. 414 (D.B.)*

– **Section 376-** – Conviction and Sentence – Rape – Minor girl subjected to sexual assault on finding her alone – Trial Court awarded sentence of 10 years R.I. and fine Rs. 5000/- – Reduction in sentence by High Court – Lacked sensitivity towards minor victim – Order of High Court reversed: *State of Madhya Pradesh Vs. Bane Singh, I.L.R. (2005) M.P. 683 (S.C.)*

– **Section 376 – Criminal Procedure Code, 1973, Section 320** – Rape – Sentence – Compounding – The offence of rape is not compoundable and it should be borne in mind that the accused not only betrayed his wife but also destroyed the dreams of a child and thus entering into compromise would not warrant reduction in the sentence: *Mangilal Vs. State of M.P., I.L.R. (1997) M.P. 534*

– **Section 376** – Delay in FIR – It is a known fact that considering the condition in our society, a rape victim would not atonee rush to lodge a report – After consultation with her relatives and after struggling with factors inhibiting the making of a report, the rape victim decided to go to the Police Station and make a report – Looking to entire

evidence appellant had committed atleast offence under section 354 of IPC – Appeal partly allowed: *Betu @ Kamaal Khan Vs. State of M.P., I.L.R. (1993) M.P. 621*

– **Section 376** – Evidence of prosecutrix – Corroboration necessary – Her immediate conduct in telling of the incident of person to whom naturally it would be told – Amounts to sufficient corroboration – Evidence Act – Section 8 – Subsequent Statement – Is relevant subsequent conduct – Is admissible in evidence – Penal Code – Section 376 – For proving offence under – Corroboration is not very essential – But necessity of corroboration is a matter of prudence except where it is sufficient to dispense with it – The fact must be present in the mind of Court – Evidence – Appreciation – Evidence of mother – Cannot be dubbed as unreliable – In certain circumstances can be regarded as corroborative 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.)*

– **Section 376** – For proving offence under – Corroboration is not very essential – But necessity of corroboration is a matter of prudence except where it is sufficient to dispense with it – The fact must be present in the mind of Court: *The State of Madhya Pradesh Vs. Surendra Prasad Dave, I.L.R. (1971) M.P. 726 (D.B.)*

– **Section 376** – 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: *State of Chhattisgarh Vs. Malti Bai, I.L.R. (2004) M.P. 218 (S.C.)*

– **Section 376** – Gang Rape – Punishment & Sentence – Minor girl raped by two boys – Held – Two persons have committed rape on minor girl of 13 years – It comes within the category of gang rape – There is no circumstances to indicate that sentence rigorous imprisonment of 10 years and fine of Rs.1000/ – and in default of payment of fine further rigorous imprisonment of six months was too severe and the same cannot be reduced to any extent – It is a heinous crime, which comes in the category of gang rape on a minor girl on the threat of knife – Appeal dismissed: *Kailash Lalsingh Khangar Vs. State of M.P., I.L.R. (1996) M.P. 446*

– **Section 376** – Hearsay evidence – Prosecutrix did not disclose about the incident to other witnesses – Evidence of other witnesses hit by rule of hearsay evidence – Divergent statement of the prosecutrix – It would be very difficult to convict the appellant – Appeal is allowed: *Parvat Singh Vs. State of M.P., I.L.R. (2005) M.P. 640*

– **Section 376** – Prosecution for attempt to commit rape – Essentials to be proved by prosecution – Difference between preparation and actual attempt to commit an offence – Only in the degree of determination – Point of distinction between an offence to commit rape and to commit an indecent assault: *State of Madhya Pradesh Vs. Babu Lal, I.L.R. (1959) M.P. 612*

– **Section 376** -- Prosecutrix and accused belong to same community and on visiting terms – Present case filed after more than two months when chances of reconciliation failed – Case of prosecution not proved beyond reasonable doubt – High Court not justified in confirming conviction of appellant – Appellant acquitted of the charge: *Ehsan Qureshi Vs. State of M.P., I.L.R. (2004) M.P. 420 (S.C.)*

– **Section 376** – Prosecutrix not disclosing act of rape on the same day to her mother – Disclosing it after ten days – Conduct of prosecutrix not natural – Prosecutrix and accused belong to same community and on visiting terms – Present case filed after more than two months when chances of reconciliation failed – Case of prosecution not proved beyond reasonable doubt – High Court not justified in confirming conviction of appellant – Appellant acquitted of the charge: *Ehsan Qureshi Vs. State, I.L.R. (2004) M.P. 420 (S.C.)*

– **Section 376** – Rape – Assessment of testimonial potency of Prosecution – Human psychology and behavioral probability – improbability of false implication of accused – Prosecutrix’s conduct after commission of rape and delay in making First Information report can be condoned: *Mohan Vs. State, I.L.R. (1983) M.P. 503*

– **Section 376** – Rape – Conviction can be founded on the testimony of prosecutrix alone unless there are compelling reasons for seeking corroboration – Prosecutrix corroborated an material particulars by prosecution witnesses – Non examination of doctor would not be fatal to prosecution case – High Court erred in recording acquittal on ground of non-examination of doctor: *State of M.P. Vs. Dayal Sahu, I.L.R. (2005) M.P. 1029 (S.C.)*

– **Section 376** – RAPE – Delay in lodging complaint –Not necessarily indicate that prosecutrix version is false – In such cases reluctance to go to police because of society’s attitude towards such women: *Karnel Singh Vs. State of M.P., I.L.R. (1995) M.P. 414 (D.B.)*

– **Section 376** – Rape – Evidence – Rape of Minor Girl – Rape established beyond reasonable doubt – Held – The substantive evidence of the prosecutrix in Court identifying the accused is absolutely of no relevance and is wholly unacceptable and no conviction can be based on the same – Until and unless there is reliable and acceptable evidence to come to a conclusion that it is accused – appellant who committed rape he cannot be convicted even if the factum of rape on the prosecutrix is established beyond reasonable doubt – The High Court interfered with an order of acquittal on mere surmises and conjectures without having an iota of acceptable evidence bringing complicity of the accused and as such the said conviction and sentence cannot be sustained in law: *Prahlad Singh Vs. State of M.P., I.L.R. (1997) M.P. 336 (S.C.)*

– **Section 376** – Rape – Offence of – Evolution of evidence of material prosecution witnesses with inconsistencies of minor nature – Criminal Procedure Code, 1973 –

Section 154 – F.I.R. – Delay in lodging in Rape cases- Delay explained – F.I.R. Relied on – 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 376** – Rape – Prosecutrix corroborated on material particulars by prosecution witnesses – Non examination of doctor would not be fatal to prosecution case: *State of M.P. Vs. Dayal Sahu, I.L.R. (2005) M.P. 1029 (S.C.)*

– **Section 376** – Rape committed by the step father on the daughter aged 13 years – Conviction can be sustained on the testimony of prosecutrix which inspire confidence and reliable – Corroboration by other witnesses is not sine qua non: *Hari Singh Vs. State, I.L.R. (1998) M.P. 240*

– **Section 376** – Whether prosecutrix was subjected to any forcible sexual intercourse by the accused – Prosecutrix completing the age of 16 years – Conduct of the prosecutrix establishing her sexual relations with the accused of her own free will and with her consent – Not offence made out: *Munnalal Vs. State of M.P., I.L.R. (1978) M.P. 973(D.B.)*

– **Section 376 (1) & (2)** – Amendment – Learned Session Judge was in error in Convicting the appellant of the offences under Section 376 of IPC after 1983, when original section 376 was substituted by new section, there can be no conviction under section 376 of IPC: *Betu @ Kamaal Khan Vs. State of M.P., I.L.R. (1993) M.P. 621*

– **Section 376 (2)** – 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: *State of Chhattisgarh Vs. Derha, I.L.R. (2004) M.P. 725 (S.C.)*

– **Section 376 (2) (f) and Criminal Law Amendment Act (XLIII of 1983)** – Minimum sentence is 10 years – Enhancement of sentence without application by State but after hearing the accused: *Mullu Vs. State of M.P., I.L.R. (1988) M.P. 175*

– **Section 376 (2) (g)** – Absence of injury on private part or non-examination of Tehsildar/Magistrate not fatal: *Vinod Kumar Vs. State, I.L.R. (1992) M.P. 356*

– **Section 376 (2) (g)** – 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 376 (2) (g)** – Sentence – After amendment in Section 376(2)(g) I.P.C. sentence can not be less than 10 years – Conviction and sentence held proper: *Vinod Kumar Vs. State, I.L.R. (1992) M.P. 356*

– **Section 376 (2) (g) and Criminal Procedure Code, 1973, (II of 1974) Section 374(2)** – 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 376 (2) (g) Criminal Procedure Code, 1973 (II of 1974) Section 374(2) and Evidence Act, Indian (I of 1872) 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 *sine qua non* for conviction – Absence of injury on private part or non-examination of Tehsildar/Magistrate not fatal – Identification parade – Prosecutrix saw the accused being taken to police station after arrest while she was sitting thereafter lodging the F.I.R. – Does not mean that accused were shown to her to be identified in the Test Parade – 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 – Sentence – After amendment in Section 376(2)(g) I.P.C. sentence can not be less than 10 years – Conviction and sentence held proper: *Vinod Kumar Vs. State I.L.R. (1992) M.P. 356*

– **Section 376 (a) Proviso** – Award of lessor sentence – Awarding lessor sentence on the ground of social status of appellant not proper – However as the offence took place nine years back therefore, sentence of three years not enhanced – Appeal dismissed: *Jhingai @ Chingai Vs. State of M.P., I.L.R. (1994) M.P. 403 (D.B.)*

– **Section 376 and Evidence Act, Indian (I of 1872) Section 45** – Offence of Rape – Absence of external injury on the person of prosecutrix – Opinion of doctor that it would prove absence of force against prosecutrix – Admissibility and value of: *Vinod Kumar Vs. State of M.P., I.L.R. (1986) M.P. 163*

– **Section 376, Evidence Act, Indian 1872 Section 3** and Criminal Procedure Code, 1973, Section 374(2) – 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*

– **Sections 376 (2) (g) 302, 201, 34 and Criminal Procedure Code, 1973 (II of 1974) Section 366** – Gang Rape – Murder – Concealment of vital piece of evidence – Conviction – Death Sentence – Reference – Accused a jail guard and a jail inmate/convict – Rape and Murder committed by both – Nail scrap marks on face, neck, below the ear of accused – No explanation suggests that the girl resisted – Accused concealed

and took steps to destroy vital pieces of evidence or rape and murder – Threw the body in septic tank – Extremely abhorring and shocking to the society – Rarest of the rare cases – Accused deserve nothing less than extreme penalty – Conviction and sentence maintained: *State Vs. Molai, I.L.R. (1999) M.P. 886 (D.B.)*

– **Sections 376 (2) (g) and 506, Part II** – Three accused appellants not known to prosecutrix from before – Test identification parade not conducted – Effect – Dock identification of the appellants by prosecutrix as well as her friends unfallingly established that accused/appellants were the miscreants – Therefore, even if test identification parade was not conducted, prosecution evidence cannot be disbelieved on that ground – If the accused/appellants claimed that they would not be identified by the prosecutrix or other witness they should have insisted on holding test identification parade – One of the appellants had not partaken in the incident at all as stated by prosecutrix herself – He is acquitted – Conviction and sentence of other two appellants maintained: *Tejram Vs. State of M.P., I.L.R. (1999) M.P. 374*

– **Sections 376 (i) 450 and 506 – B and Criminal Procedure Code, 1973, Section 374 (2)** – House tress pass, rape and Criminal intimidation – Conviction and sentence – Appeal against – Delay in lodging the FIR – Though examination of prosecutrix was belated one injury was found caused by recent intercourse – Story of forcible rape without consent falsified – Case of implied consent – Conviction and sentence set aside: *Lakhan Lal Vs. The State of M P, I.L.R. (2005) M.P. 530*

– **Sections 376(2) (f) and 506 Part – II and Criminal Procedure Code, 1973, Section 374 (2)** – Appeal, from conviction and sentence – Rape and criminal intimidation – Corroboration – May be insisted upon when there is likelihood of accusation on account of instinct of self-preservation or when probabilities factor found to be out of tune – Prosecutrix minor – Class teacher detaining a girl of tender age subjected her to rape – Prosecutrix corroborated by doctors and her mother – Trial Court rightly held appellant guilty: *Safdar Khan Vs. State of M.P., I.L.R. (2005) M.P. 1193*

– **Section 379** – Accused attempting to transport paddy to another State in a truck without permit – After seizure of peddy accused fleeing away with the truck – Truck perused 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 379 and Criminal Procedure Code, 1973, Sections 397/401** – Revision – Theft – Starter of Electric Motor Pump removed without consent from complainant's well – Recovered from accused – Recovery proved – Offence of Theft made out – More than 8 year elapsed – Jail sentence reduced to the period undergone: *Hari Singh S/o Gajraj Singh Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 368*

– **Sections 379, 420, 468 and 471** – Offences alleged under consist of both bailable and non-bailable offences: *Arun Kumar Vs. State, I.L.R. (2000) M.P. 1323*

– **Sections 379, 447** – Robbery and Criminal trespass – Applicant maternal nephew of lady co-owner of field – Applicant managing her affairs as she had no other relative to look after her – Applicant harvested paddy crop on behalf of co-owner in exercise of *bonafide* claim of right – Ingredients of Section 397 and 447 of Indian Penal Code not attracted – Conviction of applicant set aside – Revision allowed: *Sant Ram @ Santu Vs. State of M.P., I.L.R. (1994) M.P. 489*

– **Section 390** – Robbery – Accused sprinkled chilli powder in eyes of bank employees and snatched cash – Test Identification Parade – Three accused were correctly identified – Recovery of looted property proved from possession of accused persons – Offence punishable u/s 392 proved: *Ramesh Kumar Soni Vs. State of M.P., I.L.R. (1996) M.P. 462*

– **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 Ltd. Vs. State of M.P., I.L.R. (2004) M.P. 882*

– **Section 392** – Word “Person” in – Not to be narrowly construed so as to exclude dead body of human being who was killed: *Jamna das Vs. The State of M.P., I.L.R. (1963) M.P. 730 (D.B.)*

– **Sections 392, 397 and Evidence Act Indian, 1872, Sections 3,9** – Dacoity – Identification – Suspects were hand cuffed in TIP – No prior acquaintance – Witness who identified appellant in Court did not take part in TIP – Reasons not explained by prosecution – Not safe to convict simply on this evidence: *Mahesh Kumar Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 536*

– **Sections 395, 397 and Criminal Procedure Code, 1973, 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 – Matter remitted to trial Court with direction: *Janardhan Vs. State of M.P. Through P.S. Ramnagar, District Satna, M.P., I.L.R. (2005) M.P. 1199*

– **Section 396** – Implication of: *Onkarnath Vs. State of M.P., I.L.R. (1980) M.P. 1053 (D.B.)*

– **Sections 396, 397** – Sentence 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 of M.P., I.L.R. (2004) M.P. 779 (D.B.)*

– **Section 399/402** – Dacoity – Accused persons arrested on the basis of information that they were assembled and were preparing for dacoity – Statement of

witnesses showing different date regarding information given by the informant – Best evidence in this regard i.e. General diary not produced – Witnesses mostly stated with the help of case diary – During arrest, search and seizure provisions of sections 50, 51 and 52 not complied with – Held – Prosecution story may be concocted – Conviction and sentence set-aside – Appeal allowed: *Sukhlal Vs. State of M.P., I.L.R. (1997) M.P. 580*

– **Sections 396, 392, 302, 411, Evidence Act, Indian 1872, Section 114** – Dacoity with murder – Miscreants broke open the window and committed murder of deceased – Miscreants took away silver and gold ornaments apart from six thousand cash – Eye witness disclosed commission of murder by three persons – Seven persons tried under Section 396 of I.P.C. – Held – Trial Court erred in convicting all seven for murder and dacoity on the basis of recovery of looted booty though prosecution case was that only three persons entered inside the house and committed murder – Others cannot be convicted for murder by resort to Section 114 Evidence Act – Accused committing murder convicted under Sections 392, 302 of I.P.C. – Remaining accused persons convicted under Section 411 I.P.C: *State of M.P. Vs. Samaylal Vishwanath Chandram, I.L.R. (1994) M.P. 238*

– **Section 397** – Dacoity – Appellant convicted under Section 397 of Indian Penal Code for committing dacoity with deadly weapon – Appellant alleged to have armed with lathi – Lathi is not a deadly weapon – No evidence that lathi and iron covering – Appellant cannot be convicted under Section 397 of Indian Penal Code: *Deshraj Vs. State of M.P., I.L.R. (1994) M.P. 431*

– **Section 403** – Essentials of offence under: *The State of M.P. Vs. Promod Mategaonkar, I.L.R. (1965) M.P. 509 (D.B.)*

– **Sections 404 and 302** – Discovery – Time factor important for determining the applicability of particular provision of law – Criminal Trial – Investigation – Not divisible into different compartments – Criminal Trial – Confession – Confession accompanied by recovery of article – Sufficient basis of conviction: *Kishori Vs. State of M.P., I.L.R. (1973) M.P. 1097 (D.B.)*

– **Section 405** – Essentials of offence – Section 403 – Essentials of offence under – Criminal Procedure Code – Sections 236, 237 and 238 – Charge under Section 409, Indian Penal Code – Conviction under Section 403 – Permissibility: *The State of MP Vs. Promod Mategaonkar, I.L.R. (1965) M.P. 509 (D.B.)*

– **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: *Kamla Bai Vs. Manoharlal, I.L.R. (1992) M.P. 816*

– **Section 406** – Employer deducting certain percentage from wages representing it as their contribution to provident fund – Not credited to fund but retained by employer – Offence committed – Employees Provident Funds Act – Scheme – Paragraph 76(a) and (c) – Failure to pay employee’s contribution and administration charges – Amounts to offence – Criminal Procedure Code, Section 432 – Word “Regulation” in-used in general sense as equivalent to any secondary legislation – 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*

– **Section 409** – 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 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 (D.B.)*

– **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: *Ram Chandra Tiwari Vs. State, I.L.R. (2002) M.P. 369*

– **Section 409** – Entrustment of property and failure to account – Important elements for establishing charge of dishonest misappropriation – By themselves not sufficient to draw an inference of dishonest misappropriation – Criminal liability – When can be fastened: *State of M.P. Vs. Harimohan Khemaka, I.L.R. (1978) M.P. 490 (D.B.)*

– **Section 409, Exception 9** – Publication of report in Newspaper made honestly in the belief of its truth for the welfare of society – Defence of good faith available: *R.K. Karanjiya Vs. Sewakram Sobhani, I.L.R. (1979) M.P. 1031*

– **Section 409** – Misappropriation – Accused was entrusted with custody and management of huge stocks of paddy – Stock physically verified every year by disinterested official witnesses – Deficiency duly noted in presence of accused – Accused failed to account for 1500 quintals of paddy entrusted to him – Conviction of accused U/s 409 – Well justified: *Narindra Kumar Vs. State of M.P., I.L.R. (1996) M.P. 66 (S.C.)*

– **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: *Vijay Singh (Dead) Vs. State, I.L.R. (2002) M.P. 341*

– **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: *Vishnuram Agrawal Vs. South Eastern Coal Fields Ltd., I.L.R. (2001) M.P. 1599*

– **Sections 411, 412** – 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: *Gonda Vs. State of M.P., I.L.R. (2004) M.P. 779 (D.B.)*

– **Section 412** – Receiving property stolen in commission of dacoity – Appellants tried under Section 395/397 of Indian Penal Code but acquitted by Trial Court – Trial Court convicted appellants under Section 412 of Indian Penal Code – Held – Seizure witnesses did not support prosecution case – Statement of Investigating Officer not reliable because the place from where articles were seized not mentioned in seizure memo – Prosecution failed to prove that appellants were in possession of robbed property – Nothing to show that appellants had knowledge that property was robbed property – Conviction under Section 412 of Indian Penal Code set aside – Appeal allowed : *Shri Chand Vs. State of M.P., I.L.R. (1994) M.P. 411*

– **Section 415** – Deception by itself does not amount to cheating unless person cheated induced to do any act specified in the Section: *The State of Madhya Pradesh Vs. Padam Singh, I.L.R. (1975) M.P. 1087 (D.B.)*

– **Sections 415 and 417/34** – Offences thereunder and necessary ingredients of – 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 powers of High Court under section 482, Criminal Procedure Code:

Mahima Kant Chatterjee Vs. Shashank Shekhar Mukherjee, I.L.R. (1990) M.P. 293

– **Sections 415 and 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*

– **Section 416** – Giving out fictitious name also amounts to personation – Essentials necessary for constituting offence: *The State of Madhya Pradesh Vs. Padam Singh, I.L.R. (1975) M.P. 1087 (D.B.)*

– **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 420** – Petitioner running so called University and imparting degrees in such a manner that common public will take the degrees for M.B.B.S., M.D., B.A.M.S. and D.H.M.S. in medical science – By mischief students and public are misguided – Court while granting bail rightly imposed condition that petitioner shall suspend working of his so called University: *Dhamtari Electro-Homeopathic Medical Institute & Hospital, Dhamtari Vs. State, I.L.R. (2001) M.P. 1781*

– **Sections 420 and 511 and Income-tax Act, Indian (XIV of 1961) Section 277 (prior to amendment of 1975)** – Complaint thereunder for filing a false return and making a false verification – Complaint based on the order of Income-Tax Officer in assessment case – Commissioner accorded sanction on that basis – Subsequently order of Income-tax Officer set aside by Appellate Tribunal and case remanded for reassessment – Whether complaint is maintainable during reassessment proceedings – Income Tax Act, Indian, 1961 – Section 271 (4-A) – Powers of Commissioner to revise or reduce penalty under – Opportunity to assessee to invoke such powers of Commissioner must be given: *Income-Tax Officer, B-Ward, Jabalpur Vs. Dr. B.M. Arora, I.L.R. (1981) M.P. 876*

– **Sections 420, 467 and 471/34 and Criminal Procedure Code, 1973 (II of 1974) Section 438** – 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 bars 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*

– **Sections 420, 467, 468 and 417** – 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*

– **Section 441** – Mere entry even by *bonafide* claimant – Not a criminal trespass unless accompanied by criminal intent: *Lalman Vs. State of M.P., I.L.R. (1973) M.P. 519 (D.B.)*

– **Section 451** – Accused charged for entering the house with a view to commit an offence under section 354 – Accused admitting entry in the house with a view to carrying on illicit intrigue with complainant's wife knowing her to be married and without consent of complainant – Accused found to have entered the house with a view to commit the aforesaid offence – Acquittal of accused illegal – Accused liable to be convicted under section 451 – No retrial necessary as no prejudice likely to be caused by conviction: *The State of M.P. Vs. Bhooresingh, I.L.R. (1961) M.P. 884 (D.B.)*

– **Section 454 and Public premises (Eviction of Unauthorised Occupants) Act, Section 11** – Respective scope of: *Steel Authority of India Limited Vs. Aeltemesh Rein, I.L.R. (1984) M.P. 183*

– **Section 456** – For conviction under only, Guilty intention is necessary to be proved: *The State of M.P. Vs. Thakur Prasad, I.L.R. (1977) M.P. 919 (D.B.)*

– **Sections 467, 468, 471 and Vinirdishta Bhrast Acharan Nivaran Adhiniyam (XXXVI of 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 467, 471, 478, 487, read with Section 109 and Excise Act, M.P. (II of 1915) 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: *Akhilak Vs. State, I.L.R. (2001) M.P. 134*

– **Section 482** – Offence of infringement of trade mark – Things to be taken in to consideration – Court not to surrender its judgment to the evidence of witnesses: *Pandit Shiv Prasad Vs. Shri Shyamlal, I.L.R. (1963) M.P. 311 (D.B.)*

– **Section 482 and Trade and Merchandise Marks Act (XLIII of 1958) Section 78** – Falsely applying trade mark constitutes an offence: *Hariprasad Vs. Nanookhan, I.L.R. (1971) M.P. 139 (D.B.)*

– **Section 485** – Separate sets of counterfeit labels found with same person at different places – Separate trials – Subsequent trial not for the same offence – Constitution – Article 20 – Provisions when attracted – Criminal Procedure code – Section 439 – Revision – Misapprehension 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*

– **Sections 494 and 497** – Accused acquitted of charge under Section 494 – Second trial under Section 497 not maintainable – *Res judicata* – Principle applies in criminal cases on ground of public policy: *Bulchu Vs. Sheomangal, I.L.R. (1963) M.P. 171*

– **Section 494 or 497** – Admission regarding marriage by wife or husband – Not sufficient to prove marriage: *Bhunda Vs. Chetram, I.L.R. (1976) M.P. 804*

– **Section 494 or 497** – Prosecution under – Marriage to be strictly proved – Admission regarding marriage by wife or husband – Not sufficient to prove marriage – Evidence Act – Section 50 – Relationship of husband and wife in issue – Presumption under first part of the section about relationship is excluded – Section 497 – Admission contained in statement recorded under Section 342, Criminal procedure code – Does not shift burden of proving marriage: *Bhunda Vs. Chetram, I.L.R. (1976) M.P. 804*

– **Section 494** – Appellant entering into second marriage during subsistence of first marriage – Deposition by complainant that Saptapadi marriage was solemnised remained un rebutted – 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*

– **Section 494** – Offence of bigamy – Conviction and sentence – Criminal Procedure Code, 1973 – Sections 313, 397, 401 – Revision – Appellant entering into second marriage during subsistence of first marriage – Deposition by complainant that Saptapadi marriage was solemnised remained un rebutted – 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*

– **Section 494** – Second marriage – Usually performed in clandestine manner – Prosecution witness deposed about their presence in the second marriage and having witnessed 'Pav Poojan' and 'Bhanwar' – Second marriage established – Order of acquittal reversed and accused convicted: *Smt. Kashi Bai Vs. Himmat Singh, I.L.R. (1992) M.P. 872*

– **Section 494** – 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. 20000/- each – On realisation to be paid to complainant: *Smt. Kashi Bai Vs. Himmat Singh, I.L.R. (1992) M.P. 872*

– **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: *Smt. Kashi Bai Vs. Himmat Singh, I.L.R. (1992) M.P. 872*

– **Section 494 and Criminal Procedure Code, 1973 (II of 1974) Section 182** – 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 Guru Baxani Vs. Lalit Gurubaxani, I.L.R. (2001) M.P. 1605*

– **Section 495 – Non-cognizable offence** – Complainant not making payment of process fee for summoning bound over witnesses – Trial Magistrate closing evidence of complainant – Application for summoning witnesses filed by complainant rejected – Order of Trial Magistrate set aside by Sessions court – Order of Sessions Court challenged – Offence under – Section 495 is a non-cognizable offence therefore, process fee was payable – default of complainant in making payment of process fee on more than 8 occasions – Her right was rightly closed by Magistrate – Order of Sessions Court set aside: *Ram Sewak Vs. Savitribai, I.L.R. (1993) M.P. 316*

– **Section 497** – Admission contained in statement recorded under section 342, Criminal Procedure Code – Does not shift burden of proving marriage: *Bhunda Vs. Chetram, I.L.R. (1976) M.P. 804*

– **Section 497** – Adultery – Appellant/complainant filed complaint against respondent for commission of offence of adultery as he had kept the wife of appellant – Respondent convicted by Trial Court but acquitted by Appellate Court – Held – Absence of consent or absence of connivance is required to be proved – Not necessary to plead in complaint as it is not a plaint – From the evidence it was proved that appellant had not given any consent: *Bharatlal Vs. Top Singh, I.L.R. (1994) M.P. 457*

– **Section 498-A** – Complaint case dismissed – Second complaint on the same allegation – Barred: *Sharda Prasad Gupta Vs. Smt. Vidyadevi Gupta, I.L.R. (2003) M.P. 94*

– **Section 498-A** – Cruelty accused husband alleged to have ill-treated deceased/wife and demanded money from in-laws – Death of deceased/wife on account of administration of Dhatura seeds – Mother of deceased, who would have been best witness on this point, not examined – Demand of money not established – Cruelty as

defined in explanation to Section 498-A not made out – Conviction of accused U/s 498A set aside: *Kaushal Prasad Vs. State of M.P., I.L.R. (1995) M.P. 668 (D.B.)*

– **Section 498-A** – Has no retrospective effect – Alleged cruelty practiced prior to the enactment of this Section – Order of Sessions Court remanding case to consider the question of framing charge under Section 498-A of I.P.C. set aside: *Surendra Kumar Jain Vs. Rajkumari, I.L.R. (1993) M.P. 325*

– **Section 498-A** – Proof of cruelty – Death by Burns – No evidence on record that accused used to treat deceased with cruelty – Conviction U/s. 498 – A set aside: *Kamini Bai Vs. State of M.P., I.L.R. (1995) M.P. 657 (D.B.)*

– **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 subject 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 498-A and Criminal Procedure Code 1973, Section 320 (2) 482** – Compromise – Exercise of inherent powers – Offence punishable under Section 498 – A. IPC – Non-exercise of inherent power likely to prevent women from settling earlier – Application for compounding allowed: *Bhim Bhadur Vs. State of M.P., I.L.R. (2005) M.P. 779*

– **Section 498-A** -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 498-A, as amended** – Word “cruelty” in – Meaning of – To be ascertained for purposes of section 113-A of the Act: *Ashok Kumar Vs. The State of M.P., I.L.R. (1990) M.P. 280*

– **Section 498-A, Criminal Procedure Code, 1973, Section 227** – Cruelty – Letters written by deceased to her parents disclosed only instability of temperament and emotional over sensitivity – Allegations of cruelty or harassment made by parents of deceased not in tune with letters written by deceased – Allegations made after 40 days of death – Allegations appear to be vindictive or a part of strategy to pressurize the accused–No offence under Section 498 of I.P.C. made out – Applications discharged: *Manmohan Laxminarain Vs. State of M.P., I.L.R. (1993) M.P. 655*

– **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: *Sachindra Mahawar Vs. State, I.L.R. (2001) M.P. 1418*

– **Sections 498-A and 506 and Criminal Procedure Code, 1973 (II of 1974)**

Section 300 – 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*

– **Section 499 – Exception 9** – Burden to prove that imputation was made In good faith and for protection of the interest of the maker or of some other person of for public good – Is on accused – Torts – Defamation – Suit for damages – Witness protected even when defamatory statement is made – Privilege not recognized in Penal Code – Principle of English law – Not to be invoked by going beyond what is mentioned in exceptions to Section 499 – Principles governing privileges of a witness different in criminal defamation and civil defamation – Evidence Act – Section 132 – Scope and implication of – Section achieves two ends – Section 132, Proviso – Does not come into play when witness voluntarily gives answer – Criminal Procedure Code – Section 195 – Object and purpose of the provision – Section 198 – Relates to offences of private character – Object of the section – Section 499, Penal Code – Prosecution can be initiated by complainant only and not by Court: *Gayaram Vs. Smt Shantikunwar, I.L.R. (1971) M.P. 373*

– **Section 499 – Exception 9** – Imputation made after enquiry with due care and attention – Person making imputation is protected: *Prayagdutt Tiwari Vs. Gajadhar Prasad Tiwari, I.L.R. (1978) M.P. 686 (D.B.)*

– **Section 499** – Prosecution can be initiated by complainant only and not by Court: *Gayaram Vs. Smt Shantikunwar, I.L.R. (1971) M.P. 373*

– **Section 499, Exception 6** – Comments on author’s work made in good faith are saved under: *Laxminaranyan Singh Vs. Shriram Sharma, I.L.R. (1984) M.P. 339*

– **Section 499, Exception 6 and sections 500, 505 and 295 – A, Criminal Procedure Code, 1973 (II of 1974) Section 199 and Constitution of India Article 19 (1)** – Complaint under Sections 500 and 505 for Publication of defamatory matter under the caption “Tulsi ke Ram” by way of critical commentary of “Ram Charit Manas” written by Sant Tulsidas Lies at the instance of aggrieved person only – Complaint not claiming to be descendent of Sant Tulsidas alleged to have been defamed – Complainant cannot be an ‘aggrieved person’ – Not entitled to file the complaint critical Commentary on ‘Ram Charit Manas’ – No offence committed – Constitution of India – Article 19 – Freedom of speech and Expression under – Extent of – Comments on author’s work made in good faith are saved under Exception 6 to section 499, Penal Code – Publication

of article with malicious and deliberate intention of outraging religious feelings – Proper course to be adopted: *Laxminarayan Singh Vs. Shriram Sharma, I.L.R. (1984) M.P. 339*

– **Section 499, Exception 9 and Criminal Procedure Code, 1973 (II of 1974) Sections 397, 401 and 482** – 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: *Trichinopoly Ramaswami Ardhanani Vs Kripa Shankar Bhargava, I.L.R. (1992) M.P. 60*

– **Section 499, Exception 9 and Evidence Act, Indian (I of 1872) Section 123 and 124** – Report to Government by Deputy Secretary (Home) Department consisting of his findings on matters of enquiry – Is a privileged communication relating to affairs of State – Inspection cannot be sought – Contents cannot be disclosed – Secondary evidence regarding contents of report also not admissible – Publication of report in Newspaper made honestly in the belief of its truth for the welfare of Society – Defence of good faith available: *R.K. Karanjiya Vs. Sewakram Sobhani, I.L.R. (1979) M.P. 1031*

– **Sections 499 and 500** – Compliant filed J.M.F.C., Chhindwara has jurisdiction to take cognizance: *Trichinopoly Ramaswami Ardhanani Vs Kripa Shankar Bhargava, I.L.R. (1992) M.P. 60*

– **Sections 499, 500** – Alleged defamation by printing news item – Printer or publisher and the Editor should be presumed to be aware of what is being published in the issue – Director of press not connected directly or indirectly with printing & publishing – Applicant director – Cannot be held responsible: *Brij Maheshwari Vs. Arun Jain, I.L.R. (2005) M.P. 282*

– **Section 500 and Criminal Procedure Code (V of 1898) – Section 198** – Husband – When can make a complaint – When imputation is made to a wife – Imputation – Wife was a witch and practiced witchcraft and destroyed crops – Imputation affects husband who can file a complaint: *The State Vs. Gahruram, I.L.R. (1957) M.P. 368*

– **Section 500** – Proceedings for defamation – The proof of exact words used when necessary – When proof of purport of defamatory remarks sufficient for conviction: *Mohanlal Murlidhar Vs. Ramcharan Devi Prasad, I.L.R. (1957) M.P. 689 (D.B.)*

– **Section 503** – No offence under, unless there is intention to cause alarm, or to cause person to do an act which he is not legally bound to do – Words of mere empty threats or abuses not sufficient: *Habibullah Vs. The State of M.P.*, I.L.R. (1962) M.P. 646

– **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: *Prayagdutt Tiwari Vs. Gajadhar Prasad Tiwari*, I.L.R. (1978) M.P. 686(D.B.)

– **Section 506-II** – Judge hearing second application does not lose jurisdiction to grant bail – Changed circumstances do not mean some extra-ordinary 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. 522

– **Section 511** – Words “attempt” and “preparation” in – Distinction between: *State of M.P. Vs. Muratsingh*, I.L.R. (1974) M.P. 990 (D.B.)

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– **Right of elected members to attend meeting not taken away** – Court has no ancillary or inherent powers which do not flow from provisions of law: *Gyaniram Vs. Shri I.N. Saksena*, I.L.R. (1958) M.P. 645 (D.B.)

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– **Rule 173** – In absence of any nexus between disability and service condition Regulation 173 would not be applicable: *Gopal Das Maheshwari Vs. Union of India*, I.L.R. (1999) M.P. 1021

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– **Pension accrued due prior to constitution and the rules made under Article 309 – Not justiciable by civil Courts:** *The State of M.P. Vs. Pt. Lalita Shankar, I.L.R. (1967) M.P. 276*

– **Section 4** – Alteration or breach of pension rule – Remedy through suit not available: *The State of M.P. Vs. Pt. Lalita Shankar, I.L.R. (1969) M.P. 1028*

– **Section 4** – Claim for pensions under the Act – Claim not justiciable – Pension partakes the character of gratuity i.e. the grant or payment is for some thing done in past – Alteration or breach of pension rule – Remedy through suit not available: *The State of M.P. Vs. Pt. Lalita Shankar, I.L.R. (1969) M.P. 1028*

– **Section 4** – Essentials necessary to constitute pension: *Biharilal Sori Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 111 (D.B.)*

– **Section 4** – Even after receiving certificate from authorised officer – Civil Court has no right to order or decree any suit: *Biharilal Sori Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 111 (D.B.)*

– **Section 4** – Gratuity is part of pension – Is covered by: *Biharilal Sori Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 111 (D.B.)*

– **Section 4** – “Pension” – Meaning of – Essential necessary to constitute pension – Section 4, Proviso – Suit for pension is barred – Section 5 – Provides remedy by way of representation to relevant officers authorised by the appropriate Government – Even after receiving certificate from authorised officer – Civil Court has no right to order or decree any suit – Gratuity is part of pension – Is covered by Section 4 – When it becomes payable: *Biharilal Sori Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 111 (D.B.)*

– **Section 4** – Pension partakes the character of gratuity i.e. the grant or payment is for something done in past: *The State of M.P. Vs. Pt. Lalita Shankar, I.L.R. (1969) M.P. 1028*

– **Section 4** – Proviso – Suit for pension is barred: *Biharilal Sori Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 111 (D.B.)*

– **Section 4** – When gratuity becomes payable: *Biharilal Sori Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 111 (D.B.)*

– **Section 4 and Constitution of India, Articles 19(1)(F) and 300-A** – Pensions payable under statutory rules – Are receivable as of right and are ‘property’ under

Articles 19(1)(F) and 300-A – Section 4 – Not applicable to pensions recoverable as of right – Suit for recovery of such pensions and gratuity Not barred – Decree passed therein is not a nullity – Article 14 – Forbids arbitrariness also: *H.D. Soni Vs. State of M.P.*, I.L.R. (1984) M.P. 179

– **Section 4, Constitution of India, Articles 19(1) (F) and 300 – A** – Pensions Act Not applicable to pensions recoverable as of right – Suit for recovery of such pensions and gratuity – Not barred – Decree passed therein is not a nullity: *H.D. Soni Vs. State of M.P.*, I.L.R. (1984) M.P. 179

– **Sections 4 and 11** – Description in, is wider and unmistakable and involves two incidences – Word “Pension” – Meaning of – Pension accrued due prior to constitution and the rules made under Article 309 – Not justiciable by civil Courts: *The State of MP Vs. Pt. Lalita Shanker*, I.L.R. (1967) M.P. 276

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– **Regulation M.P. No. 50-B**, Government Servants (Temporary and quasi – Permanent) Rules, M.P., 1960, Rules 2(d) 12, Constitution of India, Articles 226, 313 – Notification issued under regulation 50-B – Notification has the same force as regulation itself and is binding – Instruction under the notification to be read as part of regulation itself – Candidates not fulfilling requisite qualifications – Appointments invalid – No right to hold post – Services temporary – Salary of one month given in lieu of notice – Services validly terminated – 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 – Persons not qualified of being appointed – Not a fit case for interference under article 226: *Director General of Police, M.P., Bhopal Vs. Ravi Shankar, I.L.R. (1988) M.P. 374 (D.B.)*

– **Regulations 214 and 221** – Power to impose punishment – Superintendent of Police has power to impose punishment of removal on a Head Constable – Punishment order is within jurisdiction: *Ramesh Chandra Vs. State of M.P., I.L.R. (2003) M.P. 391 (D.B.)*

– **Regulation No. 229 (b)** – Provision in, not mandatory – Lays down procedure for transmission of paper concerning dismissal, removal compulsory retirement *etc.* – Violation of procedural rule – Does not render the order bad: *Laxminarayan Vs. State of M.P., I.L.R. (1961) M.P. 38 (D.B.)*

– **Regulation No. 241** – Enquiry officer cannot act as appellate authority over criminal Court: *Harinarayan Dubey Vs. State of M.P., I.L.R. (1976) M.P. 738 (F.B.)*

– **Regulation No. 241** – Police officer acquitted because case has not been proved – Departmental enquiry can be held on a different charge though arising out of same set of facts: *Harinarayan Dubey Vs. State of M.P., I.L.R. (1976) M.P. 738 (F.B.)*

– **Regulation No. 241** – Police Officer acquitted by criminal Court on technical ground or by giving benefit of doubt or facts in the case showing that the officer is undesirable in Government service – Departmental enquiry can be held on those very charges – Police Officer acquitted because case has not been proved – Departmental enquiry can be held on a different charge though arising out of same set of facts – Enquiry officer cannot act as appellate authority over criminal Court: *Harinarayan Dubey Vs. State of M.P., I.L.R. (1976) M.P. 738 (F.B.)*

– **Regulation No. 241-D** – District Magistrate ordering magisterial investigation – Additional District Magistrate holding enquiry and administering oath to witnesses examined by him – It is merely a fact finding enquiry – Discretion alternatively lies with District Magistrate to decide whether the delinquent should be dealt with departmentally or should be prosecuted in a court of law – Enquiry held by additional District Magistrate amounts to magisterial investigation and not a judicial enquiry: *Sharda Prasad Mishra Vs. The State of M.P., I.L.R. (1972) M.P. 403*

Poppy Husk Rules, Madhya Pradesh, 1959

– **Rule 3-A – Not applicable where goods are to be exported across the customs barriers** – Levy of duty on export outside the State – Not unconstitutional, illegal or wrong – Constitution of India – Article 286 – Sales between the vendors from whom the petitioner purchased – Are sales for export and not sales in the course of export – Article 372 – Preserves Opium Act being pre-Constitutional Law – Principles to be applied to see whether delegation is arbitrary and excessive – Opium Act – Objects of – Opium Act, Section 5 and M.P. Poppy Husk Rules, 1959 – *Vires of: Organon (India) Ltd. Calcutta Vs. Collector of Excise, Mandsaur, I.L.R. (1981) M.P. 644 (D.B.)*

Possession

– **Constructive possession is deemed to be with true owner, even though immediately prior to the diluviation** – Physical possession is with adverse claimant: *Amritlal Vs. Keshriprasad Bilaiya, I.L.R. (1979) M.P. 464 (D.B.)*

– **Distinction between possession which is illegal possession and possession which is likely to be lost by enforcement of superior right:** *Daryaoosingh Vs. Pyarelal, I.L.R. (1960) M.P. 950 (D.B.)*

– **Elements constituting possession:** *Girdharilal Vs. Prafulla Chandra, I.L.R. (1969) M.P. 479*

– **Mere assertion of possession** – Whether amounts to possession: *Amritlal Vs. Keshriprasad Bilaiya, I.L.R. (1979) M.P. 464 (D.B.)*

Post-Graduate (MD/MS Courses) in clinical, para-clinical and Non-clinical Courses in Medical Colleges of Madhya Pradesh Rules, 1984

– **Rules 9-3** – Requires five years service after appointment as Assistant Surgeons in accordance with Rule 7 of Recruitment Rules, 1967 – Five Years service to be

counted from regular appointments – *Adhoc* Service cannot be counted for determining eligibility: *Dr. Akhtar Ahmad Vs. State of M.P., I.L.R. (1986) M.P. 241 (D.B.)*

– **Rules 9-3 and 9-11, Indian Medical Council Act (II of 1956)** Section 33, Regulation no. XVIII(C)(ii) M.P. Health Services (Gazetted) Recruitment Rules, 1967, Rules 6 and 7 and Constitution of India, Article 226 – Regulation XVIII (c) (ii) prescribes minimum qualification for admission to post graduate courses for eligibility only – State Govt. competent to frame rules for selection out of candidates eligible – Rules 9-3 – Requires five years service after appointment as Assistant Surgeons in accordance with Rule 7 of Recruitment Rules, 1967 – Five Years service to be counted from regular appointments – *Adhoc* Service cannot be counted for determining eligibility – Petitioner's selection and admission to Post-graduation Course cancelled subsequently on representation by other's – Petitioners not availing of remedy of appeal under Rule 9-11 – Not joint others admitted in place of petitioners, in the writ petition – Effect of cancellation of admission held to be proper even though no hearing was given to petitioners before passing order of cancellation: *Dr. Akhtar Ahmad Vs. State of M.P., I.L.R. (1986) M.P. 241 (D.B.)*

– **Rule 9-11** – Petitioner's selection and admission to post-graduation Course cancelled subsequently on representation by others – Petitioners not availing of remedy of appeal under Rule 9-11 – Not joining other admitted in place of petitioners, in the writ petition – Effect of cancellation of admission held to be proper even though no hearing was given to petitioners before passing order of cancellation: *Dr. Akhtar Ahmad Vs. State of M.P., I.L.R. (1986) M.P. 241 (D.B.)*

Post Office Act, Indian (VI of 1898)

– **Section 6** – Distinction between Liability of Central Government and liability of officers of post office – No Liability expressly undertaken by Central Government under The Act – Central Government not liable for mis-delivery of parcel – Post Office agent of sender or the addressee for delivery of postal article – Postal service cannot be regarded as common carrier: *Union of India Vs. Sumerchand Jain, I.L.R. (1968) M.P. 968*

– **Section 6** – Post office agent of sender or the addressee for delivery of postal article – Postal service cannot be regarded as common carrier: *Union of India Vs. Sumerchand Jain, I.L.R. (1968) M.P. 968*

Post Office Rules, 1933

– **Rules 67, 78, Limitation Act, Indian 1963, Article 24** – Limitation – Respondent filed suit for recovery of Rs. 48,000 alleging that money orders sent by it to

remit the amount recovered from electric consumers – Post – Master did not remit the full amount and retained the amount claimed in suit – Suit was filed after 2 years but within 3 years – Held – Rules 1933 cannot be said to be statutory – Postal authorities after receiving complaint initiated enquiry and found that amount was received but was not remitted – Amount was handed over for remitting between 14.8.1978 to 19.9.1980 – Suit filed on 5.9.1993 – Letter dated 10.3.1981 of Regional Accounts Officer mentioning that actual amount was received and balance was not sent would amount to acknowledgement of liability – Suit for recovery was within limitation – Appeal Dismissed: *Union of India Vs. M.P. Electricity Board, I.L.R. (1994) M.P. 179*

Power

– **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.)*

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.)*

– **Appeal** – New point of law – Can be raised for first time in appeal – Compromise decree – Term of execution of sale-deed on payment of Rs. 800/- – Terms extraneous to suit – This part of decree not executable – Remedy is suit – Decree stating that in default of payment, Judgment – Debtor liable to be ejected – Term could be enforced separately – Compromise decree – Provision for ejection without stating grounds – Decree in nullity – Such compromise hit by section 23, Contract Act: *Hubbail Vs. Mohammad Makbool, I.L.R. (1977) M.P. 148*

– **Appreciation of evidence – Conjectural nature of pleadings** – Evidence subsequently sought to adduce to establish – Are to be borne in mind when question of appreciation of evidence arises: *Raghubir Singh Vs. Raghubir Singh Kushwaha, I.L.R. (1972) M.P. 451*

– **Court, power of, to treat appeal as revision:** *Kumari Rashida Vs. Abdul Samad, I.L.R. (1970) M.P. 498*

– **Criminal Practice** – Circumstantial Evidence – Nature of the real test is quality and not quantity – Sentence – Planned and brutal murder – No extenuating circumstances – Extreme penalty called for: *Mojiya Vs. The State, I.L.R. (1960) M.P. 692 (D.B.)*

– **Criminal trial** – Grave suspicion not sufficient to base a conviction: *Dilli Vs. State*, I.L.R. (1974) M.P. 831 (D.B.)

– **Determination of cause** – To be founded on the case found in the pleadings or consistent therewith: *Motilal Bhatia Vs. Yusuf Ali*, I.L.R. (1975) M.P. 121

– **Division Bench while making an order for reference observed that case to be heard by Full Bench of Five or more Judges** – Not appropriate to the Bench to indicate that what should be the strength of the Full Bench which the Chief Justice may be called upon to constitute – Division Bench should have indicated that judgment requires reconsideration by Larger Bench or Full Bench leaving it to Chief Justice to decide the strength of Bench: *S.P. Anand Joara Compound, Indore Vs. Hon'ble Mr. S.K. Jha*, C.J. High Court of M.P., JBP, I.L.R. (1994) M.P. 7 (F.B.)

– **Duty of prosecution to place all evidence before Court** – Power of Court to examine such evidence to fine 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.)

– **Evidence** – Adverse inferences against party not producing best evidence in its possession: *State of M.P. Vs. Jhankarsing*, I.L.R. (1978) M.P. 165(D.B.)

– **Evidence** – Appreciation: *Mulchand Vs. Smt. Amritbai*, I.L.R. (1980) M.P. 838 (D.B.)

– **Evidence** – Court as a Court of conscience – Can ask plaintiff to summon attesting witness to satisfy the conscience regarding valid execution of will: *Sukhlal Tiwari Vs. Prem Lal Panda*, I.L.R. (1980) M.P. 1026

– **Evidence** – Witness not cross-examined by a party on a point – His evidence to be believed in the absence of patent or glaring thing rendering his testimony unworthy – Every discrepancy does not make evidence unreliable – Evidence equally balanced – Benefit to be given to a party against whom proceedings started: *Kishore Singh Vs. Bhanwarlal Nahta*, I.L.R. (1967) M.P. 923 (D.B.)

– **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: *Nagarpalika Nigam, Gwalior, Through Commissioner, Nagarpalika Nigam Vs. Motilal*, I.L.R. (1980) M.P. 39 (D.B.)

– **Judgment** – Appellate judgment not referring to statements of important witness – Judgment incomplete and not according to law: *Nilkanth Purshottam Bhawe Vs. Gopaldas*, I.L.R. (1961) M.P. 850

– **Judgment written by trying Magistrate, but pronounced by his successor**
 – No illegality – No substance in appeal: *Parasram Vs. Laxminarayan, I.L.R. (1960) M.P. 882 (D.B.)*

– **Mention of wrong section** – Cannot vitiate an order: *Dr. S.L. Namdeo Vs. Chancellor, Jawaharlal Nehru, Krishi Vishwavidhyalaya Bhopal, I.L.R. (1987) M.P. 558 (D.B.)*

– **New ground** – Can be raised if it is pure question of law and goes to the root
 – But not mixed question of law or fact: *The Christian Fellowship (Hospital) Rajnandgaon Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 67 (D.B.)*

– **New ground** – Circumstances in which it can or cannot be allowed to be raised – Transfer of property Act – Section 53-A – Agreement between parties by which one party relinquishes a claim to certain properties and the other party hands over certain other property to the first party – Second party gets property by transfer by relinquishment – Section applies to such transfers – Benefit of Section 53-A goes not only to party to a transfer but also to one claiming under him – Gift – Implies animus of giving away: *Hussain Banu Vs. Shivnarayan, I.L.R. (1967) M.P. 408*

– **New ground** – New ground of pure law – Can be raised in Second Appeal: *Rajaram Vs. Dindayal, I.L.R. (1969) M.P. 80*

– **New Plea** – Plea regarding question of law arising on the admitted or proved facts – Plea can be raised for first time even in Court of last resort – Plea regarding illegality of contract – Plea not raised in pleadings – Plea can be considered – Contract Act – Section 27 – Contract in restraint of trade – Contract is void unless brought with in exception (1) – Circumstances in which legal and illegal part can be separated – Consideration paid under illegal contract – Consideration is refundable: *Hariprasad Vs. Mst. Beni Bai, I.L.R. (1970) M.P. 804*

– **New plea** – Plea whether partnership is requested or not – Is a mixed question of fact and law – Plea cannot be raised for first time in appeal: *Daulal Vs. M/S Indian Mill Stored, Ganjapara, Raipur, I.L.R. (1978) M.P. 373*

– **New point not allowed in appeal when it requires fresh enquiry on question of fact:** *Col. Sardar Chandroji Rao, Lashkar Vs. State of M.P., I.L.R. (1980) M.P. 827 (D.B.)*

– **No foundation in pleading** – Party cannot set up a new case: *Duga Prasad Vs. Mst. Parveen Foujdar, I.L.R. (1980) M.P. 448 (D.B.)*

– **Order quoting wrong provision** – Order not in valid – Exercise of power can be referable to a jurisdiction which confers validity upon it: *Loonkaran Parakh Vs. State of M.P., I.L.R. (1980) M.P. 403 (D.B.)*

– **Parliamentary practice** – To be followed only when Act does not contain provision: *Ram Sharan Bari, Municipal Councillor, Jabalpur Vs. Dr. K.L. Dube, Mayor, Municipal Corporation, Jabalpur, I.L.R. (1978) M.P. 126(D.B.)*

– **Parties going to trial without specific issue and specific plea but with full knowledge** – Absence of plea is mere irregularity not causing prejudice to the parties: *Hirabai Vs. Bhagirathi Bai, I.L.R. (1969) M.P. 842*

– **Plea** – Question relating to jurisdiction can be raised in execution or in collateral proceedings: *Badri Prasad Vs. Umashankar, I.L.R. (1961) M.P. 1039*

– **Plea of demurrer raised** – Court has to decide on allegations in the plaint itself – Accommodation Control Act, M.P. 1961 – Section 12(4) – Relates to suit under Section 12(1)(e) or (f) – Practice – Determination of cause – To be founded on the case found in the pleadings or consistent therewith – Landlord and tenant – Mere payment of rent not sufficient to establish relationship – Accommodation Control Act, madhya pradesh, 1961 – Section 12 – Structure built on land leased – Subject matter of lease not altered – Compound without the bungalow let out – Lease is of open land – Section 12(1)(o) – Requirements are mandatory – Civil Procedure Code – Section 100 – Plea regarding non-joinder of necessary party – Question is a mixed question of fact and law – Word ‘Mis-Joidner’ includes ‘non-joinder’ – Evidence Act, Indian – 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*

– **Proper issue not framed** – Parties leading evidence in support of their cases – No prejudice can be said to be caused to parties – Accommodation Control Act, M.P., 1961 – Section 12 – Lease not specifying purpose – Purpose can be ascertained from surrounding circumstances – Premises used for both purposes – Court has to decide primary purpose – Small portion used for shop and major portion used for residence – House can be said to be let for residence – Civil Procedure code – Section 100 quality of purpose is question of law – Finding open to challenge in second appeal: *Moolchand Vs. Sheodutt Paliwal, I.L.R. (1978) M.P. 1051*

– **Relief** – Power of Court to compel a party to seek particular relief – Proper relief not claimed – Suit liable to be dismissed: *Muslim Wakf Board, Bhopal Vs. Municipal Board, Bhopal, I.L.R. (1959) M.P. 1015*

– **Subsequent event** – Can be considered if necessary to shorten litigation: *B.K.Pradhan, Vs. Smt. Kalawati Devi, I.L.R. (1968) M.P. 440*

– **Subsequent event** – Power of Court to take notice of subsequent event and mould relief provided substantial justice so requires: *Nathurprasad Vs. Singhai Kapoorchand, I.L.R. (1977) M.P. 1131 (F.B.)*

– **Subsequent events** – Appellate Court, power of to take change of law into consideration: *Budhilal Vs. Mahant Jagannathdas*, I.L.R. (1965) M.P. 471 (D.B.)

– **Suit in all stages to be tried on cause of action existing at the commencement of *lis*** – Defendant cannot take advantage of transfer of plaintiff's right to third person: *Budhilal Vs. Mahant Jagannathdas*, I.L.R. (1965) M.P. 471 (D.B.)

Practice and Rule

– **Rule 3-A of M.P. Govt. Servants (Temporary and quasi-Permanent Service) Rules, 1960** – Validity of an order has to be Judges by reasons so mentioned and not by fresh reasons in the shape of affidavits or otherwise: *Samaru Das Banjare Vs. State of M.P.*, I.L.R. (1985) M.P. 450 (F.B.)

Precedent

– **High Court in some case interpreting certain Rules framed by Government** – Petitioner not a party to that case – Judgment is binding as precedent regarding interpretation of Rule: *Ravindra Nath Tiwari Vs. Divisional Superintendent of Education, Jabalpur Division, Jabalpur*, I.L.R. (1981) M.P. 571 (D.B.)

– **One division Bench** – No power to ignore decision of another Division Bench – Proper remedy to refer case to full Bench: *Jai Prakash Mudalia Vs. A.C. Choubey, Preader & President., Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara*, I.L.R. (1976) M.P. 298 (F.B.)

– **Subsequent Division Bench not agreeing with the decision of first Division Bench** – Proper procedure to refer matter to larger Bench: *Rajendra Bharati Vs. Shri M.P. Dube, Member, Board of Revenue, M.P. Gwalior*, I.L.R. (1977) M.P. 1176 (D.B.)

Preceding

– **Decision of Court binding on parties** – The ratio of case binding on State if State is party: *N.K. Doongaji Vs. The Collector, Surguja*, I.L.R. (1962) M.P. 537 (D.B.)

– **Single Judge differing from decision of another Single Judge** – Matter to be referred to larger Bench: *Kumari Ramlali Alias Laltoo Vs. Mst. Bhagunti Bai*, I.L.R. (1971) M.P. 279 (D.B.)

– **Whether observations of Privy Council binding on High Court:** *Shri Lalchand Vs. Shree Kanhaiyalal*, I.L.R. (1961) M.P. 557

Pre-emption

– **Right must subsist on date of sale, date of suit and date of decree** – Right of pre-emption – Is a weak right – Not a right to property – Is only a right to the offer of a thing sold or about to be sold – Is a remedial right – General Clauses Act, M.P. 1957 – Section 10 – Does not save remedial right – Right cannot be said to have been acquired or accrued till a decree is passed – Right of pre-emption – Does not subsist after statute has been repealed – Right of pre-emption – Nature of the right – Circumstance in which right of pre-emption is lost: *Nirmaladevi Vs. Smt. Anardevi*, I.L.R. (1977) M.P. 216 (D.B.)

– **Right of pre-emption** – Does not subsist after statute has been repealed: *Nirmaladevi Vs. Smt. Anardevi*, I.L.R. (1977) M.P. 216 (D.B.)

– **Right of pre-emption** – Is a weak right – Not a right to property – Is only a right to the offer of a thing sold or about to be sold – Is a remedial right: *Nirmaladevi Vs. Smt. Anardevi*, I.L.R. (1977) M.P. 216 (D.B.)

– **Right of pre-emption** – Nature of the right – Circumstance in which right of pre-emption is lost: *Nirmaladevi Vs. Smt. Anardevi*, I.L.R. (1977) M.P. 216 (D.B.)

Pre-Medical Examination Rules, M.P. 1970

– **Does not contain a rule for ousting a candidate admitted to medical course:** *Dinker Prabhakar Mahajan Vs. S.L. Agrawal*, I.L.R. (1978) M.P. 213(D.B.)

– **Rule 9** – Empowers removal of Candidate from college if he gives false or incorrect statement: *Dinker Prabhakar Mahajan Vs. S.L. Agrawal*, I.L.R. (1978) M.P. 213(D.B.)

Pre-Medical Examination Rules, M.P., 1973

– **Are executive instructions** – Breach or non-compliance with such instructions – Does not confer legal right to claim enforcement in a court of law: *Joginder Singh Bhatti Vs. The Controller, Pre-Medical Examination* (1973) M.P., Bhopal, I.L.R. (1977) M.P. 423 (D.B.)

– **Rule 17 – Candidate belonging to the scheduled caste in relation to State of M.P.** – To be treated as scheduled caste or tribe irrespective whether candidate originally belonged to that State or not – Only condition to be fulfilled is that he must be bona fide resident of that place: *Joginder Singh Bhatti Vs. The Controller, Pre-Medical Examination* (1973) M.P., Bhopal, I.L.R. (1977) M.P. 423(D.B.)

Pre-Medical Test Examination Conducted by Professional Examination Board, M.P.

– **Key answer** – To be approved as correct unless proved to be wrong: *Ku. Anjali Saxena Vs. Chairman Profession Examination Board MP, I.L.R. (1990) M.P. 199 (D.B.)*

– **Scheme of the examination** – Expression ‘Key answer’ – Meaning and significance of – Key answer – To be approved as correct unless proved to be wrong: *Ku. Anjali Saxena Vs. Chairman Profession Examination Board M.P., I.L.R. (1990) M.P. 199 (D.B.)*

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– **Central And State legislatures** – Presumed to act in harmony: *M/s. Channulal Motilal, Jabalpur Vs. The Commissioner of Sales Tax. M.P., I.L.R. (1976) M.P. 577 (F.B.)*

– **Mala fide exercise of power** – Power conferred by statute – Exercise of power cannot be inferred readily to be *mala fide* unless supported by strong circumstances: *Laxminarayn Vs. State of M.P., I.L.R. (1978) M.P. 346 (D.B.)*

– **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: *Mst. Bhagwan Kunwar Vs. Mst. Nanhidulaiya, I.L.R. (1980) M.P. 490*

– **Plaintiff not entering witness box** – Examining other witnesses to prove her case – Adverse inference not liable to be drawn: *Smt. Dhanbai Vs. State of M.P. I.L.R. (1981) M.P. 48 (D.B.)*

Presidential Order

– **Presidential Order dated 23-12-74, under Article 359 (1) of Constitution and Constitution of India, Article 21** – Circumstances in which preventive action by Government can be taken on material falling short or adequate proof in a Court of law – Detenue entitled to grounds of detention and not evidence for these grounds: *Haji Ibrahim Vs. State of M.P., I.L.R. (1979) M.P. 868 (D.B.)*

– **Presidential Order dated 23-12-74, under Article 359 (1) of Constitution and Constitution of India, Article 21** – High Court, Power of, to investigate into truthfulness or other-wise of conclusions of fact referred in grounds of detention: *Haji Ibrahim Vs. State of M.P., I.L.R. (1979) M.P. 868 (D.B.)*

– **Presidential Order dated 23-12-74, under Article 359 (1) of Constitution and Constitution of India, Article 21** – Order not challengeable on ground that grounds of detention not furnished: *Haji Ibrahim Vs. State of M.P., I.L.R. (1979) M.P. 868 (D.B.)*

– **Presidential Order dated 23-12-74, under Article 359 (1) of Constitution and Constitution of India, Article 21** – Order of detention under – Contemplates valid and legal order under the Act – Detenue has right to contend that order is illegal or *mala fide* or order suffers from vice of excessive delegation – Pleas open to detenue to challenge order: *Haji Ibrahim Vs. State of M.P., I.L.R. (1979) M.P. 868 (D.B.)*

– **Presidential Order dated 23-12-74, under Article 359 (1) of Constitution and Constitution of India, Article 21** – Right to move Court regarding order of detention for enforcement of right under Article 21 – Suspended order not sustainable unless made under some authority of law – Order of detention under – Contemplates valid and legal order under the Act – Detenue has right to contend that order is illegal or *mala fide* or order suffers from vice of excessive delegation – Pleas open to detenue to challenge order – Interpretation of Statute – Provision to be construed in a way no make it redundant or meaningless – Order not challengeable on ground that grounds of detention nor furnished – Jurisprudence – Punitive action – Convicting proof of offensive activities necessary – Circumstances in which preventive action by Government can be taken on material falling short of adequate proof in a Court of law – Detenue entitled to grounds of detention and not evidence for these grounds – High Court, Power of, to investigate into truthfulness or otherwise of conclusion of fact referred in grounds of detention: *Haji Ibrahim Vs. State of M.P., I.L.R. (1979) M.P. 868 (D.B.)*

Press & Registration of Books Act (XXV of 1867)

– **Sections 3, 6, 7** – Penal Code Indian, 1860- – Sections 499,500 and Criminal Procedure Code, 1973 – Sections 200,482 – Complaint case – Quashing of – Alleged defamation by printing news item – Printer or publisher and the Editor should be presumed to be aware of what is being published in the issue – Director of press not connected directly or indirectly with printing & publishing – Applicant Director – Cannot be held responsible – Proceedings against applicant quashed: *Brij Maheshwari Vs. Arun Jain, I.L.R. (2005) M.P. 282*

– **Section 5 (2)** – Does not put restriction in the matter of selection of title or name of the newspaper in the absence of newspaper of that name in the same language in India or in State – Section 6, Proviso – Authorises authority to authenticate declaration – If satisfied on enquiry the proviso is attracted – Decision rests on satisfaction of Magistrate – Section 8-B – Cancellation of declaration – Dependant on subjective opinion of Magistrate and on his satisfaction as to matters mentioned in the provision –

Conditions mentioned in the provision existing – Opinion of Magistrate regarding cancellation or non-cancellation of declaration – A subjective matter – Not open to objective test – Casts no obligation on Magistrate to cancel declaration – Existence or absence of conditions – Left to satisfaction of Magistrate – High Court, Power of, to substitute its opinion or satisfaction for that of Magistrate or to enquire into the validity of grounds on which opinion or satisfaction formed – Section 6 – Circulation of paper – Not a matter to be taken into consideration in proceedings for authentication of declaration or cancellation: *Madanlal Vs. The Sub-Divisional, Magistrate (City) Jabalpur, I.L.R. (1967) M.P. 162 (D.B.)*

– **Section 6 – Circulation of paper** – Not a matter to be taken into consideration in proceedings for authentication of declaration or cancellation: *Madanlal Vs. The Sub-Divisional, Magistrate (City) Jabalpur, I.L.R. (1967) M.P. 162 (D.B.)*

– **Section 6, Proviso** – Authorises authority to authenticate declaration – If satisfied on enquiry the proviso is attracted – Decision rests on satisfaction of Magistrate: *Madanlal Vs. The Sub-Divisional, Magistrate (City) Jabalpur, I.L.R. (1967) M.P. 162 (D.B.)*

– **Section 8-B – Cancellation of declaration** – Dependant on subjective opinion of Magistrate and on his satisfaction as to matters mentioned in the provision: *Madanlal Vs. The Sub-Divisional, Magistrate (City) Jabalpur, I.L.R. (1967) M.P. 162 (D.B.)*

– **Section 8-B** – Casts no obligation on Magistrate to cancel declaration – Existence or absence of conditions – Left to satisfaction of Magistrate: *Madanlal Vs. The Sub-Divisional, Magistrate (City) Jabalpur, I.L.R. (1967) M.P. 162 (D.B.)*

– **Section 8-B** – Conditions mentioned in the provision existing – Opinion of Magistrate regarding cancellation or non-cancellation of declaration – A subjective matter – Not open to objective test: *Madanlal Vs. The Sub-Divisional, Magistrate (City) Jabalpur, I.L.R. (1967) M.P. 162 (D.B.)*

– **Section 8-B** – High Court, Power of, to substitute its opinion or satisfaction for that of Magistrate or to enquire into the validity of grounds on which opinion or satisfaction formed: *Madanlal Vs. The Sub-Divisional, Magistrate (City) Jabalpur, I.L.R. (1967) M.P. 162 (D.B.)*

Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act (VII of 1980)

– **Sections 3 (1) and 3 (2)** – And Constitution of India, Article 226 – Nature and power of the detaining authority under the Act – Grounds of detention – Should be furnished to the detenu in a language which he can understand and script which he can

read – Grounds should not be vague or irrelevant – Subjective satisfaction of detaining authority not liable to be reviewed by Court – Solitary act, whether can form basis of detention – Detenu found in possession of large quantity of soyabean oil without holding any licence required under – Licensing Order and found to be not maintaining accounts or stock register as required by Control order – Detaining authority passing an order for detention on subjective satisfaction – Order not liable to be interfered with by Court: *Gordhandas Vs. State of M.P., I.L.R. (1982) M.P. 1026 (D.B.)*

– **Sections 3 (1) and 3 (2)** – Grounds of detention – Should be furnished to the detenu in a language which he can understand and script which he can read – Grounds should not vague or irrelevant: *Gordhandas Vs. State of M.P., I.L.R. (1982) M.P. 1026 (D.B.)*

– **Sections 3 (1) and 3 (2)** – Solitary Act, whether can form basis of detention – Detenu found in possession of large quantity of soyabean oil without holding any licence required under – Licensing order and found to be not maintaining accounts or stock register as required by Control Order – Detaining authority passing an order for detention on subjective satisfaction – Order not liable to be interfered with by Court: *Gordhandas Vs. State of M.P., I.L.R. (1982) M.P. 1026 (D.B.)*

– **Sections 3 (1) and 3 (2)** – Subjective satisfaction of detaining authority not liable to be reviewed by Court: *Gordhandas Vs. State of M.P., I.L.R. (1982) M.P. 1026 (D.B.)*

Prevention of Corruption Act (II of 1947)

– **Section 4** – Presumption under section 4 of the Act – Cannot be drawn on mere proof of recovery of money: *Jagdish Vs. State of M.P., I.L.R. (1989) M.P. 237*

– **Sections 5 (2) 5 (1) (d) 4 – Trap witness** – Interested and partisan witness – Should not be relied without corroboration: *Jagdish Vs. State of M.P., I.L.R. (1989) M.P. 237*

– **Sections 5 (2) 5 (1) (d) 4 – Penal Code, Indian (XIV of 1860) Section 161 and Criminal Procedure Code, 1973 (II of 1974) Section 162** – Trap-un explained delay in making report throws cloud of suspicion – Question by police Inspector and reply by accused in respect of whereabouts of bribe money, inadmissible – Trap witness – Interested & partisan witness – Should not be relied without corroboration – Presumption under – Section 4 of the Act – Cannot be drawn on mere proof of recovery of money: *Jagdish Vs. State of M.P., I.L.R. (1989) M.P. 237*

Prevention of Corruption Act (II of 1947)

– **Section 4** – Co-accused received money from complainant – No evidence that on his own he could have assigned work to substitute casual worker – Conditions for

drawing legal presumption not satisfied: *Sahantaram Samwanshi Vs. State of M.P., Through C.B.I., Jabalpur, I.L.R. (2005) M.P. 1083*

– **Section 4 and Penal Code, Indian (XLV of 1860) Section 161** – Offence under – Complainant testimony duly supported by other prosecution witnesses on material particulars – Accused found in possession of money received as illegal gratification – Possession not explained – Presumption under Section 4(1) can be drawn – Court is entitled to convict the accused – Appeal dismissed: *Laxman Prasad Vs. State, I.L.R. (1998) M.P. 326*

– **Sections 4, 5 (1) (d) 5 (a) and Penal Code Indian, 1860, Sections 120-B, 161** – Bribe – Trap case – Co-accused received money from complainant – No evidence that on his own he could have assigned work to substitute casual worker – Conditions for drawing legal presumption not satisfied – Co-accused acquitted – Conviction of other accused under Section 5(1) (a) and 5 (2) of I.P.C. Act affirmed – Sentence – Cannot be reduced to less than the minimum – Appeal partly allowed: *Shantaram Somwanshi Vs. State of Madhya Pradesh, Through C.B.I., Jabalpur, I.L.R. (2005) M.P. 1083*

– **Section 5** – Bribery case – Demand and acceptance of bribe – Evidence of complainant corroborated by the circumstance that phenolphthalein powder test regarding the washing of the hands of the accused gave positive result – Taking into account all the surrounding circumstances – Conviction upheld: *Ramesh Kumar Gupta Vs. State of M.P., I.L.R. (1995) M.P. 409 (D.B.)*

– **Section 5-A** – Makes offences under Sections 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: *The State of M.P., Vs. Bheronlal Sharma, I.L.R. (1963) M.P. 761*

– **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: *The State of M.P., Vs. Bheronlal Sharma, I.L.R. (1963) M.P. 761*

– **Section 5 (1)** – Essentials necessary to constitute an offence of criminal misconduct – Things to be proved for conviction for an offence under this section: *Shivdarsingh Vs. State, I.L.R. (1958) M.P. 115*

– **Sections 5 (1) (a) and 5 (2)** – 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*

– **Sections 5 (1) (d) and 5 (2) and Penal Code, Indian (XLV of 1860) Section 420 and 468 Offences thereunder** – Accused a Labour Officer obtained advance of

Rs. 200/- and later on submitting forged bills for adjustment and deposition balance amount – Bills found to be forged – Conviction to accused even on evidence of one witness can be sustained Section 5(2) – Award of sentence less than minimum prescribed – “Special Reasons” – What Constitute: *R.K. Gupta Vs. State of M.P.*, *I.L.R. (1987) M.P. 644*

– **Sections, 5 (1) (d) (2)** – 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: *Shankarlal Vsihwakarma Vs. State*, *I.L.R. (1992) M.P. 791 (D.B.)*

– **Sections 5 (1) (d) read with Section 5(2) and Penal Code, Indian (XLV of 1860) – Section 161** – Conviction under: *Vishwanath Pd. Dubey Vs. State*, *I.L.R. (2000) M.P. 1146*

– **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: *State Vs. Girja Prasad*, *I.L.R. (2003) M.P. 554*

– **Sections 5 (1) (d) 5(1) (2)** – 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 5 (1) 5 (2) (d)** – Private individuals grabbing public funds in connivance with public servants cannot escape the liability of the charge under the P.C. Act: *Ramesh Chandra Jain Vs. State*, *I.L.R. (1992) M.P. 812*

– **Section 5 (1) (e)** – Charges framed on allegations that acquisition of property disproportionate to known source of income – Accused not able to account – Not illegality in the charge as framed: *Virendra Kumar Sakhlecha Vs. State of M.P.*, *I.L.R. (1988) M.P. 454*

– **Section 5 (1) (e) 5 (2) 5-A and Criminal Procedure Code, 1973 (II of 1974) Sections 397/401** – Authorisation by state Government by general order – No illegality – Authorisation order of State Govt. containing no reasons – Not illegal – authorisations not filed along with charge-sheet but subsequently – Sufficiently meets the requirements of the provision – Charges framed on allegations that acquisition of property disproportionate to known source of income – Accused not able to account – No illegality in the charge as framed: *Virendra Kumar Sakhlecha Vs. State of M.P.*, *I.L.R. (1988) M.P. 454*

– **Sections 5 (1) (d) and 5 (2) and Special Police Establishment Act. M.P., 1947, Section 3** – Jurisdictional error in investigation – Unless shown to have brought about a miscarriage of justice an illegality committed in course of investigation does not affect competence and jurisdiction of the Court for trial: *State of Chhattisgarh Vs. Harmahendra Singh Gandhi, I.L.R. (2005) M.P. 1025 (S.C.)*

– **Section 5 (2) read with Section 5 (1) (d) and Penal Code, Indian (XLV of 1860) Sections 161 and 21** – Accused appointed as arbitrator by one of the parties to resolve certain disputes even if he is Assistant Director of Ordnance Factories – Is not a public servant within section 21 and the alleged offence committed by him does not amount to abuse of the position as a public servant – Hence not Liable for prosecution under the above sections: *Maheshwar Sahai Vs. State of M.P., I.L.R. (1984) M.P. 461*

– **Section 5 (2) read with Section 5 (1) (d) and Penal Code, Indian (XLV of 1860) Sections 161 and 21** – Prosecution of the accused thereunder – When maintainable – Accused appointed as arbitrator by one of the parties to resolve certain disputes even if he is assistant director of ordnance Factories – Is not a public servant within section 21 and the alleged offence committed by him does not amount to abuse of the position as a public servant – Hence not liable for prosecution under section 161 penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act: *Maheshwar Sahai Vs. State of M.P., I.L.R. (1984) M.P. 461*

– **Section 5 (2)** – Award of sentence less than minimum prescribed – “Special reasons” – What constitute: *R.K. Gupta Vs. State of M.P., I.L.R. (1987) M.P. 644*

– **Sections 5 (2) and 5 (1) (d)** – Conviction and sentence – Trial Court and High Court passed orders after thread-bare discussion of the evidence – No case for interference – Appellant remained in jail for about one week – Sentence reduced to the period under gone and fine enhanced to Rs.30,000/- – Appeal partly allowed: *Prem Chand Chaturvedi Vs. State of Madhya Pradesh, I.L.R. (2004) M.P. 818 (S.C.)*

– **Section 5 (2) Penal Code Indian - 1860, Section 161, Evidence Act Indian 1872, Sections 3, 145, 146 and Criminal Procedure Code, 1973, Sections 294/374 (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 if ante dated ante time documents – Second trap laid – Nothing to show that appeallannt demanded bribe – Failure of prosecution to explain why frist 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*

– **Section 6 – 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: *Vishwanath Pd. Dubey Vs. State, I.L.R. (2000) M.P. 1146*

– **Section 7 (3) (i) (d) Criminal Procedure Code, 1974, Section 482** – Quashing of proceedings – Charge sheet filed against applicant on the allegation that bribe was investigating an offence against complainant – Constable trapped – Charge sheet challenged on the ground that there was no demand acceptance of bribe – Held – Evidence has not been recorded so far – Question whether there was any demand or not can be decided only after recording of evidence – No case for quashing-proceedings – Application dismissed: *Santosh Kumar Bharti Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 512*

– **Sections 13 (1) (e) and 13 (1) (2)** – Charges 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 a ground for quashing the Charges: *Badri Prasad Vs. State, I.L.R. (2000) M.P. 1316*

– **Section 19 – Sanction for prosecution under Sections 7, 13 of the Act** – Examination of sanctioning authority not necessary – Sanction can be proved by other evidence – If prosecution fails to prove sanction as required under the law, accused can take advantage of the same at appropriate time – Evidence Act, Indian – 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*

Prevention of Corruption Act (XLIX of 1988)

– **Section 2 (c) (xi)** – 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 2 (c) (xi) 13 (1) (d) 13 (2)** – Demand of bribe – Trap laid by Special Police Establishment attached to Loyayukt – Validity – S.P.E. constituted for investigating 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 - Members of Special Police Establishment has powers to deal with offences under Prevention of Corruption Act: *Dr. A.K. Mukherjee Vs. State, I.L.R. (2001) M.P. 1928*

– **Sections 13 (1) (d) and 13 (2) and Criminal Procedure Code, 1973 (II of 1974) Section 482** – Quashment of proceedings – Accused public servant – Sub-Inspector in Transport Department – Interpolation by applicant in registration Certificate

of Motor Vehicle reducing sitting capacity and amount of tax payable to extend monetary benefit to owner – Strong prima facie case made out – Case is pending in the Court from 24.8.1998 – No delay – Applicant at liberty to raise all these objections at the time of framing of charge – Prayer for quashment of proceedings – Cannot be accepted at this stage on the ground of delay: *K.P. Agnihotri Vs. State, I.L.R. (1999) M.P. 1097*

– **Sections 13 (i) (c) 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: *Khageshwar Prasad Vs. State, I.L.R. (2001) M.P. 1097*

– **Sections 13 (1) (e) and 13 (2)** – Charges framed under – Investigative trial before charge giving opportunity to accused to produce evidence – Not necessary: *Permanand Jha Vs. State, I.L.R. (2000) M.P. 888*

– **Sections 13 (1) (e) 13 (2) and 17** – Offence alleged under – Power to investigate – Investigation conducted by Inspector S.P.E. on the authorization of superintendent of Police – Not illegal: *Rajendra Kumar Verma Vs. State, I.L.R. (2000) M.P. 1496*

– **Sections 13 (i) (e) 13 (2) and 17** – Acquisition of property dis-proportionate 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: *Umesh Kumar Chaubey Vs. State, I.L.R. (2001) M.P. 1938*

– **Sections 13 (i) (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: *Mahavir Prasad Shrivastava Vs. State, I.L.R. (2001) M.P. 1407*

– **Sections 17** – Validity of such authorization cannot be allowed to be gone into at pre-trial stage – Accused has liberty to proved the authorization otherwise during the course of Trial: *Mahavir Prasad Shrivastava Vs. State, I.L.R. (2001) M.P. 1407*

Prevention of Cruelty to Animals Act, 1960

– **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*

Prevention of Food Adultration Act (XXXVII of 1954)

– **Act does not impose of Government a duty to appoint a person as public analyst by name** – Can be appointed by his office: *Municipal Council Raipur Vs. Bishandas, I.L.R. (1971) M.P. 564 (D.B.)*

– **Aims at punishing those whose aim is either to sell for money or just distribute** – Rule 49 – Makes mention of the purpose namely sale – Facts about existence of food stock after closure of shop in shop or at counter – No indication of the purpose – Presumption regarding sale drawable if goods are exposed for sale next day – Circumstances when inference of sale can be drawn: *State of Madhya Pradesh Vs. Ramlal*, I.L.R. (1971) M.P. 938 (D.B.)

– **And the Rules framed thereunder –Rule 9(J)** – Is directory in nature and not mandatory – Non-Compliance there of –Not fatal to the prosecution: *Food Inspector, Municipal Council, Mandsaur Vs. Ranglal Gujar*, I.L.R. (1983) M.P. 56 (D.B.)

– **Notification no. 2683-3282-XVII-M-IV, dated “Chemist” to be two different persons** – Anyone could be appointed as public analyst – Word “and” in column 4 – Means “or” – Act does not impose of Government a duty to appoint a person as public analyst by name – Can be appointed by his office: *Municipal Council, Raipur Vs. Bishandas*, I.L.R. (1971) M.P. 564 (D.B.)

– **Word “and” in column 4 of the notification dated 27-12-60 – Means “or”**: *Municipal Council, Raipur Vs. Bishandas*, I.L.R. (1971) M.P. 564 (D.B.)

– **Section 2 (i)** – Milk deemed to be adulterated if it does not contain percentage of fat and non-fatty solids as per minimum prescribed: *Municipal Corporation, Gwalior Vs. Kishan Swaroop*, I.L.R. (1966) M.P. 810 (D.B.)

– **Section 2 (r)** – ‘Ice’ – Not food but water in solid form i.e. – Hydrogen and Oxygen – Provisions of Section 7/14 not attracted – Prosecution quashed: *Udhabdas Vs. State*, I.L.R. (2000) M.P. 203

– **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: *Motumal Vs. State*, I.L.R. (2000) M.P. 1165

– **Section 2 (v)** – Coconut hair oil is not article of food within the meaning of the Act: *State of MP Vs. M/s Lakhanlal Brindaban Co., Panna*, I.L.R. (1989) M.P. 492

– **Section 2 (V)** – Definition of Food explained – Pan Masala is an article of food: *Shivraj Tobacco Company Pvt. Ltd., Kanpur Vs. State of M.P.*, I.L.R. (1990) M.P. 652

– **Section 2 (V) 7 and Prevention of Food adulteration Rules, 1955, Rules 44, 47 and Criminal Procedure Code, 1973 (II of 1974) Section 482** – Definition of Food explained – Pan Masala is an article of food – Seccharin is artificial sweetner – Mixing of seccharin 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*

– **Sections 7 (1) 11, 13, 16 (1) (a) (i) and Criminal Procedure Code, 1973, Sections 397, 401** – Revision against conviction and sentence – Right to get report of CFL is valuable right of accused – Could not be invoked as sample deteriorated due to scientific reason – Accused entitled for acquittal: *Gopal Lodhi S/o Shivcharan Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 276*

– **Sections 7, 13 (2) 16, 17, 20 – A and Criminal Procedure Code, 1973 – Section 482** – Petition for quashing complaint – Sample of ‘Amul’ cheese found adulterated – Report of C.F.L. at behest of vendor on record – Certificate of C.F.L. is final – Second application to disturb conclusion of Director CFL not contemplated though not prescribed – Nexus alleged – Prosecution can be launched against Managing Director: *B.M. Vyas Vs. State of M.P., I.L.R. (2005) M.P. 86*

– **Sections 7 (1) 13 (2) 16 (1) (a) (i) 20 and Criminal Procedure Code, 1973 – Section 482** – Petition for quashing charge – Delay in application for re-analysis not attributed to prosecution – Petitioner impleaded as accused later – Vendor or complainant did not apply for re-analysis – Petitioner cannot claim quashing of complaint on ground that sample was putrefied and he was deprived of his valuable right: *G.D. Kulkarni Vs. State of M.P., I.L.R. (2005) M.P. 174*

– **Sections 7 (1) 16 (1) (a) (i) and Criminal Procedure Code, 1973, Sections 397, 401** – Revision – Milk sample – Not taken after stirring – Not a representative sample – Report of – Public Analyst cannot be utilised against accused – Applicant entitled to get benefit – Conviction and sentence set aside: *Ramdayal S/o Babulal Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 456*

– **Section 7 (i) read with Section 16 (1) (a) (i) and Section 13** – Non-exercise of right under section 13 by accused – Effect of – Servant carrying business of his master in his absence – Master vicariously liable for the acts of his servants: *Deepchand Vs. S.R. Mittal, I.L.R. (1981) M.P. 346 (D.B.)*

– **Sections 7 (1) and 16 (1) and (b)** – No evidence regarding obstructing Food Inspector from taking sample or causing hindrance – Food Inspector merely asking for sample and oral refusal by the accused – Accused not guilty of preventing Food Inspector from taking sample: *Tulsiram Vs. State, I.L.R. (1981) M.P. 161*

– **Sections 7 (1) and 16 (1) (b)** – Word ‘prevent’ – Meaning of – No evidence regarding obstructing Food Inspector from taking sample or causing hindrance – Food Inspector merely asking for sample and oral refusal by the accused – Accused not guilty of preventing Food Inspector from taking sample: *Tulsiram Vs. State, I.L.R. (1981) M.P. 161*

– **Section 7 (1) read with Section 16 (1) (a) (i) and Prevention of Food Adulteration rules, 1955, Rules 17, 18, 19** – Report of Public Analyst stating sample to be in a condition fit for analysis – Inference – The word ‘separately’ in Rule 18 – Meaning of – Taking of two packets by same individual – No contravention of Rule 18: *Municipal Corporation, Raipur Vs. Gopaldas, I.L.R. (1985) M.P. 59*

– **Sections 7 (1) 16 (1) (a) (i)** – Prosecution – Section 13(2) – Mandatory provision regarding sending of intimation alongwith report of public analyst – Not complied with – Important defence of accused withheld – Benefit of doubt has to be given to the accused: *Ghansu Vs. State, I.L.R. (1999) M.P. 994*

– **Section 7 (1) read with Section 16 (1) (a)** – Sentence – Turmeric Power 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. – Revision partly accepted: *Nandlal Khatri Vs. State, I.L.R. (2001) M.P. 269*

– **Section 7 (1) read with Section 16 (1) (a) and Section 13 and Prevention of Food Adulteration Rules, 1955, Rule 44 (h)** -Conviction based on the report of Director Central Food Laboratory that the turmeric powder contained foreign starch – Selling of turmeric power with any foreign starch prohibited under Rule 44 (h) of the Rules: *Nandlal Khatri Vs. State, I.L.R. (2001) M.P. 269*

– **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 7, 13, 16** – Charge – Sample found unfit for analysis by CFL – Charge not supported by material would lead to a trial in void – Charge quashed: *Suresh Narain Vs. The Food Inspector, I.L.R. (2002) M.P. 758*

– **Sections 7, 9 and 16-** – Acquittal recorded by High Court on ground that Food Inspector did not possess requisite training in Food Inspection and Sample work – Such ground not taken in trial – No reason indicated as to why Food Inspector was not competent to collect samples – Acquittal set aside – Matter remitted to High Court for fresh consideration: *State of M.P. Vs. Gendalal; I.L.R. (2004) M.P. 409 (S.C.)*

– **Sections 7, 16, 19, and Criminal Procedure Code, 1973, Section 482, Petition for quashing prosecution** – Sealed tins of soyabeen 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*

– **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

– **Section 7 (16)** – **Trial before amendment** – Sentence of imprisonment for first offence not permissible – Rules framed under the Act – Rules 7 and 18 – Whether directory or mandatory – Section 13 and Rules 7 and 18 – Report of analyst not complying with – Report cannot be read in evidence – Evidence Act – 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 Madhya Pradesh, Through Food Inspector, Khargone*, I.L.R. (1970) M.P. 510

– **Sections 7, (16) (1) (a) (i) 20 (1)** – Sanction – Prosecution of accused for selling adulterated milk on the complaint of Food Inspector – No consent obtained for launching prosecution – It amounts to fundamental defect – Conviction of accused cannot be sustained – Appeal allowed: *Khitai Vs. State of MP*, I.L.R. (1994) M.P. 483

– **Sections 7, 16, 17 (3) 17 (4) and Criminal Procedure Code, 1973, Section 482** – 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 10** – Person bolting away – Identity remains undisclosed – Action amounts to preventing exercise of power: *Habib Khan Vs. The State of M.P.*, I.L.R. (1972) M.P. 607

– **Section 10 (7)** – Need for number of witnesses – Dependent on facts and circumstances of each case: *Ramdayal Vs. The State*, I.L.R. (1967) M.P. 831

– **Section 10 (7)** – Non-calling of two witnesses to witness taking of sample – Trial not vitiated unless it is deliberate and *mala fide* – Need for number of witnesses – Dependent on facts and circumstances of each case – Food Adulteration Rules, 1955 – Rules 19 and 20 – Prescribe number of drops of formalin to be put in the sample – Prescribed number of drops not put in the sample – Sample not shown to be unsuitable for the purpose of analysis – Non-compliance does not vitiate trial: *Ramdayal Vs. The State*, I.L.R. (1967) M.P. 831

– **Section 10 (7)** – Provision in – Not mandatory – Non-compliance thereof – Amounts to irregularity – Trial not vitiated: *Kapurchand Vs. The City of Jabalpur Corporation, Jabalpur*, I.L.R. (1959) M.P. 617

– **Section 10 (7) Rules 17, 18 and Form VII** – Do not necessitate the sending of original memorandum of report made under section 10 (7) to the analyst – Ghee usually sold in the shop – Servant or agent selling adulterated Ghee – Master whether vicariously liable: *Lalchand Vs. The Food Inspector, Dhar, I.L.R. (1966) M.P. 997*

– **Section 11** – Manner prescribed is mandatory – Power given by section 10 to be exercised in manner prescribed by the section – Manner prescribe not followed – Exercise or power becomes null and void: *Habib Khan Vs. The State of M.P., I.L.R. (1972) M.P. 607*

– **Section 11 (1)** – Word “shall” in – Does not mean that Inspector must do all that is contemplated under sub-clause (b) of sub-section (1) by his own hand: *The Administrator, Jabalpur Corporation, Jabalpur Vs. Girdharilal, I.L.R. (1977) M.P. 347(D.B.)*

– **Section 11 (1) (b)** – Food Inspector getting the manual work done by his peon under supervision – Does not amount to delegation of his power or abdication of his duties – Section 11(1) – Word “shall” in – Does not mean that inspector must do all that is contemplated under sub-clause (b) of sub-section (1) by his own hands – Prevention of Food Adulteration Rules, 1955 – Rule 22 – Word “:shall; in – Implication of – Provision mandatory – Non – compliance vitiates report of public analyst – Non – compliance – Not only amounts to infraction but causes injustice to accused: *The Administrator, Jabalpur Corporation, Jabalpur Vs. Girdharilal, I.L.R. (1977) M.P. 347(D.B.)*

– **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 13** – Adding requisite preservative to sample of milk – Sample of milk can remain fit for 6 months for Analysis – Section 13(2) – Prosecution started after nearly about a year of taking sample – Accused prejudiced in the trial as sample could not be sent to director, Central Food Laboratory before it was decomposed – Probation of offenders Act, 1958 – Section 6 – Accused 16 years of age – Accused entitled to be let off under this provision: *Shiv Dayal Vs. State of M.P., I.L.R. (1977) M.P. 360*

– **Section 13 and Rules 7 and 18** – Report of analyst not complying with – Report cannot be read in evidence: *Ramkishan Vs. State of Madhya Pradesh, Through Food Inspector, Khargone, I.L.R. (1970) M.P. 510*

– **Section 13**, Prevention of Food Adulteration Rules, 1955, Rule 9A, General Clauses Act, 1957, Section 27 – Service of Public Analyst Report – Copy of Report sent to Accused/Respondent by Registered Post – In view of Section 27 of General

Clauses Act, delivery of report can be presumed even in absence of acknowledgment of receipt: *State of M.P. Vs. Trilokchandra Goyal, I.L.R. (1994) M.P. 427*

– **Section 13 (1)** – Public Analyst examining sample after about 9 days – Value of the report affected: *Municipal Corporation, Gwalior Vs. Kishan Swaroop, I.L.R. (1966) M.P. 810 (D.B.)*

– **Section 13 (1)** – Weight to be attached to report of analyst when provision of Rule 20 not fulfilled: *Municipal Corporation, Gwalior Vs. Kishan Swaroop, I.L.R. (1966) M.P. 810 (D.B.)*

– **Section 13 (2)** – Food Inspector has stated that a copy of report of Public Analyst was sent to the accused persons and they were well aware, even in Court they did not requested for sending the sample of ghee to be analysed by Central Food Laboratory – Neither total non compliance of Section 13(2) of the Act nor any question as prejudice cause to the defence for its presumed non-compliance – Conviction upheld: *Umaprasad Vs. State of M.P., I.L.R. (1995) M.P. 697*

– **Section 13 (2)** – Mandatory provision regarding sending of intimation alongwith report of public analyst – Not complied with – Important defence of accused withheld – Benefit of doubt has to be given to the accused: *Ghansu Vs. State, I.L.R. (1999) M.P. 994*

– **Section 13 (2)** – Prosecution filed after nearly 16 months after the date of incident – Accused not in a position to test the report of the Analyst – Valuable right of accused lost – Accused entitled to its benefit: *Municipal Corporation, Gwalior Vs. Kishan Swaroop, I.L.R. (1966) M.P. 810 (D.B.)*

– **Section 13 (2)** – Prosecution filing application under, for permission to send a part of sample to the Director of Central Food Laboratory – Magistrate taking cognizance of offence – Magistrate acts illegally: *Bansilal Vs. Nagar Palika, Bhikangaon, I.L.R. (1982) M.P. 290*

– **Section 13 (2)** – Prosecution launched after delay of 9 months – Plea of decomposition of sample – Right to get sample analysed by Central Food Laboratory – No application moved before Court to send another part of the sample to Central Food Laboratory – Public analyst not conducted any test to show that sample had deteriorated – Accused not prejudiced in his defence – Right to get sample analysed under Section 13(2) not frustrated on account of delay in launching prosecution – Contention that on account of delay, sample must have decomposed and unfit for analysis – Rejected: *Govind Prasad Vs. State of M.P., I.L.R. (1995) M.P. 703 (D.B.)*

– **Section 13 (2)** – Prosecution started after nearly about a year of taking sample – Accused prejudiced in the trial as sample could not be sent to director, Central Food

Laboratory before it was decomposed: *Shiv Dayal Vs. State of M.P., I.L.R. (1977) M.P. 360*

– **Section 13 (2) and Prevention of Food Adulteration Rules, 1955, Rule 9-A** provisions of Section 13(2) and Rule 9-A – Are not mandatory but are directory: *Food Inspector, Nagar Palika, Mandsaur Vs. Devilal, I.L.R. (1985) M.P. 127 (F.B.)*

– **Section 13 (2) and Prevention of Food Adulteration Rules, 1955, Rule 9-A** report of Public Analyst not sent to the accused – Prejudice would be writ large – Accused deprived of his valuable right to challenge the report – Acquittal of accused is in accordance with law: *State of M.P. Vs. Kalyanmal Agrawal, I.L.R. (1984) M.P. 106*

– **Section 13 (2) and Prevention of Food Adulteration Rules, 1955, Rule 9-A** – Rule is directory and not mandatory – Report of public analyst not sent to the accused – Prejudice would be writ large – Accused deprived of his valuable right to challenge the report – Acquittal of accused is in accordance with law: *State of M.P. Vs. Kalyanmal Agrawal, I.L.R. (1984) M.P. 106*

– **Section 13 (2) Prevention of Food Adulteration Rules, 1955, Rule 9-A** – Report of Public Analyst – Report of public analyst not filed along with complaint – Ex. P/12 a notice under Section 13 (2) contains the endorsement regarding Regd. Post – Postal receipt regarding dispatch of registered letter not produced – Person who had dispatched report not examined – Applicant deprived of his valuable right of getting sample re-examined – Entire Prosecution and proceedings are vitiated for non-compliance of mandatory requirement under Section 13 (2) and Rule 9-A – Applicant acquitted – Revision allowed: *Nand Kishore Vs. State of Madhya Pradesh; I.L.R. (1994) M.P. 235*

– **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: *Nandlal Khatri Vs. State, I.L.R. (2001) M.P. 269*

– **Section 13 (5)** – Value to be attached to report of Public Analyst – Dependent upon circumstances of the case – Does not indicate that report would be admissible only if it is obtained in the manner prescribed by the rules – Evidence Act – Section 114 – Illustration (e) – Applies to the report of the Public analyst – Presumption is rebuttable – Prevention of Food Adulteration Rules, 1955 – Rules 7 and 18 – Report not inadmissible because of lack of proof of compliance of rules 7 and 18: *The State of M.P. Vs. Chhotekhan, I.L.R. (1971) M.P. 197 (F.B.)*

– **Sections 13 (2) 7 and 16** – Report of the public Analyst must be filed with the complaint – Prosecution filling application under section 13(2) for permission to send a part of sample to the Director of Central Food Laboratory – Magistrate taking cognizance of offence – Magistrate acts illegally – Criminal Procedure Code, 1973 – Section 482 – Complaint or charge-sheet not making out any offence – High Court may exercise inherent jurisdiction to quash proceedings: *Bansilal Vs. Nagar Palika, Bhikangaon, I.L.R. (1982) M.P. 290*

– **Section 16** – Accused not entitled to acquittal on conjectural prejudice: *The State of M.P. Vs. Tulsiram, I.L.R. (1972) M.P. 1082 (D.B.)*

– **Section 16** – Circumstances in which a long delay is fatal: *The State of M.P. Vs. Tulsiram, I.L.R. (1972) M.P. 1082 (D.B.)*

– **Section 16** – Long delay fatal if demand of accused under section 13(2) stands defeated: *The State of M.P. Vs. Tulsiram, I.L.R. (1972) M.P. 1082 (D.B.)*

– **Section 16** – Period for which milk can be preserved: *The State of M.P. Vs. Tulsiram, I.L.R. (1972) M.P. 1082 (D.B.)*

– **Section 16** – Proper quantity of formalin not added in sample – Conviction not challenge able on that ground alone: *The State of M.P. Vs. Tulsiram, I.L.R. (1972) M.P. 1082 (D.B.)*

– **Section 16** – Report of Public Analyst – Good Evidence unless superseded by report of Director of Central Food Laboratory: *The State of M.P. Vs. Tulsiram, I.L.R. (1972) M.P. 1082 (D.B.)*

– **Section 16** – When prejudice caused to accused because of long delay in launching prosecution – Accused entitled to acquittal: *The State of M.P. Vs. Tulsiram, I.L.R. (1972) M.P. 1082 (D.B.)*

– **Section 16** – Words “Prevent from” in – Used in sense of hindering – What amounts to prevention: *Jagannath Vs. State of M.P., I.L.R. (1977) M.P. 496*

– **Section 16 (1) (a) (i) and Prevention of Food Adulteration 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 16 (1) (a) (ii)** – Failure to mention percentage of water – Does not make report imprecise as data includes other things – Second conviction – Provision of

sub-section (ii) are attracted, special and adequate reasons to the contrary to given or minimum sentence to be awarded: *State of MP Vs. Nandram, I.L.R. (1969) M.P. 857 (D.B.)*

– **Section 16 (1) (a) (ii)** – Second conviction – Provision of sub-section (ii) are attracted, special and adequate reasons to the contrary to given or minimum sentence to be awarded: *State of MP Vs. Nandram, I.L.R. (1969) M.P. 857 (D.B.)*

– **Section 16 (1) (b)** – “Prevention” in – Meaning of: *Jagannath Vs. State of M.P., I.L.R. (1977) M.P. 496*

– **Section 16 (1) (b)** – Principle of vicarious liability not applicable to punishment or principal under that provision: *Ghisalal Vs. The State I.L.R. (1970) M.P. 344*

– **Section 16 (1) (b)** – Vendor bolting away leaving articles of food and preventing food inspector from taking sample – No offense committed – “Prevention” in meaning of – Words “Prevent from” in – Used in sense of hindering – What amounts to prevention: *Jagannath Vs. State of M.P., I.L.R. (1977) M.P. 496*

– **Section 16 (1) (c)** – Overt acts on the part of the accused in refusing to give sample, Sign notice and papers, refusing to show bills of purpose and asking the food inspector to leave his place and take any action he might choose to – Amount to ‘prevention’ within this Section: *Narayan Prasad Vs. State of M.P., I.L.R. (1983) M.P. 517*

– **Section 16 (1) (c)** – Refusal and prevention – Distinction between: *Narayan Prasad Vs. State of M.P., I.L.R. (1983) M.P. 517*

– **Section 16 (1) (c)** – The word ‘prevention’ – Meaning of – Refusal and prevention – Distinction between – Overt acts on the part of the accused in refusing to give sample, sign notice and papers, refusing to show bills of purchase and asking the food inspector to leave his place and take any action he might choose to amount to ‘prevention’ within section 16(1)(c): *Narayan Prasad Vs. State of M.P., I.L.R. (1983) M.P. 517*

– **Section 16-A (as incorporated by Amendment Act 34 of 1976)** – Jurisdiction of Court – Summary trial procedure is prescribed on for trial of comparatively minor offences – Magistrate tried the case as a warrant case and not summarily and not passed an order as provided in the proviso of section 16A of the Act – No prejudice or failure of justice caused to accused – Irregularity does not vitiate proceedings and is curable: *Jagdish Prasad Vs. State of M.P., I.L.R. (1995) M.P. 367 (D.B.)*

– **Section 16-A, Criminal Procedure Code, 1974, Section 465** – Offences to be tried summarily – Trial Magistrate adopted procedure of warrant case instead of summary trial as provided under Section 16 A – Trial not vitiated as no prejudice cause

to the accused – Omission on part of Magistrate amounts to irregularity curable under section 465 of Criminal Procedure Code: *Khitai Vs. State of M.P., I.L.R. (1994) M.P. 483*

– **Section 17 (1) and proviso** – A small business carried on in partnership – Partners living in the same town – One partner or paid manager managing the business – Burden on absentee partners to prove their dissociation from business – Presumption that all are connected – Circumstance in which benefit of proviso can be obtained – Food Regulations – Imply vicarious liability on absentee principal – In partnership every partner becomes principal with reference to paid manager or partner who is bodily present: *Sadhuram Vs. State, I.L.R. (1967) M.P. 837*

– **Section 19 (2) (1) and proviso to rule 12-A framed there-under** – Samples taken from sealed – tins bearing manufacturer’s label guaranteeing purity – Vendors, Commission agents possession of such goods and engaged selling them – Such persons are protected under section 19(2)(i) of the Act – The requirements of proviso to rule 12-a are also clearly fulfilled – Such persons are not liable to be convicted: *The Commissioner (The Administrator) Municipal Corporation Jabalpur Vs. M/S Satynarain And Co., Jabalpur, I.L.R. (1977) M.P. 806 (D.B.)*

– **Section 20** – Not obtained from the District Health – Authority – Fatal for the prosecution: *Motumal Vs. State, I.L.R. (2000) M.P. 1165*

– **Section 20 (1)** – Consideration of facts necessary before giving sanction – complainant sanctioning authority – No separate sanction necessary: *Mohanlal Vs. Chief Executive Officer, Jabalpur Corporation, I.L.R. (1959) M.P. 1031*

– **Section 20 (1)** – Food Inspector authorized to institute or give written consent to prosecute for offences under the Act – Persons authorized to prosecute – No written consent necessary – Person filing complaint – Has to consider the reasonableness and propriety of the prosecution and to be satisfied that prosecution is not frivolous and is called for – Words “By or with the consent of State Government” – Not to be interpreted as meaning “by and with the written consent of the State Government”: *The State of M.P. Vs. Pukhraj, I.L.R. (1967) M.P. 144*

– **Section 20 (1)** – Person filing complaint – Has to consider the reasonableness and propriety of the prosecution and to be satisfied that prosecution is not frivolous and is called for: *The State of M.P. Vs. Pukhraj, I.L.R. (1967) M.P. 144*

– **Section 20 (1)** – Words “By or with the consent of State Government” – Not to be interpreted as meaning “by and with the written consent of the State Government”: *The State of M.P. Vs. Pukhraj, I.L.R. (1967) M.P. 144*

– **Section 20–A (as amended by Act 49 of 1964)** – Joint trial – During the trial of any of offence under the Act if the evidence adduced before court discloses – Manufacturer, is also concern with that offence then the court can joint trial of manufacturer along with accused person for the same offence – Provisions of section 319 Cr.P.C. would not stand in the way of such trial: *Delhi Cloth And General Mills Co. Ltd. Vs. State of M.P., I.L.R. (1995) M.P. 433 (F.B.)*

– **Section 20 A (as amended by Act 49 of 1964)** – Joint trial – Manufacturer, distributor or Dealer can be try along with the person already before the court – If the person being try is a dealer would not make the section non-operational: *Delhi Cloth And General Mills Co. Ltd. Vs. State of M.P., I.L.R. (1995) M.P. 433 (F.B.)*

– **Rules – Preservatives properly added** – Delay of 14-15 days not injurious – Section 16 – Circumstances in which a long delay is fatal – Report of Public Analyst – Good evidence unless superseded by report of Director of Central Food Laboratory – Proper quantity of formalin not added in sample – Conviction not challenge able on that ground alone – Long delay fatal is demand of accused under section 13(2) stands defeated – Period for which milk can be preserved – Accused not entitled to acquittal on conjectural prejudice – When prejudice caused to accused because of long delay in launching prosecution – Accused entitled to acquittal: *The State of M.P. Vs. Tulsiram, I.L.R. (1972) M.P. 1082 (D.B.)*

– **Rules framed under the Act – Rules 7 and 18** – Whether directory or mandatory: *Ramkishan Vs. State of Madhya Pradesh, Through Food Inspector, Khargone, I.L.R. (1970) M.P. 510*

– **Rule 9 of the Rule framed under the Act** – Non-compliance by the Food Inspector – Word not initiate the proceedings – Forum for such breach is elsewhere – Revision sans substance: *Gattu Vs. State, I.L.R. (2000) M.P. 286*

– **Rule 20 of the Rules framed under the Act** – Quantity of formalin prescribed by rule not added to sample – Preservative added cannot be said to be adequate to prevent disintegration or damage in composition of milk – Section 13(1) – Weight to be attached to report of Analyst when provision of Rule 20 not fulfilled – Section 2(i) – Milk deemed to be adulterated if it does not contain percentage of fat and non-fatty solids as per minimum prescribed – Section 13(2) – Prosecution filed after nearly 16 months after the date of incident – Accused not in a position to test the report of the Analyst – Valuable right of accused lost – Accused entitled to its benefit – Section 13(1) – Public Analyst examining sample after about 9 days – Value of the report affected: *Municipal Corporation, Gwalior Vs. Kishan Swaroop, I.L.R. (1966) M.P. 810 (D.B.)*

– **Rule 20 of the Rules framed under the Act** – Quantity of formalin prescribed by rule not added to sample – Preservative added cannot be said to be adequate to

prevent disintegration or damage in composition of milk: *Municipal Corporation, Gwalior Vs. Kishan Swaroop, I.L.R. (1966) M.P. 810 (D.B.)*

Prevention of Food Adulteration Rules, 1955

– **Rule 4** – Officer filing complaint under this Act describing himself as “Food Inspector Nagar Palika” – Complaint filed in individual capacity and not on behalf of Municipality – No right in Municipality to file an appeal under Section 417 (3) Criminal Procedure Code: *Municipal Corporation, Indore Vs. Parmanand, I.L.R. (1971) M.P. 982*

– **Rule 5** – Perppermint 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 therefore as per Rule 5 – Conviction and sentence set aside – Accused acquitted of the charge: *Motumal Vs. State, I.L.R. (2000) M.P. 1165*

– **Rules 7 and 18** – Report not inadmissible because of lack of proof of compliance of rules 7 and 18: *The State of Madhya Pradesh Vs. Chhotekhan, I.L.R. (1971) M.P. 197 (F.B.)*

– **Rule 7 (3)** – Public Analyst Report – Delay in sending – Admission of prosecution witness that public analyst report was received on 15.10.1984 – Not a ground to hold that Public Analyst sent its report after 40 days of receipt of sample – However no material to show that on what date and by what mode public analyst sent its report – Creates doubt – Accused entitled for benefit of doubt – Appeal dismissed: *State of MP Vs. Trilokchandra Goyal, I.L.R. (1994) M.P. 427*

– **Rule 18** – Taking of two packets by same individual – No contravention of this Rule: *Municipal Corporation, Raipur Vs. Gopaldas, I.L.R. (1985) M.P. 59*

– **Rule 18** – Word ‘separately’ in – Meaning of: *Municipal Corporation, Raipur Vs. Gopaldas, I.L.R. (1985) M.P. 59*

– **Rule 22** – Non-compliance vitiates report of public analyst – Non-compliance – Not only amounts to infraction but causes injustice to accused: *The Administrator, Jabalpur Corporation, Jabalpur Vs. Gerdharilal, I.L.R. (1977) M.P. 347(D.B.)*

– **Rule 22** – Word “shall” in – Implication of – Provision mandatory – Non-compliance vitiates report of public analyst: *The Administrator, Jabalpur Corporation, Jabalpur Vs. Gerdharilal, I.L.R. (1977) M.P. 347(D.B.)*

– **Rule 44** – Saccharin – Saccharin is artificial sweetner: *Shivraj Tobacco Company Pvt. Ltd., Kanpur Vs. State of M.P., I.L.R. (1990) M.P. 652*

– **Rule 49** – Circumstances when inference of sale can be drawn: *The State of Madhya Pradesh Vs. Ramlal*, I.L.R. (1971) M.P. 938 (D.B.)

– **Rule 49** – Facts about existence of food stock after closure of shop in the shop or counter – No indication of the purpose – Presumption regarding sale drawable if goods are exposed for sale next day: *State of Madhya Pradesh Vs. Ramlal*, I.L.R. (1971) M.P. 938 (D.B.)

– **Rule 49** – Makes mention of the purpose namely sale: *The State of Madhya Pradesh Vs. Ramlal*, I.L.R. (1971) M.P. 938 (D.B.)

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (LXI of 1985)

– **Section 3 (i)** – Whether the charges under this Act would sustain against petitioners had no bearing – Detention could be ordered taking in regard their past activities and likelihood of engaging in illicit traffic of narcotics – Delay – Not calculable from the date of a particular incident: *Amritlal Vs. Union Government, Through Secretary, Ministry of Finance Deptt. of Revenue, New Delhi*, I.L.R. (1999) M.P. 729 (D.B.)

Prevention of Illicit Traffic in Narcotic Drugs and Pyschotropic Substances Act (XLVI of 1988)

– **Section 3** – Preventive Detention – Except alleged recovery and statements no material to manifest “illicit traffic” as a trend – No requisite and sufficient material to support subjective satisfaction – Detention illegal – Order quashed: *Nizamuddin Vs. Union of India*, I.L.R. (1999) M.P. 521 (D.B.)

– **Section 3(1) Constitution of India, Articles 22(5) 226** – Effective representation – Requirements – Order of detention served after seven months of unexplained delay – Documents supplied to detenu are in English – Nothing on record to show that contents of documents were explained to detenu in Hindi – Prejudice caused to detenu who is ignorant of English – Authority passing detention order not filing affidavit to rebut the allegation of non application of mind – Held – Detenu deprived of opportunity to make effective representation and orders issued without application of mind – Order of detention, quashed.: *Arjun Singh Vs. The Union Of India* I.L.R. (1993) M.P. 384 (D.B.)

Price Fixation

– **Price fixation** – Is in nature of legislative measure: *State of M.P. Vs. Ramcharan*, I.L.R. (1978) M.P. 601 (F.B.)

Principal and Agent

– **Authority to agent to sell property** – Authority includes authority to execute contract of sale – Commission Agent authorized to sell property – Agent entitled to commission only after contract is completed and seller has received the consideration: *Manmal Gattani Vs. Radhakishan Kalani, I.L.R. (1968) M.P. 753 (D.B.)*

– **Commission Agent authorized to sell property** – Agent entitled to commission only after contract is completed and seller has received the consideration: *Manmal Gattani Vs. Radhakishan Kalani, I.L.R. (1968) M.P. 753 (D.B.)*

Principle

– **Alteration in procedure is retrospective unless otherwise provided** – Enactment dealing with procedure – Applicable to pending action: *Vansh Bahadur Singh, Vs. Kamla Singh, I.L.R. (1969) M.P. 115*

Principle of Natural Justice

– **Applicable to inquiry by University against student for using unfair means** – University can devise its own procedure: *Rikhabchand, Vs. Jiwaji University, Gwalior, I.L.R. (1969) M.P. 26 (D.B.)*

– **Applicable when authority has to act judicially or quasi – Judicially:** *Maina Bai Vs. State of MP, I.L.R. (1967) M.P. 678 (D.B.)*

– **Depend upon circumstances of the case, the nature of inquiry and the subject matter that is being dealt with:** *Sudhir Kumar Suri Vs. Principal, Mahakoshal Arts maha Vidyalaya, Jabalpur, I.L.R. (1977) M.P. 529 (D.B.)*

– **High Court, Power of, to examine whether principles of natural justice have been followed:** *Nasiruddin Vs. Union of India, I.L.R. (1969) M.P. 386 (D.B.)*

– **Mass copying** – After scrutiny result committee awarded zero marks to some students in certain subjects – Detailed enquiry in respect of each individual by Board not possible – In case of mass copying, Principles of natural justice are not attracted: *Ramgopal Bhadoriya Vs. Secretary, Board of Secondary Education, I.L.R. (2001) M.P. 1796*

– **No notice given to a candidate to show cause before being ousted** – Action is against principles of natural justice: *Dinker Prabhakar Mahajan Vs. S.L. Agrawal, I.L.R. (1978) M.P. 213(D.B.)*

– **No show cause notice why license 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: *M/s Agrawal Medical And General Stores, Jabalpur Vs. State of M.P., I.L.R. (1977) M.P. 618(D.B.)*

– **Not giving of notice and not giving opportunity for hearing** – Violates principle of natural justice: *Sarguja Raigarh Roadways (Pvt.) Ltd., Ambikapur Vs. The Tax Officer (R.T.O.) Bilaspur, I.L.R. (1978) M.P. 857(D.B.)*

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Prisoners Act, Madhya Bharat (LVI of 1950)

– **Accused released after furnishing security after repeal of Act** – The whole proceedings are illegal: *Nageshwar Vs. Satate of M.P., I.L.R. (1971) M.P. 951*

Prisoners Release on Probation Act, M.P. (XVI of 1954)

– **And Prisoners Release on Probation Rules, M.P., 1964 and Prison Rules 1908, Rules 358 and 359** – Release – 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: *Babu Pahalwan Vs. The State of M.P., I.L.R. (1990) M.P. 316 (D.B.)*

– **Prisoners Release on Probation Rules, MP, 1964, Rule 3, Penal Code Indian (XLV of 1860) Section 460 and Constitution of India Article 14** – Constitutional Validity of rule 3 – Does not in any way infringes Article 14 of Constitution rule is valid – Right to be released on probation – Neither fundamental right nor common law right – Statutory right governed by Act and rules only: *Shyam Singh Vs. State of M.P., I.L.R. (1989) M.P. 404 (D.B.)*

– **Section 2** – Criteria mentioned in – To be satisfied before prayer for grant of licence is entertained: *Shibbu Vs. Superintendent, Central Jail, Jabalpur, I.L.R. (1978) M.P. 639(D.B.)*

– **Section 2** – Exercise of power rests on satisfaction of State Government – Satisfaction to be arrived upon conditions mentioned therein: *Sitaram Vs. State of Madhya Pradesh, I.L.R. (1974) M.P. 52 (D.B.)*

– **Section 2** – Power of State Government or Inspector General to curtail powers under the section by issuing circulars – Circular is invalid: *Sitaram Vs. State of Madhya Pradesh*, I.L.R. (1974) M.P. 52 (D.B.)

– **Section 2** – Powers of Government untrammelled – Not affected by circulars requiring prior concurrence of State of conviction as condition precedent – The words “it appears to the Government” in – Implication of – Exercise of power rests on satisfaction of State Government – Satisfaction to be arrived upon conditions mentioned therein – Power of State Government or Inspector General to curtail powers under Section 2 by issuing circulars – Circular is invalid – Transfer of Prisoners Act, 1950 – Section 3 – No inter - State agreement can be arrived at between States so as to impose condition on the release of prisoner – Section 3 (2) – Words “in due course of law” in – Means “under some rule or enactment in force” – Does not contemplate prior concurrence of transferring State as condition precedent for exercise of power under Section 2 of M.P. Prisoner’s Release on Probation Act: *Sitaram Vs. State of Madhya Pradesh*, I.L.R. (1974) M.P. 52 (D.B.)

– **Section 2** – The words “it appears to the Government” in – Implication of: *Sitaram Vs. State of Madhya Pradesh*, I.L.R. (1974) M.P. 52 (D.B.)

– **Section 2** – Word ‘may’ in – Does not mean must: *Shibbu Vs. Superintendent, Central Jail, Jabalpur*, I.L.R. (1978) M.P. 639(D.B.)

– **Section 2 and M.P. Prisoners (Release on Probation)** – Rule 1964 – Rule 7-A-A convict is released on license subject to supervision and on certain conditions breach of which would ensure revocation of license: *Chhatar Singh Vs. Gajendra Singh*, I.L.R. (2000) M.P. 943

– **Sections 2 & 9 – M.P. Prisoners Release on Probation Rule (1964) – Rule 4** – For the purpose of deciding eligibility under Rule 4 – Besides the period of sentence actually undergone after the date of conviction, the period of under trial detention has also been reckoned – Decision in *Ramsewak’s case* does not lay down the correct law: *Rajendra Kumar Vs. State govt. of M.P.*, I.L.R. (1995) M.P. 460 (F.B.)

– **Sections 2, 9 (4) and Prisoners Release on Probation Rules M.P., 1954, Rules 6, 3** – Explanation – State Government or Probation Board not acting arbitrarily, capriciously or with mala fides – Order cannot be challenged in writ under Article 226 of Constitution – Prisoner debarred from making second application for release – However State Government can give direction: *Lalji Vs. State of M.P.* I.L.R. (1989) M.P. 567 (F.B.)

– **Section 6** – Becomes operative after licence is given effect to and implemented by release of prisoner – Till release no question of breach of condition of licence arises – Prisoner to be given an opportunity to show cause against revocation of licence –

Criminal Procedure Code – Section 401 – Release from jail – Does not amount to any remission of sentence – Prisoners Release on Probation Act, M.P. – Section 8 – Period during which prisoner remains out of jail – Period has to be calculated as period of imprisonment which he is sentenced to suffer – Section 2 – Criteria mentioned in – To be satisfied before prayer for grant of licence is entertained – Section 6 – Satisfaction of Government to grant licence – Must continue till prisoner actually released – Grant of licence can be revoked or cancelled if satisfaction of Government ceases to subsist – satisfaction is subjective and not objective – To grant or not to grant a licence – A purely governmental function – Not justiciable at all – Section 2 word ‘may’ in – Does not mean must – Section 6 – Prisoner not entitled to licence as of right – No obligation imposed on Government to grant that benefit – Constitution of India – Article 226 – Finding that prisoner committed breach of condition of licence recorded in the enquiry – Not open to challenge in court of law either in exercise of ordinary civil jurisdiction or extraordinary writ of jurisdiction Prisoners Release on Probation Act, M.P., 1954 – Section – 6 – Reasons recorded in enquiry under – Not justiciable – Court not entitled to quash revocation based on grounds other than breach of any the condition of licence: *Shibbu Vs. Superintendent, Central Jail, Jabalpur, I.L.R. (1978) M.P. 639(D.B.)*

– **Section 6** – Prisoner not entitled to licence as of right – No obligation imposed on Government to grant that benefit: *Shibbu Vs. Superintendent, Central Jail, Jabalpur, I.L.R. (1978) M.P. 639(D.B.)*

– **Section 6** – Reasons recorded in enquiry under – Not justiciable – Court not entitled to quash revocation based on grounds other than breach of any of the conditions of licence: *Shibbu Vs. Superintendent, Central Jail, Jabalpur, I.L.R. (1978) M.P. 639(D.B.)*

– **Section 6** – Satisfaction of Government to grant licence – Must continue till prisoner actually released – Grant of licence can be revoked or cancelled if satisfaction of Government ceases to subsist – Satisfaction is subjective and not objective: *Shibbu Vs. Superintendent, Central Jail, Jabalpur, I.L.R. (1978) M.P. 639(D.B.)*

– **Section 6** – To grant or not to grant a licence – A purely Governmental function – Not justiciable at all: *Shibbu Vs. Superintendent, Central Jail, Jabalpur, I.L.R. (1978) M.P. 639(D.B.)*

– **Section 8** – Period during which prisoner remains out of jail – Period has to be calculated as period of imprisonment which he is sentenced to suffer: *Shibbu Vs. Superintendent, Central Jail, Jabalpur, I.L.R. (1978) M.P. 639(D.B.)*

Prisoners Release on Probation Act, M.P., (XVI of 1958)

– **Section 2 and Prisoner’s Release on Probation Rules 1964, Rule 4, 6(2) and 6 (3)** – Co-accused released on probation but recommendation to reject petitioner’s

application accepted by the Government by one line order – No reason given – Matter remitted back for reconsideration: *Prabhat Singh Vs. State of M.P.*, I.L.R. (2003) M.P. 508

– **Section 2 and Prisoner's Release on Probation Rules 1964, Rule 4, 6(2) and 6(3)** – Law requires the Government to give reasons while accepting the recommendation of the Probation Board: *Prabhat Singh Vs. State of M.P.*, I.L.R. (2003) M.P. 508

– **Sections 2, 9 (4) and Prisoners' Release on Probation Rules, M. P., 1964, Rule 3(a)** – Release of certain prisoners on licence – Intention of the Legislature – Benefit of release on probation – To be made available not to all but to certain prisoners – Limiting its application to less serious crimes – Rule making power – Delegated legislation – Government may make Rules consistent with the Act for defining class of offenders – Not possible for the legislature to envisage and encompass offenders and desirability of their release on probation – Has to be left to the executive – Such delegation of power cannot be said to be in violation of any Constitutional provision or in excess of Rule making provision of the Act – Offences mentioned in Rule 3(a) are serious or heinous offences – Criminals guilty of – Deserve to be treated differently – Could be classified reasonably – Exclusion of certain offences impliedly makes the Act applicable to other kind of prisoners – In no manner defeats the object of the Act – Not in violation of the enabling Act: *State of Madhya Pradesh Vs. Bhola @ Bhairon Prasad Raghuvanshi*, I.L.R. (2003) M.P. 249

Prisoners Release on Probation Rules, M.P., 1964

– **Rule 3** – Prisoner debarred from making second application for release – However, State Government can give direction: *Lalji Vs. State*, I.L.R. (1989) M.P. 567 (F.B.)

– **Rule 3** – Right to be released on probation – Neither fundamental right nor common law right – Statutory right governed by Act and rules only: *Shyam Singh Vs. State of M.P.*, I.L.R. (1989) M.P. 404 (D.B.)

– **Rule 3 (c)** – Deletion of Rule 3(c) and Explanation thereunder – Effect of: *Babu Pahalwan Vs. The State of M.P.*, I.L.R. (1990) M.P. 316 (D.B.)

– **Rules 3 (a) and 4** – Release of prisoners on license – Prisoners convicted for certain offences ineligible for release on license – Petitioner convicted under Section 302 and 394 read with section 397 of I.P.C. – Application for release on license rejected on the ground that petitioner is ineligible for release under Rules 3(a) – Held – Sentence imposed on Petitioner was to run concurrently – Petitioner already undergone the sentence imposed for offence under Sections 394 and 397 of I.P.C. – Petitioner eligible

for release on license under Rule 4 as they cannot be regarded as undergoing sentence thereunder though were undergoing sentence under Section 302 of I.P.C. – Respondents directed to consider their application for release on probation treating them eligible for purposes of Rule 4: *Bhagwat Sharma Vs. State of M.P., I.L.R. (1994) M.P. 302 (F.B.)*

Private Educational Institution (Promotion to Teachers and other Employees Working in Schools) Rules 1988

– **Rule 6 (1)** – Before conferring privilege of promotion prior approval of Commissioner is condition precedent – Prior approval not given by the Commissioner – Petitioners not entitled to get salaries from the State Govt.: *Prakash Chandra Jain Vs. State, I.L.R. (2003) M.P. 36 (D.B.)*

– **Rule 6 (1)** – Before conferring privilege of promotion prior approval of Commissioner is condition precedent – Prior approval not given by the Commissioner – Petitioners not entitled to get salaries from the State Govt. – Petitioners promoted by the Education Society and they worked on the promotional post – Entitled to receive salaries from the society in the relevant pay-scale: *Prakash Chandra Jain Vs. State, I.L.R. (2003) M.P. 36 (D.B.)*

– **Rule 6 (1)** – Petitioners promoted by the Education Society and they worked on the promotional post – Entitled to receive salaries from the society in the relevant payscale: *Prakash Chandra Jain Vs. State, I.L.R. (2003) M.P. 36 (D.B.)*

Prize Chits and Money Circulation Scheme (Banning) Act (XLIII of 1978)

– **Sections 2 (a) (e) and 3 and Lottery (Niyanttran Tatha Kar) Adhiniyam, M.P. (IX of 1974) Sections 2 (1) (a) 6 and 7 – Natural Justice** – Collector not hearing licensee before cancelling licence – grant of licence itself beyond jurisdiction and validity of cancellation is self evident – Question of grant of further opportunity of hearing does not arise – Collector has jurisdiction to direct refund of collections by the promoter of the scheme: *M/s Bombay Scooters, Chhindwara Vs. The Collector, Chhindwara, I.L.R. (1983) M.P. 618 (D.B.)*

– **Sections 2 (a) (e) and 3 and Lottery (Niyanttran Tatha Kar) Adhiniyam, M.P. (IX of 1974) Sections 2 (1) (a) 6 and 7** – Scheme providing for collection from every member in a group of 100 members membership fee of Rs. 5/- and contribution of Rs. 180/- P.M. – Drawing – Lucky number every month for 30 months – Awarding of scooterette to the lucky number holder member as prize – Scheme run by the petitioner is not a conventional chit but a prize chit contravening Section 3 – Scheme is also not a ‘Lottery’ as defined in the State Act – Natural Justice – Collector not hearing licensee

before canceling licence-grant of licence itself beyond jurisdiction and validity of cancellation is self evident- Question of grant of further opportunity of hearing does not arise – Collector has no jurisdiction to direct refund of collections by the promoter of the scheme – Constitution of India Article 246 – Subjection of state Legislature’s power under clause (3) to clauses (1) and (2) – Effect of – Ban imposed under Section 3 of the Central Act to prevail over the State Act in case of conflict: *M/s Bombay Scooters, Chhindwara Vs. The Collector, Chhindwara, I.L.R. (1983) M.P. 618 (D.B.)*

– **Sections 2 (e)** – Arrangement between petitioner and Account-holder enabling the petitioner to receive contribution of Rs. 100/- from each account holder and out of income from such collection awarding periodically to a specified number of persons as determined by lot or draw, prize in kind, amount to Prize Chit banned under the Act: *Sahara India, Lucknow Vs. State of M.P., I.L.R. (1983) M.P. 627 (D.B.)*

– **Section 2 (e)** – Prize Chits – What is – Arrangement between petitioner and Account-holder enabling the petitioner to receive contribution of Rs. 100/- from each account-holder and out of income from such collection awarding periodically to a specified number of persons as determined by lot or draw, prizes in kind, amounts of prize chit banned under the Act: *Sahara India, Lucknow Vs. State of M.P., I.L.R. (1983) M.P. 627 (D.B.)*

– **Section 3** – Ban imposed under – Prevails over the state Act in case of conflict: *M/s Bombay Scooters, Chhindwara Vs. The Collector, Chhindwara, I.L.R. (1983) M.P. 618 (D.B.)*

Probate Court

– **Jurisdiction of, to decide question of title:** *Gendlal Vs. Ratanchand, I.L.R. (1960) M.P. 326(D.B.)*

Probation of Offenders Act (XX of 1958)

– **Section 6** – Accused 16 years of age – Accused entitled to be let off under this provision: *Shiv Dayal Vs. State of M.P., I.L.R. (1977) M.P. 360*

– **Section 6** – What is the crucial date for reckoning 21 years of age – Date of crime or date when punishment is imposed – Relying on the decision of the larger Bench of Supreme Court crucial date is when the trial court has to deal with accused for the purpose of punishment: *Balkishan Vs. State of M.P., I.L.R. (1993) M.P. 667*

– **Section 11 (3)** – Competency of single Judge of exercise power under this provision of his own motion: *Shyam Bihari Vs. State of M.P., I.L.R. (1974) M.P. 185*

– **Section 12** – Not applicable to cases of dismissal of servant on account of his conduct: *Premkumar Vs. The Union of India, I.L.R. (1975) M.P. 274(D.B.)*

Probation of Offenders Act, C.P. and Berar (I of 1936)

– **Section 4 (b)** – Words “not punishable with death or imprisonment for life” – To be interpreted disjunctively and not conjunctively – Purpose of framing the Act: *Cheti alias Sheoprasad Vs. The State of M.P., I.L.R. (1958) M.P. 765 (D.B.)*

Professional Tax

– **Can be levied irrespective of the fact whether a concern earns profit or not:** *Janardan Rao Vs. Municipal Council, Sausar, I.L.R. (1977) M.P. 502*

Professions Tax Limitation Act (XX of 1941)

– **Effect of:** *Manoharrao, Vs. The Municipal Council, Pandhurna, I.L.R. (1968) M.P. 725 (D.B.)*

Profession, Trade, Calling and Employment Taxation Rules, C.P. and Berar, 1942

– **Rules 4, 6 and 7** – Provide machinery for assessment and for raising objection: *Shankar Krishna Nirkhe Vs. The Taxing Officer, District Treasury Indore, I.L.R. (1970) M.P. 87 (D.B.)*

Prohibition Act, C.P. and Berar (VII of 1938)

– **Section 6** – Applicable to preparations declared to be liquor under Section 28-B – Absence of declaration regarding preparation being liquor – Presumption that same falls under Section 28-A – Section 6 not attracted to such preparation – No question of grant of exemption arises – Notification dt/-19-11-1938 – Item 5 – Does not control preparation falling under Section 28-A – Terms and conditions contained in authorisation form – Not to control preparation falling under section 28-A and not declared liquor under Section 28-B – Section 28-H – Deals with tincture whether falling or not falling under Section 28-A – Notification dt/-29-10-1954 – Describes tinctures which are regulated tinctures for purposes of Section 28-H—Notification dt/- 29-10-1954 – Utterly ineffective and invalid: *Shreeram Medical Stores Durg Vs. The State of M.P., I.L.R. (1964) M.P. 828 (D.B.)*

– **Sections 6 and 28-A** – Absence of declaration regarding preparation being liquor – Presumption that same falls under Section 28-A – Section 6 is not attracted to such preparation – No Question of grant of exemption arises: *Shreeram Medical Stores Durg Vs. The State of M.P., I.L.R. (1964) M.P. 828 (D.B.)*

– **Sections 6 and 28-B** – Section 6 is applicable to preparations declared to be liquor under Section 28-B: *Shreeram Medical Stores Durg Vs. The State of M.P., I.L.R. (1964) M.P. 828 (D.B.)*

– **Sections 28-A and 28-B** – Terms and conditions contained in authorization form – Not to control preparation falling under Section 28-A and not declared liquor under section 28-B: *Shreeram Medical Stores Durg Vs. The State of M.P., I.L.R. (1964) M.P. 828 (D.B.)*

– **Section 28-H** – Deals with tincture whether falling or not falling under Section 28-A: *Shreeram Medical Stores Durg Vs. The State of M.P., I.L.R. (1964) M.P. 828 (D.B.)*

– **Section 28-H** – Notification dated 29-10-1954 issued thereunder – Describes tinctures which are regulated tinctures for purposes of Section 28-H: *Shreeram Medical Stores Durg Vs. The State of M.P., I.L.R. (1964) M.P. 828 (D.B.)*

– **Section 28-H** – Notification dated 29-10-1954 issued thereunder – Utterly ineffective and invalid: *Shreeram Medical Stores Durg Vs. The State of M.P., I.L.R. (1964) M.P. 828 (D.B.)*

– **Section 29 (2)** – Notification d/-19-11-1938-Item 5 – Does not control preparation falling under Section 28-A: *Shreeram Medical Stores Durg Vs. The State of M.P., I.L.R. (1964) M.P. 828 (D.B.)*

Prohibition Act, Madhya Pradesh (V of 1961)

– **Sections 6 and 28-B (2)** – Sale of medicinal preparations which were *ex facie* medicinal preparations – Medicines obtained from registered firm manufacturing medicines – Preparation not declared as “liquor” – Possession or sale of such preparation – Does not contravene provisions of Section 6: *State of M.P. Vs. V.L. Jethani, I.L.R. (1969) M.P. 99 (D.B.)*

Promissory Estoppel

– **On the principle of promissory estoppel** the FCI was bound to discharge its obligations arising out of Ex. P-8. FCI being the statutory corporation cannot be allowed to resile from its promise so as to cause harm or injury to the respondent because no inequity or equity in favour of FCI – The contract was not opposed to public policy u/s 23 of the Contract Act or prohibited by any statutory provision of law or *ultra vires* the authority – The case is also not such that public interest would suffer- Thus the respondent entitled to damages: *Food Corporation of India, Bhopal Vs. M/s. Babulal Agrawal, Bhopal, I.L.R. (1996) M.P. 423 (D.B.)*

Promotion

– **New promotion policy of Steel Authority of India Limited** providing higher experience qualification for candidates not possessing requisite educational qualification

for promotion from E-1 grade to E-2 grade and minimum educational qualification for promotion to E-3 (a) and 2 years experience qualification for promotion from E-3(a) to E-3(b) grade not invalid – Allocation of 30% marks for interview – Not unreasonable: *Officers Association, Bhilai Steel Plant, Bhilai Nagar Vs. Steel Authority of India Limited, New Delhi, I.L.R. (1983) M.P. 144 (D.B.)*

– **New promotion policy of Steel Authority of India Limited** resting on reasonable basis and bearing nexus with the object in view – Cannot be struck down as discriminatory or violative of Articles 14 and 16: *Officers Association, Bhilai Steel Plant, Bhilai Nagar Vs. Steel Authority of India Limited, New Delhi, I.L.R. (1983) M.P. 144 (D.B.)*

– **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: *D.R. Jhirad Vs. State of M.P., I.L.R. (1981) M.P. 927 (D.B.)*

– **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.)*

Proof

– **Charge of corrupt practice** – Nature of proof needed – Representation of the People Act Section 123(4)-Essentials of corrupt practice regarding false statement – False statement – Has to be a statement of fact and not statement of expression of opinion statement must be regarding personal character or conduct of candidate-Statement of defamatory opinion – Not a statement of fact – Truth regarding statement of personal character of conduct – Complete defense to corrupt practice – Statement not true but bona fide – Falls outside purview of the section – Section 83(b) – Particulars regarding person distributing pamphlet date and place and description of material necessary to be given – Practice – Appreciation of evidence – Conjectural nature of pleadings – Evidence subsequently sought to adduce to establish – Are to be borne in mind when question of appreciation of evidence arises – Agent – When a person can be said to act as agent of candidate in Election – Section 99-Person not acting as Election agent or agent or worker and with consent of the candidate – His name cannot be recorded under this section: *Raghubirsingh Vs. Raghubirsing Kushwaha, I.L.R. (1972) M.P. 451*

Protection of Scheduled Tribes (Interest in Trees) Act, M.P. (XI of 1956)

– **Object of the Act – Section 3** – Does not prohibit felling of timber or sale of timber – Meant for benefit of tenure-holder and for securing highest consideration – Contract without permission of Collector is invalid and not enforceable – Does not authorize seizure of timber by revenue officer – Section 8 – Provides for prosecution

but does not authorize seizure: *Atikur Rahman Khan Vs. The Naib Tahsildar, Baihar, I.L.R. (1963) M.P. 414 (D.B.)*

– **Section 3** – Does not prohibit felling of timber or sale of timber – Meant for benefit of tenure-holder and for securing highest consideration – Contract without permission of Collector is invalid and not enforceable – Does not authorize seizure of timber by revenue officer: *Atikur Rahman Khan Vs. The Naib Tahsildar, Baihar, I.L.R. (1963) M.P. 414 (D.B.)*

– **Section 8** – Provides for prosecution but does not authorize seizure: *Atikur Rahman Khan Vs. The Naib Tahsildar, Baihar, I.L.R. (1963) M.P. 414 (D.B.)*

Provident Funds Act (XIX of 1925)

– **Section 5** – Subscriber nominating a person entitled to receive the amount – Nominee dying before subscriber – Dependent of subscriber and not the heirs of nominee entitled to the Provident Fund: *Union of Bharat Vs. Aisha Bi, I.L.R. (1957) M.P. 133 (D.B.)*

Provincial Insolvency Act (II of 1936)

– **Section 28** – Receiver appointed after partner declared insolvent – Rights and obligations of such receiver – What and when property vests in him: *Laxminarayan Vs. Dwarkaprassd, I.L.R. (1963) M.P. 263 (D.B.)*

Provincial Insolvency Act (V of 1920)

– **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 (D.B.)*

– **Section 20** – Property of insolvent does not vest in receiver appointed under that section: *Mishrilal Vs. Bhupraj, I.L.R. (1959) M.P. 780*

– **Section 24 (2)** – Object of – Provision mandatory: *Bhawani Prasad Vs. Shrikishna, I.L.R. (1972) M.P. 930 (D.B.)*

– **Section 24 (2)** – Provision mandatory: *Bhawani Prasad Vs. Shrikishna, I.L.R. (1972) M.P. 930 (D.B.)*

– **Section 28 (2) and (6) and Section 52** – Right of a secured creditor to realize or otherwise deal with his security not affected by the order of adjudication – No power in Insolvency Court to remove receiver appointed in suit or by executing Court – Section 20 – Property of insolvent does not vest in receiver appointed under that section – Section 52 – Application under, to be made to the executing court – Insolvency Court has no jurisdiction to entertain and decide the application: *Mishrilal Vs. Bhupraj I.L.R. (1959) M.P. 780*

– **Section 52** – Application under to be made to the executing Court – Insolvency Court has no jurisdiction to entertain and decide the application: *Mishrilal Vs. Bhupraj* I.L.R. (1959) M.P. 780

Provincial Small Cause Courts Act, (IX of 1887)

– **Schedule II, Article 15** – Suit for redemption of pledge – Suit for recovery of specific movable property and not a suit for specific performance of contract – Suit cognizable by small Cause Court: *Jodhai Vs. Bharat*, I.L.R. (1958) M.P. 609 (D.B.)

– **Schedule II, Article 15** – Suit for redemption of pledged goods and in the alternative for payment of value – Such a suit is one for Specific Performance of contract – Not triable by Small Cause Court – Return of plaint proper: *Mohammad Vs. Firm Damodar Nandlal*, I.L.R. (1960) M.P. 521

– **Schedule II, Article 31** – Does not exclude every suit for *mesne* profits – Test to be applied to determine whether suit is for accounts and whether it is excluded from the cognizance of the Small Cause Court – Civil Procedure Code, Order 2, Rule 2 – Cause of action for *mesne* profits accruing prior to the filing of suit for possession – Suit for possession without *mesne* profits filed and decreed – Subsequent suit for *mesne* profits for the period prior to the filling of the former suit barred, but not for subsequent *mesne* profits: *Ramswaroop Vs. Jitmal*, I.L.R. (1966) M.P. 336

– **Schedule II, Article 41** – Applicability: *Lala Ramnarayan Agrawal Vs. shyamsunder Agrawal*, I.L.R. (1977) M.P. 722

– **Section 16 – Court invested with power of Small Causes** – Jurisdiction of Court to which suit stands transferred by Section 25 of the M.P. Civil Courts Act: *Alamchand Birumal, Vs. Motilal Balchand*, I.L.R. (1969) M.P. 674 (D.B.)

– **Section 16** – Only prevents ordinary Court from exercising jurisdiction where Court of Small Cause in existence – Does not oust jurisdiction of ordinary Court: *Alamchand Birumal, Vs. Motilal Balchand*, I.L.R. (1969) M.P. 674 (D.B.)

– **Section 16** – Suit of small cause nature – Suit tried and decided by ordinary civil Court – Decision is not without jurisdiction – Civil Procedure Code – Order 46, rule 7-High court in control of the case – High Court can pass fresh decree – Even though original Court having no jurisdiction had passed the decree – Decree passed by High Court – Is effective by its own force: *Tikaram Vs. Bhaiyalal*, I.L.R. (1972) M.P. 630 (F.B.)

– **Section 17** – Conditions to be fulfilled for a valid application under this Section
 – Power of Court to extend time to deposit the amount or furnish security – Deposit of furnishing security to be within time fixed for making application: *Brindabanprasad Vs. Dashrath, I.L.R. (1967) M.P. 132*

– **Section 17** – Deposit of furnishing security to be within time fixed for making application: *Brindabanprasad Vs. Dashrath, I.L.R. (1967) M.P. 132*

– **Section 17** – Proviso – Security Bond furnished in pursuance of order of Court and accepted by it – Bond does not require to be registered: *Haji Jiwakhan Vs. Gulabchand, I.L.R. (1960) M.P. 516*

– **Section 25** – Civil Practice – Revision or appeal admitted in motion hearing on a specific ground – In appeal or in revision the party cannot be restricted at the final hearing to only specific ground – All the grounds raised in revision or appeal are open-matter different in case of revision on interlocutory matter: *Sukhdeo Vs. Gendalal, I.L.R. (1965) M.P. 335*

Public Demands Recovery Act, Madhya Bharat (XXIV of 1954)

– **Section 20 (2)** – Date from which limitation of six Months is to be counted: *Mangalsa Vs. State of Madhya Pradesh, I.L.R. (1968) M.P. 613 (D.B.)*

– **Section 22** – Court-fees Act – Article 17(1) – Suit for cancellation of certificate – Suit falls under Article 17(1) of the Court – Fees Act – Fixed court-fee payable on plaint – Public Demands Recovery Act, Madhya Bharat – Section 20(2) – Date from which limitation of six months is to be counted – Contract Act – Section 63 – Scope of: *Mangalsa Vs. State of Madhya Pradesh, I.L.R. (1968) M.P. 613 (D.B.)*

Public Gambling Act (III of 1867)

– **Sections 5 and 6** – Court to decide whether matter placed before him has degree of plausibility justifying issue of warrant – Power of Court to investigate soundness or otherwise of decision: *State of M.P., Vs. Ramjan, I.L.R. (1967) M.P. 117 (D.B.)*

– **Sections 5 and 6** – Inquiry not mandatory – Authority can be satisfied by putting questions and it amounts to enquiry: *State of MP Vs. Ramjan, I.L.R. (1967) M.P. 117 (D.B.)*

– **Sections 5 and 6** – Phrases “Has reason to believe”, “Has credible in formation” or “is satisfied” – Are substantially of the same purport – Phrases imply a degree of plausibility – Process of being satisfied – Is a subjective process – Must indicate that authority issuing warrant has thought over the matter and not mechanically signed over dotted line – Inquiry not mandatory – Authority can be satisfied

by putting questions and it amounts to enquiry – Court to decide whether matter placed before him has degree of plausibility justifying issue of warrant – Power of Court to investigate soundness of otherwise of decision: *State of M.P. Vs. Ramjan, I.L.R. (1967) M.P. 117 (D.B.)*

– **Sections 5 and 6** – Process of being satisfied – Is a subjective process – Must indicate that authority issuing warrant has thought over the matter and not mechanically signed over dotted line: *State of M.P. Vs. Ramjan, I.L.R. (1967) M.P. 117 (D.B.)*

– **Section 15** – Essential for its applicability: *Manaklal Vs. State, I.L.R. (1966) M.P. 833*

Public Gambling Act, C.P. And Berar (III of 1927)

– **Section 13** – Forfeiture of amount found at gambling place – Would amount to a penalty – Criminal Procedure Code – Section 415 – Prescribes appeal in case of combination of sentences – Fine coupled with forfeiture – Appeal against conviction is maintainable – Public Gambling Act, C.P. and Berar – Section 13 – Verandah of house – Cannot be held to be a public place: *State of Madhya Pradesh Vs. Kapurchand, I.L.R. (1975) M.P. 925 (D.B.)*

– **Section 13** – Verandah of house – Cannot be held to be a public place: *State of Madhya Pradesh Vs. Kapurchand, I.L.R. (1975) M.P. 925 (D.B.)*

Public Gambling Act, Madhya Pradesh (XII of 1954)

– **Section 5** – Authority under – Exercises double function – Scrutiny of information for drawing presumption permissible: *The State of MP Vs. Jatankumar, I.L.R. (1969) M.P. 665 (D.B.)*

– **Sections 5 and 6** – Gambling indoors in private place – Not punishable – Question whether particular place is gaming house – Question is of fact – Presumption regarding a particular place to be a gaming house when can be drawn – Presumption rebuttable – Test to be applied to determine whether a particular place is gaming house – Authority under Section 5 exercises double function – Scrutiny of information for drawing presumption permissible – Presumption under Section 6 – Not sufficient to justify conviction in every case – Nobody witnessing commission being paid to house owner – Presumption though feeble and not rebutted – Not sufficient to justify conviction: *The State of M.P. Vs. Jatankumar, I.L.R. (1969) M.P. 665 (D.B.)*

– **Sections 5 and 6** – Presumption regarding a particular place to be a gaming house when can be drawn – Presumption rebuttable: *The State of M.P. Vs. Jatankumar, I.L.R. (1969) M.P. 665 (D.B.)*

– **Sections 5 and 6** – Presumption under-Not sufficient to justify conviction in every case – Nobody witnessing commission being paid to house owner – Presumption though feeble and not rebutted – Not sufficient to justify conviction: *The State of M.P. Vs. Jatankumar, I.L.R. (1969) M.P. 665 (D.B.)*

– **Sections 5 and 6** – Question whether particular place is gaming house – Question is of fact: *The State of M.P. Vs. Jatankumar, I.L.R. (1969) M.P. 665 (D.B.)*

– **Sections 5 and 6** – Test to be applied to determine whether a particular place is gaming house: *The State of M.P. Vs. Jatankumar, I.L.R. (1969) M.P. 665 (D.B.)*

Public Health Engineering (Gazetted) Service Rules, 1980

– **Schedule IV-Promotion to the post of Asstt. Engineer** – Promotion of appellants from the post of Sub-Engineer to the post of Asstt. Engineer challenged on the ground that the period of 8 years as provided in Schedule IV should be counted from dated of acquiring qualification and not on the basis of length of service – Held – Rules clearly providing that diploma holders acquiring degree of Engineering while in service shall be eligible – Counting of period of 8 years from the date of acquiring additional qualification while in service will frustrate the incentive sought to be given – Order of Tribunal set aside – Appeal allowed : *M.B. Joshi Vs. Satish Kumar Pandey, I.L.R. (1993) M.P. 14 (D.B.)*

Public Interest Litigation

– **Any thing endangers or impairs quality of life in derogation of laws** – A litigation under label of Public Interest Litigation would be maintainable – Only note of caution that Court should see – Whatsoever is sought to be enforced in Writ Jurisdiction is not vindication of some personal grudge or enmity: *Yogendra Singh Tomar Vs. State of MP, I.L.R. (1996) M.P. 360 (D.B.)*

Public Moneys (Recovery of Dues) Act, M.P. (XXVII of 1981)

– **Sections 3 (1) (b) and 5 and Civil Procedure Code (V of 1908) Order 47, rule 1 and section 115** – Section 3(1)(b) of the Act applies only to loans granted under State Sponsored Scheme – Suit for recovery of loan not covered under the Act dismissed as abated under section 5 of the Act on an erroneous concession made by the plaintiff's counsel – Mistake apparent on the face of the record – Liable to be reviewed – Trial Court refusing to entertain review application – Revision maintainable: *Punjab National Bank, Betul Vs. Deviram, I.L.R. (1984) M.P. 266*

– **Section 5** – Suit for recovery of loan not covered under the Act dismissed as abated under section 5 of the Act on an erroneous concession made by the plaintiff's

counsel – Mistake apparent on the face of the record – Liable to be reviewed – Trial Court refusing to entertain review application – Revision maintainable: *Punjab National Bank, Betul Vs. Deviram*, I.L.R. (1984) M.P. 266

Public Premises (Eviction of Unauthorised Occupants) Act (XL of 1971)

– **Section 1** – Applicability of Act – Court below has given finding that buildings were constructed over acquired land – High Court has not upset the finding – Provision of the Act is clearly applicable: *Ku. Archana Dey Vs. South Eastern Coalfields Ltd.*, I.L.R. (1996) M.P. 351

– **Sections 1, 5A & 5B** – No serious dispute about title of land – The controversy revolves around the identification of the acquired land – Plea of non-applicability of provisions of Act – Court refuse to accept the plea: *Ku. Archana Dey Vs. South Eastern Coalfields Ltd.*, I.L.R. (1996) M.P. 351

– **Sections 5A & 5B** – Merely wrong reference of a provision of law in notice or in order shall not invalidate notice or order – Estate Officer's order can not be faulted on ground that in notice only Section 5A of Act was referred: *Ku. Archana Dey Vs. South Eastern Coalfields Ltd.*, I.L.R. (1996) M.P. 351

– **Section 9** – Does not authorise issue of direction as to re-delivery of possession: *Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai Vs. The District Judge, Durg*, I.L.R. (1980) M.P. 639 (D.B.)

– **Section 9** – Order passed by District Judge thereunder Revision lies against the order to the High Court – Procedure to be followed by Estate Officer under the Act: *Ayodhya Prasad Vs. Union of India*, I.L.R. (1982) M.P. 985

– **Section 9 (1)** – District Judge means the District Judges constituting a class – 'Appellate authority' so designated cannot be construed to be a persona designata: *Jinda Ram Vs. Union of India*, I.L.R. (2000) M.P. 1300 (D.B.)

– **Sections 9 and 10** – Appeal against order Estate Officer provided before the 'District Judge' as 'appellate authority' as defined under: *Jinda Ram Vs. Union of India*, I.L.R. (2000) M.P. 1300 (D.B.)

– **Section 10** – Does not attach finality to orders terminating or disposing of the appeal for want of prosecution or failure to appear on the date fixed: *Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai Vs. The District Judge, Durg*, I.L.R. (1980) M.P. 639 (D.B.)

– **Sections 10** – 'Finality' attaching to the order of appellate authority would not mean that power of superintendence of High Court over the Court of District Judges is taken away – Court of District Judge exercising special power conferred by any Act

other than the CPC would always be amenable to revisional – Jurisdiction of the High Court under Section 115 of the Code: *Jinda Ram Vs. Union of India*, I.L.R. (2000) M.P. 1300 (D.B.)

– **Section 11** – Is intra vires: *Steel Authority of India Ltd. Bhilai Vs. Aeltemesh Rein*, I.L.R. (1984) M.P. 183

– **Section 11** – Procedure to be followed in cases of prosecution under: *Steel Authority of India Ltd. Bhilai Vs. Aeltemesh Rein*, I.L.R. (1984) M.P. 183

– **Section 11 and Penal Code, Indian (XLV of 1860)** Section 454 – Offence of Criminal trespass – Nature of – Whether accused can be discharged at the preliminary stage without holding trial – Offences under section 454, I.P.C. and section 11 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 – Respective scope of – Act is intra vires – Procedure to be followed in cases of prosecution under section 11 of the Act: *Steel Authority of India Ltd. Bhilai Vs. Aeltemesh Rein*, I.L.R. (1984) M.P. 183

– **Section 18** – Appellate Officer can dispose of appeal on the ground of non-prosecution – Appellate Officer has also power to restore appeal which has not been dismissed on merits: *Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai Vs. The District Judge, Durg*, I.L.R. (1980) M.P. 639 (D.B.)

– **Section 18** – Does not permit dismissal of appeal for default of appearance – Appeal could be decided in appellant's absence – Order dismissing appeal for default of appearance – Such order is non-est – Appeal can be restored to rectify the mistake: *Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai Vs. The District Judge, Durg*, I.L.R. (1980) M.P. 639 (D.B.)

– **Section 18 (2) (b)** – Does not make procedure of appeal under Civil Procedure Code applicable to appeals under this Act – Section 18 and Rule 9 of the rules framed under – Do not empower dismissal of appeal *in limine* – Section 18 – Does not permit dismissal of appeal for default of appearance – Appeal could be decided in appellant's absence – Order dismissing appeal for default of appearance – Such order is non-est – Appeal can be restored to rectify the mistake – Section 9 – Does not authorise issue of direction as to re-delivery of possession – Section 10 – Does not attach finality to orders terminating or disposing of the appeal for want of prosecution or failure to appear on the date fixed – Section 18 – Appellate Officer can dispose of appeal on the ground of non-prosecution – Appellate Officer has also power to restore appeal which has not been dismissed on merits – Restitution – Possession taken in contravention of stay order or in absence of knowledge of stay order – Sometimes it is proper to direct redelivery of possession – Estoppel – For applicability, taking of advantage by other party necessary – Estoppel – Mere mechanical receipt of costs without conscious decision

to abandon right – Will not create estoppel – Constitution of India – Article 226 – Cannot be invoked case of interlocutory order of Tribunals – Tribunals acting in arbitrary – Order can be interfered under this jurisdiction: *Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai Vs. The District Judge, Durg, I.L.R. (1980) M.P. 639 (D.B.)*

– **Section 18 and Rule 9 of the Rules framed under** – Do not empower dismissal of appeal *in limine*: *Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai Vs. The District Judge, Durg, I.L.R. (1980) M.P. 639 (D.B.)*

– **Sections 406 and 420, read with section 34** – Business contracts – Complaint filed under these sections – Alleging breach of terms and conditions of Contract in not rendering accounts or remitting the balance amount – Is a dispute of a civil nature – Filing of complaint and order registering the complaint and issue of process to the opposite party – Amount 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. 73*

– **Section 497 and Contract Act, Indian (IX of 1872) Section 23** – Adultery as defined in section 497 of the code – Not proved – Agreement is not hit by section 23 of the Contract Act: *Subhashchandra Vs. Smt. Narbadabai, I.L.R. (1983) M.P. 153*

Public Premises (Eviction of Unauthorised Occupants) Act (XXXII of 1958)

– **Section 9 (1)** – “District Judge” in – Is a *persona designate* and not Court of District Judge – No revision against order of District Judge lies to High Court – Section 10 – Word “application” in – Covers an application under Section 115, Civil Procedure Code: *Hargovind Vs. Divisional Engineer, South-Eastern Railway, Bilaspur, I.L.R. (1965) M.P. 998*

– **Section 9 (1) and Civil Procedure Code, Section 115** – “District Judge” in Section 9(1) – Is a *persona designata* and not Court of District Judge – No revision against order of District Judge lies to High Court: *Hargovind Vs. Divisional Engineer, South-Eastern Railway, Bilaspur, I.L.R. (1965) M.P. 998*

– **Section 10** – Word “application” in – Covers an application under Section 115, Civil procedure Code: *Hargovind Vs. Divisional Engineer, South-Eastern Railway, Bilaspur, I.L.R. (1965) M.P. 998*

Public Security Act, Madhya Pradesh (XXV of 1959)

– **Petitioner taking proceedings under the Act** – Cannot challenge provision of that Act: *Shri Gulabchandra Vs. The Government of Madhya Pradesh, I.L.R. (1964) M.P. 694 (D.B.)*

– **Section 3 (1)** – District Magistrate or State Government acting under – Does not exercise *quasi*-judicial function: *Thakur Bharatsingh Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **Section 3 (1)** – Legislation is in public interest – Restrictions imposed in the interest of general public: *Thakur Bharatsingh Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **Section 3 (1)** – Principle of natural justice not applicable: *Thakur Bharatsingh Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **Section 3 (1) (a)** – Direction given under – Does not restrict movement: *Thakur Bharatsingh Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **Section 3 (1) (a)** – Direction in – Directions precautionary: *Thakur Bharatsingh Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **Section 3 (1) (a)** – Test to be applied in determining whether restrictions are reasonable: *Thakur Bharatsingh Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **Section 3 (1) (a) (b) and (c)** – Directions in clause (a) of Section 3(1) – Directions precautionary – Legislation is in public interest – Restrictions imposed in the interest of general public – Words “In the interest of general public” in – Meaning of – Test to be applied in determining whether restrictions are reasonable – District Magistrate or State Government acting under – Does not exercise *quasi*-judicial function – Principle of natural justice not applicable – Section 3(1)(b) – Content of power given by – Not in the nature of reasonable restriction – Restriction of movement – An unreasonable restriction – Section 3(1)(a) – Direction given under – Does not restrict movement – Section 3(1)(b) – *Ultra vires* but not clause (c) – Constitution of India – Article 358 – Does not cover executive action taken in pursuance of legislation passed prior to Constitution: *Thakur Bharatsingh Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **Section 3 (1) (b)** – Content of power given by – Not in the nature of reasonable restriction: *Thakur Bharatsingh Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **Section 3 (1) (b)** – Restriction of movement – An unreasonable restriction: *Thakur Bharatsingh Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **Sections 3 (1) (b) and (c) – 3 (1) (b)** – *Ultra vires* but not clause (c): *Thakur Bharatsingh Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **Section 12** – Provisions in – Are reasonable and constitutional: *Ramnarayan Vs. State of M.P., I.L.R. (1974) M.P. 614 (D.B.)*

– **Section 12 (1)** – Agitation on platform and in press – Does not take the place of satisfaction which Government is required to reach: *Shri Gulabchandra Vs. The Government of Madhya Pradesh, I.L.R. (1964) M.P. 694 (D.B.)*

– **Section 12 (1)** – Does not speak of tendency of publication to undermine the security of State etc.—Speaks about reasonable and natural effect of sale etc. of the publication: *Shri Gulabchandra Vs. The Government of Madhya Pradesh, I.L.R. (1964) M.P. 694 (D.B.)*

– **Section 12 (1)** – Facts to be taken into consideration in determining whether publication falls under this provision: *Shri Gulabchandra Vs. The Government of Madhya Pradesh, I.L.R. (1964) M.P. 694 (D.B.)*

– **Section 12 (1)** – For the purpose of the section, distinction to be drawn between different types of publication – In Consideration of the effect of publication – Standard of reasonable man to be adopted – Truth and falsity irrelevant, so also the fact of the matter in disputed publication appearing in other publications: *Shri Gulabchandra Vs. The Government of Madhya Pradesh, I.L.R. (1964) M.P. 694 (D.B.)*

– **Section 12 (1)** – Memo of Education Board – Does not take the place of order of Government: *Shri Gulabchandra Vs. The Government of Madhya Pradesh, I.L.R. (1964) M.P. 694 (D.B.)*

– **Section 12 (1)** – Publication has to be read as a whole in fair, free and liberal spirit: *Shri Gulabchandra Vs. The Government of Madhya Pradesh, I.L.R. (1964) M.P. 694 (D.B.)*

– **Section 12 (1) (i)** – Prohibits only bringing into publication or its sale or distribution or circulation within State absolutely or for specific period: *Ramnarayan Vs. State of M.P., I.L.R. (1974) M.P. 614 (D.B.)*

– **Section 12 (1) (i)** – Words “bringing into” in – Refer to publication printed outside the State: *Ramnarayan Vs. State of M.P., I.L.R. (1974) M.P. 614 (D.B.)*

– **Section 12 (1) (i) and (ii)** – Difference between the two: *Ramnarayan Vs. State of M.P., I.L.R. (1974) M.P. 614 (D.B.)*

– **Section 12 (1) (ii)** – Import of words “such matter” in clause (ii) of sub-Section (1) of Section 12: *Ramnarayan Vs. State of M.P., I.L.R. (1974) M.P. 614 (D.B.)*

– **Section 12 (5)** – Petition to High Court thereunder – Things which High Court has to consider: *Shri Gulabchandra Vs. The Government of Madhya Pradesh, I.L.R. (1964) M.P. 694 (D.B.)*

– **Section 12 (5)** – Provisions safe – guards against capricious and arbitrary exercise of power – Gives power of High Court to see whether order is justiciable and also the nature and extent of prohibitory order: *Ramnarayan Vs. State of M.P., I.L.R. (1974) M.P. 614 (D.B.)*

– **Sections 12 (1) and (5) – Petition to High Court under sub-section (5) of Section 12** – Things which High Court has to consider – Section 12(1) – Does not speak of tendency of publication to undermine the security of State etc. – Speaks about reasonable and natural effect of sale etc. of the publication – Publication has to be read as a whole in fair, free and liberal spirit – Facts to be taken into consideration in determining whether publication falls under this provision – For purpose of Section 12(1) distinction to be drawn between different types of publications – In consideration of the effect of publication – Standard of reasonable man to be adopted – Truth and falsity irrelevant, so also the fact of the matter in disputed publication appearing in other publications – Words and Phrases – Word “Sampark” – Meaning of – Agitation on platform and in press – Does not take the place of satisfaction which Government is required to reach – Memo of Education Board – Does not take the place of order of Government – Petitioner taking proceedings under the Act – Cannot challenge provision of that Act: *Shri Gulabchandra Vs. The Government of Madhya Pradesh, I.L.R. (1964) M.P. 694 (D.B.)*

– **Section 19 (1)** – Allegations that accused were unauthorised to enter a particular area not stated either in challan or in the particulars of offence put to accused – Accused pleading guilty – Conviction of accused not proper – Section 20(1) – Words “regulate the entry of persons” implies putting of restriction upon persons permitted to enter into the said area – Restrictions in term – *Vires of* – Section 20(4) – Order made under Section 20(1) and (2) – Order deemed to be part of the statute – Contravention of the order – Persons contravening liable to be punished – Criminal Procedure Code – 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 – Criminal Procedure Code – 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 20 (1)** – Words “regulate the entry of persons” implies putting of restriction upon persons permitted to enter into the said area – Restrictions in term – *Vires of: The State of M.P. Vs. Mustaq Hussain Azad, I.L.R. (1966) M.P. 979 (D.B.)*

– **Section 20 (4)** – Order made under Section 20(1) and (2) – Order deemed to be part of the statute – Contravention of the order – Persons contravening liable to be punished: *The State of M.P. Vs. Mustaq Hussain Azad, I.L.R. (1966) M.P. 979 (D.B.)*

Public Service Commission (Limitation of Function) Regulations, M.P. 1957

– **Regulation 5** – Adhoc Appointments – May be made without consultation of Public Service Commissioner a limited period of six months – Constitution of India –

Articles 14 and 16 – Policy of adhocism – Violates Articles 14 and 16: *Dr. Satish Bhandari Vs. State of M.P., I.L.R. (1987) M.P. 16*

Public Trusts Act, Madhya Pradesh (XXX of 1951)

– **Confers no authority on Registrar to lease by auction or otherwise property of Trust** – Sections 15 and 16 – Accounts after the registration of the Trust can only be directed to be audited by special auditor: *Radheshyam Vs. The Registrar of Public Trusts, Narsimhapur, I.L.R. (1968) M.P. 224 (D.B.)*

– **Does not make a person initiating enquiry or every person interested in Trust property a party to suit – Civil Procedure Code – Order 1, rule 10** – Plaintiff is *dominus litis* – Cannot be compelled to join any person as party against his wish – Order 1, rule 10(2) – Enjoins joinder of two classes of persons – Person whose legal rights are likely to be affected by the litigation can be added as party – Persons whose presence before Court is necessary to settle the question completely – Such a person is a necessary party and ought to be joined – Indirect or incidental interest not enough or in his absence case cannot be defended by party adequately: *Bajinath Vs. The State of Madhya Pradesh, I.L.R. (1974) M.P. 853*

– **Provisions of the Act** – Effect on Section 92 Civil Procedure Code – Constitution – Articles 25 and 26 – Distinction between matters of religion and holding and management of property by religion institution – Matters of religion outside pale of Municipal Law, but not true of property – Madhya Pradesh Public Trusts Act – Section 2 (4) – Religious and Charitable Institutions – Absence of existence of public Trust – Institutions do not come under the definition – The term “Trust” in – Has same meaning as given in Indian Trusts Act – Constitution – Article 226 – State Government, Right of, to impugn order passed by Registrar under Madhya Pradesh Public Trusts Act: *State of MP Vs. Mother Superior Convent School, I.L.R. (1957) M.P. 599 (D.B.)*

– **Public Trust situate outside M.P.** – Not required to be registered under this Act: *Shri Venkatesh Bhagwan, Faizabad Vs. Janki Prasad Choudha, I.L.R. (1990) M.P. 342*

– **Trust registered as a Public trust under** – Carrying on moneylending business – Is governed by M.P. Moneylenders Act: *Rajaram Vs. Nandkishore, I.L.R. (1980) M.P. 149 (D.B.)*

– **Sections 2 (4) 26 and 27 (4)** – Trust registered as public Trust – Suit for removal of trustees or appointment or new trustees under Section 92, Civil Procedure Code barred – Remedy is under section 26 of the Act: *Gajadhar Vs. Mst. Rajrani, I.L.R. (1979) M.P. 152 (D.B.)*

– **Section 4** – Registrar of Public Trust, jurisdiction of, to decide whether applicant has a right to make application for registration of trust and to proceed with enquiry to register trust if necessary: *Umedibhai Vs. The Collector, Sehore, I.L.R. (1974) M.P. 609 (D.B.)*

– **Sections 4, 5 and 26** – Public or private Trust – Considerations and characteristics temples held to be public temples liable to be registered under the Act: *Hemraj Vs. Ravi Prakash Pujari, I.L.R. (1988) M.P. 677*

– **Sections 4, 5, 7 and 26-A** – Public trust has to be registered by the Registrar under Section 4 after enquiry under Section 5 and entry made under Section 7 of the Act – Such existing trust can only be registered as public trust on an application made under Section 4 within three months of commencement of that section in a particular area – Civil Court would not have jurisdiction until and unless there is an enquiry by the Registrar under Section 5 of the Act – Memorandum of State Government No. 745/3693/VIII/73, dated 12.4.1974 not applicable to private trust – Even a trespasser can only be removed by the process of law – Case of appellant was that the suit property belonged to his successors – in-title – It was purely private property – Not necessary to make the temple or deity of the temple a party – Decree of Trial Court joint and individual – Could not be set aside in absence of legal representative of Respondent – Entire appeal abated before the first appellate court as no steps were taken by respondent for setting aside abetment at first appellate stage or before this Court: *Hargovind Vs. State, I.L.R. (1999) M.P. 143*

– **Sections 5 and 6** – Registrar not recording findings on matters mentioned in section 5—Order of Registrar not sustainable – Determination of question regarding public trust in the manner laid – *A sine qua non* for exercising jurisdiction – Grant is to person and not to temple – Constitution – Article 226 – Error patently manifest on face of order – Another remedy available but proverbially tortuous – Power of High Court to interfere: *Rewaram Vs. The Registrar, Public Trusts, Narsinghpur, I.L.R. (1962) M.P. 38 (D.B.)*

– **Sections 5, 6 and 7** – Provisions of, mandatory – Section 26 – Trust not registered as public trust – Application under the section – Jurisdiction of Registrar to entertain and decide the application: *Kailashanand Vs. Rewaram, I.L.R. (1965) M.P. 910 (D.B.)*

– **Sections 5 to 8** – Provisions in – Are in the nature of a complete Code – Person aggrieved can obtain relief by instituting a suit under Section 8 – Registrar given power to determine nature of Trust and its property – Civil suit under the general rule is barred – Pleadings – Construction: *Bismillasab Vs. Habib Miyan, I.L.R. (1962) M.P. 719*

– **Sections 5, 26 and 10** – “Mehdi Bauhg Public Trust, Nagpur” – Application for its registration as a public trust made before Registrar Public Trusts, Nagpur – Registrar recorded a finding that it is not a public Trust – Civil Suit challenging the finding dismissed holding that plaintiffs had no locus standi to file suit – ‘However’, finding about nature of trust reversed – Appeal and cross-objection pending – Petitioners

filling application under sections 26 and 10 before Registrar public trusts, Jabalpur for direction held registrar Public Trusts, Jabalpur has no jurisdiction to entertain these applications or to pass any order on them – Petition dismissed: *Dinesh Kumar Jaiswal Vs. Collector, Jabalpur, I.L.R. (1990) M.P. 142 (D.B.)*

– **Section 6** – Question whether Trust is public trust and its registration necessary – Question falls within the jurisdiction of Registrar – His decision final and conclusive subject to result of suit – Section 32 – Dispute regarding registration of the Trust and maintainability of suit – Court has to record provisional finding – If objection upheld, suit to be stayed until final decision: *Shri Deo Hanumanji Swami Vs. Ram Gulam, I.L.R. (1963) M.P. 755 (D.B.)*

– **Section 7 (2)** – Entries made in register operate as decision in rem – Section 27 – Interpretation of Section 92, Civil Procedure Code – Cannot be invoked in interpreting this provision – Scope of the provision is of a different nature – When trustee is removed – That trustee has to hand over possession to newly appointed trustee – Power to give direction under clause (f) Section 27 – Includes the power regarding direction to deliver possession: *Dhanpalsingh Vs. Hariram, I.L.R. (1976) M.P. 1031(D.B.)*

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– **Section 72** – Suit for damages for injury to goods – Assessment of damages by officer of railway – Assessment binding on railway still consignee to prove the quantum of damages – Goods utilized by consignee – Consignee can claim on basis of assessment made – Limitation Act, Article 30 – Suit for damages for injury to goods – Governed by this Article – Starting point – Date of delivery in the absence of proof of

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– **Section 72** – Suit for damages for loss of goods due to fire – Not possible for Railway to say regarding cause of fire in every case – Not necessary in every case to prove actual origin of fire – Loss of goods by bailee – *Prima facie* evidence of negligence – Burden to disprove negligence on railway: *Union of India Vs. Raigarh Jute Mills, LTD Raigarh, I.L.R. (1961) M.P. 277 (D.B.)*

– **Section 72** – “Visual Test” of wagon – Is a good test: *Union of India Vs. Hukumchand, I.L.R. (1971) M.P. 90 (D.B.)*

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– **Sections 73, 78 (d)** – Suit for damages due to delayed transit of goods on the ground that price had fallen at the destination – Suit decreed – First appeal by Railways – Such an action not barred u/s 78(d) of the Act: *Union of India, Through General Managers Vs. M/s Jaikumar Rajkumar & Company Jabalpur, I.L.R. (1992) M.P. 833*

– **Section 74-A** – Fact of defective packing not recorded in forwarding note – Advantage under the section not available: *The Union of India, Ministry of Railways New Delhi, Vs. Messrs Allauddin Aulia Sahib, I.L.R. (1962) M.P. 697 (D.B.)*

– **Section 74-C** – Defective condition or improper packing not recorded in forwarding note – Railway not exonerated from liability and proof on negligence or misconduct not required, *Shri B.S. Gupta Vs. Union of India, through the General Manager, Central Railway, Bombay, I.L.R. (1966) M.P. 822*

– **Section 74-C** – Goods booked at railway risk rate – Liability for damages on railway even if goods not properly packed – Burden not on assignee to prove negligence or misconduct – Duty of railway to see that goods are properly packed – Acceptance of improperly packed goods at railway risk rate – Railway cannot repudiate liability on ground of defective packing – Section 72 – Liability of railway is that of bailee – Burden on railway to prove that it has taken care as a man of ordinary prudence – Responsibility altered where provisions of Section 74-A or 74-C apply – Defective

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– **Section 74-C (3)** – Burden how can be discharged: *Balmukund Lakhani Vs. The Union of India, I.L.R. (1973) M.P. 650*

– **Section 74-C (3)** – Goods booked at owner's risk rate – Burden of proving negligence on consignor – Words “from any cause what-soever” in cover cases when goods damaged due to natural causes, due to shifting of packages during transit – Burden how can be discharged – Presumption that requirements of the rule complied with – Loss or damage to goods – Not *prima facie* proof of negligence – Maxim *res ipsa loquiritur* not applicable General rules of Goods Tariff – Rule 33 – Prescribes manner of making a claim – Rule made in order to provide some sort of check against fraudulent claim: *Balmukund Lakhani Vs. The Union of India, I.L.R. (1973) M.P. 650*

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– **Section 74-E** – Deviation of route of carriage – Railway liable to damages for deviation subject to the said section: *Seth Laxmichand Vs. The Union of India, I.L.R. (1966) M.P. 740(D.B.)*

– **Section 76-D** – All concerned railway administrations – Deemed to be contracting parties – Liability of all will be the same: *Firm Kaluram Ram Narayan Etc., Bilaspur Vs. Union of India, Representing General Manager, South Eastern Railway, Etc., I.L.R. (1978), MP 497*

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– **Section 77** – And Civil Procedure Code (V of 1908), Section 80 – Notice under section 77, mandatory – Combined notice under Section 77 and 80 – Validity –

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– **Section 77** – Notice mentioning wrong destination station – Defect if fatal rendering notice invalid – Minor defects in notice does not render it invalid – Invalidity of notice to be pleaded: *M/s Bisanchand Lalchand Vs. Union of India, I.L.R. (1961) M.P. 173*

– **Section 77** – Notice not given to a particular railway – No suit maintainable against that railway: *Union of India Vs. Firm Munnalal Pasari and sons, Satna, I.L.R. (1971) M.P. 314*

– **Section 77** – Notice to each railway administration sued is necessary – Civil Procedure Code – Order 8, Rule 5 – Applicable where defendant resists the suit – Railway Act – Section 72 – Short delivery by delivering Railway – Burden on delivery railway to prove that loss did not occur on its railway – Section 140 – Provision in – Not mandatory – Service on Chief Commercial Superintendent – Service is good since he entered into correspondence: *The Tahsil Co-Operative Agricultural Association Ltd.,*

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– **Section 77** – Notice under – Can be by manager or by members but not in the name of business: *Union of India, representing the South Eastern Railway, Calcutta Vs. Satyanarain, I.L.R. (1963) M.P. 926*

– **Section 77** – Requirement of – Notice does not require money value of the claim to be stated – No detailed computation of compensation claimed – No further notice necessary to be given where Railway administration took time to trace the consignment after notice was given – Notice claiming compensation for non-delivery – Suit for damages for deterioration of goods and late delivery – Earlier notice not rendered invalid – C.P. Code Section 80 – Notice not to be construed as a pleading – Common sense to be imported into notices given under the section: *Firm Dhanraj Samrathmal, Balaghat Vs. Union of India, I.L.R. (1959) M.P. 18 (D.B.)*

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– **Section 77-B** – Consignor giving declaration about non-payment of percentage charges on value as required by administration – No necessity for further demand by administration – Consignor prohibited from urging that administration did not demand additional charges – Railways Act, Second Schedule, Item (q) Includes citronella-oil: *The Union of India Vs. Nichaldas, I.L.R. (1969) M.P. 323*

– **Section 77-C** – Clause “notwithstanding anything contained in the foregoing provisions of this chapter” – Section 77-C excludes section 73 in the context of cases

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– **Section 77-C** – Is in Nature of exception: *Ratanlal Vs. The Union of India, Representing South Eastern, Railway and Central Railway Administration, I.L.R. (1973) M.P. 910 (D.B.)*

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– **Section 77-C (1) and (2)** – Circumstances in which railway administration is under a duty to make disclosure regarding carriage of goods and when adverse inference should or should not be drawn against it: *Ratanlal Vs. The Union of India, Representing South Eastern, Railway and Central Railway Administration, I.L.R. (1973) M.P. 910 (D.B.)*

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– **Section 78 B** – Notice – Refund of overcharges – Held – The excess of money recovered from the Appellant is not of the same “genus” or class – Excess of Freight was charged was not permitted by law – The excess of charge belonged to different “genus or class” because it was charged on a supposition that goods are liable to be carried by a longer route under the rationalized scheme – It was not actually so – Thus it fall in the category i.e. money recovered when nothing was due – In such a case Section 78-B did not apply – Appeal Allowed: *Associated Cement Co. Ltd. Vs. Union of India, I.L.R. (1997) M.P. 208*

– **Section 80** – Goods traveling over different railway administrations – Essentials to be proved to fasten liability on particular railway – Amended provision inserted by amendment of 1961 – Purpose of effecting amendment – Section 76-D – All concerned

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– **Section 82-A** – During shunting operation for detaching bogies, passenger fell out of train and his right arm crushed by train – Railway Administration liable for compensation: *Sunil Kumar Ghosh Vs. Union of India, I.L.R. (1983) M.P. 452 (D.B.)*

– **Section 82-A** – Statutory liability of Railway Administration to pay compensation – nature of – Negligence of passenger not relevant: *Sunil Kumar Ghosh Vs. Union of India, I.L.R. (1983) M.P. 452 (D.B.)*

– **Section 82-A** – The word ‘Accident’ and the expression ‘accident to a train’ – Meaning and connotation of – Statutory liability of Railway Administration to pay compensation – Nature of – Negligence of passenger not relevant – During shunting operation for detaching bogies, passenger fell out of train and his right arm crushed by the train – Railway Administration liable for compensation: *Sunil Kumar Ghosh Vs. Union of India, I.L.R. (1983) M.P. 452 (D.B.)*

– **Section 82 C, Explanation** – Definition of “Dependant” amended by new Act and redefined it in the Act in Clause B of Section 123 – In view of amended definition even an earning member who is not depended on the deceased is entitled to claim compensation – Chapter XIII of the Act has not been retrospectively applicable expressly or by implication – Subsequent change in law can not be taken into consideration – Application filed by earning member not maintainable: *Sarat Chandra Nanda Vs. Union Of India, I.L.R. (1996) M.P. 151 (D.B.)*

– **Section 101** – Rules S.R.37 (2) and Rule 52 of General Rules for Indian Railways – Non-Compliance with mandatory rules resulting in collision – Assistant Station Master and pointsman on duty convicted under Section 101, Railways Act in appeal against acquittal – Approach to such a case in respect of evidence discussed – Section 337, I.P.C. – On same facts conviction there under not maintainable – Section 304-A – Death must be the direct result of rashness or negligence: *The State of M.P. Vs. Ranjit kumar Chaterjee, I.L.R. (1959) M.P. 411 (D.B.)*

– **Section 140** – Provision in – Not mandatory: *The Tahsil Co-Operative Agricultural Association Ltd., Balod, District Durg, Vs. The Union Of India, Representing The General Manager, South Eastern Railway, Calcutta, I.L.R. (1968) M.P. 300*

– **Section 140** – Service on Chief Commercial Superintendent – Service is good since he entered into correspondence: *The Tahsil Co-Operative Agricultural*

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– **Section 23** – Dispatch of goods through Railways – Found short at destination – Shortage certificate by Railways – Not a proof of that material was dispatched as claimed: *Dipak Textiles Vs. Union Of India I.L.R. (2005) M.P. 618*

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– **Para 2044** – Limited to cases where order of dismissal or removal set aside in departmental appeal: *Union of India Vs. P. V. Jagannath Rao, I.L.R. (1971) M.P. 681 (D.B.)*

– **Rules** – Whether have got force of law: *Chunnilal Vs. Union of India, I.L.R. (1962) M.P. 566*

– **Rule 145 (1) and (3)** – Attestation of entry – Amounts to acceptance of correctness of entry: *Baghel Singh Vs. Union of India, I.L.R. (1971) M.P. 639 (D.B.)*

– **Rule 145 (1) and (3)** – Does not cast obligation on authorities concerned to make alteration – Matter within discretion of authorities – Taking of action depending on their subjective satisfaction – Attestation of entry – Amounts to acceptance of correctness of entry: *Baghel Singh Vs. Union of India, I.L.R. (1971) M.P. 639 (D.B.)*

– **Rule 1711 (b)** – General Rules for Indian Railways Parts I and II, Rule 418 – Servant charged with breach of rules which provided punishment of fine amounting to one month's Pay – Order of suspension in such circumstances not valid – Suspension for more than 4 months by authority imposing penalty – Suspension invalid – Breach of Rules having force of law – Suit – Maintainability: *Chunnilal Vs. Union of India, I.L.R. (1962) M.P. 566*

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– **Rules 6, 25** – Power of Reviewing Authority – Delinquent charge sheeted but penalty imposed without holding departmental enquiry – Even if dissatisfied Reviewing Authority cannot appoint enquiry officer – Proper course is to remit the case to disciplinary authority to conduct enquiry for the stage immediately after charge sheet – Double jeopardy – Revising authority set aside the order on without enquiry punishment could not be imposed – Subsequent enquiry on remand for Revising Authority – Not a case of double jeopardy or double enquiry in one charge Rule 6 of the Rule – Case of averted collision – Punishment provided is removal or dismissal – Disciplinary Authority has to conduct an enquiry: *Suresh Kumar Jatav Vs. Union of India, I.L.R. (2001) M.P. 181 (D.B.)*

– **Rule 9 (9) (c)** – Clear and real distinction between an Inquiry Officer acting as Presenting Officer, and an Inquiry Officer putting some questions to any witness to clarify the evidence or ascertain the truth – While the first vitiates the inquiry the second would not: *Union of India, Through Its Secretary, Ministry of Railway New Delhi Vs. Mohd. Naseem Siddiqui, Bhopal, I.L.R. (2004) M.P. 821(D.B.)*

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– **Section 73 and Contract Act, Indian (IX of 1872)**, Section 238, 148 and 149 – Liability of Railway – Commences only on actual delivery of goods by the consignor to Railway Administration – Railway servant issuing Railway Receipt without delivery

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– **Section 73 and Contract Act, Indian (IX of 1872)**, Section 238, 148 and 149 – Railway Servant issuing Railway Receipt without delivery of goods for carriage – Railways administration not liable either under: *Radheshyam Agrawal Vs. Union of India*, I.L.R. (1981) M.P. 845 (D.B.)

– **Section 80** – Amended provision inserted by amending: *Firm Kaluram Ram Narayan Etc., Bilaspur Vs. Union of India, Representing General Manager, South Eastern Railway*, I.L.R. (1978) MP 497

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– **Rule 2 (a)** – “Appointing Authority” in – Means authority which appoints a Railway servant on the post or in the service from which he is removed: *P.K. Chowdhury Vs. Union of India*, I.L.R. (1981) M.P. 822 (D.B.)

– **Rules 9 to 13** – Conditions by which employee is deprived to of the right to be strictly established: *P.K. Choudhury Vs. Union of India*, I.L.R. (1981) M.P. 822 (D.B.)

– **Rules 9 to 13** – Confer valuable right on employee – Conditions by which employee is deprived of the right to be strictly established – Rule 14 (ii) – Conditions for its applicability – Power conferred by – To be strictly exercised within limits and subject to conditions contained in the provision – Authority has to state reasons for its satisfaction – Conditions are mandatory – Reasons recorded must be relevant and germane to the consent and scope of the power and must show a reasonable nexus between the fact considered and satisfaction reached – Circumstances which employee can show to prove that power to dispense with enquiry has not been validly exercised and the order passed is invalid and void – Constitution of India – Article 311, clause (3) and proviso (b) – Clause (3) is applicable where requirement of proviso (b) are complied with – Rule 14 (ii) – Reasons for dispensing with enquiry – To be communicated to the employee along with order of removal – Omission to supply reasons for dispensing with enquiry – Renders order of dismissal void although there is no violation of Article 311 of the Constitution of India – Constitution of India – Article 311 (2) – Case falling under any of the three provisos – No enquiry is obligatory – Same principle applies to a case under Rule 14 – Disciplinary authority has to hold summary enquiry even in cases falling under clauses (ii) of Rule 14 – Rule 2(a), “Appointing Authority” in – Means authority which appoints a Railway servant on the post or in the service from which he is removed: *P.K. Choudhury Vs. Union of India*, I.L.R. (1981) M.P. 822 (D.B.)

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– **Rule 14 (ii)** – Reasons for dispensing with enquiry – To be communicated to the employee along with order of removal – Omission to supply reasons for dispensing with enquiry – Renders order of dismissal void although there is no violation of Article 311 of the Constitution of India: *P.K. Choudhury Vs. Union of India, I.L.R. (1981) M.P. 822 (D.B.)*

– **Rule 14 (ii)** – Reasons recorded must be relevant and germane to the consent and scope of the power and must show a reasonable nexus between the fact considered and satisfaction reached – Circumstances which employee can show to prove that power to dispense with enquiry has not been validly exercised and the order passed is invalid and void: *P.K. Choudhury Vs. Union of India, I.L.R. (1981) M.P. 822 (D.B.)*

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– **Ordinance 19, Clause 2(b) and Ordinance 48, clause 5** – Discretion allowing candidate to appear in examination exercised – Vice Chancellor, authority of, to withdraw permission or to withhold result: *Premji Bhai Ganesh Bhai Kshatriya Vs. The Vice Chancellor, Ravishankar University, Raipur, I.L.R. (1970) M.P. 401 (D.B.)*

– **Ordinance 19, Clause 2(b) and Ordinance 48, clause 5** – Principal, authority of, to withhold admission card: *Ramchandra Vs. Manikchand I.L.R. (1970) M.P. 431 (D.B.)*

– **Ordinance No. 71, Paragraph 18** – Harmonious construction of – Entitlement of a petitioner for marks when matter was referred to third examiner: *Ku. Anju Mishra Vs. Kulpati Ravishankar University, Raipur, I.L.R. (1986) M.P. 370 (D.B.)*

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– **Ordinance no. 46 – Vires of:** *Sardar Balwant Singh Gandhi Vs. Ravi Shankar University, Raipur, I.L.R. (1975) M.P. 499 (D.B.)*

– **Statute 22 (3) (iii)** – Authorises university for prescribing or service conditions – Service conditions have force of law: *Jai Prakash Mudalia Vs. A.C. Choubey, Pleader & President Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298 (F.B.)*

– **Statute 22 (3) (iii) framed thereunder** – Governing body not authorised to terminate services of Principal without obtaining approval of University: *Jai Prakash Mudalia Vs. A.C. Choubey, Pleader & President Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298 (F.B.)*

– **Sections 23 and 35** – Ordinance No. 20 – Has force of law: *Jai Prakash Mudalia Vs. A.C. Choubey, Pleader & President Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298 (F.B.)*

– **Sections 23 and 35** – Ordinance No. 20 – Relation of servant governed by statute – Servant can invoke writ jurisdiction for enforcing right – In case of contractual relationship – Remedy is suit – Writ jurisdiction can be invoke even if power conferred

is discretionary: *Jai Prakash Mudalia Vs. A.C. Choubey, Pleader & President Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298 (F.B.)*

– **Sections 23 and 35** – Ordinance No. 20 – Teacher can enforce right granted by the provision – Provides safeguard to Principal against termination of service: *Jai Prakash Mudalia Vs. A.C. Choubey, Pleader & President Governing Body, Pt. Jawaharlal Nehru Science & Arts College, Bemetara, I.L.R. (1976) M.P. 298 (F.B.)*

Recovery of Debts Due to Banks and Financial Institutions Act (LI of 1993)

– **Collection of evidence on affidavit and production of witness** – If a case is made out as per Regulation 32 the Tribunal shall order attendance of deponent who has sworn an affidavit – Regulation 31, 32 are *intra vires* – Do not transgress the limits stipulated under Section 22 – Rule 12(6) – Bar of jurisdiction – There is no bar in entertaining writ petition under Article 226, 227 where alternative remedy has not been resorted to – Availability of alternative remedy – No inflexible rules for exercise of discretion by High Court – Depends upon on facts of each case: *M/s. P.C.C. Construction Company Vs. Debts Recovery Tribunal, I.L.R. (2003) M.P. 172 (F.B.)*

– **Loan in question were already secured and therefore, there is no question of further securing the amount by giving additional security** – Recovery of Debts Due to Banks and Financial Institution Act, 1993 – Section 3(i) – Notification published on 7.4.98 – Jurisdiction and power of the Tribunal would be deemed to have been conferred on it on appointed day i.e. 7.4.98 – Section 17(2) of the Act would be prospective in operation – Proviso to Section 31(1) bars transfer of an appeal – It would be appropriate to give a wider connotation to the word ‘appeal’ to include a revision – Otherwise absurd result shall follow – Revision is maintainable – Impugned order dated 19.1.98 set aside – Case returned to the trial Court to proceed to transfer the case to the Debts Recovery Tribunal: *Darshan Singh Vs. Central Bank of India, Durg, I.L.R. (1999) M.P. 158*

– **Section 3 (i)** – Notification published – Jurisdiction and powers of the Tribunal would be deemed to have been conferred on it on appointed day: *Darshan Singh Vs. Central Bank of India, Durg, I.L.R. (1999) M.P. 158*

– **Sections 17 and 18 and Madhya Pradesh Lok Dhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam, 1987, Section 3** – Issuance of Land Revenue Recovery Certificate for recovery of loan under Lok Dhan Adhiniyam – Provision of the two Acts are independent – There is no overlapping between the two Acts – Jurisdiction of Recovery of money by Recovery Officer under the Lok Dhan Adhiniyam is not ousted: *M.L. Chaurasia Vs. Tahsildar Balaghat, I.L.R. (2002) M.P. 276*

– **Sections 17, 17-A, 18, 20, 22 Debts Recovery Tribunals Regulation of Practice Rules 1998**, Regulations 31, 32 – Recovery proceeding – Prayer for permission to cross-examine the deponents by defendants – Rejection – Writ petition – Appeal – Word “an” and ‘any’ – There is no difference between the two terms – Expressions used in Sections 17 and 20 are not repugnant to each other: *M/s P.C.C. Construction Company Vs. Debts Recovery Tribunal*, I.L.R. (2003) M.P. 172 (F.B.)

– **Sections 17 (2) and 31 (1)** – Prospective in operation – Proviso to Section 31(1) bars transfer of an appeal – It would be appropriate to give a wider connotation to the word ‘appeal’ to include a revision – Otherwise absurd result shall follow – Revision is maintainable – Impugned order set aside – Case returned to the trial Court to proceed to transfer the case to the Debts Recovery Tribunal: *Darshan Singh Vs. Central Bank of India, Durg*, I.L.R. (1999) M.P. 158

– **Sections 18, 20, 21** – Appeal to Appellate Tribunal on deposit of 75% adjudicated amount – Bar of jurisdiction of other Courts except Supreme Court and High Court under Articles 226/227: *Shri Ganga Narayan Mishra Vs. State Bank of India.*, I.L.R. (2001) M.P. 1809

– **Section 20** – Remedy of appeal before Appellate Tribunal is efficacious and adequate remedy – Can not be permitted to abandon the statutory remedy of appeal and to invoke the extra-ordinary jurisdiction of High Court under Article 226/227 – No interference called for: *Shri Ganga Narayan Mishra Vs. State Bank of India*, I.L.R. (2001) M.P. 1809

Recovery of Dues

– **Natural Justice** – The Act nowhere restrains or bars raising of a dispute either before the officer empowered to issue the recovery certificate or before the Recovery Officer with regard to the validity of demand or its maintainability – The affected party can raise objections going to the root of the proceedings such as the debt being not legally due on account of it having become barred by the period of limitation, the transaction being not of loan or advance or grant under any “State Sponsored Scheme” or under any ‘Socially Desirable Scheme’ or the debt having been waived or wiped out under any provision of law or a provision enforceable under law and the like and such officer is duty bound to consider and decide all such questions at least summarily though formal notice to show cause may not be necessary: *New Laxmi Oil Mills, Barwaha Vs Bank of India, Barwaha*, I.L.R. (1997) M.P. 112 (D.B.)

Reference Court

– **Power of**, to call money back from party – Payment of compensation money to parties – Jurisdiction of Civil Court to hear reference not ousted: *Hitkarini Sabha*,

Jabalpur, Vs The Corporation of The City of Jabalpur, I.L.R. (1957) M.P. 130 (D.B.)

Reformatory Schools Act (VIII of 1897)

– **Section 4 (a)** – Offence of murder – Not included within the offences referred to in the provision – Rules framed under Section 8 – Prohibits youthful offenders committing unnatural offences being sent to Reformatory School: *Gangaram Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 945 (D.B.)*

– **Section 4 (a)** – Persons punished for an offence for which highest punishment provided is transportation or imprisonment for life – Persons does not fall within the definition of “youthful offender”: *Sibbu Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 709 (F.B.)*

– **Section 4 (a)** – Word “transportation” in – Means “imprisonment for life” in view of the provision of Section 53 and 53A of Penal Code – Persons punished for an offence for which highest punishment provided is transportation or imprisonment for life – Person does not fall within the definition of “youthful offender”. *Sibbu Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 709 (F.B.)*

– **Section 8** – Rules framed thereunder – Prohibits youthful offenders committing unnatural offences being sent to Reformatory School: *Gangaram Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 945 (D.B.)*

Regional Rural Banks Act (XXI of 1976)

– **Section 3 and Rewa Sidhi Gramin Bank (Staff) Service Regulations, 1980, Reg. 10(1)** – Withdrawal of Resignation – Petitioner submitted resignation making it effective after period of three months – Resignation sought to be withdrawn before the expiry of said period – Bank refused to permit petitioner to withdraw as resignation was accepted immediately by waiving the period mentioned therein – Held – Unilateral waiver of period in absence of any such request by Petitioner contrary to Regulations – Petitioner can withdraw resignation before expiry of period mentioned therein: *Rewa Sidhi Gramin Bank Vs. Rajendra Prasad Saxena, I.L.R. (1993) M.P. 165*

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– **Jurisdiction of**, to decide dispute between society and its members concerning transaction touching business of society: *Seth Mishrimal Vs. The District Co-Operative Grower’s Association Ltd. Balaghat, I.L.R. (1960) M.P. 632 (D.B.)*

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– **Collector, power of, to issue executive instructions prohibiting registration of documents** – Refusal of registration of document of directions of

Collector – Legality of: *Kailash Vs. Sub-Registrar, Indore, I.L.R. (1985) M.P. 144 (D.B.)*

– **Does not bar registration of deed insufficiently stamped** – Officer examining the deed to see whether it is duly stamped or not – Officer does not do functions under the Act: *Komalchand Vs. The State of MP, I.L.R. (1966) M.P. 174 (F.B.)*

– **Section 2** – Agreement to lease ascertaining terms and giving right of exclusive possession immediately or at future date – Formal lease to be executed afterwards – Operates as lease – Revenue Manual – Instructions regarding disposal of Nazul plots – Are executive instructions – Compliance or non compliance there of – Does not affect validity of lease: *Ramnarayan Vs. The State of Madhya Pradesh, I.L.R. (1962) M.P. 84 (D.B.)*

– **Section 17** – Agreement permitting mistress to occupy a room – Does not require registration: *Subhashchandra Vs. Smt. Narbadabai, I.L.R. (1983) M.P. 153*

– **Section 17** – Award directing parties to complete conveyance by formal registered deed – Award does not require registration – In is admissible in evidence – Arbitration Act, Section 32 – Bars suit on basis of award, but not defence – Award once given – Suit on original cause of action not maintainable: *Ram Sunder Vs. Sudama I.L.R. (1960) M.P. 317*

– **Section 17** – Award stating fact of a charge – Award does not require registration: *Nawab Usmanali Khan Vs. Sagarmal, I.L.R. (1961) M.P. 304(D.B.)*

– **Section 17** – Deed varying rate of interest mentioned in the mortgage-deed – Deed compulsorily registrable – C.P. and Berar Money lenders Act – Section 8 – “Before this Act came into force” in – Must be given natural meaning – Refers to the date on which Act was brought into force in particular territory: *Seth Jeewanchand Vs. Smt. Kalibai, I.L.R. (1963) M.P. 468(D.B.)*

– **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*

– **Section 17 (1) (b) (d), Transfer of Property Act, 1882, Sections 2(7) & 106, Contract Act, 1872, Section 23, Specific Relief Act, 1963, Section 21** – Agreement to Lease not registered – Effect – Section 17(1)(b) – Held – Requires right must be in present or in future whether vested or contingent, but right once created and if a document where no property right having been transferred and on execution of the document in future a right to come in existence, such document, will not fall within the

clause and was thus not required to be registered – Appeal partly allowed: *Food Corporation of India, Bhopal Vs. M/s Babulal Agarwal, Bhopal, I.L.R. (1996) M.P. 423 (D.B.)*

– **Section 17 (1) (c)** – Stamp Act, 1899, Schedule 1 a, Clauses (1, 2, 3), Article 35 (a) Registration of Lease for catching fish from tank – When for nine months – It is ‘instrument’ which requires stamp duty but not compulsorily registration: *Santosh Jayaswal Vs. State of M.P., I.L.R. (1995) M.P. 429 (S.C.)*

– **Section 17 (1) (d)** – Leases under Section 107, Para 1, Transfer of Property Act – Leases compulsorily registrable – Other type of leases if reduced to writing – Such leases require registration as per para 2 of Section 107, Transfer of Property Act read with Section 4 para 2 which makes Section 54(2) and (3), 59, 107 and 123, Transfer of Property Act – Supplemental to Registration Act – Registration Act – Section 49 – Un-registered lease-deed – Admissible to prove collateral transaction or collateral purpose – Nature and character of possession or relationship of landlord and tenant or by the side of or distinct from main purpose of lease – Unregistered lease – Admissible to prove nature and character of possession and status of a person as tenant – Cannot be used to prove period of lease of the rent – Evidence Act – Section 91 – Excludes oral evidence regarding terms of document, 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.)*

– **Section 17 (1) (d)** – Registration of lease – Lease of catching fish from tank – If its value is more than Rs. 100/- or lease year to year – It is an instrument under article 35 (a) of schedule 1 – A, Clauses (1) to (3) of Stamp Act – Requires to be engrossed with required stamp duty and registration under the Act: *Santosh Jayaswal Vs. State of M.P., I.L.R. (1995) M.P. 429 (S.C.)*

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– **Sections 17, 49, Stamp Act, Indian, 1899, Section 35, Evidence Act, Indian 1872, Section 65** – Writ Petition – Secondary Evidence – Admissibility of – Document insufficiently stamped – Bar of Section 35 of Indian Stamp Act, 1899 attracted – Document cannot be admitted ‘for any purpose’ including collateral one: *Chandrabhan Brahman Vs. Vijay Kumar Brahman, I.L.R. (2005) M.P. 302*

– **Sections 34 and 76** – Deed presented within 4 months of its execution – Deed registered after more than 4 months – Order registering or refusing registration – Validity

– Section 77 – Limitation for suit for registration of deed Limitation starts from date when order passed – Section 77 – Suit for registration of tampered document – Court has no jurisdiction to entertain suit – Scope of suit under the Act – Original deed before Registering Officer – Same also filed with suit – During pendency some part of document missing – Original produced – Document re-constructed Court has power to direct registration of re-constructed document – Suit for specific performance of contract evidenced by deed – Maintainability – Power of Court to pass conditional decree – Practice – Evidence – Witness interested – Not sufficient to discard his evidence: *Mst. Saraswatibai Vs. Mohammad Idrakuddin, I.L.R. (1963) M.P. 485*

– **Section 49** – Does not prevent unregistered lease being admitted in evidence as a contract: *M/s Haji Ali Mohammad and sons, Panna Vs. Holaram, I.L.R. (1976) M.P. 707*

– **Section 49** – Nature and character of possession or relationship of landlord and tenant are by the side of or district from main purpose of lease: *Sardar Amar Singh Vs. Smt. Surinder Kaur, I.L.R. (1976) M.P. 809 (F.B.)*

– **Section 49** – Unregistered lease – Admissible to prove nature and character of possession and status of a person as tenant – Cannot be used to prove period of lease or the rent: *Sardar Amar Singh Vs. Smt. Surinder Kaur, I.L.R. (1976) M.P. 809 (F.B.)*

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– **Sections 71, 83 and 84 (2), Registration Manual, Para 266 and Registration Rule 19, Urban Land (Ceiling and Regulation) Act (XXXIII of 1976), Section 28, 26 and 2(o) (c) and Constitution of India, Article 226** – Statutory duties of Sub-Registrar when document presented for registration and in case registration is refused – Collector, power of, to issue executive instructions prohibiting registration of documents – Refusal of registration of document on directions of Collector – Legality of – Sections 83 and 84(2) – Scope of – Registration Manual, para 266 and Registration Rule 19 – Respective scope of – Urban Land (Ceiling and Regulation) Act, 1976 –

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– **Section 77** – Limitation for suit for registration of deed – Limitation starts from date when order passed: *Mst. Saraswatibai Vs. Mohammad Idrakuddin, I.L.R. (1963) M.P. 485*

– **Section 77** – Suit for registration of tampered document – Court has no jurisdiction to entertain suit – Scope of suit under the Act – Original deed before Registering Officer – Same also filed with suit – During pendency some part of document missing – Original produced – Document re-constructed – Court has power to direct registration of re-constructed document – Suit for specific performance of contract evidenced by deed – Maintainability – Power of Court to pass conditional decree – Practice – Evidence – Witness interested – Not sufficient to discard his evidence: *Mst. Saraswatibai Vs. Mohammad Idrakuddin, I.L.R. (1963) M.P. 485*

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– **Section 123 (4)** – Circulation of pamphlet containing false matter – Comes under mischief of section 123 (4) – Allegation that the candidate receives money from foreigners – Reflects on character of candidate – Witnesses not summoned – Not sufficient to discredit their evidence – Gift with a view to induce electors to vote – Constitutes corrupt practice: *Maganlal Bagdi Vs. Shri Hari Vishnu Kamath, I.L.R. (1959) M.P. 893 (D.B.)*

– **Section 123 (7)** – Explanation – Person acting with consent of candidate – Becomes an agent of Candidate: *Smt. Sarla Devi Pathak Vs. Shri Birendra singh, I.L.R. (1959) M.P. 910 (D.B.)*

– **Section 123 (7), 123 (1), 1 (a) and (2), 123 (b)** – Corrupt practice of bribery or exercise of ‘undue influence’ – ‘Limitation under’ – Constitution of – corrupt practice under – Requirement of: *Alok Vs. Motilal Vora, I.L.R. (1991) M.P. 364*

– **Section 123 (7), 123 (1), 1 (a) and (2), 123 (b)** – Read with section 77 – Section 100, 80, 83, 87 and Civil procedure code (V of 1908), Order 7, Rule 11 – Election petition filed against the Elected Member (returned Candidate) – Preliminary objection raised by the elected member under order 7, Rule 11, Civil procedure Code – Written Statement not filed – objection taken by the petitioner regarding maintainability of the objection filed by the returned Member – Preliminary objection held to be maintainable – settled Principles – The words ‘Material facts’ and ‘particulars’ – Distinction in between under section 83 of the Act’ – ‘Corrupt Practice of bribery’ or exercise of ‘undue influence’ – ‘Limitation under’ – Constitution of – corrupt practice under – Requirement of: *Alok Vs. Motilal Vora, I.L.R. (1991) M.P. 364*

– **Section 130 – Breach of** – Does not *per se* vitiate election: *Naunihal singh Vs. Kishori paliwal, I.L.R. (1959) M.P. 955 (D.B.)*

Representation of the People Act (XLIII of 1951)

– **As amended – The Tribunal** – Power of, to ask for supply of better particulars – Course which is to be followed – Constitution Article 226 – High Court – Circumstances when it can interfere: *Chunnilal ken Vs. Radhacharan*, I.L.R. (1958) M.P. 153 (D.B.)

– **Amendment relating to the matters of particulars** – When can be allowed – Election Tribunal, Power of, to call for supply of particulars: *Nirbhaydas Vs. Smt. Gulab Bai*, I.L.R. (1958) M.P. 46 (D.B.)

– **Allegation against contesting candidate made regarding corrupt practice** – Contesting candidate is necessary party – Petition liable to dismissal for non – joinder: *Raghunath Singh Vs. Goverdhan*, I.L.R. (1972) M.P. 302

– **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** – Whether a Court and is subordinate to High Court – Contempt of Courts Act, Section 3 – Notice demanding damages and a written apology unaccompanied by a demand for withdrawal of a plea – Does not amount to interference with administration of justice: *Nirbhayadas Vs. Rameshwar Agnibhoj*, I.L.R. (1959) M.P. 312 (D.B.)

– **Election petition is statutory proceeding** – Statutory requirements must be strictly complied with: *Bhartendra Singh Vs. Ramsahai Pandey*, I.L.R. (1972) M.P. 95

– **Rule 11 (4) and (5)** – Does not prescribe any time limit for publishing list of contesting candidates: *Shri Kesheo Prasad Vs. Shri A.D. Mani and other* I.L.R. (1961) M.P. 974 (D.B.)

– **Sections 2 (f), 34 (1) (a), 34 (1) (b), 39 (2) and 81** – Election petition – Election to Rajya Sabha seat – Requirement of deposit alongwith nomination form – Not applicable to election to Rajya Sabha: *Rampratap Singh Vs. Smt. Mayasingh* I.L.R. (2004) M.P. 582

– **Section 7 (d)** – Conditions to be satisfied for disqualifying a person to be member of either House of Parliament: *Satya prakash Vs. Bashir Ahmed*, I.L.R. (1965) M.P. 106 (D.B.)

– **Section 7 (d)** – Contemplates subsistence of contractual relations between parties – Contract breached by one party and breach accepted by the other party – Contract has been discharged – Claim for damages on other incidental matters arising from breach – Not a consideration which flows naturally from the wording of Section

7(d) – Contract – The different ways in which it can be discharged – Contract comes to an end after discharge though may be alive for incidental matters: *Gourishankar Shastri Vs. Mayadhardas*, I.L.R. (1958) M.P. 681 (D.B.)

– **Section 7 (d)** – Disqualification not attaching to share holder of a company entering into contract: *Satya prakash Vs. Bashir Ahmed*, I.L.R. (1965) M.P. 106 (D.B.)

– **Section 7 (d)** – Essential requisite for holding office under Government required to incur disqualification: *Satya prakash Vs. Bashir Ahmed*, I.L.R. (1965) M.P. 106 (D.B.)

– **Section 7 (d)** – Person having beneficial interest in a contract entered into by some other person or body – Person not disqualified: *Satya prakash Vs. Bashir Ahmed*, I.L.R. (1965) M.P. 106 (D.B.)

– **Section 7 (e)** – Person employed by managing agent of company in which Government holds 25% share – Person holds office of profit – Not eligible to stand as candidate: *Ramakant Vs. Bhikulal*, I.L.R. (1958) M.P. 661 (D.B.)

– **Section 8 (2)** – Disqualification of a candidate to contest elections of other house parliament, on conviction for any offence and sentence of imprisonment for not less than two years – Has to be decided on the basis of facts subsisting on the date of scrutiny: *Purshottamlal Kaushik Vs. Vidya Charan Shukla*, I.L.R. (1980) M.P. 936

– **Section 8 (2)** – Pendency of appeal against conviction and sentence grant of bail subsequently – Effect of: *Purshottamlal Kaushik Vs. Vidya Charan Shukla*, I.L.R. (1980) M.P. 936

– **Section 8 (3)** – Candidate not a sitting member of Legislative Assembly – Not entitled to its advantage: *Baboolal Vs. Kankar Mujare*, I.L.R. (1986) M.P. 217

– **Section 8 (3)** – Lays down exception in cases of sitting members only – Effect of suspension of execution of sentence – Disqualification does not remain in abeyance – Returning Officer accepting the nomination as valid – Amounts to “Improper Acceptance” – Materially affects election of candidate – Calling for no further proof: *Purshottamlal Kaushik Vs. Vidya Charan Shukla*, I.L.R. (1980) M.P. 936

– **Section 8 (3)** – Petitioner continues to incur disqualification – Cannot contest to Lok Sabha – Rejection of nomination by the Returning Officer – Not illegal: *Chhatarsingh Vs. Gajendra Singh*, I.L.R. (2000) M.P. 943

– **Section 9-A** – Contract by the managing director of joint stock company with the Corporation owned by the Government – Contract affected by the provision: *Laxminarayan Vs. Bankatlal*, I.L.R. (1971) M.P. 852

– **Section 9-A** – In the case of controlled distribution – There is no sale where no choice is left but to supply goods at controlled price of the controlled quantity – Such contract does not amount to disqualification: *Laxminarayan Vs. Bankatlal*, I.L.R. (1971) M.P. 852

– **Section 16** – Person shown as elector in electoral roll – No presumption that he has age qualification – But entry conclusive regarding right to contest election cannot be rebutted by showing that his name is shown in disregard of Section 17: *Shanti Swaroop Sharma Vs. Abdul Rehman Farooqui*, I.L.R. (1965) M.P. 608 (D.B.)

– **Sections 17 and 23 (3)** – Section 17 – Provision directory – Non-observance not to render nomination void – Non removal of entry in electoral roll by electoral registration officer – Entry not invalid or liable to be called in question except by appeal under Section 24: *Shanti Swaroop Sharma Vs. Abdul Rehman Farooqui*, I.L.R. (1965) M.P. 608 (D.B.)

– **Section 22** – Requires reasonable opportunity to be given to the person whose name is to be struck out from electoral roll: *Bhartendra singh Vs. Ramsahai Pandey*, I.L.R. (1972) M.P. 95

– **Sections 30 and 31** – Irregularity in publication as required by these provisions – Election not vitiated unless it is materially affected: *Hariramsingh, Vs. Kamta Prasad*, I.L.R. (1968) M.P. 68 (D.B.)

– **Sections 33, 36 (4)** and Conduct of Election rules, 1961, Rule 4 – Candidate shall deliver to the Returning Officer nomination paper as prescribed and returning officer after summary enquiry if necessary, can reject nomination on the ground that on the date of scrutiny – Candidate is not qualified to fill the seat: *Shaligram Shrivastava Vs. Naresh Singh Patel*, I.L.R. (2001) M.P. 986

– **Sections 33, 36 (4) and 81** – Election petition challenging election of a legislative assembly – Sections 33, 36(4) and Conduct of Election Rules, 1961, Rule 4 – Candidate shall deliver to the Returning Officer nomination paper as prescribed and Returning Officer after summary enquiry if necessary, can reject nomination on the ground that on the date of scrutiny – Candidate is not qualified to fill the seat – Institution of Election Commission – Effect of – Instructions are issued to maintain purity of elections and if such instructions are not in conflict with or repugnant to statutory provisions there must be followed – Candidate not filing the proforma prescribed by the Election Commission and filed an affidavit in support of blank proforma – In absence of entries in proforma the returning officer could not satisfy himself whether the candidate was convicted for any of the offences in Section 8 of the Act or not – Oral Evidence proves candidate not filled proforma – Affidavit in support of blank proforma does not make any sense – Defeat was of substantial character – Nomination rightly rejected: *Shaligram Shrivastava Vs. Naresh Singh Patel*, I.L.R. (2001) M.P. 986

– **Sections 33 (4) and 36 (4)** – Defects in nomination paper whether substantial or not – Dependent upon nature of defect, facts and circumstances of case – Omission to name constituency in cols.2 and 5 of the prescribed form when it causes no difficulty in checking form – Defect not substantial: *Shanti Swaroop Sharma Vs. Abdul Rehman Farooqui*, I.L.R. (1965) M.P. 608 (D.B.)

– **Section 33(4), Proviso** – Any misnomer of inaccurate description or clerical or technical or printing error regarding name of candidate – Does not affect full operation of electoral roll – Where description in regard to name of person is such as to be commonly understood – Error in which circumstance can be ignored: *Jogya Vs. Beti Jaga*, I.L.R. (1973) M.P. 1050

– **Section 33 (4) Proviso** – Where description in regard to name of person is such as to be commonly understood – Error in which circumstances can be ignored: *Jogya Vs. Beti Jaga*, I.L.R. (1973) M.P. 1050

– **Section 33 (4)** – Correction of name in voters list by Returning Officer prior to last date of filing nomination form – Correction incorporated to the extent by which the candidate is commonly known & understood – Not a case of substituting the candidate: *Chandra Shekhar Chaturvedi Vs. Smt. Rajesh Nandini Singh*, I.L.R. (2000) M.P. 953

– **Section 34** – The allusion to the Parliamentary Constituency meant for the purpose of election to the House of (Lok Sabha) – Not applicable in respect of nomination for Rajya Sabha: *Rampratap Singh Vs. Smt. Maya Singh*, I.L.R. (2004) M.P. 582

– **Section 36 (1) (b)** – Deposits – Acceptance of by Returning officer personally – Not necessary – Acceptance by his subordinates under his authority – Is valid: *Ajeem Khan Vs. Mathura Prasad*, I.L.R. (1987) M.P. 352

– **Sections 36 (1) and (4), 34 (1) (b), 100 (1) (d), Constitution of India, Articles 173 (a) and 343, Official Languages Act, (XIX of 1963) and Official Languages Act, MP 1957 (VI of 1958)** – Nomination paper – Omission to fill up serial number of Candidate – Though a ‘defect’ in terms of Section 36 (4) but not a defect of substantial character – Rejection of nomination paper for such defect is illegal – Oath/affirmation of Candidates – Validity of the words “according to the firm” used in Article 173(a) – Meaning of – Oath/affirmation though not in prescribed form but not departing from prescribed form in any material aspect – Is valid – Oath/affirmation made and subscribed before Additional Collector/Assistant Returning Officers – Are legal – Section 34(1)(b) – Deposits – Acceptance of by Returning Officer personally – Not necessary – Acceptance by his sub-ordinates under his authority – Is valid – Section 100(1)(d) – Whether result of election concerning returned candidate materially affected

by acceptance of nomination paper of certain other candidate – Mode of assessment: *Ajeem Khan Vs. Mathura Prasad, I.L.R. (1987) M.P. 352*

– **Section 36 (2)** – Returning Officer, Power of, to enter into enquiry about status of person whose name is entered in electoral roll – Tribunal has the same power as Returning Officer: *Shri Kesheo Prasad Vs. Shri A.D. Mani, I.L.R. (1961) M.P. 974(D.B.)*

– **Section 36 (2) and (4)** – Mis description or omission in statement of particulars of electoral roll number is trifling – Omission not preventing Returning Officer from quickly ascertaining whether proposer is an elector – Returning Officer cannot blame the proposer – Inquiry can be made at the time of scrutiny – Returning Officer cannot reject nomination paper on ground of defect of unsubstantial character – Constitution of India – Article 341 – “Dusadh” neither a Scheduled Tribe nor a Scheduled Caste – A member of a Tribe described as Scheduled Tribe in Bihar – Such person shifting to Madhya Pradesh – Such person cannot be regarded as member of Scheduled Tribe in Madhya Pradesh: *Jyoti Bhushan Pratap Singh Vs. Bodh Ram Muritram, I.L.R. (1973) M.P. 604*

– **Section 36 (4)** – Serial number of the part of the Electoral roll not mentioned in nomination paper – Defect is of substantial nature – Rejection of nomination paper on this score valid: *Netram Vs. Lakshman Prasad, I.L.R. (1959) M.P. 766(D.B.)*

– **Section 36 (8) and Rule 8 of conduct of Election Rules 1961** – Returning Officer within his jurisdiction to carry out such correction by virtue of statutory provisions – No illegality committed by Returning Officer in accepting nomination of the Returned candidate: *Chandra Shekhar Chaturvedi Vs. Smt. Rajesh Nandini Singh, I.L.R. (2000) M.P. 953*

– **Sections 40, 100** – Election agent can be appointed at any time – Can be appointed even prior to the scrutiny of nomination – Phrase “at the election” in Section 40 – Meaning of – Technical defect in the withdrawal of candidate – Case governed by Section 100(1) (d) – Proof regarding material effect on election necessary: *Her Highness Maharani Vijaya Raje Scindia Vs. Motilal, I.L.R. (1958) M.P. 193 (D.B.)*

– **Sections 64, 100 (1) (10) and Conduct of Election rules, 1961, 256(3)** – Grounds for setting aside election – In – adequate 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*

– **Sections 77, 80-A, 81, 100 and 123** – Election petition – Election to parliament – Corrupt practice – Alleged appeal to voters to vote in the name of religion – Assurance

to people to build temple for Lord Rama – Would not come within the concept of seeking votes in the name religion – Videocassette produced and marked as exhibit but no application filed to display the assette – Election supervision denying personal knowledge of the date of meeting – No corroborative evidence as to appeal to voters in the name of religion – Case of corrupt practice as engrafted in Section 123(3) of the Act not made out – Corrupt practice – Burden of proof – Lies heavily on the person who allege it to prove it beyond reasonable doubt as in a criminal trial – Section 77 and Conduct of Election Rules 1964, Rules 86,87,88, 89 and 90 – Maximum limit of expenses permissible – Rs. 4.5 lacs in Madhya Pradesh – Petitioner not substantiating by cogent evidence that returned candidate exceeded the limit prescribed case of corrupt practice not made out: *Dilip Parasram Vs. Kamal Nath*, I.L.R. (2001) M.P. 1155.

– **Sections 77 and Conduct of Election Rules 1964, Rules 86,87,88,89 and 90** – Maximum limit of expenses permissible – Rs. 4.5 lacs in Madhya Pradesh – Petitioner not substantiating by cogent evidence that returned candidate exceeded the limit prescribed: *Dilip Parasram Vs. Kamal Nath*, I.L.R. (2001) M.P. 1155.

– **Sections 79 (b) and 82 (b)** – Candidate against whom allegations of corrupt practice made – Candidate a necessary party to election petition: *Basantlal, Vs. Umashankar*, I.L.R. (1965) M.P. 303 (D.B.)

– **Sections 79 (b) and 82 (b)** – Candidate who has withdrawn within prescribed time – Is a candidate within these Sections: *Basantlal Vs. Umashankar*, I.L.R. (1965) M.P. 303 (D.B.)

– **Sections 79 (b) and 90 (4)** – Person claiming to be duly nominated – Can apply for being joined as party: *Shanti Swaroop Sharma Vs. Abdul Rehman Farooqui*, I.L.R. (1965) M.P. 608 (D.B.)

– **Section 79 (b)** – Person declared to be candidate from the time when the candidate begins to hold himself out as prospective candidate: *Kishore Singh Vs. Bhanwarlal Nahta*, I.L.R. (1967) M.P. 923(D.B.)

– **Section 80** – Election Petition – Returned candidate filing four nominations – Two each in different names as electoral list did not mention her name correctly – Affidavit sworn in by the candidate in the name as mentioned in ballot paper – Section 33(4) – Correction of name in voters list by Returning Officer prior to last date of filing nomination form – Correction incorporated to the extent by which the candidate is commonly known & understood – Not a case of substituting the candidate – Section 36(8) & Rule 8 of conduct of Election Rules 1961 – Returning Officer within his jurisdiction to carry out such correction by virtue of statutory provisions – No illegality committed by Returning Officer in accepting nomination of the Returned candidate – Section 127-A – Corrupt Practice – In absence of pleading or evidence it cannot be held that the alleged corrupt practice has materially affected the Election – Locus

standi – petitioner registered voter of the concerned constituency – Eligible to file election petition – Words and Phrases – Last date in Section 23(3) of R.P. Act 1951 means the last hour of the last date: *Chandra Shekhar Chaturvedi Vs. Smt. Rajesh Nandini Singh, I.L.R. (2000) M.P. 953*

– **Section 80, 81, and 87 – Election Petition** – Procedure for – Articles 225, 329 of the Constitution of India and Section 51 of the States Re-organization Act, 1956 – Rule framed by the High Court in exercise of powers under, for regulating proceeding in an Election Petition – Provisions mandatory – Civil Procedure Code, 1908 – Section 4 – Saving – Rules framed by High Court are saved under Section 4 of the Code and will have overriding effect on any other law – Rule 2 of the High Court Rules – Special procedure prescribed for presentation of Election Petition – Non – compliance of Rule – Fatal to maintainability of the Petition – Article 348(2) of the Constitution – Provision for use of Hindi language in proceedings before High Court – Expression ‘all proceedings of the High Court’ would not include an Election Petition which cannot be equated with filing of ordinary plaint or appeal or application – Order VI, Rule 17 C.P.C. – Prayer for amendment in Election Petition to comply with the mandatory Rules – Limitation for filing Election petition Expired – Prayer cannot be granted – Petition has to fail: *Jaibhan Singh Pawaiya Vs. Sri Madhav Rao, I.L.R. (2000) M.P. 1103*

– **Sections 80, 81 and 87 (1) – Election Petition** – Presentation of – Cannot be equated with ordinary plaint – Has to be in strict compliance of the Rules framed by High Court in exercise of powers under Articles 225, 329 of the Constitution of India and Section 51 to the State Re-Organization Act, 1956 – Article 348(2) – Provision of use Hindi Language – Has to be interpreted so as to achieve object enshrined in – Article 329 of the Constitution – Special Rules framed by the High Court relating to Election Petition – Provision to spare – Quarter margin on left side and ½ inch open space on top and at the bottom of the page – Provision mandatory – Not complied with – Petition filed in Hindi Language – Election petition filed not in strict compliance of Special Rules framed by High Court for specific purpose – Petition cannot be entertained – R.P. Act – Section 81(3) – Election Petition – Supply of as many attested true copies of petition as there are respondents – Copies filed not duly attested – Violation of mandatory provision – Fatal to trial of election Petition – Recounting of votes – Prayer for – Necessary materials not pleaded not disclosed – Prayer not liable to be acceded to: *Badan singh Raghuvanshi Vs. B. Rajgopal Naidu, I.L.R. (2000) M.P. 830*

– **Sections 80, 81, 100 and Civil Procedure Code, (V of 1908), Section 11** – Election Petition – Interlocutory application – Res-judicata – Application for permission to produce additional witnesses – Rejected earlier by a detailed order after vigorous and searching examination – Non interference though in another case but both the cases tagged together – Earlier order operates res judicata: *Anandilal Ahirwar Vs. Satya Vrat Chaturvedi, I.L.R. (2003) M.P. 298*

– **Sections 81, 100 and 101** – Ballot paper not invalid, nor rejected but mistake occurring in valuing preference – Does not amount to improper reception or rejection of vote – Word “Improper” in Section 100 – Refers to grounds on which ballot papers can be declared in valid – Election petition on ground of miscount – Maintainable – Provisions in rules – Do not control Section 81, 100 and 101 – Section 83 (1) – Contemplates giving of full particulars of corrupt practice and not of other grounds – “Material facts” in – Meaning of – Purpose of particulars to be given – Particulars of miscount not necessary to be stated – Grounds when re-count can be asked for and granted – Rule 138 – Tribunal, power of to order production and inspection of ballot papers – Section 117 – Does not require petitioner to deposit security amount personally – Challan to show deposit to be on behalf of petitioner – Section 100(1)(c) and (D) – Election not liable to be declared void on ground of improper reception of nomination papers unless ground rendering nomination invalid falls under Section 36(2) – Section 36 (2) – Returning Officer, power of, to enter into enquiry about status of person whose name is entered in electoral roll – Tribunal has the same power as Returning Officer – Rule 11(4) and (5) – Does not prescribe any time limit for publishing list of contesting candidates – Section 100 – Tribunal, Power of, To find out mistake and to make a re- count and to declare a candidate elected as result of re count: *Shri Kesheo Prasad Vs. Shri A.D. Mani, I.L.R. (1961) M.P. 974(D.B.)*

– **Section 81 (3)** – Copy of petition served on opponent – Copy differing in material particulars from original – Not a copy within the meaning of the section: *Ramshankar Vs. Jugalkishore, I.L.R. (1969) M.P. 238*

– **Section 81 band 87** – The Act or rules framed thereunder – Making no procedural provision – Provision of Civil Procedure Code apply: *Ramanlal Premy Vs. Shiv Pratap Singh, I.L.R. (1978), M.P. 569*

– **Section 81, 67-A and Limitation Act, Indian (XXXVI of 1963)**, Sections 5 and 29 – Election Petition – Period of Limitation of 45 days – Commencement of – Expression “From the date of Election of Candidate” – Connotation of – Limitation commences from the date of declaration of result by returning officer and not from the date of publication of such result in official Gazette – Petition filed beyond 45 days – Delay – Whether High Court has jurisdiction to condone – Section 5 of Limitation Act, 1963 in applicable – Savings clause in Section 29, Limitation Act – Does not make provisions of Section 5 applicable to Election petitions – Representation of the people Act – Section 86(1) – Requirements of-Mandatory – High Court bound to dismiss election Petition filed beyond limitation – Mistake of counsel – When a good ground for condonation of delay – Opinion on matters of “justifying doubt” given by counsel – When may be a ground for condonation of delay: *Abhimanyu Rath Vs. Virendra Pandey, I.L.R. (1979) M.P. 455*

– **Sections 81, 67-A and Limitation Act, Indian (XXXVI of 1963)**, Section 5 and 29 – Expression “Form the date of election of Candidate” – Connotation of: *Abhimanyu Rath Vs. Virendra Pandey, I.L.R. (1979) M.P. 455*

– **Sections 81, 67-A and Limitation Act, Indian (XXXVI of 1963)**, Sections 5 and 29 – Limitation commences from the date of declaration of result by Returning officer – And not from the date of Publication of such result in official Gazette: *Abhimanyu Rath Vs. Virendra Pandey, I.L.R. (1979) M.P. 455*

– **Section 81, 67-A and Limitation Act, Indian (XXXVI of 1963), Sections 5 and 29** – Petition filed beyond 45 days – Delay – Whether High Court has jurisdiction to condone – Section 5 of Limitation Act, 1963, inapplicable: *Abhimanyu Rath Vs. Virendra Pandey, I.L.R. (1979) M.P. 455*

– **Section 81 (1) and Limitation Act, Indian (XXXVI of 1963)**, Section 5 – Mistake of Counsel – When a good ground for condonation of delay – Opinion on matters of “justifying doubt” given by counsel – When may be a ground for condonation of delay: *Abhimanyu Rath Vs. Virendra Pandey, I.L.R. (1979) M.P. 455*

– **Sections 81 and 123 (7)** – An elector has a right to challenge election by election petition – Corrupt practice – Has to be specifically pleaded – Standard of proof required for proving corrupt practice – Cancellation of duties of presiding officers – Proof of motive necessary – In its absence presumption can be drawn that it was done in natural course – Section 12(7) – Essential ingredient of – “Obtaining or procuring” assistance of such Govt. servant – Proof of – Canvassing by Govt. servant alone is not sufficient for attracting Section 123(7): *Sada Ram Vs. Bhaiyya Sahib, I.L.R. (1989) M.P. 27*

– **Sections 81 and 123 (7)** – Cancellation of duties of presiding officers – Proof of motive necessary – In its absence presumption can be drawn that it was done in natural course: *Sada Ram Vs. Bhaiyya Sahib, I.L.R. (1989) M.P. 27*

– **Sections 81, 83, 123(3), (3A), Rule 94-A, Form 25-D, Conduct of Election Rules, 1961** – Corrupt practices alleged conduct of the elections – Held – Pleadings are not obscure and do not contained material facts and particulars as is manifested by bare perusal of relevant paras and flout the mandate of law. There are other further infirmities coupled with defective verification/outstanding and non production and non supply of Audio Cassette, which on pleading is essentially found to be an integral part of the petition – Petition dismissed: *Sajjansingh Verma Vs. Surendra Verma, I.L.R. (1996) M.P. 368(D.B.)*

– **Section 81, 82, 83** – Mandatory provisions – Non-compliance – Election Petition as untenable in law dismissed – Section 83(1) and Civil Procedure Code, Order

VI, Rule 2(1) and Order VII, Rule II (a) – Allegation of corrupt practices without full particulars and without requisite affidavit with regard to such particulars render the petition devoid of cause of action and thus unworthy of being tried further – Election Petition dismissed – Section 83(1) and Election rules 1961, Rule 94-A – Affidavit – Requires verification in terms of Code, shall be sworn before a Magistrate of First Class or a Notary or Commissioner of Oaths and shall be in form 25 – Non-compliance fatal: *Rameshwar Dayal Sharma Vs. Nemichand Jain, I.L.R. (1998) M.P. 933*

– **Section 81** – Election Petition – Rejection of nomination paper by the Returning Officer – Penal Code, Indian, 1860 – Sections 302, 307, and 307 – Petitioner convicted and sentenced to life – Released on licence – Not an absolute ‘release’ envisaged under Section 8(3) of the R.P.Act read with Article 102(1)(e) of the Constitution of India – Expiry of six years from such release – Would not wipe out disqualification attached to petitioner – Prisoners (Release on probation) Act, MP 1954, Section 2 and Prisoners (Release on Probation) Rules, MP 1964 – Rule 7-A convict is released on licence subject to supervision and on certain conditions breach of which would ensure revocation of licence – Section 8(3) of the R.P.Act – Petitioner continues to incur disqualification – Cannot contest election to Lok Sabha – Rejection of nomination by the Returning Officer – Not illegal: *Chhatarsingh Vs. Gajendra Singh, I.L.R. (2000) M.P. 943*

– **Sections 81** – Acceptance of nomination paper not affecting prospect of losing candidate – Cannot be held that by such acceptance election of Respondents No. 1 and 2 were materially affected: *Prabhat Kumar Vs. Gouri Shankar Agrawal, I.L.R. (2001) M.P. 1676*

– **Sections 81, 123 – Election Petition** – Alleged illegal acceptance of nomination – Oath and affirmation taken by candidate within minutes of filing nomination – No illegality – Acceptance of nomination paper not affecting prospect of losing candidate – Cannot be held that by such acceptance election of Respondents were materially affected – Corrupt practice – Vague allegation – Particulars of expenses etc. neither pleaded nor exhibited – Case of corrupt practice not made out – Petition has to fail: *Prabhat Kumar Vs. Gouri Shanker Agrawal, I.L.R. (2001) M.P. 1676*

– **Section 81 (3)** – “Petition” in – Includes annexures containing particulars of corrupt practice: *Ramshankar Vs. Jugalkishore, I.L.R. (1969) M.P. 238*

– **Section 81 (3)** – Provisions of – Provision mandatory: *Ramshankar Vs. Jugalkishore, I.L.R. (1969) M.P. 238*

– **Sections 81 (3) and 86 (1)** – Scope of – Section 81 (3) – Provisions of – Provision mandatory – Copy of petition served on opponent – Copy differing in material particulars from original – Not a copy within the meaning of the section – “Petition” in

– Includes annexures containing particulars of corrupt practice – Section 86 (5) and Civil Procedure Code, Order 6, Rule 17 – Limitation on powers of allowing amendment: *Ramshankar Vs. Jugalkishore, I.L.R. (1969) M.P. 238*

– **Section 81(3)** – Candidate against whom no allegations are made That candidate not a necessary party to the petition: *Laxminarayan Vs. Bankatlal, I.L.R. (1971) M.P. 852*

– **Section 81(3)** – Circumstances in which annexure form essential and inevitable part of petition: *Laxminarayan Vs. Bankatlal, I.L.R. (1971) M.P. 852*

– **Section 81(3)** – Filing of copies of petition mandatory – Word “Copy” in – To be interpreted reasonably and not very stiffly – Substantially accurate copy filed – Sufficient compliance – Circumstances in which annexure form essential and inevitable part of petition – Candidate against whom no allegations are made – That candidate not a necessary party to the petition – Section 9-A – Contract by the managing director of joint stock company with the Corporation owned by the Government – Contract affected by the provision – In the case of controlled distribution – There is no sale where no choice is left but to supply goods at controlled price of the controlled quantity – Such contract does not amount to disqualification – Section 123 – Circumstances in which party can be held to be agent of the candidate – Circumstances in which candidate can be held responsible for corrupt practice committed by party – Person appealing holding a religious position – Appeal can not be said to be appeal to religion unless it has religious colouring or element of threat or persuasion of superhuman or divine displeasure or reward – Expenses incurred by political party – Not to be counted against candidate who has his separate agency and is accounting for his expenses: *Laxminarayan Vs. Bankatlal, I.L.R. (1971) M.P. 852*

– **Section 81(3)** – Substantially accurate copy filed – Sufficient compliance: *Laxminarayan Vs. Bankatlal, I.L.R. (1971) M.P. 852*

– **Section 81(3)** – Word “copy” in – To be interpreted reasonably and not very stiffly: *Laxminarayan Vs. Bankatlal, I.L.R. (1971) M.P. 852*

– **Sections 81(3), 83(1) 86(1)** – Election Petition alleging corrupt practice – Reference made to pamphlet annexed with petition – Annexure treated as integrated with petition – Contents of pamphlet not included in petition – Copy of candidature not served on respondent along with copy of petition – Non-compliance of mandatory requirements of Section 83 – Amounts to fatal defect – Petition liable to be dismissed on ground of non-compliance of Section 81(3) read with Section 83(2) – Permitting interpretation of contents of pamphlet in petition – Amounts to introduction of practice not previously alleged in the petition – Such amendment cannot be allowed: *Kushalchand Vs. Harlal, I.L.R. (1980) M.P. 25*

– **Section 81(3) and 83(2)** – Petition liable to be dismissed on ground of non-compliance of Section 81(3) read with Section 83(2): *Kushalchand Vs. Harlal, I.L.R. (1980) M.P. 25*

– **Section 81(3)** – Election Petition – Supply of as many attested true copies of petition as there are respondents – Copies filed not duly attested – Violation of mandatory provision – Fatal to trial of Election Petition: *Badan Singh Raghuvanshi Vs. B. Rajgopal Naidu, I.L.R. (2000) M.P. 830*

– **Section 82** – Election Petition not alleging any corrupt practice against particular person – Such Person not a necessary party: *Srinivas Vs. Rukmini Raman Pratap Singh, I.L.R. (1958) M.P. 74 (D.B.)*

– **Section 82** – Candidate whether a necessary party depends upon the relief claimed in the petition: *Basantlal, Vs. Umashankar, I.L.R. (1965) M.P. 303 (D.B.)*

– **Section 82 and 99** – Person following corrupt practice – Person not joined as party – Not necessary to issue notice to him regarding action under section 99 before conclusion of trial – Three situations arise regarding a person who is not a party to proceedings – For action under Section 99 Court or Tribunal can act *suo motu* – Person proceeded against must be given opportunities to defend himself: *Kishore Singh Vs. Bhanwarlal Nahta, I.L.R. (1967) M.P. 923 (D.B.)*

– **Section 83, Proviso** – Filing of affidavit in support of the allegation of corrupt practice – Is a condition precedent – Section 123(6) and Section 77 – For corrupt practice excessive expenditure must be incurred or authorised by candidate or his election agent – Expenses incurred by a political party for its propaganda – Cannot be said to have been incurred by candidate: *Ramkumar Mishra Vs. Keshrimal, I.L.R. (1973) M.P. 830*

– **Section 83** – Non compliance of mandatory requirements of Section 83 – Amounts to fatal defect: *Kushalchand Vs. Harlal, I.L.R. (1980) M.P. 25*

– **Section 83** – Permitting interpretation of contents of pamphlet in petition – Amounts to introduction of practice non previously alleged in the petition – Such amendment cannot be allowed: *Kushalchand Vs. Harlal, I.L.R. (1980) M.P. 25*

– **Section 83(1)** – Contemplates giving of full particulars of corrupt practice and not of other grounds – Purpose of particular to be given – Particulars of miscount not necessary to be stated – Grounds when recount can be asked for and granted: *Shri Kesheo Prasad Vs. Shri A.D. Mani and other, I.L.R. (1961) M.P. 974(D.B.)*

– **Section 83 (1) (b)** – Circumstances when objection on ground of non supply of particulars cannot be raised: *Bhagirath Bilgaiya, Vs. Rishabh Kumar, I.L.R. (1965) M.P. 964 (D.B.)*

– **Section 83 (1) (b)** – Duty of Election Tribunal regarding supply of particulars of corrupt practice – Stages: *Bhagirath Bilgaiya, Vs. Rishabh Kumar, I.L.R. (1965) M.P. 964 (D.B.)*

– **Section 83(1)** - Proviso and Rule 94-A framed under that Act – Question regarding construction thereof – Substantial questions of law: *Shri Kamalnarain Sharma, Vs. Pandit Dwarka Prasad Mishra, I.L.R. (1966) M.P. 501 (D.B.)*

– **Section 83(1)**, Proviso and Rule 94-A of the Conduct of Election Rules, 1961 – Affidavit not in the form and not sworn before the authorities mentioned in it – Affidavit not proper – Consequences of non-compliance with Section 83(1), proviso and Rule 94-A – Filing of subsequent valid affidavit – Not permissible and does not cure defect: *Pandit Dwarka Prasad Mishra Vs. Shri Kamalnarain Sharma, I.L.R. (1966) M.P. 345(D.B.)*

– **Section 83(1)**, Proviso and Rule 94-A of the Conduct of election Rules, 1961 – Provisions mandatory: *Pandit Dwarka Prasad Mishra Vs. Shri Kamalnarain Sharma, I.L.R. (1966) M.P. 345(D.B.)*

– **Section 83(1), Proviso** – Words “Petition shall also be accompanied by an affidavit” – Meaning and significance – Provisions mandatory – Rule 94-A – Requirements of – Affidavit not in the form and not sworn before the authorities mentioned in it – Affidavit not proper – Consequences of non-compliance with Section 83(1), Proviso and Rule 94-A – Filing of subsequent valid affidavit – Not permissible and does not cure defect – Interpretation of Statute – Provision to be construed in a way that no part to be left as superfluous, void or insignificant – Provision whether mandatory or directory – Does not depend upon whether consequences for non-compliance were provided or not – Contempt of Courts Act – Section 3 – Application pointing some mistake or that certain points are not decided – Does not amount to contempt: *Pandit Dwarka Prasad Mishra Vs. Shri Kamalnarain Sharma, I.L.R. (1966) M.P. 345 (D.B.)*

– **Section 83(1) and Election Rules, 1961 – Rule 94-A – Affidavit** – Requires verification in terms of Code shall be sworn before a Magistrate of First Class or a Notary or Commissioner of oaths and shall be in form 255 – Non-compliance fatal: *Rameshwar Dayal Sharma Vs. Nemichand Jain, I.L.R. (1998) M.P. 933*

– **Section 83(b)** – Particulars regarding person distributing pamphlet and date place and description of material necessary to be given: *Raghubir Singh Vs. Raghubir Singh Kushwaha, I.L.R. (1972) M.P. 451*

– **Section 83(1) (c), Conduct of Election Rules 1961, Rule 94 – A – Election petition** – Maintainability – Allegation of Corrupt Practice – Affidavit in support sworn before Deputy Registrar of High Court – Rules provides that affidavit should be sworn

before Magistrate of first class, notary of commissioner of oath – M.P. High Court Rules empowering Deputy Registrar of High Court for administration of oath can not supersede election rule – In verification no specific content regarding what contents are true to knowledge of deponent and what are true on information – Held – Affidavit is not in conformity with law – Election petition deserves to be dismissed: *Shashi Bhushan Bajpai Vs. Madhavrao Scindia*, I.L.R. (1997) M.P. 396

– **Section 83(1) (c)** – Copy of petition served on returned candidate not bearing endorsement of authority before whom it was verified and affidavit was sworn – Held – Since original affidavit filed with election petition was also not sworn before competent authority – Petition can be dismissed: *Shashi Bhushan Bajpai Vs. Madhavrao Scindia*, I.L.R. (1997) M.P. 396

– **Sections 85 and 90 as amended in 1958** – Non compliance of Section 83 by petitioner – Power of tribunal to dismiss petition: *Amichand, Vs. Pratapsingh*, I.L.R. (1964) M.P. 920 (D.B.)

– **Section 86** – Non-compliance of statutory requirements as prescribed under Sections 81, 82 and 117 – Election petition against returned candidate – Not maintainable – Court has no option but to dismiss the Election Petition – Preliminary objection of returned candidate sustained – Election Petition dismissed summarily: *Shyamlal Holani Vs. Kailash Joshi*, I.L.R. (1998) M.P. 294

– **Section 86(1)** – High Court bound to dismiss Election Petition filed beyond limitation: *Abhimanyu Rath Vs. Virendra Pandey*, I.L.R. (1979) M.P. 455

– **Section 86(1)** – Requirements of – Mandatory: *Abhimanyu Rath Vs. Virendra Pandey*, I.L.R. (1979) M.P. 455

– **Section 86 (5) and Civil Procedure Code, Order 6, Rule 17** – Limitation on powers of allowing amendment: *Ramshankar Vs. Jugalkishore*, I.L.R. (1969) M.P. 238

– **Section 87** – Confers discretion on Election Tribunal to try election petition separately or in groups – Tribunal exercising discretion – Discretion not liable to challenge under Section 10, Civil Procedure Code: *Shanti Swaroop Sharma, Vs. Abdul Rehman Farooqui*, I.L.R. (1965) M.P. 608 (D.B.)

– **Section 87 and Civil Procedure Code (V of 1908)** – Section 10 – Difference between: *Shanti Swaroop Sharma, Vs. Abdul Rehman Farooqui*, I.L.R. (1965) M.P. 608 (D.B.)

– **Section 87 and Civil Procedure Code (V of 1908)** – Section 10 – Difference between – Section 87 – Confers discretion of Election Tribunal to try election petition

separately or in groups – Tribunal exercising discretion – Discretion not liable to challenge under Section 10, Civil Procedure Code – Civil Procedure Code, Section 10 – Prescribes procedure – Procedure can be waived – Representation of the People Act – Section 79(b) and 90(4) – Person Claiming to be duly nominated – Can apply for being joined as party – Section 17 and 23 (3) – Section 17 – Provision directory – Non observance not to render nomination void – Non removal of entry in electoral roll by electoral registration officer – Entry not invalid or liable to be called in question except by appeal under Section 24 – Section 16 – Person shown as elector in electoral roll – No presumption that he has age qualification – But entry conclusive regarding right to contest election – Cannot be rebutted by showing that his name is shown in disregard of Section 17 – 33 (4) and 36(4) – Defects in nomination paper whether substantial or not – Dependent upon nature of defects, facts and circumstances of case – Omission to name constituency in cols. 2 and 5 of the prescribed form when it causes no difficulty in checking form – Defect not substantial – Section 100 – Nomination paper wrongly rejected – Proof of election being materially affected is not necessary – Section 123 (4) – Conditions under which this provision attracted – Allegations of collusion with mine owners and sacrificing interest of workers – So also allegation regarding opening of gambling houses and drinking dens – Statements affect personal character – Burden of proof – Statement maligning a candidate – Burden to prove the statements not false or were bona fide shifts on persons making them – Section 100(1)(b) – Corrupt practice committed by returned candidate or his agent proved – Proof as provided by this section not necessary: *Shanti Swaroop Sharma Vs. Abdul Rehman Farooqui, I.L.R. (1965) M.P. 608 (D.B.)*

– **Section 90(5)** – Petitioner, when can be allowed to give particulars or instances of corrupt practice: *Shri Babulal Sharma Vs. Shri Brijnarayan Brijesh, I.L.R., (1958) M.P. 22 (F.B.)*

– **Section 90(5) and Section 77 (3)** – Constitution of India – Article 226 – Tribunal taking wrong view of law, but examining the merits of allegation about amendment and deciding them – High Court – No power to interfere – Allegation that accounts not correctly maintained – Not sufficient to call upon the election tribunal to embark upon enquiry regarding expenditure incurred in Election: *K.C. Sharma Vs. The Election Tribunal, Chhatarpur, I.L.R. (1958) M.P. 43 (D.B.)*

– **Section 90 (5) – Election Tribunal** – Power of, to allow particulars of corrupt practices to be supplied – Section 123 – Donation to a party fund prior to the date of publication of the notification calling the election - Does not amount to corrupt practice – Section 123 (3) – Appeal to protect mother-cow not an appeal on ground of religion – Appeal to religious minded persons generally to vote for a particular person to protect their religion – Not an appeal to vote on ground of religion: *Krishna chandra sharma Vs. Rishab Kumar, I.L.R. (1959) M.P. 31(D.B.)*

– **Sections 98, 100 (1) (b), 123 (4)** – Charges of corrupt practices – Quasi-criminal in character – Allegations must be clear and precise – Success not to be lightly interfered – Purity of election to be maintained – Circulation of pamphlet containing false matter comes under mischief of Section 123 (4) – Allegation that the candidate receives money from foreigners – Reflects on character of candidate – Witnesses not summoned – Not sufficient to discredit their evidence – Gift with a view to induce electors to vote-constitutes corrupt practice: *Maganlal Bagdi Vs. Shri Hari Vishnu Kamath, I.L.R. (1959) M.P. 893(D.B.)*

– **Section 98** – Trial of one point going to root of the matter and sufficient to dispose of whole petition – Order on that point amounts to order under this section Appeal against order maintainable – Sections 85 and 90 as amended in 1958 – Non – compliance of section 83 by petitioner – Power of tribunal to dismiss petition – Civil Procedure Code – Order 6, Rule 17 – Application for amendment of verification or for supplying verification clause – Tribunal allowing application – Discretion properly used – Defect in verification or total want of verification – Amounts to irregularity in procedure – Petition not liable to rejection – Opportunity to cure defect to be given: *Amichand, Vs. Pratapsingh, I.L.R. (1964) M.P. 920 (D.B.)*

– **Section 99** – Person not acting as Election agent or agent or worker and with consent of the candidate – His name cannot be recorded under this section: *Raghubir Singh Vs. Raghubir Singh Kushwaha, I.L.R. (1972) M.P. 451*

– **Section 100** – Corrupt practices committed by returned candidate, his agent or person interested in him can be taken into consideration – False Statement made to better the prospects of returned candidate – Amounts to corrupt practice – Burden on appellant in appeal how and when discharged: *Jamuna Prasad Singh Vs. Ramnivas, I.L.R. (1958) M.P. 553 (D.B.)*

– **Section 100** – Tribunal Power of, to find out mistake and to make a recount and to declare a candidate elected as result of re-count: *Shri Kesheo Prasad Vs. Shri A.D. Mani, I.L.R. (1961) M.P. 974 (D.B.)*

– **Section 100** – Nomination paper wrongly rejected – Proof of election being materially affected is not necessary: *Shanti Swaroop Sharma Vs. Abdul Rehman Farooqui, I.L.R. (1965) M.P. 608 (D.B.)*

– **Section 100** – Proof of reception, rejecting or refusing a vote – Not sufficient for setting aside election – Result of election being affected has to be proved: *Bhartendra Singh Vs. Ramsahai Pandey, I.L.R. (1972) M.P. 95*

– **Section 100 (1) (C) and (d)** – Election not liable to be declared void on ground of improper reception of nomination papers unless ground rendering nomination invalid

falls under Section 36(2): *Shri Kesheo Prasad Vs. Shri A.D. Mani*, I.L.R. (1961) M.P. 974(D.B.)

– **Section 100 (1) (d) (iv)** – Election petition on ground of miscount – Maintainable – Provisions in rules – Do not control Section 81, 100 and 101: *Shri Kesheo Prasad Vs. Shri A.D. Mani*, I.L.R. (1961) M.P. 974(D.B.)

– **Section 100 (1)(b)** – Corrupt practice committed by returned candidate or his agent proved – Proof as provided by this section not necessary: *Shanti Swaroop Sharma Vs. Abdul Rehman Farooqui*, I.L.R. (1965) M.P. 608 (D.B.)

– **Section 100(1)(a) and 100(1)(d)(i) and Section 8(2) and 8(3)** – Respective scope of: *Purshottamlal Kaushik Vs. Vidya Charan Shukla*, I.L.R. (1980) M.P. 936

– **Section 100(1)(a), 100(1)(d)(i), 8(2)(3), 32, 36(2)** – Constitution of India – Article 102 and Section 32 and 36(2)(a) of the Act – Expression “for being chosen” “to be chosen” and “chosen” used respectively in – Connotation of – Section 8(2) – Disqualification of a candidate to contest elections of either house of Parliament, on conviction for any offence and sentence of imprisonment for not less than two years – Has to be decided on the basis of facts subsisting on the date of scrutiny – Section 100(1)(d)(i) – Expression “improper acceptance” to be answered with reference to Section 36 of Representation of the people Act on the basis of facts existing on the date of subsequently – Subsequent acquittal by appellate Court – Does not cure the disqualification – Sections 100(1)(a) and 100(1)(d)(i) and Section 8(2) and 8(3) – Respective Scope of – Section 8(2) – Pendency of appeal against conviction and sentence grant of bail subsequently – Effect of Section 8(3) – Lays down exception in cases of sitting members only – Effect of suspension of execution of sentence – Disqualification does not remain in abeyance – Returning Officer accepting the nomination as valid – Amounts to “Improper Acceptance” – Materially affects election of a candidate – Calling for no further proof – Right to contest election is statutory right – Can be exercised only in the manner prescribed – Interpretation of statute – Construction of a provision made in a judicial decision – Deemed to be in consonance with legislative intent, if no amendments made in the statute there after: *Purshottamlal Kaushik Vs. Vidya Charan Shukla*, I.L.R. (1980) M.P. 936

– **Section 100(1)(d)(i)** – Expression “improper acceptance” to be answered with reference to Section 36 of Representation of the People Act on the basis of facts existing on the date of scrutiny and ignore facts coming into existence subsequently – Subsequent acquittal by appellate Court – Does not cure the disqualification: *Purshottamlal Kaushik Vs. Vidya Charan Shukla*, I.L.R. (1980) M.P. 936

– **Section 100(1) (a) 8(2) 8(3) and Criminal Procedure Code, 1973, Section 428** – Words “Disqualification from the date of such conviction” – Meaning of “Release” –

Connotation of – Candidate detained in jail as an under trial from 12/13-3-1975 to 7/8-12-1977 – Subsequently stood convicted by trial Court on 20-1-1981 and sentenced for the period of detention during trial – Disqualification under section 9(2) would cease on 7/8-12-77 and not on 20-1-1981 – Cancellation of bail bonds in judgment of conviction would relate back to the date of release on bail i.e. 7/8-12-1977 – Section 8(3) – Candidate not a sitting member of legislative Assembly – Not entitled to its advantage: *Baboolal Vs. Kankar Mujare, I.L.R. (1986) M.P. 217*

– **Section 100(1) (d)** – Whether result of election concerning returned candidate materially affected by acceptance of nomination paper of certain other candidate – Mode of assessment: *Ajeem Khan Vs. Mathura Prasad, I.L.R. (1987) M.P. 352*

– **Sections 100(1)(d), 100(1)(c) and 81** – Election petition was filed on the ground of improper rejection of nomination paper – New ground added after expiry of period of limitation for filing election petition – Held – New ground sought to be added was improper acceptance of nomination paper – High Court was wrong in allowing the application for amendment with an observation that the question of limitation shall be decided at the time of final hearing – New ground cannot be added after expiry of period of limitation for filing election petition – Appeal allowed: *K.D. Deshmukh vs. Amritlal Jaiswal, I.L.R. (1993) M.P. 12*

– **Section 116-A** – Court, power of, to admit additional evidence by invoking powers under Order 41, Rule 27, C.P. Code – Additional evidence– When can be admitted: *Chakrapani Vs. Chandoo, I.L.R. (1958) M.P. 183 (D.B.)*

– **Section 116-A** – Provision of Appeal – Does not offend Article 329 (b) of the Constitution – Appeal against decision of election Tribunal competent – Section 7 (e) – Person employed by managing agent of Company in which Government holds 25% share – Person holds office of profit – Not eligible to stand as candidate – Section 36(2) – Acceptance of nomination paper does not require judicial determination while rejection on objection does – Returning officer can reject till list of validly nominated candidates is made and affixed to Notice Board: *Ramakant Vs. Bhikulal, I.L.R. (1958) M.P. 661 (D.B.)*

– **Section 116 – A – Limitation Act** – Section 12 – Appeal against order of election tribunal – Computation of limitation for Appeal – Time required for obtaining copies to be excluded – Evidence Act – 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 – Charge of bribery in election case – Position of person offering bribe – As a rule of caution corroboration necessary to the evidence of person offering bribe – Purity of election process to be safe-guarded – Success of candidate not to be lightly interfered and more so on mere suspicion: *Surajmal Tugnawat Vs. Sundarlal Patwa, I.L.R. (1965) M.P. 800 (D.B.)*

– **Section 116-A (2)** – Words wide – Includes filing of cross objection – Furnishing of security of costs along with memo of cross objection – Necessity – Section 101 – Statutory fiction – Produced statutory novation – Novation engrafts itself on contracts already made – Section 7(d) – Contract remains in force till fulfillment by both sides – Section 100 – Burden of proof of party seeking to declare election void evidence regarding likelihood not sufficient – Positive demonstration that votes would be divided in such a way that returned candidate would have been unsuccessful – Election rules 27(2) and 57(2) – Ballot paper not bearing distinguishing mark – Liable to be rejected unless validated by election commission – Section 97 – Votes obtained by candidate not challenged as invalid before the election tribunal – No right to challenge the same in appeal – Special provisions in section 97 cut out general provisions in section 100(1)(d) – Section 101 – Burden of proof on party seeking to be declared elected to show the securing of majority of valid votes – Rule 51 – Condition for issue of postal ballot paper – Rule 31 – Ballot paper not incerted in the ballot box – Not liable to be taken in counting of votes – Practice – Appellate Court – Power to consider a point not raised by contesting respondent but other respondent – Section 123(5) proviso – Driver bringing members of his house hold for voting in his vehicle – Does not amount to corrupt practice: *Inayatullah Khan Vs. Diwanchand Mahajan, I.L.R. (1958) M.P. 290 (D.B.)*

– **Section 116-A (3)** – Proviso – Wrong advice of counsel given bona fide and without negligence – Sufficient cause for condonation of delay in filing appeal: *Gulsher Ahmad Vs. The election Tribunal Chhatarpur, I.L.R. (1958) M.P. 189 (D.B.)*

– **Section 116-A** – Election of candidate not to be lightly interfered with-purity of Election process to be maintained – Standard of proof required to make out corrupt practice – Section 79(b) – Person declared to be candidate from the time when the candidate begins to hold himself out as prospective candidate – Section 123(4) – Corrupt practices done by a person – Things required to be proved to hold the candidate responsible for it – Statement made by a person – Statements repeated by election agent – Implied consent to statements by a person can be inferred – Corrupt practice proved – Inference that it is reasonably calculated to prejudice the prospects of other candidates election – No inference follows that his prospects were in fact adversely effected – Section 82 and 99 – Person following corrupt practice – Person not joined as party – Not necessary to issue notice to him regarding action under section 99 before conclusion of trial – Three situation arise regarding a person who is not a party to proceedings – For action under Section 99, Court of tribunal can act *suo motu* – Person proceeded against must be given opportunities to defend himself – Practice – Evidence – Witness not cross examined by a party on a point – His evidence to be believed in the absence of patent or glaring thing rendering his testimony unworthy – Every discrepancy does not make evidence unreliable – Evidence equally balanced – Benefit to be given to a party against whom proceeding started: *Kishore Singh Vs. Bhanwarlal Nahta, I.L.R. (1967) M.P. 923(D.B.)*

– **Section 117** – Receipt under – To be self-contained – Oral evidence not admissible – Section 90(3)–Receipt not required to be enclosed with election petition – Formal or trivial defects – Do not justify dismissal of election petition – Section 34 and 117 – Section 34 – Enabling provision – No exclusion can be read in Section 117 on the basis of Section 34 – Not necessary that deposit must be made by petitioner himself: *Umashankar Muljibhai Trivedi Vs. Shri Manaklal Agarwal, I.L.R. (1958) M.P. 363 (D.B.)*

– **Section 117** – Does not require petitioner to deposit security amount personally – Challan to show deposit to be on behalf of petitioner: *Shri Kesheo Prasad Vs. Shri A.D. Mani, I.L.R. (1961) M.P. 974(D.B.)*

– **Section 117 and 118** – Declaration sought that candidate has been elected – It becomes election petition – It has to comply with Sections 117 and 118 of the Representation of the People Act – Not permissible to raise plea regarding corrupt practice in the written statement of respondent: *Bhartendra Singh Vs. Ramsahai Pandey, I.L.R. (1972) M.P. 95*

– **Section 117 (1)** – Imposes duty to deposit Rs. 2000/- as security – Contains no provision for reduction of the amount – To stand for election or to move application for setting aside election – Are not common law rights These rights conferred by statute – Strict statutory – Compliance necessary for enforcing rights: *Charan Lal Sahu Vs. Nand Kishore, I.L.R. (1973) M.P. 81*

– **Section 123** – Charge of bribery in election case – Position of person offering bribe – As a rule of caution corroboration necessary to the evidence of person offering bribe: *Surajmal Tugnawat Vs. Sundarlal Patwa, I.L.R. (1965) M.P. 800 (D.B.)*

– **Section 123** – Purity of election process to be safe guarded – Success of candidate not to be lightly interfered and more so on mere suspicion: *Surajmal Tugnawat Vs. Sundarlal Patwa, I.L.R. (1965) M.P. 800 (D.B.)*

– **Section 123** – Carrying on of civil public duties – Performance thereof indirectly helping election – Cannot amount to corrupt practice: *Hariramsingh Vs. Kamta Prasad, I.L.R. (1968) M.P. 68 (D.B.)*

– **Section 123** – Corrupt practice – Charge of, is quasi criminal – Must be established beyond reasonable doubt – Mere preponderance of probabilities not enough – Carrying on of civil public duties – Performance thereof indirectly helping election – Cannot amount to corrupt practice – No presumption that benevolent and public acts on eve of election were done with corrupt motive – Land – Revenue Code, Madhya Pradesh, 1959 – Section 17 – Deputy Collector – appointed as Additional Collector – Does not begin to function as such until the exercise of powers are notified – Person appointed as assistant Returning Officer was not Deputy Collector in fact – Does not by itself vitiate

election unless election materially affected Representation of the People Act – Sections 30 and 31 – Irregularity in publication as required by these provisions – Election not vitiated unless it is materially affected – Constitution of India, Article 173 and Representation of the People Act, Section 36(2) – Oath can be made only after presentation of nomination papers – Requirements of Article 173 to be satisfied on the date of scrutiny of nomination papers – Nomination paper not accompanied by oath or affirmation – Nomination paper is invalid: *Hariramsingh Vs. Kamta Prasad, I.L.R. (1968) M.P. 68 (D.B.)*

– **Section 123** – No presumption that benevolent and public acts on eve of election were done with corrupt motive: *Hariramsingh Vs. Kamta Prasad, I.L.R. (1968) M.P. 68 (D.B.)*

– **Section 123(3)** – Appeal exhorting voters not to vote for Congress if Hinduism to be saved and vote for Congress would entail sin of killing cows, would cause destruction of Hinduism – Appeal is on ground of religion for the prospect of candidate – Amounts to corrupt practice – Sections 79 (b) and 82(b) – Candidate who has withdrawn within prescribed time – Is a candidate within these sections – Candidate against whom allegations of corrupt practice made Candidate necessary party to election petition Candidate whether a necessary party depends upon the relief claimed in the petition: *Basantlal, Vs. Umashankar, I.L.R. (1965) M.P. 303 (D.B.)*

– **Section 123** – Election expenses – Expenses incurred by friend of candidate – Expenses not to be included in the return: *Bhagirath Bilgaiya, Vs. Rishabh Kumar, I.L.R. (1965) M.P. 964 (D.B.)*

– **Section 123**, Explanation 2 – Person appointed as polling agent – Presumption that he assisted in furtherance of the prospects of candidate appointing him: *Shantilal Vs. Bipinlal, I.L.R. (1966) M.P. 431(D.B.)*

– **Section 123** – Circumstances in which candidate can be held responsible for corrupt practice committed by party: *Laxminarayan Vs. Bankatlal, I.L.R. (1971) M.P. 852*

– **Section 123** – Circumstances in which party can be held to be agent of the candidate: *Laxminarayan Vs. Bankatlal, I.L.R. (1971) M.P. 852*

– **Section 123** – Expenses incurred by political party – Not to be counted against candidate who has his separate agency and is accounting for his expenses: *Laxminarayan Vs. Bankatlal, I.L.R. (1971) M.P. 852*

– **Section 123** – Person appealing holding a religious position – Appeal cannot be said to be appeal to religion unless it has religious colouring or element of threat or persuasion of superhuman or divine displeasure or reward: *Laxminarayan Vs. Bankatlal, I.L.R. (1971) M.P. 852*

– **Section 123** – Corrupt practice – Is in the nature of quasi criminal charge – Standard of proof is that required in criminal case: *Bhartendra singh Vs. Ramsahai Pandey, I.L.R. (1972) M.P. 95*

– **Sections 123 – Corrupt Practice** – Vague allegation – Particulars of expenses etc. neither pleaded nor exhibited – Case of corrupt practice not made out – Petition has to fail: *Prabhat Kumar Vs. Gouri Shankar Agrawal, I.L.R. (2001) M.P. 1676*

– **Sections 123(3)** – Case of Corrupt Practice as engrafted Section 123(3) of the Act not made out – Corrupt practice – Burden of proof – Lies heavily on the person who alleges it to prove it beyond reasonable doubt as in a criminal trial: *Dilip Parasram Vs. Kamal Nath, I.L.R. (2001) M.P. 1155*

– **Section 123(3)** – Appeal to vote on ground of religion or community – Statement which amounts to an appeal on ground of religion and community: *Bhagirath Bilgaiya, Vs. Rishabh Kumar, I.L.R. (1965) M.P. 964 (D.B.)*

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– **Section 123(3) and 3 (A)** – Statement alleged to amount to corrupt practice – Its meaning, expression and impact on mind of others to be considered by reference to setting of facts and background then existing – Appeal to vote on ground of religion or community – Statement which amounts to an appeal on ground of religion and community – Section 83(1)(b) – Duty of Election Tribunal regarding supply of particulars of corrupt practice – Stages – Circumstances when objection on ground of non supply of particulars cannot be raised – Evidence Act – Section 114 – Presumption regarding personal character of candidate – Representation of the People Act – Section 123(3) – Statements which will relate to attack on personal character and which will not – Election expenses – Expenses incurred by friend of candidate – Expenses not to be included in the return: *Bhagirath Bilgaiya, Vs. Rishabh Kumar, I.L.R. (1965) M.P. 964 (D.B.)*

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– **Section 123 (3)** – Attribute of spiritual significance – Does not impart to its use on flag the character of religious symbol – Everything that is holy or sacred – Is not a religious symbol: *Bhartendra singh Vs. Ramsahai Pandey, I.L.R. (1972) M.P. 95*

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– **Section 123 (4)** – Conditions under which this provision attracted: *Shanti Swaroop Sharma Vs. Abdul Rehman Farooqui, I.L.R. (1965) M.P. 608 (D.B.)*

– **Section 123(4)** – Distinction between criticism of a candidate as politician and a statement relating to personal character – Letter Statement amounts to corrupt practice: *Habib bhai Vs. Pyarelal, I.L.R. (1966) M.P. 248 (D.B.)*

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– **Section 123(4)** – Mention of person's caste – Does not amount to making appeal on ground of caste: *Habib bhai Vs. Pyarelal, I.L.R. (1966) M.P. 248(D.B.)*

– **Section 123(4)** – Publication of statement relating to personal character of candidate – Amounts to corrupt practice – Statement to be one of fact and not one of opinion and comment – Distinction between criticism of a candidate as politician and a statement relating to personal character – Later statement amounts to corrupt practice – Innuendo coupled with introductory matter – Amounts to whole connected proposition by which charge brought out to person concerned – Mention of person's caste – Does not amount to making appeal on ground of caste – Words “*^D;k gYnh dk jax D;k i jns'kh dk lax***” – Does not amount to attack on personal character – Words “*oks gekjs ?kj dk yM+dk gS***” – Does not amount to appeal on ground of caste or community

– To possible interpretations of statements – One not defamatory should be preferred
 burden of proof – Burden on person alleging corrupt practice to prove it – Standard of
 proof necessary – Civil Procedure Code – Order 41, Rules 27 – Additional evidence –
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– **Section 123(4)** – Words “*Dik gñh dk jax Dik i jns ‘kh dk lax*” – Does
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– **Section 123(4)** – Words “*oks gekjs ?kj dk yM+dk gS*” – Does not amount to
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– **Section 123(4)** – Corrupt Practices done by a person – Things required to be
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 prospects of other candidates election – No inference follows that his prospects were
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– **Section 123(4)** – Essentials of corrupt practice regarding false statement:
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– **Section 123(4)** – False statement – Has to be a statement of fact and not
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– **Section 123 (5)** – Hiring or procuring a conveyance for carrying elector to or
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– **Section 123 (6) and Section 77** – For corrupt practice expenditure must be
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– **Section 123(7)(f)** – Essential police function – Functions performed by patel under Section 224 and rules under Section 258 of Madhya Pradesh Land Revenue Code – Cannot be regarded as functions for the effective prevention and detection of crime in order to maintain law and order: *Shantilal Vs. Bipinlal, I.L.R. (1966) M.P. 431(D.B.)*

– **Section 123(7)(f)** – Implication and scope of – Police functions in – Refers to functions which police officer discharges under police Act and Code of Criminal Procedure – Essential police functions – Functions performed by patel under Section 224 and rules under Section 258 of Madhya Pradesh Land Revenue Code – Cannot be regarded as functions for the effective prevention and detection of crime in order to maintain law and order – Patel does not discharge police functions – Section 123, Explanation 2 – Person appointed as polling agent – Presumption that he assisted in furtherance of the prospects of candidate appointing him – Burden to Proof – Burden of establishing corrupt practice – Burden on person alleging it – Rules and Orders (Civil), 1950 Rule 578 – Does not apply to taxation in election petition: *Shantilal Vs. Bipinlal, I.L.R. (1966) M.P. 431(D.B.)*

– **Section 123(7)(f)** – Police function in – Refers to functions which police officer discharges under Police Act and Code of Criminal Procedure: *Shantilal Vs. Bipinlal, I.L.R. (1966) M.P. 431(D.B.)*

– **Section 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*

– **Sections 123(7)** – Essential ingredient of – “Obtaining on procuring” assistance of such Govt. Servant – Proof of – Canvassing by Govt. servant alone is not sufficient for attracting Section 123(7): *Sada Ram Vs. Bhaiyya Sahib, I.L.R. (1989) M.P. 27*

– **Section 127-A** – Corrupt practice – In absence of pleading or evidence it cannot be held that the alleged corrupt practice has materially affected the Election: *Chhatarsingh Vs. Gajendra Singh, I.L.R. (2000) M.P. 943*

– **Section 177(1)** – To stand for election or to move application for setting aside election – Are not common law right – These rights conferred by statute – Strict statutory compliance necessary for enforcing rights: *Charan Lal Sahu Vs. Nand Kishore, I.L.R. (1973) M.P. 81*

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– **As Amended in 1956** – Sections 83, 85 and 90 (4) – Rule of interpretation – Where legislature amends the Act – Amendments have to be taken together – Amendments made in all the three Sections – To be read as part and parcel of the same intention – Term “Trial” in Section 90(1) – Meaning of – Power of Tribunal to order better particulars – Particulars not given – Tribunal not compelled to try an indefinite issue – Article 226 – Order in interlocutory stage – High Court – Power to decide upon correctness of order made with jurisdiction: *H. V. Kamath Vs. Election Tribunal, Jabalpur*, I.L.R. (1957) M.P. 479 (D.B.)

– **Section 9-A** – Corrupt Practice – Mock ballot papers got published by candidate not containing name and address of printer and publisher – Corrupt Practice committed by candidate – More than two contesting candidates for one seat – Notice to voters may assume significance – Declaration of election petitioner as elected not proper: *Chhotelal Rai Vs. Shyam Kishore*, I.L.R. (1999) M.P. 985

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– **Section 169 and Rules 5 & 10** – Giving direction or imposing restriction by Election Commission – Does not amount to rule Making – Rule 10 not *ultra-vires*: *Prabhucharan Vs. Shiv Dutta Upadhyaya* I.L.R. (1958) M.P. 60 (D.B.)

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– **Section 8** – Determination of just compensation – Arbitrator has no power to award solatium and interest on the acquisition of requisitioned land under the Act – Like U/ss 23 and 34 of the Act: *Ishwari Prasad Vs. Union of India*, I.L.R. (1996) M.P. 156 (D.B.)

– **Section 8 (1)(e)** – Determination of compensation – Land sold by Ex D-2 & D-3 is not adjacent or near about the acquired land, their title is in dispute and not having potentiality – Can not be guide to determine the fair compensation: *Ishwari Prasad Vs. Union of India*, I.L.R. (1996) M.P. 156 (D.B.)

– **Section 8 (1) (e)** – Determination of compensation – Land sold prior to 6 years from the acquisition by Ex. P-5 is agriculture land situated near the acquired land – Ignoring the sale deed, and the fact that there is rising trend and upward rise in the price of land – Arbitrator awarded compensation on his own estimation – Held – Ex P-5 is a guide to determine the compensation: *Ishwari Prasad Vs. Union of India*, I.L.R. (1996) M.P. 156 (D.B.)

– **Section 8(3)** – Compensation includes interest and solatium which are price for deprivation of the property – Award modified: *Union of India Vs. University of Sagar*, I.L.R. (1992) M.P. 764 (D.B.)

– **Section 11, Court fees Act (XII of 1870)**, Section 8 and MP Civil Court Rules, Rule 385, clause (xi) – *Advolorem* Court-fee is payable on appeal under section 11 of the Act of 1952 and appeal liable to be registered as Miscellaneous Appeal: *Union of India Vs. University of Sagar*, I.L.R. (1985) M.P. 771

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– **Applicable in the case of execution of void decree:** *Birdichand Vs. Punamchand*, I.L.R. (1971) M.P. 932

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– **Decision of Revenue Court** – Not *res judicata* in Civil Suit: *Nathu Vs. Delbande Hussain*, I.L.R. (1966) M.P. 671 (D.B.)

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– **Direct and substantial adjudication** – Necessary for operation of *res-Judicata*: *Sayebal Vs. State of M.P.*, I.L.R. (1978), MP 1003 (D.B.)

– **Decision in previous Miscellaneous Petition** – Operates as *res-judicata* in Second Petition – Principle does not apply to appeal by special leave from final decision after remand – Civil Procedure Code – Section 105 (2) – Not applicable to Supreme Court – Legislature – Power of, to amend law retrospectively – General Sales Tax (Second Amendment) Act, Madhya Pradesh, 1964 – Not challengeable – Is not contrary to Article 141 of the Constitution of India – Retrospective operation obrogates principle of *res-judicata* – General Sales Tax (Amendment and Validation) Act, Madhya Pradesh 1967 – Validity – Taxing authorities not bound by the agreement between parties but by statutory provision – General Sales Tax Act, Madhya Pradesh, 1958 – 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 – 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 Kesavram, Rajnandgaon Vs. Additional Assistant Commissioner of Sales Tax, Raipur, I.L.R. (1979) M.P. 123 (D.B.)*

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– **Order in earlier execution** – *Res Judicate* in subsequent execution – Protection granted by repealed act cannot be claimed on ground of *Res Judicate* after repeal – Land Revenue code, Madhya Pradesh, 1959 – Section 2(i) – Lands held jointly and assessed to land revenue jointly – Land constituted one holding – Joint holders cannot get exemption separately – Act – Provision in repealed Act – Not saved by Repealing Act – Right under repealed Act – Not enforceable – Land Revenue Code, Madhya Pradesh, 1959 – Section 165(7)(a) – Applicable to sales in pending execution when the Code came into force – Repeal – Effect of repeal cannot revive anything not in force at the time at which repeal takes effect: *Balmukund Vs. Gendalal, I.L.R. (1967) M.P. 421*

– **Principle of constructive *Res judicate*** – Applicable to execution proceedings – Civil Procedure Code – Order 21, Rule 66, Issue of Second sale notice – Necessity – Public Trusts Act, Madhya Pradesh – Section 32(2) – The term “other proceedings” in – Meaning of: *Rai Debi Prasad Vs. Deo Parasnath ji, I.L.R. (1970) M.P. 994*

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– **Principle applies to proceedings under Article 226 of the Constitution of India – *Res-judicata*** – Applies even when petition is dismissed without notice provided order is speaking order – Principle of constructive *res-judicata* applicable provided subsequent petition based on same cause of action – Industrial Relations Act, Madhya Pradesh, 1960 – Section 27 – Representative Union – Represents all employees in the industry in the local area for which it is registered – Representative Union – Party to the proceedings – Can file writ petition – Section 97 (1), Proviso (b) – Agreement between Representative Union and employees – Binding on all employees in the industry in the local area – Contract Act, Indian 1872 – Section 28 – Compromise preventing further challenge to Award or order of High Court – Not an absolute restraint on legal proceedings – Agreement to fall under this provision – Must be one restraining enforcement of rights under or in respect of contract – An agreement not to challenge award or order of High Court in earlier writ petition – Not a restraint on enforcement of rights in respect of any contract so as to fall under this provision: *Sone Singh Vs. State Industrial Court, Indore, I.L.R. (1979) M.P. 311 (D.B.)*

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– **Protection granted by repealed act cannot be claimed on ground of *Res Judicate* after repeal:** *Balmukund Vs. Gendalal, I.L.R. (1967) M.P. 421*

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– **Question not directly involved but could have been agitated in previous proceedings** – Question barred in subsequent proceedings on principle of constructive *res-Judicata* – Civil Services (General Conditions of service) Rules, MP, 1961 – Rule 13 – Absence of statutory rules regulating promotions – Government can issue administrative instructions which are not violative of any rule or constitutional provision – Promotions not claimable as of right – Servant occupying higher post in substantive capacity – cannot be reduced in rank without opportunity of being heard – Provisional promotion on ad-hoc basis – Reversion is concomitant – Constitution of India – Article 311 – Reversion from a higher rank which is temporary or officiating – Order of reversion is not invalid for non-compliance of procedure under this provision – Article applicable

when reversion is by way of punishment – Simple reversion from higher post which was not substantive – Is not punishment – But is accident of service – Determination of the nature of order of reversion – Line of demarcation to be drawn on the foundation for order and motive for order – Order *ex facie* innocuous – Party contending it to be camouflage and in reality a punishment – Party has to plead and prove it – Reversion to substantive post – Order does not amount to penalty – Book Circular – Clause 13 – Provides no period for communication of record – Promotion committee considering question of promotion – Not required to give notice of adverse remark and give opportunity to explain – The decision on the question of suitability – Court cannot interfere with Governments decision: *Smt. V.K. Singh Vs. State of M.P., I.L.R. (1978), MP 925 (D.B.)*

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– **Section 3** – Modification by the Act – Is only for purposes of Acquisition of Land for the resettlement and rehabilitation of displaced person – Modification is not for all acquisition – Deeming provision limited to that Act only: *Ganga Prasad Verma Vs. State of Madhya Pradesh I.L.R. (1970) M.P. 81 (D.B.)*

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– **Suit by** – For setting aside alienation by widow – Maintainability: *Dhirajkaur Vs. Lakhansigh, I.L.R. (1957) M.P. 17(D.B.)*

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– **Filing of application for review** – Does not reopen questions decided by order or decision sought to be reviewed: *Shri Chintaman Wajnath Pandit, Vs. The State Government of M.P., I.L.R. (1968) M.P. 742 (D.B.)*

– **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 it self 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 (D.B.)*

– **Judicial or quasi – Judicial Proceedings** – No power to review apart from statute – Constitution of India, Article 226 and Civil Procedure Code, Order 47, rule 5 – Order 47, rule 5 of the Code – Proprio vigore does not apply to petition under Article 226 – Provisions of order 47, Rule 5 not invocable in derogation of Rules 3 and 4 of chapter 1 of rules framed by High Court – High Court Rules – Rules 3 and 4 – Review to be heard by division Bench: *Manoharlal Verma Vs. State of M.P., I.L.R. (1977) M.P. 86(D.B.)*

– **No inherent power in Court to review:** *Rajaram Vs. Rani jamit kunwar Devi I.L.R. (1960) M.P. 253 (D.B.)*

– **No right of review unless conferred by statute Land Revenue Code, MP, 1959** – 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 – Section 56 – definition of “order” in – Applies to the whole of the chapter order passed under section 6(2) of Abolition of Proprietary Rights Act, MP, 1950 – Can be

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– **Power not inherent in Court** – Has to be conferred by statute: *Singhai Bhaiyaal Vs. Rikhilal Jain, I.L.R. (1968) M.P. 457*

– **Right to-A** creation to statute law – Could be exercised within defined limits: *Narayan singh Vs. The Board Of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1962) M.P. 788*

– **Strict legal remedy not an equitable proceedings** – Power to review may be exercise when error apparent on the face of record found – Order based upon a law which stood amended when the order passed but amended provisions not brought to the notice of the court, liable to be reviewed: *State of M.P. Vs. Jaswantpuri, I.L.R. (1991), M.P. 306(D.B.)*

– **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 Chintaman Waijnath Pandit, Vs. The State Government of M.P., I.L.R. (1968) M.P. 742 (D.B.)*

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– **Section 3** – Vires of – Power to legislate – Includes power to repeal or modify any previous law – Crown Grants Act (XVof 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 recover revenue from proprietor: *State of Madhya Pradesh Vs. Laxmi Prasad, I.L.R. (1959) M.P. 755(D.B.)*

– **Section 5 (3)** – Word “may” in – Has no compulsory force – Gives discretion to State Government to determine nature of grant and not a discretion to make a grant at all: *Sardar Govindrao Vs. The State of M.P. I.L.R. (1959) M.P. 172 (F.B.)*

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– **Section 57(1)** – Tenant not being Pachpan Paintalis tenant of Pattedar tenant is ghairhaqdar tenant: *Dewan Bahadur Major Raghurajsingh Vs. Vindhya Pradesh State, I.L.R. (1958) M.P. 785(D.B.)*

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Rewa Land Revenue and Tenancy Code, 1935

– **Darbar order dated 7-6-34** – Darbar order not a personal law but territorial law applicable to all subjects of Darbar – Rewa Land Revenue and Tenancy Code – Applicable to agricultural lands only – Section 323 – Provides for inheritance and succession to grove – Land and makes personal law applicable – Provision inconsistent with Darbar order – Darbar order cannot prevail – Estoppel – No estoppel against statute: *Gokulram Vs. Bhagwandas, I.L.R. (1962) M.P. 607*

– **Section 4 – Definition of rent** – Does not include payment of amount given for transfer of possession of bandhs: *Ran Bahadur Singh Vs. Board Of Revenue MP, Gwalior, I.L.R. (1964) M.P. 1 (D.B.)*

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– **Section 6 and 16** – Government – Power of, to appoint Panchayat for a Particular Temple or *Math* – Panchayat appointed for whole or part of State – power of such panchayat to appoint managing committee for particular temple or *Math*: *Pramodhan Bihari Saran ju Vs. the State of M.P., I.L.R. (1960) M.P. 70 (D.B.)*

– **Rule 29 (2) of Octroi Rules** – Claim for refund of whole amount of octroi tax paid, when tenable: *National Tobacco Co. of India Ltd., Jabalpur Vs. City of Jabalpur Corporation, I.L.R. (1960) M.P. 832 (D.B.)*

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– **Section 21 (2) – Scope of** – Makes Electoral Roll of the Assembly as relates to particular area of the Municipality as electoral roll of that particular area of the Municipality: *Ramadhar Pandey Vs. The State of Madhya Pradesh, I.L.R. (1958) M.P. 776(D.B.)*

– **Section 121(1)(f)** – Words “consumption” and “use” – Connotation of – The word “therein” in – Used to stress the fact that goods brought must be for consumption

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– **Section 125(2)** – Tax proposals sanctioned by Government – Mandatory on Board to fix date for imposition of tax by passing special resolution – Section 121 (1)(f) – Words “consumption” and “use” – Connotation of – The word “therein” in – Used to stress the fact that goods brought must be for consumption and not for purpose of export – Section 126 (2) – Bars enquiry into the procedure followed in imposition of tax – Interpretation of statutes – Construction of taxing statute – Intendment or equitable principle not 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(D.B.)*

– **Section 126(2)** – Bars enquiry into the procedure followed in imposition of tax: *Panchamlal Vs. Municipal Board, Rewa, I.L.R. (1963) M.P. 191(D.B.)*

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– **Section 5 and Rule 3(2)** – Grant or refusal of permit based on subjective opinion of Government – Mode in which that opinion has to be formed – Government not required to decide matter objectively – Order not a *quasi* judicial order – Decision is purely administrative decision – Principles of natural justice – Applicable when authority has to act judicially or *quasi* Judicially: *Maina Bai Vs. State of Madhya Pradesh, I.L.R. (1967) M.P. 678 (D.B.)*

– **Section 5(4) and Rule 3(2)** – Government not required to decide matter objectively – Order not a *quasi*-judicial order – Decision is purely administrative decision: *Maina Bai Vs. State of Madhya Pradesh, I.L.R. (1967) M.P. 678 (D.B.)*

– **Section 7(1)** – Conditions to be satisfied before license can be revoked, suspended or deposit amount forfeited – Satisfaction of Food supply Inspector – Not to be substituted for satisfaction of Licensing Officer – Report of Food Inspector regarding circumstances in which the license was obtained – Not binding on Licensing Officer – Notice issued under signature of Licensing Officer – Indicates requisite satisfaction of Licensing Officer – Notice not signed under his authority – Material to be shown regarding satisfaction of that authority: *Salamat rai Vs. The Collector, Raipur, I.L.R. (1966) M.P. 75(D.B.)*

– **Section 7(1)** – Notice issued under signature of Licensing Officer – Indicates requisite satisfaction of Licensing Officer – Notice not signed under his authority – Material to be shown regarding satisfaction of that authority: *Salamat rai Vs. The Collector, Raipur, I.L.R. (1966) M.P. 75(D.B.)*

– **Section 7(1)** – Report of Food Inspector regarding circumstances in which the license was obtained not binding on Licensing Officer: *Salamat rai Vs. The Collector, Raipur, I.L.R. (1966) M.P. 75(D.B.)*

– **Section 7(1)** – Satisfaction of Food Supply Inspector – Not to be substituted for satisfaction of Licensing Officer: *Salamat rai Vs. The Collector, Raipur, I.L.R. (1966) M.P. 75(D.B.)*

– **Section 7(1)(a)and(b)** – Notice to show cause signed by food Officer for Collector – Food Officer not authorized by Licensing Officer after satisfying himself regarding matters contemplated by the said provision – Notice invalid – Consequent cancellation of license bad: *Mohammad Ayub Gani Bhai Vs. The State of M.P., I.L.R. (1967) M.P. 63 (D.B.)*

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– **Right to contest election is a statutory right** – Can be exercised only in the manner prescribed: *Purshottamlal Kaushik Vs. Vidya Charan Shukla, I.L.R. (1980) M.P. 936*

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– **Implication of concept of monopoly:** *Capital Multipurpose Co-Operative Society Ltd. Bhopal Vs. The State of Madhya Pradesh, I.L.R. (1970) M.P. 532 (D.B.)*

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– **Section 5(1)** – “Other members” in-connotes the Chairman to be a member of Corporation – Chairman ceases to be member when he resigns Chairmanship: *Capital Multipurpose Co-Operative Society Ltd. Bhopal Vs. The State of Madhya Pradesh, I.L.R. (1970) M.P. 532 (D.B.)*

– **Section 5(1)** – Power of Government to override, abrogate or modify the provision of Section 5(1) by framing rules: *Capital Multipurpose Co-Operative Society Ltd. Bhopal Vs. The State of Madhya Pradesh, I.L.R. (1970) M.P. 532 (D.B.)*

– **Sections 18, 19 and 68-A, Clause (b)(II)** – Confers power on Corporation to initiate and take up schemes – Section 5(1) – “Other members” in – Connotes the Chairman to be a member of corporation – Chairman ceases to be member when he resigns Chairmanship – Power of Government to override, abrogate or modify the provision of section 5(1) framing rules – State Road Transport Corporation rules, Madhya Pradesh, 1962 – Rule 3, sub-rule (4) – Vires of – Motor Vehicles Act – Section 68-C and State Road Transport Services (Development) Rules, Madhya Pradesh 1959 – Rule

3 – Does not impose obligation on State Transport undertaking to disclose material on which opinion was formed for framing a scheme – Section 68-D – Contemplates *quasi* Judicial enquiry regarding objections to scheme and not regarding examining of material on which opinion to frame scheme is based on adequacy of the material – Approving and modifying scheme – Implies that the scheme is for efficient, adequate, economical and properly coordinated Road Transport Service and is in public interest – Distinction between goodness or badness of the scheme because of the correctness or incorrectness of the formation of opinion for initiations of the scheme and the opinion formed is correct or incorrect because the scheme formed is or is not in the nature spoken of in Section 68-C – Validity of the opinion to be decided by the adjudication of merits of scheme on tests laid down in Section 68-C – Section 68-D(2) – Lays down the nature of the matter which the objectors can show in connection with the scheme – Road Transport Corporation Act, 1950 – Creates monopoly in State Transport undertaking regarding running of Transport Services – Presumption regarding monopoly arises under Article 19(6) of the Constitution – Monopoly must be presumed to be reasonable and in the interest of general public – Implication on concept of monopoly – Motor Vehicles Act – Section 68-D(2) – Question which can considered under this provision – Section 68(2) and (3) – Approved or modified scheme final when published in the gazette – Publication of erroneous and defective scheme – Not to be regarded as publication of scheme as approved or modified under sub-section (2): *Capital Multipurpose Co-Operative Society Ltd. Bhopal Vs. The State of Madhya Pradesh, I.L.R. (1970) M.P. 532 (D.B.)*

– **Section 34** – Direction by State Govt. to Corporation relating to recruitment, conditions of service, training of its employees and wages to be paid to them and the matters alike have force of law and overriding effect – Corporation cannot depart from them except with previous permission of State Government: *Mahesh Chandra Gupta Vs. M.P. State Road Transport Corporation, Bairagarh, I.L.R. (1981) M.P. 275 (D.B.)*

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– **Section 34** and Regulation 47 and Constitution of India, Articles 16 and 12 – Right to promotion – Is covered under Article 16 – Corporation being a statutory body is “the State” within Article 12 – Section 34 – Directions by State Govt. to corporation relating to recruitment, conditions of service, training of its employees and wages to be paid to them and the matters alike – Have force of law and overriding effect – Corporation cannot depart from them except with previous permission of State Government – Government directing appointment to Class I and Class II posts through Public Service Commission – Board directing *ad hoc* appointments to be made – Subject to selection by Public Service Commission – Validly of – Selection post – Basis of appointment is

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– **Section 45** and State Road Transport Corporation Employees Service Regulations, MP (XXVII of 1960), Regulation 59 – Retirement of petitioner at the age of superannuation of 58 years of age on the basis of wrong entry of date of birth – Objection of petitioner accepted on the basis of High School Certificate – Order of retirement withdrawn by the Respondents/Corporation – Vigilance conducted without giving opportunity to the petitioner unilaterally – Petitioner again retired on the basis of date of birth shown in earlier Gradation list already superseded by subsequent gradation list of 1984 and 1989 – Order of retirement is violative of Article 14 of the Constitution – Order of retirement quashed: *Kailashnarayan Sharma Vs. M.P. S.R.T.C., I.L.R. (1992) M.P. 15*

– **Section 45(2)(c)** Road Transport Corporation Employees Service Regulations, MP Regulation 59, Industrial Employment (Standing Orders) Act 1946, Section 13-B and MP Industrial Employment (Standing Order) Act 1961, Section 2(2) and Standard Standing Orders 14-A – Scope of: *MP State road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669 (F.B.)*

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– **Regulation apply to Industrial workmen** in respect of matters not covered by Standing order: *M.P. State road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669 (F.B.)*

– **Regulation cannot prevail over matters regulated by Standing Order:** *MP State road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669 (F.B.)*

– **Regulation 1** – Not effective before 1st June 1970: *MP State road Transport Corporation Vs. Heeralal, I.L.R. (1982) M.P. 669 (F.B.)*

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– **“Boundaries prevail over area”** – Not of universal application – Boundaries vague but area exactly specified – Description by area would prevail: *Shanker singh Vs. Sanstha Sonabai Sharvakashram, I.L.R. (1980) M.P. 568 (D.B.)*

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– **Rules for the assessment, collection and refund of octroi tax** – Rule 38 and 45 Refund provided in: is a concession – Municipal Committee, Power of, to impose conditions and limitations and procedure for claiming refund: *Loonkaran Parakh Vs. The State of Madhya Pradesh, I.L.R. (1963) M.P. 200 (D.B.)*

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– **Rules of natural justice** – Working committee or Board of directors not performing any quasi-judicial duty – Rules of natural justice not applicable – Registration of Bank – No authority conferred on Bank to decide question of rights judicially: *Krishna Chandra Gupta, Vs. Registrar, Co-Operative Societies, Madhya Pradesh, Indore, I.L.R. (1964) M.P. 891 (D.B.)*

– **Rule 2 (i)** framed under Section 25 (6) of the Municipalities Act, C.P. and Berar – “Drawing Rs. 50/-Per mensem or over” – Not limited to case where substantive salary and dearness allowance come to that figure or exceed it: *Municipal Committee, Kawardha Vs. Ambika Prasad Gupta, I.L.R. (1959) M.P. 715 (D.B.)*

– **Rule 2** framed under Section 144 (2) (ii) of Panchayats Act: *Sheo Kumar Vs. Shri M.A. Khan, Deputy Commissioner, Bilaspur, I.L.R. (1959) M.P. 527(D.B.)*

– **Rule 4** framed under section 182 (2) (iv) Local Government Act – Electoral roll – Correction – Can be made even during the pendency of Sabha: *Murlidhar Vs. The Collector, Raigarh, I.L.R. (1959) M.P. 506 (D.B.)*

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– **Principle applicable for construing them:** *Prahlad Dutt Vs. State of Madhya Pradesh*, I.L.R. (1969) M.P. 214(D.B.)

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– **Rules framed under the Act** – To be treated as if made in the Act: *M/s Chootabhai Jethabhai Patel and Co., Rajnandgaon, Vs. The State of M.P.*, I.L.R. (1967) M.P. 688(D.B.)

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– **Rules for admission to professional courses framed by MP Vyavsayik Pathyakram Pravesh Pareeksha Mandal** – Rule 1.4 (iii), Explanantion 1 – The term

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– **Rules for admission to professional courses framed by MP Vyavsayik Pathyakram Pravesh Pareeksha Mandal – Rule 1.4 (iii), Explanation 5 – Concession by reservation – Whether can be obtained without fulfilling all conditions attached to it:** *Ku. Madhu Mittal Vs. State of M.P., I.L.R. (1984) M.P. 71 (D.B.)*

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– **Rules for admission to professional courses framed by MP Vyavsayik Pathyakram Pravesh Pareeksha Mandal – Rule 1.4 (iii), Explanation 5 – Rule about bonafide residents in MP not indicating availability of benefit of reservation to Freedom Fighters of erstwhile state of MP – Whether sufficient to strike it down as unreasonable:** *Ku. Madhu Mittal Vs. State of M.P., I.L.R. (1984) M.P. 71 (D.B.)*

– **Rules for admission to professional courses framed by MP Vyavsayik Pathyakram Pravesh Pareeksha Mandal – Rule 1.4 (iii), Explanation 5 – Whether applies to living freedom fighters only:** *Ku. Madhu Mittal Vs. State of M.P., I.L.R. (1984) M.P. 71 (D.B.)*

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– **Rules 6.5 and 8.5 and Constitution of India, Articles 14 and 16** – Determination of eligibility for consideration in accordance with Rules 6.5 and 8.5 –

Effective percentage of marks calculated in terms of Rule 8.5 for eligibility for consideration has to be 50% atleast – Respondent No. 5 got only 46.67% of effective percentage of marks – Not entitled to admission in post graduation – Admission quashed Directions issued to give admission to the next man in the order of merit in the waiting list: *Dr. Mukesh Kumar Jain. Vs. State of M.P., I.L.R. (1987) M.P. 140 (D.B.)*

– **Rules 8 (1), (2) and 10 and Constitution of India**, Articles 226 and 14 – Petitioner selected as eligible candidate for registration for M.D. Medicine and placed at No. 10 in merit list – Selection of 9 candidates in order of merit – Petitioner Placed at No. 1 in waiting list – Removal of candidate at No. 9 by the Council by an order dated 22-12-1984 w.e.f. 1-8-1984 – Petitioner entitled to admission as the next candidate – Respondents giving admissions to other candidates in department of Radiology in the year 1984 on the basis of merit list of 1983 – Petitioner not treated alike – Amounts to discrimination – Suitable direction to Respondent for admission of petitioner issued: *Dr. Sunil Gajendragadkar Vs. State of M.P., I.L.R. (1987) M.P. 163 (D.B.)*

– **Rule 9.6** – Writ Petition – Education – Admission to post graduate courses in medical colleges: *Dr. A.K. Gupta Vs. State, I.L.R. (1992) M.P. 311 (D.B.)*

– **Rule 9.6** – Petitioner already obtained post-graduation in M.D. (Radiology) before joining service as Assistant Surgeon – Prohibition that Asstt. Surgeon and Private Practitioners who have obtained post graduation in any subject shall not be allowed to take up Degree or diploma in another subject is made with a view to restrict competition for limited number of reserved seats – Challenge to Rule based on Article 14 of the Constitution – Without substance: *Dr. A.K. Gupta Vs. State, I.L.R. (1992) M.P. 311 (D.B.)*

Rules for Proceedings under the Contempt of Courts Act (LXX of 1971)

– **Rule 7 – Civil Contempt** – Same procedure to be followed as that of Criminal Contempt: *Collector, Gwalior Vs. First Civil Judge, Class-I, Gwalior, I.L.R. (1983) M.P. 539 (D.B.)*

– **Rule 7** – Not invalid: *Collector, Gwalior Vs. First Civil Jdge, Class-I, Gwalior, I.L.R. (1983) M.P. 539 (D.B.)*

Rules Framed Under Local Government Act, MP (XXXVIII of 1948)

– **Rule 3** – Failure to examine witnesses in departmental inquiry in support of charges – Amounts to fatal infirmity – Rules requiring holding of oral inquiry – Recording of evidence mandatory – Failure to hold such oral inquiry is fatal: *Sheokumar Tiwari Vs. The Janpad Sabha, Lakhnadon, I.L.R. (1972) M.P. 447(D.B.)*

Rules of Jabalpur Municipality

– **Rule 29 (2) of Octroi rules** – Conditions necessary to be satisfied for claiming refund – Rule 29(2) – Vires of – Claim for refund of whole amount of octroi tax paid, when tenable – City of Jabalpur Corporation Act, Section 175(3) – Suit for refund – Conditions necessary for its maintainability – Municipalities Act, C.P. and Berar, Section 48(2) – Suit filed after six months for refund of tax – Suit is barred by time: *National Tobacco Co. of India Ltd., Jabalpur Vs. City of Jabalpur Corporation, I.L.R. (1960) M.P. 832 (D.B.)*

– **Rule 29 (2) of Octroi rules** – Conditions necessary to be satisfied for claiming refund: *National Tobacco Co. of India Ltd., Jabalpur Vs. City of Jabalpur Corporation, I.L.R. (1960) M.P. 832 (D.B.)*

– **Rule 29 (2) of Octroi rules** – Vires of: *National Tobacco Co. of India Ltd., Jabalpur Vs. City of Jabalpur Corporation, I.L.R. (1960) M.P. 832 (D.B.)*

Rules of Natural Justice

– **Rules** vary according to varying constitutions of statutory bodies and rules under which they have to act: *Messrs Phoolchand Narendra Kumar Vs. State of M.P., I.L.R. (1974) M.P. 249 (D.B.)*

– **Requires giving opportunity to be heard** – Casts no obligation to be heard through a pleader unless statute or statutory rule provides to that effect: *The State of Madhya Pradesh Vs. Gopinath Shukla, I.L.R. (1966) M.P. 404 (D.B.)*

Ryotwari Sub – lessee Protection Act, Madhya Bharat (XXIX of 1955)

– **Section 3** – Sub-lease in contravention of Section 78 of Land Revenue and Tenancy Act, Madhya Bharat – Sub-lessee entitled to benefit of this provision – Sub – lessee is entitled to be *Bhumiswami* under Section 185 of Land Revenue Code, Madhya Pradesh, 1959 – Land Revenue Code, Madhya Pradesh, 1959 – Section 169 – Applicable to leases made after Code came into force – Cannot have retrospective operation – Section 257 (k) – Bars jurisdiction of Civil Court in respect of suits for possession by person under disability against their lessess: *Ranchhodprasad Vs. Nathuprasad, I.L.R. (1969) M.P. 997*

– **Section 3 and Tenancy Act, Madhya Bharat (LXVI of 1950)**, Section 74 – Sub-Leases granted before M.B. Tenancy Act came in force – Sub leases coming to end on 15-8-54 – Sub lessees were protected from enactment – Sub-leases granted by disabled person – Not granted protection – Land Revenue Code, Madhya Pradesh, 1959 – Section 185 – Contemplates two kinds of sub-lessees – Sub lessees granted protection – leases coming to an end – Sub – lessees protected – Requirements which

sub tenant had to satisfy to get occupancy rights – Section 185(3) – Special definition of sub-lessee under protection Act not incorporated – Sub – tenant therefore must have a subsisting lease in his favour – Exclusion created by sub-section (3) – Operative on sub leases granted under section 74, M.B. Tenancy Act when code came into force even though wider connotation to sub-section (3) not given – Words ‘holds land from a “Bhumiswami” in – Refers to an existing relationship – Section 168(5) Applicability – Section 185(3) – Excludes sub-lessees from acquiring occupancy rights when MP Land Revenue Code came into force: *Ram Kishan Das Vs. Mahila Shankar Pruwali*, I.L.R. (1976) M.P. 614 (D.B.)

– **Section 3 and 4** – Protect the possession of the sub-lessee if in possession on the date the Act came into force: *Soorajmal Vs. Rama*, I.L.R. (1974) M.P. 282 (D.B.)

– **Section 4 – Sub** – Lessees in Madhya Bharat and Bhopal regions got protection as well as occupancy status although sub-tenancy terminated according to contract or decree – Land Revenue Code, Madhya Pradesh, 1959 – Section 185 – Tenant holding over after termination of tenancy, but not dispossessed – Intitled to benefit of the Section – Quit notice – Not sufficient to terminate status as ordinary tenant – Transfer of Property Act – Section 106 – Agricultural lands let out without registered deed or without creating any permanent tenancy or sub-tenancy – Presumption is of a lease from year to year: *Gutti Padka Vs. Mohanlal*, I.L.R. (1969) M.P. 299

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– **Rule 18** – One month’s pay in lieu of notice – Payment, not a condition precedent – Order not rendered illegal for non payment: *Central Co-Operative Bank Ltd., Raisen Vs. Shibbulal*, I.L.R. (1988) M.P. 1 (F.B.)

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– **Rule 47** – Dismissal by approving authority of the punishing authority is not without jurisdiction: *The Central Co-operative Bank Ltd., Raisen Vs. The Board of Revenue*, I.L.R. (1988) M.P. 251 (F.B.)

Salary Allowances and Pension of Member of Parliament Act (XXX of 1954)

– **Section 8-A** – Provision for pension to Ex-Members of parliament – Not ultra vires – Constitutional validity – Test for: *S.P. Anand Vs. Union of India*, I.L.R. (2001) M.P. 914 (D.B.)

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– **Sections 2 (1), 13 and 30 (2)** – 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: *M/s Indian Finances Private Ltd., Allahabad, Vs. Sales Tax Officer, Jabalpur*, I.L.R. (1965) M.P. 700 (D.B.)

– **Section 4** – Distinction between a sale and agreement to sell: *Firm Bhagwandas Shobhalal Jain, Sagar Vs. State of M.P.*, I.L.R. (1966) M.P. 913(D.B.)

– **Section 4 (3)** – Words “where the transfer of property is to take place at a future time” in – Not restricted in operation to future goods – There can be no present sale of goods in potential existence – Property in such goods passes when goods come in existence – Transactions regarding future goods having potential existence – Amount to executory contracts or agreements to sell – Such contracts create only jus in personam and not jus ad rem – General Clauses Act, Section 3 (25) – Registration Act, Section 2 (6) – Fruit not in existence but deriving nourishment from soil – Not a growing crop – Limitation Act, Article 115 – Suit for compensation for breach of contract by government – Applicability: *Manoharlal Vs. The State of Madhya Pradesh*, I.L.R. (1958) M.P. 864 (D.B.)

– **Section 5** – Person acting as distributor placing orders with company for goods and paying their price – Company bearing the octroi duty, charges of handbills and Cinema slides – Distributor submitting account of stock from time to time – Person does not become an agent of the Company – Transactions deemed to be made on the basis of contract of sale – Suit for sale price not maintainable: *Seth Motilal Vs. The Golden Tobacco Co.*, I.L.R. (1957) M.P. 165

– **Section 6 (3)** – Agreement to sell coal-ash was a running contract – Such agreement operated only as an agreement to sell – Executory contract – Is a contract pure and simple – Executed contract is a contract plus a conveyance – Breach of agreement to sell by seller – Remedy of purchaser – Property in goods remains with the seller who can deal with and dispose them of – Rule of construction – Applicable in general to written contracts – Sale of Goods Act – Section 6(3) – Effect of – Expression “future goods” in – Meaning of – Remedies open to buyer in case of breach of contract of sale of future goods – Date when loss to be ascertained – Contract Act – Section 87 – Illustration (Before Sale of Goods Act) – Effect of – Sale of Goods Act – Section 6(3) – Remedies in case of breach of contract to sell future goods – Measure of damages: *Union of India Vs. Tarachand*, I.L.R. (1979) M.P. 1100 (D.B.)

– **Section 6 (3)** – Effect of: *Union of India Vs. Tarachand*, I.L.R. (1979) M.P. 1100 (D.B.)

– **Section 6 (3)** – Expression “future goods” in – Meaning of: *Union of India Vs. Tarachand*, I.L.R. (1979) M.P. 1100 (D.B.)

– **Section 6 (3)** – Remedies in case of breach of contract to sell future goods – Measure of damages: *Union of India Vs. Tarachand*, I.L.R. (1979) M.P. 1100 (D.B.)

– **Section 6 (3)** – Remedies open to buyer in case of breach of contract of sale of future goods – Date when loss to be ascertained: *Union of India Vs. Tarachand*, I.L.R. (1979) M.P. 1100 (D.B.)

– **Section 7** – Petitioner himself negligent – Failed to inspect the tendu leaves put to auction – Cannot invoke Section 7 of Sales of Goods Act: *Santosh Kumar Chopda Vs. State*, I.L.R. (2003) M.P. 42

– **Section 15** – Sale of goods by description – Goods must correspond with description – Test to be applied is strict one – Contract Act, Indian – Section 229 – intimation of rejection of goods to agent – Is intimation to principal – Agency – Agent occupying dual capacity viz. selling agent as well as favoured buyer – Agent acting a selling agent in particular transaction – Agent acts as agent in its normal meaning – His authority however is subject to his contractual terms – Principal “holding out” an implied authority to agent – Principal liable on basis of apparent authority – Agent acting within the scope of authority in entering into transaction – Agent has power to perform all acts incidental to the performance or breach of such contract – Contract Act – Section 208 – Termination of Contract of agency in relation to third party – Takes effect when third party has knowledge of it – Section 74 – Measure of damages for breach of contract – Civil Procedure Code – Order 7, Rule 9 – Alternative relief flowing from pleading of parties – Party entitled to that relief on alternative basis: *Kulsekharapatnam Hand-Made Match Workers’ Co-operative Cottage Industrial society Ltd. Vs. Firm Radhelal Lalloolal, Satna*, I.L.R. (1974) M.P. 636 (D.B.)

– **Section 23** – Delivery to buyer when takes place: *Firm Jagannath Bhagwandas Vs. Firm M/s Khemraj Madanlal*, I.L.R. (1958) M.P. 257 (D.B.)

– **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: *The Amalgamated Coalfields Ltd, Calcutta Vs. The Janapada Panchayat, Chhindwara*, I.L.R. (1981) M.P. 8 (D.B.)

– **Section 39** – Seller Authorised to send goods to buyer – Seller intrusting goods to carrier for transmission – Delivery is deemed to have been made to buyer: *Union of India Vs. National Coal Development Corporation Ltd., Ranchi*, I.L.R. (1974) M.P. 510

– **Section 39** – Title to goods passes when goods appropriated to contract of sell: *Union of India Vs. National Coal Development Corporation Ltd., Ranchi*, I.L.R. (1974) M.P. 510

– **Section 39 (1)** – Essentials for applicability: *C.P. Timber Works, Kanpur Vs. Commissioner of Sales Tax, M.P. Indore*, I.L.R. (1965) M.P. 762 (D.B.)

– **Section 54** – Provision in is subject to contract to contrary: *Gopodas Vs. The State of M.P., I.L.R. (1978), M.P. 474(D.B.)*

– **Section 54 (4)** – Gives right to unpaid seller to claim damages for rescission of contract – Rescission does not result in total annulment of contract: *Gopodas Vs. The State of M.P., I.L.R. (1978) M.P. 474(D.B.)*

– **Section 61** – Amount of royalty recovered by the lessee from the buyer is a part of the price – Recovery of interests by way of damages is permissible at a reasonable rate for the period for which it remained unpaid: *South Eastern Coalfields Ltd. Vs. State of M.P., I.L.R. (2004) M.P. 10 (D.B.)*

– **Section 64** – Sale of Goods – Unless there is a contract to the contrary liability to pay tax is on purchaser – Categorical stipulation in agreement – Purchaser cannot escape liability: *M/s A.O.P. Enterprises, Bidi Manufactures Vs. State of M.P., I.L.R. (2004) M.P. 1050*

Sales of Motor Spirit and Lubricants Taxation Act, Madhya Pradesh 1957 (IV of 1958)

– **Section 3 (unamended)** – Liability of whole sale dealer for payment of tax payable by retail dealer – Dependent upon agreement between him and the State Government – Section 3(1) – Tax leviable on all retail sales only if sales effected by them – Section 3 as amended by Act of 1961 – Assessee liable to sales-tax from the date the amendment came into force: *Caltex (India) Limited, Raipur Vs. Sales Tax Officer, Raipur, I.L.R. (1975) M.P. 613 (D.B.)*

– **Section 3** – As amended – Assessee liable to sales-tax from the date the amendment came into force: *Celtex (India) Limited, Raipur Vs. Sales Tax Officer, Raipur, I.L.R. (1975) M.P. 613 (D.B.)*

– **Section 3 (1)** – Tax leviable on all retail sales only if sales effected by them: *Celtex (India) Limited, Raipur Vs. Sales Tax Officer, Raipur, I.L.R. (1975) M.P. 613 (D.B.)*

Sales Tax (Central) Act (LXXIV of 1956)

– **Notification No. 878/913/V/ST, dated 31-3-1963** – Department of Railway – Sale to it amounts to sale to Railway – Branches of department have no separate existence: *G.R. Kulkarni Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 291 (D.B.)*

– **Notification No. 878/913/V/ST, dated 31-3-1963** – Railways – Is business activity of Government of India – Word “Business” in – Meaning of – Word “commercial” in – Used in conventional sence – Has also other meanings – Railways

are engaged in commercial activity whatever meaning is given to that word – Department of Railway – Sell to it amounts to sell to Railway – Branches of department have no separate existence – Sale to department of railway – Sale falls under exception – Railways are engaged in a business activity: *G.R. Kulkarni Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 291 (D.B.)*

– **Notification No. 878/913/V/ST, dated 31-3-1963** – Sale to department of railway – Sale falls under exception – Railways are engaged in a business activity: *G.R. Kulkarni Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 291 (D.B.)*

– **Notification No. 878/913/V/ST, dated 31-3-1963** – Word “Commercial” in – Used in conventional sense – Has also other meanings – Railways are engaged in commercial activity what ever meaning is given to that word: *G.R. Kulkarni Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 291 (D.B.)*

– **Section 3 – Inter** - State sales – Not taxable under the State Act though they may be inside sales: *Manganese ore (India) Ltd., Nagpur-1 Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1978) M.P. 8 (D.B.)*

– **Section 3 (a)** – Implication of sale in the course of inter - State trade or commerce – Passing of property is not test under this provision: *Manganese ore (India) Ltd. Nagpur-1 Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1978) M.P. 8(D.B.)*

– **Sections 3 (a), 4 (2) (b) and 9** – Delivery of goods at the mines siding – Risk in journey passing to buyer – Sale takes place at place of mine although goods can be rejected at destination because being not to specification: *Manganese ore (India) Ltd Nagpur-1. Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1978) M.P. 8 (D.B.)*

– **Section 4 (2) (b)** – Does not require that the goods should be un-conditionally appropriated to contract with assent of other party – Sales were inside sales: *Manganese ore (India) Ltd. Nagpur-1 Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur I.L.R. (1978) M.P. 8 (D.B.)*

– **Section 5 (1)** – Agreement regarding analysis and sampling and moisture determination done at port of discharge were to be final – Same things done at port of loading were to be provisional – Relevant only for final settlement of price: *Manganese ore (India) Ltd. Nagpur-1 Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur Region Jabalpur, I.L.R. (1978) M.P. 8(D.B.)*

– **Section 5 (1)** – Delivery of goods free on Board at Indian port – Sales are complete and title passes within territory of India: *Manganese ore (India) Ltd. Nagpur–*

1 Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1978) M.P. 8(D.B.)

– **Section 5 (1)** – Sale by seller to exporter – Sales cannot be said to have occasioned the export of goods: *Manganese ore (India) Ltd. Nagpur-1 Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1978) M.P. 8(D.B.)*

– **Section 5 (1)** – Sales to exporter – Not immediate cause of export – Sales cannot be said to be in course of export: *Manganese ore (India) Ltd. Nagpur-1 Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1978) M.P. 8(D.B.)*

– **Section 5 (1)** – Where property passes in F.O.B. Contracts – Course of export when commences: *Manganese ore (India) Ltd. Nagpur-1 Vs. The Regional Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1978) M.P. 8(D.B.)*

– **Section 5 (1) and Constitution of India, Article 286** – Sale by agent to foreign buyer on F.O.B. Terms – Sale is in course of export and is exempt from taxation – Sale by seller to exporter – Sales cannot be said to have occasioned the export of goods – Delivery of goods free on Board at Indian port – Sales are complete and title passes within territory of India – Agreement regarding analysis and sampling and moisture determination done at port of discharge were to be final – Same things done at port of loading were to be provisional – Relevant only for final settlement of price – Sales to exporter – Not immediate cause of export – Sales cannot be said to be in course of export – Where property passes in F.O.B. Contracts – Course of export when commences – Constitution of India – Article 1 – What is included in the territory of State Article 297 – Territory of India – Includes water in its ports and harbours and territorial waters – Central sales Tax Act – Sections 3(a), 4(2)(b) and 9 – Delivery of goods at the mines siding – Risk in journey passing to buyer – Sale takes place at place of mine although goods can be rejected at destination because being not to specification – Section 3(a) – Implication of sale in the course of inter – State trade are commerce passing of property is not text under this provision – Section 4(2)(b) – Does not require that the goods should be unconditionally appropriated to contract with assent of other party – Sales were inside sales Section 3 – Inter - State sales – Not taxable under the State Act though they may be inside sales – General Sales Tax Act, M.P. 1958 – 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), M.P. 8 (D.B.)*

– **Section 6 (2)** – Whether assessing Authority bound to grant exemption on production of E-I Form from selling dealer without furnishing ‘C’ Form declaration

from purchasing dealer: *The Commissioner of Sales Tax, Madhya Pradesh Vs. M/s Shivnarayan Jagat Narayan, Raigarh, I.L.R. (1981) M.P. 255 (D.B.)*

– **Section 8 (1)** – Re-assessment proceeding – Filing of certificate at appellate stage – Is of no avail to assess – Assessee not entitled to produce evidence in reassessment proceedings: *Commissioner of Sales M.P. Vs. M/s Bombay Textile Stores, Ujjain, I.L.R. (1980) M.P. 188 (D.B.)*

– **Section 8 (1)** – Tribunal is justified in accepting evidence to the assessment proceedings regarding date when “C” form silent about it: *Commissioner of Sales M.P. Vs. M/s Bombay Textile Stores, Ujjain, I.L.R. (1980) M.P. 188 (D.B.)*

– **Sections 8 (1), 8 (4), 9 (3), 13 (1), Central Sales Tax (Registration and turnover) Rules 1957, Rule 12(1), General Sale-tax Act, M.P. 1958 (II of 1959), Section 19(1) and Sales Tax (Central) Rules, M.P. 1957** – Declaration in form ‘C’ not completely filled in Requisite information and details not furnished therein – Assessee not entitled to benefit of Section 8(1) of the Central Sales Tax Act – Re-assessment proceeding – Filing of Certificate at appellate stage – Is of no avail to assessee – assessee entitled to produce evidence in reassessment proceedings – Tribunal is justified in accepting evidence to the assessment proceedings regarding date when “C” form silent about it: *Commissioner of Sales M.P. Vs. M/s Bombay Textile Stores, Ujjain, I.L.R. (1980) M.P. 188 (D.B.)*

– **Sections 8 (1) and (2-A)** – Goods when exempt from tax under this Act – General Sales Tax Act, Madhya Pradesh, 1958 – Explanation to sub section (2-A) or Section 8 – Expression “except only in specified circumstances or under specified condition” in – Meaning of: *The Commissioner of Sales Tax M.P. Vs. M/s Kapoor Dori Niwar and Co. Gwalior, I.L.R. (1973) M.P. 364 (D.B.)*

– **Section 8 (4) and Sales Tax (Registration and Turnover) Rules, Central 1957, Rule 12 (3)** – Inter State sales – Benefit or concessional rate of tax thereunder when can be claimed by the dealer – Production of duplicate form ‘C’ and declaration necessary – Mere production of photostate copy of counterfoil of declaration in from ‘C’ not sufficient: *The Commissioner of Sales Tax, Madhya Pradesh, Indore, Vs. M/s Gajanan Bidi Leaves Co., Sagar, I.L.R. (1986) M.P. 30 (D.B.)*

– **Section 9 and Sales Tax (Central), Rules, 1957** – Rules 7-A and 12 – General Sales Tax Act, Madhya Pradesh, 1958 – 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 General Sales Tax Rules, Madhya Pradesh – Breach punishable under Section 17(3) of General Sales Tax Act, and not by Rule 12 of Central Sales Tax Rules: *The Commissioner of Sales Tax, M.P. Indore Vs. M/s Kantilal Mohanlal and Brothers, Morena, I.L.R. (1970) M.P. 700 (D.B.)*

– **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: *M/s Premier Refractories of India (P) Ltd, Katni ETC Vs. Sales Tax Officer, Jabalpur, I.L.R.* (1977), *M.P. 955 (D.B.)*

– **Section 9 (2)** – Invalidity of penalty not validated by retrospective amendment: *M/S Premier Refractories of India (P) Ltd, Katni Etc. Vs. Sales Tax Officer, Jabalpur, I.L.R.* (1977), *M.P. 955 (D.B.)*

– **Section 9 (2)** – Penalty could not be imposed at the time it was imposed: *M/s Premier Refractories of India (P) Ltd, Katni ETC. Vs. Sales Tax Officer, Jabalpur, I.L.R.* (1977), *M.P. 955 (D.B.)*

– **Section 9 (2)** – Words “For the time being” in – Implications of: *M/s Premier Refractories of India (P) Ltd, Katni ETC Vs. Sales Tax Officer, Jabalpur, I.L.R.* (1977), *M.P. 955 (D.B.)*

– **Section 10-A** – Condition under which penalty under this provision can be imposed **Section-10(b)** – Words “falsely represents” in – Used in a narrower sense – Existence of *mens rea* – Necessary ingredient for offence under this provision: *The Commissioner of sales Tax, M.P. Indore Vs. Bombay General Stores, Shahdol, I.L.R.* (1976) *M.P. 199 (D.B.)*

– **Section 10-(b)** – Existence of *mens rea*– Necessary ingredient for offence under this provision: *The Commissioner of sales Tax, M.P. Indore Vs. Bombay General Stores, Shahdol, I.L.R.* (1976) *M.P. 199 (D.B.)*

– **Section 10-(b)** – Words “falsely represents” -Necessary ingredient for offence under this provision: *The Commissioner of sales Tax, M.P. Indore Vs. Bombay General Stores, Shahdol, I.L.R.* (1976) *M.P. 199 (D.B.)*

– **Section 14 (iv) (d) (iv) and General Sales-tax Act. M.P. 1958 (II of 1959), Entry No.5 of part I of schedule II** – Iron hoops are declared goods falling under section 14(iv)(d)(iv) and taxable at 3 per cent under Entry 5, part I, schedule II, M.P. General Sales-tax Act, 1958: *M/s Govindji jamunadas, Gwalior Vs. The Commissioner of Sales Tax, I.L.R.* (1983) *M.P. 417 (F.B.)*

– **Section 14 (iv) (d) (iv) and General Sales-tax Act. M.P. 1958 (II of 1959), Entry No.5 of part I of Schedule II** – Steel strips fall within “Rolled Steel Sections” – Steel strips riveted and painted continue to be the same commercial commodity – Iron hoops are declare goods falling under Section 14(iv)(d)(iv) and taxable at 3 per cent under entry 5, Part I, Schedule II, M.P. General Sales Tax Act, 1958 – Construction of

Statute – Amendment in a statute made to clarify the ambiguity – Useful in construing the earlier provision: *M/s Govindji jamunadas, Gwalior Vs. The Commissioner of Sales Tax, I.L.R. (1983) M.P. 417 (F.B.)*

Sales Tax (Central) Rules, Madhya Pradesh, 1957

– **Rules 7-A and 13** – Rules do not forbid imposition of penalty: *M/s Premier Refractories of India (P) Ltd, Katni ETC Vs. Sales Tax Officer Jabalpur, I.L.R.. (1977) M.P. 955 (D.B.)*

– **Rules 7-A and 12 and Sales Tax Act, M.P. Section 17(3)** – Rules create criminal offence while Section 17(3) does not: *M/s Premier Refractories of India (P) Ltd, Katni ETC Vs. Sales Tax Officer, Jabalpur, I.L.R. (1977) M.P. 955 (D.B.)*

– **Rule 8 (1), Proviso** – Enforceability of: *The Commissioner of Sales Tax, M.P. Indore Vs. M/s Girja Prasad Sunderlal, Satna, I.L.R. (1972) M.P. 793 (D.B.)*

– **Rule 8 (2)** – Provision not mandatory: *M/s. K.M. Chopra and Company, Nagpur Road, Jabalpur Vs. The Additional Commissioner of Sales-Tax M.P. Indore I.L.R. (1970) M.P. 31 (D.B.)*

– **Rule 8 (2)** – Validity: *M/s. K.M. Chopra and Company, Nagpur Road, Jabalpur Vs. The Additional Commissioner of Sales-Tax M.P. Indore I.L.R. (1970) M.P. 31 (D.B.)*

– **Rule 8-D** – Is merely directory and not mandatory: *Commissioner of Sales Tax, Madhya Pradesh Vs. M/s Shivnarayan Jagat Narayan, Raigarh, I.L.R. (1981) M.P. 255 (D.B.)*

– **Rule 8-D and Sales Tax Act (Central) (LXXIV of 1956), Section 6(2), Proviso and Central Sales Tax (Registration and Turnover) Rules, 1957, Rule 12(2)** – Inter-State sale – Subsequent Sale to a registered dealer – Exemption from liability of Central Sales Tax-Sales Tax (Central), 1956 Section 6(2) – Whether assessing authority bound to grant exemption on production of E-I form selling dealer without furnishing ‘c’ Form declaration from purchasing dealer – Sales Tax (Central) Rules, 1957 – Rule 8-D – Is merely director and not mandatory: *Commissioner of Sales Tax, Madhya Pradesh Vs. M/s Shivnarayan Jagat Narayan, Raigarh, I.L.R. (1981) M.P. 255 (D.B.)*

Sales Tax Act, C.P. And Berar (XXI of 1947)

– **And General Sales Tax Act, Madhya Pradesh, 1958 (II of 1959)** – Supply of coal outside the limit of the State under orders of Coal Commissioner – Liability to tax under the above Acts – Constitution of India – Article 286 as amended – Sales

between 11th September 1956 to 4th January 1957 – Power of State to levy Sales Tax under Coal Acts – Constitution of India – Article 226 – Non-exhaustion of remedy – Not a bar to exercise of power under article 226: *The Amalgamated Coalfields Ltd, Calcutta Vs. State of Madhya Pradesh, I.L.R. (1968) M.P. 709 (D.B.)*

– **And Rules made thereunder** – Rule 22 and forms VI and IV – Words “such period or periods” – Refer to quarter or quarters as specified in notice: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945 (F.B.)*

– **And Rules made thereunder** – Rules 22, 32 and 34 – Cannot that quarter is period prescribed for the definition of turnover in the Act: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945 (F.B.)*

– **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 (D.B.)*

– **Entry 11 of Schedule 1** – Words “Cosmetics” and “Toilet” in – To be construed as understood in common parlance and in commercial language: *The Commissioner Of Sales Tax, Madhya Pradesh, Indore, Vs. Shri Sadhana Aushadhalaya, Jabalpur, I.L.R. (1964) M.P. 986 (D.B.)*

– **Entry 32 of Schedule II and General Sales Tax Act, Madhya Pradesh, 1958 (II of 1959) – Section 10(1)** and Entry 23 of Schedule I – Do not contemplate exemption from sales tax on sales of medicinal preparation containing alcohol – Do not warrant reading of provisions of C.P. and Berar Prohibition Act, 1938 in the entries as referring to Act of 1955 – General Clauses Act – Section 8 – Words “Repeals”, “reenacts” and “provisions so repealed” – Limit operation of rule of “construction of references” only when former enactment repealed and re-enacted – Does not authorise substitutions of the repealing enactment for the provision repealed of former enactment: *M/s Vino Chemical and Pharmaceutical Works, Nagur Vs. The Sales Tax Officer, Raipur, I.L.R. (1967) M.P. 54 (D.B.)*

– **Entry 32, Schedule II** – Constitution – Entry 84, List I – Entry 54, List II – Levy of Sales Tax on preparation containing alcohol by State Government – Validity – C.P. and Berar Excise Act – Sections 2 (b) and (13) – Medicinal or toilet preparations 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.)*

– **Proceedings commencing before the New Act** – Assessee’s liability preserved – Tax leviable at old rate – Rights regarding appeal, revision and reference

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– **Schedule II, Entries must be construed strictly:** *The Commissioner of Sales Tax, Madhya Pradesh Vs. The Agarwal Saw Mills, Seoni, I.L.R. (1968) M.P. 342 (D.B.)*

– **Schedule II, Entry 41** – Biscuits – Whether fall under this provision – Word “cooked food” in – To be understood in the sense of common parlance – Exemption granted by – To be strictly construed – Words and phrases “Cooked Food” – Meaning of: *The Commissioner of Sales Tax, M.P. Indore Vs. Shri Ballabhdas Ishwar Das, I.L.R. (1968) M.P. 491 (D.B.)*

– **Schedule II, Entry 41** – Exemption granted by – To be strictly construed: *The Commissioner of Sales Tax, M.P. Indore Vs. Shri Ballabhdas Ishwar Das, I.L.R. (1968) M.P. 491 (D.B.)*

– **Schedule II, Entry 41** – Word “cooked food” in – To be understood in the sense of common parlance: *The Commissioner of Sales Tax, M.P. Indore Vs. Shri Ballabhdas Ishwar-Das, I.L.R. (1968) M.P. 491 (D.B.)*

– **Schedule II, Item 17** – Timber pharras – Does not fall under this provision – Turnover regarding sales thereof – Cannot be excluded from taxable turnover: *The Commissioner of Sales Tax, Madhya Pradesh Vs. The Agarwal Saw Mills, Seoni, I.L.R. (1968) M.P. 342 (D.B.)*

– **Section 2** – Contract for pressing cotton and for delivery of compressed cotton in a certain kind of packing contract amounts to sale of packing material – Sales Tax payable on sale price of packing material: *The Nimar Cotton Press Vs. The Sales Tax-Officer, Nimar Circle Khandwa, I.L.R. (1960) M.P. 748 (F.B.)*

– **Section 2** – Definition of dealer – Includes an agent whether acting on remuneration or commission – Same is the case with general sales Tax Act, M.P. 1958: *Tahsil Co-Operative Agricultural marketing Association Private Ltd., Khandwa Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1978) M.P. 1081(D.B.)*

– **Section 2 (c)** – Assessee charging interest on money invested for principal and commission for labour – Is only an agent and not dealer: *The Commissioner of Sales Tax Vs. M/s Basantilal Banarsidas Khandwa, I.L.R. (1977) M.P. 368 (D.B.)*

– **Section 2 (c)** – Assessee Purchasing raw cotton for mill, ginning it and selling seeds at the directions of Mill – Is not a dealer – Assessee charging interest on money invested for principal and commission for labour – Is only an agent and not dealer: *The Commissioner of Sales Tax Vs. M/s Basantilal Banarsidas Khandwa, I.L.R. (1977) M.P. 368 (D.B.)*

– **Section 2 (c)** – Distributor purchasing goods from company and selling to customers on his own responsibility without making company liable to him for the transaction – Falls under definition of Dealer liable to pay sales tax: *The State of Madhya Pradesh Vs. Shri Dayaram, I.L.R. (1960) M.P. 736 (D.B.)*

– **Section 2 (c)** – Essentials necessary to term a person a dealer – Section 2(g) – Transactions of financing purchaser or seller on commission and interest – Transactions do not amount to sale: *Motilal Hazarilal vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 636 (D.B.)*

– **Section 2 (c) (g)** – Expression “carries on the business of selling or supplying goods” in section 2(c) – To be construed in commercial sense – Test to be applied in determining whether a particular person is dealer or not: *The State of Madhya Pradesh Vs. The Bengal Nagpur Cotton Mills Ltd., Rajnandgaon, I.L.R. (1960) M.P. 920 (D.B.)*

– **Section 2 (c) and General Sales Tax Act, 1958 (II of 1959)** – Section 2(g) – Definition of goods – Cover steam: *Madhya Pradesh Electricity Board, Jabalpur Vs. The Commissioner of Sales- Tax, M.P. Gwalior, I.L.R. (1971) M.P. 967 (D.B.)*

– **Section 2 (c) and General Sales Tax Act, 1958 (II of 1959), Section 2(d)** – Subsidiary product in factory – Regular and continuous sale there of – Intention to carry on business in such product to be reasonably inferred: *Madhya Pradesh Electricity Board, Jabalpur Vs. The Commissioner of Sales-Tax, M.P. Gwalior, I.L.R. (1971) M.P. 967 (D.B.)*

– **Section 2 (c) and General Sales Tax Act, 1958 (II of 1959), Section 2(g)** – Supply of steam without profit motive – Not liable to sales-tax: *Madhya Pradesh Electricity Board, Jabalpur Vs. The Commissioner of Sales-Tax, M.P. Gwalior, I.L.R. (1971) M.P. 967(D.B.)*

– **Section 2 (c) and General Sales Tax Act, Madhya Pradesh, 1958 (II of 1959), Section 2(d)** – Electricity Board not to be regarded as dealer in respect of its activity of generation, distribution, sale and supply of electric energy: *Madhya Pradesh Electricity Board, Jabalpur Vs. The Commissioner of Sales-Tax, M.P. Gwalior, I.L.R. (1971) M.P. 967 (D.B.)*

– **Section 2 (c) and General Sales Tax Act, Madhya Pradesh, 1958 (II of 1959), Sections 2 (d) and 2 (g)** – Definitions of “goods” and “sale” in these Acts – To have same meaning as “sale of goods” in Sale of Goods Act – Section 2(g) – Definition of “goods” in – Does not cover electricity – Supply and distribution of electricity – Does not amount to sale of electricity as goods – Electricity Board not to be regarded as dealer in respect of its activity of generation, distribution, sale and supply of electric energy – Subsidiary product in factory – Regular and continuous a sale thereof – Intention

to carry on business in such product to be reasonably inferred – Definition of goods – Cover steam – Supply of steam without profit motive – Not liable to sales-tax – Sales Tax Act, 1947, Section 4(6) and General Sales Tax Act, Madhya Pradesh, Section 7 – Scope of: *Madhya Pradesh Electricity Board, Jabalpur Vs. The Commissioner of Sales-Tax, M.P. Gwalior, I.L.R. (1971) M.P. 967 (D.B.)*

– **Section 2 (c) and General Sales Tax Act, Madhya Pradesh, 1958 (II of 1959), Section 2 (g)** – Supply and distribution of electricity – Does not amount to sale of electricity as goods: *Madhya Pradesh Electricity Board, Jabalpur Vs. The Commissioner of Sales-Tax, M.P. Gwalior, I.L.R. (1971) M.P. 967 (D.B.)*

– **Section 2 (e)** – Sales of unserviceable vehicle or motor accessories belonging to assessee – Does not amount to Sale by dealer – Person selling not a dealer – Test to determine whether the sales is by dealer is whether the dealer carries on continuous operation with a view to earn profit: *Commissioner of Sales Tax, M.P. Indore Vs. Ram Dulare Balkishan & Brothers, Balaghat, I.L.R. (1966) M.P. 836(D.B.)*

– **Section 2 (e)** – Test to determine whether sale is by dealer is whether the dealer carries on continuous operation with a view to earn profit: *Commissioner of Sales Tax, M.P. Indore Vs. Ram Dulare Balkishan & Brothers, Balaghat, I.L.R. (1966) M.P. 836(D.B.)*

– **Section 2 (g)** – Explanation II – Sale to Pucca Adatiya – When takes place – Pucca Adatiya residing outside State – Goods also leaving State before sale – Explanation not applicable: *ShriGopal Vs. The State, I.L.R. (1957) M.P. 389 (D.B.)*

– **Section 2 (g)** – Explanation II (as prior to 1950) – *Vires* of – Assessment and collection of tax on its basis after constitution – Validity – Contract of sale outside State – Goods existing and ascertained in the State – Goods are liable to Sales-Tax – Unascertained goods become ascertained when delivered to common carrier: *Messrs Mohanlal Hargovinddas Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 1035 (D.B.)*

– **Section 2 (g) and Explanation II** – Despatch of goods by a manufacturer in the State to a person carrying on business outside the State – Price of goods debited to buyer – Buyer responsible for shortage, etc., in transit – Transaction amounts, to sale and liable to imposition of sales tax: *Ramchandra Rathore Bros. Vs. The Commissioner of Sales Tax, I.L.R. (1957) M.P. 391 (D.B.)*

– **Section 2 (G), Explanation (ii)** – Constitution of India – Article 286 – Tax on sale of goods outside the State prior and subsequent to 26-1-50 – Validity: *Messrs Mullaji Jamaluddin And Co. Vs. The State of M.P., I.L.R. (1957) M.P. 631 (F.B.)*

– **Section 2 (g), Explanation II** – Goods in existence at the time when agreement entered into – Then sale takes place where goods exist though under Sale of Goods Act, sale takes place when good appropriated – Even though sale may be said to have been outside – Sales inferred by fiction in State where goods exist – *Situs* can be fixed by nexus theory which State Legislature has authority: *Messrs Anwarkhan mehboob Company, Jabalpur Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1970) M.P. 193 (D.B.)*

– **Section 2 (g), Explanation II** – Sales inferred by fiction in State where goods exist – *Situs* can be fixed by nexus theory which State Legislature has authority: *Messrs Anwarkhan mehboob Company, Jabalpur Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1970) M.P. 193 (D.B.)*

– **Section 2 (i) (a)** – Quarrying and breaking of boulders into metal (stones) – Amounts to manufacture – Person carrying on such business – Liable to assessment: *G.R. Kulkarni Vs. The State, I.L.R. (1957) M.P. 13 (D.B.)*

– **Section 2 (j)** – “Prescribed period” and “Such period” in – Mean a quarter: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945 (F.B.)*

– **Section 2 (j)** – Words “such period” in definition of taxable turnover – Refers to “prescribed period” in the definition of turnover: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945 (F.B.)*

– **Section 2 (j) (a) (iii)** – Goods used for generation and distribution of electric energy only exempted – Every other thing sold to Electricity Board – Not exempted: *Associated Cement Co. Ltd., Kymore, M.P. Vs. Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur, I.L.R. (1974) M.P. 270 (D.B.)*

– **Section 2 (J) (a) (III), as amended** – Sale by Cement Marketing Co. to a purchaser outside the State – Goods delivered to purchaser outside the State where manufacture of cement takes place – Sale is explanation sale and is exempt from sales-tax: *The Associated Cement Co. Ltd, Kymore Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1980) M.P. 361 (D.B.)*

– **Section 2 (j) – Term “Supply” in** – Not to be interpreted in literal absolute sense – To be given a limited and qualified sense – Section 2 (c) – Term “Or otherwise” in Important and very wide – Agent or trustee supplying goods to members – Not to amount to a transaction of sale even when supply is for commission or agency brokerage: *Bengal Nagpur Cotton Mills Club, Rajnandgaon, Durg Vs. Sales Tax Officer, Raipur, I.L.R. (1957) M.P. 297 (D.B.)*

– **Section 2(J) (a) (III), as amended in 1951 and Constitution of India, Article 286(1)(a), Explanation** – Cement appropriated by manufacturer to contract in favour of Cement Marketing Co. who held authorization – Sale takes place at the place of manufacturer – Sale is intra – State sale – Assessee manufacturer liable to pay sales-tax to State – Sale by Cement Marketing Co. to a purchaser out-side the State – Goods delivered to purchaser outside the State where manufacture of cement takes place – Sale is explanation sale and is exempt from sale-tax – Constitution of India – Article 286, Explanation – Words “actually delivered” in-implication of: *The Associated Cement Co.Ltd, Kymore Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1980) M.P. 361 (D.B.)*

– **Sections 2 (b) and 4 (1), Proviso** – Sales not in execution of contracts as defined in Section 2(b) – Sales effected after the Act – Sales not exempted from tax – Word “Contract” in proviso to Section 4(1) – To be interpreted according to Section 2(b) of the Act: *The Perfect Pottery Company Limited, Jabalpur Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1970) M.P. 354 (D.B.)*

– **Section 3** – Sale of manufactured gold ornaments from gold purchased – Amounts to sale of gold – Seller liable to pay sales tax – Section 11(5) – Starting point of limitation – Material date is date of notice (Form XII) – Section 11-A – Period of 3 years to be computed from 1st January following date of expiry of period of assessment – Limitation of Section 11-A Not to be read in Section 11 as first assessment does not fall within any of four contingencies for which limitation is provided in Section 11-A: *Dauram Vs. The State of Madhya Pradesh, I.L.R. (1961) M.P. 663 (D.B.)*

– **Section 4** – Condition precedent for imposition of tax – Section 2(c) and (g) – Expression “carries on the business of selling or supplying goods” in section 2(c) – To be construed in commercial sense – Test to be applied in determining whether a particular person is dealer or not: *The State of Madhya Pradesh Vs. The Bengal Nagpur Cotton Mills Ltd., Rajnandgaon, I.L.R. (1960) M.P. 920 (D.B.)*

– **Section 4 (1), Proviso** – Word “Contract” in proviso to Section 4(1) – To be interpreted according to Section 2(b) of the Act: *The Perfect Pottery Company Limited, Jabalpur Vs. The Commissioner of Sale Tax, M.P., I.L.R. (1970) M.P. 354 (D.B.)*

– **Section 4 (6)** – Purchase of timber on declaration that it is for Consumption in the State – Timber exported outside State – Original purchaser liable to pay sales-tax: *M/s S.N. Ghosh Vs. The Commissioner of Sales Tax, Madhya Pradesh, I.L.R. (1965) M.P. 355 (D.B.)*

– **Section 4 (6) and General Sales Tax Act, Madhya Pradesh, 1958 (II of 1959) – Section 7 – Scope of:** *Madhya Pradesh Electricity Board, Jabalpur Vs. The Commissioner of Sales-Tax, M.P. Gwalior, I.L.R. (1971) M.P. 967 (D.B.)*

– **Section 4 (6)** as amended – Goods not specified in certificate – Assessee not absolved from payment of purchase-tax when declaration given to seller that purchased goods would be used for manufacture which would be sold by actual delivery in M.P. for consumption – Goods not used for the purpose but dispatched outside M.P. – Certificate of registration not in conformity with amended Section 4(6) – Goods purchased without payment of tax for the purpose mentioned in Section 4(6) and utilized for other purpose – Dealer liable to assessment under amended Section 4(6): *M.P. Lac industries, Dhamtari Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1976) M.P. 379 (D.B.)*

– **Section 4 (6) as amended** – Goods not used for the purpose but dispatched outside M.P. – Certificate of registration not in conformity with amended section 4(6): *M.P. Lac industries, Dhamtari Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1976) M.P. 379 (D.B.)*

– **Section 4 (6) as amended** – Goods purchased without payment of tax for the purpose mentioned in Section 4(6) and utilized for other purpose – Dealer liable to assessment under amended Section: *M.P. Lac industries, Dhamtari Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1976) M.P. 379 (D.B.)*

– **Section 5 (1) (a) and Schedule 1, Entry 11** – Hair-oil prepared with help of Ayurvedic formula and having bad odour – Falls under the heading “Toilet” or “Cosmetic” under entry 11 of Schedule 1 and liable to tax according to Section 5(1) (a) – Words “Cosmetics” and “Toilet” in Entry 11 of Schedule 1 – To be construed as understood in common parlance and in commercial language: *The Commissioner of Sales Tax, Madhya Pradesh, Indore, Vs. Shri Sadhana Aushadhalaya, Jabalpur, I.L.R. (1964) M.P. 986 (D.B.)*

– **Section 8** – Casts duty on dealer to register himself before carrying on business: *State of Madhya Pradesh Vs. Santsingh, I.L.R. (1968) M.P. 313 (D.B.)*

– **Section 8 (1)** – Omission to take certificate – Not an offence but carrying on business Without certificate is an offence – Section 26 (2) – Words “Anything done” covers “omissions” – Word “under” in – Synonymous with “in accordance with the provision of” – Anything done in contravention of the provisions of the Act – Cannot be considered to be done under the Act – Section not applicable to the offences committed by dealers – Interpretation of Statute – Principle – Different part of enactment – To be interpreted in a way so as to give effect to every one them: *The State of Madhya Pradesh Vs. Som Nath, I.L.R. (1960) M.P. 505 (D.B.)*

– **Section 8 (5)** – Conviction of dealer for non-registration – Commissioner registering the dealer and granting certificate – Certificate to take effect as if dealer registered on his application – The dealer has to be treated as registered dealer only if

he is convicted for non-registration be competent authority – Jurisdiction – Authority having no jurisdiction to deal with the matter still dealing with it – Competent authority not deprived of jurisdiction to deal with same matter: *Seth Pamandas Sindhi Vs. The State of M.P., I.L.R. (1963) M.P. 863 (D.B.)*

– **Sections 8 and 24 (1)** – Breach of Section 8 – Breach punishable under Section 24 (1): *State of Madhya Pradesh Vs. Santsingh, I.L.R. (1968) M.P. 313 (D.B.)*

– **Sections 8 and 24 (1)** – Section 8 – Casts duty on dealer to register himself before carrying on business – Breach of Section 8 – Breach punishable under Section 24(1) – Section 26(2) – Carrying on business without getting registered – Amounts to omission under the Act – Action comes under the provision: *State of Madhya Pradesh Vs. Santsingh, I.L.R. (1968) M.P. 313 (D.B.)*

– **Section 11 (4)** – Best judgment – Assessment made on the basis of private sources of information and inquiries made – Assessment proper – Provided material disclosed to Assessee and opportunity given to rebut: *M/s Bhagwanjibhai Jairambhai, Timber Merchants, Jabalpur Vs. The Commissioner of Sales Tax., I.L.R. (1960) M.P. 783 (D.B.)*

– **Section 11 (4)** – No flaw in account books but otherwise found to be unreliable – Assessing authorities not bound to accept them – Can make best judgment assessment – But estimate must relate to some evidence or material: *Mohanlal Vishram Vs. The Commissioner of Sales Tax, Madhya Pradesh, Jabalpur, I.L.R. (1964) M.P. 819 (D.B.)*

– **Section 11 (5)** – Assessment not complete before dissolution of firm – Liability to pay tax does not disappear – Can be determined during winding up proceedings: *Ghanshyamdas, Vs. Sales Tax Officer, Durg, I.L.R. (1965) M.P. 221 (D.B.)*

– **Section 11 (5)** – Calendar year in – Day from which it is to be calculated – Calendar month has two meanings but calendar year has not: *Kanhayyalal Vs. Deputy Commissioner of Sales Tax, M.P., Nagpur, I.L.R. (1958) M.P. 1 (F.B.)*

– **Section 11 (5)** – Conditions requisite for making assessment – Issue of notice not a condition precedent – Not necessary that dealer must be heard before issue of notice: *Ghanshyamdas, Vs. Sales Tax Officer, Durg, I.L.R. (1965) M.P. 221 (D.B.)*

– **Section 11 (5)** – Covers whole period for which dealer is liable to pay tax and has failed to apply for registration: *M/s L.J. Patel And Co., Raipur, Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore, I.L.R. (1965) M.P. 534 (D.B.)*

– **Section 11 (5)** – Imposition of penalty under – Prior approval of Sales Tax Commissioner necessary – Words and Phrases – Word “Firewood” – To be understood

in popular and natural sense in the Sales Tax Act – Meaning of – Schedule II – Entries must be construed strictly – Schedule II, Item 17 – Timber *pharras* – Does not fall under this provision – Turn-over regarding sales thereof – Cannot be excluded from taxable turnover: *The Commissioner of Sales Tax, Madhya Pradesh Vs. The Agarwal Saw Mills, Seoni, I.L.R. (1968) M.P. 342(D.B.)*

– **Section 11 (5)** – Limitation of 3 years to be computed for each quarter separately and for the entire period within which he is liable to pay tax taken as a whole: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945 (F.B.)*

– **Section 11 (5)** – Not to be narrowly construed – “Period” in – Meaning of – Point from which three years period is to be computed – Interpretation of statute – 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, Madhya Pradesh, Indore, I.L.R. (1964) M.P. 175 (D.B.)*

– **Section 11 (5)** – Question whether turn over exceeds taxable limit and whether assessee willfully failed to apply for registration – A Question of fact: *Ghanshyamdas, Vs. Sales Tax Officer, Durg, I.L.R. (1965) M.P. 221 (D.B.)*

– **Section 11 (5)** – Starting point of limitation – Material date is date of notice (Form XII): *Dauram Vs. The State of Madhya Pradesh, I.L.R. (1961) M.P. 663 (D.B.)*

– **Section 11 (5)** – Word “period” – Refers to quarter or quarters which is limit of assessment – Covers the case of dealer who does not apply for registration and does not file return: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945 (F.B.)*

– **Section 11 (5)** – Words “within three calendar years from the expiry of such period” in – Mean three calendar years from expiry of such quarter for which dealer is liable to pay tax: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945 (F.B.)*

– **Section 11-A** – Applicability of, to a case pending before appellate authority in appeal against assessment order: *Messrs Mohanlal Hargovinddas Vs. The State of Madhya Pradesh, I.L.R. (1963) M.P. 637(D.B.)*

– **Section 11-A** – Conditions for applicability of section 11-A – Expression “If in consequence of any information which has come into his possession, the commissioner is satisfied” – Meaning of – Question of satisfaction – A subjective matter – Cannot be challenged except on ground of mala fide: *Kanhaiyalal Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1960) M.P. 603 (D.B.)*

– **Section 11-A** – Period of 3 Years to be computed from 1st January following date of expiry of period of assessment – Limitation in Section 11-A Not to be read in

Section 11 as first assessment does not fall within any of four contingencies for which limitation is provided in section 11-A: *Dauram Vs. The State of Madhya Pradesh, I.L.R. (1961) M.P. 663 (D.B.)*

– **Section 11-A** – Scope of Term “Escaped assessment” – Explained – When it can be taxed: Section 11-A of C.P. and Berar Sales Tax Act does not govern the cases where the assessment is being made for the first time, either on a return being made or where no return is made and action is taken under 4th Sub-section of Section 11 of the said Act: *Regional Assistant Commissioner of Sales Tax Vs. Ghanshyamdass, I.L.R. (1957) M.P. 634 (D.B.)*

– **Section 11-A and General Sales-Tax Act, Madhya Pradesh, 1958 (II of 1959)** – Section 19(1) – 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 (D.B.)*

– **Section 11-A and Income Tax Act, Section 34 (1)(b)** – Distinction between them: *Kanhaiyalal Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1960) M.P. 603 (D.B.)*

– **Sections 11-A and 22 (5)** – Section 22 (5) is subject to Section 11-A – Power of revision not exercisable after expiry of limitation under Section 11-A – General Sales Tax Act, Madhya Pradesh 1958 – 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 (D.B.)*

– **Sections 11-A, 22-A and 22-B** – Not overlapping: *Kanhaiyalal Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1960) M.P. 603 (D.B.)*

– **Sections 11-A, 22-B and 27-A (1) (b)** – Conditions for applicability of section 11-A – Expression “if in consequence of any information which has come into his possession, the commissioner is satisfied” – Meaning of – Question of satisfaction – A subjective matter cannot be challenged except on ground of mala fide Sections 11 – A, 22-A and 22-B not overlapping – Sales Tax Act, section 11-A and Income Tax Act, Section 34 (1)(b) – Distinction between them: *Kanhaiyalal Vs. The Commissioner of Sales Tax, M.P. Indore, I.L.R. (1960) M.P. 603 (D.B.)*

– **Section 11-C** – To be construed consistent with the right of successor State to recover arrears of taxes conferred by Section 78 of States Re-organisation Act: *Shyama Charan Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945 (F.B.)*

– **Section 16, Proviso** – Sales Tax Rules C.P. and Berar, 1947 – Rule 67 – Delegation of power to impose penalty by Commissioner to Sales Tax Officer – Sales

Tax Officer can exercise power only with previous approval of Assistant Commissioner and Commissioner: *The Commissioner of Sales Tax, M.P. Indore Vs. Gulabchand Laxminarayan, Pendra, Bilaspur, I.L.R. (1966) M.P. 843 (D.B.)*

– **Section 17** – Liability of registered dealer for Sales Tax continues – As long as change in the name and nature of business not intimated to prescribed authority: *Lalji Vs. The Assistant Commissioner Sales Tax, Raipur, I.L.R. (1958) M.P. 495 (D.B.)*

– **Section 18 (5)** – Dealer not maintaining accounts of sale – Taxing authority, Power of, to compute profits at flat rate: *Padamsingh Vs. Commissioner of Sales Tax, Madhya Pradesh, I.L.R. (1966) M.P. 1005(D.B.)*

– **Section 18 (5)** – The rate at which profits to be calculated – Is a question of fact depending on nature and extent of business and surrounding circumstances: *Padamsingh Vs. Commissioner of Sales Tax, Madhya Pradesh, I.L.R. (1966) M.P. 1005(D.B.)*

– **Section 22 (1) and Rule 53 (4)** – Appeal against appellate order dismissing appeal for default – Power of second appeal Court to hear appeal on merits: *M/s Purshottamdas Mathuradas And Co., Private Ltd., Dhamtari Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1969) M.P. 884 (D.B.)*

– **Section 22 (1) and Rules 55 and 57** – Payment of tax or penalty – A condition precedent for entertainment of revision but not so in case of appeal: *The Sales Tax Commissioner, M.P. Vs. Ghanshyamdas, I.L.R. (1957) M.P. 386 (D.B.)*

– **Section 22 (4)** – Does not provide for appeal against appellate order of Commissioner of against original order passed by him: *The Commissioner of Sales Tax, M.P. Vs. M/s Caltex (India) Ltd., Satna, I.L.R. (1971) M.P. 579 (D.B.)*

– **Section 22 (4)** – Power of Board of Revenue to decide case on material on record and not to remand case – **Section 18(5)** – Dealer not maintaining accounts of sale –taxing Authority, Power of, to compute profits at flat rate – The rate at which profits to be calculated – Is a question of fact depending on nature and extent of business and surrounding circumstances: *Padamsingh Vs. Commissioner of Sales Tax, Madhya Pradesh, I.L.R. (1966) M.P. 1005 (D.B.)*

– **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(D.B.)*

– **Section 22 (7) and Rule 80 of the Sales Tax Rules, Vindhya Pradesh** – Make provision for hearing of assessee whose assessment is to be enhanced in appeal or to any other person who is likely to be affected: *The Commissioner of Sales Tax, M.P. Vs. M/s Caltex (India) Ltd., Satna, I.L.R. (1971) M.P. 579 (D.B.)*

– **Section 22 (7), and Rule 80 of the Sales Tax Rules, Vindhya Pradesh, 1954** – Do not authorize Commissioner to enhance assessment in revision: *The*

Commissioner of Sales Tax, M.P. Vs. M/s Caltex (India) Ltd., Satna, I.L.R. (1971) M.P. 579 (D.B.)

– **Section 22 and Sales Tax Rules, Vindhya Pradesh 1954, Rule 75** – Section 22 (4) – Does not provide for appeal against appellate order of Commissioner of against original order passed by him – Central Sales Tax Act, Madhya Pradesh 1958 – Section 52(1) – Preserves right of appeal granted by Section 22 of the Act of 1947 – Section 22 (7) and Rule 80 – Make provision for hearing of assessee whose assessment is to be enhanced in appeal or to any other person who is likely to be affected – Do not authorize Commissioner to enhance assessment in revision: *The Commissioner of Sales Tax, M.P. Vs. M/s Caltex (India) Ltd., Satna, I.L.R. (1971) M.P. 579 (D.B.)*

– **Section 22 read with rule 58** – Appellate authority, power of, to enhance assessment by including transactions exempted in taxable turnover – Power not rendered infructuous by withdrawing appeal or by remaining absent: *Messrs Mohanlal Hargovinddas Vs. The State of Madhya Pradesh, I.L.R. (1963) M.P. 637(D.B.)*

– **Section 22-A – Revisional powers of Commissioner** – Not restricted to matters mentioned in application made by party – Can consider whole case – Section 11(5) – Conditions requisite for making assessment – Issue of notice not a condition precedent – Not necessary that dealer must be heard before issue of notice – Question whether turnover exceeds taxable limit and whether assessee willfully failed to apply for registration – A question of fact – Interpretation of Statute – Act giving retrospective effect – Closed transaction or substantive rights effected and re-opened – Section 11 (5) – Word “period” in – Covers whole period during which registration was not effected – Assessment not complete before dissolution of firm Liability to pay tax does not disappear – Can be determined during winding up proceedings – Partnership Act – Section 49 – Payment of partnership debt – A part of winding up process – Sections 47 and 49 – Partnership dissolved – Partnership still continues for winding up purposes and payment of liability – Assessment can be made against dissolved firm – Notices could be issued to the firm: *Ghanshyamdass, Vs. Sales Tax Officer, Durg, I.L.R. (1965) M.P. 221 (D.B.)*

– **Section 23** – Reference pending in High Court – Does not operate as stay – Order of tribunal is not suspended – Decorum requires tribunal to await decision – Undue haste in resuming assessment – Furnishes ground for contending that authority wants to thwart reference – Answering of reference making remand order illegal – Belief that assessment order will stand is mistaken: *Messrs Haji Latif Abdulla Vs. The Board of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1965) M.P. 364 (D.B.)*

– **Section 26 (2)** – Carrying on business without getting registered – Amounts to omission under the Act – Action comes under the provision: *State of Madhya Pradesh, Vs. Santsingh, I.L.R. (1968) M.P. 313 (D.B.)*

– **Section 26 (2)** – Not applicable to the offences committed by dealers: *The State of Madhya Pradesh Vs. Som Nath, I.L.R. (1960) M.P. 505 (D.B.)*

– **Rules 32** – Provision of, not mandatory – Section 11(5) – Covers whole period for which dealer is liable to pay tax and has failed to apply for registration: *M/s L.J. Patel And Co., Raipur, Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore, I.L.R. (1965) M.P. 534 (D.B.)*

– **Rule 32 of the Rules framed thereunder** – Provision of, not mandatory: *M/S L.J. Patel And Co., Raipur, Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore, I.L.R. (1965) M.P. 534 (D.B.)*

– **Rule 67** – Delegation of Power to impose penalty by commissioner to Sales Tax Officer – Sale Tax Officer can exercise power only with previous approval of Assistant Commissioner and Commissioner: *The Commissioner of Sales Tax, M.P. Indore Vs. Gulabchand Laxminarayan, Pendra, Bilaspur, I.L.R. (1966) M.P. 843(D.B.)*

Sales Tax Act, Central (LXXIV of 1956)

– **Person claiming relief under the statutory provision** – Person must accept its validity – Section 8(3)(b) – Expression “intended for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution on electricity or any other form of power” in – Indicate that manufacture or processing of goods is not mining or generation or distribution – That is natural meaning or generation or distribution – That is natural meaning of words “manufacture of processing of goods” – Words “in mining” – Connotes in the process of mining – Coal mining operation – What it includes – Transport of coal from surface to other places – Activity distinct and independent from operation which constitutes mining – Goods which are not used in mining within the meaning of Rule 13: *Indra Singh & Sons Private ltd., Chirimiri Vs. The Sales Tax Officer, Raigarh, I.L.R. (1963) M.P. 35 (D.B.)*

– **Section 8 (3) (b)** – Expression “intended for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power” in – Indicate that manufacture or processing of goods in not mining or generation or distribution – That is natural meaning of words “manufacture of processing of goods”: *Indra Singh & Sons Private ltd., Chirimiri Vs. The Sales Tax Officer, Raigarh, I.L.R. (1963) M.P. 35(D.B.)*

– **Rule 13** – Coalmining operation – What it includes – Transport of coal from surface to other places – Activity distinct and independent from operation which constitutes mining – Goods which are not used in mining within the meaning of Rule 13: *Indra Singh & Sons Private Ltd., Chirimiri Vs. The Sales Tax Officer, Raigarh, I.L.R. (1963) M.P. 35(D.B.)*

Sales Tax Act, Madhya Bharat, 1950

– **Assessment** – General Sales-Tax Act, Madhya Pradesh, 1958 (II of 1959) – Assessment for the period prior to the new Act – Governed by old act in all matters: *M/s Amarnath Ajit Kumar Bhind Vs. Commissioner of Sales Tax, Madhya Pradesh, I.L.R. (1975) M.P. 554 (D.B.)*

– **Assessment** – If there be nothing in the new Act, regarding assessment prior to the coming into force of the new Act, Section 10 of the General Clauses Act, Madhya Pradesh, 1957 applies – Assessment for the period prior to the new Act – Governed by old act in all matters – General Sales-tax Act, Madhya Pradesh, 1958 – Section 62, Proviso 1 – Preserves previous operation of repealed Acts in all matters governed by it – 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 – Sales-Tax Act, Madhya Bharat, 1950 – Section 12(2) and General Sales Tax Act, Madhya Pradesh, 1958 Section 39(2) – Order of assessment regarding period when Madhya Bharat Sales-Tax Act in force – Revision against order governed by Section 12(2) of the Madhya Bharat Act and not Section 39 of the M.P. General Sales-Tax Act: *M/s Amarnath Ajit Kumar Bhind Vs. Commissioner of Sales Tax, Madhya Pradesh, I.L.R. (1975) M.P. 554 (D.B.)*

– **Section 5, item 30 of Notification dated 22-5-50** – Item 30 refers to Electric goods of every description – Expression “Electric goods of every description” – Wide enough to include Torch Batteries – Words “Include” – Is a word of enlargement – Used to enlarge the meaning of words and phrases occurring in body of statute: *Messrs Bansilal Vs. The Commissioner of Sales Tax, Madhya Bharat, Gwalior, I.L.R. (1957) M.P. 75 (D.B.)*

– **Section 8 (1) (b) and (5)** – Rebate – Time when it can be claimed: *Messrs Ramanlal Poonambhai Vs. Commissioner of Sales Tax, Madhya Bharat Government, I.L.R. (1957) M.P. 71 (D.B.)*

– **Section 10** – Scope and Extent – Burden on department to prove under assessment as certain turnover has escaped assessment – Not necessary for assessing authority to prove each and every specific item: *Sales Tax Commissioner, M.P., Indore Vs. M/s Kunte Brothers, Gwalior, I.L.R. (1960) M.P. 914 (D.B.)*

– **Section 12 (2) and General Sales Tax Act, Madhya Pradesh 1958 (II of 1959), Section 39 (2)** – Order of assessment regarding period when Madhya Bharat Sales-Tax Act in force – Revision against order governed by Section 12(2) of the Madhya Bharat Act and not Section 39 of the M.P. General Sales-tax Act: *M/s Amarnath Ajit Kumar Bhind Vs. Commissioner of Sales Tax, Madhya Pradesh, I.L.R. (1975) M.P. 554 (D.B.)*

– **Rule 46 – Power to Transfer** – Not confined to any particular case pending before Sales Tax Officer – Can be exercised with respect to a class of cases then pending – Jurisdiction – Not conferred by submitting wrong return: *Messers Khemchand Rajmal Vs. The Chief Secretary, Madhya Bharat Government, I.L.R. (1957) M.P. 92 (D.B.)*

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– **Rule 11 (c) – Exemption certificate issued for a particular year** – Valid not only for the quantum of turnover but also for any actual excess turnover in that year – Assessee liable to pay fee only at the rate prescribed: *The Commissioner of Sales Tax, Madhya Pradesh Vs. M/s Daulatram Dulichand, Ratlam, I.L.R. (1969) M.P. 1063 (D.B.)*

– **Rules 11 and 13 – Assessee obtaining exemption certificate** – Assessee not liable to pay sales-tax if turnover exceeds the turnover of preceding year – Rule 14 – Assessee liable to pay tax if no exemption certificate granted – Rule 11 (c) – Exemption certificate issued for a particular year – Valid not only for the quantum of turnover but also for any actual excess turnover in that year – Assessee liable to pay fee only at the rate prescribed: *The Commissioner of Sales Tax, Madhya Pradesh Vs. M/s Daulatram Dulichand, Ratlam, I.L.R. (1969) M.P. 1063 (D.B.)*

– **Rule 14** – Assessee liable to pay tax if no exemption certificate granted: *The Commissioner of Sales Tax, Madhya Pradesh Vs. M/s Daulatram Dulichand, Ratlam, I.L.R. (1969) M.P. 1063 (D.B.)*

Samaj Ke Kamjor Vargon Ke Krishi Bhumi Dharakon Ke Udhar Dane Walon Ke Bhumi Hadapane Sambandhi Kuch Karano Se Paritran Tatha Mukti Adhiniyam, M.P. 1976 (III of 1977)

– **And Constitution of India** – Act providing exhaustive guidelines for ascertaining true nature of transaction – Procedure prescribed is fair – Bar of appearance of a lawyer in proceedings before a Tribunal – Neither unreasonable nor unconstitutional: *Chhedilal Agrawal Vs. State of M.P., I.L.R. (1984) M.P. 237 (D.B.)*

– **Section 2 (a)** – Applicability of Act on document in question of year 1964 – Document purporting to be sale deed of 1964 not intended to be a conveyance – Owner remained in possession of land also found proved from revenue entries – Sales effected in 1974 – Sale deed within prohibited period as provided under the Act: *Namdeo Vs. Collector, East Neemar Khandwa, I.L.R. (1995) M.P. 422 (D.B.)*

– **Section 2 (c)** – ‘Holder of agricultural land’ – Oral mortgage in favour of money lender – Subsequent sale by money lender – Finding by Sub-Divisional Officer that money-lender delivered back part of the land and sold only 8 acres and odd remaining in his possession – It is within specification of 4 hectares of irrigated land – Act clearly becomes applicable to land in question: *Namdeo Vs. Collector, East Neemar Khandwa, I.L.R. (1995) M.P. 422 (S.C.) (D.B.)*

– **Sections 2 (c), 2 (f), 4 (4), 7 and 10 Constitution of India** – Bar of jurisdiction of Civil Court and remedies and forum available to a holder under the Act for determination of nature of Transaction – Provision reasonable – Not discriminatory – Not violative of any of the Articles of the Constitution: *Chhedilal Agrawal Vs. State of M.P., I.L.R. (1984) M.P. 237 (D.B.)*

– **Sections 2 (c), 2 (f), 4 (4), 7 and 10 Constitution of India, Articles 14, 246(3) and entry 30 List II, VII schedule** – Act within the competence of State Legislature under Entry 30, List II, VII Schedule – Not violative of Article 246(3) of the Constitution: *Chhedilal Agrawal Vs. State of M.P., I.L.R. (1984) M.P. 237 (D.B.)*

– **Sections 2 (c), 2 (f), 4 (4), 7 and 10 Constitution of India, Articles 14, 246(3) and Entry 30, List II, VII Schedule** – Object of the Act – Act within the competence of State Legislature under Entry 30, List II, VII Schedule – Not violative of article 246(3) of the constitution Bar of Jurisdiction of Civil Court and remedies and forum available to a holder under the Act for determination of nature of transaction – Provision reasonable – Not discriminatory – Not violative of any of the Articles of the Constitution – Act providing exhaustive guidelines for ascertaining true nature of transaction procedure prescribed is fair – Bar of appearance of a lawyer in proceedings before a Tribunal – Neither unreasonable nor unconstitutional: *Chhedilal Agrawal Vs. State of M.P., I.L.R. (1984) M.P. 237 (D.B.)*

– **Sections 2 (f), 3, 6, 7** – Prohibited transaction – Sale deed executed with distinct oral understanding that sale shall not be acted upon if the loan was repaid – Market value of the land at the relevant time was much higher than loan amount – Appellant member of the Scheduled Tribe – Entitled to the benefit under the Act of 1977 – Order of SDO for handing over possession of land to appellant – Not erroneous on facts: *Bhavsingh (Dead) by Lrs. Vs. Keshar Singh, I.L.R. (2004) M.P. 1 (D.B.)*

– **Sections 2 (f), 6, 7, 12 (2), and 14** – Preamble and Statutory Scheme – Welfare legislation – Interpretation of – Beneficial construction – Rules of – ‘Head on Clash’ between two sections of statute – Duty of courts to avoid by following rules of harmonious construction – Civil Procedure Code – Section 9 – Exclusion of – Jurisdiction of Civil Courts – Not to be readily inferred – Word “entertain” – Meaning of – Jurisdiction of Civil Courts in respect of A suit or application involving question of prohibited transaction of loan – Extent of – Proper course to be adopted by Civil Court indicated: *Hiralal Vs. Hatesings, I.L.R. (1984) M.P. 55*

– **Sections 3, 4, 7 and 14** – Prohibited transaction – Consideration for sale woefully inadequate – Finding as to inadequacy of consideration of sale deed is based on appreciation of evidence – Cannot be questioned in writ jurisdiction: *Seth Ratilal Vs. Smt. Gangabai*, I.L.R. (2002) M.P. 200 (D.B.)

– **Section 4** – Act defines “appointed day” meaning the 1st day of January, 1971 – It is not disputed that the registered Sale deed was executed in favour of petitioner on 27.06.1960 – No document showing any separate agreement to resale – Held – Since sale has taken place in year 1960 nearly eleven years before the appointed day, it was incumbent upon the respondent/applicant to prove that the transaction of loan subsisted up to that day. In absence of any document and cogent evidence transaction could not be reopened – Petition allowed: *Keshar Singh Vs. Bhavsingh*, I.L.R. (1993) M.P. 460 (D.B.)

– **Section 4** – Nominal sale-deed executed to secure loan but possession continued with the plaintiffs – Revenue entries showing continuous possession of plaintiffs – Plaintiffs entitled to relief of declaration and injunction by virtue of Section 4 – Judgments & decree of Courts below set aside – Plaintiff’s suit decreed: *Mst. Sukhrani Vs Chootelal*, I.L.R. (1992) M.P. 465

– **Section 5** – Application for setting aside sale – Applicant must prove that he was a holder of agricultural land on the date of alleged transaction – Holdings of applicant on the date of application – Is of the consequence – Petitioner found to be in possession of 41.96 acres of land on the date of disputed transaction – Not a holder agricultural land for the purposes of the Adhiniyam, 1976 – Cannot be given any benefit: *Kunjilal Das Vs. Preetamchand*, I.L.R. (2001) M.P. 1

– **Section 5** – Application qua the sale deed dated 18.01.1969 made in the year 1982 – Barred by limitation Petition allowed – Limitation Act – 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

– **Section 5** – Civil Suit filed by petitioner pending – S.D.O. has no jurisdiction to entertain and decide application: *Mirza Rashid Beg Vs. Inayatulla Khan*, I.L.R. (1986) M.P. 250 (D.B.)

– **Section 5** – Initial transaction was prohibited transaction – Subsequent sale cannot survive – Order of restoring possession rightly passed: *Seth Ratilal Vs. Smt. Gangabai*, I.L.R. (2002) M.P. 200 (D.B.)

– **Sections 5, 2(f) and (c)** – Necessary ingredients for attracting the provisions of Adhiniyam – S.D.O. Holding it to be a ‘prohibited transaction of loan’ – Setting aside

the sale deed and directed delivery of possession of land to the respondent no.1 – Order unassailable in writ Petition: *Ram Lakhan Vs. Pamma, I.L.R. (1985) M.P. 402 (D.B.)*

– **Section 6 (4)** – Prohibited transaction – Finding that original owner/borrower repaid borrowed amount of loan with interest and never intended to sell land to money lender – While making enquiry, Sub-Divisional Officer substantially complied with provision of Section 6(4) – Non consideration of factors such as urgency of loan, availability of other source, market value of land at time of transaction and adequacy of consideration – Would not cause any failure of justice: *Namdeo Vs. Collector, East Neemar Khandwa, I.L.R. (1995) M.P. 422 (S.C.) (D.B.)*

– **Section 7** – Upon finding that transaction in question was vitiated – Transaction set aside under Section 7(1)(a) – Land holder interested in getting possession back and not in getting market value – Plea that subsequent purchaser was in possession of land for more than 20 years and had improved land and willing to pay market value – Not allowed: *Namdeo Vs. Collector, East Neemar Khandwa, I.L.R. (1995) M.P. 422 (S.C.) (D.B.)*

– **Section 7, Constitution of India, Seventh Schedule, List II, Entry No. 18 and Articles 14 and 226** – Provisions of the Adhiniyam are not discriminatory – Legislature competent to enact the Adhiniyam – Provision are intra vires – Finding of fact as to whether it was a Prohibited transaction and not an outright sale – Not liable to be interfered with in writ Jurisdiction – *Res-Judicata* – Principles of Court not having jurisdiction, giving erroneous decision – Cannot operate as *res-judicata* in subsequent litigation – M.P. Anusuchit Jati That Jan Jati Rin Sahayata Adhiniyam, 1967 Scope of – Decision under the Adhiniyam of 1967 cannot operate as *res-judicata* or constructive *res-judicata* in proceedings under the Adhiniyam of 1976: *Shri Ram Soni Vs. Collector, Sagar, I.L.R. (1984) M.P. 708 (D.B.)*

– **Section 7 (1) (b)** – On enquiry, S.D.O. found that sale was within prohibited period and consideration was inadequate – Enquiry U/s 7(1) (ii) (b) r.w. Section 6(4) need not be made: *Namdeo Vs. Collector, East Neemar Khandwa, I.L.R. (1995) M.P. 422 (S.C.) (D.B.)*

Sarbarakar or Pujari

– **Position of** – Criminal Procedure Code, 1898 – Section 145 – Possession of trespasser – Protected if he is in possession within two months of the date of preliminary order – Person entering into possession with permission – Cannot disclaim the nature of that possession and exclude persons who granted permission for possession: *Raja Megharajsingh Vs. Baba Devidas, I.L.R. (1977) M.P. 174*

Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (XXXIII of 1989)

– **Section 3 (1) (iii)** – Writ Petition filed by first petitioner and his son against Deputy Collector alleging that he has started enquiry against wife of first petitioner in regard to matter which is outside his jurisdiction – Enquiry stayed by Court – Third Respondent made report to S.H.O. alleging that he is member of Scheduled Caste and filing of writ petition against him would be an offence under Section 3 of Act, 1989 – Held – Filing of legal proceeding itself is not sufficient to entertain complaint and register crime – Question of offence under Section 3 (1)(iii) would arise only after disposal of relevant proceeding – F.I.R. quashed: *Abdul Rasheed Siddiqui Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 98*

– **Section 3 (1) (v) and Penal Code, Indian (XLV of 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 aside: *Jaggu Vs. State, I.L.R. (2001) M.P. 1756*

– **Section 3 (1) (X)** – Mere utterance of word 'Chamara' without any intention to humiliate shall not make out an offence: *Anil Kumar Pandey Vs. Daulat Prasad, I.L.R. (2005) M.P. 921*

– **Section 3 (1) (x)** – When Applicable – Attracted only when the alleged insult or intimidation is with intent to humiliate a member belonging to that particular community with reference to the community – Complaint filed against petitioner for allegedly insulting complainant – Words of abuse attributed to petitioner against complainant having no reference to community – Therefore, it cannot be inferred that insult or intimidation or with reference to the community to which the complainant belongs – Provisions of Section 3(1)(x), not attracted: *Ravindra Kumar Mishra Vs. State of M.P., I.L.R. (1995) M.P. 401*

– **Section 3 (1) (x), Penal Code Indian, 1860, Sections 294, 452, 506 and Criminal Procedure Code, 1973, Sections 397, 401** – Revision against acquittal – Incident not in public place – Actual words of abuse not proved – Material contradiction in deposition and case diary statements – Such evidence cannot be relied upon for conviction of accused – Two views possible – One adopted by Trial Court – Cannot be interfered with in revisional jurisdiction: *Smt. Asha Devi W/o Harinath Harizan Vs. Gopal Prasad, I.L.R. (2005) M.P. 463*

– **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: *J.N. Fuloria Vs. Smt. Benibai*, I.L.R. (2001) M.P. 560

– **Section 3 (I) (iv) (v), (x) (xv) and Criminal Procedure Code, 1973** – Sections 397,401 – Revision against acquittal – Entire evidence cannot be re-appreciated – Accused not joined in the suit wherein decree is passed in favour of complainant – Decree cannot be said to be binding on accused – Suit by accused pending for cancellation of decree – Acquittal not perverse or unreasonable: *Munsa kumhar Vs. Brij kishore*, I.L.R. (2005) M.P. 1216

– **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’: *Sharad Kachhi Vs. State of M.P.* I.L.R. (2005) M.P. 899

– **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: *Mirchi @ Rakesh Jain Vs. State*, I.L.R. (2003) M.P. 156

– **Sections 3 (I) (xi) (xii), 18 – Criminal Procedure Code, 1973, Section 438**–Anticipatory bail – Accused coming along with 3 other co-accused persons and surrounded prosecutrix – Two accused persons committed rape by using criminal force and threat of criminal assault for overcoming her will – Bar as to grant of anticipatory bail – Held – Accused persons dominated the will of the prosecutrix by virtue of that association – Under facts and circumstance offence under Section 3 (1) (xii) made out – Application for grant of anticipatory bail not maintainable: *Bharatsingh Vs. Harijan Kalyan Vibhag*, I.L.R. (1993) M.P. 339

– **Section 3 (2) (v) and Evidence Act, Indian, 1872, Section 3** – Murder – No evidence that offence was committed because deceased was member of scheduled castes – Offence U/s 3(2) (v) not proved: *Kundanlal S/o Nanhelal Vs. State of M.P.* I.L.R. (2005) M.P. 540 (D.B.)

– **Section 3 (2) (v), Penal Code Indian, 1860 Sections 34,323 and Criminal Procedure Code, 1973, Section 374 (2)** – Simple injuries sustained while Police tried to take deceased to Police Station in connection with offence registered – Nothing to show any design because deceased was a member of Schedule Caste – No case under Section 3 (2) (v) of SC/ST Act made out – Autopsy Surgeon not in a position to give cause of death – Act is neither murder nor culpable homicide – Falls within Section 323/34 IPC – No charge framed under IPC – Accused cannot be convicted under this

section also – Appeal allowed – Accused acquitted: *Heeralal Vs. State of Madhya Pradesh, I.L.R. (2005) M.P. 447(D.B.)*

– **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(i)(x) of the Act: *J.N. Fuloria Vs. Smt. Benibai, I.L.R. (2001) M.P. 560*

– **Section 8 (a)** – Presumption as to offences – Validity of presumption of abatement of offence by person rendering financial assistance to person accused of or reasonably suspected of committing offence challenged – Held – Provision of Section 8(a) necessary for effective implementation of provision in Section 3 – Provision is not arbitrary and is necessary for effective working of Act – Section 8 (a) Constitutionally valid: *Dr. Ram Krishna Balothia Vs. Union of India, I.L.R. (1994) M.P. 128 (D.B.)*

– **Section 14** – Court of Sessions – Court of Session comprehends Sessions Judge and A.S.J. Additional Sessions Judge has jurisdiction to try offences under 1989 Act if it is made over to him or her: *Bar Association, Jhabua, I.L.R. (1994) M.P. 344 (D.B.)*

– **Sections 14, 2 (d) & Criminal Procedure Code, 1974, Sections 6, 193 and 190** – Special Courts – Not functions as Sessions Court – But Court of original jurisdiction – Special Courts can take cognizance as per provisions of section 190 of code and on private complaints – For taking cognizance committal orders not required – Provisions of section 193 of the code not apply to proceeding under the Act – Though where cognizance has already been taken on the basis of committal orders in police challan and in private complaints cases – Not necessary for the Special Courts to retrace their steps: *Anand Swaroop Tiwari Vs. Ram Ratan Jatav, I.L.R. (1995) M.P. 478 (F.B.)*

– **Section 18** – Bar of anticipatory bail: *Suresh Kumar Tyagi Vs. State, I.L.R. (2000) M.P. 413*

– **Section 18, Criminal Procedure Code, 1974, Section 438, Constitution of India, Articles 14, 21** – Non-application of provision of Section 438 of Code – Object of Act is to ensure advancement of members of S.C. and S.T. by protecting them from exploitation by members of stronger sections of society – Purpose not served by whole-sale denial of benefit of Section 438 – Section 18 of Act is oppressive, unfair and unreasonable – Section 18 of the Act struck down as violative of Articles 14 and 21 of Constitution of India: *Dr. Ram Krishna Balothia, Vs. Union of India, I.L.R. (1994) M.P. 128 (D.B.)*

– **Sections 18, 3 – Cr.P.C. Section 438** – Anticipatory bail in cases relating to offences of atrocity against S.C. & S.T. – Under the Act – Offences form distinct class and cannot be compared with other offences – Exclusion of application of provision

regarding anticipatory bail under S.438, Cr. P.C. proper – Section 18 of the Act not violative of Arts. 14 and 21 of the Constitution, as there is every likelihood of terrorising the victims and prevent proper investigation while on anticipatory bail: *State of M.P. Vs. Ram Kishna Balothia*, I.L.R. (1995) M.P. 61 (S.C.) (D.B.)

Scheduled Castes and Scheduled Tribes Order (Amendment) Act (LXIII of 1976)

– **Bhaina is a scheduled Tribe thereunder but not Bahnas who consists of Muslims and are cotton cleaners** – Evidence Act – Section 115 – Equitable Estoppels – Petitioner got 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 estoppels 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.)

Scheduled Tribes Debt Relief Regulations, Madhya Pradesh, 1962

– **Empower re-opening of excluded transaction and constitutionally unexceptional** – Purpose and intention thereof – Not hit by Article 14 or by Article 32 (2A) of the Constitution: *Chandmal Vs. State of Madhya Pradesh*, I.L.R. (1969) M.P. 779 (D.B.)

– **Regulations** – *Vires* of – Constitution of India – Fifth Schedule, para 5(2) (c) and 5(2) – Purpose of para 5 (2) – Sub-heading “Business of Moneylending” – Is by way of illustration – Words “peace and good Government” in – Very wide – Justify forbidding of certain lines of business provided it is for protection of persons for whose benefit it is made – Empower re-opening of excluded transaction and constitutionally unexceptional – Purpose and intention thereof – Not hit by Article 14 or by Article 32 (2A) of the Constitution – Regulation 25A – Acceptance of payment before its introduction – Cannot be a subject-matter of criminal charge – Not hit by Article 20 of the Constitution: *Chandmal Vs. State of Madhya Pradesh*, I.L.R. (1969) M.P. 779 (D.B.)

– **Regulation 25-A** – Acceptance of payment before its introduction – Cannot be a subject-matter of criminal charge – Not hit by Article 20 of the Constitution: *Chandmal Vs. State of Madhya Pradesh*, I.L.R. (1969) M.P. 779 (D.B.)

Schizophrenia

– **It is an illness of slow insidious, on set developing over years:** *Usha vs Santosh Kumar Pahadiya*, I.L.R. (1996) M.P. 381

Secondary Education Act, Madhya Pradesh (X of 1959)

– **Section 21** – Decision of Board regarding language of question papers – To be based on report of Examination Committee: *Kumari Meena Chitle Vs. The Board of Secondary Education, M.P. Bhopal, I.L.R. (1970) M.P. 737 (D.B.)*

– **Section 21** – Preamble of Prospectus – Confers discretion not regarding language of question papers, but regarding choice between recognized languages on one hand and four languages: *Kumari Meena Chitle Vs. The Board of Secondary Education, M.P. Bhopal, I.L.R. (1970) M.P. 737(D.B.)*

– **Chapter IX, Regulation 2(c)** and Board of Secondary Education, M.P. Regulation, 1959 – Contain no express provision regarding medium or media of instruction or dealing with the language of question paper – Regulation – Chapter IX, Regulation 2(c) – Deals with number of question papers and not number of languages in which papers are to be set – Matter regarding language or languages in which question papers are to be set up – Belongs to province of Examination committee and not other committees – Expression “all matters arising out of conduct of examination” – Wide enough to include matter of language of question paper – Section 21 – Decision of Board regarding language of question papers – To be based on report of Examination Committee – Preamble of prospectus – Confers discretion not regarding language of question papers, but regarding choice between recognized languages on one hand and four languages: *Kumari Meena Chitle Vs. The Board of Secondary Education, M.P. Bhopal, I.L.R. (1970) M.P. 737 (D.B.)*

– **Chapter XI, Regulation 1 of Regulations framed under** – Does not invalidate the appointment of principal, lecturer, teacher or old personnel by manager of non-government Higher Secondary School contrary to the memorandum: *Ras Bihari Pande Vs. The Municipal Corporation, Jabalpur, I.L.R. (1968) M.P. 904 (D.B.)*

– **Regulations** – Chapter XI, Regulation 1 – Does not invalidate the appointment of principal, lecturer, teacher or old personnel by manager of non-government Higher Secondary School contrary to the memorandum – Municipal Corporation Act, Madhya Pradesh, 1956 – Section 58 – Lecturer in Higher Secondary School of Corporation – Is not an officer specified in this Section – Sections 66 and 67 – Running of Higher Secondary School – Neither a mandatory nor permissive function of Corporation – Section 58 – Appointment of Lecturer without consulting Public Service Commission – Appointment not invalid – Municipal Corporation Act, Madhya Pradesh, 1956 – Contains no provision invalidating the proceedings of meeting in which the Councillor having interest has taken part – Constitution of India – Article 16 (1) – Applicable to any matter relating to appointment or employment to any office under the Corporation – Equality of opportunity for citizen regarding appointment or employment in any office –

Applies not only to initial appointment but also to matter of promotion – Guarantees of the application of same standard to all persons similarly situate: *Ras Bihari Pande Vs. The Municipal Corporation, Jabalpur, I.L.R. (1968) M.P. 904 (D.B.)*

– **Regulations framed under Sections 22 and 23, Chapter XVI, Rule 20** – Results Committee, Power of to punish student for rude behaviour – Action of Results Committee is *quasi-judicial* Must observe principles of natural justice – What are principles of natural justice – Procedure prescribed by Regulation or bye-laws to be followed – If no procedure prescribed – Authority to determine procedure and follow it – Procedure need not be of trial of suit or departmental enquiry – Fair opportunity to be given: *Abdul Haque Naseem Vs. The Board of Secondary Education, Bhopal, I.L.R. (1968) M.P. 879 (D.B.)*

– **Rule 20 of Chapter XVI of regulations framed under the Act** – Action of Results Committee is *quasi-judicial* – Must observe principles of natural justice: *Abdul Haque Naseem Vs. The Board of Secondary Education, Bhopal, I.L.R. (1968) M.P. 879 (D.B.)*

Secondary Education Act, Madhya Pradesh, (XII of 1951)

– **Section 18 – Regulations, Chapter XIV, clauses 7 and 14** – Change of syllabus and text books without considering the report of the Board Studies – Validity – Regulations, Chapter XIV, clause 11 – Provisions regarding Board of Studies not limited to syllabi and text books of the higher secondary school classes: *Kashi Prasad Sinha Vs. The State of M.P., I.L.R. (1958) M.P. 619 (D.B.)*

– **Stay order** – Time from which it comes into operation – Subsequent proceedings after the passing of the order – Validity: *Bisandas Vs. Nirmalkumar, I.L.R. (1958) M.P. 753 (D.B.)*

Securities Contracts (Regulations) Act (XLII of 1956)

– **And Article 12** – Stock Exchange – Performing public duty – Though not a State under Article 12 yet can be amendable 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 (D.B.)*

Seeds Act (LIV of 1966)

– **Regulates quantity of seeds and sale thereof:** *Satyapal Anand Vs. State of M.P., I.L.R. (1981) M.P. 102 (D.B.)*

Selection for Post Graduate (Clinical, Para-Clinical and Non-Clinical) Rules, M. P., 1984

– **Admission in P. G. Courses** – Rules framed by the State Govt., for selection in Diploma and P. G. Course should be understood and judged in the same manner as is provided in the Regulation framed by the Indian Medical Council in exercise of its regulatory power: *Dr. Ku. Meena Bathija Vs. State, I.L.R. (1992) M.P. 232 (D.B.)*

Selection for Post-Graduate Courses in Medical College of M.P. Rules 1984

– **Rule 8.2, Constitution of India, Article 14** – Admission in Post Graduate Courses – Out of 3 seats in M.S. Ophthalmology Course, one was reserved for Asstt. Surgeon and two were to be filled from Institutional Candidates – One seat was surrendered for All India Post Graduate Quota however the same was released as candidate to whom it was allotted did not accept it – 100% reservation for Institutional Candidates violative of Article 14 of Constitution – Second seat required to be filled in by selecting most meritorious among all eligible candidates – However, Petitioner's claim that he was meritorious then 4th respondent cannot be accepted – Marks obtained in Qualifying Examinations cannot be basis of assessment – Court would not allow admission to candidate belatedly and disturb others who have already been admitted – Petition dismissed: *Dr. Anand Upadhyay Vs. State of Madhya Pradesh, I.L.R. (1994) M.P. 1 (F.B.)*

Sentence

– **Incident took place 16 years back** – Accused has undergone the agony of criminal proceedings, lost his job and has a large family to support – Sentence of imprisonment was reduced to period already undergone: *Ramesh Kumar Gupta Vs. State of M.P., I.L.R. (1995) M.P. 409 (S.C.) (D.B.)*

– **Planned and brutal Murder** – No extenuating circumstance – Extreme penalty called for: *Mojiya Vs. The State, I.L.R. (1960) M.P. (D.B.) 692*

Service Law

– **Adverse entries in service record for the period before promotion of Government servant** – Value of – Overall assessment of Govt. servant has to be made – Old and state confidential reports not to be considered – Petitioner an I.A.S. Officer promoted in super time Scale of I.A.S. From 1-7-80 compulsorily retired by an order dated 9-4-1984 – Order challenged as Malafide and arbitrary – Govt. to rebut such pleas by voluntarily filling documents – Court finding that Review committee not

recommending petitioner's compulsory retirement – Old and state entries in service record of petitioner considered and relevant entries misconstrued as adverse – After promotion no entries are found to be adverse – Impugned order liable to be quashed: *S.C. Vaish Vs. Union of India*, I.L.R. (1985) M.P. 677

– **Appointments not falling within the meaning of ad-hoc** – Liable to be treated as regular: *Bherusingh Vs. State of Madhya Pradesh*, I.L.R. (1987) M.P. 549 (D.B.)

– **Circulars cannot amend or supersede the statutory provision** – Circulars curtailing owners of the D.P.C. to include the names of suitable officers in the select list which is contrary to requirement of Rules – Have no effect in law: *D.S. Tomar Vs. State of M.P.*, I.L.R. (1986) M.P. 505

– **Departmental Enquiry** – Mere direction to initiate departmental enquiry – Does not amount to a pending departmental enquiry: *D.S. Tomar Vs. State of M.P.*, I.L.R. (1986) M.P. 505

– **Departmental Promotion Committee not applying the same standard while preparing list of eligible candidates** – Acts arbitrarily: *D.S. Tomar Vs. State of M.P.*, I.L.R. (1986) M.P. 505

– **Distinction between dismissal and termination**: *Devi Shanker Dwivedi Vs. Vikram University, Ujjain*, I.L.R. (1977) M.P. 1077 (D.B.)

– **Judicial interference not permissible unless mala fides of victimization or violation of statutory rules or degradation from higher post to lower one is proved**: *Bhel Executives Association, Bhopal Vs. The Chairman And Managing Director, Bhel*, I.L.R. (1990) M.P. 249 (D.B.)

– **Matters** – Transfer – Powers of Master to transfer his Servant – Should be passed for administrative purposes or in public interest and in the interest of institution itself – Interference by High Court in matter of transfer, when permissible: *R.K. Dubey Vs. M.P. State Agro Industries Development Corporation Bhopal*, I.L.R. (1990) M.P. 363 (D.B.)

– **Promotion of Revenue Officer to the post of Tahsildar or S.L.R.** – Petitioner promoted from the post of Revenue Inspector to the cadre of Naib Tahsildar in the Revenue Section – Deemed to be holding equivalent post of A.S.L.R. – After holding that post for 4 years petitioner entitled to be considered for promotion as S.L.R. – State Government not considering petitioner for promotion as S.L.R.-On the ground that he had not worked as A.S.L.R. for 4 years – Order unjustified and liable to be quashed – Petitioner entitled to be considered for promotion as S.L.R.and appropriate place in seniority list: *A.P. Choudhary Vs. State of M.P.* I.L.R. (1982) M.P. 886

– **Promotion** – State Govt. by an order dated 12-1-1978 promoting the petitioner retrospectively w.e.f. 3-1-76 to the post of Accounts Officer (Class I) although he had attained the age of superannuation on 30-9-77 – Post of Accounts Officer (Class I) being selection post liable to be filled up by direct recruitment by P.S.C. – Subsequently State Govt. cancelling the promotion order retrospectively w.e.f. 3-1-76 finding it to be a mistake – Order neither amounts to reversion nor penalty: *Vishwanath Vs. State of M.P.*, I.L.R. (1983) M.P. 239

– **Selection Post** – Basis of appointment is merit-cum-seniority – Determination and mode of Seniority: *Mahesh Chandra Gupta Vs. M.P. State Road Transport Corporation, Bargarh*, I.L.R. (1981) M.P. 275 (D.B.)

– **Suspension order of an employee can be passed even before he is charge sheeted:** *Madhav Anantrao Gore Vs. State Bank of India*, I.L.R. (1986) M.P. 94 (D.B.)

– **Termination of Service** – Order effective only when it is communicated: *Madhya Pradesh State Road Transport Corporation, Bhopal Vs. The Industrial Court, Indore*, I.L.R. (1981) M.P. 298 (D.B.)

– **Transfer of a Govt. servant or an employee of public sector undertaking to a similar post in the same cadre from one place or section to another place or section on administrative grounds** – Rests on the discretion of the concerning authority or management Judicial interference not permissible unless malafides or victimization or violation of statutory rules or degradation from higher post to lower one is proved: *Bhel Executives Association, Bhopal Vs. The Chairman and Managing Director, Bhel*, I.L.R. (1990) M.P. 249 (D.B.)

– **Adhoc appointment of Additional Divisional Medical Officer in Railways Subsequent to 1/10/1984** – Terminated by the apex Court giving liberty to apply for selection through UPSC – Petitioner granted age relaxation for facing UPSC – Not selected by the UPSC – Railways have no alternative but to relieve him and to appoint a person selected by UPSC – No illegality in termination: *Dr. Krishna Kumar Vs. Union of India*, I.L.R. (2004) M.P. 373 (D.B.)

– **Advance increments** – Eligibility was passing of Hindi typewriting test on particular date – Govt. decided to appoint candidates who have passed such test – No advance increments given to them – By necessary implication, earlier appointed candidates cannot be entitled to increments – New appointees need not be given additional increments as they had passed the test on the prescribed date before their appointment – Earlier appointees who passed test after cut-off date would not be entitled to increments: *State of M.P. Vs. Shakri Khan*, I.L.R. (1996) M.P. 53 (S.C.) (D.B.)

– **Application for recovery of difference of wages/salary** – No Limitation provided in I.D. Act: *Kishore Jaidka Vs. Presiding Officer, Labour Court, Sagar, I.L.R. (2004) M.P. 147*

– **Bank officer** – Unauthorised withdrawal of money for emergency – No defence available that there was no loss or profit resulted when acted without authority – Acting beyond authority itself is a breach of discipline and misconduct: *Damoh Panna Sagar Rural Regional Bank Vs. Munnalal Jain, I.L.R. (2005) M.P. 375 (D.B.)*

– **Compassionate appointment** – Provided by Railway only if an employee is medically decategorised: *Sunil Kumar Rai Vs. Union of India, I.L.R. (2003) M.P. 1079 (D.B.)*

– **Compulsory retirement** – As against two only 1.05 marks obtained on an average of 20 years service – Really a deadwood and worthless – Decision of compulsory retirement bonafide: *Dr. Vishwanath Prasad Agnihotri Vs. M.P. State Cooperative Dairy Fadraton Ltd., I.L.R. (2004) M.P. 134*

– **Departmental Enquiry** – Main witnesses not supported the prosecution – Two passengers apprehended without ticket and 38 were let off – Ground reality not taken into account that in Bihar and Madhya Pradesh marriage parties and political volunteers barge into trains ticketless and very often the ticket checker is helpless and some times he is threatened by passengers – Element of doubt if the employee had any pecuniary advantage – Delinquent is entitled to benefit of doubt: *Union of India Vs. A.K. Mishra, I.L.R. (2004) M.P. 122 (D.B.)*

– **Departmental Enquiry** – Conniving a Barat party to travel in train without ticket – Finding of enquiry officer that charges are not proved beyond doubt – Not a case of no evidence: *Union of India Vs. A.K. Mishra, I.L.R. (2004) M.P. 122 (D.B.)*

– **Departmental Enquiry** – In rarest of rare cases it is permissible for the Court to substitute lesser punishment without remitting the case to Disciplinary Authority if the evidence so warrants: *Union of India Vs. A.K. Mishra, I.L.R. (2004) M.P. 122 (D.B.)*

– **Departmental Enquiry** – Punishment of compulsory retirement – Harsh and shockingly disproportionate – Punishment substituted by withholding of three increments with cumulative effect but with continuity in service – Order of Tribunal modified: *Union of India Vs. A.K. Mishra, I.L.R. (2004) M.P. 122 (D.B.)*

– **Departmental enquiry** – Punishment of Removal – Delinquent Police Head Constable – Allegation of demanding bribe and on non-payment causing arrest – Charge proved – Punishment of Removal – Not improper: *Rameshchandra Vs. State, I.L.R. (2003) M.P. 391 (D.B.)*

– **Disciplinary Authority inflicted punishment of removal from service disagreeing with the finding of enquiry officer** – Modified by the appellate authority to compulsory retirement – No notice or reasons given why it differs from the enquiry report – Clearly indicates non-application of mind: *Union of India Vs. A.K. Mishra* I.L.R. (2004) M.P. 122 (D.B.)

– **Eligibility for advance Increments** – Govt. scheme prescribing particular date as last date for passing of Hindi typewriting test – Not illegal – Govt. has power to prescribe such cut-off date: *State of M.P. Vs. Shakri Khan*, I.L.R. (1996) M.P. 53 (D.B.)

– **Father of Petitioner not Medically decategorised but voluntarily retired from the railways** – Petitioner not entitled to compassionate appointment: *Sunil Kumar Rai Vs. Union of India*, I.L.R. (2003) M.P. 1079 (D.B.)

– **Fixation of pension** – Non-practising allowance to be part of pay for post – 1.1.1996 retirees – Policy formulated by a decision of the President – Cannot be negated by a departmental clarification: *Union of India Vs. The Central Administrative Tribunal Jabalpur Bench, Jabalpur*, I.L.R. (2005) M.P. 227 (D.B.)

– **Furnishing for 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): *Kalyan Singh Verma Vs. Director General, Head quarters, Central Reserve Police Force, New Delhi*, I.L.R. (2004) M.P. 655 (D.B.)

– **House Rent Allowance** – Both of the spouses Government servants – Wife in Central Government Service – Petitioner – Husband State Government employee entitled to HRA: *G.K. Kundlani Vs. State*, I.L.R. (2003) 381 (D.B.)

– **House Rent Allowance** – Interpretation – When two words occur in a particular sentence and there is no reason to give distinctive meaning they should convey the same meaning: *G.K. Kundlani Vs. State*, I.L.R. (2003) 381 (D.B.)

– **In the matter of seniority and promotion one should be vigilant and delight to approach the Court in quite promptitude** – Stale claims are not to be agitated: *B.S.B Gaur Vs. State*, I.L.R. (2003) 1199 (D.B.)

– **Mere ad-hoc appointment for few months** – Does not entitle petitioner to seek reinstatement after 16 years – Petition dismissed: *Jagdish Prasad Tripathi Vs. State of Madhya Pradesh Through Secretary School Education Department Bhopal*, I.L.R. (2003) M.P. 1119 (F.B.)

– **Misconduct** – Departmental Enquiry – Punishment – Discrimination – Three Employees charge sheeted for the same incident – Two others awarded lesser

punishment and petitioner alone is awarded severe punishment of compulsory retirement Disproportionate and discriminatory: *Chain Singh Jatt Vs. Union of India*, I.L.R. (2004) M.P. 253 (D.B.)

– **Order of stay obtained from Tribunal but by then employee relieved** – Department directed not to initiate disciplinary proceeding for not obeying transfer order: *Union of India Vs. Sri Vilas Ramesh Chandra Tarhate*, I.L.R. (2003) M.P. 491 (D.B.)

– **Promotion** – Criteria is seniority subject to fitness – No document on record to show that petitioner was having ACR mark lesser than respondent No.5 – Petitioner directed to be promoted with all consequential benefits: *Badrilal Mandloi Vs. State of M.P. Through Secretary Forest Department Govt. of M.P., Bhopal*, I.L.R. (2005) M.P. 696

– **Recruitment** – After participation petitioner is estopped and cannot be permitted to turn around and challenge the procedure: *Dr. Manoj Singh Tomar Vs. State of M.P.*, I.L.R. (2003) M.P. 1082 (D.B.)

– **Recruitment** – Petitioner appointed in 1992 – Worked as driver on daily wages for four years – Thereafter regularised on the post of driver – Work and conduct must have been found upto the mark – No need of forming selection committee or formality of interview – Termination – Against the rule of “fairness” of the administration – Order of termination quashed: *Pawan kumar Singh Vs. State*, I.L.R. (2003) M.P. 396

– **Reinstatement** – Back wages – Employer not responsible for bringing about the situation of dismissal – Employee not entitled to back wages: *Anoop Kumar Srivastava Vs. State*, I.L.R. (2003) M.P. 33 (D.B.)

– **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.: *Chandrapal Singh Pundhir Vs. Madhya Pradesh Board of Secondary Education of Bhopal*, I.L.R. (2003) 531 (D.B.)

– **Termination** – 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, Head quarters, Central Reserve Police Force, New Delhi*, I.L.R. (2004) M.P. 655 (D.B.)

– **Termination** – Petitioner obtained employment on false representation – Admittedly not the son of displaced person – Story of adoption not putforth in domestic

inquiry – Plea rightly negated – Appeal dismissed: *Gyan Singh Markam Vs. Central Government Industrial Tribunal Cum Labour Court, Jabalpur*, I.L.R. (2004) M.P. 491 (D.B.)

– **Termination** after show cause notice and payment of three months salary due to poor performance – Rules framed by society not statutory in nature – Termination within the scope of Rules can not amount to breach of public duty – Order of termination can not be said to be arbitrary or unreasonable: *Ms. Serbjeet Bhatia Vs. The Goc-in-c, HQ Central Command, Lucknow (UP)*, I.L.R. (2004) M.P. 460

– **Termination of workman** – Limitation – Non obstante clause – Dispute filed belatedly – Can be entertained by Registrar if sufficient cause is shown – Registrar has power to condone the delay: *Narayan Prasad Tamrakar Vs. M.P. State Cooperative Land Development Bank Ltd.*, I.L.R. (2004) M.P. 154 (D.B.)

– **Transfer** – 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 (D.B.)

– **Transfer** – Order of stay obtained from Tribunal but by then employee relieved – Department directed not to initiate disciplinary proceeding for not obeying transfer order: *Union of India Vs. Sri Vilas Ramesh Chandra Tarhate*, I.L.R. (2003) M.P. 491(D.B.)

– **Transfer** – When a Public officer is visited with a chargesheet on the basis of serious allegation the department may in its wisdom transfer him to another place – Revocation of suspension order does not confer a right to be retained at the same place: *Union of India Vs. Sri Vilas Ramesh Chandra Tarhate*, I.L.R. (2003) M.P. 491(D.B.)

– **Word ‘Government’ used in M. P. Govt. Circular in the context means State Government only:** *G.K. Kundlani Vs. State*, I.L.R. (2003) M.P.381 (D.B.)

Service Rule

– **Non publication of directions not fatal:** *Shri I.N. Saksena Vs. The State of Madhya Pradesh*, I.L.R. (1966) M.P. 216 (D.B.)

– **Rule (17) (b)** – And Fundamental Rule 74 – Service Rule 17(b) to be read in context of fundamental rule 74: *S.P. Shrivastava Vs. State of Madhya Pradesh*, I.L.R. (1975) M.P. 969 (D.B.)

– **Rule (17) (b)** – Implication of: *S.P. Shrivastava Vs. State of Madhya Pradesh*, I.L.R. (1975) M.P. 969 (D.B.)

Shashkiya Sevak (Adhivarshiki Ayu) Adhiniyam, Madhya Pradesh, (XXIX of 1967)

– **Applicable to Municipal Servants:** *B. Singh Vs. The Administrator, Municipal Corporation, Raipur, I.L.R. (1971) M.P. 826 (D.B.)*

– **As amended by Act (XXVII of 1998) – Retirement age of teachers revised to 62 years** – Petitioner Lady Extension Teacher in the University – Merely imparts instructions to farmers by bringing them abreast with the developments and the latest techniques in farming – Cannot be said that she was engaged to impart such instructions as a teacher: *Smt. Maya Verma Vs. Jawaharlal Nehru Krishi Vishwavidhyalaya, Jabalpur, I.L.R. (2001) M.P. 794*

– **As amended by Shaskiya Sevak (Adhivarshiki-Ayu) Sanshodhan Adhiniyam M.P. (XXXV of 1984) – Section 2 – Ship modeling Instructor working in National Cadet Corps – Is not engaged in any educational institution – Not entitled to benefit of 60 years retirement age:** *Mahendra Pal Singh Vs. The State of M.P., I.L.R. (1987) M.P. 730 (D.B.)*

– **As amended by Shaskiya Sevak (Adhivarshiki – Ayu) Sanshodhan Adhiniyam M.P. (XXXV of 1984) – Section 2 – National Cadet Corps Sub-ordinate Class III Service M.P. Educational Institution – What is – Ship modelling Instructor working in National Cadet Corps – Is not engaged in any educational institution – Not entitled to benefit of 60 years retirement age:** *Mahendra Pal Singh Vs. The State of M.P., I.L.R. (1987) M.P. 730 (D.B.)*

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 Gorelal Vs. Naga Ramkhilawandas, I.L.R. (1962) M.P. 956*

Shiksha Karmis (Recruitment and Condition of Service) Rules, M.P. 1997

– **(As amended) – Rule 5 (7) – Order of Collector for selection in accordance with subsequent notification – Every statute or statutory rules are prospective unless it is expressly or by necessary implication made to have retrospective effect – Direction of Collector not sustainable:** *Raja Bhaiya Tripathi Vs. State, I.L.R. (2001) M.P. 1843*

– **(As amended) – Rules 5 (7) and 5 (8) – Appointment of Panchayat Karmi – Number of candidates for test and interview even if exceeded three times the post advertised yet candidates who have worked for atleast one session in school of Janpad**

Panchayat or Zila Panchayat are to be called in addition to the candidates qualified on merit: *Raja Bhaiya Tripathi Vs. State, I.L.R. (2001) M.P. 1843*

– **Rule 5 (8)** – Inclusion of local MLA in selection committee not envisaged in the Rules – Clear violation of Rules – Selection list liable to be quashed: *Raja Bhaiya Tripathi. Vs. State, I.L.R. (2001) M.P. 1843*

Shops and Establishment Act, M. P. (XXV of 1958)

– **Section 2, Clause (24)** – Advocate’s office not premises where services are rendered to customers – Not a shop – Client not a ‘Customer’ of advocate – M.P. Shops and Establishments Act not applicable: *Bishambar Nath Agarwal Vs. Ganesh Narain Kalekar, I.L.R. (1964) M.P. 846 (D.B.)*

– **Section 30 and Payment of Wages Act, Section 15** – Advocate’s clerk’s application before legal Authority under Payment of Wages Act, under Section 15 for arrears of pay – Advocate’s office not premises where services are rendered to customers – Not a shop – Client not a ‘customer’ of advocate – M.P. Shops and Establishments Act not applicable: *Bishambar Nath Agarwal Vs. Ganesh Narain Kalekar, I.L.R. (1964) M.P. 846 (D.B.)*

– **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: *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.)*

Shops and Establishments Act, C.P. and Berar (XXII of 1947)

– **Section 2, Clause 17** – Premises where cycles are let out for hire – Do not constitute a shop – Merely giving in the premises bicycles on hire – Does not amount to rendering service: *The State of Madhya Pradesh Vs. Khushal Chand, I.L.R. (1959) M.P. 479*

Sick Industrial Companies (Special Provisions) Act, 1985 (I of 1986)

– **Section 22** – Recovery proceedings pursuant to Award of Labour Court against company brought about under amalgamation scheme sanctioned by BIFR under Section 18 – In absence of declaration by BIFR under Section 22(3) – No automatic stay of

recovery proceedings: *M/s. Allwyn, Hyderabad Vs. Dy. Commissioner, Indore, I.L.R. (1998) M.P. 655*

Sick Textile Undertakings (Nationalisation) Act (LVII of 1974)

– **Section 14 (2) and National Textile Corporation (M.P.) Ltd. Employees Conduct, Discipline and Appeal Rules, 1976** – Petitioner appointed as Processing master by M.P. State Textile corporation – Subsequently option given for being governed by Rules, Regulation and other service conditions applicable to National Textile Corporation – Petitioner's Services terminated treating it as contractual under the initial term of appointment, if any, stood superseded with the exercise of option by the petitioner to the rules framed by the corporation – Termination order not justified by any rule of the corporation – Termination order quashed – Constitution of India – Articles 12 and 226 – National Textile Corporation is a 'State' within Article 12: *Bhagwant Vs. National Textile Corporation Ltd., New Delhi, I.L.R. (1984) M.P. 547 (D.B.)*

Sinchai (Jal Kar Manyatakaran) Act, Madhya Pradesh (XXVII of 1964)

– **Sections 3 (2) and (3)** – Effect of – Entry No. 17, List II (State list), Schedule VII (II) – Authorises State Legislature to pass enactment on the subject – Legislature could make valid law and also give retrospective effect – No agreement providing penalty for breach – State Government has no power to impose penalty: *The Gwalior Agriculture Company Limited, Dabra Vs. State of M.P., I.L.R. (1975) M.P. 599 (D.B.)*

Sishya – Parampara grant

– **Incidents of:** *State of Madhya Pradesh Vs. Mahant Udaygir Guru Rewagir, I.L.R. (1970) M.P. 92 (D.B.)*

Society Registration Act, Madhya Pradesh (I of 1959)

– **Powers of Registrar** – Public Trusts Act, Madhya Pradesh (XXX of 1951) – Registrar under Society Registration Adhiniyam – Has more powers than Registrar under Public Trusts Act: *Shanker Singh Vs. Sanstha Sona Bai Sharvkashram, Khurai, I.L.R. (1980) M.P. 568 (D.B.)*

– **Certificate Issued under old Act** – Deemed to be issued under this Act: *Shanker Singh Vs. Sanstha Sona Bai Sharvkashram, Khurai, I.L.R. (1980) M.P. 568 (D.B.)*

– **Registered Society in M.P.** – Now governed by this provision – Registrar under Society Registration Adhiniyam – Has more powers than Registrar under Public Trusts Act – Public Trusts Act, Madhya Pradesh, 1951 – Section 36(i)(b) – Society for religious and charitable purpose – Society registered under society Registration Adhiniyam

– Is exempt from registration under Public Trusts Act – General clauses act, Madhya Pradesh – 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 – Certificate issued under old Act – Deemed to be issued under the Act of 1973 – Public Trusts Act, Madhya Pradesh – Section 32 – Suit by society registered under Societies Registration Adhiniyam, 1973 – Not barred under this provision – Bars only hearing and not institution of suit – Practice is to stay suit till Trust is registered – Rule “Boundaries prevail over area” – Not of universal application – Boundaries vague but area exactly specified – Description by area would prevail – Evidence Act, Section 92, Proviso 1 – Admissibility of oral evidence to prove mistake – Strong evidence necessary to make out a case of mistake – Limitation Act, 1963 – Does not provide for suit for relief of rectification – Matter governed by Residuary Article 113 – Starting point is when right to sue accrues – Specific Relief Act, 1963 – Section 26 – Is an enabling provision – Failure to sue for rectification – Does not affect title to property – Relief of possession a primary relief – Relief of rectification ancillary – Suit for possession within time – Relief for rectification not barred: *Shanker Singh Vs. Sanstha Sona Bai Sharvkashram, Khurai, I.L.R. (1980) M.P. 568 (D.B.)*

Society Registrikaran Adhiniyam, M.P. (XLIV of 1973)

– **Education college run by petitioner society** – Petitioner society admitting more students than the strength fixed by the council – Not proper – Holding of examination or 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 (D.B.)*

– **Section 3 (f), as amended** – ‘State aided society defined – ‘A society which receives aid’ and not a society which received aid: *The Chhatarpur Homeopathic and Biochemic Association Vs. State, I.L.R. (2001) M.P. 801*

– **Section 3 (f), (as amended) and Section 33** – ‘State aided society means a Society which received aid, grant loans and land or building on concessional rates and other facilities from Central Govt. or State Govt. or any statutory body – Petitioner has received grant in aid of Rs. 2,00,000/- and land on concessional rates – It is a ‘State aided Society’ as defined under Section 3(f) of the Act: *Patrakar Bhawan Samiti, Bhopal Vs. State, I.L.R. (2001) M.P. 1110.*

– **Sections 3 (f), 33 and 40** – Petitioner Society received an assistance almost a decade back – Not a State Aided Society – Order of supersession of petitioner society treating it as a ‘State aided society’ – Illegal: *The Chhatarpur Homeopathic and Biochemic Association Vs. State., I.L.R. (2001) M.P. 801.*

– **Sections 3 (f), 33 and 40** – Supersession and appeal – Writ Petition: *The Chhatarpur Homeopathic and Biochemic Association Vs. State, I.L.R. (2001) M.P. 801.2*

– **Section 33 and Constitution of India, Article 226** – Principle of natural justice – Order of supersession of governing body of society passed without giving opportunity to the society to file reply and explain circumstances alleged against it and charges held to be proved without application of mind and without mentioning reasons – Order vitiated – Liable to be quashed: *Raj Bahadur Pathak Vs. State of M.P.*, I.L.R. (1985) M.P. 575 (D.B.)

– **Section 33** – Powers of Administrator – Does not extend to admitting new members on the roll of Membership – In the event of election Administrator has to conduct election on the strength of membership on roll available on the date of supersession: *Sujit Kumar Banerjee Vs. State*, I.L.R. (2001) M.P. 452

Sovereign Ruler

– **Powers of:** *Col. Lal Ram Pal Singh, Vs. State of Madhya Pradesh*, I.L.R. (1960) M.P. 934 (F.B.)

Speaking Orders

– **Meaning of:** *Pascal Mendonza Vs. State of M.P.*, I.L.R. (1990) M.P. 358

Special Marriage Act (XLIII of 1954)

– **Section 2** – Marriage permissible between persons who do not profess any of seven faiths or both of whom prefer any one of four specified faiths – Section 17 – word “May” in – Confers discretion on Court to declare marriage null or dissolve it – Does not contain general declaration about marriage being void – Sections 22 and 23 – Effect of the sections – Effects separation – Hindu Law – Applicability – Gonds adopting Hindu Law – They do not become Hindus – Hindu Law – Inheritance – Separated son excludes widow from inheritance: *Smt. Mira Devi Vs. Smt. Aman Kumari*, I.L.R. (1962) M.P. 273 (D.B.)

– **Section 17** – Word “may” in – Confers discretion on Court to declare marriage null or dissolve it – Does not contain general declaration about marriage being: *Smt. Mira Devi Vs. Smt. Aman Kumari*, I.L.R. (1962) M.P. 273 (D.B.)

– **Sections 22 and 23** – Effect of the sections – Effects separation: *Smt. Mira Devi Vs. Smt. Aman Kumari*, I.L.R. (1962) M.P. 273 (D.B.)

– **Sections 24, 25 and 29 and Contract Act, 1872** – Section 17 – Fraud – Suit for a decree of nullity of marriage and appeal – Fact of earlier marriage suppressed by appellant – Iqarnama executed that in view of dispute parties wish to obtain divorce – Non mention of cause of dispute in the document not by itself indicative that fact of earlier marriage was disclosed to husband – Fraud – It is not essential that there should

be any misrepresentation by express words – Wife obliged to disclose fact of earlier marriage to husband – Active concealment – Husband entitled to decree: *Smt. Asha Qureshi Vs. Afaq Qureshi, I.L.R. (2003) M.P. 987*

– **Section 25 and Contract Act, 1872, Section 17** – Active concealment of earlier marriage – Material suppression – Husband entitled to decree of nullity: *Asha Qureshi Vs. Afaq Qureshi, I.L.R. (2002) M.P. 672*

– **Section 27 (1) (d)** – Divorce on ground of cruelty – Requirements of – Words ‘has treated with cruelty’ in – Meaning of: *A.P. Marry Vs. K.G. Raghwan, I.L.R. (1981) M.P. 682 (D.B.)*

– **Section 28** – Does not come into play – Decree granted by the Trial Court is without application of mind – Decree set aside – Reference rejected: *Smt. Susmita Joseph Vs. Limson, I.L.R. (1999) M.P. 722 (F.B.)*

– **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: *Smt. Susmita Joseph Vs. Limson, I.L.R. (1999) M.P. 722 (F.B.)*

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Special Tribunals or authority acting in excess of powers conferred by law

– **Action is in excess of jurisdiction** – Action can be challenged in civil Court: *Singhai Tantilal Vs. The City of Jabalpur Corporation, I.L.R. (1959) M.P. 286*

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– **Section 9** – Suit for possession by *Bhumiswami* of land after dispossession barred by section 257 of Land Revenue Code: *Nathu Vs. Dilbande Hussain, I.L.R. (1966) M.P. 671(D.B.)*

– **Section 10** – Hindu law – Property acquired without the aid of joint family property – May also be joint family property depending upon facts of each case – Ancestral or joint family members – Presumption about nature of acquisition – Joint family status – Presumption – Does not relate to property held jointly – 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 – Evidence Act – Section 115 – Estoppel – Party alleging transaction to be nominal one and without consideration, not entering witness-box to prove it – Effect – Land Revenue Code, M.P. 1959 – 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 20** – In order to claim specific performance tender of the amount payable under the contract must be “in the manner provided in the contract” – The word “Specific” when used for performance or allied matter like payment etc. must be given its natural meaning and consequently deviation or departure delivers dent almost beyond repair – Held – Requisite “readiness and willingness” has not been proved – The terms are not complied with and are in fact violated – Appeal allowed: *Basantilal Jagannath Mahajan Vs. Rameshwar Prasad Nanoolal Mahajan, I.L.R. (1993) M.P. 584*

– **Section 22** – Contract by Manager of joint Hindu family – Enforceable against minor and *vice versa* – Contract Act – Contract by guardian of minor for purchase of immovable property – Contract not valid: *Ramchandra Vs. Manikchand, I.L.R. (1970) M.P. 430 (D.B.)*

– **Section 22** – Contract not liable to be cancelled at the sweet will of one party – Reasonable notice to perform contract within specific time necessary – Mere delay not sufficient to defeat plaintiff's right – Nature of delay required to defeat plaintiff's right – In judging claim for specific performance – Subsequent rise in price irrelevant: *Mulla Badruddin Vs. Master Tufail Ahmed, I.L.R. (1961) M.P. 691 (D.B.)*

– **Section 25 (a)** – Scope of: *Nathulal Vs. Ganpat Prasad, I.L.R. (1957) M.P. 476 (D.B.)*

– **Section 31** – Latent ambiguity in description of property in deed – Suit for correction not necessary: *Narayan singh Vs. The Board of Revenue, Madhya Pradesh, I.L.R. (1962) M.P. 788*

– **Section 35** – Application to rescind contract for sale can be made in the same suit in which decree for specific performance of contract for sale has been passed – Purchaser – Defendant defaulted in payment of purchase money when Specific Relief Act of 1877 was in force – Application claiming rescission of the contract made on 10-7-62 before Specific Relief Act, 1963 came into force – Such Application maintainable under the Act of 1877 – Decree for specific performance not fixing any time limit for payment of purchase money – Contract should be performed within a reasonable time – Civil Procedure Code, 1908 – Order 22, rule 4(4) – Provision applicable to appeals as well – Power to exempt can be exercised at any time before delivery of judgment and even after abatement has taken place – Application in writing not necessary for such exemption – Effect of exemption from substitution of legal representatives of the deceased on judgment pronounced against the deceased: *Kanhaiyalal Vs. Mulla Abdul Hussain, I.L.R. (1984) M.P. 393(D.B.)*

– **Section 35** – Purchase-Defendant defaulted in payment of purchase money when specific Relief Act of 1877 was in force – Application claiming rescission of the contract made on 10-7-62 before Specific Relief Act, 1963 came into force – Such Application maintainable under the Act: *Kanhaiyalal Vs. Mulla Abdul Hussain, I.L.R. (1984) M.P. 393 (D.B.)*

– **Section 39** – Conditions under which costs of improvement can be made condition precedent to setting aside sale: *Jagatsingh Vs. Ganpat, I.L.R. (1969) M.P. 800 (D.B.)*

– **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 (D.B.)*

– **Section 39** – Suit for setting aside sale on the ground of unsoundness of mind of vendor – Circumstances attending execution to be considered – Evidence Act – Section 114 – Presumption arising from registration of deed – Presumption weakened where transaction taking place in unusual circumstances – Conditions under which costs of improvement can be made condition precedent to setting aside sale: *Jagatsingh Vs. Ganpat, I.L.R. (1969) M.P. 800 (D.B.)*

– **Section 42 and Specific Relief Act (XLVII of 1963)** – **Section 34** – Words further relief includes consequential benefits of a declaratory decree – Executing Court has to execute the decree as it is -Objection of appellant rightly overruled: *President Shree Gujrati Samaj Higher Secondary School, Ratlam Vs. Ramesh Chandra, I.L.R. (2000) M.P. 402*

– **Section 42** – Hindu Succession Act, 1956, Section 14 – Suit for declaration on basis of title to a right to property after coming into force of Hindu Succession Act – Maintainability – Declaration regarding the non-existence of a certain relationship affecting the right of inheritance – Grant of: *Mankuwar alias Bhuri Vs. Mt. Bodhi*, I.L.R. (1957) M.P. 270

– **Section 42** – Not exhaustive – Declarations not falling within this section – Declarations governed by the provisions of Section 9 or Order 7, rule 7, Civil Procedure Code – Requisites for a declaration suit – No declaration regarding pecuniary liability possible under the provision: *The State Vs. Khanbahadur H.H.D.H. Dhiwandiwalla and Co. Bhopal*, I.L.R. (1974) M.P. 465 (D.B.)

– **Section 42** – Requisites for a declaratory suit – Not declaration regarding pecuniary liability possible under the provision: *The State Vs. Khanbahadur H.H.D.H. Dhiwandiwalla and Co. Bhopal*, I.L.R. (1974) M.P. 465(D.B.)

– **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: *The Gwalior Forest Products Limited Company, Shivpuri Vs. State of Madhya Pradesh*, I.L.R. (1968) M.P. 789 (D.B.)

– **Section 42** – Suit for declaration affecting pecuniary relationship – Maintainability – Court-fees Act – Section 7(4)(c) – Suit for declaration for avoiding pecuniary liability – Suit valued for jurisdiction at a certain figure – Same will be valuation for court fees: *Nathuram Vs. The State*, I.L.R. (1961) M.P. 427

– **Section 42** – Types of declaratory suits – Abolition of Jagirs Act, Madhya Bharat – Section 17 – Jurisdiction of Civil Court to examine the reasons of Government – “Sishya-Parampara” grant – Incidents of: *State of Madhya Pradesh Vs. Mahant Udaygir Guru Rewagir*, I.L.R. (1970) M.P. 92 (D.B.)

Specific Relief Act (XLVII of 1963)

– **Agreement to sell** – Agreement to be valid must contain the description of the property to be sold – Description should be sufficient to identify the property to be sold – Vendor and purchaser – Normal rule is that purchaser should bear expenses of the stamp-paper and registration charges of the document – Civil Procedure Code – Section 34 – Normal rule is costs to follow event – Rule can be departed according to circumstances: *E. Nageshwar Rao Vs. Dinesh Chandra Verma*, I.L.R. (1978) M.P. 679 (D.B.)

– **Suit for, by Vendee – Sale in favour of pre emptor during the intervening period** – Specific performance cannot be refused: *Mulla Qamruddin Vs. Brijmohandas*, I.L.R. (1961) M.P. 97 (D.B.)

– **Vendor and purchaser** – Normal rule is that purchaser should bear expenses of the stamp-paper and registration charges of the document: *E Nageshwar Rao Vs. Dinesh Chandra Verma*, I.L.R. (1978) M.P. 679(D.B.)

– **Sections 7, 10, 14, 39, 40 and 41** – Signals are not ordinary articles of commerce – Loss on breach of contract not ascertainable – Contract for specific performance enforceable under Section 10 of 1963 Act: *Jabalpur Cable Network Pvt. Ltd. Jabalpur Vs. E.S.P.N. Software India Pvt. Ltd. New Delhi*, I.L.R. (2001) M.P. 846

– **Sections 9, 10 and 20** – Specific performance of contract – Suit for – Decree cannot be refund on ground that the property is in possession or that price of the property has increased during pendency of suit: *Babulal Agrawal Vs. Smt. Jyoti Shrivastava*, I.L.R. (2001) M.P. 192 (D.B.)

– **Section 10** – No step taken by plaintiff within one month of the date of agreement although as per his own witness sale-deed was to be registered within one month after payment of rest of the amount – Granting a decree of specific performance would not be appropriate: *Kanhaiya @ Kaniram Vs. Siddhnath*, I.L.R. (2005) M.P. 736

– **Section 12, Civil Procedure Code, 1908 – Section 115 and Order 23, Rule 3** – Suit for specific performance by housing society – Society taken over – Administrator filed application that suit had been compromised and may be dismissed – So called compromise not filed on record – Application dismissed on compromise between parties – Case remitted back to trial Court for decision on merit: *Jantantra Grih Nirman S.S. Maryadit Bhopal Vs. Haricharan*, I.L.R. (2005) M.P. 15 (S.C.) (D.B.)

– **Section 14 (b)** – Import of section 14(b) of Specific Relief Act – Refusal of Specific performance only when dependency on personal qualifications or volition of parties is such that denial would be just and fair: *Hansaben Vs. Ku. Kumud Kaniya*, I.L.R. (1989) M.P. 726

– **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 claims 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. the date of abolition: *Rameshwardas Vs. Jagannath*, I.L.R. (1979) M.P. 511 (D.B.)

– **Section 16** – Formal tender – Not necessary to party who would have refused to accept money: *Smt. Sushila Devi Vs. Smt. Laxmi Bai*, I.L.R. (1972) M.P. 1034 (D.B.)

– **Section 16** – Suit for specific performance by plaintiff – Pleading that he is ever willing to perform his part of contract and is also capable and has not become incapable of performing his part of contract essential – Absence of such pleading fatal to maintainability of the suit – Such default cannot be made good by deposition putting a leading question – In absence of foundation in plaint on a particular point evidence thereon cannot be allowed to go on record – Explanation for delay on expiry of notice period necessary – Absence – Adverse inference as to willingness and readiness of the plaintiff allowing defendant to lead evidence first – Miscarriage of justice occasioned because defendant could not lead evidence in rebuttal of plaintiff's evidence – Decree of specific performance – Discretion of the Court – Mandatory provisions must be complied with: *Hemachan Jain Vs. Sitaram*, I.L.R. (1991) M.P. 654

– **Section 16 (c)** – Pleadings – There is no averment in the plaint that respondent was ready and willing to perform his part of contract. It is now mandatory to take such a plea as provided in Section 16(c) of the Specific Relief Act, 1963: *Kamrunnisa Vs Pramod Kumar Gupta*, I.L.R. (1996) M.P. 393

– **Section 16 (c)** – Purchaser present in Sub-Registrar's office with balance amount – Stamp papers purchased and subsequently returned by purchaser – Unequivocal pleadings in plaint – Readiness and willingness of purchaser explicitly proved: *Ashok Kumar Adalia Vs. Smt. Munnibai*, I.L.R. (2001) M.P. 1536

– **Section 16 (c) and Explanation** – Contract open to two constructions – Plaintiff can allege alternative constructions and claim relief – Rule construction is that which is accepted by Court – In such cases difficulties are likely to arise in proving readiness and willingness from the date of contract: *Bajranglal Vs. Purshottamdas*, I.L.R. (1977) M.P. 562 (D.B.)

– **Section 16 (c) and its Explanation** – Readiness and willingness by plaintiff to perform his part of contract – Requirement of, entitling plaintiff to obtain decree for Specific performance – Is mandatory – Totality of facts and circumstances have to be looked into to ascertain it: *Smt. Chhabrani Vs. Smt. Narbada Bai*, I.L.R. (1987) M.P. 709

– **Section 16 (1) (c)** – Suit for specific performance – Absence of issue relating to readiness and willingness – It is incumbent on the plaintiff to state readiness and willingness as that is the mandate of law: *Sitaram Saraogi Vs. Hemchand Jain*, I.L.R. (1998) M.P. 300 (D.B.)

– **Section 16 (1) (c)** – Suit for specific performance – Plaint not in conformity with Forms No. 7 and 48 of First Schedule of the code of Civil Procedure – No averment in plaint to indicate readiness and willingness of the plaintiff in praesenti on the date of institution of suit – Suit is liable to be dismissed – Specific Relief Act – Section 16(1)(c)

– Suit for specific performance – Absence of issue relating to readiness and willingness
 – It is incumbent on the plaintiff to state readiness and willingness as that is the mandate of law: *Sitaram Saraogi Vs. Hemchand Jain*, I.L.R. (1998) M.P. 300 (D.B.)

– **Section 16 (c)** – Suit for specific performance of sale – Nature of transaction and intention of parties can be proved by evidence – In such a suit plaintiff is not required to prove availability of liquid money but he is definitely required to prove his potential to raise the requisite sum of consideration – Burden not discharged – Plaintiff rightly non-suited: *Ramesh Chand Vs. Kishanchand*, I.L.R. (2005) M.P. 980

– **Sections 19 (b), 20** – Specific Performance of Contract – Suit by purchaser on the ground that he was ready and willing but vendor avoided performance of contract despite demand – Sold the house to appellant to defeat and destroy his right – Held – Plaintiff always ready and willing perform his part of contract – Vendor intentionally avoided performance of contract – Defence of vendor that plaintiff had no money not acceptable – Vendor could have sought direction from Court for deposit of money by plaintiff immediately after receipt of notice of suit – Subsequent purchaser had knowledge of previous agreement – Subsequent purchaser not bona fide purchaser – Plaintiff entitled to decree for specific performance of Contract – Balance amount payable by plaintiff directed to be paid to the subsequent purchaser and not to vendor Appeal dismissed: *Sampatbai Shaitanmal Vs. Rameshchandra Veerbhan*, I.L.R. (1993) M.P. 556

– **Section 20** – Joint property – May be decreed to the extent of vendor's share
 – Plaintiff in possession as tenant – Suit decreed: *Govind Prasad Vs. Gajanand*, I.L.R. (2005) M.P. 884

– **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 20 (4)** – Does not throw out the doctrine of mutuality completely – Word “merely” shows that specific performance cannot be refused merely on ground of mutuality: *Than Singh Vs. Barelal*, I.L.R. (1979) M.P. 56 (D.B.)

– **Section 20 (4)** – Specific performance not to be refused merely because specific performance at the instance of other party cannot be enforced: *Than Singh Vs. Barelal*, I.L.R. (1979) M.P. 56 (D.B.)

– **Section 22 and Civil Procedure Code (V of 1908), Order 2, Rule, 3** – Suit for specific performance of contract – Stranger to contract in possession of the property but not setting up independent title – Could be joined as defendant and relief of possession could be claimed jointly or individually against him: *Gopal Prasad Patel Vs. Rameswak Patel*, I.L.R. (1990) M.P. 623

– **Section 22** – Suit for specific performance of contract – Relief of specific performance refused – Equitable relief for return of money could be granted although the same not asked for in the plaint: *Smt. Sushila Devi Vs. Smt. Kachra Bai, I.L.R. (1989) M.P. 157*

– **Section 22** – Court, Power of to grant relief to the plaintiff under: *Suraj Singh Vs. Smt. Nathi Bai, I.L.R. (1990) M.P. 96*

– **Section 22 (2)** – No relief shall be granted unless specifically claimed: *Jawariya Vs. Addl. Judge to District Judge, Mandleshwar, I.L.R. (2000) M.P. 326*

– **Section 26** – Failure to sue for rectification – Does not affect title to property: *Shanker Singh Vs. Sanstha Sona Bai Sharvkashram, Khurai, I.L.R. (1980) M.P. 568 (D.B.)*

– **Section 26** – Is an enabling provision: *Shanker Singh Vs. Sanstha Sona Bai Sharvkashram, Khurai, I.L.R. (1980) M.P. 568 (D.B.)*

– **Section 26** – Relief of possession a primary relief – Relief of rectification ancillary: *Shanker Singh Vs. Sanstha Sona Bai Sharvkashram, Khurai, I.L.R. (1980) M.P. 568 (D.B.)*

– **Section 26** – Suit for possession within time relief for rectification not barred: *Shanker Singh Vs. Sanstha Sona Bai Sharvkashram, Khurai, I.L.R. (1980) M.P. 568 (D.B.)*

– **Section 27-A and Transfer of Property Act (IV of 1882), Section 53-A** – Difference between the protection granted under these provisions: *M/s Haji Ali Mohammad And Sons., Panna Vs. Holaram, I.L.R. (1976) M.P. 707*

– **Section 28** – The expression “or such further period as the Court may allow” in – Connotation of: *Thakur Nathu Singh Vs. Thakur Surat singh (1982) M.P. 94*

– **Section 31** – Is an enabling section – Party not resorting to it is not deprived of the right conveyed to him by the deed – Evidence Act – Sections 91 and 92 – Oral evidence when and how far admissible: *Rikhiram Vs. Ghasiram, I.L.R. (1979) M.P. 653*

– **Section 34** – Ability to seek relief – Must exist at the time of filing of suit – Suit not to be dismissed on the happening of subsequent event: *Santoshchandra Vs. Smt. Gyansundarbai, I.L.R. (1979) M.P. 641 (D.B.)*

– **Section 34 and Civil Procedure Code (V of 1908), Section 9 and Order 7, rule 7** – Scope of Section 34 is not exhaustive – Declaratory decree can also be granted under section 9 and Order 7, rule 7, Civil Procedure Code – Suit for mere

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– **Section 34 and Civil Procedure Code (V of 1908), Section 9 and Order 7, rule 7** – Suit for mere declaration that no pecuniary liability arising out of commercial transactions attaches to Plaintiff – Maintainability of: *Ramnaryan Vs. Firm Managaram Radheshyam, I.L.R. (1982) M.P. 249(D.B.)*

– **Section 34** – Kinds of suits for declaration – Case in which suit for declaration when not maintainable: *Shyamlal Vs. Smt. Bhagwanti Bai (Deceased) Through L.Rs. Mangli, I.L.R. (1979) M.P. 1020*

– **Section 34** – Mere declaration including requisite relief as well suit for mere declaration is maintainable: *Krishi Upaj Mandi Samiti Mhow Vs. Shree Ram Choudhary, I.L.R. (1998) M.P. 961*

– **Section 34** – Plaintiff losing possession during pendency of suit – Plaintiff can amend and ask for that relief – Non-asking of relief – Suit cannot be dismissed: *Santoshchandra Vs. Smt. Gyansundarbai, I.L.R. (1979) M.P. 641 (D.B.)*

– **Section 34** – Plaintiff owner in possession except over two rooms constructed by defendants – Suit could not have been dismissed for want of prayer for possession: *Ram Pramod Kachhi Vs. Gayadeen, I.L.R. (2004) M.P. 1085*

– **Section 34** – Proviso – Plaintiff entitled to consequential relief directly flowing from declaration sought – Plaintiff must ask for such relief along with declaration: *Santoshchandra Vs. Smt. Gyansundarbai, I.L.R. (1979) M.P. 641 (D.B.)*

– **Section 39 and Arbitration and Conciliation Act (XXVI of 1996) – Section 39** – Parties agree to refer the dispute to Arbitrator and appellant willing to pay the charges for services liable to be rendered by respondent – Looking to the interest of general public injunction granted in favour of appellant subject certain conditions: *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 41 (h)** – Remedy of appeal not efficacious – No bar of Section 41(h) – Jurisprudence – Two decisions of Supreme Court laying down deferent law by the benches of equal judges – Latest decision would prevail: *Hansaben Vs. Ku. Kumud Kaniya, I.L.R. (1989) M.P. 726*

– **Section 41 (c)** – Appellant is a sick company – Proceedings pending for rehabilitation – Provisions of Specific Relief Act cannot be made applicable: *Nepa Ltd. East Nimar (M.P.) Vs. Manoj Kumar Agrawal, I.L.R. (1999) M.P. 1062*

– **Section 41 (g)** – Plaintiff real brother of appellant – Allowed raising of construction joining his wall – Either consented or acquiesced – Grant of injunction for removal of the wall would be against principles of equity, justice and fairness – Judgment and decree impugned set aside: *Smt. Dhaniya Bai Vs. Jiwan*, I.L.R. (2003) M.P. 71

– **Section 42** – Consideration for grant of interlocutory injunction – Principles of irreparable injury – Party entering into negative covenant with open eyes – Balance of convenience and irreparable injury would be out of consideration – Comparative injury – Consideration of: *Permali Wallac Ltd. Bhopal Vs. Dr. K.T. Shamsunder*, I.L.R. (1980) M.P. 878

– **Section 42** – Does not prevent Court from enforcing negative covenants in the agreement of service – Grant of injunction – Discretionary – Cannot be granted if contract unconscionable or excessively harsh or unreasonable or one sided or the virtual effect, if granted, would compel performance of service or to remain idel – Considerations for grant of interlocutory injunction – Principles of irreparable injury – Party entering into negative covenant with open eyes – Balance of convenience and irreparable injury would be out of consideration – Comparative injury – Consideration of: *Permali Wallac Ltd. Bhopal Vs. Dr. K.T. Shamsunder*, I.L.R. (1980) M.P. 878

– **Section 42** – Grant of injunction – Discretionary – Cannot be granted if contract unconscionable or excessively harsh or unreasonable or one sided or the virtual effect, if granted, would compel performance of service or to remain idel: *Permali Wallac Ltd. Bhopal Vs. Dr. K.T. Shamsunder*, I.L.R. (1980) M.P. 878

Stamp Act, Indian (II of 1899)

– **Sch. 1, Art. 49 (a)** – Nature of document – Nature of document to bring within particular article has to be decided on the language of the instrument – Evidence need not to be looked into: *Goel Industries Vs. Om Prakash Mittal*, I.L.R. (1993) M.P. 288

– **And Stamp Act, M.P.(IInd Amendment) Act of 1990 – Sections 3, 35 and Entry No. 23 of Schedule 1-A** – Agreement of Sale – Possession delivered – Effect – Agreement of sale shall be deemed to be conveyance – Document not admissible in evidence unless proper stamp duty paid: *Smt. Vijaywanti Vs. Jiyanlal*, I.L.R. (2001) M.P. 738

– **(As amended in M.P.) – Sections (2) (15) and 36** – Instrument of partition – Tendered in evidence by witness during deposition – Document admitted in evidence by trial Court for collateral purpose of proving possession – Admissibility of document cannot be questioned in appeal on ground that document is unstamped: *Ramgulam Vs. Mathura Prasad (Deceased) through L.R. Ramvati Alias Jamvati*, I.L.R. (2001) M.P. 1719

– **As amended by Second Amendment Act M.P. 1975** – Section 59 (2) – Powers of High Court under – Section 57 – Reference to the High Court – When can be made – Section 47-A – Course open to the aggrieved party against the order passed by the Sub-Divisional Officer – Section 56 – Revision – Powers of the Board of Revenue under: *Mahant Ishwari Sharan Deo Vs. State of M.P., I.L.R. (1982) M.P. 659 (F.B.)*

– **As amended by Second Amendment Act M.P. 1975** – Section 59 (2) – Section 47-A – Course open to the aggrieved party against the order passed by the Sub-Divisional Officer: *Mahant Ishwari Sharan Deo Vs. State of M.P., I.L.R. (1982) M.P. 659 (F.B.)*

– **Article 35 of Schedule 1-A** – Stamp Duty on lease – Grant of fishing rights in reservoir owned by M.P. Rajya Matsya Vikas Nigam – Demand of stamp duty at the rate of 4% under Article 35 of Stamp Act – Held – Respondents having right to operate on column of water – Also have right to carry away fish existing and future – Applying definition of Immovable Property in Registration Act and under Section 2(18) of M.P. General Clauses Act right conferred is a right in immovable property amounting to lease and is covered by Article 35 of Schedule 1-A of Stamp Act: *State of M.P. Vs. Santosh Jaiswal, I.L.R. (1994) M.P. 371 (D.B.)*

– **Article 35 (a) in Schedule 1** – A and Section 26 – Mining leases – Computation of Stamp duty on instruments of mining lease in accordance with Rule 31 of the Mineral Concession Rules, 1960 – Mode of – Royalty payable under mining lease by the lessee to the lessor is rent or part of rent – Section 26 – Applicability of: *Steel Authority of India Ltd. Bhilai Steel Plant Bhilai, Bhilai Vs. Collector of Stamps, Bilaspur, I.L.R. (1986) M.P. 11 (D.B.)*

– **Article 49** – Article 49 of Indian Stamp Act not included in Section 3-A of the State Act no additional stamp duty payable to the promissory not: *Inder Singh Ahuja Vs. Baldeo Singh Bhatia, I.L.R. (1991) M.P. 130 (D.B.)*

– **Chapter IV** – Inspector of Stamps and Registration during the course of inspection of office of Municipal Committee notices under stamped bonds – Is entitled to impound and make a report to Collector of stamps for further action under chapter IV – Further action under Chapter IV cannot be dropped on the ground that the bonds have become in fructuous on account of payments made: *State of M.P. Vs. Jiwan Mathura Prasad, I.L.R. (1984) M.P. 1 (F.B.)*

– **Principles which govern its application** – Section 36 – Document admitted in evidence and exhibited – Admission cannot be subsequently challenge on ground of insufficiency of Stamp – Provision comes in when the document is admitted and exhibited – Section 38 (2) – Not applicable where document admitted in evidence – Section 29 – Stamp duty on partition deed – All parties jointly and severally liable in the absence of agreement – Parties between themselves have right to contribution – Collector not

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– **Stamp vendors licence** – Does not create right but is a mere privilege: *Sohan Lal Gupta Vs. Collector, Raipur, I.L.R. (1971) M.P. 627 (D.B.)*

– **State succession** – Pre-existing Laws in component States continue till changed by New sovereign authority: *Col. Lal Rampal Singh Vs. State of Madhya Pradesh, I.L.R. (1960) M.P. 934 (F.B.)*

– **Section 2 (5) and Article 15** – Document with no express provision to pay and no attestation, but mentions merely a date by which the repayment would be made – Although an implied promise to pay be inferred, it is neither an agreement nor a bond – It is a receipt only – Civil Procedure Code, Section 115 – Revision lies against order holding the document a bond: *Sobhagmal Vs. Ramniwas, I.L.R. (1960) M.P. 728*

– **Section 2 (5) – Essentials of Bond** – Distinguishing features between Bond and promissory note – Peculiar features of Bond – Instrument falling within both categories – Instrument chargeable with higher duty: *Santsingh Vs. Madandas, I.L.R. (1977) M.P. 1059 (F.B.)*

– **Sections 2 (15) and 2 (24) (b)** – Whether deed by which property is divided falls under Sections 2(15) and 2(24)(b) – Section 2(24)(b) – Settlement deed – Contemplates that the property belongs to settler – Joint Family property – Karta, power of, to effect partition: *Mahajan Dwarka Prasad Vs. The Sub-Registrar, Narsimhapur, I.L.R. (1971) M.P. 1 (F.B.)*

– **Section 2 (24) (b)** – Settlement deed – Contemplates that the property belongs to settler: *Mahajan Dwarka Prasad Vs. The Sub-Registrar, Narsimhapur, I.L.R. (1971) M.P. 1 (F.B.)*

– **Section 3-A** introduced by Indian Stamp and Excise Duty (Amendment) Act, 1971, Refugee Relief Taxes Abolition Act, 1973 M.P. Karadhan Vidhi (Sanshodahn) Adhiniyam, 1972, Section 3-A and Central Provinces and Berar Indian Stamp (Amendment) Act, 1939 – Promissory note executed after Ist April, 1973 does not require additional duty of ten paisa: *Sitaram Vs. Mathuralal Bhikaji, I.L.R. (1984) M.P.601*

– **Section 9, Articles 33 (a) (v) and 33 (c)** – Stamp duty – Constitutional validity – Fiscal legislation – Not confiscatory or expropriatory in nature – Cannot be

challenged merely on ground of being excessive – Persons willing to pay high premium and rent to defeat competition or to secure advantage – Cannot have a grievance when it comes to payment of stamp duty – Section 33(a) (V) and 33(c) not *ultravires*: *Smt. Padma Vs. The State of M.P.*, I.L.R. (2004) M.P. 1025 (D.B.)

– **Section 26** – Applicability of: *Steel Authority of India Ltd. Bhilai Steel Plant, Bhilai Vs. Collector of Stamps, Bilaspur*, I.L.R. (1986) M.P. 11 (D.B.)

– **Sections 27, 27-A, 47-a, Schedule 1, Entry 23 and Constitution of India, Seventh Schedule, List II, Entry 63 and list III, Entry 44** – Provisions of Sections 27, 47-A and schedule 1 as amended by M./P. Act 8 of 1975 in the matter of stamp duty payable on market value, valid: *Smt. Ramkishori Gupta Vs. The State of M.P.*, I.L.R. (1989) M.P. 260 (D.B.)

– **Sections 27 and 36** – “Admitted into evidence” – Meaning of Court’s order to the effect that the document is admissible, is equivalent to admission itself – Noting the particulars by the presiding officer is a mechanical process under Order 13, Rule 4 – This being not done, order of the Court still equivalent to admission for the purpose of Section 36 of the Act and cannot be called into question – Failure to comply with section 27 by not setting forth in the gift deed value of the property of consideration for the gift – Document not rendered inadmissible: *Vinayak Dattatraya Sant, Indore Vs. Hasanali Haji Nazarali, Indore*, I.L.R. (1960) M.P. 895

– **Section 29** – Stamp duty on partition deed – All parties jointly and severally liable in the absence of agreement – Parties between themselves have right to contribution – Collector not bound to recover *pro rata*: *Balkrishna Vs. The Board of Revenue, M.P. Gwalior*, I.L.R. (1971) M.P. 597 (F.B.)

– **Section 29** – Imposes duty on executor to supply proper stamp: *Parmanand Jain Vs. Firm Babulal Rajendra Kumar Jain*, I.L.R. (1980) M.P. 743 (D.B.)

– **Sections 32, 33, 35** – Writ petition – Deficit Stamp Duty paid – Collector of Stamps required to make endorsement on document itself – Separate certificate issued – Plaintiff permitted to obtain endorsement on the document: *Preetam Singh Vs. The Life Insurance Corporation of India, Madan Mahal, Jabalpur*, I.L.R. (2005) M.P. 480

– **Sections 32 (3) and 35, Proviso(e)** – Collector’s certificate validating pro-note after recovering duty and penalty – Certificate conclusive – Document admissible – Civil Court bound to admit document as evidence: *Dagdu Vs. Dhannalal*, I.L.R. (1962) M.P. 642

– **Section 33 (1)** – Authorities mentioned in, Power of, to impound deeds not coming before them in the performance of their function – Expression “any instrument,

chargeable, in his opinion, with duty, is produced or comes in the performance of his functions” in – Implies exercise of powers only so long as function is not performed or completed and not afterwards – Registering officer, duty of, see if instrument duly stamped before it is registered – After registration of deed, Registering Officer becomes *functus officio* – Registration Manual – Paragraph 231 – Does not empower authority to make report to Collector – Paragraph 232 – Words “after registering the document” in – Refer to the entry of deed in the register maintained of documents presented for registration – Words and Phrases – “*Functus officio*” – Meaning of – Registration Act – Does not bar registration of deed insufficiently stamped – Officer examining the deed to see whether it is duly stamped or not – Officer does not do functions under the Act: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174 (F.B.)*

– **Section 33 (1)** – Expression “any instrument, chargeable, in his opinion of his functions” in – Implies exercise of powers only so long as function is not performed or completed and not afterwards: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174 (F.B.)*

– **Section 33 (1)** – Insufficiently stamped document produced before the Court – Its genuineness disputed – Whether Court can impound the document before its genuineness is established – Section 35 – Impounding of document – Whether relates to only original documents – Carbon copy of a document signed by parties – Whether can be impounded – Proviso (a) Whether Court is competent to reduce the amount of penalty: *Satish Kumar Vs. Lalsingh, I.L.R. (1981) M.P. 1064*

– **Sections 33 (1), 38 (2) and 40** – The expression “comes in the performance of his function” – Connotation of – Inspector of Stamps and Registration during the Course of inspection of office of Municipal Committee notices under stamped bonds – Is entitled to impound and make a report to collector of stamps for further action under chapter IV – Further action under Chapter IV cannot be dropped on the ground that the bonds have become in fructuous on account of payments made: *State of M.P. Vs. Jiwan Mathura Prasad, I.L.R. (1984) M.P. 1 (F.B.)*

– **Section 35** – After registration of deed, Registering Officer becomes *functus officio*: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174 (F.B.)*

– **Section 35** – Impounding of documents – Whether relates to only original document – Carbon copy of a document signed by parties – Whether can be impounded: *Satish Kumar Vs. Lalsingh, I.L.R. (1981) M.P. 1064*

– **Section 35** – Proviso (a) – Whether Court is competent to reduce the amount of penalty: *Satish Kumar Vs. Lalsingh, I.L.R. (1981) M.P. 1064*

– **Section 35** – Registering Officer, duty of, to see if instrument duly stamped before it is registered: *Komalchand Vs. The State of M.P., I.L.R. (1966) M.P. 174 (F.B.)*

– **Sections 35, 36, 61 and Evidence Act, Indian 1872, Section 167** – Admissibility of document – Court admitted document with direction to party to pay necessary stamp duty – Document acted upon while pronouncing judgment – In view of Section 61 of Stamp Act and Section 167 of Evidence Act, document cannot be challenged in appeal: *Babulal S/O Damodarji Agrawal Vs. Mohammad Sharif, I.L.R. (1995) M.P. 620*

– **Sections 35, 37 and 38** – Suit for partition – Photocopy of family settlement filed in defence – Secondary evidence – Admissibility of – A Party can only be allowed to rely on a document which is an instrument for purposes of Section 35 and 37 of the Stamp Act: *Sugreeva Prasad Dubey Vs. Sitaram Dubey, I.L.R. (2004) M.P. 265*

– **Section 36** – Civil Procedure Code, Section 105 – Finality of trial Court's order regarding the deed – Applicable to admissibility of document and chargeability of stamp duty and penalty – Section 36, Stamp act not applicable to rejection of instrument – Section not to be construed as to override provision of Section 105, Civil Procedure Code – Contract Act, Section 25(3) – Deed acknowledging inability and promising payment of amount with interest – Deed falls under the Section: *Mannalal Vs. Sitambernath, I.L.R. (1961) M.P. 374*

– **Section 36** – Document admitted in evidence and exhibited – Admission cannot be subsequently challenged on ground of insufficiency of Stamp – Provision comes in when the document its admitted and exhibited: *Balkrishna Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1971) M.P. 597 (F.B.)*

– **Section 38 (1) and (2)** – Collector duty of, to determine nature of the deed, its duty and penalty: *Haji Abdul Hamid Vs. The State of Madhya Pradesh, I.L.R. (1966) M.P. 399 (D.B.)*

– **Section 38 (1) and (2)** – Court impounding a document and imposing duty and penalty – Has to sent to the collector an authenticated copy of document, duty and penalty – In other cases original document to be sent to Collector – Collector, duty of, to determine nature of deed, its duty and penalty – Section 40 – Collector, duty of, to entertain and determine the objection of party when document received under section 38(2): *Haji Abdul Hamid Vs. The State of Madhya Pradesh, I.L.R. (1966) M.P. 399(D.B.)*

– **Section 38 (2)** – Not applicable where document admitted in evidence: *Balkrishna Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1971) M.P. 597 (F.B.)*

– **Section 40** – Collector, duty of, to entertain and determine the objection of party when document received under section 38(2): *Haji Abdul Hamid Vs. The State of Madhya Pradesh, I.L.R. (1966) M.P. 399 (D.B.)*

– **Section 40** – Powers of Collector under – Are discretionary in respect of imposition of penalty – Not provision in the Act to guide discretion: *Balkrishna Vs. The Board of Revenue, M.P. Gwalior, I.L.R. (1971) M.P. 597 (F.B.)*

– **Section 44 (1)** – Stamp Duty and penalty recovered from creditor – Creditor entitled to recover from debtor: *Parmanand Jain Vs. Firm Babulal Rajendra Kumar Jain, I.L.R. (1980) M.P. 743 (D.B.)*

– **Section 47, Prevention of Undervaluation of Instrument Rules M.P., 1975, Rules 9, 9(3), 14, 14(4), Constitution of India, Article 227** – Verification of Memo of Appeal – Petitioner purchased 34.66 acres of land from respondent no. 6 – Sub-Registrar made a reference to Collector Stamps for determination of market value of property and for recovery of deficit stamp duty – Collector determined stamp duty payable at Rs. 5,23,497 – Appeal filed before Board of Revenue dismissed on the ground that verification was not endorsed and signed by petitioner at the foot of the memo of appeal – Held – Appellate Court can afford an opportunity to remove the defect – Appeal cannot be rejected on this ground: *Trilochan Singh Vs. Board of Revenue, I.L.R. (1993) M.P. 391 (D.B.)*

– **Section 47-A, as amended by Indian Stamps (Madhya Pradesh Second Amendment) Act (VIII of 1975)** – Operation thereof – Not retrospective – Principal Governing the operation of a Statute on a particular new section – Section 47-A, as amended – Whether Sub-registrar empowered to make a reference to the Collector of stamp in regard to under valuation once such instrument has been registered before coming into force of the amendment in 1975: *Sitaram Vs. State of M.P., I.L.R. (1982) M.P. 855 (F.B.)*

– **Section 47 – A, as amended by Indian Stamps (Madhya Pradesh Second Amendment) Act** – Whether Sub-registrar empowered to make a reference to the Collector of stamp in regard to under valuation once such instrument has been registered before coming into force of the amendment in 1975: *Sitaram Vs. State of M.P., I.L.R.(1982) M.P. 855 (F.B.)*

– **Section 47 A (as inserted by M.P. Act 8 of 1975) & Section 75** – M.P. Prevention of Under Valuation of Instruments Rules (1975) Rule 3A – *Ultra vires* – The Registering Officer is a statutory functionary under the Act and his function cannot be taken away, abrogated or curtail by a subordinate legislation – Rule 3-A, curtails the power instead of supplementing the provisions of Section 47-A – Indeed it abrogates provisions of Section 47-A – Rule 3-A, therefore is *ultra vires* - Power granted by Section 75 of the Act and cannot stand together with Section 47-A thereof: *Bala Prasad Vs.State of M.P., I.L.R. (1996) M.P. 326 (D.B.)*

– **Section 47 A (as inserted by M.P. Act 8 of 1975) & Section 75** – M.P. Prevention of Under Valuation of Instruments Rules (1975) Rule 3A & Rule 5 –

Determination of market value – In accordance with the procedure prescribed in Rule 4 and principles indicated in Rule 5 – Statement prepared under Rule 3-A indicating the average rates can not influence the decision of Collector in determining market value of property: *Bala Prasad Vs. State of M.P., I.L.R. (1996) M.P. 326 (D.B.)*

– **Section 56** – Revision – Power of the Board of Revenue under: *Mahant Ishwari Sharan Deo Vs. State of M.P., I.L.R. (1982) M.P. 659 (F.B.)*

– **Section 57** – Reference to the High Court When can be made: *Mahant Ishwari Sharan Deo Vs. State of M.P., I.L.R. (1982) M.P. 659 (F.B.)*

– **Section 57 (1) and Article 45, Schedule 1-A** – reference – When can be made to the High Court for decision: *State of M.P. Vs. Maharaja Martand Singh Joo Deo, I.L.R. (1984) M.P. 191 (F.B.)*

– **Section 57(1)** – Contemplates reference of some precise question – General or vague reference not permissible – Chief Controlling Revenue Authority adjudicating on the controversy and reaching a definite conclusion – Reference income – Patent and need not be answered: *Manohar Kunwarbai Vs. State of M.P., I.L.R. (1984) M.P. 67 (F.B.)*

– **Rule 27** – Framed under the Act – Order of revocation – Collector not obliged to act judicially – Order not open to appeal or revision – Order only executive or administrative – Not open to review by writ of certiorari – Power of revocation – Not subject to any pre-condition – Not notice necessary – Matter rests on subjective satisfaction of Collector: *Sohan Lal Gupta Vs. Collector, Raipur, I.L.R. (1971) M.P. 627 (D.B.)*

– **Rule 27** of the Rules framed under the Act – Vires of: *Sohan Lal Gupta Vs. Collector, Raipur, I.L.R. (1971) M.P. 627 (D.B.)*

Standard Standing Orders

– **Constitute the statutory terms of employment** – Industrial Relation Act, Madhya Pradesh, 1960 – Section 61(1)(a)(a) – Power of labour Court to enquire into charges framed and also the question whether condition of service of employee is regulated by Standing Order or by Statutory regulation – Section 66 – Revisional Power not to be exercised for setting aside order of Labour Court for existence of any defect – Constitution of India – Article 226 – Point not raised before Industrial Court – Cannot be raised in writ petition: *Jagat Singh Choudhury Vs. M.P. Electricity Board, Jabalpur, I.L.R. (1971) M.P. 272 (D.B.)*

– **Clause (12) (F)** – Consumption of liquor by driver of a passenger bus without amounting to drunkenness and without proof of his incapability of driving – Whether amounts to misconduct: *M.P. State Road Transport Corporation, Bhopal Vs. The State Industrial Court, Indore, I.L.R. (1984) M.P. 80*

– **Clause (12) (F)** – Contrary conclusions reached by Labour Court and Industrial court based on misreading and misconstruction of clause 12(1)(f) of the standard Standing Orders – Error apparent on the face of record – Orders liable to be quashed: *M.P. State Road Transport Corporation, Bhopal Vs. The State Industrial Court, Indore, I.L.R. (1984) M.P. 80*

– **Clause (12) (1) (F)** – Misconduct – ‘Drunkenness meaning of: *M.P. State Road Transport Corporation, Bhopal Vs. The State Industrial Court, Indore, I.L.R. (1984) M.P. 80*

– **Clause (12) (1) (F)** – The Expression “Conduct endangering the life of safety any person” – Connotation of: *M.P. State Road Transport Corporation, Bhopal Vs. The State Industrial Court, Indore, I.L.R. (1984) M.P. 80*

– **No. 2 – Clause (VI)** – “Temporary Employee” includes workers continuously employed for a period of less than six months: *Jumul Cement Works, Jamul Vs. Resident, State Industrial Court, Madhya Pradesh, Indore, I.L.R. (1971) M.P. 445 (D.B.)*

– **Not applicable to workers in constructional work of cement company:** *Jumul Cement Works, Jamul Vs. Resident, State Industrial Court, Madhya Pradesh, Indore, I.L.R. (1971) M.P. 445 (D.B.)*

Standing Order

– **Are statutory rules** – Not liable to be ignored, modified, varied or departed from by an agreement or contract between employer and the employee – Parties cannot contract out of the terms of standing orders: *Jagdish Mittra Sharma Vs. Jiyajee Rao Cotton Mills Ltd., Gwalior, I.L.R. (1972) M.P. 890 (D.B.)*

– **Paragraph 15, clause (h)** – Disorderly behaviour of 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: *Sarguja Raigarh Motor Karmachari Sangh, Ambikapur Vs. The Managing Director, Sarguja Raigarh Roadways (P) Ltd, Ambikapur, I.L.R. (1969) M.P. 604 (D.B.)*

– **Paragraph 15, clause (h)** – “Misconduct” in – Includes any act subversive of discipline – Not necessary that that act should be committed during the working hours or when on duty or at the Industrial establishment itself: *Sarguja Raigarh Motor Karmachari Sangh, Ambikapur Vs. The Managing Director, Sarguja Raigarh Roadways (P) Ltd, Ambikapur, I.L.R. (1969) M.P. 604 (D.B.)*

State Bank of India (Sub-Accountants and Head Cashiers) Service Rules

– **Are not stipulations of contract governing employment of as person joining service:** *Dattatraya Vs. State Bank of India, I.L.R. (1973) M.P. 229 (D.B.)*

– **Rules are bye-laws:** *Dattatraya Vs. State Bank of India, I.L.R. (1973) M.P. 229 (D.B.)*

– **Rule 18 (1)** – Agreement under Rule 18(1) – Clauses 3, 4, 7 and 10 of the agreement – Validity: *Dattatraya Vs. State Bank of India, I.L.R. (1973) M.P. 229 (D.B.)*

– **Rule 18 (1)** – Person appointed as Head Cashiers aware of Rule 18(1) – Cannot challenge reasonableness of that rule: *Dattatraya Vs. State Bank of India, I.L.R. (1973) M.P. 229 (D.B.)*

State Bank of India (Supervising Staff) Service Rules, 1975

– **Rule 7 and 31, State Bank of India Act (XXIII of 1955) – Section 43 and State Bank of India General Regulations, 1955 Regulation 46** – Circular No. PER/036 of 1979 issued by the Bhopal Local Head office of the State Bank of India relaxing eligibility clause of one year of confirmed service in case of Scheduled Caste/Tribes employees of the State Bank of India to be considered for promotion – Validity of – Rule 7(1) and Regulation 46 – Powers of Central Board under Rule 7(1) – Regulation 46 – Jurisdiction of Executive Committee constituted under Regulation 46 to frame scheme determining terms and conditions of appointment of employees – Circular issued in pursuance of the scheme relaxing eligibility clause in case of Scheduled Castes/Tribes candidates – Does not contravene Rule 7 – Regulation 46 – Paragraph 1.2 of the Scheme framed under – Words “where the element of direct recruitment does not exceed 50% of the vacancies” in – Meaning of – Regulation 46 – Paragraph 3.2 of the Scheme frame under the Regulation – Object of – Constitution of India – Articles 12, 14 and 16 – State Bank of India is “State” under Article 12 – Relaxation in matter of eligibility granted in favour of Scheduled Castes/Tribes employees – Does not offend fundamental rights of other employees-Circular framed under the regulation – Validity of: *The State Bank of India, Bombay Vs. R.K. Jain, I.L.R. (1982) M.P. 807 (D.B.)*

State Bank of India (Supervisory Staff) Service Rules

– **Rule 50 (2) (iv)** – Appointment of Enquiry Officer before receipt of reply of delinquent – Not sufficient to vitiate the whole enquiry proceedings unless some prejudice is caused to the delinquent: *Mukul Vs. State Bank of India, I.L.R. (2000) M.P. 1076*

– **Rule 50 (2) (xvi)** – Enquiry Officer empowered to take any material in evidence not included in the charge sheet: *Mukul Vs. State Bank of India, I.L.R. (2000) M.P. 1076*

– **Rule 50 (5)** – Punishment – Petitioner an officer of the Bank – While occupying a position of trust betrayed the employer by making misutilisation of financial loans that too taken in fictitious name – Punishment of removal from service substituted in appeal – Neither disproportionate nor the appellate authority is required to give detailed reason therefore: *Mukul Vs. State Bank of India, I.L.R. (2000) M.P. 1076*

– **Rule 50 (5)** – Supply of enquiry report – Absence of procedure for, in rule 50(2) – Inconsequential as the order of punishment is passed prior to cut off date laid down by the Supreme Court: *Mukul Vs. State Bank of India, I.L.R. (2000) M.P. 1076*

State Bank of India General Regulations, 1955

– **Regulation 46** – Paragraph 1.2 of the Scheme framed under – Words where the element of direct recruitment does not exceed 50% of the vacancies” in – Meaning of: *The State Bank of India, Bombay Vs. R.K. Jain, I.L.R. (1982) M.P. 807 (D.B.)*

– **Regulation 46** – Paragraph 3.2 of the Scheme framed – Object of: *The State Bank of India, Bombay Vs. R.K. Jain, I.L.R. (1982) M.P. 807 (D.B.)*

– **Rule 7(1) and Regulation 46** – **Rule 7(1) and Regulation 46** – Powers of Central Board under Rule 7(1) – Regulation 46 – Jurisdiction of Executive Committee constituted under Regulation 46 to frame scheme determining terms and conditions of appointment of employees – Circular issued in pursuance of the scheme relaxing eligibility clause in case of Scheduled Castes/Tribes candidates – Does not contravene Rule 7: *The State Bank of India, Bombay Vs. R.K. Jain, I.L.R. (1982) M.P. 807 (D.B.)*

State Bank of India, Act (XXIII of 1955)

– **And State Bank of India (Sub-Accountants and Head Cashiers) Service Rules** – Rules not framed by Central Government – Section 49 – Does not embrace service conditions and terms of Bank’s employees – Section 50 – Does not touch power to regulate service conditions and terms of employees – Regulations made under this section – Not meant to cover terms and conditions of Service-Rules – Are not stipulations of contract governing employment of a person joining service – Rules and bye-laws – Corporation – Power to make bye-laws for regulating its own actions and concerns and rights and duties amongst members and for regulating employment of its officers and servants – Is one of its legal incidents – Distinction between bye-laws and

rules – Section 43 – Word “determine” in – Confers power to make bye-laws regarding conditions of service – Bye-laws – Not challengeable on ground of unreasonableness – Person appointed as Head Cashier aware of Rule 18(1) – Cannot challenge reasonableness of that rule – Agreement under Rule 18(1) – Clauses 3, 4, 7 and 10 of the agreement – Validity of: *Dattatraya Vs. State Bank of India, I.L.R. (1973) M.P. 229 (D.B.)*

– **Section 43** – Word “determine” in – Confers power of make bye-laws regarding conditions of service: *Dattatraya Vs. State Bank of India, I.L.R. (1973) M.P. 229 (D.B.)*

– **Section 49** – Does not embrace service conditions and terms of Bank's Employees: *Dattatraya Vs. State Bank of India, I.L.R. (1973) M.P. 229 (D.B.)*

– **Section 50** – Does not touch power to regulate service conditions and terms of employees: *Dattatraya Vs. State Bank of India, I.L.R. (1973) M.P. 229 (D.B.)*

– **Section 50** – Regulations made under this section – Not meant to cover terms and conditions of service: *Dattatraya Vs. State Bank of India, I.L.R. (1973) M.P. 229 (D.B.)*

State Bank of Indore (Officers) Service Regulations, 1979

– **Regulation 19(1) and Constitution of India, Article 226** – Retirement from service before normal age of retirement under second proviso – Action can be taken in the interest of Bank – Powers conferred by second proviso, Not discriminatory or arbitrary – retirement was not in the interest of Bank – Impugned order quashed: *Surendra Prata Singh Kushwaha Vs. State Bank of Indore, Indore, I.L.R. (1989) M.P. 392(D.B.)*

State Civil Service Regulation

– **Publication of direction in Gazette** – Does not affect validity or effectiveness: *Shri I.N. Saksena Vs. The State of Madhya Pradesh, I.L.R. (1966) M.P. 216(D.B.)*

State Co-Operative Dairy Federation Limited Employees' (Recruitment, Classification and Conditions of Service) Regulation, M.P. 1985 (as amended)

– **Regulation 13 (1)** – Compulsory retirement on completion of 20 years service in public interest – Not interest of employer or employee which is material but efficiency

and integrity are of paramount considerations: *Dr. Vishwanath Prasad Agnihotri Vs. M.P. State Cooperative Dairy Fadaration Ltd., I.L.R. (2004) M.P. 134*

– **Regulation 13 (1)** – Marks given on grading in confidential reports – Not to be retired if average marks obtained are two or more – Formula ensures objectivity in evaluation of service record – Rules out chances of bias, prejudice or subjectivity: *Dr. Vishwanath Prasad Agnihotri Vs. M.P. State Cooperative Dairy Fadaration Ltd., I.L.R. (2004) M.P. 134*

State Co-Operative Marketing Federation Ltd. Employees' Service Rules

– **Rule 23** – Continuation of departmental enquiry after superannuation – There has to be specific provision under the law to take action against a person who has ceased to be in the service: *Radheshyam Khichrolia Vs. M.P. State Co-Operative Marketing Federation Ltd., I.L.R. (2003) M.P. 107*

State Financial Corporation Act (63 of 1951)

– **Section 29– and Constitution of India, Article 226** – Constitutional validity of Section 29 of Act challenged on the ground of arbitrary and unguided power and for that reason violative of Article 14 of the Constitution – Held – Demanding one's won money cannot be said to be unreasonable even if the demand causes some hardship – The provision is in public interest as the corporation is funded by public funds – Section 29 no doubt confers wide power on the Financial Corporation but the purpose of those power is to ensure prompt payment of money advanced to the Industrial Unit – Petition dismissed: *Premier Brass Metals Works Pvt. Ltd. Vs. Union of India, I.L.R. (1993) M.P. 521 (D.B.)*

– **Section 29**– Provision envisages adjudication of rights of parties – Plaintiff not party to loan agreement with financial institution nor its properties were pledged – Plaintiff has a right to file a suit for declaration and injunction as regards its own property: *Kinetic Engineering Limited Vs. M.P. Finance Corporation, I.L.R. (2001) M.P. 1744*

– **Sections 29, 31, 32, and Lokdhan (Shodhya Rashiyon Ki Vasuli) Adhinyam, 1987 Section 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 Limited Vs. M.P. Financial Corporation, I.L.R. (2001) M.P. 1520 (D.B.)*

– **Section 31** – Application u/s 31 is not a mortgage suit but say an application for attachment of property in execution of a decree before the judgment – So Court cannot pass preliminary decree under Order 34 Rules 2 & 4 – Court can grant relief in terms of Section 31(1) – Preliminary decree set aside and case send back for deciding application u/s 31 afresh: *M/s. Ganga Ice Factory, Chhatarpur Vs. M.P. Financial Corporation, Indore, I.L.R. (1996) M.P. 403 (D.B.)*

State Industries (Gazetted Service) Recruitment Rules, M.P. 1967

– **Do not prohibit selection of persons not passing departmental examination but who have put in 10 year's service:** *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

– **Governs question to recruitment, eligibility to appointment and promotions to various posts in the department:** *J.C. Yadav Vs. State of M.P., I.L.R. (1979) M.P. 1055 (D.B.)*

State Judicial Service (Classification, Recruitment and Conditions of Service) Rules M.P. 1955

– **As modified under executive power** – Appointments made in accordance with – Appointments are perfectly valid: *Anant Prakash Polekar Vs. State of Madhya Pradesh, I.L.R. (1979) M.P. 776 (D.B.)*

– **Reserved seats for scheduled tribes and scheduled castes** – Inter-Changeable – Candidates for non-reserved seats – Have no right to those seats – Constitution of India – Article 16(4) – Permits reservation of seats in favour of backward classes – Giving preference to candidates of scheduled caste and tribe – Is not violative of this Article – Article 309 – Authorises Governor to frame service Rules – Article 162 – Executive power of State – Extends to matter in respect of which legislature has power to legislate – Executive can frame service rules – Government can adopt defunct rules as modified even through no action taken under section 120, States Re-organisation Act – Article 234 – Consultation with High Court and Public Service Commission essential for adopting rules and not for recruitment of person to judicial service – Article 162 – Absence of statutory rules – Appointment on basis of rules or instructions having executive status – Appointments perfectly valid – Appointment made in accordance with M.P. Judicial Service (Classification, Recruitment and Conditions of Service) Rules as modified under executive power – Appointments are perfectly valid: *Anant Prakash Polekar Vs. State of Madhya Pradesh, I.L.R. (1979) M.P. 776 (D.B.)*

State Road Transport Corporation Rules, Madhya Pradesh, 1962

– **Rule 3, Sub-rule (4)** – Vires of: *Capital Multipurpose Co-Operative Society Ltd. Bhopal Vs. The State of Madhya Pradesh, I.L.R. (1970) M.P. 532 (D.B.)*

State Road Transport Services (Development) Rules, M.P. 1959

– **As amended in 1970 – Rule 4(2)** – Government appointing law Secretary as Special Secretary under Appointment is saved: *Narula Transport Service, Hamidia Road, Bhopal Vs. State of M.P., I.L.R. (1980) M.P. 1131 (D.B.)*

– **As amended in 1970, Rule 4(2) and Motor Vehicles Rules, M.P. 1974, Rule 136** – Government failing to notify appointment in time under Rule 136 – Government failing to notify appointment in time under Rule 136 of the Rules of 1974 – Rule 4(2) of 1959 Rules would still hold the filed: *Narula Transport Service, Hamidia Road, Bhopal Vs. State of M.P., I.L.R. (1980) M.P. 1131 (D.B.)*

– **Rule 3(i) (j)** – Contemplates making of provision for transfer of permits if proposals are made: *Raipur Transport Company Privat Ltd., Raipur Vs. State of M.P., I.L.R. (1972) M.P. 822 (D.B.)*

States Reorganization Act (XXXVII of 1956)

– **Enactment to be interpreted liberally:** *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Merger of State with New State** – Contract of employment with old State terminates – Servant opting to serve new State has to serve on such terms as new State may choose to impose – Master and servant – Servant accepting contractual appointment for fixed term – Master can re-employ him on same terms or on fresh terms or not employ at all – When service terminated by expiry of terms – Article 311(2) of constitution does not come into play – Constitution of India, article 311 – Condition necessary to be fulfilled to attract the provision – Master and servant – Provisional contract of service – Does not involve relationship of master and servant: *Rudra Prasad Vs. State of M.P., I.L.R. (1977) M.P. 38 (D.B.)*

– **Section 41** – Authorised President to make modification in original (Schedule Castes Order) as compatible with territorial changes – Did not confer authority to exclude person from Scheduled Caste: *Naunihalsingh Vs. Kishorilal Paliwal, I.L.R. (1959) M.P. 955 (D.B.)*

– **Sections 49 to 69** – Decision of Madhya Bharat High Court, Vindhya Pradesh Judicial Commissioner's Court or Bhopal Judicial Commissioner's Court – Not binding as a Judicial precedent on Madhya Pradesh High Court – Decision of Madhya Bharat High Court, Vindhya Pradesh Judicial Commissioner's Court or Bhopal Judicial Commissioner's Court only entitled to respect: *Radha Bai Vs. Kamal Chand, I.L.R. (1965) M.P. 637*

– **Section 51 and Constitution of India** – Article 384 (2) – Provision of use of Hindi Language – Has to be interpreted so as to achieve object enshrined in: *Badan Singh Raghuvanshi Vs. B. Rajgopal Naidu, I.L.R. (2000) M.P. 830*

– **Section 51** – Notification issued by Chief Justice directing certain types of cases which could be heard at Indore or Gwalior to be heard at Principal Seat at

Jabalpur – Held – President empowered to provide for establishment of permanent benches and for any matter connected therewith – Section 51 confers power on President to authorize Chief Justice to pass appropriate orders in relation to such matters – Chief Justice has authority to issue notifications directing that particular class of cases to be heard at Jabalpur – Judgment passed in Abdul Taiyab A. Malik lays down correct law and does not require reconsideration: *S.P. Anand Joara Compound, Indore Vs. Hon'ble Mr. S.K. Jha, C. J., High Court of M.P. JBP, I.L.R. (1994) M.P. 7 (F.B.)*

– **Section 51 (2)** – Confers no authority to prescribe limitation regarding jurisdiction of the Judge of the Bench: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Expression “in respect of cases arising in the revenue District of” in the notification dated 28-11-68 issued thereunder – Indicates compendious description of cases to which notification applies prospectively: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Notification dated 28-11-68 issued thereunder – Does not affect order transferring a case from jurisdiction of one Bench to jurisdiction of another Bench passed before its date: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Notification dated 28-11-68 issued thereunder – Effect of – Word “Bench” in – meaning of – Power of president to limit territorial jurisdiction of Judges to hear cases – Phrase “matter connected with the Bench” – Cannot refer to the limitation of the area – Section 51(2) – Confers no authority to prescribe limitation regarding jurisdiction of the judge of the bench – Notification restricting jurisdiction of Judge to hear cases from territories other than mentioned in the notification – Notification is bad – Enactment to be interpreted liberally – Interpretation of Statute – Aid from subsequent statute can be taken to determine meaning of particular term – Phrase “permanent bench” in – Used in special sense – Phrase used in the context of jurisdiction – Words “any matter connected therewith” in – Include power of president to prescribe jurisdiction of permanent Bench – Notification not prohibiting Judges of permanent Bench from hearing cases from areas other than those mentioned therein – Prescribes the ordinary jurisdiction of the Judges of the permanent Bench – Interpretation of Statute – Cardinal rule – Statute is prospective unless specially made retroactive – Expression “in respect of cases arising in the Revenue District of “ in the notification – Indicates compendious description of cases to which notification applies prospectively – Order passed under the proviso – Order would be prospective – Notification does not affect order transferring a case from jurisdiction of one Bench to Jurisdiction of another Bench passed before its date: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Notification dated 28-11-68 issued thereunder – Notification not prohibiting Judges of permanent Bench from hearing cases from areas other than

those mentioned there in – Prescribes the ordinary jurisdiction of the Judges of the permanent Bench: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Notification restricting jurisdiction of Judge to hear cases from territories other than those mentioned in the notification – Notification is bad: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Order passed under the proviso to the notification dated 28-11-68 issued thereunder the Section – Order would be prospective: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Phrase “matter connected with the Bench” – Cannot refer to the limitation of the area: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Phrase “Permanent Bench” in – Used in special sense – Phrase used in the context of jurisdiction: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Power of president to limit territorial jurisdiction of Judges to hear cases: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Word “Bench” in – Meaning of: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2)** – Words “any matter connected therewith” in – Include power of president to prescribe jurisdiction of permanent Bench: *Gulabchand Vs. Rukmani Devi, I.L.R. (1972) M.P. 799 (F.B.)*

– **Section 51 (2), Notification of President of India, dated 28.11.1968 and order of Chief Justice, dated 5.2.1976** – Duties of Additional Registrar of Indore and Gwalior in respect of writ petitions: *Balkishan Das Vs. Harnarayan, I.L.R. (1982) M.P.1 (F.B.)*

– **Section 51 (2), Notification of President of India, dated 28.11.1968 and order of Chief Justice, dated 5.2.1976** – Order of Chief Justice applies to pending Cases also: *Balkishan Das Vs. Harnarayan, I.L.R. (1982) M.P.1 (F.B.)*

– **Section 51 (2), Notification of President of India, dated 28.11.1968 and order of Chief Justice, dated 5.2.1976** – The word ‘hearing’ includes motion hearing also – Hence even for motion hearing and for interim orders case has to be listed at Jabalpur only: *Balkishan Das Vs. Harnarayan, I.L.R. (1982) M.P. 1 (F.B.)*

– **Section 51 (2), Notification of President of India, dated 28.11.1968 and order of Chief Justice, dated 5.2.1976** – Writ Petitions under Articles 226 and 227,

Constitution of India raising questions of vires of any enactment, rule, order or notification etc. – Hearing of – Can be done only at Jabalpur – Duties of Additional Registrar at Indore and Gwalior in respect of writ petitions – Order of Chief Justice applies to pending cases also – The word ‘hearing’ includes motion hearing also – Hence even for motion hearing and for interim orders case has to be listed at Jabalpur only – High Court Rules and Orders – Chapter I, Rule 12 – Reference to a larger Bench – When can be made – Existence of two conflicting decisions not a condition precedent – Order dismissing a petition in motion hearing – Has a binding force – Interpretation of Statute – Has to be construed according to ordinary grammatical meaning – The words ‘cases arising’ – Meaning of: *Balkishan Das Vs. Harnarayan*, I.L.R. (1982) M.P. 1 (F.B.)

– **Section 52** – Saves jurisdiction which was available under Section 23 of Madhya Bharat High Court of Judicature Act, 1949, – Letters Patent – Clause 10 – Appeal heard by single judge of the new High Court – Appeal competent under clause 10 of Letters Patent – States Re-organisation Act – Section 54 – Laws and rules pertaining to practice and procedure of New High Court to be applicable – Rule 20 of the old High Court not applicable – Ryotwari Sub-lessee Protection Act, Madhya Bharat, 1955 – Sections 3 and 4 – Protect and possession of the sub-lessee if in possession on the date the Act came into force – Land Revenue Code, Madhya Pradesh 1959 – Section 185 (1) (ii) (b) – Person in possession on the date when the Code came into force – Person will get advantage of being occupancy tenant: *Soorajmal Vs. Rama*, I.L.R. (1974) M.P. 282 (D.B.)

– **Section 54** – Law and rules pertaining to practice and procedure of New High Court to be applicable – Rule 20 of the old High Court not applicable: *Soorajmal Vs. Rama*, I.L.R. (1974) M.P. 282 (D.B.)

– **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 (D.B.)

– **Section 78** – Place of assessment for tax due before November 1956 – Is place when tax could have been assessed before that date – Successor State in whose dominion that place is situated – Has a right to recover that tax – Burden on petitioner to prove that order or assessment was without jurisdiction: *Shyama Chandra Shukla Vs. State of Madhya Pradesh*, I.L.R. (1975) M.P. 945 (F.B.)

– **Section 78** – Scope of: *Shyama Chandra Shukla Vs. State of Madhya Pradesh*, I.L.R. (1975) M.P. 945 (F.B.)

– **Section 115** – Assistant Superintendent from Bhopal region – Cannot be equated with Gazetted Officers from other regions: *M.L. Jinesh Vs. Union of India*, I.L.R. (1972) M.P. 78 (D.B.)

– **Section 115** – Does not empower Central Government to delegate their authority: *P.K. Roy Vs. The State of Madhya Pradesh, I.L.R. (1966) M.P. 200 (D.B.)*

– **Section 115** – Fixing of proportionate quotas for departmental promotions and direct recruitment – Meant for administrative convenience or for department's guidance – Departure from policy – Appointment not rendered nullity: *Sardar Maha Singh Vs. State of M.P., I.L.R. (1974) M.P. 70 (D.B.)*

– **Section 115** – Officers belonging to different categories and coming from different parts of integrated states – Officers equated under the one category – Original differences disappear – After integration they belong to one category fixed by Central Government: *K.S. Gama Vs. The State of M.P., I.L.R. (1976) M.P. 113 (D.B.)*

– **Section 115** – Persons recruited from different sources in a particular cadre – No discrimination to be made in future promotion – Officers belonging to different categories and coming from different parts of integrated States – Officers equated under one category – Original differences disappear – After integration they belong to one category fixed by Central Government – Constitution of India – Article 226 – Delay no ground for refusing relief when representation made to government and appeal is pending: *K.S. Gama Vs. The State of M.P. The Commissioner of sales Tax, M.P. I.L.R. (1976) M.P. 113 (D.B.)*

– **Section 115** – Principles to be observed in the matter of integration of Government servants allotted to service of new State of M.P.– In matters of equation of posts – Assistant Superintendent from Bhopal region – Cannot be equated with Gazetted Officers from other regions – Constitution of India – Article 226 – Equation of post – Purely administrative function: *M.L. Jinesh Vs. Union of India, I.L.R. (1972) M.P. 78 (D.B.)*

– **Section 115** – Post for which promotion sought to be made vacant – Post not available for candidate from department – Promotion of departmental candidate made to such-post – Promotion not invalid – Fixing of proportionate quotas for departmental promotions and direct requirement – Meant for administrative convenience or for department's guidance – Departure from policy – Appointment nor rendered nullity: *Sardar Maha Singh Vs. State of M.P., I.L.R. (1974) M.P. 70 (D.B.)*

– **Section 115** – Reorganisation of states – Unification of various service rules – Notification giving option of Government Servant to option for pension Rules of constituent units of new State – Failure to exercise option – New Rules become applicable automatically: *Narula Transport Service, Hamidia Road, Bhopal Vs. State of M.P., I.L.R. (1980) M.P. 1131 (D.B.)*

– **Sections 115 (1) and 116** – Petitioner originally in service of Vindhya Pradesh – After reorganization becomes allotted to State of Madhya Pradesh – Continuing to

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– **Sections 115 (1) and 116** – Scope of – Petitioner originally in service of Vindhya Pradesh – After reorganization becomes allotted to State of Madhya Pradesh – Continuing to hold the same post – Will be deemed to be appointed to that post in new State – Fiction operative only to give him requisite authority to discharge duties and functions – Does not confer right to continue in that post or to prohibit State from appointing him in another post or office – M.P. Unification of Pay scales and Fixation of Pay on Absorption Rules, 1959 – Rules deal with fixation of pay – Do not deal with absorption of personnel – Do not confer right to being absorbed against certain posts – Constitution of India – Article 226 – Decision of authority regarding equation of posts – Is an administrative decision – Cannot be interfered in writ proceedings: *Vinod Kumar Verma Vs. State of M.P., I.L.R. (1966) M.P. 91(D.B.)*

– **Section 115 (3) (4) (5)** – Executive power of State extends to matters enumerated in State list: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Section 115 (5)** – Confers power on Central Government to establish advisory committees for certain purposes – This power implies that Central Government authorised to do all those acts: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Section 115 (5)** – Confers power only on Central Government to effectuate integration of services in New States and States of Andhra Pradesh and Madras – Central Government can take assistance from State Government for preparation of provisional gradation list: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Section 115 (5)** – Order must give reasons – Even if power is administrative – Action of Central Government should be in conformity with rules of natural justice: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Section 115 (5)** – Order of Central Government under – Is *quasi-judicial*: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Section 115 (5)** – Power given is not restricted but is wide and given for purposes of integration: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Section 115 (5) (b)** – Reasonable opportunity of making effective representation
 – Includes a right to be supplied with service details of other servants included in the list
 – Refusal amounts to not giving reasonable opportunity: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Section 115 (5) (b)** – Representation is against ultimate act done with the approval of Central Government: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Section 115(5) (b)** – Right of representation – Not exhausted when one representation is made – Can be made from time to time: *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Section 115 (5) and (7) and Section 117** – State Government, Power of, to do integration work as delegate of Central Government – Does not empower Central Government to delegate their authority – Formulation of principles and preparation of provisional list on its basis – Not incidental or subsidiary acts which could be delegated: *P.K.Roy Vs. The State of Madhya Pradesh, I.L.R. (1966) M.P. 200 (D.B.)*

– **Section 115 (7)** – And Constitution of India, Article 309 – Mode for prescribing the conditions of service of the Government Servant of the former State – Is by making rules under Article 309 of the Constitution only: *J.K.Pal Vs. State of M.P., I.L.R. (1972) M.P. 1008 (D.B.)*

– **Section 115 (7)** – Proviso, Constitution of India, Article 311 and New pension Rules, M.P. 1951, Rule 2(3)(ii) and as amended in 1966 – Authority ordering compulsory retirement of Govt. servant – Need not be the appointing authority – Constitution of India – Article 311 – Applies to dismissal or removal of Govt. servant – But not to his compulsory retirement – States Reorganisation Act, 1956 – Section 115 – States Reorganisation of States – Unification of various service rules – Notification giving option to Govt. Servant to opt for Pension Rules of constituent units of new States – Failure to exercise option – New Rules become applicable automatically – Section 115(7) Proviso – Is mandatory – Rule reducing age of superannuation or reducing qualifying service of or compulsory retirement – Amounts to variation in condition of service – Previous approval of Central government not obtained – Rule cannot be enforced – New Pension Rules, 1951 – Application of, on ground of consent, express or implied – Statute – Mandatory provision thereof – When waived by a person entitled to the benefit thereof – Failure to give option – Amounts to deprivation of such benefit – New Pension Rules as amended in 1966 – Notification stating that new provision substituted after consultation with Central Government under Section 115 of States Reorganisation Act – Connotation of: *Ghanshyamdas Shrivastava Vs. Chief Conservator of Forests (General), M.P. Bhopal, I.L.R. (1980) M.P. 1121 (D.B.)*

– **Section 115 (7), Proviso** – Is mandatory: *Ghanshyamdas Shrivastava Vs. Chief Conservator of Forests (General), M.P. Bhopal, I.L.R. (1980) M.P. 1121 (D.B.)*

– **Section 115 (7)** – Requires concurrence of Central Government in case of change of conditions of service – Concurrence not necessary where same service condition retained under different rule – Retirement of Government servant under Rule 2(3)(1), New pension Rule – Section 115(7) of States Reorganization Act not offended – Constitution of India Article 309 and Entry 41, List II – Power of Governor to make rules governing conditions of service Stand curtailed to the extent of provision made in the Act of State legislation – Matter of retirement or compulsory retirement after qualifying period of service – Not governed by M.P. Shasakia Sevanivriti ka Vidhimanyata karan Adhinyams, 1967 and 1972 – Matter governed by New pension rules as amended from time to time – New pension Rules, 1951 – Scope of – Fundamental rules – Rule 56 – No conflict between New Pension Rules and various Acts passed by legislature: *Parmeshwar Dayal Pandey Vs. State of M.P., I.L.R. (1981) M.P. 466 (D.B.)*

– **Section 115 (7)** – Retirement of Government servant under Rule 2(3)(1), New pension Rule – Section 115(7) of States Reorganization Act not offended: *Parmeshwar Dayal Pandey Vs. State of M.P., I.L.R. (1981) M.P. 466 (D.B.)*

– **Section 115 (7)** – Scales of Pay – Not revisable to the disadvantage of employee: *J.K. Pal Vs. State of M.P., I.L.R. (1972) M.P. 1008 (D.B.)*

– **Section 117** – Confers additional power on Central Government for effectuating exercise of power given under Section 115(5): *Narayan Chandra Mukherji Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 550 (D.B.)*

– **Section 117** – Formulation of principles and preparation of provisional list on its basis – Not incidental or subsidiary acts which could be delegated: *P.K.Roy Vs. The State of Madhya Pradesh, I.L.R. (1966) M.P. 200(D.B.)*

– **Section 120** – Object behind the Section – Power or adaptation – Does not confer power to make law inconsistent with specific provision made in this Act: *Shyama Chandra Shukla Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 945 (F.B.)*

– **Section 125 (1) and (2)** – Scope of – Industrial Relations Act, Madhya Pradesh, 1960 – 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 (D.B.)*

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– **Act of Parliament** – Validity of, challenged on ground of its encroachment on the field covered by State List – Test to be applied is doctrine of pith and substance – Mineral Concession Rules – Rule 27 Validity of – M.P. Land Revenue Code – Section 247(4) Mineral concession right granted on land of state – State not entitled to compensation for use of surface – Words “Any person” in – Used in contradistinction to state or its assignee – Grant – Rule that grantor cannot derogate from his grant applies: *S.N. Sunderson & Co., Katni Vs. The State of Madhya Pradesh*, I.L.R. (1964) M.P. 516 (D.B.)

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– **Sections 2 (2), 3 (1) (b), Schedule III** – Entry Tax – Levy of, under – Constitutional, since the nature of revenue earned was compensatory – Not open to challenge under Article 301: *M/s Geo Miller & Co. Private Ltd. Vs. State of M.P., I.L.R. (2004) M.P. 605 (D.B.)*

– **Section 3 (1) (b)** – Entry of goods specified in Schedule III for consumption or use in execution of works – Hence liable to tax – If imported for purpose of sale they are not subject to tax – 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. Private Ltd. Vs. State of M.P., I.L.R. (2004) M.P. 605 (D.B.)*

– **Section 3 (1) (b), of Entry Tax Act, leaves out “execution of works contract” from definition of “sale”** – Transfer of property involved in the execution of contract – Entry tax imposed – Justifiable – Appellants liable to pay entry tax: *M/s Geo Miller & Co. Private Ltd. Vs. State of M.P., I.L.R. (2004) M.P. 605 (D.B.)*

– **Section 3 (1) Proviso (iv)** – Levy of entry tax – Liability to pay entry tax – From another local area, assessee, a registered dealer, purchased goods other than local goods from selling registered dealer – Taxable event occurred in the hands of selling dealer – Therefore, he would have incurred liability to pay entry tax – Assessee, when he moved the same goods from local area to another – Is not liable to pay entry tax: *Mohan Singh And Sons Vs. Commissioner of Sales Tax, M.P., I.L.R. (1995) M.P. 506 (F.B.)*

– **Section 3 (1) Proviso (iv)** – Entry Tax – Taxable event is entry of goods into local area – Proviso as stood prior to amendment Act No. 24 of 1982 – Entry Tax is single point tax – Goods when brought from another local area into this area, giving rise to taxable event with liability to pay entry tax vesting in selling registered dealer – Where goods are not local goods, it protect the purchasing registered dealer i.e. assessee

from payment of entry tax: *Mohansingh & Sons Vs. Commissioner of Sales Tax, M.P., I.L.R. (1996) M.P. 286 (F.B.)*

– **Sections 3 and 6 (c) and General Sales Tax, Act, M.P. 1958(II of 1959)**

– Section 7(1) – Entry tax and purchase tax – Building contract undertaking – Contract with Central Public Works Department – Iron, Steel and Cement to be supplied by C.P.W.D. And costs thereof to be deducted from final bill – Liability of contractor for payment of Entry tax and Purchase tax on the costs of such building material – Section 6 – Presumption under: *M/s N.M. Goyal, Rajnandgaon Vs. Sales-Tax Officer, Rajnandgaon, I.L.R. (1986) M.P. 685 (F.B.)*

– **Section 3 (1), Proviso (iv)** – Burden of proof on the purchasing dealer in claiming exemption from liability of Entry tax – How discharged for claiming deduction under: *M/s Ranomal Ramesh Kumar, Gwalior Vs. State of M.P., I.L.R. (1984) M.P. 568 (D.B.)*

– **Sections 3 (1), Proviso (iv), 7 and 11** – Entry tax liability of the purchasing dealer when arises – Liability of the selling dealer to maintain bills and accounts and to affix rubber stamp on the bills declaring the goods sold thereunder as local goods is mandatory failure of the selling dealer to put such rubber stamp on the bill inference burden of proof on the purchasing dealer in claiming exemption from liability of entry tax how discharged for claiming deduction under Section 3(1), proviso (4) of the Act: *M/s Ranomal Ramesh Kumar, Gwalior Vs. State of M.P., I.L.R. (1984) M.P. 568 (D.B.)*

– **Sections 3 (1), Proviso (iv), 7 and 11** – Liability of the selling dealer to maintain bills and accounts and to affix rubber stamp on the bills declaring the goods sold thereunder as local goods – Is mandatory – Failure the selling dealer to put such rubber stamp on the bills-inference: *M/s Ranomal Ramesh Kumar, Gwalior Vs. State of M.P., I.L.R. (1984) M.P. 568 (D.B.)*

– **Sections 3 (1) (b), 2 (m), 2 (bb)** – Contract only for excavation and removal of earth and rock – Labor 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 (D.B.)*

– **Sections 3, 7 & 11** – Entry Tax – Non affixture of rubber stamp endorsement on bill by selling dealer – Burden of proof – Goods moved from one local area to another, entry tax liable to be paid by registered dealer who causes the entry – Non-affixing of rubber stamp endorsement – Taxable event had already occurred – In case of non-affixture of rubber stamp endorsement on bill, burden would be on revenue to proof that goods are local goods of which assessee caused entry to be made into another

local area: *Mohansingh & Sons Vs. Commissioner of Sales Tax, M.P., I.L.R. (1996) M.P. 286 (F.B.)*

– **Section 4** – Entry tax – Notification enhancing rate of tax for lime (stone) – Expression ‘lime-stone’ should be interpreted to mean lime-Stone and not lime obtained from limestone – Entry into specified local areas of lime-stone caused by dealer – Liable to be taxed: *The Associated Cement Companies Ltd. Vs. State of M.P., I.L.R. (1995) M.P. 231(D.B.)*

– **Sections 4, 4-A and 10** – Notification issued reducing rate of entry tax followed by another notification adding explanation that no refund shall be made if a dealer has paid tax on basis of higher rate – Not ultra vires – If the tax has been paid no one is entitled to refund: *Century Textiles and Industries Limited Vs. State, I.L.R. (2000) M.P. 1419 (D.B.)*

– **Section 4-A** – Enhancement of rat of Entry Tax on Lime Stone – In taxing statute the popular or common sense meaning has to be preferred to technical or scientific meaning – Lime stone includes both low silica and high silica lime stone: *Steel Authority of India Limited Bhilai Steel Plant, Bhilai Vs. The Assistant Commissioner of Commercial Taxes, Durg, I.L.R. (2001) M.P. 1281*

– **Section 4-A** – Entry tax imposed by Notification on entry of minerals in specified local area – Dealers picking up minerals from mine area into their factory – Though factory is situated in specified local area – Cannot deny liability to tax on ground that factory cannot be a local area – Taxable event is entry of goods into local area in which factory is situated: *The Associated Cement Companies Ltd. Vs. State of M.P., I.L.R. (1995) M.P. 231(D.B.)*

– **Section 4A** – *Vires* – Section is not beyond legislative competence of State: *The Associated Cement Companies Ltd. Vs. State of M.P., I.L.R. (1995) M.P. 231(D.B.)*

– **Section 4 (1), Proviso** – Validity – Entry tax – Concession provided for specified goods used by manufacture as raw material – Exclusion of limestone from specified goods – Treating limestone as raw material used in cement manufacturing – Cannot be regarded as unreasonable classification or a classification having no nexus with the object sought to be achieved: *The Associated Cement Companies Ltd. Vs. State of M.P., I.L.R. (1995) M.P. 231(D.B.)*

– **Section 6 (c)** – Presumption under: *M/s N.M. Goyal, Rajnandgaon Vs. Sales-Tax Officer, Rajnandgaon, I.L.R. (1986) M.P. 685 (F.B.)*

– **Sections 7, 3 & 11** – Legal consequence of not affixing rubber stamp endorsement on bill as required u/s. 7 by selling registered dealer – Bill of goods

purchased by assessee from a registered dealer not containing any rubber stamp endorsement to the effect that goods were local goods and no entry tax had been paid – Burden of proof – Burden would lie on Revenue to prove that goods are local goods entered by assessee into another local area: *Mohan Singh And Sons Vs. Commissioner of Sales Tax, M.P., I.L.R. (1995) M.P. 506 (F.B.)*

– **Section 13, Sthaniya Kshetra me Mal ke Pravesh Par Kar (Sanshodhan), Adhiniyam, M.P. (XXII of 1977), Section 9 and General Sales Tax Act, M.P. 1958 (II of 1959), Section 15, 38 (2)** – Assessment of Entry Tax for the period prior to amendment of 1977 – Order passed after amendment – Second Appeal maintainable: *M/s Ajanta Printers, Industrial State, Damoh Vs. Commissioner of Sales Tax, M.P., I.L.R. (1988) M.P. 178 (D.B.)*

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– **Section 5** – Order No, 5861/634-XVIII – Urban/1, D/- 18-6-1969 – Vires of: *Sayebal Vs. State of M.P., I.L.R. (1978) M.P. 1003 (D.B.)*

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– **Substituted service effected in a way and under circumstances as not to post the party with knowledge of suit** – Does not amount to due service: *Kamalabai W/o Sajjansingh Vs. Bhula S/o Moti Chamar, I.L.R. (1959) M.P. 307*

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– **Office of Mahant** – Is regulated by custom or usage of the particular institution except where founder himself laid down rule of succession – Custom – Pleading and proof of – Will – Properties of math – Mahant's right to make will – Plaintiff failing to prove his title – Suit liable to be dismissed even though defendant not in lawful possession of math and its properties: *Ramdas Vs. Vaishnavdas, I.L.R. (1983) M.P. 89 (D.B.)*

– **Plaintiff failing to prove his title** – Suit liable to be dismissed even though defendant not in lawful possession of math and its properties: *Ramdas Vs. Vaishnavdas, I.L.R. (1983) M.P. 89 (D.B.)*

Succession Act Indian (XXXIX of 1925)

– **Appeal** – Application of probate – Heavy burden lay on the propounder of a disputed Will to prove valid execution – Evidence Act Indian 1872 – 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 any thing 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.)*

– **Extended by Part B State Laws Act, 1951 – Section 306** – Compensation for loss of reputation and mental agony – Right thereto does not survive – Expression “personal injury” in section 306 not restricted to physical injury – Injury to plaintiff’s goods though caused by tortuous act – Claim for compensation thereto survives – Order 22, Rule 1, Civil Procedure Code – Right to sue means right to seek relief – Plaintiff’s suit decreed in trial Court – Lost in first appeal – He dies after filing second appeal – His claim does not survive, it being for compensation for loss of reputation and mental agony – Limitation – Compensation for trespass and wrongfully injuring goods – Articles 39 and 49 applicable: *Ratanlal Vs. Baboolal, I.L.R. (1959) M.P. 994*

– **Will** – Propounder of Will – Has a right to call upon a person contesting the will to show his interest – Ejectment suit Decision on title is a decision on incidental matter – Not conclusive between rival – Claimants to title – Tenant setting up title in third party – A question of title would be incidental – Tenant suffering a decree on mistaken belief that plaintiff was landlord – Landlord not examining witness on will Proof of title not final – Rightful claimant can subsequently dispute the Will and also testamentary capacity of testator – Practice – Evidence – Court as a Court of conscience – Can ask Plaintiff to summon attesting witness to satisfy the conscience regarding valid execution of Will: *Sukhlal Tiwari Vs. Prem Lal Panda, I.L.R. (1980) M.P. 1026*

– **Will** – Tenant suffering a decree on mistaken belief that plaintiff was Landlord – Landlord not examining witness on Will – Proof of title not – Final Rightful claimant can subsequently dispute the Will and also testamentary capacity of testator: *Sukhlal Tiwari Vs. Prem Lal Panda, I.L.R. (1980) M.P. 1026*

– **Sections 57 (c), 213** – Will by a Hindu covered by Section 57(c) – Executor or legatee is not required to take probate or letter of administration under Section 213(2) – Succession certificate not necessary – Sections 216, 217, 227 and 263 – Right under two conflicting will executed by a Hindu – Wills not covered by Section 57 – Jurisdiction of Civil Court – Not barred: *Phool Singh Vs. Smt. Kosa Bai, I.L.R. (1998) M.P. 689 (D.B.)*

– **Section 63** – Attestation of will by witnesses – Significance of: *Illyas Vs. Badshah, I.L.R. (1990) M.P. 210*

– **Section 63** – Valid execution of Will – Ingredients – Will has to be signed and executed by the testator in presence of two attesting witnesses with the intention to bequeath: *Ravi Shankar Vs. Rajendra Kumar Dubey, I.L.R. (2000) M.P. 163*

– **Section 63** – Will – Proof of valid execution – Propounder of will examined the scribe and one of the attesting witnesses as required by law – No infirmity found in their testimony – Execution successfully proved – Will cannot be termed as suspicious or doubtful only on the ground that other persons have not been given share by the testator – Judgment & decree of lower appellate Court proper – No interference called for: *Karumu Vs. Rafel, I.L.R. (2000) M.P. 1125*

– **Section 63** – Will, Burden of proof: *Illyas Vs. Badshah, I.L.R. (1990) M.P. 210*

– **Section 63 and Evidence Act, Indian (I of 1872), Section 68** – Combined effect of: *Illyas Vs. Badshah, I.L.R. (1990) M.P. 210*

– **Section 63 and Evidence Act, Indian (I of 1872), Section 68** – Will Proof of Onus – Suspicious circumstances – What are – Onus on propounder to explain them to satisfaction of Court – Sections 45 and 47 – Opinion of hand – Writing experts – Value of: *Govind Das Vs. Madanlal, I.L.R. (1987) M.P. 496*

– **Section 63 and Evidence Act, Indian (I of 1872), Sections 68 & 63** – Will – Valid execution – Requirements of – Attestation of will by witnesses – Significance of – Will, Burden of proof – Succession Act, Section 63 and Evidence Act, Section 68 – Combined effect of – Mohammadan law – Does not debar a Muslim from executing will of his property in favor of any one outside the community – Custom limiting choice of legatee without affecting the right to execute will – Whether against public policy or against Mohammadan Law: *Illyas Vs. Badshah, I.L.R. (1990) M.P. 210*

– **Section 63, Evidence Act, 1872, Section 68** – Will – Attestation – Three wills – For the First will, statement of attesting witnesses not showing that executants signed will before him or that witnesses signed before executants – For the second will witnesses failed to prove that contents were read over to executants – The original third will not placed on record and contradictions in statement of witnesses regarding execution of will – Held – Wills not proved in accordance with law: *Ramesh Verma Vs. Smt. Lajesh Saxena, I.L.R. (1997) M.P. 472*

– **Section 63, Evidence Act, Indian (I of 1872), Section 68** – Will – How to be proved – Burden on propounder Will surrounded by suspicious circumstance, burden heavier – Will does not become suspicious because there are more than two attesting witnesses, They are not local witnesses, Scribe not examined: *Smt. Shanti Bai Vs. Rambhajan, I.L.R. (1988) M.P. 504*

– **Sections 63, 276 (1) (b)** – Evidence Act Section 68 – Will – Grant of Probate – Held – The Division Bench affirming the decision of the Learned Single Judge held that it is well settled that the burden lies only on the person, who sets up the theory of Will to prove the due execution of Will and to remove the suspicious circumstances surrounding the document – The credibility of appellants witnesses and the active interest taken for gain by the executor was held that the Will the shrouded with suspicion, which could not be cleared by propounder as such the Will was found to be not genuine and authentic – The Will has to be proved as per the provisions of Section 63 the Indian Succession Act & Section 68 of the Evidence Act: *Om Prakash Sharma Vs. Smt. Saraswatibai*, I.L.R. (1997) M.P. 148 (D.B.)

– **Section 68** – Probate Court – Jurisdiction of, to decide question of title – Sections 223 and 246 – Legatees minor – No executor appointed – Letters of Administration can be granted to father and minor legatees: *Gendral Vs. Ratanchand*, I.L.R. (1960) M.P. 326 (D.B.)

– **Section 77** – Power of Court to supply words in order to effectuate intention of testator – Use of the ‘word ‘vpy’ inadvertently made in the will by testator in place of ‘py’ – Power of Courts to read: *Sajanbai Vs. Surajmal*, I.L.R. (1985) M.P. 234

– **Section 106** – Will containing words denoting severance of interest of legatees – Legatees take as tenants in common and not as joint tenant: *Jankibai Vs. Sarha*, I.L.R. (1960) M.P. 323

– **Section 119 (I), Illustration (iii) and use of the words ‘unless a contrary intention appears by the will’** – Effect of Performance of condition precedent becoming impossible by act of God – Bequest fails: *Sajanbai Vs. Surajmal*, I.L.R. (1985) M.P. 234

– **Sections 126, 77, 87 and 119** – Will – Construction of – Will providing that suit house to vest in defendant not upon death of testator but upon fulfillment of condition imposed therein – Condition imposed is a condition precedent – Its fulfillment necessary before bequest to take effect – Section 119, Illustration (iii) and use of the words unless a contrary intention appears by the will’ – Effect of – Performance of condition precedent becoming impossible by act of God – Bequest fails – Section 77 – Power of Court to supply words in order to effectuate intention to testator – Use of the word ‘vpy’ inadvertently made in the will by testator in place of ‘py’ – Power of Court to read: *Sajanbai Vs. Surajmal*, I.L.R. (1985) M.P. 234

– **Sections 126, 77, 87 and 119** – Will providing that suit house to vest in defendant not upon death of testator but upon fulfillment of condition imposed therein – Condition imposed is a condition precedent – Its fulfillment necessary before bequest to take effect: *Sajanbai Vs. Surajmal*, I.L.R. (1985) M.P. 234

– **Sections 216, 217, 227 and 263** – Right under two conflicting wills executed by a Hindu – Wills not covered by Section 57 – Jurisdiction of Civil Court – Not barred: *Phool Singh Vs. Smt. Kosa Bai, I.L.R. (1998) M.P. 689. (D.B.)*

– **Section 222 (1)** – Executor appointed by an executor or the heirs of executor appointed by will – Not entitled to grant of Probate: *Smt. Sushilabai Vs. Govind Ganesh Khare, I.L.R. (1957) M.P. 643 (D.B.)*

– **Sections 223 and 246** – Legatees minor – No executor appointed – Letters of Administration can be granted to father and minor legatees: *Gendral Vs. Ratanchand, I.L.R. (1960) M.P. 326 (D.B.)*

– **Section 263** – When just cause under this provision is made out – Burden shifts on grantee to prove that will is valid: *Banwarilal Vs. Ku. Kusum Bai, I.L.R. (1977) M.P. 1109 (D.B.)*

– **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 person 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 on beneficiaries: *Shri I.A.T. Warde, Ghorawari Kalan Collieries, Junnordeo Through the executor Shri T.K. shukla, Ghorawari Vs. The Commissioner of Income Tax, M.P., I.L.R. (1961) M.P. 772 (D.B.)*

– **Section 273** – Probate or Letter of Administration – Jurisdiction of a District Judge in the State of M.P. if the value of property or estate of deceased lying beyond the State of M.P. is more than Rs. 10,000/- The claim cannot be segregated so as to cover property or estate located within the limits of State of M.P. by a District Judge within whose jurisdiction, the deceased at the time of his death had a fixed place of above – The remedy is to approach the High Court under clause(a) of Section 273: *Naval Vs. Jagdish Prasad, I.L.R. (1998) M.P. 267 (F.B.)*

– **Sections 276 and 273** – Whether the District Judge loses its jurisdiction to grant probate of the value of the property and estate situate beyond the limits of State exceeds Rs. 10000/- Yes – Sections 276 and 273 – Whether probate granted by the District Judge would be valid for the property situated whihin its jurisdiction despite the presence of property and worth more than Rs. 10000/- beyond that State – H.O.: *Naval S/o. Rameshwar Prasad Vs. Jagdish Prasad, I.L.R. (1998) M.P. 441 (F.B.)*

– **Section 283 (1) (c)** – Person having a slight interest or a bare possibility of an interest – Entitles him to oppose testamentary document – Transferee from heir at law – Can apply for revocation of probate of the will – Such person is entitled to citation – Section 263 – When just cause under this provision is made out – Burden shifts on grantee to prove that will is valid: *Banwarilal Vs. Ku Kusum Bai, I.L.R. (1977) M.P. 1109 (D.B.)*

– **Section 283 (1) (c)** – Transferee from heir at law – Can apply for revocation of probate of the will – Such person is entitled to citation: *Banwarilal Vs. Ku. Kusum Bai*, I.L.R. (1977) M.P. 1109 (D.B.)

– **Section 299** – Appeal against order of Additional District Judge – Appeal lies to High Court: *Sheikh munshi Vs. Imam Khan*, I.L.R. (1963) M.P. 306

– **Section 301** – Removal of executor so named in the will and appointment of successor – Grounds and consideration of: *Dr. Smt. Kusum Kurre Vs. Dharam Singh* I.L.R. (1986) M.P. 414

– **Section 306** – Not applicable to criminal prosecution: *Prayagdutt Tiwari Vs. Gajadhar Prasad Tiwari*, I.L.R. (1978) M.P. 686 (D.B.)

– **Sections 371, 372, 374, 384** – Appeal – Succession certificate – Revocation of – No evidence that deceased was either resident of or having property in Betul district of M.P.– Railway servant posted at Hoshangabad and having landed property in Nagpur (Maharashtra) – Betul Court had no jurisdiction – Certificate obtained without furnishing particulars required by law – Revocation inevitable: *Savitri W/o Mohan Ramrao Vs. Chandrakala*, I.L.R. (2005) M.P. 337

– **Section 372** – Succession Certificate – On the basis of will – Onus Probandi on the person propounding the will to satisfy the conscience of Court that the testator was capable to understand that he/she is executing a will – Succession certificate for want of valid will – Can not be granted to party failing to discharge the burden. *Babulal Vs. Satyanarayanpal*, I.L.R. (1998) M.P. 234

– **Section 372 and Civil Services (Pension) Rules 1976** – Rules 45, 46 – If there is no nomination or if made does not subsist, gratuity shall be paid to legal heirs – Being legal heirs claimants entitled to realize dues – Order dismissing application set aside and the order granting succession certificate restored: *Dhannalal Vs. Director, Department of Agricultural*, I.L.R. (2004) M.P. 519

– **Section 372**, Hindu Succession Act, 1956, Sections 15(1)(d) and 18 and Civil Procedure Code, 1908 Section 115 – Revision – 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

– **Sections 372 and 387** – Proceedings for grant of succession certificate are summary proceedings – Judgment of succession case does not amount to *res-judicata* – Parties are not precluded to establish right in regular civil suit: *Harprasad Vs. Smt. Rajrani*, I.L.R. (2002) M.P. 318

– **Sections 372, 384** – Application for succession certificate by second wife of deceased – Rejection – Appeal – Parties ‘Gond’ tribe – Hindu Marriage Act, 1955, 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*

– **Sections 372, 384 and Civil Services (Conduct) Rules, M. P., 1965, Rule 22** – Government employee having a wife living cannot contract second marriage without permission of the Government – Appellant claims to be second wife – Whether she belonged to Gond tribe and how custom of second marriage is prevalent – Not satisfactorily proved – Cannot claim to be legally wedded wife: *Gyantibai Vs. Rampyaribai, I.L.R. (2003) M.P. 430 (D.B.)*

– **Sections, 372, 384, 388 (3) and Civil Procedure Code (V of 1908) – Section 115** – Civil Revision – Maintainability – Succession Certificate granted but reversed in appeal – Revision therefrom – Value of *lis* more than Rs. 20,000/- Revision maintainable to correct the error, if any, committed by subordinate Court: *Lalibai Vs. Gulabai, I.L.R. (1992) M.P. 217*

– **Sections 373, 384** – Application for succession – Rejection – Appeal – Paternity in dispute – Presumption of legitimacy not applicable – Burden of proof – Appellant daughter-in-law filed copies of public documents showing her husband to be son of deceased – *Prima facie* burden discharged – Burden shifts – Defendant to failed to discharge burden placed on her – Inference can be drawn that husband of plaintiff was son of deceased: *Smt. Madhulika Verma Vs. Smt. Prabhawati Verma, I.L.R. (2002) M.P. 707*

– **Sections 373 and 387** – Refusal to grant succession certificate – Order deciding rights between the parties – Can be questioned in a civil suit – Separate suit maintainable: *Ashish Kumar Vs. Smt. Leela Bai (Dead) Through her L.Rs.: Narayan Prasad Gupta, I.L.R. (2002) M.P. 1010*

– **Section 383** – Adivasi Gond, Keeping of more than one wife in permissible under custom – Marriage – No prohibition for second marriage during the life time of first marriage in Gond Community – Succession Certificate granted in favour of father of deceased liable to be accused – Husband entitled to the certificate being legal heir of deceased: *Kunwar Singh Marko Vs. Shiv Dayal Sarote, I.L.R. (1998) M.P. 769 (D.B.)*

– **Sections 384, 387** – Hindu Marriage Act 1955, Sections 5(1), 10, 11, 16, 29(2) – Evidence Act 1872, Section 114 – Code of Criminal Procedure 1973, Section 125 –

Succession Certificate granted to the second wife & her children when the marriage with the first wife continued – Held – The finding regarding the divorce of the first wife is perverse and therefore it is liable to be corrected in appeal – There is no direct evidence on the fact that there had been any divorce between the deceased and the first wife – The marriage between the deceased and the second wife took place during the subsistence of his marriage with the appellant in contravention of Section 5(1) of the Act – The children of the deceased of the second wife are entitled to succession certificate in view of the legal fiction in Section 16 of the Act which makes them legitimate for all practical purposes including succession of property of their parents and have to be treated as legitimate – Appeal partly allowed: *Smt. Savitri Devi Vs. Smt. Manorama Bai*, I.L.R. (1997) M.P. 192 (D.B.)

– **Section 388** – Sub-Section (2) of provides that any inferior Court so invested shall, within the local limits of its jurisdiction, have concurrent jurisdiction with the District Judge in the exercise of all the powers conferred by this Part upon the District Judge. Thus, by this notification powers of District Judge are not excluded. The inferior Court so invested with the powers of District Judge shall have a concurrent jurisdiction with District Judge. Therefore, Power to entertain the application for grant of probate vests with the District Judge under Section 264 of the Act. Section 264 of the Act is in Part IX of the Act, therefore, notification under section 388 will not be applicable – Under section 8 of the Civil Court act, 1958 the Court of Addl. Judge, can exercise power of District Judge even in the absence of General and Special Order – The District Judge for the Purpose of Section 264, is not a persona designate: *Ashok Kumar Vs. Smt. Rampyari Bai*, I.L.R. (1998) M.P. 755 (D.B.)

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.)

Sugar and Gur (Futures and Option (Prohibition) Order, 1949

– **Section 2 (d) – Essentials necessary to transaction of futures:** *Baburam Vs. Firm Roshanlal Shrikrishan Das*, I.L.R. (1964) M.P. 718 (D.B.)

Sugar Dealers Licensing Order, M.P. 1959

– **Clauses 2 (a) and 3** – Limit of 137 mds. To be co-related to each place of business of selling the controlled commodity – Purchase of more than 137 mds. of Sugar in lots for 2 or 3 shops – No contravention of clause 3, committed: *Badri Prasad Vs. The State of M.P.*, I.L.R. (1972) M.P. 1110

– **Shop with reference to place of business is unit** – Interpretation of Statute – Principle – Statute to be construed in a way so as to harmonies different provisions

and not in a way which would make non-sense of legislation – Sugar Dealers Licensing Order, M.P. 1959 – Clauses 2(a) and 3 – Limit of 137 mds, to be co-related to each place of business of selling the controlled commodity – Purchase of more than 137 mds. of sugar in lots for 2 or 3 shops – No contravention of clause 3, committed: *Badri Prasad Vs. The State of M.P., I.L.R. (1972) M.P. 1110*

Sugarcane (Control) Order 1966

– **Clause 3, Sub-clause (e)** – Consideration which Government takes into account in fixing price: *M/s Kalooram Govindram, Jaora M.P. Vs. The Union of India, I.L.R. (1980) M.P. 434 (D.B.)*

– **Clause 3, Sub-clause (e)** – Does not prohibit fixing of minimum price at start of crushing season: *M/s Kalooram Govindram, Jaora M.P. Vs. The Union of India, I.L.R. (1980) M.P. 434 (D.B.)*

– **Clause 3, Sub-clause (e)** – Does not say whether the recovery of sugar from sugar cane should be of the year for which minimum price of sugar cane is to be fixed or for any earlier year – Is also silent regarding recovery to be taken into account for entire year or for any period of year – Recovery of sugar in previous year – Is only to be taken into account for fixing minimum price – Does not prohibit fixing of minimum price at start of crushing season – Government can take into consideration particular period of year if there is reasonable basis behind it – Consideration which Government takes into account in fixing price: *M/s Kalooram Govindram, Jaora M.P. Vs. The Union of India, I.L.R. (1980) M.P. 434 (D.B.)*

– **Clause 3, Sub-clause (e)** – Government can take into consideration particular period of year if there is reasonable basis behind it: *M/s Kalooram Govindram, Jaora M.P. Vs. The Union of India, I.L.R. (1980) M.P. 434 (D.B.)*

– **Clause 3, Sub-clause (e)** – Recovery of sugar in previous year – Is only to be taken into account for fixing minimum price: *M/s Kalooram Govindram, Jaora M.P. Vs. The Union of India, I.L.R. (1980) M.P. 434 (D.B.)*

Suit

– **Suit against Municipality** – Notice under Section 80, Civil Procedure Code not necessary: *The Municipal Committee, Raigarh Vs. Ramkaran Ganeshilal Agarwal, I.L.R. (1958) M.P. 414 (D.B.)*

– **Suit by licensees against servient owner restraining him from interfering with their right** – Maintainability: *Shri S.C. Mukerji Vs. Smt. Gangabai, I.L.R. (1957) M.P. 1*

– **Suit by Partners of firm in their names** – Partner dying – Legal representative not brought on record – Suit abates wholly: *Pyarelal Vs. Modi Sikharchand, I.L.R. (1957) M.P. 21 (D.B.)*

– **Suit by Vendee for refund of money** – Vendee advancing money in pursuance of contract – Maintainability: *Shaikh Umar Vs. Shivdansingh, I.L.R. (1957) M.P. 590 (D.B.)*

– **Suit by revisioners to set aside alienation 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. Niranjana, I.L.R. (1958) M.P. 9 (F.B.)*

– **Suit for damages** – Contributory negligence by plaintiff – Damages liable to be reduced: *Shankarrao Vs. Union of India, I.L.R. (1958) M.P. 710 (D.B.)*

– **Suit for partition by a widow of deceased coparcener** – Property obtained by her after partition – Does not become separate property of her deceased husband – Widow dying – Property reverts to coparcenary – Window not created a coparcener: *Bhagabai Vs. Bhaiyalal, I.L.R. (1957) M.P. 114*

– **Suit for redemption of pledge** – Suit for recovery of specific movable property and not a suit for specific performance of contract – Suit cognisable by Small Cause Court: *Jodhai Vs Bharat, I.L.R. (1958) M.P. 609 (D.B.)*

Suits Valuation Act (VII of 1887)

– **Section 8** – Valuation for jurisdiction – Value of property or decretal amount whichever is less: *Idol Shri 'Shriji' Vs. Chaturbhay, I.L.R. (1964) M.P. 429*

– **Section 11** – Decision rendered by Court on merits after trying a case – Not liable to be upset on technical grounds: *Sheo Bhagwan Vs. Mst. Durgadevi, I.L.R. (1979) M.P. 349 (D.B.)*

– **Section 11** – Objections to valuation before appellate Court – Can prevail when intimate connection between under valuation and wrong disposal of claim on merits established: *Kedarmal, Vs. Gopaldas, I.L.R. (1962) M.P. 815 (D.B.)*

– **Section 11 (1) and (2)** – Power of lower appellate Court to entertain objection to under valuation or over valuation – Decision of lower Court not affected on merits because of the error – Lower appellate court not to interfere – Question of valuation of suit as to its category – Section 11 still applicable: *Mst. Zenab Bi Vs. Wajahat Husen, I.L.R. (1959) M.P. 982*

– **Rules under Suits Valuation Act, Rule 1(1) to (4) and Court Fees Act, Section 7(v)(b)** – Valuation of suit for purposes of jurisdiction under Rule 1(1) to (4) – Same as value for purposes of Court fees Act – Section 7(v)(b) – Extension of laws Act, M.P., 1958 – Section 3(3) – Suits valuation Act extended to Madhya Bharat region 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*

Supersession of Municipal Committee by Government

– **Government to give reasons therefore** – High Court, power of, to examine the reasons to determine reasonableness and sufficiency: *Municipal Committee, Kareli Vs. The State of Madhya Pradesh, I.L.R. (1958) M.P. 13 (F.B.)*

Suspension

– **Normally the Court does not interfere with orders of suspensions if the same are legal and logical with due application of mind** – Civil Services (Classification, control and appeals) Rules, M.P. 1966 – Rule 9(1), Municipal Employee (Recruitment and conditions of Service) Rules, M.P.1968, Rule 53(1)(2)(3) and Nagar Palika Nigam Service (Classification, control and Appeals) Byelaws, 1971, Byelaw 7(1)(b) – Proviso is inserted by amendment No.-16, dated 3.8.96 effective from 17.4.96 in Rule 9(1) of M.P.C.S. Rules, 1966 – Provides that a Govt. Servant shall in variably be placed under suspension when a challan for criminal offence involving corruption of other moral turpitude is filed against him – No such amendment is made so far in the aforesaid Rules or byelaws as the question is still one of discretion and not of compulsion – And discretion has to rest on gravity, if any or nature of allegation only – Interest of Corporation and public should reign supreme, mere being is not enough – Rule 53(3) permits suspension when criminal charge is likely to embarrass in discharge of duties, Rule 53(1) and (2) also speak about discretion – Such order Byelaw 7(5) is capable of being modified or revoked may is not always ‘must’ – Suspensions – Sitting of standing committee is a serious matter particularly when fate and future of as many as six employees was under consideration without – Such item of agenda – No light is thrown as to how new subject could be considered in adjourned meeting challan papers not provided to standing committee and thus had no occasion to consider gravity of alleged misconduct or nature of allegations which is sine qua non to impose or continue suspension from service – Order of suspensions affecting, dignity, cannot be arbitrary – Dignity of the individual is assured by the preamble of the constitution of India: *Manmohan Singh Bayas Vs. Indore Municipal Corporation, I.L.R. (1998) M.P. 558*

– **Normally the Court does not interfere with orders of suspensions if the same are legal and logical with due application of mind** – Civil Services (Classification, control and appeals) Rules, M.P. 1966 – Rule 9(1), Municipal Employee (Recruitment and conditions of Service) Rules, M.P.1968, Rule 53(1)(2)(3) and Nagar Palika Nigam Service (Classification, control and Appeals) Byelaws 1971, Byelaw 7(1)(b) – Proviso is inserted by no-16, dated 3.8.96 effective from 17.4.96 in Rule 9(1) of M.P.C.S. Rules, 1966 – Provides that a Govt. Servant shall in variable be placed under suspension when a challan for criminal offence involving corruption of other moral turpitude is filed against him – No such amendment is made so far in the aforesaid

Rules or byelaw as the question is still one of discretion and not of compulsion – And discretion has to rest on gravity, if any, or nature of allegation only – Interest of Corporation and public should reign supreme, mere being is not enough – Rule 53(3) – Permits suspensions when criminal charge is likely to embarrass in discharge of duties, Rules 53(1) and (2) also speak about discretion – Such order byelaws 7(5) is capable of being modified or revoked “may” is not always ‘must’ – Suspensions – Sitting of standing committee is a serious matter particularly when fate and future of as many as six employees was under consideration – Without – Such item of agenda – No light is thrown as to how new subject could be considered in adjourned meeting – Challan papers not provided to standing committee and thus had no occasion to consider gravity of alleged misconduct or nature of allegations which is sine qua non to impose or continue suspension from service – Order of suspensions affecting, dignity, cannot arbitrary “Dignity” of the individual is assured by the preamble of the Constitution of India.: *Nityanand Joshi Vs. Indore Municipal Corporation, I.L.R. (1998) M.P. 805*

– **Sitting of standing committee is serious matter particularly when fate and future of as many as six employees was under consideration without** – Such item of agenda – No light is thrown as to how new subject could be considered in adjourned meeting challan papers not provided to standing committee and thus had no occasion to consider gravity of alleged misconduct or nature of allegations which is sine qua non to impose or continue suspension from service – Order of suspensions affecting, dignity, cannot arbitrary ‘Dignity’ of the individual is assured by the preamble of the Constitution of India: *Nityanand Joshi Vs. Indore Municipal Corporation, I.L.R. (1998) M.P. 805*

Swatantrata Sangram Sainik Samman Nidhi Niyam, M. P., Rules 1972

– **As amended by inserting sub-rule (6) to Rule 3** – Pension payable to freedom fighter – Claim of – Date of entitlement – Rules amended by inserting clause (6) to Rule 3 providing that entitlement shall be from the date of order – Amendment made effective from the date of commencement of the Rules – Freedom fighter entitled to pension from the date of order and not from the date of application – Mukundlal Bhandari’s case distinguishable – Has no application to cases under the M. P. Rules 1972: *State Of M.P. Vs. Devkinandan Maheshwari, I.L.R. (2003) M.P. 260 (S.C.) (D.B.)*

– **Rules 2, 3** – Samman Nidhi to freedom fighters – Person imprisoned between the year 1919 to 1946 in connection with freedom movement even for a day has to be treated as freedom fighter under Rule 2 – Word “कैद” used in certificate – Petitioner is entitled to receive Samman Nidhi: *Shivnarayan Johari Vs. State Government of M.P. Through the Secretary G.A.D. Vallabh Bhawan, Bhopal, I.L.R. (2005) M.P. 1053*

Tax

– **Tax is never imposed by auction:** *M/s. N.K. Doongaji & Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207 (F.B.)*

Tax and Fee

– **Distinction** – Excise Act, Central Provinces, 1915 – Fee realised in respect of Excise contract – Cannot be justified as a fee – 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 – Tax is never imposed by auction – Constitution of India – Article 19(1)(g) – Right to deal in liquor – Is not such an inherent right of a citizen which cannot be controlled or regulated by state – Right to do business in intoxicating liquor – Is inherent right of citizen – State has right to impose reasonable restriction – Excise Act, C.P., 1915 – Section 17 – Right to carry on trade in intoxicating liquor – Is subject to a licence granted under section 17 – Grant of licence – Is only to control and regulate the exercise of the right – Licence does not transfer right to carry on trade – Section 18 – Right to regulate trade – Does not imply that that right vested in controlling authority – Words and phrases – Word “Privilege” – Meaning of Excise Act, C.P., 1915 – 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 – Grant of privilege – Does not involve transfer of right to trade – Excise (Amendment and Validation) Act, M.P. 1964 – Excise Act became applicable to foreign liquor after amendment – Grant of licence regarding foreign liquor – Does not involve any transfer of a right of sale from Government to licensee – State Government can only charge fee: Per Singh J. – Constitution of India – Article 19 – Citizen has fundamental right to carry on liquor business – State can engage in liquor business – Right of citizen to deal in liquor – Right can be restricted or prohibited – Excise Act, C.P. 1915 – Section 8 to 17 – Confer power on State alone to deal in intoxicants – Grant of licence – Is a grant of privilege exclusively belonging to the State – Sections 18 and 27 – Section 18 to be read alongwith Section 27 – Section 18 – Grant of lease under – Person acquires a sort of limited monopoly – Sections 18 and 27 – Payment receivable under – Is different from duty and fees – Consideration received is for grant of lease of trading rights – Provisions valid under first part of Art. 19(6) of the Constitution – Excise Act, C.P. – Section 5, as amended and Sections 18 and 21 – Enable grant of license in F L1–: Per Tare C.J. – Constitution of India Article 19(1)(g) – Recognises a fundamental right of liquor contractor to deal a foreign liquor Can be regulate by imposing reasonable restrictions – Excise Act, C.P. – Confers regulatory power on State Government in respect of manufacture and sale of foreign liquor – Constitution of India – Article 47 – Contemplates total prohibition – Total prohibition on sale of liquor placed by State Government – Restriction can not be said to be unconstitutional – Excise Act, C.P. 1915 – 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 – 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 – Sections 25, 26 and 27 – Contemplate three kind of levies – These three cannot be conferred: *M/s. N.K. Doongaji & Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207 (F.B.)*

Taxable Turnover

– **Inclusion of Registration fee and Insurance charges for a vehicle sold under hire purchase scheme for determination of basic 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 Private Ltd., I.L.R. (1999) M.P. 68 (D.B.)*

– **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: *Sales Tax Commissioner M.P. Vs. M/s Bhopal Motors Private Ltd., I.L.R. (1999) M.P. 68 (D.B.)*

Taxation

– **General Rules of Taxation** – Two person cannot be assessed for the same income from one activity of the nature specified in the definition – Vritti, Vyapar, Ajivika Aur Sevayoujan Kar Abhiniyam, Madhya Pradesh, 1966 – Profit earned by the firm, when distributed to the partners – Is not an income taxable in the hands of partners: *Sambhaji Rao Vs. State of M.P., I.L.R. (1975) M.P. 475 (D.B.)*

Taxation Concessions Order, 1950

– **Paragraph 12** – Concession given by – Not applicable to super tax – Income Tax Act – 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 (D.B.)*

Taxation Laws (Extension to Merged States and Amendment) Act (LXVII of 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. R.R. Mishra, Income Tax Officer, Raigarh Circle, Raigarh, I.L.R. (1972) M.P. 69 (D.B.)*

– **Section 7** – The term “Assessment” in– Includes, “Reassessment” -Term to be given plain meaning – Income Tax Act, Indian – Section 34 – Saving clause – Applicable to chargeable accounting period prior to 31-3-48: *Hirjibhai Vs. I.T.O. Rajnandgaon, I.L.R. (1957) M.P. 286 (D.B.)*

– **Section 7 (1), Proviso** – Starting of proceedings for assessment on escaped income of 1946-47 after Indian Income tax Act, 1922 made applicable – Order making assessment upheld by Appellate Assistant Commissioner – Second appeal against appellate order – Maintainability: *Mulla Irshad Ali Vs. The Commissioner of Income Tax, MP Bhopal & Nagpur, I.L.R. (1961) M.P. 1059 (D.B.)*

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 (D.B.)*

Taxation Laws (Part B States) (Removal of 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 (D.B.)*

– **Para 2, Proviso** – Explanation – Effect of substantive part of para 2 – Greater of the two depreciation allowances viz., allowable under Income tax Act, or under Part B State 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): *M/s Nandlal Bhandari Mills Ltd., Indore Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur & Bhandara, Nagpur, I.L.R. (1962) M.P. 651 (D.B.)*

Telegraph Act, Indian (XIII of 1885)

– **Section 3 (1)** – Definition of Telegraph in – Wide enough to include telephone – Section 3 (4) – “Telegraph line” – Includes Telephone Line – Section 7-B – Dispute between a person owning a telephone and the telephone authority regarding discontinuance of telephone – Falls under the Section: *Rasiklal Jethu Bhai Parakh Vs. The Divisional Engineer, Telegraphs, Raipur Division, Raipur, I.L.R. (1966) M.P. 394 (D.B.)*

– **Section 3 (4)** – “Telegraph Line” – Includes Telephone Line: *Rasiklal Jethu Bhai Parakh Vs. The Divisional Engineer, Telegraphs, Raipur, Division, Raipur, I.L.R. (1966) M.P. 394 (D.B.)*

– **Section 7-b** – Dispute between a person owning a telephone and the telephone authority regarding discontinuance of telephone – Falls under the section: *Rasiklal Jethu Bhai Parakh Vs. The Divisional Engineer, Telegraphs, Raipur Division, Raipur, I.L.R. (1966) M.P. 394 (D.B.)*

– **Section 7-B and Arbitration Act, Indian (X of 1940)**, Section 41 – The bar of Civil Courts jurisdiction is to modify remit and set aside the award or to make it a rule of the Court – Appointment of arbitrator is not barred and equally the Court has jurisdiction to grant temporary injunction – Application pending for arbitration – Appellant entitled to get order of temporary injunction: *Hafiz Mohammad Vs. Massod Bi, I.L.R. (1992) M.P. 572*

– **Sections 10, 16 (1), Electricity (Supply) Act (LIV of 1948)**, Section 42, Electricity Act, Indian (IX of 1910), Sections 12 to 19 – Telegraph Authorities entitled to put posts on and line across the land of private person – In case of resistance or obstruction by owner, permission of District magistrate necessary – Section 42 Electricity (Supply) Act, empowers Electricity Authorities to exercise same powers as Telegraph authorities in the matter of sanctioned scheme – Some position of under section 12(2) Electricity Act, 1910 if matter not covered by a sanctioned scheme – Practice – Courts duty to do justice according to law as well as social justice: *M.P., Electricity Board, Jabalpur Vs. Natthoolal, I.L.R. (1989) M.P. 536*

– **Section 16 (3) and Electricity Supply Act (LIV of 1948)**, Section 42 – District Judge, Power of, to determine compensation: *Shri Ghanshyamdas Binnani Vs. The M.P. Electricity Board., Rampur, Jabalpur, I.L.R. (1972) M.P. 191*

Telegraph Wires (Unlawful Possession) Act (LXXIV of 1950)

– **Section 7 (1)** – Notification issued by Central Government under – Is legislative in nature: *State of M.P. Vs. Ramcharan, I.L.R. (1978) M.P. 601 (F.B.)*

Temporary Injunction

– **When can be granted:** *Beniprasad Bijaykumar Vs. Lever Brothers (India) Ltd., I.L.R. (1957) M.P. 160*

Tenancy

– **Coming to end by efflux of time prior to commencement of the Act – Tenant becomes trespasser** – Tenant not entitled to protection under the Act: *Bankelal Vs. Sant Saran, I.L.R. (1959) M.P. 231 (D.B.)*

Tenancy Act, Central Provinces (I of 1920)

– **And Land Revenue Code, M.P., 1954 (II of 1955) – Distinction between:** *Smt. Rambati Vs. Mst. Bundhuwar, I.L.R. (1980) M.P. 764*

– **Schedule II, Article I** – Applicability – Section 104(4) – Confines exclusion of Sections 6, 7, 19 and 20 of Limitation Act to suits and applications under the Act – Suit filed within one year of attaining majority – Suit is in time: *Mukhtyar Mohammad Vs. Sakharam*, I.L.R. (1974) M.P. 964

– **Schedule II, Article I** – Non-payment of rent or its discontinuance – Does not by itself create adverse possession – Title of landlord not affected by payment of rent by tenant to third person without his knowledge – Limitation does not run against landlord: *Pravinbhai Vs. Nalinikant*, I.L.R. (1960) M.P. 873

– **Schedule II, Article I and Limitation Act (IX of 1908)** – Sections 6 and 7 – Suit filed within one year of attaining majority – Suit is in time: *Mukhtyar Mohammad Vs. Sakharam*, I.L.R. (1974) M.P. 964

– **Schedule II, Article I and Trusts Act, Indian (II of 1882) – Section 84** – Alienation by *de facto* guardian of minor's property – Minor bringing suit within 3 Years of his attaining majority but beyond 3 years of the transfer – Suit barred by limitation: *Kejoram Vs. Ramdayal*, I.L.R. (1968) M.P. 938 (D.B.)

– **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 (D.B.)

– **Tenancy** – Not Created by unilateral act – Offer and acceptance necessary – Can be implied from conduct of parties – Mere demand for rent – Not sufficient to create tenancy: *Manoharlal Vs. Brijraj Kishore*, I.L.R. (1957) M.P. 147

– **Sections 2 and 12** – Land in – Means agricultural land – Occupancy or absolute occupancy land – Does not lose the character because of diversion to non – agricultural purposes: *Thakur Bhagwansingh Vs. Supyar Singh*, I.L.R. (1958) M.P. 657 (D.B.)

– **Section 11 as amended by (XI of 1940)** – Widow inheriting before amendment – Occupancy land which was joint family property – Widow dying after amendment of 1940 – Occupancy lands pass to other members by survivorship: *Hazarilal Vs. Mahesh*, I.L.R. (1959) M.P. 877 (D.B.)

– **Section 12-A (11) (12)** – Accrual of rights of pre-emption – Not dependent on making application under sub-section (11) or (12) of the section: *Govindrao Vs. Board of Revenue, Madhya Pradesh, Gwalior*, I.L.R. (1965) M.P. 206 (D.B.)

– **Section 12-A (11) (8)** – Accrual of rights of pre-emption – Dependent upon sale of holding in contravention of Section 12-A and possession obtained: *Govindrao Vs. Board Of Revenue, Madhya Pradesh, Gwalior*, I.L.R. (1965) M.P. 206 (D.B.)

– **Section 13** – Term “transfer” in – Covers all cases of physical transfers of possession and not restricted to transfers valid under Transfer of Property Act or any other law – Transfer not in accordance with Revenue law – Remedy to set aside is under Section 13 of the Act: *Mahabir Prasad Vs. Samaroo*, *I.L.R. (1959) M.P. 481 (F.B.)*

– **Section 35** – Land acquired by abandonment there under after 1948-49 falls under definition of Home-farm land saved to the proprietor: *Prabhakar Rao Vs. Seth Kanhaiyalal*, *I.L.R. (1960) M.P. 597 (D.B.)*

– **Section 40** – Madhya Pradesh Land Revenue Code, 1954 (II of 1955) – Section 169 (2) and (3) – Madhya Pradesh Land Revenue Code – Section 169(3) – Creates a rule of decision for Courts – Does not refer either to procedure or substantive rights – Makes no distinction between a case arising prior to the code and subsequent – Protection given in mild form – Made more stringent and imperative – Interpretation of Statute – Law altered in a way as to create a rule of evidence or a rule of decision – Person claiming to be governed by one law – Burden on him to show that pending litigation saved from operation of New Act – Constitution of India – Articles 226 and 227 – Finding of fact fundamental to jurisdiction – No interference under Article 226 by issue of a writ of certiorari – Interference permissible under Article 227 – Evidence Act – Section 109, Scope of: *Sona Bai Vs. The Board of Revenue*, *I.L.R. (1958) M.P. 137 (D.B.)*

– **Section 104 (4)** – Confines exclusion of Section 6, 7, 19 and 20 of Limitation Act to suits and applications under the Act: *Mukhtyar Mohammad Vs. Sakharan*, *I.L.R. (1974) M.P. 964*

– **Section 105 (a) and Section 12-A** – Matter regarding enforcement of Preemption – Excluded from Civil Court jurisdiction – C.P. Consolidation of Holdings Act, 1928, Section 12(2) and C.P. Land Revenue Act, 1917, Section 80(3) – Entries in record prepared by consolidation authorities – Entries presumed to be correct: *Sukhram Vs. Tarachand*, *I.L.R. (1961) M.P. 685 (D.B.)*

Tenancy Act, Central Provinces (IX of 1883)

– **Section 43 (1)** – The word “Devolve” in – Cannot be said to include survivorship on the principle of stare decisis – Principle of stare decisis – Meaning of: *Smt. Rewati Vs. Gouribai*, *I.L.R. (1959) M.P. 43 (D.B.)*

Tender Notice

– **Terms in tender notice** – Are executive directions – Cannot have the status of law and as such not enforceable: *Rajendra Kumar Verma Vs. State of Madhya Pradesh*, *I.L.R. (1975) M.P. 480 (D.B.)*

Tendu Patta (Vyapar Viniyaman) Adhiniyam, Madhya Pradesh (XXIX of 1964)

– **And Tendu Patta (Vyapar Viniyaman) Niyamavali** – Combined effect of the Act and the Rules: *M/s Chhotabhai Jethabhai Patel, and Co. Sagar Vs. The State of M.P., I.L.R. (1971) M.P. 247 (D.B.)*

– **And Tendu Patta Niyamavali, Madhya Pradesh, 1965-66** – Not applicable to auction and disposal of leaves from Government land – Clause 25 of Tendu Notice and clause 2 of Purchaser agreement – Confer right of renewal on purchaser on fulfilment of conditions – Tendu Patta ke Nirvartan Hetu Nyuntam Dar Nishcayan Adhyadesh, Madhya Pradesh, 1972 – Supersedes the condition regarding rates mentioned in purchaser's agreement – Purchaser entitled to renewal on the rates mentioned in ordinance where rates mentioned in purchaser's agreement are low – Constitution of India – Article 226 – Circumstances in which writ of Mandamus can be issued even though alternative remedy is available – Prerogative power – Not exercisable for enforcing contractual rights and obligation – Exercisable for enforcing fundamental right or statutory rights – Phrase – “This year” – Relates to initial year of agreement viz. Year 1970 – General Sales Tax Act, Madhya Pradesh – Section 2(d) – Government of Forest Department – Not dealer in respect of forest produce – Right and obligations pertaining to agreement – Come into being by operation of contract – In cases where appeal provided for administrative order partakers and nature of quasi Judicial order – Fixing of rates of Tendu leaves – Regard must be had to prevailing rate – Interpretation of Statute – Rules regarding construction – *non-obstante* clause in the provision – Effect of: *M/s Shri Ganesh Trading Company, Sagar Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 735 (F.B.)*

– **Does not touch leaves** grown outside the State of Madhya Pradesh and imported therein: *M/s Chhotabhai Jethabhai Patel, and Co. Sagar Vs. The State of M.P., I.L.R. (1971) M.P. 247 (D.B.)*

– **In cases where appeal provided for** – Administrative order partakes the nature of *quasi-judicial* order – Fixing of rates of Tendu leaves – Regard must be had to prevailing rate: *M/s. Shri Ganesh Trading Company, Sagar Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 735 (F.B.)*

– **Ordinance dated 11-5-65** – Section 3 – Does not fall within clause (c) of proviso to Article 213 (1) of the Constitution: *M/s Chhotabhai Jeth Abhai Patel & Co., Rajnandgaon Vs. The State of M.P., I.L.R. (1967) M.P. 721 (D.B.)*

– **Regulates trade of Tendu leaved grown in the State** – Creates State monopoly in the trade of leaves grown in the State – Operates only in the State of Madhya Pradesh – Section 5(1) – Speaks about purchase of transport of Tendu leaves

grown in the State – Does not control purchase or transport of leaves grown outside the State of Madhya Pradesh – Transport of imported Tendu leave – Not regulated by the Rules– Adhiniyam 1964 – Does not touch leaves grown outside the State of Madhya Pradesh and imported therein – Combined effect of the Act and the Rules: *M/s Chhotabhai Jethabhai Patel and Co. Sagar Vs. The State of M.P., I.L.R. (1971) M.P. 247 (D.B.)*

– **Section 1 (3)** – Prohibition operative in area where Act brought into force by notification under Section 1 (3): *M/s Vrajlal Manilal And Co., Sagar Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 753 (D.B.)*

– **Sections 4, 12, Tendu Patta (Vyapar Viniyaman) Niyamavali, M.P., 1966**, Rule 3 and Constitution of India, Article 226 – Tenders for purchase and trade in tendu leaves – Policy decision by State Government to reject offers having over writing and inter-polations – Rejection of tenders justifies – No relief could be granted in extraordinary jurisdiction under Article 226 of Constitution – Contract Act, Indian, 1872, Section 74 – Security deposit for due performance – Forfeiture of deposit for breach of conditions of tender notice – Not justified where no loss caused in consequence party only entitled to reasonable compensation: *Haji Abdul Sattar Vs. M.P. State minor Forest Produce Trading and Development Co-Operative Marketing Federation Ltd. Bhopal, I.L.R. (1991) M.P. 152 (D.B.)*

– **Section 4 (1) and Tendu Patta (Vyapar Viniyaman) Niyamavali 1965**, Rule 3 – M.P. Rajya Laghu Van Upaj Sahkari Sangh appointed agent without inviting applications – Instrumentality of State – Acts for the State and profits and loss are of the State – Collection of Tendu leaves in 17 Districts given to Sangh – Traders not ousted completely – Appointment of Sangh as agent upheld – Refusal to renew agreement in terms of clause 29 of agreement – Application rejected on the ground of regrouping of units – Valid reason for refusing renewal – Trader notices – Some conditions invalid – Will not invalidate other valid conditions – Tender notices not to be struck down: *Hari Om Vs. State of M.P., I.L.R. (1988) M.P. 362 (D.B.)*

– **Section 4 (1)** – Refusal to renew agreement in terms of clause 29 of agreement – Application rejected on the ground of regrouping of units – Valid reason for refusing renewal: *Hari Om Vs. State of M.P., I.L.R. (1988) M.P. 362(D.B.)*

– **Section 4 (1)** – Trader notices – Some conditions invalid – Will not invalidate other valid conditions – Tender notices not to be struck down: *Hari Om Vs. State of M.P., I.L.R. (1988) M.P. 362(D.B.)*

– **Section 5** – Vaidity of: *Lal Ragho Shah Vs. State of Madhya Pradesh, I.L.R. (1970) M.P. 568 (D.B.)*

– **Sections 5 and 12 and Constitution of India** – Article 226 – Tender notice issued by respondents/societies appointed by State Govt. as agent for disposal of tendu

leaves collected by them – Requirements of clauses 6, 20, 21 and 22 there of – Respondents complying with them giving due considerations to norms set in and to different clauses in tender notice in selecting purchasers of tendu leaves – Method found to be reasonable, just and free from bias, favoritism and nepotism – Petition dismissed: *Mukesh & Company Vs. M.P. Rajya Laghu Vanopaj (Vayapar Evam Vikas) Sahkari Sangh Ltd., Bhopal, I.L.R. (1990) M.P. 481 (D.B.)*

– **Section 5 (1) – Monopoly – Restriction on transport – Integral and essential part of creation of monopoly:** *M/s Vrajlal Manilal And Co., Sagar Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 753 (D.B.)*

– **Section 5 (1) – Words “no person” in – Excludes any person whatsoever – Prohibition operative in area where Act brought into force by notification under Section 1 (3) – Section 5 (1), Clause B – Expression “may be transported by such person outside the unit” in – Refers also to transport of leaves from one place to another outside the limits of the unit – Section 5(2) – *Non obstante* expression in – Overrides restriction on transport only to the limited extent mentioned in clauses (a) and (b) of subsection (2) – Section 5 (1) and Constitution of India, Article 19 (6) – Section 5 (1) protected by latter part of article 19 (6) – Section 5 (2) – Validity – Monopoly – Restriction on transport – Integral and essential part of creation of monopoly:** *M/s Vrajlal Manilal And Co., Sagar Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 753 (D.B.)*

– **Section 5 (1) and Constitution of India, Article 19 (6) – Section 5 (1) – Protected by latter part of Article 19 (6):** *M/s Vrajlal Manilal And Co., Sagar Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 753 (D.B.)*

– **Section 5 (1), Clause B – Expression “may be transported by such person outside the unit” in-refers also to transport of leaves from one place to another outside the limits of the unit:** *M/s Vrajlal Manilal And Co., Sagar Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 753 (D.B.)*

– **Section 5 (2) – *Non obstante* expression in – Overrides restriction on transport only to the limited extent mentioned in clauses (a) and (b) of sub-section (2):** *M/s Vrajlal Manilal And Co., Sagar Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 753 (D.B.)*

– **Section 5 (2) – Speaks about purchase or transport of Tendu leaves grown in the State – Does not control purchase or transport of leaves grown out side the State of Madhya Pradesh:** *M/s Chhotabhai Jethabhai Patel, and Co. Sagar Vs. The State of M.P., I.L.R. (1971) M.P. 247 (D.B.)*

– **Section 5 (2) – Validity:** *M/s Vrajlal Manilal And Co., Sagar Vs. The State of Madhya Pradesh, I.L.R. (1969) M.P. 753 (D.B.)*

– **Section 12** – Authorises Government to dispose of Tendu leaves: *Rajendra Kumar Verma Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 480 (D.B.)*

– **Section 19** – Ordinance dated 11-5-65 – Making amendments in the rules framed by government under section 19 of the Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964 – Rules have existence as independent legislation – Does not amend provision of the Act or rules thereunder with respect to matters falling in concurrent list: *M/s Chhotabhai Jeth Abhai Patel & Co., Rajnandgaon Vs. The State of M.P., I.L.R. (1967) M.P. 721 (D.B.)*

– **Section 19 (2)** – Words “without prejudice to generality of the foregoing powers” in – Implication and effect of – Tender Notice – Condition in, regarding presentation – Mandatory and not directory – Instructions of conservator – Cannot override the condition in the tender notice, prescribed by Government in exercise of rule 7(i) – Rule 7(7) – Powers conferred by, can be exercised only when valid tenders received – Rules import prohibition restraining Government from disposing of leaves in contravention of the rules – Rules framed under the Act – To be treated as if made in the Act – Interpretation of the Statute – 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 & Co., Rajnandgaon Vs. The State of M.P., I.L.R. (1967) M.P. 688 (D.B.)*

– **Rules framed thereunder** - Rules import prohibition restraining Government from disposing of leaves in contravention of the rules: *M/s Chhotabhai Jethabhai Patel & Co., Rajnandgaon Vs. The State of M.P., I.L.R. (1967) M.P. 688 (D.B.)*

– **Rule 7 of the rules framed thereunder** – Tender Notice – Condition in, regarding presentation – Mandatory and not directory: *M/s Chhotabhai Jethabhai Patel & Co., Rajnandgaon Vs. The State of M.P., I.L.R. (1967) M.P. 688 (D.B.)*

– **Rule 7 (1) of the rules framed thereunder** – Instructions of Conservator – Cannot Override the conditions in the tender notice, prescribed by Government in exercise of rule 7(1): *M/s Chhotabhai Jethabhai Patel & Co., Rajnandgaon Vs. The State of M.P., I.L.R. (1967) M.P. 688 (D.B.)*

– **Rule 7 (7)** – Powers conferred by can be exercised only when valid tenders received: *M/s Chhotabhai Jethabhai Patel & Co., Rajnandgaon Vs. The State of M.P., I.L.R. (1967) M.P. 688 (D.B.)*

– **Rule 7, Sub-rule (7-a)** – Does not pertain to items falling under items 7, 21 and 42 of concurrent list or to any matter falling under other items of that list: *M/s Chhotabhai Jethabhai Patel & Co., Rajnandgaon Vs. The State of M.P., I.L.R. (1967) M.P. 721 (D.B.)*

Tendu Patta (Vyapar Viniyaman) Niyamavali, Madhya Pradesh, 1965

– **Transport of imported Tendu leaves** – Not regulated by the rules: *M/s Chhotabhai Jethabhai Patel, and Co. Sagar Vs. The State of M.P., I.L.R. (1971) M.P. 247 (D.B.)*

– **Rule 3 M.P. Rajya Laghu Van Upaj Sahkari Sangh appointed agent without inviting applications** – Instrumentality of State – Acts for the State and profits and loss are of the State – Collection of tendu leaves in 17 – Districts given to Sangh – Traders not ousted Completely – Appointment of Sangh as agent upheld: *Hari Om Vs. State of M.P., I.L.R. (1988) M.P. 362 (D.B.)*

– **Rule 7 – Sub-rule (7)** – Power under, when can be exercised – Rules made applicable to person appointed as purchasers – Are those rules, which are applicable to successful tenderer – But not those which have to be complied with by persons making tender in accordance with sub-rules (2), (3), (4) and (5): *Gulabdas Agarwal Vs. State of Madhya Pradesh, I.L.R. (1969) M.P. 233 (D.B.)*

– **Rule 7 – Sub-rule (7)** – Rules made applicable to persons appointed as purchasers – Are those rules which are applicable to successful tenderer – But not those which have to be complied with by persons making tender in accordance with sub-rules (2), (3), (4) and (5): *Gulabdas Agarwal Vs. State of Madhya Pradesh, I.L.R. (1969) M.P. 233 (D.B.)*

Tendu Patton Ke Nirvertan Hetu Nyuntam Dar Nishchayan Adhadesh, Madhya Pradesh (II of 1972)

– **Non-obstante** clause in the provision – Effect of: *M/s. Shri Ganesh Trading Company, Sagar Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 735 (F.B.)*

– **Supersedes** the condition regarding rates mentioned in purchaser's agreement – Purchaser entitled to renewal on the rates mentioned in ordinance where rates mentioned in purchaser's agreement are low: *M/s. Shri Ganesh Trading Company, Sagar Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 735 (F.B.)*

Terminal Tax (Assessment and Collection) Goods Exported from M.P. Municipal Limits Rules, 1996

– **Residuary Entry – SI.No.15** – Municipality is left free to levy terminal tax on other local products export edible oil-plea that copper is a central subject an the State or Municipality has no competence to levy tax – Not tenable – Terminal tax imposed as revenue for performing mandatory duty by the council as revenue for performing mandatory duty by the council – No infirmity in the reasoning of learned Singal Judge: *Hindustan Copper Limited Vs. State, I.L.R. (2001) M.P. 48 (D.B.)*

Test

– **Test to be applied** to determine whether suit is for accounts and whether it is excluded from the cognizance of the Small Cause Court: *Ramswaroop Vs. Jitmal*, I.L.R. (1966) M.P. 336

– **Whether** the relief claimed by the plaintiff will directly affect the intervenor in the enjoyment of his rights: *Sampatbai Vs. Madhusing Gambhirji Rajput*, I.L.R. (1959) M.P. 786

“Thekedar”

– **Section 2(m)** – Does not include mere lessee or Thekedar who is not an intermediary: *State of Madhya Pradesh, Vs. Seth Narayandas*, I.L.R. (1958) M.P. (D.B.) 33

Title

– **Ejectment suit** – Decision on title – Is a decision on incidental matter – Not conclusive between rival claimants to title: *Sukhlal Tiwari Vs. Prem Lal Panda*, I.L.R. (1980) M.P. 1026

– **Tenant setting up title in third party** – A question of title would be incidental: *Sukhlal Tiwari Vs. Prem Lal Panda*, I.L.R. (1980) M.P. 1026

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– **Action in detinue** – Notice of suit claiming return of timber confiscated by revenue officer or its price – Non compliance – Suit filed – Suit not premature: *Onkar Bahadursingh Vs. The State of Madhya Pradesh*, I.L.R. (1962) M.P. 710 (D.B.)

– **Conversion** – What amounts to conversion – Essentials necessary for constituting conversion: *Radheshyam, Vs. Jagat Narain*, I.L.R. (1962) M.P. 404 (D.B.)

– **Damages** – Combination not to injure but to protect the interest of those who combine – Not an actionable wrong – Cloth Merchants Association passing a resolution requiring its members not to enter into credit transaction with the Plaintiff – Predominant intention only to protect business interest of its members does not constitute an actionable wrong – Suit for damages for business loss does not lie – Civil Procedure Code, 1908 order 6, rule 17 amendment in the plaint substituting a new cause of action cannot be allowed – Claim for damages based on conspiracy to injure sought to be substituted as claim for damages for defamation – Amendment cannot be allowed: *Rajlal Sindhi Vs. M/s Kaka & co., Satna*, I.L.R. (1984) M.P. 645

– **Damages** – 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 – Driver in the employ of owner of truck – Presumption that he was working in the course of employment: *Sadaram Vs. Sobharam, I.L.R. (1961) M.P. 90 (D.B.)*

– **Damages – Duties of a Doctor** and extent of care to be taken by him before administering medical treatment to a patient and operating upon her for appendicitis – Rash and negligent act of the Doctor in operating upon the deceased resulting in death – Doctor liable for damages: *Ram Bihari Lal Vs. Dr. J.N. Shrivastava, I.L.R. (1985) M.P. 8 (D.B.)*

– **Damages** – 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.)*

– **Damages** – Kinds of damages – What are special damages and general damages – Civil Procedure Code – Section 100 – Matters relating to assessment of damages – The questions are of fact – Mistake in the principle of assessment materially affecting compensation – Interference in second appeal necessary: *Bhairodin Vs. Phulchand, I.L.R. (1967) M.P. 590*

– **Damages** – Measure of damages – Things to be considered: *State of Madhya Pradesh Vs. Ganpat, I.L.R. (1968) M.P. 592 (D.B.)*

– **Damages** – Party not pressing for costs before Revenue Court – Cannot sue for costs alone in Civil Court: *Ramnarayan Vs. Madan Mohan Zira, I.L.R. (1980) M.P. 898*

– **Damages** – 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*

– **Damage** – Tort by servant of the Union Government in connection with private undertaking or an undertaking not in exercise of sovereign power – Suit for damages against Union Government – Maintainability – 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.)*

– **Damages** – Truck damaged by collision of the train when in possession of hirer – Owner entitled to sue Railway – Indian Railways Act – Section 13 – Providing gates of railway crossing – Not obligatory on Railway Company unless demand to that effect made by Central Government: *Seth Harachand Patni Vs. Union of India, I.L.R. (1957) M.P. 348 (D.B.)*

– **Damages for injury to person** – Damages of two kinds – Determination of general damages – Two questions to be considered – General damages not determinable with exactitude – Damages for loss of pleasure – Personal circumstances of plaintiff to form background of assessment – Considerations which must be taken in to account in

applying Principles – Assessment of damages discretionary matter Principles Interference by appellate Court: *Kumari Deepti Tiwari Vs. Seth Banwari Lal, I.L.R. (1968) M.P. 428 (D.B.)*

– **Deceit** – Misrepresentation can be inferred from conduct – Party to whom misrepresentation made acting on that misrepresentation and suffering damage – Person misleading liable on the same ground as misrepresentation of facts in express terms – Issue of booklet by director of company for being used by the agent or being available to the public inducing them to buy shares – Action is fraudulent – Action for damages based on deceit – Proof of fraud resulting in actual damages necessary – Damages – Measure of damages is price paid by person under inducement for shares which had no value when bought – Limitation Act, Article 95 – Applicability to a suit for damages for deceit Companies Act, Section 171 – Not applicable to a suit against objectors for damages for fraud: *Shri S. Chatterjee Vs. Dr. K.L. Bhawe, I.L.R. (1960) M.P. 265 (D.B.)*

– **Defamation** – Burden on plaintiff to prove that the words are defamatory and its publication – Presumption that defamatory words are false – Burden of rebutting it on defendant – 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.)*

– **Defamation** – Mere vulgar abuse and vituperative epithets – Do not disparage reputation if intended as mere abuse – Standard to be applied in determining whether statement is defamatory – Statement when is defamatory – Allegation of illegitimacy – *Per se* defamatory – Slander actionable without proof of damages: *Mst. Ramdhara Vs. Mst. Phulwatibai, I.L.R. (1969) M.P. 474*

– **Defamation** – Rules of construction regarding the writing said to be defamatory – Circumstance in which *innuendo* is necessary to be pleaded: *Ramakant Vs. Shri Devilal Sharma, I.L.R. (1970) M.P. 317*

– **Defamation** – Suit for damages – Witness protected even when defamatory statement is made – Privilege not recognised in Penal Code – Principle of English law – Not to be invoked by going beyond what is mentioned in exceptions to Section 499 – Principles governing privileges of a witness different in criminal defamation and civil defamation: *Gayaram Vs. Smt. Shanti Kunwar, I.L.R. (1971) M.P. 373*

– **Doctrine of “res ipsa loquitur”** – Circumstance when it applies – Vicarious liability – State when liable for act of its servant – Sovereign function – Activity of running Government Hospital for giving relief to citizen – Not a sovereign function of state in traditional sense – Civil Procedure Code – Order 41, Rule 27 – No reason given for not producing insurance policy in lower court – Policy not required to pronounce judgment – Policy cannot be admitted as additional evidence – Damaged for accident –

Principle adopted for awarding damages: *The “AD HOC” Committee, The Indian Insurance Companies Association Pool, Bombay Vs. Smt. Radha Bai, I.L.R. (1977), MP 61 (D.B.)*

– **Infringement of legal right** – Motive irrelevant if an act not illegal or wrongful but can be considered in fixing compensation: *Dr. Mohammad Gulam Nabi Khan Vs. Dr. Mehfooz Ali, I.L.R. (1990) M.P. 573*

– **Invasion of right to private Property** – Invasion amounts to tort – Public authority – Right of, to invade private property or affect right of owners of such property – Electricity (Supply) Act, 1948 – Section 42 – Scope of – Brings into operation whole frame work of part III of Telegraph Act, 1885 – Telegraph Act – Section 16(3) and Electricity (Supply) Act, 1948 – Section 42 – District Judge, power of, to determine compensation: *Shri Ghanshyam Das Binnani Vs. The M.P. Electricity Board., Rampur, Jabalpur, I.L.R. (1972) M.P. 191*

– **Liability of Joint Feasors** – The apportionment of liability should not have been done by the Tribunal and each of the tort-feasors should have been held jointly and severally liable – Accordingly we accept the cross-objection and hold that both the tort-feasors are jointly and severally liable: *M.P. State Road Transport Corporation Vs. Abdul Rahman, I.L.R. (1997) M.P. 157 (D.B.)*

– **Malicious Prosecution** – Damages – Question who is prosecutor in criminal case – Depends upon several circumstances – Person actively instrumental in putting criminal law in motion – Person would be prosecutor – Malice – Dependent upon prosecutor’s belief – Not connected with reasonable and probable cause – Acquittal of accused in criminal case – Does not mean that accusation was false to the knowledge of prosecutor – Civil Procedure Code – Section 100 – Question of reasonable and probable cause – A mixed question of law and fact: *Shrimant Seth Rishabhkumar Vs. Pandit K.C. Sharma, I.L.R. (1960) M.P. 1008 (D.B.)*

– **Malicious Prosecution** – Person initiating the proceedings – Is a prosecutor: *Jhamsingh Vs. Prafullachandra Trivedi, I.L.R. (1974) M.P. 947 (D.B.)*

– **Malicious Prosecution** – Prosecution has wider meaning than in the criminal law – Malicious prosecution can be held in the civil proceedings also: *Rajeshwar Vs. Kartikram, I.L.R. (1989) M.P. 658*

– **Malicious Prosecution** – Suit for damages for malicious prosecution – Acquittal by criminal Court – Does not imply absence of reasonable and probable cause – Burden still on prosecution to prove the same – Person initiating the proceedings – Is a prosecutor – Police Act – Section 42 – Police Officer exceeding his power – Protection not available – Vicarious liability – Public servant committing tortuous act in discharge of statutory functions referable and ultimately based on delegation of sovereign power to such public

servant– State Government not vicariously liable for the Act: *Jhamsingh Vs. Prafullachandra Trivedi*, I.L.R. (1974) M.P. 947 (D.B.)

– **Meaning of Tort** – Act when actionable – Infringement of legal right – Motive irrelevant if an act not illegal or wrongful but can be considered in fixing compensation – Pleading of legal right and its infringement necessary: *Dr. Mohammad Gulam Nabi Khan Vs. Dr. Mehfooz Ali*, I.L.R. (1990) M.P. 573

– **Negligence** – Collision of two cars – Two parties moving in relation to one another as to involve risk of collision – Each owes duty to move with care – Bailor and Bailee – Bailor not liable for negligence of bailee in the use of chattel Car given to friend for use – Owner not liable for negligence of friend in using car – Owner however liable if bailee is his agent – Damages – 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 – Motor Vehicles Act – Section 96(2) – Owner transferring car – Car meeting with accident causing injury to third party- Owner cannot recover compensation from insurance company – Purchaser cannot recover unless there is assignment – Insurance policy – A Personal contract of indemnity – Not assignable – Transfer of policy amounts to novation – Requisites to be satisfied for novation of contract – Sections 95(5) and 96 – Policy containing clause about transfer – Transfer of policy to purchaser of car – Transfer assented to by insurance company – Transferee is person falling under category “the person or class of persons specified in the policy in respect of any liability” for purposes of sub-section (5) of section 95 – Would be “a person insured by the policy” for purposes of Section 96 of the Act: *Gyarsilal Vs. Pt. Sitacharan Dubey*, I.L.R. (1964) M.P. 91 (D.B.)

– **Negligence** – Condition necessary for liability for negligence – A new duty situation can be recognised by Courts – To deterring whether such duty exists – Guidance can be take from principles stated by lord Atkin – Employer owes duty to take care for safety of his employee – Normally employer owes no duty to employee while he is proceeding from his house to place of work in normal circumstances – In abnormal circumstances employer owes a duty to provide for safety of employee when coming to place of employment – State when liable for negligence – The existence of a duty – Situation or a duty to take care is essential before a person can be held liable for negligence: *M.P. State Road Transport Corporation, Bhopal Vs. Mst. Basanti Bai*, I.L.R. (1976) M.P. 508 (D.B.)

– **Negligence** – Cyclist and driver of motor vehicle etc., duty of care and diligence greater of driver – Person injured was negligent – No defence: *Indian Trade And General Insurance Co., Ltd., Bombay Vs. Madhukar Bhagade*, I.L.R. (1968) M.P. 281 (D.B.)

– **Negligence** – Doctrine “*res ipsa loquitur*” when applies – Doctrine not a rule of law – Is no more than a rule of evidence – Damages – 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.)

– **Negligence** – Doctrine *res ipsa loquitur* is a rule of evidence affecting onus – Does not alter general rule of evidence affecting onus – Civil Procedure Code – Section 100 – Question whether fire was due to negligence – A Question of fact – Question whether evidence sufficient to justify inference – Question of fact – Question whether *prima facie* burden has been discharged and whether other side has rebutted that – Are questions of fact: *Sunder Lal Vs. Firm Dayalal Meghji & Co., Raipur*, I.L.R. (1962) M.P. 681 (D.B.)

– **Negligence** – Proof of care which a Motor driver has to take when children playing on road – The standard of care applicable in case of accident to adult – Not applicable in case of children of tender age – Defence of contributory negligence not open – Measure of damages – Motor Vehicles Act, Section 96 – Suit for damages for accident – Insurance company not necessary party – Issue of notice through Court only necessary – Liability co-extensive with owner of car – Insurance Co. can be joined as party even after limitations if claim against original defendants is filed in time: *Antoo Vs. Jagatsingh*, I.L.R. (1963) M.P. 270 (D.B.)

– **Negligence** – Suit for damages – Contributory negligence by plaintiff – Damages liable to be reduced – Railways Act – Section 13 (1) – Degree of care required to be taken by Railway in different types of ways crossing railway lines – Question of creating a gate and posting a watchman – Dependent on extent of traffic on railway and on public road – No hard and fast rule can be laid down: *Shankarrao Vs. Union of India*, I.L.R. (1958) M.P. 710 (D.B.)

– **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 (D.B.)

– **Nuisance** – Building adjoining highway – Buildings not properly maintained – Omission to keep buildings in repair amounts to nuisance – Owner liable for nuisance and for continuing the same after knowledge – Disrepairs causing damage – Evidence of negligence – Burden of disproving want of negligence on owner or occupier – Act of God – Rainfall of extraordinary violence – Not act of God – Damages – 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.)

– **Person** resorting to frivolous or vexatious and or dilatory proceedings – Person is liable for damages: *Pannalal Vs. Chhedilal*, I.L.R. (1970) M.P. 817

– **Public authority** – Right of, to invade private property or affect right of owners of such property: *Shri Ghanshyam Das Binnani Vs. The M.P. Electricity Board., Rampur, Jabalpur, I.L.R. (1972) M.P. 191*

– **Servant** or agent not liable for tort for procuring breach of master's or principal's contract with another – Matter different if servant of agent act *mala fide*: *Parashar Singh Vs. Hindustan Manganese mines Ltd. Bombay, I.L.R. (1971) M.P. 295 (D.B.)*

– **Vacarious liability** – Public servant committing tortuous act in discharge of statutory functions referable and ultimately based on delegation of sovereign power to such police servant – State Government not vicariously liable for the Act: *Jhamsingh Vs. Prafullachandra Trivedi, I.L.R. (1974) M.P. 947 (D.B.)*

– **Vicarious liability** – Driver driving car rashly and negligently during the course of employment Damage caused – Liability of master – Principle on which master can be held liable for damages: *Bhaiya Lal Godre Vs. Shrimati Rajrani, I.L.R. (1959) M.P. 583 (D.B.)*

– **Vicarious liability** – Officers not acting illegally or in excess of their powers in discharge of official duty – State not liable for the said alleged acts or omissions: *Durga Prasad Vs. Mst. Parveen Foujdar, I.L.R. (1980) M.P. 448 (D.B.)*

– **Vicarious Liability** – Truck of Public works Department carrying material or officers – Cannot be said to be engaged in discharge of any sovereign function of the state: *State of M.P. Vs. Ram Pratap Singh, I.L.R. (1977), MP 672 (D.B.)*

– **Vicarious liability** – When master is liable for the act of his servant – Words 'prohibition – Definition of – Statutory rules as regards conduct of driver Vehicle – Explanation of Negligence – Driver while acting in the course of his employment giving lift to a person in disregard of statutory rule or prohibition – Accident occurring – Owner is vicariously liable': *Narayan Lal Vs. Rukmani Bai, I.L.R. (1980) M.P. 807 (F.B.)*

– **Vicarious Liability of State** – Sovereign power – Defense of – When available to State – Military truck engaged for transporting vegetables for prisoners of war – Accident committed badly crushing the right leg of claimants – State is liable for tortuous acts of its servant: *Union of India Vs. Kumari Neelam, I.L.R. (1981) M.P. 1061 (D.B.)*

Town Improvement Trusts Act, Madhya Pradesh, 1960 (XIV of 1961)

– **Chapter XXIII** – Scope of town planning under, is limited – Municipal Corporation has right to acquire land under M.P. Municipal Corporation Act apart from it: *Beni Prasad Vs. The Jabalpur Improvement Trust Jabalpur, I.L.R. (1975) M.P. 448 (D.B.)*

– **Section 5** – Notification issued under by the State Government appointing Collector by designation as the Chairman of Improvement Trust – Absence of name of appointee in notification should not withheld commencement of term of office – *Ex-officio* successor in office of chairman of Trust by virtue of same notification – Not illegal nor invalid – Purpose of notification is to notify identity of the *persona designata*: *Rajendra Kumar Joshi Vs. Town Improvement Trust, Itarsi, I.L.R. (1992) M.P. 256 (D.B.)*

– **Sections 5, 6 and Development Authority Services (Officers and Servants) Recruitment Rules, M. P., 1987**, Rules 6, 7, 8 – Termination – Appointment made in utter disregard to the Recruitment Rules – Instead of cancelling appointment order termination in terms of service condition passed by the competent authority – Not open to challenge: *Rajendra Kumar Joshi Vs. Town Improvement Trust, Itarsi, I.L.R. (1992) M.P. 256 (D.B.)*

– **Section 6 (1)** – Provisions director in nature – Order of termination of illegally appointed employers passed by successor-in-office of Collector in terms of service Rules – No interference called for in suit jurisdiction: *Rajendra Kumar Joshi Vs. Town Improvement Trust, Itarsi, I.L.R. (1992) M.P. 256 (D.B.)*

– **Section 31** – Not restricted to one-type pure scheme – Permits combination of any two or more of such types or any special features thereof: *Beni Prasad Vs. The Jabalpur Improvement Trust Jabalpur, I.L.R. (1975) M.P. 448 (D.B.)*

– **Section 39** – Town expansion scheme mentioned – Not required to conform to any specified pattern – Any special features no to be found in the types specified in Section 32 to 38 – Are covered by this provision: *Lakhanlal Vs. The Town Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 263 (D.B.)*

– **Section 39 (2)** – Expansion scheme respecting area situated in limits of town – Previous sanction of State Government necessary – Obtaining of previous sanction is not mandatory: *Lakhanlal Vs. The Town Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 263 (D.B.)*

– **Section 51** – Requirement of previous sanction under – Is directory – When can direction be regarded as directory: *Lakhanlal Vs. The Town Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 263 (D.B.)*

– **Section 52 (1)** – Anterior defect in procedure cured by notification under this provision – Section 68 (1) – Individual notices under, not served or failure to make enquiry by State Government – Scheme not affected – Constitution of India – Article 31(2) – Removal of congestion from crowded and squalid localities – Is public purpose – Town improvement Trusts Act, Madhya Pradesh 1961 – Section 78(3) – Decision of Tribunal regarding compensation – Enforceable as decree Section 39 – Town expansion scheme mentioned in – No required to conform to any specified pattern – Any special

features not to be found in the types specified in Section 32 to 38 – Are covered by this provision – Section 39(2) – Expansion scheme respecting area situated in limits of town – Previous sanction of State Government necessary – Obtaining of previous sanction is not mandatory – Interpretation of Statute – Test to be applied to determine whether requirement is mandatory or directory – Town Improvement Trusts Act Madhya Pradesh, 1961 – Section 51 – Requirement of previous sanction under – Is Directory – When can direction be regarded as directory – Section 52 (2) – Publication of notification of scheme – Conclusive evidence of the scheme being duly framed and sanctioned: *Lakhanlal Vs. The Town Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 263 (D.B.)*

– **Section 52 (2)** – Defects in procedure in proceedings – Protection under this provision available – Section 68 – Does not contemplate giving of individual notices regarding intention to acquire land – Section 70 – Confers power of State Government to make enquiry – Provision not mandatory – Sanction of State Government not challengeable because discretionary power regarding enquiry has not been exercised – Chapter XXIII – Scope of town planning under, is limited – Municipal Corporation has right to acquire land under M.P. Municipal Corporations Act apart from if – Constitution of India – Article 31 (2) – Words “Public purpose” in – Has no inflexible or rigid connotation enuring for all times – Has elastic concepts – Scheme providing for rehabilitation of persons required to be displaced from thickly populated area and for removing congestion, nuisance and insanitary conditions – Is in general interest of community and hence a public purpose – Town Improvement Trusts, Act, Madhya Pradesh – Section 31 – Not restricted to one – Type pure scheme – Permits combination of any two or more of such types or any special features there of – Word “Housing” wide enough to include the making of provision for any building required for carrying on any business or industry: *Beni Prasad Vs. The Jabalpur Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 448 (D.B.)*

– **Section 52 (2)** – Publication of notification of scheme – Conclusive evidence of the scheme being duly framed and sanctioned: *Lakhanlal Vs. The Town Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 263 (D.B.)*

– **Section 68** – Does not contemplate giving of individual notices regarding intention to acquire land: *Beni Prasad Vs. The Jabalpur Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 448 (D.B.)*

– **Section 68 (1)** – Individual notices under, not served or failure to make enquiry by State Government – Scheme not affected: *Lakhanlal Vs. The Town Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 263 (D.B.)*

– **Section 70** – Confers power on State Government to make enquiry – Provision not mandatory: *Beni Prasad Vs. The Jabalpur Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 448 (D.B.)*

– **Section 70** – Sanction of State Government not challengeable because discretionary power regarding enquiry has not been exercised: *Beni Prasad Vs. The Jabalpur Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 448 (D.B.)*

– **Section 78 (3)** – Decision of Tribunal regarding compensation – Enforceable as decree: *Lakhanlal Vs. The Town Improvement Trust, Jabalpur, I.L.R. (1975) M.P. 263 (D.B.)*

Trade and Merchandise Marks Act (XLIII of 1958)

– **Sections 2 (q) (r) and (s) and 48, 49** – Registration of Trade Mark will the Registrar under the Act is pre-requisite for bringing such an action – Plaintiff not registered proprietor nor registered user of the Trade mark – 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 (D.B.)*

– **Sections 23, 51, 55 and 120** – Suit for declaration and injunction – As soon as an action is brought under Section 51(1) of the Act the ground envisaged under Section 120 ceases to survive: *Ramesh Bhai Shah Vs. Smithkline & French Laboratories Ltd., I.L.R. (2001) M.P. 1378*

– **Sections 23, 51, 55 and 120 and Civil Procedure Code (V of 1908), Order 39 Rule 1 and 2** – Infringement of trade mark – Suit for declaration and injunction – As soon as an action is brought under Section 51(1) of the Act the ground envisaged under Section 120 ceases to survive – Trade mark used on goods meant for export also constitutes use of trade mark within India – Registered user entitled to bring action under Section 51 of the Act – Use of deceptively similar trade mark and label on the product – Trial Court rightly granted temporary injunction: *Ramesh Bhai Shah Vs. Smithkline & French Laboratories Ltd., I.L.R. (2001) M.P. 1378*

– **Section 29 (1)** – Defendant using label so similar to that as plaintiff's product that innocent purchasers may be misled – In reply to notice defendant undertook to amend the label – Case of infringement of plaintiff's trade mark within the meaning of Section 29 (1) of the Act made out: *Cox Distillery Vs. McDowell & Company Ltd, I.L.R. (2001) M.P. 79*

– **Section 55** – Trademark on goods meant for export also constitute use of trade mark within India – Registered user entitled to bring action under Section 51 of the Act: *Ramesh Bhai Shah Vs. Smithkline & French Laboratories Ltd., I.L.R. (2001) M.P. 1378*

– **Section 75** – Test for finding out imitation and infringement of trade mark: *Hariprasad Vs. Nanookhan, I.L.R. (1971) M.P. 139 (D.B.)*

– **Sections 78, 79-** – 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. Vs. Shri Satish Rohra*, I.L.R. (2005) M.P. 1113

Trade Mark

– **Suit for infringement of:** *Beniprasad Bijaykumar Vs. Lever Brothers (India) Ltd.*, I.L.R. (1957) M.P. 160

Trade Unions Act, Indian (XVI of 1926)

– **And Trade Unions M.P. (Amendment) Act (XXVIII of 1960)** – Sections 3 and 2 and Amended section 11 of Indian Trade Unions Act – Appeal to Industrial Court against order of Registrar cancelling registration of Trade Union – Competency: *A. R. Farookhi Vs. The Industrial Court of M.P., Indore*, I.L.R. (1972) M.P. 720 (D.B.)

– **Section 18** – Act done in contemplation or furtherance of trade dispute otherwise than in contemplation or furtherance of strike or lock out declared illegal by Industrial Disputes Act – Action not actionable because it induced other persons to break a contract of employment or causes interference with other rights of some other person – If threats given or violence caused protection not available: *M.P. Colliery Workers Federation Chirimiri Vs. The United Collieries Ltd. Calcutta*, I.L.R. (1973) M.P. 664

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– **Section 8** – Abadi vests in proprietor – Not appurtenant to village share – Transfer of village share – Abadi does not pass: *Mt. Rupkali Vs. Kedarnath, I.L.R. (1957) M.P. 450*

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– **Section 44** – Dwelling house belonging to undivided family of two brothers – Sale deed executed by one without partition – Second part of Section 44 of the Transfer

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– **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 45** – Presumption – Defendant as a manager of family executed the sale deed – Added names of his wife and sons in sale deed by fraud – Plea that property was purchased by his own income, stridhan of his wife and with help of wife's relatives – Not proved – Presumption under Section 45 Transfer of Property Act not attracted – Trial Court rightly decreed the suit of plaintiff: *Smt. Rajeshwari Vs. Balchand Jain I.L.R. (2001) M.P. 695 (D.B.)*

– **Section 52** – Applicability of: *Dhansingh Vs. Smt. Sushilabai, I.L.R. (1970) M.P. 797 (D.B.)*

– **Section 52** – Requirements of – Sale deed executed during pendency of suit regarding same property in pursuance of prior agreement of sale – Sale affected by *lis pendens*: *Munnial Vs. Bhaiyalal, I.L.R. (1960) M.P. 797 (D.B.)*

– **Section 52** – Suit for possession – Suit land sold during pendency of suit – Sale hit by doctrine of *lis pendence* as envisaged under Section 52 of the Act: *Yashwant Rao Khogal Vs. Smt. Jahoorabi, I.L.R. (2001) M.P. 709*

– **Section 52** – Transfer of property during pendency of suit for specific performance – Transfer affected by *lis pendens*: *Smt. Vraj Kuwar Bai Vs. Kunjbeharilal, I.L.R. (1972) M.P. 722 (D.B.)*

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– **Section 53** – Plaintiff's notice of demand on defendant for recovery of Rs. 2600/- – Defendant immediately transferred by gift, her property in favour of daughter-in-law – Plaintiff's suit to set aside gift under Section 53 of the Act – Suit tenable although the claim of a single creditor defeated: *Mst. Kanchanbai Vs. Motichand, I.L.R. (1967) M.P. 402*

– **Section 53-A** – Agreement between parties by which one party relinquishes a claim to certain properties and the other party hands over certain other property to the first party – Second party gets property by transfer by relinquishment – Section applies to such transfers: *Hussain Banu, Vs. Shivnarayan, I.L.R. (1967) M.P. 408*

– **Section 53-A** – Benefit thereof goes not only to party to a transfer but also to one claiming under him: *Hussain Banu, Vs. Shivnarayan, I.L.R. (1967) M.P. 408*

– **Section 53-A** – No bar of limitation for a defence under the section: *M/s Haji Ali Mohammad And Sons. Panna Vs. Holaram, I.L.R. (1976) M.P. 707*

– **Section 53-A** – Not applicable where transaction is void or a nullity: *Radhelal Vs. Punaram, I.L.R. (1979) M.P. 377*

– **Section 53-A** – Part performance – On the basis of a void contract enquiry for protection of possession cannot be claimed: *Ram Kishore Vs. Smt. Battoo Bai, I.L.R. (2001) M.P. 1225*

– **Section 53-A** – Part performance – Possession of defendant not proved to be in part performance of agreement of sale – Plea of part performance not tenable: *Ram Lal Vs. Mangal Singh I.L.R. (2001) M.P. 1542*

– **Section 53-A** – Requirements of – Preparedness to fulfil the contract has to be specifically pleaded – Trusts Act, Indian – Section 91 – Effect of the provision – Evidence Act, 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 – 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*

– **Section 53-A** – Suit for ejectment – Lessee can rely on contract of transfer under this provision – No conflict between section 17 of The Registration Act. 1908 and section 53-A, Transfer of Property Act – Section 53-A applies to unregistered instrument of lease – Applicable also to instruments of transfer as well – Registration Act – Section 49 – Does not prevent unregistered lease being admitted in evidence as a contract – No bar of limitation for a defense under Section 27-A Specific Relief Act. 1963, Section 53-A and Transfer of Property Act – Difference between the protection granted under these provisions: *M/s Haji Ali Mohammad And Sons. Panna Vs. Holaram, I.L.R. (1976) M.P. 707*

– **Section 54** – Agreement to sell immovable property – Whether creates any interest therein: *Narain Prasad Vs. Premsingh, I.L.R. (1981) M.P. 137*

– **Section 54** – Distinction between tangible and intangible immovable property – Equity in the case of simple and usufructuary mortgage – Nature of right to property: *Phoolchand Vs. Nagar Palika, Sheorpur, I.L.R. (1967) M.P. 582*

– **Section 54** – Equity in the case of simple and usufructuary mortgage – Nature of right to property: *Phoolchand Vs. Nagar Palika, Sheorpur, I.L.R. (1967) M.P. 582*

– **Section 54** – Sale-deed executed and registered – Consideration not proved – Question whether title passed to the vendee depends upon intention of parties – Burden of proof – Burden of proving absence of intention to pass title on persons challenging sale deed: *Sukaloo Vs. Punau, I.L.R. (1960) M.P. 614 (D.B.)*

– **Section 54** – Words And Phrases – “Royalty” and Consideration – Rights of mining assigned to third party – Assignment Deed postulating payment of royalty – Held – The document is to be weighed by its content and not by its title – Faulted words can not bounce back to alter the though – In Deed, word “Royalty” was used misdescriptively and was really meant to cover an important item of consideration due for future payments: *Inderjeet Singh Sial Vs. M/s Karam Chand Thapar, I.L.R. (1995) M.P. 441 (D.B.)*

– **Section 55** – Rights and Liabilities of buyer and seller – Suit by buyer for recovery of rent from tenant – Plaintiff claimed rent for the period prior to registration of sale-deed in their favour – Agreement of sale contained stipulation that plaintiff can let out the premises on rent – Section 55(4)(a) of the Act holds the field in absence of stipulation to the contrary – There being specific contract – Plaintiffs shall be entitled to rent: *S.K.Jain Vs. Smt. Dayawanti, I.L.R. (1999) M.P. 236*

– **Section 55** – Transfer *pendente lite* by transferor – Transferor still has interest to challenge decree: *Nathuram Vs. District Co. Operative Bank Ltd., Shivpuri, I.L.R. (1975) M.P. 807 (D.B.)*

– **Section 55** – Vendor willfully delaying completion of a proper conveyance – Vendor liable for *mesne* profits – Tort – Person resorting to frivolous or vexatious and/or dilatory proceedings – Person is liable for damages: *Pannalal Vs. Chhedilal I.L.R. (1970) M.P. 817*

– **Section 55 (4) (a)** of the Act holds the field in absence of stipulation to the contrary – There being specific contract – Plaintiffs shall be entitled to rent: *S.K. Jain Vs. Smt. Dayawanti, I.L.R. (1999) M.P. 236*

– **Section 58** – Mortgage – Recovery of debt – Where mortgage is invalid personal covenant as regard debt borrow can be enforced – The primary consideration in such transaction is the debt borrowed and the mortgagee is only by way of security in favour of the mortgagee – There is thus no legal hurdle in recovering the amount of debt – Appeal Dismissed: *Smt. Saraswatidevi Vs. Krishnaram Baldeo Bank Limited, I.L.R. (1997) M.P. 153*

– **Section 58** – Pronote debt agreed to be amalgamated with mortgage debt – Mortgage debt not augmented – No mortgage decree can be passed in respect thereof: *Radhasoami Satsang Sabha Vs. Shri Hans Kumar, I.L.R. (1958) M.P. 523 (D.B.)*

– **Section 58 (c)** – Condition not included in the deed – Document cannot be treated as mortgage by conditional sale – Evidence Act – Sections 91 and 92 – Condition that sale-deed was never agreed to be acted upon – Evidence regarding the same is admissible – Circumstances in which evidence is admissible regarding terms of agreement or that there was no agreement at all – Power of Court to enter into the real nature of transaction – Plea that sales was fictitious – Oral evidence not barred by section 58(c) of Transfer of Property Act and Sections 91 and 92 of Evidence Act – Equity – 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.)*

– **Section 58 (c)** – Document of sale containing a condition of repurchase – Words in document unambiguous – Surrounding circumstance not to be looked – Document not containing clear and express words excluding mortgage – The transaction evidenced by such document is mortgaged by conditional sale and not sale with condition of re-purchase – Transaction evidenced by two separate documents one of sale and other an agreement of re-purchase – Transaction not a mortgage by conditional sale: *M.A. Bashir Vs. Mrs. Ethel, I.L.R. (1957) M.P. 28 (D.B.)*

– **Section 58 (c)** – Mortgage is not a deed of out right sale but with condition to repurchase the property in a stipulated period – Provisions of Section 58(c) are fulfilled – Deed should be construed as a mortgage – Once mortgage money has been paid, the mortgage comes to an end, though for statutory right to recover possession survives – Civil Procedure Code, Section 96 and Limitation Act, amended – Article 65 – Suit filed after Amendment in the Limitation Act – Suit for possession based on title under Article 65 of the Limitation Act – Plaintiff is required to prove his title and need not further prove possession within 12 years of suit – Suit cannot be dismissed unless defendant proves adverse possession – Mere possession how ever long – Not adverse possession – Limitation Act, Indian, 1963, amended – Article 65 – Declaration possession – Evidence available on record proved plaintiffs title cover 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*

– **Sections 58 (c) and 58 (d)** – Sale or mortgage – Sale-deed and agreement of re-conveyance executed by parties – Circumstances showing the transaction to be a mortgage – Possession delivered to the transferred – Transaction is usufructuary mortgage and not mortgage by conditional sale – Proviso to section 58 (c) not attracted – Transaction held to be a mortgage and not out right sale: *Aziz Rehman Vs. Mushir Mohammed Khan, I.L.R. (1989) M.P. 120*

– **Sections 58 (d) and 60, Land Revenue Code, M.P. (XX of 1959), Section 165 (2)(b) and Contract Act, Indian (IX of 1872), Section 65** – Usufructuary

mortgage – Mortgage fixing time limit for redemption and on failure to redeem within stipulated period – Mortgage to be treated as a sale-clog on equity of redemption – Condition void – Nature of usufructuary mortgage not converted into and anomalous mortgages – Mortgage not in accordance with the requirements of section 165(2)(b) of the land revenue code, M.P., 1959 – Mortgage is not valid – Restoration of respective benefits to mortgagor and mortgagee equitable: *Haji fatma Bee Vs. Prahlad Singh*, I.L.R. (1984) M.P. 259

– **Sections 58 and 105** – Usufructuary mortgage in favour of lessee Mortgagee already in possession as lessee – No merger – Nor surrender of lease by operation of law nor implied surrender by contract – Lessee's rights during mortgage period remain suspended – On redemption mortgagor can obtain symbolic possession earlier tenancy rights revive – Mortgagee's actual possession after redemption as tenant to continue: *Motilal Vs. Gopi Krishna*, I.L.R. (1961) M.P. 357

– **Section 60** – Mortgage deed containing contract to the effect that redemption to be in the month of Baisakh and the period of redemption provided was to be after 80 years – Contract not unconscionable – Condition does not operate as clog on equity of redemption: *Ramkhilawan Vs. Mulloo*, I.L.R. (1957) M.P. 407

– **Section 60** – Proviso – Deed containing general words showing abandonment of all rights in the property – Implication is that executant gave up whatever rights he had which includes rights which were in existence – Such document deemed to be act of parties extinguishing right of redemption – Amounts to sufficient compliance with proviso to Section 60, Transfer of Property Act: *Habib Miyan Vs. Mahemud Mir*, I.L.R. (1958) M.P. 654 (D.B.)

– **Section 60** – Transferee from mortgagor – Entitled to the benefit of sealing down of the debt not because of Abolition Act but under general law – Final Decree for sale – Mortgage debt remains subsisting – Abolition of Proprietary Rights Act – Section 24 and 27 – Order passed under section 27 after determination of debts – Previous decree wiped out – Remedy of decree-holder is under Section 28 for a preliminary decree – Section 43 – Benefit under, not available to purchaser of mortgaged property: *Kishanchand Vs. Mst. Rani Bahu*, I.L.R. (1963) M.P. 69 (D.B.)

– **Section 76 (a)** – Eviction of tenancy rights by mortgagee extending in duration beyond the period within which mortgaged property could be redeemed – Cannot be said to be prudent act of management – Tenancy ceases after redemption: *Purshottam Vs. Ramcharanlal*, I.L.R. (1969) M.P. 468 (D.B.)

– **Section 76 (a)** – Letting property by mortgagee – Action not against principles of the section – Mortgagor not entitled to demand vacant possession: *Abdul Hamid, Vs. Manilal*, I.L.R. (1968) M.P. 266 (D.B.)

– **Section 92** – Co-mortgagor paying the mortgage money under preliminary decree – Co-mortgagor becomes surrogated to the rights of mortgagee in respect of other co-mortgagor who has not paid the amount – Transfer made by co-mortgagor who has not paid the mortgagee money to mortgagee – Amounts to transfer of equity of redemption – Purchaser becomes purchaser of only equity or redemption: *Gyasiram Vs. Brij Bhushandas, I.L.R. (1974) M.P. 982*

– **Section 92** – Mortgage – Doctrine of subrogation – Final decree for foreclosure in favour of the first mortgagee – Effect of – Puisne mortgage – Redemption – Non-joinder of party in the suit by the first mortgagee – Redemption of the first mortgage by punished mortgage – Whether revives the right of the mortgagor to redeem the mortgage: *Gyarsu Vs. Mst. Deoki, I.L.R. (1980) M.P. 871*

– **Section 92** – Puisne mortgage – Redemption – Non-joinder of party in the suit by the first mortgagee – Redemption of the first mortgage by punished mortgage – Whether revives the right of the mortgagor to redeem the mortgage: *Gyarsu Vs. Mst. Deoki, I.L.R. (1980) M.P. 871*

– **Section 92** – Transfer made by co-mortgagor who has not paid the mortgage money to mortgagee – Amounts to transfer of equity of redemption – Purchaser becomes purchaser of only equity of redemption: *Gyasiram Vs. Brij Bhushandas, I.L.R. (1974) M.P. 982*

– **Section 100** – Charge created by Decree – Binds the person who claims through the party against whom a decree has been passed although he has no notice of charge – Restricted in operation to two categories of charges – Charge created by decree falls under neither category – Is not a charge created by operation of law – Words “Operation of law” – Meaning of – Decree – Decree based on compromise – Not different from contract between parties – Is subject to all provisions regarding contract – Charge created by decree – Not enforceable against transferee for consideration without notice – Property can be sold in execution when decree directs sale of it – Not open to transferee to plead want of knowledge that decree for sale had been passed – Charge is a right – Claim of charge regarding specific Immovable property – Is a right to immovable property – Directly and specifically in question in the suit – Judgment and decree – Three aspects in which it can be considered – Civil Procedure Code – Section 100 – Question of being a bona fide purchaser for value and without notice – Is a question of fact: *Smt. Attarbai Vs. Seth Mishrilalsa, I.L.R. (1967) M.P. 773*

– **Section 100** – Charge created by decree – Not enforceable against transferee for consideration without notice – Property can be sold in execution when decree directs sale of it – Not open to transferee to plead want of knowledge that decree for sale had been passed: *Smt. Attarbai Vs. Seth Mishrilalsa, I.L.R. (1967) M.P. 773*

– **Section 100** – Charges is right – Claim of charge regarding specific immovable property – Is a right to immovable property – Directly and specifically in question in the suit: *Smt. Attarbai Vs. Seth Mishrilalsa, I.L.R. (1967) M.P. 773*

– **Section 100** – Restricted in operation to two categories of charges – Charge created by decree falls under neither category – Is not a charge created by operation of law: *Smt. Attarbai Vs. Seth Mishrilalsa, I.L.R. (1967) M.P. 773*

– **Section 105** – Agreement of advancing loan for reconstruction of re-building – Does not amount to present demise – Liability to pay rent arises only when lease comes into existence: *Navnit Das Vs. Bhagwandas, I.L.R. (1977) M.P. 227*

– **Section 105** – Long acceptance of rent amounts to creation of tenancy: *Hitkarini Sabha, Jabalpur Vs. The Corporation of The City of Jabalpur, I.L.R. (1961) M.P. 543 (D.B.)*

– **Section 105** – Right of enjoyment and licence coupled with *profits-a-prendre* – No distinction between the two: *State of MP Vs. Yakinuddin, I.L.R. (1958) M.P. 706 (D.B.)*

– **Section 105** – Transaction between the parties cannot be said to be that of a licence – Question of law – Erroneous conclusion by Courts below on proved facts would certainly be a question of law – Decree of ejectment reversed: *Sher Khan Vs. Abbas Bhai Janal, I.L.R. (1992) M.P. 409*

– **Section 105 and Easement Act, Indian (V of 1882)** – Section 54 – Appellant licensee or a lessee – Test – Exclusive possession is an important test – No evidence of plaintiff to show that possession given to the appellant/defendant was not exclusive or that the possession was restrictive one: *Sher Khan Vs. Abbas Bhai Janal, I.L.R. (1992) M.P. 409*

– **Section 106** – Agricultural lands let out without registered deed or without creating any permanent tenancy or sub-tenancy – Presumption is of a lease from year to year: *Gutti Padka Vs. Mohanlal, I.L.R. (1969) M.P. 299*

– **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 106** – Lessee not put in possession of entire leased premises – Lessee entitled to remission of rent: *M.P. Wakf Board, Bhopal Vs. Mst. Sirajbi, I.L.R. (1979) M.P. 63*

– **Section 106** – Notice by a transferee of part of leased premises terminating the tenancy regarding whole property – Is invalid – Partition of leased premises –

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– **Section 106** – Notice by karta – Sufficient to terminate tenancy and is competent to file suit for ejectment: *Rajendra Prasad Vs. Jagdish Prasad, I.L.R. (1977) M.P. 1001*

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– **Section 106** – Notice thereunder – Accommodation Control Act, Section 4(a) – Notice thereunder – Notice under one independent of notice under other – Termination of tenancy before expiry of notice period for payment of rent – Suit filed after expiry of notice period for payment of rent – Circumstances under both notices coexisted when suit filed for ejectment, land-lord's right to claim possession arose: *Smt. Radharanibai Vs. Rattanlal, I.L.R. (1961) M.P. 587*

– **Section 106** – Premises used for assembling, and selling – Such use cannot be treated as manufacturing purpose: *Trilok Singh Vs. Ramprasad, I.L.R. (1971) M.P. 702*

– **Section 106** – Provisions regarding termination, of tenancy in – Not abrogated by Accommodation Control Act – M.P. Accommodation Control Act – Section 4 – Does not furnish any additional ground for ejectment – Restricts rights of landlord as regards eviction – Bar imposed by section removed – Matter falls to be governed by provisions of Transfer of Property Act – Transfer of Property Act – Section 114 – Not applicable to ejectment under clause (h) of section 111, Transfer of Property Act: *Rajaram Vs. Ramswarup, I.L.R. (1963) M.P. 117*

– **Section 106** – Service of notice on one joint tenant – Sufficient to terminate tenancy: *Shambhudayal Vs. Suleman, I.L.R. (1979) M.P. 1114*

– **Section 106** – Subsequent user of premises for manufacturing purposes by tenant without agreement – Does not make lease for manufacturing purposes: *Trilok Singh Vs. Ramprasad, I.L.R. (1971) M.P. 702*

– **Section 106** – Suit against one joint tenant in actual possession and control of premises – Suit is maintainable: *Shambhudayal Vs. Suleman, I.L.R. (1979) M.P. 1114*

– **Section 106** – Tenancy by sufferance – Does not create relationship of landlord and tenant: *Shri Mahadeoji Idol, Jabalpur Vs. Dasai, I.L.R. (1966) M.P. 99 (D.B.)*

– **Section 106** – Tenancy commencing from 1st of calendar month – Notice terminating tenancy on 31st of the month – Validity – Validity of notice – Not dependent on hypertechnical and other considerations: *Tolaram Vs. Ayaldas, I.L.R. (1965) M.P. 824*

– **Section 106** – Words “manufacturing purpose” in – Meaning of – Subsequent user of premises for manufacturing purposes by tenant without agreement – Does not make lease for manufacturing purposes – Premises used for assembling – Repairing and selling – Such use cannot be treated as manufacturing purpose – Partnership – Distinct entity from that of one of the partners – Civil Procedure Code – Section 100 – Finding that premises *bona-fide* required for business – Is a finding of fact: *Trilok Singh Vs. Ramprasad*, I.L.R. (1971) M.P. 702

– **Section 106 and Evidence Act, Indian (1 of 1872)**, Section 114 – Both parties failing to prove commencement of tenancy – Presumption that it starts from 1st of calendar month arises: *Puranchand Vs. Anandi Bai*, I.L.R. (1981) M.P. 396

– **Sections 106 and 111(h)** – In the notice there was a bonafide omission of the premises – Notice to quit has to be liberally construed so that it should not be defeated by inaccuracy either in the description of the premises or because incorrect name either of the tenant or landlord or other similar inaccuracy – Notice to quit u/s 106 has to be construed liberally so as to advance the cause of justice – Principle would not apply where inaccuracy therein has been deliberately inserted for some fraudulent or ulterior purpose – Civil Procedure Code – Order 41, Rule 33 & Order 6, Rule 17 – First Appellate Court allowed the application under Order 6, Rule 17, CPC – Without – On opportunity to make consequential Amendment – To remove inaccuracy or omission in the interest of justice – Appellate Court right is allowing Amendment application and decree for eviction u/s 41, Rule 33, C.P.C.: *Bhagwati Prasad Vs. Baleshwar Dayal*, I.L.R. (1998) M.P. 683

– **Sections 106 and 111(h)** – Notice to quit u/s 106 has to be construed liberally so as to advance the cause of justice – Principle would not apply wherein – Accuracy therein has been deliberately inserted for some fraudulent or ulterior purpose: *Bhagwati Prasad Vs. Baleshwar Dayal*, I.L.R. (1998) M.P. 683

– **Sections 106 and 116** – Tenancy for fixed term – Tenant in occupation after the expiry of the term without landlord’s consent or permission – Such a tenant not a tenant holding over – He is a tenant on sufferance – No better than trespasser – No notice to him under section 106 necessary – Section 116, Transfer of Property Act not applicable: *Nawalmal Vs. Totaram*, I.L.R. (1962) M.P. 439

– **Sections 106, 116** – Lease for stipulated period – Provision in lease agreement to pay damages at enhanced rate after the expiry of lease period – Tenant becomes tenant holding over and lease is renewed from year to year or from month to month – Notice under section 106 necessary before claiming eviction: *Krishna Singh Vs. Amiya Kumar Dutta*, I.L.R. (1990) M.P. 698

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– **Section 108** – Entire tenancy validly determined – Landlord taking possession of part of leased premises – Lessee has only to hand over possession of the portion in his possession – Lessee remaining in possession after determination of tenancy – Lessee becomes a statutory tenant – Such person has no estate or interest in premises – His right is personal and is neither transferable nor assignable – Devolves on heirs in manner provided by statute – Accommodation Control Act, Madhya Pradesh 1961 – Section 12 – Grounds provided by, not available to legal representatives – Section 2 – “Person” in – Refers to person whose tenancy is determined – Transfer of Property Act – Section 106 – Lessee not put in possession of entire leased premises – Lessee entitled to remission of rent: *M.P. Wakf Board, Bhopal Vs. Mst. Sirajbi, I.L.R. (1979) M.P. 63*

– **Section 108** – Lessee remaining in possession after determination of tenancy – Lessee becomes a statutory tenant – Such person has no estate or interest in premises – His right is personal and is neither transferable nor assignable – Devolves on heirs in manner provided by statute: *M.P. Wakf Board, Bhopal Vs. Mst. Sirajbi, I.L.R. (1979) M.P. 63*

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– **Sections 108 and 106** – Tenancy cannot be split – Notice terminating tenancy regarding portion of leased premises – Notice is bad – Circumstances in which ejectment from a part of the premises permissible – Accommodation Control Act. M.P. 1961 – Section 12(1) (e) or (f) – Landlord proving need for part of the leased premises – Landlord entitled to evict tenant from whole of the premises: *Jeewanlal Vs. Anant, I.L.R. (1972) M.P. 579*

– **Section 109** – Applicable where transfer of a part of property leased or any part of transferor’s interest therein: *Sardarilal Vs. Narayanlal, I.L.R. (1980) M.P. 1109 (F.B.)*

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– **Section 109** – Arrears of rent – Is a mere debt and “chose in action” – Is not part of reversion – Transferee entitled to recover because of contract of assignment:

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– **Section 109** – Brings about severance of tenancy – Termination of tenancy by the transferee in respect of part transferred is valid: *Sardarilal Vs. Narayanlal, I.L.R. (1980) M.P. 1109 (F.B.)*

– **Section 109** – Brings about statutory attornment i.e. As if lessee attorns by contract to the lessor: *P.B. Pathak Vs. Dr. Riyazuddin, I.L.R. (1980) M.P. 49 (D.B.)*

– **Section 109** – Joint lessors or one lessor cannot determine tenancy – If all lessors do not agree – Remedy of joint lessor is partition – One joint lessor entitled to separate share of land – Can enforce forfeiture clause in lease regarding his share: *P.B. Pathak Vs. Dr. Riyazuddin, I.L.R. (1980) M.P. 49 (D.B.)*

– **Section 109** – Partition is transfer for purpose of this provision: *P.B. Pathak Vs. Dr. Riyazuddin, I.L.R. (1980) M.P. 49 (D.B.)*

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– **Section 109** – Statutory attornment – Effect – Transfer of leased property of a part thereof – Transferee acquires all rights and new relationship created – This relationship not dependent upon consent of lessee: *P.B. Pathak Vs. Dr. Riyazuddin, I.L.R. (1980) M.P. 49 (D.B.)*

– **Section 109** – Tenancy when can be split up and when not – Partition is transfer for purpose of this provision – Brings about statutory attornment i.e. As if lessee attorns by contract to the lessor – Effect of Section 140 of English Law of Property Act and this provision is similar – Right of ejectment – Right inherent in ownership – Transferee of part of leased property – Can determine lease of that property under circumstances mentioned in section 111, Transfer of Property Act – Right of ejectment not restricted to a case of termination of lease-hold right by efflux of time or it is surrendered before transfer – Section 109 – Applicability of, to such case – Joint lessors or one lessor cannot determine tenancy – If all lessors do not agree – Remedy of joint lessor is partition – One joint lessor entitled to separate share of land – Can enforce forfeiture clause in lease regarding his share – Statutory attornment – Effect – Transfer

of leased property or a part thereof – Transferee acquires all right and new relationship created – This relationship not dependent upon consent of lessee- Transfer of part of leased property – Amounts to splitting of tenancy: *P.B. Pathak Vs. Dr. Riyazuddin, I.L.R. (1980) M.P. 49 (D.B.)*

– **Section 109** – Transfer of demised house found to be not genuine – No attornment of tenancy in favour of transferee – Evidence Act, Indian – Section 116 – Estoppel – tenant not let into possession by the landlord – Tenant not estopped from challenging derivative title claimed by the landlord – Civil Procedure Code, section 100 and Accommodation Control Act, Madhya Pradesh 1961 Section 12 – Finding that transfer of demised house is not genuine – Is a finding of fact – Not open to challenge is second appeal – Plaintiff not entitled to evict tenant under Section 12 of the M.P. Accommodation Control Act: *Meerkhan Vs. Kutub Ali, I.L.R. (1980) M.P. 977 (D.B.)*

– **Section 109** – Transfer of part of leased property – Amounts to splitting of tenancy: *P.B. Pathak Vs. Dr. Riyazuddin, I.L.R. (1980) M.P. 49 (D.B.)*

– **Section 109 and Accommodation Control Act, M. P. (XLI of 1961)**, Section 12(1) – Suit for eviction by landlady/lessor – Prior to suit, she sold the house in question – Transfer by sale itself would not debar the landlady to terminate tenancy and bring a suit for eviction – It is exclusive right of lessor to evict lessee: *Hafiz Mohhammad Vs. Masood Bi, I.L.R. (1992) M.P. 572*

– **Section 109 and Evidence Act, Indian (I of 1872), Section 116** – Tenant paying rent to original landlord – Subsequent purchaser becomes landlord – Tenant stopped from questioning title of subsequent purchaser: *R.P. Tiwari Vs. Smt. Sulochna Choudhary, I.L.R. (2001) M.P. 839*

– **Sections 109 and 111** – Transferee of part of leased property – Can determine lease of that property under circumstances mentioned in Section 111: *P.B. Pathak Vs. Dr. Riyazuddin, I.L.R. (1980) M.P. 49 (D.B.)*

– **Sections 109 and 130 and M.P. Accommodation Control Act (XXIII of 1955)** – Section 4 (a) – Distinction between a case where arrears of rent are only transferred by landlord and a case where leased premises along with arrears of rent are transferred – Transferee of merely arrears of rent – Recovery of arrears of rent – Recovery is only as recovery of debt: *Babu Bhai Vs. Bhagwandas, I.L.R. (1966) M.P. 761*

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becomes a co-owner with the co-lessor – All co-owners must join in termination of tenancy – Interpretation of Statute – Two view 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.)

– **Section 110** – Not applicable to a case of tenancy from month to month – In calculating period of notice – First day of month not necessary to be omitted – Notice terminating with end of month of tenancy – Notice valid – Bhopal Civil Procedure Code, Section 49 – Court, power of, to limit rate of rent or interest paid by one party to the other – Does not create a vested right - Meaning of vested right – No person has vested right in course of procedure – Act – Changing law of procedure – Act acts retrospectively and not prospectively – Act prevailing at the time of institution of suit normally governs rights of parties: *Mst. Mohammadi Begam Vs. Abdul Majid Khan*, I.L.R. (1962) M.P. 689 (D.B.)

– **Section 111** – Determination of lease of Immovable property – Lessor can resume possession only in a manner known or recognised by Law – Appeal allowed: *Smt. Meenakshi Jain Vs. State*, I.L.R. (1998) M.P. 417

– **Section 111 (b)** – Usufructuary mortgage in favour of tenant already in possession as such – Tenancy terminates by implied surrender – Tenancy does not revive on redemption: *Ramrao Vs. Pahumal*, I.L.R. (1965) M.P. 602 (D.B.)

– **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 (D.B.)

– **Section 111 (1) (g)** – M.P. Land Revenue Code 1959 – Lease – Natural Justice – Held – It is settled that lease of immovable property executed by the State in favour of any person prior to coming into force of the M.P. Land Revenue Code, 1959 shall be governed by Transfer of Property Act, and the rights and liabilities of the lessor and the lessee will be dealt with in accordance with the provisions of the Transfer of Property Act – The breach of condition of the lessee only makes the lease voidable – Therefore, forfeiture is not complete unless and until the lessor gives a notice to the lessee that he wish to exercise his option to determine the lease – Petition allowed: *Smt. Meenakshi Jain Vs. State of M.P.*, I.L.R. (1997) M.P. 188

– **Sections 111 and 113**, Illustration (a) – Notice to quit served on the tenant but rent accepted even for the period after expiration of notice period – Intention of landlord explicit to treat the lease as subsisting: *Murli Shri Deo Radha Madhawalal jee Geda Trust Sagar Vs. Pradeep Kumar Nayak.*, I.L.R. (2001) M.P. 533

– **Sections 111(g) and 114** – Provisions apply only to a case when suit is based on forfeiture: *Bhujjilal Vs. Ayoob Ali Beg*, I.L.R. (1992) M.P. 911

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– **Section 116** – Application of – Essentials to be proved – Limitation Act, Article 139 – Termination of tenancy – Burden of proof: *Mitharam Vs. Deochand, I.L.R. (1960) M.P. 486*

– **Section 116** – Deals with tenants holding over – Evidence Act, Section 115 – Not applicable – Where rent accepted under mistake – Abolition of Proprietary Rights Act, Madhya Pradesh, Section 13 – Compensation Officer not to record rights of tenants and not to make enquiry regarding same – Section 15(4) – Operates between proprietor and the Government – Does not bar tenant from challenging entry made by compensation officer: *Singhai Komalchand Vs. The State of Madhya Pradesh, I.L.R. (1963) M.P. 454 (D.B.)*

– **Section 116** – No estoppel against tenant who withdraws admission and denies title of landlord: *Sadashiv Vs. Jagdishchandra, I.L.R. (1966) M.P. 954*

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– **Section 127** – Gift burdened with obligation in favour of minor – Gift is voidable and not void: *Rajendra Kumar Vs. The State of Madhya Pradesh, I.L.R. (1965) M.P. 498*

– **Section 127** – Gift to a minor of property imposing obligation to pay Government revenue and public taxes – Gift cannot be regarded as void: *Rajendra Kumar Vs. The State of Madhya Pradesh, I.L.R. (1965) M.P. 498*

– **Section 130** – Applicable to assignment of a promissory note as a chose in action: *Champalal Vs. Padam Chand, I.L.R. (1969) M.P. 850*

– **Section 130** – Claim for compensation – Not a claim to a debt but a mere right to sue – It is not assignable – Right is personal – Right to sue for damages for tort or for breach of contract – Not assignable – Transfer of actionable claim – Can be only by an instrument in writing – Land Acquisition (Mines) Act, 1885 – Not applicable to erstwhile State of M.P. As mines owned by Government – Constitution of India – Art. 299(1) – Conditions to be satisfied – Provision mandatory – Estoppel – Party consenting to construction of canal – Party estopped from claiming compensation – Limitation Act, 1908 – Articles 115 and 120 – Suit for compensation based on contract – Suit governed by Article 115 and Article 120 – Article 2 – Public officer acting pursuance of statutory

authority – Public officer exceeding his powers and committing tortuous act – Suit for damages for such act – Suit governed by this provision – Article 18 – Suit for damages for non-Completion or refusal to complete acquisition under Land Acquisition Act Suit governed by this Article: *State of M.P. Vs. Ramansha Byramji, I.L.R. (1978) M.P. 768 (D.B.)*

– **Section 130** – Instrument of Transfer – Must indicate clearly intention to transfer – Language must show that right and title of transferor has been transferred to third party – Expression “to obtain cheques for sums payable to us under the contracts directly in their own name or in our names” read with “to receive the amount thereof and appropriate such receipts” – Only amount to an authority to Bank to cash and realise amount – Expression “Please pay to Bharat Bank Jabalpur” – Does not constitute an assignment absolute or create a charge: *Takhatmal Vs. Bharat Nidhi Ltd., Jabalpur, I.L.R. (1963) M.P. 679 (D.B.)*

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– **Rules 6 and 11** – Make no distinction between permanent and officiating capacity: *Dr. Shyam Sunder Lal Dixit Vs. State of M.P., I.L.R. (1974) M.P. 545 (D.B.)*

– **Rules 6 and 11** – Order of absorption not necessary for claiming benefit of these rules: *Dr. Shyam Sunder Lal Dixit Vs. State of M.P., I.L.R. (1974) M.P. 545 (D.B.)*

Universities

– **University Ordinance No.6**, Sub-clause 7(i) and (ii) – Duties of the Head of the Department and University Authorities while issuing admission card to the candidate appearing in the Examinations – Explained once admission card issued it will be presumed that clause No. 21 of Ord., 6 have been complied with: *Gorakh Nath Sing Vs. Dr. Harisingh Gour, I.L.R. (1991) M.P. 342 (D.B.)*

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– **Section 11, Clause 3** – Representation made to Vice-Chancellor and Chancellor – Power of the Executive Committee to dispose them – Statute 22, sub clause 3(iii) of clause 3 – Provision mandatory – Municipalities Act, 1961 – Section 124 – Establishment

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– **Ordinance regarding admission of non-collegiate students to University Examination** – Candidate not entitled as of right to permission – Authorities can reject for valid reasons covered by Act, Statutes and Ordinances: *John Chirayil Kurian Vs. University of Sagar, I.L.R. (1979) M.P. 900 (D.B.)*

– **Ordinance regarding admission of non-collegiate students to university examinations** – Did not bar candidate residing outside territorial jurisdiction of Sagar University – Vishwavidhyalaya Adhiniyam, Madhya Pradesh, 1973 – Section 24, clause (XXXVII) and Section 37, clauses (iv to vi) – Contemplate admission of non-collegiate students being admitted to examination of University – Subject to other provisions of Act, Statutes and Ordinances – Section 7 – Refers to affiliation to educational institution and colleges with university – Ordinance regarding admission of non-collegiate students to university examination – Candidate not entitled as of right to permission – Authorities can reject for valid reasons covered by Act, Statutes and Ordinances: *John Chirayil Kurian Vs. University of Sagar, I.L.R. (1979) M.P. 900 (D.B.)*

– **Ordinance No. 13** – Clause 8 – Academic Council in cancelling examination result proceeding on wrong premises – Grounds for cancelling result were not valid – Decision of the question whether candidate should be allowed to appear for examination rests with Executive Council: *Pretish Chandra Dutta Vs. University of Saugar, I.L.R. (1975) M.P. 1008 (D.B.)*

– **Ordinance no. 13** – Clause 8 – Candidate allowed to appear for examination – Presumption that all requirements were fulfilled: *Pretish Chandra Dutta Vs. University of Saugar, I.L.R. (1975) M.P. 1008 (D.B.)*

– **Ordinance 13** – Clause 8 – Principal revising the order of expulsion to one of fine on the advice of Vice- Chancellor – The action is of Principal himself – It cannot be nullified: *Pretish Chandra Dutta Vs. University of Saugar, I.L.R. (1975) M.P. 1008 (D.B.)*

– **Ordinance no. 13** – Section 8(2) – Principal realizing fine and other dues from students after order of expulsion: *Pretish Chandra Dutta Vs. University of Saugar, I.L.R. (1975) M.P. 1008 (D.B.)*

– **Ordinance No. 33**, paragraph 12 – Orders of Vice – Chancellor permitting students failing in B.A. part I to attend classes of B.A. Part II and further order allowing them to appear in both examination – Legality: *Prakash Vs. The Principal, Sheo Bhagwan Rameshwar Prasad Arts College, Bilaspur, Bilaspur, I.L.R. (1967) M.P. 517 (D.B.)*

– **Section 13 (c)** – Action of Vice-Chancellor under administrative and not judicial or *Quasi* judicial – Rules of natural justice vary according to circumstances of each case – No notice necessary in case of administrative action: *Radhe lal Maheshwari Vs. Dr. Dwarka Prasad Mishra, Vice Chancellor, University of Saugar, I.L.R. (1961) M.P. 21 (D.B.)*

– **Section 14 (4)** – Power to decide existence of emergency with Vice-Chancellor – No power in Court to enquire into existence of emergency of propriety of action: *Shivnarayan Vs. The Vice Chancellor, Saugar University, I.L.R. (1960) M.P. 37 (D.B.)*

– **Section 14 (4)** – Vice Chancellor sole judge of emergency under – No power in Court to enquire into existence of emergency or propriety of action taken by Vice-Chancellor without reference to university authority – Power of Court to examine legality of order – Ordinance No. 33, paragraph 12 – Orders of Vice – Chancellor permitting students failing in B.A. part I to attend classes of B.A. part II and further order allowing them to appear in both examinations – Legality: *Prakash Vs. The Principal, Sheo Bhagwan Rameshwar Prasad Arts College, Bilaspur, I.L.R. (1967) M.P. 517 (D.B.)*

– **Section 14 (5)** – Ordinances 6, 12 and 13 – Distinction between Statute and Ordinance – Ordinance 6 – Proctor – Powers of punishment – Section 31 – Discipline of students to be regulated by Statute and not be Ordinance – Power of Vice-Chancellor to take disciplinary action – Not Curtailed because Proctor’s powers regarding maintenance are subject to control of Vice Chancellor – Section 13(c) – Action of Vice-Chancellor under – Administrative and not judicial or quasi judicial Rules of natural justice vary according to circumstances of each case – No notice necessary in case of administrative action: *Radhe lal Maheshwari Vs. Dr. Dwarka Prasad Mishra, Vice Chancellor, University of Saugar, I.L.R. (1961) M.P. 21 (D.B.)*

– **Section 25 (2)** – Word “Control and general regulation” in – Relate to “standards of teaching and examination within the University” – Matters provided by Section 38 are outside the provisions of Section 25(2) – Power of cancellation cannot be implied to Section 25(2) – Such power is conferred on Executive Council by section 24(1)(p) – Academic Council has no power to cancel the result: *Pretish Chandra Dutta Vs. University of Saugar, Saugar, I.L.R. (1975) M.P. 1008 (D.B.)*

– **Section 30** – Statute 21-AA framed under – Being inconsistent with new Act – That provision is obliterated: *Dr. H.N. Bhargava Vs. University of Sagar, I.L.R. (1978) M.P. 43 (D.B.)*

– **Section 30** – Statute 21-AA framed under – Is mandatory and not directory: *Dr. H.N. Bhargava Vs. University of Saugar, I.L.R. (1978) M.P. 43 (D.B.)*

– **Section 31** – Discipline of students to be regulated by Statute and not by Ordinance – Power of Vice-Chancellor to take disciplinary action – Not curtailed because Proctor's powers regarding maintenance are subject to control of Vice-Chancellor: *Radhe lal Maheshwari Vs. Dr. Dwarka Prasad Mishra, Vice Chancellor, University of Saugar, I.L.R. (1961) M.P. 21 (D.B.)*

– **Section 38** – Committee appointed by Academic Council for preparation of result – Committee is distinct from Academic Council – Declaration of result contemplates 3 steps – Procedure for declaration of result – To be followed for cancelling result – Section 25(2) – Words “control and general regulation” in – Relate to “standards of teaching and examination within the University – Matters provided by Section 38 are outside the provisions of Section 25(2) – Power of cancellation cannot be implied in Section 25(2) – Such power is conferred on Executive Council by section 24(1)(p) – Academic Council has no power to cancel the result – Ordinance no. 13 – Section 8(2) – Principal realizing fine and other dues from students after order of expulsion – Ordinance no. 13 – Clause 8 – Principal revising the order of expulsion to one of fine on the advice of Vice-Chancellor – The action is of Principal himself – It cannot be nullified – Academic Council in cancelling examination result proceeding on wrong premises – Grounds for cancelling results were not valid – Decision of the question whether candidate should be allowed to appear for examination rests with Executive Council – Candidate allowed to appear for examination – Presumption that all requirements were fulfilled – Constitution of India – Article 226 – Writ of *mandamus* or *certiorary* to quash the resolution cancelling the result can be issued: *Pretish Chandra Dutta Vs. University of Saugar, Saugar, I.L.R. (1975) M.P. 1008 (D.B.)*

– **Section 47-A** – Candidate has right to see that Executive Council properly exercises the power: *Dr. Ram Singh Vs. The University of Saugar, Saugar, I.L.R. (1975) M.P. 292 (D.B.)*

– **Section 47-A** – Power of Executive Council to appoint any person to any teaching post – Rule of construction – Words in singular to include the plural and *vice versa* – Section 47-A(3) and (4) – Words “Names” and “persons” in – To be construed as “name or names” and “person or persons” – Section 47-A (5) – Words “if any” in – Suggest that selection committee not bound to recommend more than one name in all cases – If only one name is recommended – Proviso of Sub-Section (4) has no application – Section 47-A(3) and (4) – Selection committee can recommend one name for post if one only is found suitable – Section 47-A(1) and (4) – Effect of – Section 47-A – Scheme and object of – Section 47-A – Candidate has right to see that executive council properly exercises the power: *Dr. Ram Singh Vs. The University of Saugar, Saugar, I.L.R. (1975) M.P. 292 (D.B.)*

– **Section 47-A** – Scheme and object of: *Dr. Ram Singh Vs. The University of Saugar, Saugar, I.L.R. (1975) M.P. 292 (D.B.)*

– **Section 47-A (1) and (4)** – Effect of: *Dr. Ram Singh Vs. The University of Saugar, Saugar, I.L.R. (1975) M.P. 292 (D.B.)*

– **Section 47-A (3) and (4)** – Selection Committee can recommend one name for post if one only is found suitable: *Dr. Ram Singh Vs. The University of Saugar, Saugar, I.L.R. (1975) M.P. 292 (D.B.)*

– **Section 47-A (3) and (4)** – Words “names” and “persons” in – To be construed as “name or names” and “person or persons”: *Dr. Ram Singh Vs. The University of Saugar, Saugar, I.L.R. (1975) M.P. 292 (D.B.)*

– **Section 47-A (5)** – Words “If any” in – Suggest that selection committee not bound to recommend more than one name in all cases – If only one name is recommended, provision of sub-Section (4) has no application: *Dr. Ram Singh Vs. The University of Saugar, Saugar, I.L.R. (1975) M.P. 292 (D.B.)*

– **Section 49 (1) and (2)** – Parties not invoking provisions of Section 49(1) – Suit for recovery of three months’ salary not barred: *Shivnarayan Vs. The Vice Chancellor, Saugar University, I.L.R. (1960) M.P. 37 (D.B.)*

University Ordinance No. 48

– **Section 9-A** – Scope and object of – Notification No. Ex/68/63, dated 24-8-63 – Student failing in one subject – Can appear in supplementary examination in that subject irrespective of percent of aggregate marks secured in main examination – Can be declared pass if he secures 55 Percent marks in aggregate – Student failing in more subjects than one – Benefit under the provision not available – Cancellation of one paper in the main examination – Amounts to his failure in that paper: *Shri Hanuman Prasad Mishra Vs. The University of Saugar, Saugar, I.L.R. (1966) M.P. 382 (D.B.)*

– **Section 9-A** and Notification No. Ex/68/63, dated 24-8-63 – Student failing in more subjects than one – Benefit under the provisions not available – Cancellation of one paper in the main examination – Amounts to his failure in that paper: *Shri Hanuman Prasad Mishra Vs. The University of Saugar, Saugar, I.L.R. (1966) M.P. 382 (D.B.)*

– **Section 9-A** and Notification No. Ex/68/63, dated 24-8-63, dated 24-8-63 – Student failing in one subject – Can appear in supplementary examination in that subject irrespective of percentage of aggregate marks secured in main examination – Can be declared pass if he secures 55 percent marks in aggregate: *Shri Hanuman Prasad Mishra Vs. The University of Saugar, Saugar, I.L.R. (1966) M.P. 382 (D.B.)*

University Service Rules, M.P. 1982

– **Rules 28(1) and 28(3)** and Civil Services (Classification, Control and Appeal) Rules, M.P., 1966, Rule 9(2-a) – Suspension – Recording of reasons of placing an incumbent under suspension – Not always necessary – Suspension order containing allegation of misconduct – Gravity of misconduct itself may constitute good reason to place an employee under suspension: *Dr. Ram Suman Pandey Vs. Chancellor of Universities M.P. RajBhawan, Bhopal, I.L.R. (2000) M.P. 1389*

Upkar Adhiniyam, M.P., 1981 (I of 1982)

– **As amended by Upkar (Sanshodhan) Adhiniyam, M.P. (XXI of 1987)**, Sections 11, 12 and 25, Mines and minerals (regulation and Development) Act, (LXVII of 1957) Section 18 and Constitution of India, Schedule VII, List I and II – Cess imposed is tax and not fee – Levy should have some relation to the services rendered in order to be fee – Rule cannot impose tax unless statute specifically authorities imposition – Levy imposed by the Act is tax on minerals produced and not tax on land itself – Not covered by Entry 49 or 50 of State List II – Section 11 of the Act as amended is ultra vires: *M.P. Lime Manufacturers Association, Katni Vs. State of M.P., I.L.R. (1991) M.P. 1 (F.B.)*

Urban land (Ceiling and Regulation) Act (XXXIII of 1976)

– **Section 2(o)(c)** Land situated within urban agglomeration – Whether sufficient to refuse registration: *Kailash Vs. Sub-Registrar, Indore, I.L.R. (1985) M.P. 144 (D.B.)*

– **Section 2(o)(c)** Land when can be said to be mainly used for the purpose of agriculture: *Kailash Vs. Sub-Registrar, Indore, I.L.R. (1985) M.P. 144 (D.B.)*

– **Section 4** and Urban Land (Ceiling and Regulation) Repeal Act, 1999 – Sections 2, 3, 4 and 10 – Abatement of proceedings – Land not taken over – Petitioner entitled to an opportunity to show that possession having not taken the proceedings are deemed to be abated – Disputed question of fact – Petitioner may raise such contention before competent authority: *Smt. Sunder Bai Vs. State, I.L.R. (2002) M.P. 54*

– **Section 4** and Urban Land (Ceiling and Regulation) Repeal Act, 1999 – Sections 2, 3, 4 and 10 – Draft statement issued – No appeal filed before competent authority – Writ Petition after seventeen years – Not tenable: *Smt. Sunder Bai Vs. State, I.L.R. (2002) M.P. 54*

– **Sections 6, 19, 20** – Compulsory acquisition of land by Development Authority – Agreement executed that in lieu of cash compensation developed plots shall be given

to the petitioner society who is nominee of original holder – Authority refusing to handover the agreement on the ground that ceiling proceedings are pending in respect of the land – Unjustified: *Hind Griha Nirman Sahkari Samiti Maryadit, Jabalpur Vs. Jabalpur Development Authority, I.L.R. (1992) M.P. 159 (D.B.)*

– **Sections 9 and 6(2) and Hindu Succession Act (XXX of 1956)**, Section 8 – Daughter's share cannot be clubbed with widow's share – Competent Authority can call upon daughters to file return after inquiry to re-determine surplus land: *Smt. Swaraj Kumari Lumba Vs. State, I.L.R. (1983) M.P. 444 (D.B.)*

– **Sections 9 and 6(2) and Hindu Succession Act (XXX of 1956)**, Section 8 – Father dying on 22/7/1963 leaving behind 59533 Sq. ft. land inherited by widow and two daughters in equal shares – Widow filing return but not mentioning shares of daughters in it or in reply filed – However, objection raised about daughter's shares before passing of final orders – Objections liable to be inquired into – Daughter's share cannot be clubbed with widow's share – Competent Authority can call upon daughters to file return after inquiry to re-determine surplus land: *Smt. Swaraj Kumari Lumba Vs. State, I.L.R. (1983) M.P. 444 (D.B.)*

– **Section 19 (1) (i)** – Development Authority is an authority within the meaning of Section 19(1)(i) of the Act, 1976 – The provision of Ceiling Act 1976 would not be applicable to the vacant land held by such Authority – Ceiling proceeding pending – Even if such land held by the holder is declared excess of ceiling limits the authority would continue to hold the land by virtue of proviso to sub-section (2) of Section 19 of the Act: *Hind Griha Nirman Sahkari Samiti Maryadit, Jabalpur Vs. Jabalpur Development Authority, I.L.R. (1992) M.P. 159 (D.B.)*

– **Section 20 (1) (b)** – Undue Hardship – Indebtedness due to income tax and wealth tax, liability cannot be said to be “undue hardship” – Not a ground to grant exemption under clause(b): *Ravindra Bahadur Singh Vs. State of M.P., I.L.R. (1993) M.P. 84 (D.B.)*

– **Sections 27, 10, & 5** – Ceiling of excess land – Whether application seeking permission to transfer excess land can be moved impending ceiling proceedings – Held – Transfer application can be moved – Where State is the vendee – Finalization of draft proceedings and declaration under Section 10(3) of the Act not necessary – Judgment passed by M.P. High Court Reversed: *State of M.P. Vs. Surendra Kumar, I.L.R. (1995) M.P. 19 (S.C.) (D.B.)*

– **Section 28** – Whether transferor require to produce no objection certificate from competent Authority for seeking registration of document: *Kailash Vs. Sub-Registrar, Indore, I.L.R. (1985) M.P. 144 (D.B.)*

– **Section 33** – Appellate Authority is provided with plenary powers even to dismiss an appeal under this provision for non-prosecution as the appeals are to be decided expeditiously and appeals under Section 33 have been expressly given short life: *Suraj Singh Vs. State of M.P., I.L.R. (1992) M.P. 379 (D.B.)*

– **Section 33** – Provision for appeal within 30 days – Appeal filed beyond limitation – Rightly dismissed by appellant authority as statutory remedies are required to be availed within the limitation prescribed by the statute – Impugned Order not interfered with: *Haji Yasin Vs. The Commissioner, I.L.R. (2001) M.P. 787*

– **Section, 33** and Urban Land (Ceiling and Regulation) Repeal Act, 1999, Sections 3, 10 (3)–Repeal of Principal Act does not affect vesting of any vacant land possession of which has been taken over by the State Government–Dispute as to whether possession has been taken over–No material available on record–Matter remitted back to High Court: *Kishan Lal Vs. State of M.P., I.L.R. (2005) M.P. 680 (S.C.) (D.B.)*

Usurious Loans Act (X of 1918)

– **Section 21-A, and Contract Act, Indian (IX of 1872), Sections 139, 141 and 176 and Banking Regulation Act (X of 1949)**, as amended in 1984, Section 21-A – Suit decided by the Court after coming into force of Section 21-A of the Act – Suit transaction cannot be re-opened on the ground that rate of interest is excessive – Security remained in possession of borrower as per Hypothecation agreement – Creditor can either file a suit or proceed against the security – Accounts were settled and acknowledged by the borrower – No infirmity in the impugned judgment and decree – Appeal failed: *Kamla Prasad Jaiswal Vs. Punjab National Bank, I.L.R. (1992) M.P. 634*

Van Bhumi Shashwat Patta Prati Sanharan Adhiniyam, M.P. (XXXIII of 1973)

– **And Constitution of India, Article 14** – Act is not invalid on ground of compensation being arbitrary or illusory: *Smt. Padmavati Devi Vs. State of M.P., I.L.R. (1981) M.P. 909 (D.B.)*

– **And Constitution of India, Article 31 (2)** – Act is invalid and not violative of Article 31 (2): *Smt. Padmavati Devi Vs. State of M.P., I.L.R. (1981) M.P. 909 (D.B.)*

– **Section 1 and Constitution of India, Article 31-A** – Article confined to agrarian reform – Augmenting resources of State by itself in the absence of anything regarding utilization of such resources for agrarian reform – Protection under Article 31-A not available – Act is valid and not violative of Article 31(2) – ‘Public purpose’ – Is of wide import and has to be construed in the light of Directive Principles embodied in Article 39 (a), (b) and Article 31-C – Augmenting resources of State is not public purpose but utilization of income for good of community be distributing material resource

of community to sub serve common good – Is a public purpose – Act is not invalid on ground of compensation being arbitrary or illusory – Article 14 – Violation of – Even if petitioner alone is affected by the Act, she would stand as a class different from other persons – No violation of Article 14 – Section 2(a) and 3(2)9(a) of the Adhiniyam – Right to fell timber and forest produce extracted before the appointed date – Cannot vest in the State: *Smt. Padmavati Devi Vs. State of M.P., I.L.R. (1981) M.P. 909 (D.B.)*

– **Sections 2 (a) and 3 (2) (a)** – Right to fell timber and forest produce extracted before the appointed date – Cannot vest in the State: *Smt. Padmavati Devi Vs. State of M.P., I.L.R. (1981) M.P. 909 (D.B.)*

Van Upaj (Vyapar Viniyaman) Adhiniyam, M.P. (IX of 1969)

– **As amended by act of 1986, section 15 (6)** – Truck carrying 120 wooden logs concealed perfectly by putting tarpaulin to avoid its detection – When it was tried to be stopped by forest employees, the inmates of the truck opened fire from the fire arm and fled away – Confiscation proceedings – Despite opportunity owner failed to cross-examine forest employees – Burden of proof on owner of vehicle to prove that truck was used for illegal activities without his knowledge – Held – Owner failed to discharge burden of proof – Confiscation valid – Order of Session Judge and High Court setting aside order of confiscation set aside. Appeal allowed: *State of M.P. Vs. Suresh Kumar, I.L.R. (1997) M.P. 15 (S.C.) (D.B.)*

– **Section 9 – Forest Produce** – Auction sale – As per tender conditions unless and until the competent authority sanctions the sale of forest produce the sale would not be completed – DFO was not competent to sanction sale beyond 1 lac – DFO signed a bid sheet and sanctioned the sale beyond 1 lac – Sanction would not be legal – Government cancelled the auction – Not invalid: *State of M.P., Vs. G.L. Patel & Co., I.L.R. (1996) M.P. 121 (D.B.)*

– **Section 15-B** – Order of Sessions Judge in exercise of revisional power attain finality by virtue of sub-Section (55) of Section 15-B – But amendable to Writ Jurisdiction of High Court as no remedy is available under the law – Writ Petition maintainable: *Smt. Mani Jain Vs. Sub-Divisional Forest Officer, Mhow, I.L.R. (2000) M.P. 1257 (D.B.)*

– **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: *Smt. Mani Jain Vs. Sub-Divisional forest Officer-Cum-Authorised Officer, Mhow, I.L.R. (2001) M.P. 1359 (D.B.)*

– **Sections 19 (1) (b), 16 (b), 18, 22 and Van Upaj (Vyapar Viniyaman) Kastha Niyam, M.P., 1973**, Rules 4(1), (3), (4) – Power of confiscation – Only Court has powers under the Adhiniyam – No provision for forfeiture by forest officer for the specified goods – Provisions of section 55(1) of Indian Forest Act not applicable in view of Section 22 of Adhiniyam: *Kirodimal Agrawal Vs. State of M.P., I.L.R. (1991) M.P. 221 (D.B.)*

– **Section 22 and 11 Kashtha Chirah (Viniyaman) Adhiniyam, Madhya Pradesh (XIII of 1984)**, Sections 23 and 4, Kashtha Chiran (Viniyaman) Niyam, Madhya Pradesh 1984 and Constitution of India, Article 19(1)(g) – Order of D.F.O. rejecting petitioner's application for establishment of a saw mill, under Adhiniyam of 1969, challenged in writ petition – During pendency of writ, Adhiniyam of 1984 and Niyam of 1984 came into force – Petitioner has to obtain licence under 1984 Adhiniyam in view of Section 23 of 1984 Adhiniyam – Powers given to Licensing Authority under 1984 Adhiniyam are neither arbitrary nor unchannellised – Restrictions imposed by 1984 Adhiniyam do not contravene Article 19(1)(g) of the Constitution: *Abdul Sattar Khan Vs. Divisional Forest Officer (Vikas), Seoni, I.L.R. (1985) M.P. 522 (D.B.)*

Van Upaj Ke Karoron ka Punrikshan Adhiniyam, M.P. (XIII of 1987)

– **Sections 3, 5** – Agreement entered into by the Govt. after coming into force of the Adhiniyam but provision of Section 3 not invoked – Provision of the Adhiniyam cannot be attracted after expiry of considerable period: *M/s Bastar Oil Mills and Industries Limited, Vs. State, I.L.R. (2000) M.P. 681*

Vanijyak Kar Adhiniyam, M. P., 1994 (V of 1995)

– **Sections 68, 89 and Schedule I**, Sections 89, 94 – Accessories – Foot valve – Having no independent use but used in pumpsets below 10 H.P. run by electricity for its efficient use – Foot valves fall under the category of accessories – Exempt under Schedule I, Entry 89 of the Commercial Tax Act: *M/s. Perfect Engineering Company Vs. Commissioner of Commercial Tax, I.L.R. (2002) M.P. 46*

Veterinary (Gazetted) Recruitment Rules, Madhya Pradesh, 1966

– **Rules 6 and 8** – Constitution of India – Articles 14 and 16 – Infringement of – Principles of “equality of opportunity” – Applicable to members of same class of employee only – Do not prohibit prescription of reasonable rules for selection – Relevant connection between test prescribed and interest of public service – No violation of Article 16 of the Constitution – Rules not *ultra-Vires* – Burden upon person alleging violation of equal protection or equal opportunity – Recruitment to certain post from direct recruitment

and also by promotion – Selection on merit-cum-suitability – Government entitled to decide ratio between two sources of recruitment – Persons outside prescribed upper age limit – Not fulfilling conditions of eligibility – Not entitled to raise grievance that they should also be considered for selection: *Dwaraka Dhish Bhargava Vs. State of M.P.*, I.L.R. (1979) M.P. 486 (F.B.)

– **Rules 6 and 8** – Persons outside prescribed upper age limit – Not fulfilling conditions of eligibility – Not entitled to raise grievance that they should also be considered for selection: *Dwaraka Dhish Bhargava Vs. State of M.P.*, I.L.R. (1979) M.P. 486 (F.B.)

– **Rules 6 and 8** – Recruitment to certain post from direct – Recruitment and also by promotion – Selection on merit-cum suitability – Government entitled to decide ratio between two sources of recruitment: *Dwaraka Dhish Bhargava Vs. State of M.P.*, I.L.R. (1979) M.P. 486 (F.B.)

– **Rules 6 and 8** – Rules not *ultra vires*: *Dwaraka Dhish Bhargava Vs. State of M.P.*, I.L.R. (1979) M.P. 486 (F.B.)

Vicarious Liability

– **Ghee usually sold in the shop** – Servant or agent selling adulterated ghee – Master whether vicariously liable: *Lalchand Vs. The Food Inspector, Dhar*, I.L.R. (1966) M.P. 997

– **Ordinarily no vicarious liability arises in criminal law except when imposed by statute**: *The State Of Madhya Pradesh, Vs. The Bundelkhand Transport Co.*, I.L.R. (1964) M.P. 166

– **State when liable for act of its servant** – Sovereign Function – Activity of running Government Hospital for giving relief to citizen – Not a sovereign function of State in traditional sense: *The “AD HOC” Committee, The Indian Insurance Companies Association Pool, Bombay Vs. Smt. Radhabai*, I.L.R. (1977) M.P. 61 (D.B.)

Vidhan Sabha Sadasya Vetan Tatha Bhatta Tatha Pension Adhiniyam, M.P. (7 of 1973)

– **Section 6A (as amended by Act 18 of 1992)**, Constitution, Article 195 – Constitutionality of an Act – Legislative competence to grant pension without any minimum qualifying yardstick – Held – The Act is *intra vires* and it is within the competence of the State Legislature under Article 195 of the Constitution r/w Entry 42 of List 11 of the Seventh Schedule of the Constitution to legislate on pension of member of Assembly – We do not propose to further proceed to lay down the period for being

qualified receive pension – We leave it to the wisdom of the legislature to lay down, keeping in view the provision of various Assemblies and Parliament where minimum period has been prescribed for entitlement to pension – Petition Dismissed: *Raghu Thakur Vs. State of M.P., I.L.R. (1996) M.P. 334 (D.B.)*

Vidyut Pradaya Upakaran (Arjan) Adhiniyam (38 of 1974)

– **Section 12 (c)**, – Deductions claimed by the Board under Section 12(c) of the Act is not barred by limitation: *M.P. Electricity Board, Jabalpur Vs. Saugor Electric Supply Co. Ltd., Calcutta, I.L.R. (1997) M.P. 60*

– **Section 13 (4)**, – Whether “Special Officer” is a Court under the Act – In view of the settled position of law Special Officer is not a “Court”, so as to attract provisions of Limitation Act: *M.P. Electricity Board, Jabalpur Vs. Saugor Electric Supply Co. Ltd., Calcutta, I.L.R. (1997) M.P. 60*

Vikram University Act, Madhya Bharat (XVIII of 1955)

– **Act does not confer authority to suspend powers of senate or syndicate:** *Devi Shanker Dwivedi Vs. Vikram University, Ujjain, I.L.R. (1977) M.P. 1077 (D.B.)*

– **Section 9, Clause (5)** – Direction of Chancellor to syndicate not to consider budget estimate – Not covered by any provision in Act: *Devi Shanker Dwivedi Vs. Vikram University, Ujjain, I.L.R. (1977), MP 1077 (D.B.)*

– **Section 9, Clause (5)** – Clause 5 – Does not confer any independent power to issue direction or having no connection with any inspection or inquiry referred in clause (a): *Devi Shanker Dwivedi Vs. Vikram University, Ujjain, I.L.R. (1977) M.P. 1077 (D.B.)*

– **Section 10 (1)** – Person is member of faculty of Arts or Samiti or member of Research Degree Committee – Person cannot be said to be connected with university: *Vasudeo Maheshwari Vs. His Excellency Shri K.C. Reddy, Chancellor, Vikram University, Ujjain, I.L.R. (1974) M.P. 925 (D.B.)*

– **Section 18** – Senate supreme authority of University Section 20 – Clauses 9(a), (b) and (n) – Clauses 9(a) and (b) not exhaustive of powers of syndicate – Clause (n) – Confer residuary power of university – Powers of syndicate get reduced if powers exercisable by different authority – Powers conferred by clauses (a) and (b) – Not liable to be taken away while those conferred by clause (n) can be taken away – Otherwise provision controls clause (n) – Power to abolish post – Exercisable by syndicate if not conferred on other authority – Statute 26 or clause 18 of ordinance – Does not take away power of syndicate to abolish posts – Act does not confer authority to suspend powers of senate of syndicate – Section 9, clause 5 – Does not confer any

independent power to issue direction having no connection with any inspection or inquiry referred in clause (a) – Direction of Chancellor to syndicate not to consider budget estimate – Not covered by any provision in Act – Distinction between dismissal and termination: *Devi Shanker Dwivedi Vs. Vikram University, Ujjain, I.L.R. (1977) M.P. 1077 (D.B.)*

– **Section 20** – Clauses 9(a), (b) and (n) – Clauses 9(a) and (b) not exhaustive of powers of syndicate: *Devi Shanker Dwivedi Vs. Vikram University, Ujjain, I.L.R. (1977) M.P. 1077 (D.B.)*

– **Section 20** – Clauses 9(a), (b) and (n) – Powers conferred by clauses (a) and (b) – Not liable to be taken away while those conferred by clause (n) can be taken away – Otherwise provision controls clause (n): *Devi Shanker Dwivedi Vs. Vikram University, Ujjain, I.L.R. (1977) M.P. 1077 (D.B.)*

– **Section 20** – Clauses 9(a), (b) and (n) – Power to abolish post – Exercisable by syndicate if not conferred on other authority: *Devi Shanker Dwivedi Vs. Vikram University, Ujjain, I.L.R. (1977) M.P. 1077 (D.B.)*

– **Section 20 – Clauses (n)** – Confers residuary powers of University: *Devi Shanker Dwivedi Vs. Vikram University, Ujjain, I.L.R. (1977) M.P. 1077 (D.B.)*

– **Section 20 – Clauses (n)** – Powers of syndicate get reduced if powers exercisable by different authority: *Devi Shanker Dwivedi Vs. Vikram University, Ujjain, I.L.R. (1977) M.P. 1077 (D.B.)*

– **Sections 44 and 45** – The provision regarding office of Vice-Chancellor and exercise of Powers under Section 45 comes into immediate operation – The words “Notwithstanding anything contained in the Act, Statutes and Ordinances” in Section 44, Scope of: *Rajendra Kumar Vs. State Government of M.P., I.L.R. (1957) M.P. 188*

– **Statue 26 or clause 18 of ordinance** – Does not take away power of syndicate to abolish posts: *Devi Shanker Dwivedi Vs. Vikram University, Ujjain, I.L.R. (1977) M.P. 1077 (D.B.)*

– **Regulation 2, Clause 3** – Meeting called on requisition of eight members – Meeting not necessarily a special meeting – Clause 3 – Power of Registrar to preside over meeting of syndicate – Section 10(1) – Person is member of Faculty of Arts or Samiti or member of research degree committee – Person cannot be said to be connected with university: *Vasudeo Maheshwari Vs. His Excellency Shri K.C. Reddy, Chancellor, Vikram University, Ujjain, I.L.R. (1974) M.P. 925 (D.B.)*

– **Regulation 2, Clause 3** – Power of Registrar to preside over meeting of syndicate: *Vasudeo Maheshwari Vs. His Excellency Shri K.C. Reddy, Chancellor, Vikram University, Ujjain, I.L.R. (1974) M.P. 925 (D.B.)*

Vikram University Act (XXVIII of 1958)

– **Contains no provision directing results committee to act judicially or to give opportunity to candidate to explain circumstances appearing against him**
 – Results committee has to decide objectively – Acts judicially: *Rajendra Kumar Vs. Vice-Chancellor, Vikram University, Ujjain, I.L.R. (1966) M.P. 28 (D.B.)*

Vikram University Ordinance 16

– **Section 10 and Ordinance 32, Section 5** – Results Committee, power of, to deal with students practicing unfair means in examination – Contains no provision directing Results Committee to act judicially or to give opportunity to candidate to explain circumstances appearing against him – Results Committee has to decide objectively – Acts judicially: *Rajendra Kumar Vs. Vice-Chancellor, Vikram University, Ujjain, I.L.R. (1966) M.P. 28 (D.B.)*

Vindhya Pradesh Abolition of Jagirs and Land Reforms Act (XI of 1952)

– **“Income” used in residuary item** – Connotes periodical monetary return coming in with some sort of regularity from definite source – Act, Schedule and rules contemplate coming in of regular and definite periodical monetary return in the calculation of gross income of a jagir: *Ran Bahadur Singh Vs. Board of Revenue M.P. Gwalior, I.L.R. (1964) M.P. 1 (D.B.)*

– **Sub-Para 3 (a)** – Amount recovered for transfer of possession of Bandhs – Not rent in respect of basic year – Is a premium and not rent – Rewa Land Revenue and Tenancy Code, 1935 – Section 4 – Definition of rent – Does not include payment of amount given for transfer of possession of Bandhs – Vindhya Pradesh Abolition of Jagirs and Land Reforms Act – “Income” used in residuary item – Connotes periodical monetary return coming in with some sort of regularity from definite source – Act, Schedule and rules contemplate coming in of regular and definite periodical monetary return in the calculation of gross income of a jagir – Para 4(C) – Legal liability of jagirdar to render service and not whether in practice actual service is taken or not – Is essential for claiming deduction: *Ran Bahadur Singh Vs. Board of Revenue M.P. Gwalior, I.L.R. (1964) M.P. 1 (D.B.)*

– **Para 4 (c)** – Legal liability of jagirdar to render service and not whether in practice actual service is taken or not – Is essential for claiming deduction: *Ran Bahadur Singh Vs. Board of Revenue M.P. Gwalior, I.L.R. (1964) M.P. 1 (D.B.)*

– **Section 6 Clause (g), sub-clause(2)** – 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 (D.B.)*

– **Section 21** – Making of enquiry – A condition precedent to the grant of patta: *Sumedhiram Vs. Deoraj Prasad, I.L.R. (1964) M.P. 983 (D.B.)*

– **Sections 22 and 24** – Sir or Khudkast land in Actual cultivation of grantee from jagirdar – Actual possession not with jagirdar – Land cannot be allotted to jagirdar: *Smt. Jayaram Kumari Vs. Beni Bahadur Singh, I.L.R. (1959) M.P. 823 (D.B.)*

Vindhya Pradesh Application of Laws Ordinance (IV of 1948)

– **Section 2** – Words “other laws” in – Is wide enough to give continuity even to a private Act enacted by Ruler of the State: *Col. Lal Rampal Singh Vs. State of Madhya Pradesh, I.L.R. (1960) M.P. 934 (F.B.)*

– **Section 2** – Words “other laws” in – Is wide enough to give continuity even to a private Act enacted by Ruler of the State – State succession – Pre-existing laws in component States continue till changed by New sovereign authority – Sovereign Ruler – Powers of – Constitution, Article 226 – Existence of alternative remedy – Not absolute bar to exercise of direction under this Article: *Col. Lal Rampal Singh Vs. State of Madhya Pradesh, I.L.R. (1960) M.P. 934 (F.B.)*

Vindhya Pradesh Gram Panchayat Ordinance, 1949

– **Section 14** – Rule 61 framed thereunder – Collector – Power of, to remove Sarpanch or Up-Sarpanch – Section 15 and 16 – Gift for a purpose secured by private enterprise not covered by these sections – Property does not vest unless some overt act performed: *Balmik Prasad Vs. The State of M.P., I.L.R. (1958) M.P. 790 (D.B.)*

– **Section 34** – Confers power on Gram Panchayat to manage and regulate markets – Power to be exercised in accordance with ordinance: *Shri Rajendra Kumar Chaturvedi Vs. President, Gram Panchayat, Harpalpur, I.L.R. (1959) M.P. 869*

– **Section 37 and Rule 221 (2)** – Imposition of tax on goods exported – Validity: *Sheoratanlal Gulabchand Vs. Gram Sabha, Jaitwara, I.L.R. (1962) M.P. 179 (D.B.)*

– **Section 37(a)**, Rule 221 (1) and (2) – Tax imposed on the quarterly of bidis prepared – Tax is not a license fees – Amounts to excise duty – Tax is illegal: *Seth Mohanlal Hargovindas Vs. Gram Panchayat, Nagod, I.L.R. (1962) M.P. 666 (D.B.)*

– **Section 112**, item (e) – Does not enable Gram Panchayat to regulate working of markets – Confers no authority to frame bye-laws – Bye-laws *ultra vires* Section 34 confers power on Gram Panchayat to manage and regulate markets – Power to be exercised in accordance with Ordinance: *Shri Rajendra Kumar Chaturvedi Vs. President, Gram Panchayat, Harpalpur, I.L.R. (1959) M.P. 869*

– **Rules 10 to 15** framed under ordinance – Name entered in the final register – Name cannot be removed till register is in operation – Name can be removed in the

next revision of register – Rule 14, Proviso – Scope of – Words “has become disqualified” in – Meaning of – Condition necessary for application of rule – Collector, Power of, to remove name during revision of register – Rule 61 – Grounds in – Have no relation to disqualification stated in Section 5 – Words and Phrases – Words “Moral Turpitude” – Covers offence under Section 457, Indian Penal Code: *Tej Bhan Singh Vs. The Collector, Rewa, I.L.R. (1963) M.P. 229 (D.B.)*

– **Rule 14, Proviso** – Scope of: *Tej Bhan Singh Vs. The Collector, Rewa, I.L.R. (1963) M.P. 229 (D.B.)*

– **Rule 61** – Grounds in – Have no relation to disqualification stated in Section 5: *Tej Bhan Singh Vs. The Collector, Rewa, I.L.R. (1963) M.P. 229 (D.B.)*

Vinirdisht Bhrast Acharan Niwaran Adhiniyam, Madhya Pradesh (XXXVI of 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: *Radharaman Agrawal Vs. State, I.L.R. (2000) M.P. 1469*

– **Section 24 and Vinirdisht Bhrast Achran Niwaran Coloniyan Ka Registrakaran Tatha Vikas Rules, M.P., 1982** Rules 3, 5 and 10 – Promissory estoppel – Operation of Collector granting colonisation licence to petitioner on certain conditions and with awareness that disputed land was exempted under urban ceiling law as agricultural land for agricultural purposes only and provisions of urban ceiling law would be attracted in case it is to be used for any other purpose – Petitioner complying with the conditions of Licence – Subsequently Collector issuing show cause notice for cancellation of licence and also meanwhile suspending the licence for suppression of material facts – Conditional exemption of land from urban ceiling law – Promissory estoppel operates – Impugned notice and order of suspension quashed: *Janki Grah Nirman Co-Operative Housing Society, Jabalpur Vs. Collector Jabalpur, I.L.R. (1986) M.P. 693 (D.B.)*

– **Section 24, 27 and 39** – Illegal colonization – Offence cognizable: *Sultan Khan Vs. State of M.P., I.L.R. (2001) M.P. 745*

– **Section 39 and 29** – Revenue Commissioner of Division is specified officer – Investigation into the offence under the Adhiniyam by police without the direction of Revenue Commissioner – Is Illegal – Resultant prosecution is void ab- initio: *Javerilal Vs. The State of M.P., I.L.R. (1986) M.P. 675*

– **Section 39** – On Collector's report Divisional Commissioner directing police investigation and subsequent filing of challan to the Court by police Procedure adopted illegal: *Sultan Khan Vs. State of M.P., I.L.R. (2001) M.P. 745*

– **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: *Sultan Khan Vs. State of M.P., I.L.R. (2001) M.P. 745*

– **Sections 39, 26 & 24(b)** – Undisputedly, Police Officer did not submit a report – Collector directly asking Commissioner to grant sanction for investigation – No prior information to Police Officer given – Lodging of complaint thereafter is illegal – Sanction for investigation into Offence of illegal colonization dispute land not shown by Collector as forming part of local area to attract said offence before Commissioner – Relevant khasra entries and copies of sale deeds also not produced – Grant of sanction shows non-application of mind – Order of sanction quashed: *State of M.P. Vs. Rajendra Singh Rathore, I.L.R. (1995) M.P. 714*

Vishwa Vidyalaya Adhiniyam, M.P. (XXII of 1973)

– **Ad-hoc lecturers** – Position: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh, Vishwavidyalaya, Rewa, I.L.R. (1987) M.P. 736 (F.B.)*

– **Does not make any provision like statute 21-AA** framed under section 30 of the University of Saugar Act, 1946 – Statute 21-AA – Being inconsistent with new Act – That provision is obliterated – Statute 21-AA – Is mandatory and not directory – 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 – Validity of appointment – To be judged by law in force at the time of the appointment: *Dr. H.N. Bhargava Vs. University of Sagar, I.L.R. (1978) M.P. 43 (D.B.)*

– **Ordinance 5**, Clause 21, Ordinance 6, Clause 23 and Constitution of India, Articles 14 – Show cause notice not necessary when there is mass coping – Discrimination in awarding punishment to different students quashed: *Ravindra Roy Vs. Bhopal University, I.L.R. (1991) M.P. 514 (D.B.)*

– **Ordinance no. 5 and Ordinance No. 6 Part VI, Clause 31, Ravishanker University** – Merit list in a examination published Revaluation sought by a examinees – Marks increased in revaluation affecting the order of merit – Amendment in merit list is consequential and inevitable: *Manoj Kumar Jindal Vs. Ravishanker University, Raipur, M.P., Through Registrar, I.L.R. (1991) M.P. 190 (D.B.)*

– **Statute 17, Clause 5** – Is made up of two parts – Under both eventualities Principal holding permanent post – Deemed to be in continuous service in his post – Leave prior to coming into force of Statute 17 – Not to be considered for purpose of clause 5 – Many duties of the Development Officer – Can be said to be academic in nature though he is not required to teach – His functions and duties are connected with education in University – Statute 19, Clauses 5 and 6 – Do not contemplate raising of *suo motu* objection by committee – Name mentioned in tentative list – No objections filed – Name could not be omitted from final seniority list – Nor committee can raise *sou motu* objection – Statute 19, Clause 5 (d) – Does not give power to committee to scrutinize seniority list – Opportunity to be given to person whose name is sought to be omitted: *Devi Prasad Shukla Vs. Ravi Shanker University, Raipur, I.L.R. (1979) M.P. 888 (D.B.)*

– **Statute 17, Clause 5** – Leave prior to coming into force of Statute 17 – Not to be considered for purpose of clause 5: *Devi Prasad Shukla Vs. Ravi Shanker University, Raipur, I.L.R. (1979) M.P. 888 (D.B.)*

– **Statute 17, Clause 5** – Many duties of the Development Officer – Can be said to be academic in nature through he is not required to teach – His functions and duties are connected with education in University: *Devi Prasad Shukla Vs. Ravi Shanker University, Raipur, I.L.R. (1979) M.P. 888 (D.B.)*

– **Statute 19, Clause 5(d)** – Does not give power to committee to scrutinize seniority list – Opportunity to be given to person whose name is sought to be omitted: *Devi Prasad Shukla Vs. Ravi Shanker University, Raipur, I.L.R. (1979) M.P. 888 (D.B.)*

– **Statute 19, Clauses 5 and 6** – Do not contemplate raising of *suo motu* objection by committee: *Devi Prasad Shukla Vs. Ravi Shanker University, Raipur, I.L.R. (1979) M.P. 888 (D.B.)*

– **Statute 19, Clauses 5 and 6** Name mentioned to tentative list – Not objections filed – Name could not be omitted from final seniority list – Nor committee can raise *sou motu* objection: *Devi Prasad Shukla Vs. Ravi Shanker University, Raipur, I.L.R. (1979) M.P. 888 (D.B.)*

– **Statute No. 25** – Words “every teacher” – Who is – Statute no. 28, clause 16 and 18 – Appointment of teachers – How to be made – Ashaskiya Sikshana Sansthan Adhiniyam, M.P. (XX of 1978) – Rules framed thereunder – Rule 14 (1) – Requires selection of teachers by committee under chairmanship of Kulpati – Their appointment not made according to it – They are not entitled to be included in teachers electoral roll – Ad-hoc lecturers – Position of – Interpretation of Statute – Language Capable of two meanings – Absurdity should be avoided – Constitution of India – Article 226 – Futile cannot be issued: *Radheshyam Tripathi Vs. Awadhesh Pratap Singh, Vishwavidyalaya, Rewa, I.L.R. (1987) M.P. 736 (F.B.)*

– **Statute 29, Clause 12(3)** – Removal of examiner – No person can be condemned unheard – Principles of natural justice should be observed – When the authority of the university reached to the conclusion that the examiner's work being unsatisfactory at that stage before passing the removal order an opportunity of hearing should be given to examiner: *Awadhesh Prasad Shukla Vs. Professor J.P. Shukla, I.L.R. (1995) M.P. 545*

– **Statue 69** – Framed in exercise of powers under Section 38 – Merit promotion scheme – Method of implementation – Clause 4 – Restriction on such promotion to 1/3 of number of total permanent position and not more than Two posts in a given plan period – Admission in return that two promotions had already been made – Respondent had no authority to give promotion to respondents in excess of limit – Promotion order of Respondent quashed – Retirement of one of the professor holding the post under merit promotion scheme will not validate illegal appointment of respondent from retrospective date – Mandamus for refund of money – Cannot be issued at the instance of petitioner who himself has no right to claim such refund: *Dr. Govind Prasad Mishra Vs. Rani Durgawati Vishwa Vidhyalaya, I.L.R. (1999) M.P. 81 (D.B.)*

– **Section 2(v) and 15(4)** – Emergency decision by Kulpati – Executive Council has a statutory duty to consider the action of Kulpati and decide whether it is approved or disapproved – While considering the action of Kulpati Executive council not to be influenced by the report of Commission which is without jurisdiction: *Dr.(Ku.)Sneh Rani Jain Vs. State of M.P., I.L.R. (1982) M.P. 233 (D.B.)*

– **Section 2(v) and 15(4)** – Resignation of an employee accepted by vice-Chancellor under Section 14(4) of the University of Saugar Act, 1946 – Deemed to be under Section 15(4) of the Adhiniyam – Resignation – When may be withdrawn: *Dr.(Ku.)Sneh Rani Jain Vs. State of M.P., I.L.R. (1982) M.P. 233 (D.B.)*

– **Section 4 (xvii) and 2 (ii)**, Ordinance 6, Clause 1 and Constitution of India, Article 226 – Establishment of University of Saugar under the University of Saugar Act, 1946 (First Schedule) – Statutory fiction – Deemed to be University under Vishwavidyalaya Adhiniyam, Madhya Pradesh, 1973 – Natural Justice – Rule of, not codified conditions in which a candidate can be refused permission to appear in examination or cancel his examination – Petitioner unsuccessful examinee at LLB Examination of Saugar University – Awadhesh Pratap Singh University permitting petitioner to appear in LL.B. Examination as Ex-student – Admission card issued – Subsequently University cancelling it and withholding result without notice to show cause – Rules of natural justice violated – Certiorari can issue – Evidence Act – Section 115 – Promissory Estoppel – Principles of Petitioner neither guilty of fraud nor misstatement or super-session of facts not patently ineligible – Promissory estoppel operative against the University respondent: *Bal Krishna Tiwari Vs. Registrar, Awadhesh Pratap Singh University, Rewa, I.L.R. (1979) M.P. 289 (F.B.)*

– **Sections 4 (xxi), 49** – Person connected with University – Expert member on selection committee connected with University – Expert member not sending resignation to Registrar as required under law but to Vice-Chancellor – Resignation to take effect as soon as it reaches the Registrar – Endorsement by Vice-Chancellor that resignation accepted is meaningless – Resignation did not have effect of snapping the relationship of expert member with University – Role of an expert in selection committee is not unnecessary, insignificant or ancillary role – Constitution of selection committee vitiated – Consequently selection made by selection committee also vitiated: *Lal Mani Singh Vs. Awadhesh Pratap Singh University, Rewa, I.L.R. (1994) M.P. 38 (D.B.)*

– **Section 7** – Refers to affiliation of educational institution and colleges with university: *John Chirayil Kurian Vs. University of Sagar, I.L.R. (1979) M.P. 900 (D.B.)*

– **Section 13(2) and (3)** – Empanelment of “not less than 3 persons” – Requirement of – Directory – Empanelment of only 2 persons found to be suitable for the post – Appointment of one of them as Kulapati – Appointment Valid – Interpretation of Statute – Command in negative form in a Statute – Exception: *Zaheer Ahmad Vs. The Kuladhipati, Bhopal University, Bhopal, I.L.R. (1983) M.P. 436*

– **Section 18**, Statute no. 20 Clause (4) – University inviting applications for a post of librarian mentioning essential qualification and ‘desirable’ and providing in the advertisement that application must reach University office latest by 30-10-1982 – Requirement regarding date of receipt of applications – Whether such requirement constitutes condition of eligibility and application received by post on 2-11-1982 was no liable to be considered: *Rani Durgawati Vishwa Vidyalaya, Jabalpur Vs. Laxman Richaria, I.L.R. (1987) M.P. 693 (D.B.)*

– **Section 20**, Statute 23, Clauses 2(xi), 53 and 55 and Constitution of India, Article 226 – Statute 23 – Object of – The word ‘duly sealed’ – Meaning of – Validity of a vote can be scrutinized only in an election petition under clause 53 and not in writ petition – Interpretation of Statute – Expression in a Statute to be understood in a sense to harmonise the object of the Statute and legislature: *R.P. Singh Vs. Awadhesh Pratap Singh University, Rewa, I.L.R. (1986) M.P. 313 (D.B.)*

– **Section 20**, Statute 23, Clauses 53 – Validity of a vote can be scrutinized only in an election petition under clause 53 and not in writ petition: *R.P. Singh Vs. Awadhesh Pratap Singh University, Rewa, I.L.R. (1986) M.P. 313 (D.B.)*

– **Section 24, Clause (xxxvii)** and Section 37, Clauses (iv) to (vi) – Contemplate admission of non-collegiate students being admitted to examination of University – Subject to other provisions of Act, Statutes and Ordinances: *John Chirayil Kurian Vs. University of Sagar, I.L.R. (1979) M.P. 900 (D.B.)*

– **Section 37 (iii)** Ordinance under – Ordinance 6, Clause 23, Sub-Clauses (f)(i) – Possession of any chit or any note prohibited in Examination hall – Candidate running away with the chit when noticed by Superintendent of Examination – Such conduct establishes use of unfair means – Notice to show cause – Vagueness in it – Enquiry when vitiated – Natural justice – Rules of – Opportunity to be heard orally given but not availed of – Grievance cannot be made – Constitution of India – Article 226 – Interference with the conclusions reached by committee – When can be made: *Mohammad Yakub Ansari Vs. Devi Ahilya Vishwavidyalaya, Indore, I.L.R. (1987) M.P. 617 (D.B.)*

– **Sections 37, 38** Ordinance No. 57 (2) (a), Ordinance No.7, Rule 4/27, Rules for post graduation, Medical Council Act, Indian (LII of 1956), Regulations u/s 33, Constitution of India, Article 226 – House–job of petitioner terminated – No opportunity of hearing given, Rules of natural Justice not followed – Petitioner did not incur any disqualification for post graduation – Regulation u/s 33 requires one year’s housemanship – House–job done in recognised hospital – Condition regarding house–job in medical college, unreasonable – Condition debarring meritorious students from prosecuting higher studies – Amounts to unreasonable restriction – Merit has to be preferred to other superfluous considerations: *Dr. Ashish Dixit Vs. Union of India, I.L.R. (1988) M.P. 618 (D.B.)*

– **Section 37**, Ordinances 1, 2 – Discretion to nominate the office bearer of the Union by Vice-chancellor or Principal – No right of students has been infringed: *Sanjay Jain Vs. State of M.P., I.L.R. (1989) M.P. 525(D.B.)*

– **Section 38, 39** – Powers of University to frame rules for admission – Universities are autonomous bodies created by different Acts – Can provide their own guidelines for admission to respective courses – Ordinance in relation to Master of Computer Semester Examinations – Clause 13 provision for disqualifying candidates who failed in two papers of preceding semester to take admission in next semester in the respondent University – Not arbitrary not unconstitutional: *Yashwant Birla Vs. Pt. Ravishankar Shukla University, I.L.R. (2001) M.P. 178 (D.B.)*

– **Section 44(1)**, Clause 12(3) of Statute 29–Opportunity of hearing though not provided before passing any order but the University authorities must observe principles of natural justice as their disciplinary powers have been described as judicial or quasi-judicial: *Dr. N.G. Rathi Vs. Ravishankar University, Raipur, I.L.R. (1992) M.P. 246 (D.B.)*

– **Section 46(b)** – “Incorporation of University byelaw” – Meaning of – Invalidity of law – Effect – Constitution of India – Article 226 – Interpretation of provision of Act involved – High Court can exercise discretionary power even though alternative remedy

is available: *Babulal Sharma Vs. The Vice-Chancellor, Awadesh Pratap Singh University Rewa, I.L.R. (1980) M.P. 735 (D.B.)*

– **Section 49** – Minimum Qualification – Advertisement inviting application for appointment to posts of Professors, Readers and Lectures did not contain detailed minimum qualification expected – Handout supplied with application form contained minimum qualification which is in accordance with requirements laid down by U.G.C. – Advertisement not defective simply because minimum qualifications were not stated – Question of prejudice to applicants or to University also not raised – Advertisement proper: *Lal Mani Singh Vs. Awadhesh Pratap Singh University, Rewa, I.L.R. (1994) M.P. 37 (D.B.)*

– **Section 49** – Percentage of Reservation – Advertisement only mentioning existence of usual reservation for SC/ST candidates – Reservation quota laid down by UGC well known – Advertisement not vitiated merely because percentage of reservation not mentioned: *Lal Mani Singh Vs. Awadhesh Pratap Singh University, Rewa, I.L.R. (1994) M.P. 38 (D.B.)*

– **Section 49** – University Grants Commission Act 1956, Section 12 – Merit promotion scheme – Readers, Professors promoted under – Do not fall within cadre of Readers, Professors and cannot compete with cadre employees in seniority and promotion – That, however, does not mean that they are not Readers or Professors and they are still to be treated as only Lecturers or Readers as the case may be from which posts they got merit promotion: *Dr. Rashmi Srivastava Vs. Vikram University, I.L.R. (1995) M.P. 106 (S.C.) (D.B.)*

– **Sections 49, 6(30)** – Appointment of Readers, Professors – Can only be by direct recruitment – Additional posts of Readers, Professors can be created under S.6 – But cannot be reserved for promotees: *Dr. Rashmi Srivastava Vs. Vikram University, I.L.R. (1995) M.P. 104 (S.C.) (D.B.)*

– **Section 52(1)** – Requirement is satisfaction as to whether or not sufficient material exist – Show cause notice also given to petitioner/Vice – Chancellor as why he should not demit office – The vice- Chancellor and Registrar found to be in head on collision resulting in chaos in the affairs of University detrimental to the interest of students and their studies – Sufficient to invoke emergence provision of the Act: *Prof. Narendra Kumar Gouraha Vs. State, I.L.R. (2000) M.P. 558*

– **Section 55** – Alternative remedy – Dispute relating to appointment to salaried posts of University – Alternative remedy of approaching Vice-Chancellor not available in view of Explanation II to Section 55: *Lal Mani Singh Vs. Awadhesh Pratap Singh University, Rewa, I.L.R. (1994) M.P. 39 (D.B.)*

– **Section 59**–Bar to any suit–Though cause of act on shown to have arisen prior to coming into force of the Adhiniyam Trial Court justified in dismissing the suit for want of jurisdiction–Plaintiff has a remedy of moving the Kuladhipati for making reference of dispute–No interference in impugned judgment called for: *Ghanshyam Gautam Vs. Jiwaji Vishwavidhyalaya, Gwalior, I.L.R. (1992) M.P. 457*

Vishwa Vidhyalaya (Sanshodhan) Adhiniyam, M.P. (IV of 1996)

– **Section 49-A** – Insertion of – two methods of recruitment but no provision for interlacing seniority – Lacuna remedied by inserting Section 49-A providing for combined seniority of persons recruited directly and also those recruited by promotion – Not violative of Articles 14 and 16: *Dr.Chain Singh Panwar Vs. State, I.L.R. (2000) M.P. 1396 (D.B.)*

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– **List once finalized** – Cannot be altered except for permissible corrections as accidental errors: *Gopalsingh, Vs. Collector, Morena, I.L.R. (1964) M.P. 195 (D.B.)*

Vriti Kar Adhiniyam, M.P. (16 of 1995)

– **Section 5** – Computation of income for levy of Professional-tax – Deduction allowable to professionals not allowed to salaried class – Would not make it ultra vires of Article 14 of Constitution – Both classes of persons stand on different footing and are not similarly placed – Provision not discriminatory: *High Court of Employee Association Vs. State of M.P., I.L.R. (1996) M.P. 109 (D.B.)*

– **Section 5** – Deductions allowed under Income-tax Act not available under provisions of Professional Tax Act – Does not invalidate provision under Professional Tax Act – Origin of both enactments are different – Basis in I.T. Act is income and in Professional Tax Act it is profession, trades, callings and employments – State competent to legislate: *High Court of Employee Association Vs. State of M.P., I.L.R. (1996) M.P. 109 (D.B.)*

Vritti, Vyapar, Ajivika Aur Sevayoujan Kar Adhiniyam Madhya Pradesh (XXVI of 1966)

– **Profit earned by the firm, when distributed to the partners** – Is no an income taxable in the hands of partners: *Sambhaji Rao Vs. State of M.P. Etc., I.L.R. (1975) M.P. 475 (D.B.)*

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– **Conduct of parties and correspondence between them negating any acts of waiver** – Waiver cannot be inferred: *M/s Suhag Hotels (Pvt.) Ltd., New Delhi Vs. M.P. Housing Board, Bhopal, I.L.R. (1984) M.P. 129 (D.B.)*

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– **Land used for burial from time immemorial** – No express dedication – Land is wakf: *Mohammad Kasam Vs. Abdul Gafoor, I.L.R. (1966) M.P. 418 (D.B.)*

Wakfs Act (XXIX of 1954)

– **Wakf property** – School transferred un-conditionally, management committee dissolved, lease transferred in the name of municipal council and school and building maintained by it – Ownership of land and building was also transferred along with management of school – Such property cannot said to be a Wakf property: *Municipal Council Vs. M.P. Wakf Board, Bhopal, I.L.R. (1988) M.P. 306*

– **Section 11** – Appointment under clause (C) – Requirement of one of the three qualifications prescribed thereunder necessary: *Mohammad Yahyah Ali Khan Vs. State of M.P., I.L.R. (1983) M.P. 134 (D.B.)*

– **Section 11** – Members not possessing requisite Qualifications – This appointment of Board is rendered invalid and liable to be quashed: *Mohammad Yahyah Ali Khan Vs. State of M.P., I.L.R. (1983) M.P. 134 (D.B.)*

– **Section 11** – Mutawalli possessing qualifications and requirements under other clauses than (d) – Not prohibited from being appointed as member of Board: *Mohammad Yahyah Ali Khan Vs. State of M.P., I.L.R. (1983) M.P. 134 (D.B.)*

– **Sections 43(4A), 55C** – Jurisdiction of Civil Court – Section 43 of wakf at provides for removable of Mutawalli – Bar against removal of Mutawalli – Appeal may be made against such order within one month before the tribunal and decision of Tribunal shall be final – Jurisdiction of Civil Court stands ousted: *Intazamiya Committee Id Gah, Morar Vs. M.P. Wakf Board, Bhopal, I.L.R. (1995) M.P. 304*

Wakf Act (I of 1995)

– **as amended – Sections 83 and 85** – Prohibition – Civil Court shall not decide the dispute of the nature triable by the Wakf Tribunal – Petitioner not disclosing to

which authority the lis should be transferred – Prayer cannot be acceded to in view of express statutory prohibition: *M.P. Wakf Board, Bhopal Vs. State, I.L.R. (2000) M.P. 207*

– **Sections 55-G, 83(9)** – Revision – Suit relating to Waqf property – Rightly transferred to Waqf Tribunal – Erstwhile Nawab dedicated land to Mazar – Transfar effected not by sale but appointment made for management of the property – Cannot be said to be an allotment in personal capacity – Suit land part of Kabristan – Rightly included in register of Waqf Property: *Sewaram Vs. M.P. Waqf Board Bhopal, I.L.R. (2005) M.P. 452*

– **Sections 63, 64, 83(9)** – Revision – Muslim law – Appointment of Mutawalli – Period for which appointment is made should be specified- – Inter se dispute relating to hereditary succession of appointment – Parties directed to get the dispute decided by competent Court: *Syed Yaqub Hassan Peerzada Vs. M.P. Wakf Board, Bhopal; I.L.R. (2005) M.P. 271*

Water (Prevention and Control of Pollution) Act (VI of 1974)

– **The Word “Pollution”** – Meaning of: *M/s Rajadhiraj Industries Pvt. Ltd. Vs. Nanhelal Baghel, I.L.R. (1987) M.P. 176*

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– **Sections 24, 25 and 58, Civil Procedure Code (V of 1908)**, Order 39, rule 2 and Sections 9 and 91 and Evidence Act, Indian (I of 1872), Section 57 – Public ‘nuisance’ – Pollution of water amounts to Common Law right – Civil suit for its enforcement under section 91, Civil Procedure Code – Maintainability of – Section 58 – Does not take away jurisdiction of Civil Court – Right to as discharge water through natural stream, tank or river – Does not include a right to pollute water by discharge of trade effluent – Civil Procedure Code – Order 39, rule 2 – Envisages expression injury of any ‘kind’ – Discharge of trade effluent without any treatment by setting up water treatment plant – Covered under this expression – *Prima facie* case made out – Court can grant injunction restraining discharge of trade effluent until provision for its treatment provided – Evidence Act – Section 57 – Court can take judicial notice of general and Public facts – The word ‘pollution’ – Meaning of – Necessity for enacting penal law against pollution of water, air and noise pointed out: *M/s Rajadhiraj Industries Pvt. Ltd. Vs. Nanhelal Baghel, I.L.R. (1987) M.P. 176*

– **Sections 25,26** – Writ petition – Consent for installing stone crusher – Grant and cancellation thereof – Once consent is granted cannot be cancelled without affording

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– **Section 49** – Complaint filed by Member Secretary on behalf of Board against Factory and its general Manager for violation of Section 25 and 26 – No resolution by Board to file complaint – Sanction given by Board after institution of complaint cannot be previous sanction as required under Section 49 – Complaint not maintainable: *Morena Mandal Sahakari Shakkar Karkhana Ltd., Vs. M.P. Board for Prevention and Control of Water Pollution, Bhopal, I.L.R. (1993) M.P. 309*

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– **Bhogra land allotted to co-sharers** – Succession to such lands governed by rules relating to succession of ryots: *Dayaram, Vs. Maheshwar MP, I.L.R. (1960) M.P. 451 (D.B.)*

– **Clauses 5 and 15** – Property of Thekedar is partible amongst members – Partition not binding on State – State can induct new thekedar having title over entire bhogra land – M.P. Abolition of Proprietary Rights Act, Section 54(1) – Land Secured by Ex-thekedar under – Land is impressed with former character – Code of Civil Procedure Section 11 – Former Court must be Competent to try whole of subsequent suit and not merely as issue – Co-owner – Suit by one co-owner against person in wrongful possession – Suit regarded as on behalf of all co-owners: *Mst. Pilononi Vs. Anand Singh, I.L.R. (1960) M.P. 285 (D.B.)*

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– **Section 2 (m)** – Contingent liability for payment – Does not amount to debt owed by assessee: *Seth Narsinghdas Kanhaiyalal, Hanumantal, Jabalpur, Vs. The Commissioner of Wealth Tax, M.P., Nagpur and Bhandra, Nagpur, I.L.R. (1970) M.P. 845 (D.B.)*

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– **Vires of:** *Shri Singhai Nathuram Shri Nandanlal Vs. The Commissioner of Wealth-Tax, Madhya Pradesh and Nagpur, Nagpur, I.L.R. (1971) M.P. 1087 (D.B.)*

– **Section 2(e)** – The definition of “assets” – Wide – Includes every description of property movable and immovable – Includes also present and future debts: *Sardar C.S. Angre Vs. The Commissioner of Wealth Tax, M.P., Nagpur, I.L.R. (1972) M.P. 207 (D.B.)*

– **Section 2(e)** – “Assets” – Connotation of – Section 2(m) – ‘Net wealth’ – Meaning of section 7 – Value of assets – How to be determined – Right to recover or use for mesne profits – Nature of – Is ‘property’ falling within the definition of ‘assets’ in section 2(e) – Liable to be included in the ‘net wealth’ of the assessee on the valuation date even before passing of the decree quantifying the amount of mesne profits – Assessment of valuation of such right: *The Commissioner of Wealth Tax, M.P.–II, Bhopal Vs. Shivji Bhai Jairam, (H.U.F.), Raipur, I.L.R. (1983) M.P. 115 (D.B.)*

– **Section 2(e)** – Right to recover or use for mesne profits – Nature of – Is ‘property’ falling within the definition of ‘assets’ in section 2(e) – Liable to be included in the ‘net wealth’ of the assessee on the valuation date even before passing of the decree quantifying the amount of mesne profits – Assessment of valuation of such right: *The Commissioner of Wealth Tax, M.P.– II, Bhopal Vs. Shivji Bhai Jairam, (H.U.F.), Raipur, I.L.R. (1983) M.P. 115 (D.B.)*

– **Section 2(e) (iv)** – Annuity meaning of – Assessee retiring from the firm but keeping his half share in goodwill – Assessee receiving Rs. 50,000/- annually towards use of his half share of good will by the firm – Amount so received does not amount to annuity – It is commutable and cannot be excluded from net wealth – Value of share in good will of assessee in such case is includable in his net wealth: *Parmanand Bhai Patel Vs. Commissioner of Wealth Tax, M.P., II Bhopal, I.L.R. (1989) M.P. 186 (D.B.)*

– **Section 2(m)(e)(q) and Section 3** – Compensation amount not paid is a debt – Is an asset – Liable to be included in the net wealth of assessee: *Sardar C.S. Angre Vs. The Commissioner of Wealth Tax, M.P., Nagpur, I.L.R. (1972) M.P. 207 (D.B.)*

– **Section 2(m)(e)(q) and Section 3** – Wealth tax chargeable on all assets wherever located on a valuation date – Requirement is that it must belong to assessee: *Sardar C.S. Angre Vs. The Commissioner of Wealth Tax, M.P., Nagpur, I.L.R. (1972) M.P. 207 (D.B.)*

– **Section 2 (m)** – Expression “Quareza-e-Hasana” – Means a loan given in good faith and good will according to quranic law – No legal obligation of debtor to pay and no legal right to creditor to recover – Such loan does not constitute wealth of an assessee – Not liable to be included in ‘Net wealth’ of an assessee: *The Commissioner of Wealth Tax M.P., Bhopal Vs. Abdul Hussain, I.L.R. (1979) M.P. 1126 (D.B.)*

– **Section 2(m)** – ‘Net Wealth’ – Definition of – Expression “Quaraza-e-Hasana” – Means a loan given in good faith and good will according to quranic law – No legal obligation of debtor to pay and no legal right of creditor to recover – Such loan does not constitute wealth of an assessee – Nor liable to be included in ‘Net wealth’ of an assessee – Voluntary repayment by debtor – Constitutes Wealth in the assessment year of repayment: *The Commissioner of Wealth Tax M.P., Bhopal Vs. Abdul Hussain, I.L.R. (1979) M.P. 1126 (D.B.)*

– **Section 2(m)** – Voluntary repayment by debtor – Constitutes Wealth in the assessment year of repayment: *The Commissioner of Wealth Tax M.P., Bhopal Vs. Abdul Hussain, I.L.R. (1979) M.P. 1126 (D.B.)*

– **Section 2(m) 5(1)(iv) and 5(1-A) and Wealth Tax rules** – Rule 2 – Assessment of Individual – House in the name of partnership firm of which assessee is a partner – Assessee entitled to exemption under section 5(1)(iv) in proportion to his wealth in the firm: *Jagdish Chandra Grover Vs. Commissioner of Wealth-Tax, Jabalpur, I.L.R. (1986) M.P. 479 (D.B.)*

– **Section 3** – Vires of: *Shri Singhai Nathuram Shri Nandanlal Vs. The Commissioner of Wealth-Tax, Madhya Pradesh and Nagpur, Nagpur, I.L.R. (1971) M.P. 1087 (D.B.)*

– **Section 3** – Circumstances when assessee liable to pay wealth-tax – Section 5(1)(i) – Words “other legal obligation” include wakfs – Deed – Principle of construction – Document to be read as a whole to find out intention of executant or the legal effect of deed – Mahomedan Law – Wakf – Things which indicate that property is given is wakf – When can wakf be inferred – Right of wakf when comes to an end: *The Commissioner of Wealth Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur Vs. Begum Hashmatbi, I.L.R. (1975) M.P. 742 (D.B.)*

– **Section 5(1) (i)** – Words “other legal obligation” include wakfs: *The Commissioner of Wealth Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur Vs. Begum Hashmatbi, I.L.R. (1975) M.P. 742 (D.B.)*

– **Section 5(1)**, clause (viii), as amended by Finance (No.2) Act of 1971 with retrospective effect from 1-4-1963 and Explanation 1 to clause (viii) added by Finance (No.2) Act of 1971 with effect from 1st April, 1972 – The term “Jewellery” used therein – Meaning of – Dictionary meaning of a word in a statute – Basic rule of its use to understand the meaning of – The term “Jewellery” as used in clause (viii) is not wide so as to cover all ornaments – Gold ornaments not studded with precious or semi-precious stones not included in the term “Jewellery” prior to 1st April 1972: *The Commissioner of Wealth-Tax, M.P.-I., Bhopal Vs. Smt. Tarabai Kanakmal, I.L.R. (1983) M.P. 67 (F.B.)*

– **Section 5(1) (iv) and 7(4)** – Claim of assessee for exemption on ground of self- occupation – Matter remanded to the WTO to decide whether the property constituted two separate houses or is one house – Cannot be said to be a new plea: *Smt. Aruna Devi Baheti Vs. Commissioner of Wealth-Tax Bhopal, I.L.R. (2000) M.P. 1169 (D.B.)*

– **Section 5 (1) (iv) and 7(4)** – Order not in any way prejudicial to the interest of assessee as being passed in the process of assessment – Such new plea taken by tribunal does not constitute separate subject matter – Tribunal justified in entertaining the new plea – Reference answered in the affirmative: *Smt. Aruna Devi Baheti Vs. Commissioner of Wealth-Tax Bhopal, I.L.R. (2000) M.P. 1169 (D.B.)*

– **Section 7** – Determination of value of assets – Two houses connected by a bridge over public road – Cannot be said to be one house without proper enquiry: *Smt. Aruna Devi Baheti Vs. Commissioner of Wealth-Tax Bhopal, I.L.R. (2000) M.P. 1169 (D.B.)*

– **Section 7** – Value of assets – How to be determined: *The Commissioner of Wealth Tax, M.P. – II, Bhopal Vs. Shivji Bhai Jairam, (H.U.F.), Raipur, I.L.R. (1983) M.P. 115 (D.B.)*

– **Section 7(2)(a)** – Empowers authority to adopt balance sheet value of assets as net value of business as a whole – Can make adjustment if it considers balance sheet does not represent correct value of assets – Question of adopting particular mode of valuation – Matter entirely in the discretion of the Tribunal – Not necessary that all depreciation allowable for income-tax purposes – To be allowable in computation of total wealth – Depends upon facts and circumstances of each cases: *The Commissioner of Wealth-Tax, M.P., Nagpur And Bhandara, Nagpur Vs. The Swadeshi Cotton And Flour Mills Ltd., Indore, Nagpur, I.L.R. (1972) M.P. 1119 (D.B.)*

– **Section 7(2)(a)** – Not necessary that all depreciation allowable for income-tax purposes to be allowable in computation of total wealth – Depends upon facts and circumstances of each case: *The Commissioner of Wealth-Tax, M.P., Nagpur And Bhandara, Nagpur Vs. The Swadeshi Cotton And Flour Mills Ltd., Indore, Nagpur, I.L.R. (1972) M.P. 1119 (D.B.)*

– **Section 7(2)(a)** – Question of adopting particular mode of valuation – Matter entirely in the discretion of the Tribunal: *The Commissioner of Wealth-Tax, M.P., Nagpur And Bhandara, Nagpur Vs. The Swadeshi Cotton And Flour Mills Ltd., Indore, Nagpur, I.L.R. (1972) M.P. 1119 (D.B.)*

– **Section 7(2)(a)** – Scope of – Method in which net value of assets of the business has to be ascertained: *Central India Machinery Manufacturing Co. Ltd. Vs. The Commissioner of Wealth Tax, Nagpur, I.L.R. (1975) M.P. 372 (D.B.)*

– **Section 17(1)(b)** – Word “Information” in – Meaning of – Section 2(m)(e)(q) and section 3 – Wealth-tax chargeable on all assets wherever located on a valuation date – Requirement is that it must belong to assessee – The definition of “ assets” – Wide – Includes every description of property movable and immovable – Includes also present and future debts – Compensation amount not paid is a debt – Is an asset – Liable to be included in the net wealth of assessee: *Sardar C.S. Angre Vs. The Commissioner of Wealth Tax, M.P., Nagpur, I.L.R. (1972) M.P. 207 (D.B.)*

– **Section 17(1)(a) and (b)** – Re-opening of assessment – Permissibility – Assessee disclosing fully and truly all material facts in his return – Assessee’s contention accepted by wealth Tax officer – Assessment cannot be re-opened subsequently: *Commissioner of Wealth Tax, Bhopal Vs. Manilal C. Desai, I.L.R. (1981) M.P. 622 (D.B.)*

– **Section 27** – Gives no power to Tribunal to withdraw the reference: *Gajadhar Prasad Nathu Lal Vs. The Commissioner of Wealth-Tax, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 895 (D.B.)*

– **Section 27** – Party failing to appear or party appearing and stating that it is not interested in the reference – High Court not bound to answer reference: *Gajadhar Prasad Nathu Lal Vs. The Commissioner of Wealth-Tax, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 895 (D.B.)*

– **Section 27** – Party who can withdraw reference – Gives no power to Tribunal to withdraw the reference – Party failing to appear or party appearing and stating that it is not interested in the reference – High Court not bound to answer reference: *Gajadhar Prasad Nathu Lal Vs. The Commissioner of Wealth-Tax, M.P., Nagpur and Bhandara, Nagpur, I.L.R. (1969) M.P. 895 (D.B.)*

– **Section 27** – Reference at the instance of assessee – Section 7 – Determination of value of – Assets – Two houses connected by a bridge over public road – Cannot be said to be one house without proper enquiry – Section 5(1)(iv) and 7(4) – Claim of assessee for exemption on ground of self-occupation – Matter remanded to the WTO to decide whether the property constituted two separate houses or is one house – Cannot be said to be a new plea – Order not in any way prejudicial to the interest of assessee as being passed in the process of assessment – Such new plea taken by Tribunal does not constitute separate subject matter – Tribunal justified in entertaining the new plea – Reference answered in the affirmative: *Smt. Aruna Devi Baheti Vs. Commissioner of Wealth-Tax Bhopal, I.L.R. (2000) M.P. 1169 (D.B.)*

– **Section 27(3) and Limitation Act Indian (XXXVI of 1963)**, Section 5 and 29 (2) – Section 5 of Limitation Act applies to application under Section 27 (3) Wealth Tax Act: *Nihalkaran Vs. Commissioner of Wealth-Tax, Bhopal, I.L.R. (1987) M.P. 725 (F.B.)*

– **Sections 27(1) and 2 (e) (iv)** – Annuity – To be excluded from assets – Annuity, meaning of – Assessee retiring from the firm but keeping his half share in goodwill – Assessee receiving Rs. 50,000/- annually to wards use of his half share of goodwill by the firm – Amount so received does not amount to annuity – It is commutable and cannot be excluded from net wealth – Value of share in goodwill of assessee in such case is includable in his net wealth: *Parmanand Bhai Patel Vs. Commissioner of Wealth tax, M.P., II Bhopal, I.L.R. (1989) M.P. 186 (D.B.)*

Wheat Procurement (Levy) Order, M.P., 1973

– **Section 1 and 2(a)** – Preamble – Object – Purpose is to procure adequate quantity of wheat for public distribution Wheat and wheat-seed – Distinction – Wheat seed neither food stuff nor meant for human consumption – Levy order not applicable to wheat-seed growers – Essential Commodities Act, 1955 – Section 3 – Jurisdiction – Exercisable only in respect of food stuffs meant for human consumption and public distribution – Seeds Act, 1966 – Regulates quantity of seeds and sale thereof: *Satyapal Anand Vs. The State of M.P., I.L.R. (1981) M.P. 102 (D.B.)*

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– **Clause 5** – Does not contravene Article 19 (i)(f) and (j) of Constitution of India: *Baldoo Vs. State of Madhya Pradesh, I.L.R. (1969) M.P. 39 (D.B.)*

– **Clause 5** – Imposes a reasonable restriction in the interest of general public: *Baldoo Vs. State of Madhya Pradesh, I.L.R. (1969) M.P. 39 (D.B.)*

– **Clause 5** – Not a pivotal provision – Whole does not become non-applicable because clause 5 does not apply to agriculturist dealer: *Baldoo Vs. State of Madhya Pradesh, I.L.R. (1969) M.P. 39 (D.B.)*

– **Clause 5** – Not bad on ground of excessive delegation: *Baldoo Vs. State of Madhya Pradesh, I.L.R. (1969) M.P. 39 (D.B.)*

– **Clause 5** – Scope and purpose of – Not bad on ground of excessive delegation – Imposes a reasonable restriction in the interest of general public – Does not contravene Article 19(i) (f) and (j) of Constitution of India – Clause 5 – Not a pivotal provision – Whole does not become non-applicable because clause 5 does not apply to agriculturist dealer – Clause 8 (c) – Does not infringe Article 19 (i) (f): *Baldoo Vs. State of Madhya Pradesh, I.L.R. (1969) M.P. 39 (D.B.)*

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Wild Life (Protection) Act (LIII of 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 39** – Government Property – Revision filed by State against the order release jeep on furnishing security – Amended Section 39 provides every vehicle used for committing offence and has been seized under provisions of Act shall be property of State Govt. – Section 50(2) which provided release of vehicle also omitted – Vehicle seized under provisions of Wild Life (Protection) Act cannot be released – Vehicle directed to be returned back to Addl. Inspector General, Wild Life – Revision Allowed: *State of M.P. Vs. Sayed Yahya Ali, I.L.R. (1994) M.P. 498*

Will

– **By sole coparcener** – Adoption by the widow of another coparcener – Right of adopted son to challenge the disposition made by the 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: *Mst. Jhunkaribahu Vs. Phoolchand, I.L.R. (1957) M.P. 531 (D.B.)*

– **Burden of proof on propounder** – Nature of evidence necessary to be adduced: *Mulchand Vs. Smt. Amritbai, I.L.R. (1980) M.P. 838 (D.B.)*

– **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.)*

– **Construction of** – Intention of the testator to be ascertained from the language of document itself – Document to be read as a whole to ascertain intention: *Suklal Vs. Smt. Dashodia, I.L.R. (1988) M.P. 268*

– **Date of execution and date of death of testator** – Law applicable thereto: *Smt. Rambati Vs. Smt. Bundkuwar, I.L.R. (1980) M.P. 764*

– **Effect and validity of in respect of tenancy lands** – Powers of testamentary disposition – Tenancy Act, C.P., 1920 and Land Revenue Code, Madhya Pradesh, 1954 – Distinction between – Date of execution and date of death of testator – Law applicable thereto: *Smt. Rambati Vs. Smt. Bundkuwar, I.L.R. (1980) M.P. 764*

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– **Probate of Will obtained in foreign Court** – Does not do away with proof of will – Construction of Will – Surrounding circumstances not to be used to throw doubt on the meaning of the words used in that will or to give it different meaning – Extrinsic evidence admissible when fictitious names used by living person: *Kedarmal Vs. Gopaldas*, I.L.R. (1962) M.P. 815 (D.B.)

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– **“Actually allowed”** in Section 10(5) (b), Income tax Act – Meaning of: *M/s Nand lal Bhandari Mills Ltd., Indore, Vs. The Commissioner Of Income Tax, Madhya Pradesh, Nagpur*, I.L.R. (1962) M.P. 651 (D.B.)

– **“Assessment or re-assessment of the firm”** and “inclusion thereof” in Section 35(5) of the Income-tax Act, 1922 – Implication of: *Naraindas, Vs. Income-Tax Officer*, I.L.R. (1964) M.P. 538 (D.B.)

– **An “Agent”** is a person Employed to do any act for another or to represent another in dealing with third persons: *Ramlal Khurana Vs. G.P. Thakur*, I.L.R. (2004) M.P. 173

– **“An Assessment or Revenue Officer”** in Section 55 of the Bhopal State Municipalities Act, 1955 – Meaning of: *Abdul Hafeez Khan, Vs. The Government of Madhya Pradesh*, I.L.R. (1965) M.P. 747 (D.B.)

– **‘Advance Tax’** is a tax paid by assessee before regular assessment and on assessment the amount loses its character of advance tax: *Commissioner of Income Tax, Jabalpur Vs. M/s. Udhoji Shri Kishandas Satna*, I.L.R. (2004) M.P. 440 (F.B.)

– **“Any Work”** – Means any task or job or activity: *Satya Prakash Vs. Bashir Ahmed*, I.L.R. (1965) M.P. 106 (D.B.)

– **“Anumati”** – Connotation of: *Bhikam Singh Vs. State of M.P.*, I.L.R. (1986) M.P. 68 (D.B.)

– **Ad-hoc – Meaning of:** *Bherusingh Vs. State of Madhya Pradesh, I.L.R. (1987) M.P. 549 (D.B.)*

– **“Any other establishment”** in Section 1 (3) (b) of the Employees Provident Funds Act – Meaning of: *M/s Radhakishan Narayandas, Jawahar Ganj, Jabalpur, Vs. The Regional Provident Fund Commissioner, Madhya Pradesh, I.L.R. (1970) M.P. 266 (D.B.)*

– **“Agriculturist”** In – Meaning of: *Narsingh Vs. Kamandas, I.L.R. (1981) M.P. 534 (F.B.)*

– **“Appearance of a party”** – Meaning of: *Rama Rao Vs. Shantibai, I.L.R. (1978) M.P. 509 (F.B.)*

– **“Assessment” and “assess”** in Section 18 of the General Sales Tax Act, Madhya Pradesh, 1958 – Meaning of: *Firm Harpaldas Jairamdas, Bilaspur Vs. The Sales Tax Officer, Bilaspur, I.L.R. (1965) M.P. 402 (D.B.)*

– **“Auction”** – Meaning of: *Sardar Ajitsingh, Vs. The Chief Conservator of Forests, MP Rewa, I.L.R. (1967) M.P. 850 (D.B.)*

– **“A parent”** includes a mother also: *Smt. Sunder Bai Vs. M.P. Electricity Board, Through Divisional Engineer, Chhindwara, I.L.R. (1982) M.P. 541*

– **“Admitted into evidence” – Meaning of:** *Vinayak Dattatraya Sant, Indore Vs. Hasanali Haji Nazarali, Indore, I.L.R. (1960) M.P. 895*

– **Admission** – Equivalence of study – Question of equivalence of study should be decided by Expert Body and not High Court: *Medical Council of India Vs. Silas Nelson, I.L.R. (1993) M.P. 22 (S.C.) (F.B.)*

– **“Any”** – Connotation of: *Sardar Ishwar Singh Vs. Himachal Puri, I.L.R. (1990) M.P. 166*

– **‘Any other person’ in Section 5(1) of Industrial Relations Act – Meaning of:** *Rajya Parivahan Karmachari Mahasangh, Ujjain Vs. State of M.P., I.L.R. (1983) M.P. 321 (D.B.)*

– **“Any other sufficient ground”** mean reasons sufficient on ground at least analogous to those specified immediately previously: *Ratanlal Vs. Bardibai, I.L.R. (2003) 1072 (F.B.)*

– **“Any person”** – Meaning of: *Sardar Ishwar Singh Vs. Himachal Puri, I.L.R. (1990) M.P. 166*

– **“Anything done”** in Section 26(2) of sales Tax Act, Central Provinces and Berar, 1947 – Covers “omissions”: *State of MP Vs. Somnath*, I.L.R. (1960) M.P. 505 (D.B.)

– **“Any person” and “Covered by such Scheme”** – Means and includes: *Arun Kumar Lath Vs. R.T.A., Bilaspur*, I.L.R. (1991) M.P. 323 (F.B.)

– **“Adequate”** – Cannot be construed to empower the authority to enhance the penalty against: *Madhusudan Yadav Vs. Kshetriya Gramin Bank Hoshangabad*, I.L.R. (2000) M.P. 143

– **“Adultery”** – After amendment in the Act, even a single act of consummation with a person other than the spouse would amount to adultery. *Smt. Amita Vs. A.K.Rathore*, I.L.R. (2000) M.P. 380

– **“At Any time”** – In Section 50 of Land Revenue Code, M.P. 1959 – Would not mean in indefinite period: *Ravi Narayan Vs. State*, I.L.R. (2000) M.P. 1329

– **“Accident”** – Excluded idea to wilful and intentional act – But includes murder as accidental happening so far as workmen is concerned: *Smt. Satiya Vs. The Sub-Divisional Officer, P.W.D. (B & R), Narsingpur*, I.L.R. (1979) M.P. 527 (D.B.)

– **“Accident”** – Meaning of – To be construed in wider sense connoting mishap or untoward event, etc: *Smt. Sunderbai Vs. The General Manager, Ordnance factory, Khamaria, Jabalpur*, I.L.R. (1980) M.P. 1033 (D.B.)

– **“Attestation”** – Means signing a document for purpose of testifying to the signature of executants: *Ravi Shankar Vs. Rajendra Kumar Dubey*, I.L.R. (2000) M.P. 163

– **“Audi alteram partem”** – Principle of – Is required to be followed: *Paramjeet Singh Vs. Principal Secretary Revenue Ministry, Bhopal*, I.L.R. (2000) M.P. 334

– **“Against”** – Meaning of: *Ganpatlal Sharma Vs. Surya Prasad*, I.L.R. (1977) M.P. 1119

– **“Building”** – Meaning of: *Munnalal Lachhiram & Sons, Vs. The Gram Panchayat, Susari*, I.L.R. (1964) M.P. 199 (D.B.)

– **“Bona-fide or genuine”** – Means honesty or in good faith: *Smt. Sheela Devi Vs. Devendra Singh Parihar*, I.L.R. (2000) M.P. 198

– **“By operation of law”** in Order 21 rule 16, Civil Procedure Code – Covers devolution of decree by inheritance: *Hemchand, Vs. Tekchand*, I.L.R. (1959) M.P. 89

– **“Business”** – Meaning of: *The State Bank of India Employee’s Housing Co-operative Society Limited, Raipur Vs. Navla Shanker Dave, I.L.R. (1975) M.P. 538*

– **“Business”** – Meaning of – Includes agriculture – Worker employed for digging well on the agricultural holding – Would be a worker employed in the business of employer: *Gunda Vs. The Workmen’s Compensation Commissioner, District Panna, I.L.R. (1963) M.P. 222 (D.B.)*

– **Burden of proof** – Suit for recovery against supply of coal by a partnership firm – Burden of proof – When parties led evidence issue of burden to prove becomes secondary: *Madhya Pradesh Rajya Tilhan Utpadan Sahakari Sangh Vs. M/s. Agm Prakash Ramchandra Modi, I.L.R. (2004) M.P. 594*

– **“Business” in** – Meaning of: *G.R. Kulkarni Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1976) M.P. 291 (D.B.)*

– **“Being” in Section 17(1)** of the Panchayats Act, Madhya Pradesh, 1962 – Is of “wider import”, not limited to stage of election – Meaning of: *Halke Mehte Vs. H.C. Kamthan, Sub-Divisional Officer Karera, I.L.R. (1974) M.P. 260 (D.B.)*

– **“By reason of which” in Section 179**, Criminal Procedure Code – Governs both clauses – Every consequence flowing from crime – Confers no jurisdiction – Does not contemplate remote loss or consequence: *Ganga Prasad, Vs. Chhotelal, I.L.R. (1963) M.P. 559*

– **“Consequence” in Section 179**, Criminal Procedure Code – Denotes consequence which is integral part of offence: *Ganga Prasad, Vs. Chhotelal, I.L.R. (1963) M.P. 559*

– **“Civil Post” in Article 311 of the Constitution** – Meaning of: *Kailaschand Vs. The General Manager, Ordnance Factory, Khamaria, Jabalpur, I.L.R. (1967) M.P. 891 (D.B.)*

– **“Continuing offence” in Sections 92 and 106** of the Factories Act – Meaning of: *The State of Madhya Pradesh, Vs. Umashankar, I.L.R. (1963) M.P. 518 (D.B.)*

– **“Cultivation”** – Connotation: *Rao Shankar Pratap Singh, Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 639 (F.B.)*

– **‘Candidate at the election’ in Rule 43**, Cantonments Act – Includes candidate whose nomination paper has been rejected: *Ramnarayan Vs. Vishnu, I.L.R. (1957) M.P. 80 (D.B.)*

– **“Calendar Year” in Section 11(5)** – Day from which it is to be calculated – Calendar month has two meanings but Calendar year has not: *Kanhayyalal Vs. Deputy Commissioner of Sales Tax, Nagpur, I.L.R. (1958) M.P. 1 (F.B.)*

– **Consideration in** – Meaning of: *Smt. Saguna Bai Vs. Dhanprasad, I.L.R. (1987) M.P. 509*

– **“Compromise” and “Parties”** – Means and includes: *Saraswati Prasad Vs. Smt. Sukhmanti, I.L.R. (1991) M.P. 388*

– **“Class” in Section 124-A** of the Indian Penal Code – Means definite class of citizens of India: *Gangadhar Vs. The State of M.P., I.L.R. (1962) M.P. 449 (D.B.)*

– **“Cause of action”** – Meaning of: *Ramnarayan Vs. Puransingh, I.L.R. (1970) M.P. 445*

– **Criminal Trial** – Witness – Credibility – Evidence of witnesses corroborated by medical evidence – Evidence not liable to be rejected only because of some discrepancies and contradictions in testimony: *State of M.P. Vs. Vishal Singh, I.L.R. (1994) M.P. 251 (D.B.)*

– **“Contempt”** – Meaning of: *In Re. Guljarilal and Others, , I.L.R. (1970) M.P. 1024 (D.B.)*

– **“Cases arising”** - Meaning of: *Balkishan Das Vs. Harnarayan, I.L.R. (1982) M.P. 1 (F.B.)*

– **Criminal Practice** – Use of sharp edged weapon – Normal expectation is the use of sharp side of weapon – Doctor finding only lacerated wounds caused by hard and blunt object – Prosecution case not reliable: *Kalu Singh Vs. State of M.P., I.L.R. (1993) M.P., 242 (D.B.)*

– **CBI Enquiry** – In matters which are visited with civil consequences it is preferable that Courts do not call in aid the CBI – Report of CBI also not conclusive – Authority directed to consider who is more qualified on basis of terms and conditions applicable: *Birendra Singh Parihar Vs. Indian Oil Corporation, I.L.R. (2004) M.P. 364 (D.B.)*

– **“Cloth” in phrase** – All varieties of cloth manufactured in the Mills – Meaning of: *M/s Shreeram Vastra Bhandar, Raipur Vs. Sales Tax Officer, Raipur, I.L.R. (1982) M.P. 487 (D.B.)*

– **“Compensation” Article 115** – Wide and includes claim for damages, refund of consideration and also interest on the consideration: *Seth Mohammad Hussain, Vs. Firm Andani Company Akola, I.L.R. (1958) M.P. 505 (D.B.)*

– **‘Cognizance’ in** – Connotation of: *State of M.P. Vs. Bahadursingh, I.L.R. (1984) M.P. 122*

– **“Coal”** – Includes charcoal: *The Commissioner of Sales Tax, Madhya Pradesh, Indore, Vs. M/s Jaswant Singh Charansingh, Ujjain, I.L.R. (1968) M.P. 990 (D.B.)*

– **“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, I.L.R. (1979) M.P. 566 (D.B.)*

– **“Case”** – Meaning of: *Premdas Vs. Lalloo Ram, I.L.R. (1960) M.P. 927*

– **“Committee” in Section 57** of the Municipalities Act, Central Provinces and Berar, 1922 – Refers to corporate body and not to members individually: *Shri Radheshyam Khare Vs. The State Government of M.P., I.L.R. (1960) M.P. 399 (D.B.)*

– **“Councillor” In Section 2 (1) (b) of M.P. Local Govt. Act, 1948** – Meaning of: *Ambika Charan Vs. The Collector, Durg, I.L.R. (1960) M.P. 64 (D.B.)*

– **“Commercial Transaction”** – The word commercial transaction – Meaning of: *M/s Ganga Prasad Saligram, Chirgaon Vs. M/s Durga Prasad Rajaram, Sagar, I.L.R. (1990) M.P. 627*

– **“Complaint” in Section 417 (3)** of the Criminal Procedure Code – 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.)*

– **“Cooked Food”** – Meaning of: *The Commissioner of Sales Tax, M.P. Indore, Vs. Shri Ballabhdas Ishwardas, I.L.R. (1968) M.P. 491 (D.B.)*

– **“Cooked Food”** – Meaning of: *The Commissioner of Sales Tax, Madhya Pradesh, Indore, Vs. Shri Ballabhdas Ishwardas, Khandwa, I.L.R. (1969) M.P. 704 (D.B.)*

– **“Cause” and “allow”** – Import requirement of personal knowledge: *The State Of Madhya Pradesh, Vs. The Bundelkhand Transport Co., I.L.R. (1964) M.P. 166*

– **“Causes of action”** – Meaning of: *Firm Bhagwandas Shobhalal Jain, Sagar Vs. State of M.P. I.L.R. (1966) M.P. 913 (D.B.)*

– **“Charge” in Section 537 (b)** of the Criminal Procedure Code – Meaning of: *Lachhman, Vs. State of M.P., I.L.R. (1966) M.P. 135 (D.B.)*

– **“Contempt”** – Meaning of: *In Re Kaluram, I.L.R. (1966) M.P. 847 (D.B.)*

– **“Contempt of Courts”** – Means Civil Contempt or Criminal Contempt – High Court empowered to punish both: *Collector Gwalior Vs. First Civil Judge, Class-I, Gwalior, I.L.R. (1983) M.P. 539 (D.B.)*

– **“Certain statutory provision shall be read from a particular date in a particular manner”** and the “deemed” reading – Difference between the phraseology: *Sardar Harisingh Jhelumi, Vs. State of Madhya Pradesh, I.L.R. (1965) M.P. 453 (D.B.)*

– **“Claiming under him” in Section 108** of the Transfer of Property Act – Is restricted in its meaning to claiming a right under the lessor: *Durga Prasad Vs. Mst. Parveen Foujdar, I.L.R. (1980) M.P. 448 (D.B.)*

– **“Compensatory allowance”** – Is not an additional salary: *Shri Bishambhar Dayal, Retired Chief Justice, Madhya Pradesh High Court Vs. The Commissioner of Income-Tax, I.L.R. (1980) M.P. 80 (D.B.)*

– **“Compensatory allowance”** – Neither salary nor perquisite – Implication of “perquisite” and compensatory allowance: *Shri Bishambhar Dayal, Retired Chief Justice, Madhya Pradesh High Court Vs. The Commissioner of Income-Tax, I.L.R. (1980) M.P. 80 (D.B.)*

– **“Communication” in Section 44(1)** of The General Sales Tax Act, Madhya Pradesh, 1958 – Means actual and not imputed or constructive communication: *Messrs Sheojiram Parmanand, Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore, I.L.R. (1964) M.P. 54 (D.B.)*

– **“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.)*

– **“Copy”** – Meaning of: *M/s Mishrabandhu Karyalaya, Jabalpur Vs. Sheoratanlal Koshal, I.L.R. (1973) M.P. 88 (D.B.)*

– **“Court of record”** – Meaning of – Weight to be attached to the statement of Court – Distinction to be drawn regarding statement contained in record of Court and in the report: *In Re Bisram and others, I.L.R. (1964) M.P. 472 (D.B.)*

– **“Casual Connection”** – In the course of employment stretches from the time workmen enters employer’s premises till he goes out of the same after his duty – The barrier was put by employer – Since employer could not provide conveyance it arranged for a private vehicle and charged fare for that – Accident occurred due to hitting the said barrier – Necessarily there was a causal connection with the employment as deceased was returning home in that bus after death: *Western Coalfields Ltd., Chhindwara Vs. Shamshad Bano, I.L.R. (2000) M.P. 1131*

– **Commission** – Defined in – Commission received by petitioner as agent – Does not come under definition of wages: *Kulbir Singh Vs. Union of India, I.L.R. (1989) M.P. 703 (D.B.)*

– **“Cause to be despatched”** Mean he has to remain vigilant that things are done properly and compliance of law is made: *Smt. Somwati Soni Vs. The Gram Panchayat Padwar (Barela)*, I.L.R. (2000) M.P. 213

– **“Commerce” or “Commercial”** necessarily has a concept of a trading activity “Legal Profession” involves certain amount of skill as against commercial activity when it is more of a matter of thing or business activity: *Shiv Narayan Vs. M.P. Electricity Board*, I.L.R. (2000) M.P. 796 (D.B.)

– **“Cruelty”** – Filing of false complaint against the spouse amounts to cruelty: *Smt. Amita Vs. A.K.Rathore*, I.L.R. (2000) M.P. 380

– **“Civil Court”** in Section 8 and 12 of Public Trusts Act, M.P. – Used in ordinary grammatical meaning – Has the same meaning as given in section 3, M.P. Courts Act: *Badri Prasad Vs. Umashankar*, I.L.R. (1961) M.P. 1039

– **“Compensation”** in Section 110 of Motor Vehicles Act – Includes loss or damage to person or vehicle: *Dr. Om Prakash Mishra, Vs. National Fire and General Insurance Co. Ltd. Jabalpur*, I.L.R. (1961) M.P. 1009 (D.B.)

– **“Contract” in Section 15 (1)** of Municipalities Act, C.P. and Berar – Should have wider meaning: *Shri Ballabh, Vs. The State of M.P.*, I.L.R. (1961) M.P. 1 (F.B.)

– **“Cruelty”** – Meaning of: *Smt. Tulsibai, Vs. Bhima*, M.P., I.L.R. (1961) M.P. 292 (D.B.)

– **“Culpable negligence”** in Rule 11(8) of Home Guards Rules, 1947 – Meaning of: *C.A. D’Souza Vs. State of M.P.*, I.L.R. (1961) M.P. 202 (D.B.)

– **“Decision in context of per incuriam”** – Means only the reason for the previous order and not the operative part of such previous order – Operative part binding only inter partes: *Bhurelal Pagare Vs. State*, I.L.R. (2000) M.P. 228

– **“Disciplinary action”** is punishing the breach of discipline: *Karan singh Vs. State*, I.L.R. (2000) M.P. 472

– **“Dangerous part of machinery”** – Meaning of – Part of machine whether dangerous – Not to be judged on scientific principle requiring expert knowledge: *M/s J.B. Mangharam and Co., Gwalior Vs. Employees State Insurance Corporation, Gwalior*, I.L.R. (1964) M.P. 128

– **“Discharge”** in Section 436 and 437 of the Criminal Procedure Code – Includes case of a person partially discharged: *Randhir Vs. State of Madhya Pradesh*, I.L.R. (1964) M.P. 321

– **“Distraint” in Section 176 of the Municipalities Act, Madhya Pradesh, 1961** – Means seizure whether of movable or immovable property: *M/s Ramchandra Laxmichand, Vs. The Municipal Council, Satna*, I.L.R. (1964) M.P. 504 (D.B.)

– **“Declared an occupancy tenant of Malik Makbuza” in Section 169** of Land Revenue Code, 1954, Madhya Pradesh – Includes a person authoritatively recognized as occupancy tenant: *Devi Prasad Vs. The Board of Revenue of M.P.*, I.L.R. (1960) M.P. 565 (D.B.)

– **“Distributed” in Section 23-A** of the Income-tax Act, 1922 – Does not mean actual payment: *Central India Industrial Corporation Ltd., Lashkar, Vs. The Commissioner Of Income Tax, M.P. Nagpur & Bhandara, Nagpur*, I.L.R. (1964) M.P. 455 (D.B.)

– **“Dispose of”** – Mean different from “decide”: *Rama Rao Vs. Shantibai*, I.L.R. (1978) M.P. 509 (F.B.)

– **Dispute arising out of the contract”** – Connotation of: *M/s. Uttam Singh Dural & Co. (P) Ltd. New Delhi, Vs. M/s. Hindustan Steel Ltd., Bhilai*, I.L.R. (1983) M.P. 269 (D.B.)

– **“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: *Commissioner of Gift Tax, Bhopal Vs. Banshilal Narsidas*, I.L.R. (2004) M.P. 85 (D.B.)

– **“Defect of jurisdiction”** and “other causes of like nature” in Section 14(1), Limitation Act – Include untenable appeal: *Mst. Duliya Bai Vs. Vilayatoli*, I.L.R. (1958) M.P. 695 (D.B.)

– **“Devolve”** in Section 43(1) – Cannot be said to include survivorship on the principle of stare decisis: *Smt. Rewati, Vs. Smt. Gouribai*, I.L.R. (1959) M.P. 43 (D.B.)

– **“Disperse”** in Section 3 of the Maintenance of Public Order Act, Madhya Pradesh, 1965 – Meaning of: *Brijlal Vs. The District Magistrate, Damoh*, I.L.R. (1971) M.P. 20 (D.B.)

– **“Definite share”** in section 7(v) of the Court-fees Act – Meaning of: *Balu Vs. Amichahd, Nagpur*, I.L.R. (1972) M.P. 1 (F.B.)

– **“Decretal amount”** – Meaning of: *Ramchandra Vs. Seth Shrikishandas*, I.L.R. (1977) M.P. 925

– **“Dispute”** in Section 13(2) of Accommodation Control Act, 1961 – Meaning of: *Smt. Mankunwar Bai Vs. Sunderlal Jain*, I.L.R. (1979) M.P. 676 (F.B.)

– **“Direction”** in Section 38 of the Panchayata Adhiniyam, Madhya Pradesh, 1981 – Meaning of: *Bhikam Singh Vs. State of M.P.*, I.L.R. (1986) M.P. 68 (D.B.)

– **“Duly sealed”** – Meaning of: *R.R.P. Singh Vs. Awadhesh Pratap Singh University, Rewa*, I.L.R. (1986) M.P. 313 (D.B.)

– **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: *Commissioner of Income Tax Vs. Sikharchand Jain, I.L.R. (2003) 1104 (D.B.)*

– **“Directly in charge of”** – Used therein – Connotation of: *M.A. Palkhivala Vs. M.P. Pradushan Niwara Mandal, I.L.R. (1990) M.P. 466*

– **“Dispossession” and “discontinuance of possession”** – Meaning of: *Badulla Vs. Gyasiram, I.L.R. (1959) M.P. 117 (D.B.)*

– **“Default” in Order 41, rule 22(4)** – Includes default of appearance or in doing something which would be necessary for enabling Court to hear appeal: *Bhavar Singh Vs. Sonibai, I.L.R. (1962) M.P. 648 (D.B.)*

– **Employee** – Definition of – Does not include coolies employed by a contractor, though Working under supervision of owner for a limited purpose: *The Jabalpur Electric Supply Co. Vs. The State Industrial Court, M.P., I.L.R. (1959) M.P. 220 (D.B.)*

– **“Evade”** – Implication of: *The Municipal Committee, Harda, Vs. Banshilal Agarwal, Proprietor of the Shop M/s. Baijnath Banshilal, Harda, I.L.R. (1972) M.P. 935 (D.B.)*

– **“Error of law apparent on the face of record”** – Meaning of: *Seetaram Vs. Smt. Rambai, I.L.R. (1958) M.P. 54 (D.B.)*

– **“Equal protection”** in Article 14 of the Constitution – Meaning of: *Ramchandra Kotasthane, Vs. State of M.P., I.L.R. (1970) M.P. 917 (D.B.)*

– **“Ejusdem generis”** – Idea on which it is based – Rule when has no application – Condition necessary for its application: *Gwalior Sugar co. Ltd., Dabra Vs. Shyam Saran Gupta, I.L.R. (1971) M.P. 502 (D.B.)*

– **“Employment in any Industry”** – Include persons employed in operation incidental to Industry: *Ajit Singh Vs. State Industrial Court, Indore, I.L.R. (1979) M.P. 961 (D.B.)*

– **“Execution”** – In Section 15 of the Limitation Act, 1908 – Meaning of: *Ramnarayan Vs. Anandilal, I.L.R. (1971) M.P. 789 (F.B.)*

– **“Implements of husbandry”** In – Meaning of: *Narsingh Vs. Kamandas, I.L.R. (1981) M.P. 534 (F.B.)*

– **‘Eaves Water’** – Not discharged through spouts – Height of eaves raised – 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.)*

– **“Execution of any work”** – Means carrying out of any task or job or the undertaking of any activity: *Satya Prakash, Vs. Bashir Ahmed, I.L.R. (1965) M.P. 106 (D.B.)*

– **“Execution of any works”** in Section 7(d) of the Representation of the People Act – Meaning of: *Satya Prakash, Vs. Bashir Ahmed, I.L.R. (1965) M.P. 106 (D.B.)*

– **“Estoppel”** – No particular description provided alongwith requisite form – No pleading of any action on the alleged belief – Provision not attracted: *Santosh Bharti Vs. State of M.P., I.L.R. (2004) M.P. 754*

– **“Election”** – Connotes entire process of election beginning from stage of nomination and culminating in candidate being declared elected – Includes rejection or acceptance of nomination paper: *Thakur Prasad, Vs. V.S. Mehta, Block Development Officer and Returning Officer, Gram Panchayats Elections, Block Lanji, I.L.R. (1967) M.P. 356 (D.B.)*

– **“Execution closed”** – Does not amount to dismissal of execution: *Daulatrao Vs. Shafi Ahmad, I.L.R. (1969) M.P. 1006*

– **Every includes all types of councilor whether elected, nominated or ex-officio councilors** – Non-compliance would render proceeding vitiated: *Narayandas Sharma Vs. State, I.L.R. (2000) M.P. 771*

– **“Every Person” in Section 147 of Land Revenue Code, 1954 Madhya Pradesh** – Means every person holding land from the State: *Devi Prasad Vs. The Board of Revenue of M.P., I.L.R. (1960) M.P. 565 (D.B.)*

– **“Expressly excluded” in clause (a) of sub-Section (2) of Section 29** – Means specifically mentioned as excluded and not exclusion inferred as result of logical process of reasoning: *Behari Lal Chaurasia Vs. The Regional Transport Authority, Rewa, I.L.R. (1960) M.P. 569 (D.B.)*

– **“Eligible to be” in Section 17(1) of the Panchayats Act, Madhya Pradesh, 1962** – Meaning of: *Halke Mehte Vs. H.C. Kamthan, Sub-Divisional Officer Karera, I.L.R. (1974) M.P. 260 (D.B.)*

– **“Excise Duty”** – Meaning of: *Shree Synthetics Limited, Ujjain Vs. Union of India, I.L.R. (1982) M.P. 706 (D.B.)*

– **“Entertain” in** – Meaning of: *Hiralal Vs. Hatesingh, I.L.R. (1984) M.P. 55*

– **“Encroachment and trespass”** – Distinction between: *Smt. Indubai Vs. Jawaharlal, I.L.R. (1990) M.P. 156*

– **“Establishment”** – Meaning of: *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.)*

– **“Evidence”** in – Meaning of: *A.P. Shrivastava Vs. State of M.P., I.L.R. (1990) M.P. 122*

– **“Entertain”** in Motor Vehicles Act – Section 110 F – Meaning of: *Khatumal Vs. Abdul Qadir, I.L.R. (1961) M.P. 240 (D.B.)*

– **“Entertainment”** in Section 2(b) of Entertainments Duty Act – Must be some exhibition, performance, amusement, game or sport for amusement or gratification for persons who see or hear it: *The Calico Mills LTD, Ahmedabad Vs. The State of Madhya Pradesh, I.L.R. (1961) M.P. 67 (D.B.)*

– **“Exhibition”** in section 2(b) of Entertainments Duty Act, C.P. and Berar – Meaning of: *The Calico Mills LTD, Ahmedabad Vs. The State of Madhya Pradesh, I.L.R. (1961) M.P. 67 (D.B.)*

– **“Finds”** in Section 50 of Madhya Bharat Tenancy Act – Meaning of: *Shiv Narain Sharma Vs. The Tehsildar, Tehsil Gwalior, I.L.R. (1961) M.P. 792 (D.B.)*

– **“Falling which”** – Meaning of: *Association of Scientific workers Jabalpur Vs. Union of India, I.L.R. (1982) M.P. 314 (D.B.)*

– **“F.O.R.”** – Implication and incident of: *C.P. Timber Works, Kanpur Vs. Commissioner of Sales Tax, M.P. Indore, I.L.R. (1965) M.P. 762 (D.B.)*

– **“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 (D.B.)*

– **‘Fraud’** in section 48 (2) of the Civil Procedure Code – To be interpreted in a wider sense – Delay in execution due to untenable objections – Amounts to fraud: *Firm Radhakisan Vs. Kalicharan, I.L.R. (1957) M.P. 3*

– **“Family arrangement”** – Meaning of: *Santoshchandra Vs. Smt. Gyansundarbai, I.L.R. (1979) M.P. 641 (D.B.)*

– **“Food”** in Section 210 (1) of Cantonments Act, 1924 – Does not include betel leaves: *The State Government of MP Vs. Abdul Rashid, I.L.R. (1960) M.P. 534*

– **“Forfeiture of earnest money”** – Meaning and effect of: *Gyasiram Vs. Gulkandibai, I.L.R. (1975) M.P. 133*

– **“Forthwith”** in Rule 84 of Civil Procedure Code – Meaning of: *Vishan Swaroop Vs. Omprakash, I.L.R. (1975) M.P. 161*

– **“Final orders” in Article 182 (5)** – Means and includes appellate order when appeal filed against order of executing Court: *The C.P. Syndicate Ltd. Vs. Firm Hasan Ali*, I.L.R. (1959) M.P. 1 (F.B.)

– **“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

– **“Functus officio”** – Meaning of: *Komal Chand Vs. The State of M.P.*, I.L.R. (1966) M.P. 174 (F.B.)

– **“For the purpose”** – Meaning of: *Mainabai Vs. Keshavlal*, I.L.R. (1973) M.P. 486

– **“Fault” “Slip” and “Slicken-sid”** – Meaning of: *H.S Sachdeo Vs. State of MP*, I.L.R. (1976) M.P. 172

– **“Final Order”** – Final order not containing reason for conclusion – Order is still final order, though exception can be taken for not giving reasons – Cardinal principle of law – Act of Court not to cause injury to litigant – Constitution of India – Article 227 – Power under, when can be exercised: *Ram Ratan Vs. Mathura Prasad*, I.L.R. (1976) M.P. 691 (D.B.)

– **“Firewood”** – To be understood in popular and natural sense in the Sales Tax Act – Meaning of: *The Commissioner of Sales Tax, M.P. Vs. The Agarwal Saw Mills, Seoni*, I.L.R. (1968) M.P. 342 (D.B.)

– **“General Election”** – Does not include notification in the Gazette under section 45 of elected councilors – Notification not a step towards election of a councilor: *Manaklal, Vs. The Collector, Seoni*, I.L.R. (1968) M.P. 695 (D.B.)

– **“Good Faith”** – Meaning of – Defined in Section 2(h) of the Limitation Act: *Choudhary Khemaraj Singh Alias, Sheokumar Vs. Bhagwat Singh*, I.L.R. (1988) M.P. 264

– **“Has become “disqualified”** in proviso to rule 14 framed under Vindhya Pradesh Gram Panchayat Ordinance – Meaning of: *Tejbhan Singh, Vs. The Collector, Rewa*, I.L.R. (1963) M.P. 229 (D.B.)

– **“Has treated with cruelty” in Section 27 (1) (d) of Special Marriage Act** – Meaning of: *A.P. Marry Vs. K.G. Raghwan*, I.L.R. (1981) M.P. 682 (D.B.)

– **“Housing”** wide enough to include the making of provision for any building required for carrying on any business of industry: *Beni Prasad Vs. The Jabalpur Improvement Trust Jabalpur*, I.L.R. (1975) M.P. 448 (D.B.)

– **Hindu Law** – Debt – Debt for immoral purposes – Son who wants to take advantage has to prove that debt taken by his father was for immoral purposes – In

absence of any pleadings and prove debt taken by father was not for immoral purposes: *Ramesh Sukhlal Kulmi Vs. Tikam Gopalji Kulmi, I.L.R. (1993) M.P. 176*

– **“High way”** – Meaning of: *J.P. Sanghi Vs. State of M.P. Public Works Department Bhopal, I.L.R. (1985) M.P. 67 (D.B.)*

– **“Garments” and “Hosiery goods”** – Meaning of: *The Commissioner of Sales Tax, M.P. Indore Vs. M/s Mahajan Brothers, Indore, I.L.R. (1965) M.P. 181 (D.B.)*

– **“Illegal practice”** – Meaning of: *Shri Hitjorilal, Vs. The Deputy Commissioner, I.L.R. (1963) M.P. 65 (D.B.)*

– **“Illegal means”** – Meaning of: *M.P. Colliery Workers Federation Chirimiri Vs. The United Collieries Ltd. Calcutta, I.L.R. (1973) M.P. 664*

– **“In mining”** – Connotes in the process of mining: *Indra singh & Sons, Pvt. Ltd. Chirimiri Vs. The Sales Tax Officer, Raigarh, I.L.R. (1963) M.P. 35 (D.B.)*

– **“It appears” or “is satisfies”** – Meaning of: *Narmada Prasad Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 8 (D.B.)*

– **“Immediately”** in Chapter IV, Rule 10 of Madhya Pradesh High Court Rules – To be reasonably construed – To be read so as to advance its purpose and not to defeat justice – Leave can be asked after delay if it is sufficiently explained: *Ranarayan Vs. The State of Madhya Pradesh, I.L.R. (1962) M.P. 84 (D.B.)*

– **“In or in connection with the work of a factory or establishment”** – Meaning and scope of: *Bhopal Motors Pvt. Ltd., Bhopal Vs. Employees State Insurance Corporation, Indore, I.L.R. (1982) M.P. 954 (D.B.)*

– **“Industrial Dispute”** – Meaning of: *Jamul Cement Works, Jamul Vs. Resident, State Industrial Court, Madhya Pradesh, Indore, I.L.R. (1971) M.P. 445 (D.B.)*

– **“Impose”** – Meaning of: *Janpad Panchayat, Rehli Vs. Collector, Sagar, I.L.R. (1980) M.P. 1 (D.B.)*

– **“it necessary”** – Import of: *B. Johnson Vs. C.S. Naidu, I.L.R. (1986) M.P. 276 (D.B.)*

– **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 (S.C.) (D.B.)*

– **“Independent person”** – Meaning of: *Narrottam das Vs. P.B. Gawarikar, I.L.R. (1960) M.P. 970 (D.B.)*

– **“Investigation”** – Meaning and interpretation of: *Raghvendra Singh Hazari Vs. State of Madhya Pradesh, I.L.R. (1982) M.P. 186*

– **“Injury” and “Annoyance”** – Meaning of: *Ramkishan Vs. State of Madhya Pradesh, I.L.R. (1964) M.P. 414*

– **Ice** – Not food but water in solid form i.e. Hydrogen and Oxygen: *Udhabdas Vs. State, I.L.R. (2000) M.P. 203*

– **“In the discharge of his judicial duty”** – Used in contradistinction 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. Chandrikasingh, I.L.R. (1967) M.P. 443*

– **“Inconsistency”** – Meaning of: *Gandhi Travel Churhat Vs. Secretary, Regional Transport Authority, Rewa, I.L.R. (1990) M.P. 84 (D.B.)*

– **Interpretation of Statutes** — Object—To discover intention of Legislature from language used therein and if the language is plain and admits only one meaning – Occasion of interpretation hardly arises: *State of M.P. Vs. M/s. Chahal & Co., New Delhi, I.L.R. (1995) M.P. 144 (F.B.)*

– **“In the form”** – Construction of – Interpretation of Statute – Enactment ambiguous – Scheduled form is legitimate aid to construction – Abolition of Proprietary Rights Act, M.P., 1950 – Section 91(1) – Rule 1 of the Rules framed under – Ex-proprietor not entitled to reservation of grass land unless so reserved before date of vesting – Word “objection” in – Implication of – Possession of unoccupied land by proprietor as qua proprietor – Such possession does not amount to reservation of land for exclusive use Rule 6 – “Objection” in – Means adverse reason – The word “finds” in – Connotation of – Civil Procedure Code – Section 9 – Jurisdiction of Civil court to decide validity of the order passed by Deputy Commissioner: *Kallu Vs. Munna, I.L.R. (1976) M.P. 159*

– **“In manner and Form”** – Meaning of: *M/s K.M. Chopra and Company, Nagpur Road Jabalpur, Vs. The Additional Commissioner of Sales-Tax, M.P. Indore, I.L.R. (1970) M.P. 31 (D.B.)*

– **“Irregularly” and “illegality” in** – Meaning of: *Bajji Vs. State, I.L.R. (1981) M.P. 896*

– **Illegal Omission** – Illegal means against or not authorized by law: *Surendra Agnihotri Vs. State of M.P., I.L.R. (1999) M.P. 251*

– **“Improper”** in section 100 of Representation of People Act – Refers to grounds on which ballot papers can be declared invalid: *Shri Kesheo Prasad Vs. Shri A.D. Mani, I.L.R. (1961) M.P. 974 (D.B.)*

– **“In the interest of general public” in section 3(1)(a) of the public Security Act** – Meaning of: *Thakur Bharatsingh, Vs. State of M.P., I.L.R. (1965) M.P. 778 (D.B.)*

– **“Injury”** – Meaning of: *The Municipal Committee, Seoni, Vs. The State of Madhya Pradesh, I.L.R. (1961) M.P. 252 (D.B.)*

– **“Intention and “Knowledge”** – Meaning of – When can be inferred – Deference between the two: *Ram Prashad Vs. The State of Madhya Pradesh, I.L.R. (1961) M.P. 891 (D.B.)*

– **“Involving”** preceded by “death of, or bodily injury to” and followed by “in respect of accidents” – Indicate that claim in respect of damage to vehicle alone barred from jurisdiction of Claims Tribunal – Remedy in Civil Suit: *Dr. Om Prakash Mishra, Vs. National Fire and General Insurance Co. Ltd. Jabalpur, I.L.R. (1961) M.P. 1009 (D.B.)*

– **Just ahead’ and ‘ahead’** – Distinction between – Narrow gap of 15 to 40 minutes is ‘ahead’ and not ‘Just ahead’: *Ramswaroop Shrivastava Vs. State Transport Appellate Tribunal, Gwalior, M.P., I.L.R. (1987) M.P. 686 (D.B.)*

– **“Kirana”** in Section 5 of the General Sales Tax Act, 1958 – A Compendious expression – Includes in its ambit goods of all sorts commonly vended by grocer Includes turmeric: *Commissioner of Sales Tax, Madhya Pradesh, Indore, Vs. M/s Laddumal Jangilal, Ujjain, I.L.R. (1964) M.P. 824 (D.B.)*

– **“Khowa”** in Entry No. 21, Schedule 1 to the General Sales Tax Act, 1958 – Meaning of: *The Commissioner of Sales Tax, M.P. Indore., Vs. Shri Harichand Chandulal, I.L.R. (1967) M.P. 308 (D.B.)*

– **“Key answer”** – Meaning and significance of: *Ku. Anjali Saxena Vs. Chairman, Professional Examination Board, M.P., Bhopal, I.L.R. (1990) M.P. 197 (D.B.)*

– **“Knowingly”** in – Significance of in offence punishable under: *Dines S/o Khemjibhai Vs. Union of India, I.L.R. (1990) M.P. 450*

– **“Liabilities”** in section 16 of C.P. Court of Wards Act – Does not include claim for partition or future maintenance: *Onkar Bahadur Singh Vs. Raghuraj Singh, I.L.R. (1957) M.P. 500 (D.B.)*

– **“Like approval”** and “shall be subject to like approval” in Section 25(1), Proviso to the Municipalities Act, C.P. and Berar, 1922 – Meaning and construction of: *Mannilal Gupta, Vs. Municipal Council, Piparia, I.L.R. (1965) M.P. 246 (D.B.)*

– **“Levy” and “Imposition “** – Meaning of and distinction between: *Shree Synthetics Limited, Ujjain, Vs. Union of India, I.L.R. (1982) M.P. 706 (D.B.)*

– **“Legal” and “Lawful”** – Meaning of: *Hemdutta Vs. State of M.P., I.L.R. (1971) M.P. 820 (D.B.)*

– **“Locality” in Section 4(1)** of the Land Acquisition Act – Meaning of: *The Christian Fellowship (Hospital) Rajnandgaon Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 67 (D.B.)*

– **“Last Date”** means the last hour of the last date in Section 23(3) of the R.P. Act, 1951: *Chandra Shekhar Chaturvedi Vs. Smt. Rajesh Nandini Singh, I.L.R. (2000) M.P. 953*

– **“Lotteries”** in Constitution of India, Article 19(1)(g) – Not a trade or business nor protected under Article 19(1)(g) of the Constitution, but is a purely game of chance: *Subhash Kumar Manwani Vs. State, I.L.R. (2000) M.P. 854 (D.B.)*

– **“May “ and “Must” in Section 190(1)(a)** – Used in the Provision cannot be construed: *Smt. Manorama patel Vs. Subhash Soni, I.L.R. (2000) M.P. 758*

– **“Mahal”** as defined in Section 2 (8) of the C.P. Land Revenue Act, 1917 – Meaning of: *Mt. Rupkali Vs. Kedarnath, I.L.R. (1957) M.P. 450*

– **“Manufacture” in Section 2 (k)** – Meaning of – Person doing work of dyeing and printing textiles and engaged in the business of selling or supplying printed and dyed material – If a manufacturer: *Messrs Hiralal Jitmal Vs. The Commissioner of Sales Tax, I.L.R. (1957) M.P. 175 (D.B.)*

– **“Mind “** in Section 84 – Meaning of: *The State, Vs. Ahmadulla, I.L.R. (1958) M.P. 401 (D.B.)*

– **“May”** – Sometimes not used in permissive or directory sense – Has the effect of “must”: *The Municipal Committee, Khurai Vs. The State of Madhya Pradesh, I.L.R. (1964) M.P. 668 (D.B.)*

– **“May”** in Section 134 – Used in imperative sense – Issue of notice mandatory: *Premchand, Vs. Board of Revenue, Madhya Pradesh Gwalior, I.L.R. (1964) M.P. 70 (D.B.)*

– **“Moral Turpitude”** – Covers offence under Section 457, Indian Penal Code: *Tejbhan Singh, Vs. The Collector, Rew, I.L.R. (1963) M.P. 229 (D.B.)*

– **Maxims** – Ut res magis valeat quam pereat – Golden rule of construction of a statue – Each & every word of the statue be given beneficial effect – Can be invoked only in cases of ambiguity: *State of MP Vs. M/s. Chahal & Co., New Delhi, I.L.R. (1995) M.P. 144 (F.B.)*

– **“Mower”** in Item No. 12 of Notification No. 736-3694-V-SR dated 1-4-59 – Meaning of: *The Commissioner of Sales Tax, M.P., Indore Vs. M/s. Agricultural Implements Dealers Syndicate, Morena, I.L.R. (1968) M.P. 676 (D.B.)*

– **“Matter”** in Rule 11 of High Court Rules – Meaning of: *The Amalgamated Coalfields Limited, Calcutta Vs. The State of M.P., I.L.R. (1969) M.P. 399 (D.B.)*

– **“Material Facts” and “Particulars”** – Distinction in between under section 83 of the Act: *Alok Vs. Motilal Vora, I.L.R. (1991) M.P. 364*

– **“Mis-joinder” includes “non-joinder”**: *Motilal Bhatia Vs. Yusuf Ali, I.L.R. (1975) M.P. 121*

– **“Meal”** – Meaning of: *The Commissioner Of Sales Tax Vs. Inidan Coffee Worker’s Co-Operative Society, Ltd, Jabalpur, I.L.R. (1976) M.P. 992 (D.B.)*

– **“Mool Niwas and Sthaniya Niwasi” in Madhya Pradesh** – Meaning of: *Ku. Gayatri Pancholi Vs. Government of M.P., I.L.R. (1986) M.P. 386*

– **Material supplied** – Meaning of – Cannot include services rendered: *Kulbir Singh Vs. Union of India, I.L.R. (1989) M.P. 703 (D.B.)*

– **“Modification”** in section 9 of Mines and Minerals (Regulation and Development) Act, 1957 – Meaning of: *Dadabhoy’s New Chirimiri Ponri Hill Colliery Company Private Ltd., Bombay, Vs. The State of Madhya Pradesh, I.L.R. (1970) M.P. 363 (D.B.)*

– **“Means” in** – Used in Sub-Section (1) of section 125 – Connotation of: *Durga Singh Vs. Prembai, I.L.R. (1990) M.P. 411 (D.B.)*

– **“Malignantly”** in Section 153 of Penal Code, Indian – Meaning of: *The State Govt, MP, Vs. Indarsingh, I.L.R. (1961) M.P. 633 (D.B.)*

– **“Material facts”** in section 83 (1) of Representation of the People Act – Meaning of: *Shri Kesheo Prasad Vs. Shri A.D. Mani, I.L.R. (1961) M.P. 974 (D.B.)*

– **“No Court”** Connotation of: *Rammoo Vs. Union of India, I.L.R. (1990) M.P. 128 (D.B.)*

– **“Not involving the carrying on of any activity for profit”** – Construction of: *Mahakoshal Shaheed Smarak Trust, Jabalpur, Vs. The Commissioner of Income-Tax, MP-II, Bhopal, I.L.R. (1983) M.P. 60 (D.B.)*

– **“Negligence”** – Meaning of: *Shrimati Manjula Devi Bhuta Vs. Shrimati Manjusri Raha, I.L.R. (1970) M.P. 462 (D.B.)*

– **“Not punishable with death or imprisonment for life”** in Section 4(b) – To be interpreted disjunctively and not conjunctively: *Cheti alias Sheoprasad, Vs. The State of Madhya Pradesh, I.L.R. (1958) M.P. 765 (D.B.)*

– **“Necessary measures”** would also include a direction to the authority to consider the matter alongwith notice of applicant for appointment of arbitrator as per relevant clause of contract and come to a just conclusion: *M/s Ashok Coal Depot. Bilaspur M.P. Vs. South Eastern coal Fields ltd Bilaspur, I.L.R. (2000) M.P. 635*

– **“Negligence”** – Meaning of: *Mangilal Vs. Prarasram, I.L.R. (1971) M.P. 986 (F.B.)*

– **“Notification”** in Section 2(25) of General Clauses Act, 1957 – Means a notification published in the Gazette: *Ashok Kumar Kaurav Vs. State, I.L.R. (2000) M.P. 1057*

– **Order** – Means the formal expression of any decision of a Civil Court which is not a decree – Refusal to grant ex-parte injunction is an order indicating reasons for not exercising jurisdiction under Section 9 of the Act – Order is appealable – Under Section 37 of the Act: *Jabalpur Cable Network Pvt. Ltd. Jabalpur Vs. E.S.P.N. Software India Pvt. Ltd. New Delhi, I.L.R. (2001) M.P. 846*

– **“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: *Anandji Kalyanji Idol of Jain, Free Ganj Ujjain, Vs. Daulat Singh, I.L.R. (1963) M.P. 247 (D.B.)*

– **“Operation of law”** – Meaning of: *Smt. Attravai Vs. Seht Mishrilalsa, I.L.R. (1967) M.P. 773*

– **“Oil-seeds”** in Schedule 1, Part II, Item 3 of the General Sales Tax Act, Madhya Pradesh, 1958 – Meaning of: *The Commissioner of Sales Tax, M.P., Indore, Vs. M/s Bakhat Rai and Co., Katni, I.L.R. (1970) M.P. 1020 (D.B.)*

– **“Opportunity” in Rule 18 (2)** of the Co-operative Societies Act, Madhya Pradesh, 1960 – Does not necessarily mean personal hearings: *Kamta Prasad, Vs. The Registrar, Co-Operative Societies, M.P., Bhopal, I.L.R. (1970) M.P. 585 (D.B.)*

– **Overcharged** – Meaning – Since the word “overcharges” has not been defined in the Act, its ordinary dictionary meaning has to be applied – The dictionary meaning of “overcharges” is “to charge more than what is due to a thing or a transaction”. *Associated Cement Co. Ltd. Vs. Union of India, I.L.R. (1997) M.P. 208*

– **Omission** – Means something that has not been done either deliberately or accidentally: *Surendra Agnihotri Vs. State of M.P., I.L.R. (1999) M.P. 251*

– **“Oppressive”** in Section 397 of the companies Act, Indian 1956 – Meaning of: *M/s Chunnilal Onkarlal Vs. The Hukumchand Mills Ltd. Indore, I.L.R. (1973) M.P. 286*

– **“Other accommodation”** in section 4(h) of Accommodation Control Act, 1955
– Meaning of: *Mainabai Vs. Keshavlal*, I.L.R. (1973) M.P. 486

– **“Ordinarily resides”** in sections 9 and 25 – Meaning of: *MST. Bhagwati Vs. Shri Pyarelal*, I.L.R. (1961) M.P. 968 (D.B.)

– **“Person” in Section 83 (1-A)** of Municipalities Act, C.P. and Berar, 1922 – Includes Municipal Committee: *The Anand Transport Co. (Private)Ltd, Raipur, Vs. The Board of Revenue, Madhya Pradesh, Gwalior*, I.L.R. (1963) M.P. 811 (D.B.)

– **“Person in authority”** Meaning of: *Nannhu Vs. The State of M.P.*, I.L.R. (1959) M.P. 300 (D.B.)

– **“Personal capacity” in Article 361**, Clause 4 of Constitution of India – Meaning of – Governor acting as Chancellor – Action is in public capacity and not in private capacity: *Dr. S. C. Barat Vs. Shri Hari Vinayak Pataskar, Chancellor of The University of Jabalpur*, I.L.R. (1962) M.P. 226 (D.B.)

– **“Period” in Section 11 (5) of Sales Tax Act, C.P. and Berar** – Meaning of – Point from which three year’s period to be computed: *M/s Battulal, Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore*, I.L.R. (1964) M.P. 175 (D.B.)

– **“Persona designata”** – Meaning of: *Ravishankar Vs. Board of Revenue*, I.L.R. (1973) M.P. 943 (F.B.)

– **“Period”** in Section 11(5) of the Sales Tax Act, C.P. and Berar, 1947 – Covers whole period during which registration was not effected: *Ghanshyamdass, Vs. Sales Tax Officer, Durg*, I.L.R. (1965) M.P. 221 (D.B.)

– **“Parting with possession”** – Meaning of: *M/s Satyabhama Devi Choubey Vs. Shri Ramkishore Pandey*, I.L.R. (1975) M.P. 82 (D.B.)

– **“Pension”** in paragraph 13 (iii) of merged States (Taxation concessions) Order, 1949 – Meaning of: *Shri Raj Kumar Bikram Bahadur Singh Vs. The Commissioner of Income-Tax*, I.L.R. (1975) M.P. 1103 (D.B.)

– **“Principle”** really means “period”: *Brijrajsingh, Vs. The Board of Revenue, Gwalior*, I.L.R. (1966) M.P. 21 (D.B.)

– **“Purporting to be done under the Act”** – Do not include an act which is wholly outside the provisions of the Act and thus *ultra vires*: *Municipal Committee/ Council, Balaghat, Vs. Meghraj*, I.L.R. (1966) M.P. 475

– **“Perquisite”** – Signifies additional benefit in addition to: *Shri Bishambhar Dayal, Retired Chief Justice, Madhya Pradesh High Court Vs. The Commissioner of Income-Tax*, I.L.R. (1980) M.P. 80 (D.B.)

– **“Prohibition”** – Definition of: *Narayan Lal Vs. Rukmanibai, I.L.R. (1980) M.P. 807 (F.B.)*

– **“Portion of land”** in Section 2(1)(i) of the Land Revenue Code, Madhya Pradesh, 1959 – Meaning of: *Ramsingh Vs. Shankarlal, I.L.R. (1974) M.P. 727 (F.B.)*

– **“Property”** – Includes business: *The Commissioner of Income Tax, M.P. Nagpur And Bhandara, Nagpur Vs. Seth Kirodimal Charity Trust, Raigarh, I.L.R. (1978) M.P. 93 (D.B.)*

– **“Possession”** in Section 45 of Abolition of Proprietary Rights Act – To be given larger meaning – Includes persons who are in actual possession as also persons entitled to possession: *Pt. Biharilal Vs. The State of Madhya Pradesh Through Deputy Commissioner Sagar, I.L.R. (1960) M.P. 676 (D.B.)*

– **“Privilege”** – Meaning of: *M/S N.K. Doongaji & Company, Katni Vs. State of M.P., I.L.R. (1976) M.P. 207 (F.B.)*

– **“Pension”** – Meaning of: *The State of M.P., Vs. Pt. Lalita Shankar, I.L.R. (1967) M.P. 276*

– **“Public order”** – Meaning of: *Sardar Amarsingh, Vs. The State of M.P., I.L.R. (1967) M.P. 173 (D.B.)*

– **“Pending” in Rule 7(3) (e)** of the Notaries Rules, 1956 – Means pending for decision: *Narayanlal, Vs. State of Madhya Pradesh, I.L.R. (1968) M.P. 520 (D.B.)*

– **Phrase “res ipsa loquitur”** – When it applies – In Tort, it is only rule of evidence affecting onus – Does not alter general rule of onus – Burden of proof – Question academic when both parties have led evidence – Tort – Negligence – Cyclist and driver of Motor vehicle etc., duty of care and diligence greater of driver – Person injured was negligent – No defence – Suit based on negligence – Plaintiff proving prima facie defendant’s negligence – Burden shifted on defendant to prove facts negating his liability – Burden of proving inevitable accident – Is upon person seeing it up – Things to be proved to sustain the plea – Damages – Items of loss and injury to be ascertained for grant of general damages – Tribunal exercising discretion in matter of grant of general damages – Discretion not shown to be arbitrary – No interference by appellate Court – Appellate Court, when can interfere: *Indian Trade and General Insurance Co. Ltd., Bombay Vs. Madhukar Bhagade, I.L.R. (1968) M.P. 281 (D.B.)*

– **“Provision and maintenance”** seem to convey the same meaning: *Abdul Haq Vs. Yasmin Talat, I.L.R. (1998) M.P. 435*

– **Practice and Procedure** – Protracted Trials – Trial Court took 10 years to decide suit – Appeal took further 4 years – Dispensation of justice should be sure and

swift – Decision should be expeditious: *Kailash Chandra Tejpal Vs. Vinod Guljarilal*, I.L.R. (1993) M.P. 546

– **Promotion** – Length of Service – In absence of specific rule, Seniority amongst the similar post in similar cadre has to be counted on the basis of length of service: *M.B. Joshi Vs. Satish Kumar Pandey*, I.L.R. (1993) M.P. 14 (S.C.) (D.B.)

– **Promotion** – Petition claiming promotion after a period of two decades without making the effected persons as party to the petition – All promotees who have not been made party cannot be made to suffer for no faults on their part: *K.K.M. Nair Vs. Union of India*, I.L.R. (1993) M.P. 1 (S.C.) (F.B.)

– **“Panti”** – Meaning of: *Messrs Chimanlal Umaji and Sons, Indore, Vs. The Commissioneer of Income-Tax, Madhya Pradesh, Nagpur and Bhandara, Nagpur*, I.L.R. (1969) M.P. 130 (D.B.)

– **“Prescribed authority” in Section 2(xxi)** of Panchayat Raj Adhiniyam 1993 – Means such Officer or authority as the State Govt – May be notification direct to discharge the function of a prescribed authority under the provisions of the Act: *Ashok Kumar Kaurav Vs. State*, I.L.R. (2000) M.P. 1057

– **“Prescribed”** in Section 2(25) of General Clause Act, 1957 – Means prescribed by the Rules made under an enactment: *Ashok Kumar Kaurav Vs. State*, I.L.R. (2000) M.P. 1057

– **Pension has wider meaning** – Could not be restricted only to payment made to an employee by Government in lieu of his past services: *S.P. Anand Vs. Union of India*, I.L.R. (2001) M.P. 914 (D.B.)

– **Person interested in Section 3(b)** include all persons claiming an interest in the compensation of land acquired: *Union of India Vs. The JT. Collector & Land Acquisition Officer.*, I.L.R. (2001) M.P. 998 (D.B.)

– **Plying “Meaning of”**: *Sardar Jogendra Singh Vs. The State Transport Appellate Tribunal, M.P. Gwalior*, I.L.R. (1981) M.P. 636 (D.B.)

– **“Quid pro quo”** – Principles of and its application to justify charge of Court fee: *D.&H. Secheron Electrodes (Pvt.) Ltd., Indore Vst. State of M.P.*, I.L.R. (1983) M.P. 20 (D.B.)

– **“Route” in** – Meaning of: *The Madhya Pradesh State Road Transport corporation, Bhopal Vs. State Transport Appellate Tribunal Gwalior*, I.L.R. (1981) M.P. 32 (D.B.)

– **Returned Candidate** – Means a candidate whose name has been published under Sections 19, 26 or 33 of the Act: *Chandra Bhan Singh Vs. State, I.L.R. (2001) M.P. 291 (F.B.)*

– **Ratio decidendi an “Precedent”** What Constitutes binding is – 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 (F.B.)*

– **Reason** – Use of in the definition clause in antithesis of arbitrariness: *Chandra Shekhar Chaturvedi Vs. Smt. Rajesh Nandini Singh., I.L.R. (2000) M.P. 953*

– **“Require”** – Connotes something more than a mere wish or desire: *Smt. Sheela Devi Vs. Devendra Singh Parihar, I.L.R. (2000) M.P. 198*

– **“Retired Government Servant”** – Includes a person retired from defence Services: *Kunjulal Yadav Vs. Parasram Sharma, I.L.R. (2000) M.P. 416 (F.B.)*

– **‘Resignation’ in** – Meaning of: *Hridayashwar Singh Chauhan Vs. State of M.P., I.L.R. (1988) M.P. 69 (D.B.)*

– **‘Regular assessment’** means the first or the original assessment by the Assessing Officer and not the revised assessment pursuant to appellate order: *Commissioner of Income Tax, Jabalpur Vs. M/s. Udhoji Shri kishandan, Satna, I.L.R. (2004) M.P. 440 (F.B.)*

– **“Residence”** – Meaning of: *Lalji Bhai, Vs. Collector, Seoni, I.L.R. (1967) M.P. 334 (D.B.)*

– **“Retain”** – Meaning of: *Tikamdas, Vs. State of Madhya Pradesh, I.L.R. (1967) M.P. 668 (D.B.)*

– **“Resignation”** – Not a term of Act – Does not discharge contract till accepted by Master: *Satna Central Co-Operative and Land Mortgage Bank, Ltd. Satna Vs. Purnanlal Agrawal, I.L.R. (1974) M.P. 580 (D.B.)*

– **“Resided” in Section 488 of Criminal Procedure Code** – Covers temporary as well as permanent residence – What constitutes – “Residence” depends on facts of each case: *Tulsiram Vs. Smt. Narbada Bai, I.L.R. (1957) M.P. 438*

– **Royalty** – Meaning of – Important feature of royalty: *Surajdin Vs. The State of Madhya Pradesh, I.L.R. (1959) M.P. 202 (D.B.)*

– **“Rent”** – Meaning of Accommodation Control Act, M.P. does not define ‘rent’: *Krishnachandra Vs. Hiralal, I.L.R. (1964) M.P. 274*

– **“Readymade garments” and “Hosiery goods”** – To be understood as in common commercial parlance and in their popular meaning: *The Commissioner of Sales Tax, MP Indore, Vs. M/s. Mahajan Brothers, Indore, I.L.R. (1965) M.P. 181 (D.B.)*

– **“Rank”** – Implication of: *Ashok Kumar Mukherjee Vs. The Registrar of High Court of M.P., Jabalpur, I.L.R. (1977) M.P. 1 (F.B.)*

– **“Reduction in rank”** in Article 311 of constitution of India – Meaning of: *Ashok Kumar Mukherjee Vs. The Registrar of High Court of M.P., Jabalpur, I.L.R. (1977) M.P. 1 (F.B.)*

– **“Return” in General Sales Tax Act, Madhya Pradesh, 1958** – Meaning of: *Firm Harpaldas Jairamdas, Bilaspur, Vs. The Sales Tax Officer, Bilaspur, I.L.R. (1965) M.P. 402 (D.B.)*

– **“Right accrued”** – Circumstances when right accrues: *Govindrao, Vs. Board of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1965) M.P. 206 (D.B.)*

– **“Right of appeal”** – Meaning of: *Patny Transport (Private) Ltd., Jagdalpur, Vs. The State Transport Appellate Authority, Gwalior, I.L.R. (1969) M.P. 16 (D.B.)*

– **“Railway Station enclosures” – Meaning of:** *Municipal Committee, Bhatapara Vs. The Board of Revenue, I.L.R. (1960) M.P. 212 (D.B.)*

– **“Regulation”** in Section 432 of Criminal Procedure Code – Used in general sense as equivalent to any secondary legislation: *Provident Fund Inspector Vs. Mohammad Hussien, I.L.R. (1960) M.P. 341*

– **“Refusal”** – Meaning of: *Gopilal Vs. Sitaram, I.L.R. (1970) M.P. 615 (D.B.)*

– **Rice** – Includes any variety of rice: *State Vs. Santosh Kumar Agrawal, I.L.R. (1999) M.P. 1034 (D.B.)*

– **“Reason” and “Conclusions”** – Distinction between and import of: *Samaru Das Banjare Vs. State of M.P., I.L.R. (1985) M.P. 450 (F.B.)*

– **“Regrets” and “apology”** – Distinction between: *In Re C.K. Saraf, I.L.R. (1985) M.P. 380 (D.B.)*

– **“Release” in** – Meaning of: *Babu Pahalwan Vs. The State of M.P., I.L.R. (1990) M.P. 316 (D.B.)*

– **“Resulted in his death”** – Meaning of: *Ghurriya @ Rohini Baiswar Vs. State of M.P., I.L.R. (1990) M.P. 218 (D.B.)*

– **“Subject matter of the Trust” in** – Meaning and scope of as distinguished from subject matter of suit: *Shri Venkates Bhagwa, Faizabad Vs. Janki Prasad Choudha, I.L.R. (1990) M.P. 342*

– **“Shall” used in a statute** – Gives presumption of being mandatory: *Kankar Mujare Vs. State of M.P., I.L.R. (1985) M.P. 1 (D.B.)*

– **Specifically denied** – Means specifically denied by the party against whom the document is sought to be used and not only by the executant: *Laxmi Bai Vs. Shyama Bai, I.L.R. (1999) M.P. 1052*

– **“Similar”** – Meaning of: *M/s S.R. Calcuttawala, Indore, Vs. The Commissioner of Sales Tax, M.P., I.L.R. (1970) M.P. 348 (D.B.)*

– **“Suspension”** – Does not end relationship of Master and Servant – Is not “Termination of employment”: *V.P. Gidroniya, Vs. State of Madhya Pradesh, I.L.R. (1970) M.P. 249 (D.B.)*

– **“Sale”** – Not defined in the income tax Act – Its ordinary conception: *M/s Dewas Cine Corporation, Dewas, Vs. Commissioner of Income-Tax M.P. Nagpur and Bhandara, Nagpur, I.L.R. (1965) M.P. 849 (D.B.)*

– **“Same”** – Used in popular language for “similar”: *Mahesh Kumar Vs. State of M.P., I.L.R. (1980) M.P. 443 (D.B.)*

– **“Speaking order”** – Meaning of: *Jodhraj Vs. State, I.L.R. (1986) M.P. 519*

– **“Suspension during enquiry” in clause 521 (10-b)** of Shastry Award – Meaning of: *Madhav Anantrao Gore Vs. State Bank of India, I.L.R. (1986) M.P. 94 (D.B.)*

– **“Shall be filed in Collector’s Office”** in Section 12 of the Land Acquisition Act, 1894 – **Connotation of:** *Chhangalal Vs. The Land Acquisition Officer, Mahasamund, I.L.R. (1965) M.P. 460 (D.B.)*

– **“So far as may be”** – Meaning of: *Nathuram Vs. District Co. Operative Bank Ltd., Shivpuri, I.L.R. (1975) M.P. 807 (D.B.)*

– **“Stream”** – Description of: *Narsoo Vs. Madanlal, I.L.R. (1975) M.P. 843 (D.B.)*

– **“Sall”** – Interpretation of: *M.P. Spectro Engineering Corporation Engineers & Contractors, Bhopal Vs. State of M.P., I.L.R. (1989) M.P. 97 (D.B.)*

– **“laidZ” – Meaning of:** *Shri Gulabchandra, Vs. The State Government of Madhya Pradesh, I.L.R. (1964) M.P. 694 (D.B.)*

– **“Suit”** – Meaning of: *Prabhakar Parasharamji Pandit, Vs. Vikram Sugar Mills Ltd., I.L.R. (1959) M.P. 804*

– **“Sub-tenant”** in Section 21 of the Abolition of Jagirs Act, Madhya Bharat – Used in wider sense and includes sub-tenant whose tenancy is determined: *Deshraj alias Dostmohammad, Vs. Dangalia, I.L.R. (1965) M.P. 253 (D.B.)*

– **“Specially authorized in this behalf” in Section 168(1)** of the Municipalities Act, C.P. and Berar, 1922 – Qualify the words “by any other officer or member” and do not go with the words “Vice-president or secretary”: *Shri Radheshyam Khare, Vs. The State Government of Madhya Pradesh, I.L.R. (1960) M.P. 399 (D.B.)*

– **“Surviving member of the Coparcenary”** – Meaning of: *Laxmi Prasad Vs. Madan Mohan, I.L.R. (1981) M.P. 58*

– **“Subject to rules framed under this Act”** – Meaning of: *Bhagwat Prasad, Vs. The State of Madhya Pradesh, I.L.R. (1967) M.P. 204 (D.B.)*

– **“Such as” and “etc.”** – Words of limitation in regard to the meaning of general words “all kinds of eatables and drinks” – Words “such as” – Mean having that Particular quality or characteristic specified: *The Commissioner of Sales Tax, M.P., Indore, Vs. M/s Jabalpur Aerated Water Factory, Jabalpur, I.L.R. (1967) M.P. 304 (D.B.)*

– **“Sugar”** – Does not include “Batasa”, “Chiranji” “Mishri”: *Chhannulal Motilal Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore, I.L.R. (1967) M.P. 451 (D.B.)*

– **“Sues”** in Section 4 of the Partition Act – Meaning of: *Laxman Prasad, Vs. Babulal, I.L.R. (1968) M.P. 103*

– **“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*

– **“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.)*

– **“Shall”** makes the provision of Section 22(2) of the Act mandatory – Power of Court to amend the decree or plaint at any stage – Can only be exercised if any proceeding is pending: *Jawariya Vs. Addl. Judge to District Judge, Mandleshwar, I.L.R. (2000) M.P. 326*

– **“Slime”** – Is nothing but powdery form of ferreous – Exigible depending upon varied degree of ferreous contents – Demand of Royalty by the State justified: *National*

Mineral Development Corporation Limited Hyderabad Vs. State, I.L.R. (2000) M.P. 1220 (D.B.)

– **“Subject” in Rule X(iii)** would mean a ‘Particular course subject’ – Any other interpretation to it would run contrary and render the other provisions of the Rules redundant: *Dr. Sameer Harshe Vs. State, I.L.R. (2001) M.P. 749*

– **“Specific denial”** – Meaning of: *Nilknath Purshottam Bhawe, Vs. Gopaldas, I.L.R. (1961) M.P. 850*

– **“Tank” in section 5(f) of Abolition of Proprietary Rights Act, 1950, MP** – Includes embankment or Pars surrounding it: *Ramkumar Dani Vs. The State of M.P., I.L.R. (1961) M.P. 965 (D.B.)*

– **“Tax” in clause (b) of Section 164 of Municipalities Act, Madhya Pradesh, 1961 – Not used in restricted sense** – Means compulsory exaction of money by Municipal Council: *M/s Ramchandra Laxmichand, Satna, Vs. The Municipal Council, Satna, I.L.R. (1964) M.P. 504 (D.B.)*

– **“Tenant”** in Section 13 (1) of the Accommodation Control Act, 1961 – Meaning of: *Inderlal, Vs. Mahngi Bai, I.L.R. (1969) M.P. 863 (D.B.)*

– **“Theatre” and “theatrical performance”** – Meaning of Cinema falls under theatrical performance – “Other shows for public amusement” – Includes cinema show: *Delite Talkies, Jabalpur, Vs. The City of Jabalpur Corporation, Jabalpur, I.L.R. (1969) M.P. 791 (D.B.)*

– **“Tender”** – Principle of: *Abdul Hamid, Vs. Manilal, I.L.R. (1968) M.P. 266 (D.B.)*

– **“Tenant”** in Section 16 and 17 of Accommodation Control Act, 1955 – Used in popular sense – Includes an ex tenant: *Shyamlal Vs. Umacharan, I.L.R. (1960) M.P. 377 (F.B.)*

– **“Taxation” and “Tax”** – Distinction: *Lucky Bharat Garage (p) Ltd., Through Sardar Baldeosingh, Raipur, Vs. The Regional Transport Authority Raipur, I.L.R. (1967) M.P. 381 (D.B.)*

– **“To keep up” in Section 14 of the Estate Duty Act, 1953** – Meaning of: *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.)*

– **“Trial” in Section 90 (1)** – Meaning of: *H.V. Kamath Vs. The Election Tribunal, Jabalpur, I.L.R. (1957) M.P. 479 (D.B.)*

– **“Thekedar” in Section 2(m)** – Does not include mere lessee or Thekedar who is not an intermediary: *The State of Madhya Pradesh Vs. Seth Narayandas, I.L.R. (1958) M.P. 33 (D.B.)*

– **“This year”** relates to the initial year of agreement namely, the year 1970: *M/s Shri Ganesh Trading Company, Sagar Vs. State of Madhya Pradesh, I.L.R. (1973) M.P. 735 (F.B.)*

– **“Transit” – Meaning of:** *The Union of India, Ministry of Railways, New Delhi, Vs. Messrs Allauddin Aulia Sahib, I.L.R. (1962) M.P. 697 (D.B.)*

– **“Tax and fee”** – Distinction between and their implication – Wrong crediting of fund – Does not change nature of the amount – Co-relation between total collections and expenditure incurred for rendering service established – Absence of uniformity will not make the amount a tax – Co-relation necessary to sustain fee – Need not be arithmetical exactitude: *Loonkaran Parakh Vs. State of M.P., I.L.R. (1980) M.P. 403 (D.B.)*

– **The “Principal”** is the person for whom such act is done: *Ramlal Khurana Vs. G.P. Thakur, I.L.R. (2004) M.P. 173*

– **“Turn over” in Section 13 (1) of General Sales Tax Act, Madhya Pradesh** – Has extended meaning – Covers only sales of goods specified in Schedule 3: *Hiranand Tejumaal, Vs. The Commissioner of Sales Tax, Madhya Pradesh, Indore, I.L.R. (1962) M.P. 674 (D.B.)*

– **“Tax”, “toll”, “cess”, “free” and “duty”** – Meaning of: *Mata Prasad Vs. Election Officer, Morena, I.L.R. (1975) M.P. 468 (D.B.)*

– **“Toll Tax”** – Implication of: *Swaroopchand Jain Vs. State of Madhya Pradesh, I.L.R. (1975) M.P. 232 (D.B.)*

– **“Trade” and “business”** – Connotation of: *The State Bank of India Employee’s Housing Co-operative Society Limited, Raipur Vs. Navla Shanker Dave, I.L.R. (1975) M.P. 538*

– **“The Regional Transport Authority** may deal with application (for transfer) as if it were an application for a permit” in Rule 75(d) framed under Motor Vehicles Act Meaning of: *Poonamchand, Vs. The Regional Transport Authority, Indore Region, Indore, I.L.R. (1963) M.P. 385 (D.B.)*

– **The expression “proceeding” used in Section 13 of M.P. Accommodation Control Act** covers proceeding before RCA – But does not include execution proceedings. *Smt. Nathibai Vs. Maheshwari Samaj Ramola Trust, I.L.R. (1996) M.P. 206 (D.B.)*

– **“To show cause”** – Means both to allege cause and to prove it: *Baranagar Electric Supply and Industrial Company Ltd., Baranagar Vs. The State of Madhya Pradesh, I.L.R. (1963) M.P. 1021 (D.B.)*

– **“Two of whom shall be appointed by the executive council by single transferable vote” in sub-section (2) of section 11, University of Jabalpur Act** – Meaning of: *N.P. Shrivastava Vs. Dr. Hari Vinayak Pataskar, Chancellor of the University of Jabalpur, Bhopal, I.L.R. (1963) M.P. 390 (D.B.)*

– **“Unsoundness of mind” in Section 84** – Not to be understood in the same sense as in the medical science: *The State, Vs. Chhote Lal, I.L.R. (1958) M.P. 380 (D.B.)*

– **“Under in Section 26 (2) of Sales Tax Act, Central Provinces and Berar, 1947** – Synonymous with “in accordance with the provisions of” – Anything done in contravention of the provisions of the Act – Cannot be considered to be done under the act: *The State of Madhya Pradesh Vs. Somnath, I.L.R. (1960) M.P. 505 (D.B.)*

– **“Used”- in Municipalities Act, Section 127(3)(ii)** – Meaning of: *Swami Shivanand Vs. Municipal Council, Satna, I.L.R. (1980) M.P. 227 (D.B.)*

– **“Use” in Section 66(1)(e), Municipalities Act, C.P. and Berar, 1922** – Connotes employment of goods brought to any similar purpose to which such goods are ordinarily used: *The Anand Transport Co. (Private) Ltd., Raipur, Vs. The Board of Revenue, Madhya Pradesh, Gwalior, I.L.R. (1963) M.P. 811 (D.B.)*

– **“Use, sell, carry” etc. to be double content** – One physical act and other legal relationship – Words used in both senses in criminal law: *The State of Madhya Pradesh, Vs. The Bundelkhand Transport Co., I.L.R. (1964) M.P. 166*

– **“Unable to maintain herself” used in Section 125, Criminal Procedure Code** – Connotation of: *Rewati Bai Vs. Jageshwar, I.L.R. (1990) M.P. 530*

– **“Under any other law” in Section 61 of the Madhya Pradesh Shops and Establishments Act, 1958** – Meaning of: *Chalchitra Karmachari Sangh Through Shri Tarasingh Viyogi, Gwalior, Vs. Proprietor, Regal Talkies, Gwalior, I.L.R. (1965) M.P. 56 (D.B.)*

– **“Up-set price”** – Implication of: *State of M.P. Vs. Sardar Bootasingh, I.L.R. (1977) M.P. 317 (D.B.)*

– **“Umpire”** – Meaning of: *Maganlal Vs. Ramaji, I.L.R. (1966) M.P. 282 (D.B.)*

– **“Vastu”** – Wide enough to cover chattels, real and personal – Includes money in deposit but not immovable property: *Kedarmal, Vs. Gopaldas, I.L.R. (1962) M.P. 815 (D.B.)*

– **“Variety”** – Not only mean different name but also include made of different material: *M/s Leatherite Khajuraho Vs. State, I.L.R. (2000) M.P. 39*

– **“Vested right”** – Meaning of – No person has vested right in course of procedure: *Mst. Mohammadi Begam, Vs. Abdul Majid Khan, I.L.R. (1962) M.P. 689 (D.B.)*

– **“Vanaspati”** in item no. 23 of the Schedule in the Notification No. 75/7 S.R. 55(51) of 24-11-53 does not mean Vanaspati ghee or Hydrogenated Oil: *The Ujjain Oil Mills Private Limited Vs. The Sales Tax Officer, I.L.R. (1960) M.P. 49 (D.B.)*

– **“Vanaspati industry”** Includes industry of refining crude vegetable oil: *The Ujjain Oil Mills Private Limited Vs. The Sales Tax Officer, I.L.R. (1960) M.P. 49 (D.B.)*

– **“Varnish”** – Meaning of Commodity known as “French polish” included in “Varnish” and liable for payment of tax: *Akhtar Abbas Vs. Assistant Commissioner Central Excise, Bhopal, I.L.R. (1960) M.P. 408 (D.B.)*

– **“Vegetable”** in Section 210(1) of Cantonments Act, 1924 – Does not include betel leaves: *The State Government of M.P. Vs. Abdul Rashid & Cantonment Board, I.L.R. (1960) M.P. 534*

– **“Written down value” in Section 10(2) (vi) and 10(5)(b)** – Meaning of: *M/S Nandlal Bhandari Mills Ltd., Indore, Vs. The Commissioner of Income Tax, Madhya Pradesh, Nagpur and Bhandara, I.L.R. (1962) M.P. 651 (D.B.)*

– **“Water-tight”** – Is descriptive of a type of wagon – Not to be understood as guarantee that it is actually water-tight: *Union of India Vs. Hukumchand, I.L.R. (1971) M.P. 90 (D.B.)*

– **‘Workman’** – Person employed casually for purposes of employee’s trade or business – Falls within the definition of workman: *Kishorchand Vs. Damodar, I.L.R. (1957) M.P. 10 (D.B.)*

– **Word “direction” in Section 17 (1) of Payment of Wages Act** – Includes refusal to make a direction: *P.L.Singh Vs. Shri C.B. Kekre, District Judge, Chhindwara, I.L.R. (1959) M.P. 835 (D.B.)*

– **Words “agreeing to the nomination” in Rule 19-A (3) of M.P. Election Rules**, Meaning of: *Radhakishan Vs. Shri R.R. Dube, Collector, I.L.R. (1959) M.P. 1023*

– **Words** – “illegal practice” Meaning of: *Sheo Kumar Vs. Shri M.A. Khan, Deputy Commissioner, Bilaspur, I.L.R. (1959) M.P. 527 (D.B.)*

– **Words** “reasonable and probable cause” – Meaning of: *Lakhan Lal Mishra Vs. Kashinath Dube, I.L.R. (1959) M.P. 544 (D.B.)*

– “**Works**” in Section 7(d) of the Representation of the People Act – Used in the Sense of “operations” “projects” “scheme” “plan”: *Satya Prakash, Vs. Bashir Ahmed, I.L.R. (1965) M.P. 106 (D.B.)*

– **Word “Talbana”** – Meaning of – Criminal Procedure Code – Section 256 – Right of accused to call prosecution witnesses for cross-examination after charge – Rules and Orders (Criminal) – Rule 558 – Bailable case in which cognizance taken on private complaint – Case falls under Rule 558 (a)(ii) – Matter of asking accused to pay diet-money in discretion of Magistrate: *Kodu Vs. Banmali, I.L.R. (1970) M.P. 1003 (D.B.)*

– “**Wilful Disobedience**” in – Connotation of: *Chaitram Vs. Steel Authority of India Ltd., Bhilai Steel Plant, Hirri Dolomite Mines, Bilaspur, I.L.R. (1990) M.P. 332*

– “**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: *The Amalgamated Coalfields Ltd, Calcutta Vs. Tha Janapada Panchayat, Chhindwara, I.L.R. (1981) M.P. 8 (D.B.)*

– “**When used as raw material for manufacture of medicines**” – Not superfluous – Benefit of exemption cannot be claimed nor available to drugs in general only on ground of capability of being used for manufacturing other drugs: *M/s Lupin laboratories Ltd. Vs. The Commissioner, I.L.R. (2001) M.P. 334*

– **Writ of Mandamus** – Does not issue where duty is discretionary and when the same is exercised – Can issue where discretion abused and results in injustice: *Purushottamdas Vs. The Board of Secondary Education, Jabalpur, I.L.R. (1960) M.P. 417 (D.B.)*

– **Witness** – Merely because eye-witnesses tried to implicate acquitted witnesses and part of their evidence was not held to be reliable not sufficient to reject their testimony in relation to appellant: *Ram Kripal @ Bhallu Vs. State of M.P., I.L.R. (1994) M.P. 210 (D.B.)*

– “**Without Prejudice**” – Meaning of: *M/s Chitram Company Private Ltd. Main Road, Foyapuram, Madras Vs. M.P. Electricity Board, Rampur, Jabalpur, I.L.R. (1983) M.P. 572*

– “**Welfare**” – Meaning of: *Smt. Kalmunnisa Vs. Shah Salim Khan, I.L.R. (1977) M.P. 239*

– **Words “Award and decision”** – Distinction between them – Co-operative Societies Act, Madhya Pradesh, 1961 – Section 67 – The words “Award” in – Meaning

of – Section 77 – The word “order” – Implication of – Order under, is appealable – Constitution of India – Article 226 – Existence of alternative remedy – Does not necessarily bar remedy under this provision – Co-operative Societies Act, Madhya Pradesh 1961 – Section 64 – Mention of name of society is mandatory when candidate contests election as representative of society – Interpretation of Statute – Ambiguity in procedural law – Rule to be followed: *Gangadhar Vs. The Nirvachan Adhikari Marketing Society, Vijaypur, I.L.R. (1975) M.P. 249 (D.B.)*

– “मुख्य अभियंता” – Means “Chief Engineer” and not ‘Engineer-in-Chief: *Ratanlal Khare Vs. State of M.P., I.L.R. (1985) M.P. 415*

Work Charged and Contingency Paid Employees Revision of Pay Rules, M.P., 1984

– Rules 3, 5 and 6 and Constitutional of India, Articles 226, 14 & 16 – Classification for different pay scales on basis of uniform length of service or requisite qualification – Classification reasonable – Petition challenging validity of Rules – Alternative remedy to raise industrial dispute no bar: *Karyabharit Avam Dainik Vetan Karmchhari Sangh Bargi Nagar, Jabalpur Vs. State of M.P., I.L.R. (1989) M.P. 87 (D.B.)*

Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (XLV of 1955)

– Section 14 and Industrial Employment (Standing Orders) Act (XX of 1946) – Circumstances In which Order of reinstatement should not be passed: *Suman Verma, Vs. The Nava Bharat Karmachari Sangh, Indore, I.L.R. (1970) M.P. 292 (D.B.)*

– Section 14 and Industrial Employment (Standing Orders) Act (XX of 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: *Suman Verma, Vs. The Nava Bharat Karmachari Sangh, Indore, I.L.R. (1970) M.P. 292 (D.B.)*

Working Journalists and other News Paper Employment (Condition of Service) and Miscellaneous Provisions Act (XLV of 1955)

– As amended by Act No. (LXV of 1962) – Section 17 – Application for recovery of dues towards differential salary and Gratuity under the Palekar Award – Stage of recovery would reach only after the amount due to employee is determined Sections 10, 17(1) and 17(2) of Industrial Disputes Act 1947: *Nav Bharat Press (Private) Ltd. Vs. State, I.L.R. (2001) M.P. 931*

– **Sections 2 (F), 3(1) 4 and Industrial Disputes Act (XIV of 1947)**, Sections 2 (00) 25-F – Retrenchment means termination – Conditions prescribed u/s.25-F not complied with – Retrenchment is illegal – Setting aside of Exparte order – Sufficient cause must be shown to set aside: *Nav Bharat & M.P. Chronical Group of News Papers Vs. Krishnasharan Shrivastava, I.L.R. (1991) M.P. 82 (D.B.)*

Workmen's Compensation Act (VIII of 1923)

– **(as amended) – Sections 4,4--A and 30** – Appeal – Accident in course of employment leading to permanent disability – Relevant date is date of accident – Compensation is required to be determined on basis of law prevailing on that date – Accident took place prior to amendment – Amended provision of Section 4 not applicable – Delay in payment of compensation – Employer extended all facilities for treatment – Imposition of penalty uncalled for – Interest – Nothing to do with date of accident – Rate revised by subsequent amendment – Workman entitled to enhanced rate of interest: *General Manager S.E.C.L. Johilla, Area G.M. Complex, Naurazabad, District Umaria (M.P.) Vs. Gajanan Wadnekar, I.L.R. (2005) M.P. 406 (D.B.)*

– **Not a penal statute** – Section 2 (d) – Minor brother includes uterine brother: *The General Manager, Gwalior, Sugar Co., Dabra Vs. Srilal, I.L.R. (1957) M.P. 596*

– **Employee** undertaking risky act for the sake of his comfort and convenience and suffers injury – Employer not liable to pay compensation: *Ramdas Vs. Union of India, I.L.R. (1966) M.P. 802*

– **Protection given by not confined to hours of labour**, but also during the period of leisure – Employee under taking risky act for the sake of his comfort and convenience and suffers injury - Employer not liable to pay compensation: *Ramdas Vs. Union of India, I.L.R. (1966) M.P. 802*

– **Schedule II, Clause XXIX** – Word “farming” in – Meaning of – Workers having means or connection with Tractor or Workers having means or connection with Tractor or other contrivances mentioned in the clause or with work that is done – Would be workmen within this clause – Worker having means with mechanical pumps or electric motor in connection with irrigation – Would be a workman: *The Bhopal Sugar Industries Ltd., Sehore Vs. Smt. Sumitra Bai, I.L.R. (1980) M.P. 560 (D.B.)*

– **Schedule II, Clause XXIX** – Worker having means with mechanical pumps of electric motors in connection with irrigation – Would be a workman: *The Bhopal Sugar Industries Ltd., Sehore Vs. Smt. Sumitra Bai, I.L.R. (1980) M.P. 560 (D.B.)*

– **Schedule II, Clause XXIX** – Workers having means or connection with Tractor or other contrivances mentioned in the clause or with work that is done – Would be

workmen within this clause: *The Bhopal Sugar Industries Ltd., Sehore Vs. Smt. Sumitra Bai*, I.L.R. (1980) M.P. 560 (D.B.)

– **Section 2 (1) (n)** – The word “And” in the definition of Workman is conjunctive and not disjunctive – Person employed casually for purposes of employer's trade or business – Falls within the definition: *Kishorchand Vs. Damodar*, I.L.R. (1957) M.P. 10 (D.B.)

– **Section (2)(1)(n)** – Labourer employed by a agriculturist in his land – Would fall within definition of workman – Constitution of India – Article 226 – Error required to be established by long drawn process of reasoning – And where two opinions can be possible – There hardly can be error apparent on face of record – Constitution of India – Article 227 – Circumstances in which High Court can interfere – Words and Phrases – Word “Business” – Meaning of – Includes agriculture – Worker employed for digging well on the agricultural holding – Would be a worker employed in the business of employer: *Gunda Vs. The Workmen's Compensation Commissioner, District Panna*, I.L.R. (1963) M.P. 222 (D.B.)

– **Section 2(1)(n)** – Conductor of a Motor Bus – Wages deducted for period of absence – Does not become casual employee – Falls within the definition of workman – Negligence of employee in carrying out regulations – Does not disentitle him to compensation – Question Whether accident arose out of, and in course of employment – A question of law – Burden of proof – Claim for compensation for death of employee – Burden on person claiming compensation to prove that death occurred during course of employment – Causal connection between employment and accident to be established: *Firm Babulal Mulchand Jain, Chhatarpur Vs. Ali Mohammad*, I.L.R. (1963) M.P. 507,

– **Section 2(1)(n) and Schedule II, Clause (VIII) (a)** – Person employed in construction, repairs or demolition of building not more than one story or twenty feet or more from ground level to apex of roof not a work man – Burden of proof – Construction of parapet to the roof of one storeyed building – Does not make the building more than one storeyed – Burden on claimant to prove that deceased was workmen: *Subhadrabai Vs. The Malwa United Mills, LTD. Indore and Nathulal Vs. Subhadrabai*, I.L.R. (1961) M.P. 396

– **Section 2(1) (d) (iii)(b)** – Application for compensation made by mother of a deceased employee – Court dismissing it holding that mother is not a dependent – Order illegal: *Smt. Sunder Bai Vs. M.P. Electricity Board, Through Divisional Engineer, Chhindwara*, I.L.R. (1982) M.P. 541

– **Section 2(1) (d) (iii)(b)** – Expression other than a widowed mother in – Meaning of – The words ‘a parent’ includes a mother also – Application for compensation made

by mother of a deceased employee – Court dismissing it holding that mother is not a dependent – Order illegal – Interpretation of Statutes – Effect of a proviso: *Smt. Sunder Bai Vs. M.P. Electricity Board, Through Divisional Engineer, Chhindwara, I.L.R. (1982) M.P. 541*

– **Section 2(1)(n) and items (xxii) and (xxiii) of Schedule II** – Such a 'forest guard' is a 'workmen' under this section: *State Vs. Smt. Sushila Bai Thakur, I.L.R. (1999) M.P. 768*

– **Sections 2(1) (n) and 30** – Appeal – Tenable only on substantial question of law – Compensation – Liability – Workmen's engaged for motor repairing fitted in the premises jointly belonging to the appellants – All the appellants are equally liable: *Nandu Alias Nandkishor Vs. Smt. Sheela Bai, I.L.R. (2005) M.P. 984*

– **Section 2(c), 2(e), 4-A** (unamended), 12 and 30 Appeal against the award of compensation, interest and penalty – Award of compensation with compound interest and penalty – On default of employer in paying the compensation beyond the permissible limit of one month interest flows automatically – Penalty on compensation does not flow automatically from the main liability incurred by the employer – Section 2(c), 2(e) and 12 – Definition of employer does not speak of principal or contractor – Object of Section is to protect the workman and to secure Compensation from a person who is in better position to pay who then are to be indemnified by the Contractor – Award of interest exceeding 6% P.A. – Not permissible – principal shall pay compensation with 6% simple interest and shall be entitled to be indemnified by contractor – Principal not liable to pay penalty – Award modified: *State Vs. Chitrekha, I.L.R. (2001) M.P. 1041 (D.B.)*

– **Section 2(c), 2(e) & 12** – Definition of employer does not speak of Principal or Contract – Object of Section is to protect the workman and to secure compensation from a person who is in better position to pay who they are to be indemnified by the Contractor – Award of interest exceeding 6% P.A. – Not permissible – Principal shall pay compensation with 6% simple interest and shall be entitled to be indemnified by contractor – Principal not liable to pay penalty – Award modified: *State Vs. Chitrekha, I.L.R. (2001) M.P. 1041 (D.B.)*

– **Section 2(f)** – Chief Engineer of Public Works Department is a managing agent on behalf of Government – Is liable for claim for compensation: *Public Works Department, Through Chief Engineer, P.W.D., Bhopal Vs. Mst. Kausa, I.L.R. (1966) M.P. 470*

– **Section 2(1)(d)** – Adopted unmarried daughter – Is unmarried legitimate daughter: *Ganga devi Vs. M/s N.H.O. Jha and Co. Private Ltd. Palachori Colliery, I.L.R. (1973) M.P. 1127 (D.B.)*

– **Section 2(2)** – Does not exclude workman employed by departments of Government: *Smt. Satiya Vs. The sub-Divisional Officer, P.W.D. (B & R), Narsingpur, I.L.R. (1979) M.P. 527 (D.B.)*

– **Section 2(1)(n)** – Definition has to be read along with Schedule-II – Section 2 (1)(n) and Schedule II, Entry No. VIII – Word – ‘Workman’ – Means one who is employed for purpose of employer's trade or business – Section 2(2) – Exercise and Performance powers of a department acting on behalf of Government – Be deemed to be the trade or business of that department unless contrary intention appears – Does not exclude workman employed by departments of Government – Words and Phrases – “Accident” – Excludes idea wilful and intentional act – But includes murder as accidental happening so far as workman is concerned: *Smt. Satiya Vs. The sub-Divisional Officer, P.W.D. (B & R), Narsingpur, I.L.R. (1979) M.P. 527 (D.B.)*

– **Section 2(1)(n) and Schedule II, Entry No. VIII – Word ‘Workman’** – Means one who employed for purpose of employers trade or business: *Smt. Satiya Vs. The sub-Divisional Officer, P.W.D. (B & R), Narsingpur, I.L.R. (1979) M.P. 527 (D.B.)*

– **Section 2(2)** – Exercise and performance of power of a department acting on behalf of Government of – Be deemed to be the trade or business of that department unless contrary intention appears: *Smt. Satiya Vs. The sub-Divisional Officer, P.W.D. (B & R), Narsingpur, I.L.R. (1979) M.P. 527 (D.B.)*

– **Section 2(n)** – Deceased employed as Chowkidar – No Special terms of employment – Evidence of record showing that deceased was required to do all functions for furtherance of the scheme of the respondent including demolition of structure built unauthorisedly – Deceased was a ‘workman’ as defined in section: *Smt. Mariyambi Vs. Town And Country Development Authority, Jabalpur, I.L.R. (1983) M.P. 703*

– **Section 2(n) – Clause (VIII) of II Schedule and section 3** – Deceased went to remove encroachment and demolition of structures in furtherance of the scheme of the respondent – Suffered strain and stress – Died of cardiac failure – Deceased died in the course of employment and as a result of employment – Respondent liable to pay compensation: *Smt. Mariyambi Vs. Town And Country Development Authority, Jabalpur, I.L.R. (1983) M.P. 703*

– **Section 2(n) – Clause (VIII) of II Schedule and Section 3** – Respondent's function for development of site for house buildings and constructional activities fall within the ambit of clause (viii) of schedule II – Deceased employed as chowkidar – No special terms of employment – Evidence on record showing that deceased was required to do all functions for furtherance of the scheme of the respondent including demolition of structure built unauthorized – Deceased was a ‘workman’ as defined in section 2(n) – Deceased went to remove encroachment and demolition of structures in

furtherance of the scheme of the respondent – Suffered strain and stress – Died of cardiac failure – deceased died in the course of employment and as a result of employment – Respondent liable to pay compensation: *Smt. Mariyambi Vs. Town And Country Development Authority, Jabalpur*, I.L.R. (1983) M.P. 703

– **Section 2 (1)** – Jurisdiction of Tribunal – Depends on whether wages of more than Rs. 500/- actually paid or not – Company giving contract to a contractor who engages the workmen – Company is principal employer – Company is liable: *The General Manager (Works) M/s Straw Products Ltd., Bhopal Vs. Mohd. Akhtar*, I.L.R. (1991) M.P. 468

– **Section 2(e)** – “Employer” and “Workman” – Defined in and includes: *Smt. Surajbai Vs. Cement Corporation of India Ltd., Bilaspur*, I.L.R. (1991) M.P. 392

– **Section 3** – Obligation on the Employer to pay compensation: *Smt. Surajbai Vs. Cement Corporation of India Ltd., Bilaspur*, I.L.R. (1991) M.P. 392

– **Section 3(1)** – The words “arising out of and in the course of employment” – Means and includes – Distinction between – Where the death is neither expected nor designed, it amounts an accident under section 3 (1) of the Act: *Smt. Surajbai Vs. Cement Corporation of India Ltd., Bilaspur*, I.L.R. (1991) M.P. 392

– **Section 3(1)** – Theory of notional extension of employer's premises – Place of duty of the employee under the doctrine: *Smt. Surajbai Vs. Cement Corporation of India Ltd., Bilaspur*, I.L.R. (1991) M.P. 392

– **Sections 3, 3(1), 2(e) and 12** – For the advancement of the object and purpose of the Act – Liberal interpretation is required – Interpretation should be done in the context of the fact – Obligation on the Employer to pay compensation – “Employer” and “Workman” – Defined in and includes – The words “arising out of an in the course of employment” – Means and includes – Distinction between – Where the death is neither expected nor designed, it amounts an accident under section 3(1) of the Act – Theory of national extension of employer's premises – Place of duty of the employee under the doctrine – Liability of the principal under section 12 of the Act: *Smt. Surajbai Vs. Cement Corporation of India Ltd., Bilaspur*, I.L.R. (1991) M.P. 392

– **Section 3** – Travelling by bus and crossing and recrossing the barrier is an obligatory part for reporting to duty – Appellant also charging Rs. 3.50 for crossing the barrier and Accident occurred before the bus could cross out the barrier – Incident has to be held to have occurred during the course of employment – Award of compensation rightly granted by the commissioner – No interference in appellate jurisdiction necessary: *Western Coalfields Ltd., Chhindwara Vs. Shamshad Bano*, I.L.R. (2000) M.P. 1131

– **Section 3(1)** – Word “accident” in – Used in the popular and ordinary sense – Meaning of – Words “arising out of his employment” in – Wide enough to cover where

there is direct connection between the injury and the employment – Section 2(f) – Chief Engineer of Public Works Department – Is a managing agent on behalf of Government – Is liable for claim for compensation: *Public Works Department, Through Chief Engineer, P.W.D., Bhopal, Vs. Mst. Kausa, I.L.R. (1966) M.P. 470*

– **Section 3(1)** – Words “ arising out of his employment” in Wide enough to cover where there is direct connection between the injury and the employment: *Public Works Department, Through Chief Engineer, P.W.D., Bhopal Vs. Mst. Kausa, I.L.R. (1966) M.P. 470*

– **Section 3 (1), proviso (b)(ii) – Requirements of** – The term ‘willful disobedience’ in connotation of – The worker sustaining injury during the course of employment failing comply with the orders of the employer regarding wearing goggles – Whether disentitles him to claim compensation – Evidence Act – 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: *Chaitram Vs. Steel Authority of India Ltd., Bhilai Steel Plant, Hirri Dolomite Mines, Bilaspur, I.L.R. (1990) M.P. 332*

– **Section 3 (1), proviso (b)(ii)** – The worker sustaining injury during the course of employment failing comply with the orders of the employer regarding wearing goggles – Whether dis entitles him to claim compensation: *Chaitram Vs. Steel Authority of India Ltd., Bhilai Steel Plant, Hirri Dolomite Mines, Bilaspur, I.L.R. (1990) M.P. 332*

– **Section 3** – Physical strain resulting in death need not be unusual even outside course of employment: *Smt. Sunderbai Vs. The General Manager, Ordnance factory, Khamaria, Jabalpur, I.L.R. (1980) M.P. 1033 (D.B.)*

– **Section 3** – Words “arising out of employment” in – Mean “a casual relationship, between the accident and the employment” – Burden to prove that employment contributed to accident – Lies on applicant – Word “accident” in – Meaning of – To be construed in wider sense connoting mishap or untoward event etc – Physical strain resulting in death need not be unusual even outside course of employment: *Smt. Sunderbai Vs. The General Manager, Ordnance factory, Khamaria, Jabalpur, I.L.R. (1980) M.P. 1033 (D.B.)*

– **Sections 3,4,30 Third proviso** – Award of compensation – Can only be challenged by way of an appeal and not otherwise – Provision for depositing award amount as pre condition of appeal – Not violative of the constitution: *Khemkaran Sanodiya Vs. Union of India, Through The Secretary, Ministry of Law, New Delhi, I.L.R. (2005) M.P. 568 (D.B.)*

– **Section 3** – The word 'injury' in – Connotation of – Wagon loader in Coal miners suffering from tuberculosis while in employment – Resulting in permanent total disability – Death taking place subsequent to the disablement Calculation of compensation in such cases is for disablement and not for death: *General Manager, Western Coalfields Ltd., Kanhan Area Vs. Smt. Kalasia Bai, Junnardeo, I.L.R. (1987) M.P. 443*

– **Sections 3, 4-A, 10 and 30, Workmen's Compensation Rules, 1924**, Rule 41 and Civil Procedure Code (V of 1908). Order 9, rule 13 Limitation Act Indian (XXXVI of 1963), Section 14 and Workmen's Compensation (Occupational Disease) Rules, M.P. – Claim for compensation – Occupational disease – Death on account of pulmonary tuberculosis not accompanied by pneumoconiosis – Is not a death on account of occupational disease – Section 3 – The word 'injury' in – Connotation of – Wagon loader in Coal mines suffering from tuberculosis while in employment – Resulting in permanent total disability – Death taking place subsequent to the disablement calculation of compensation in such cases is for disablement and no for death – Section 4-A – Penalty – When can be imposed – *Ex-parte* order against employer – Employer applying for setting it aside – On dismissal of such application, employer filing appeal against the award of compensation on merits – Tenability of – Limitation Act, 1963 – Section 14 – Condonation of delay in filing appeal: *General Manager, Western Coalfields L.T.D., Kanhan Area Vs. Smt. Kalasia Bai, Junnardeo, I.L.R. (1987) M.P. 443*

– **Section 4-A** – Penalty – When can be imposed: *General Manager, Western Coalfields L.T.D., Kanhan Area Vs. Smt. Kalasia Bai, Junnardeo, I.L.R. (1987) M.P. 443*

– **Section 4-A (3)** – Interest – Nothing to do with date of accident – Rate revised by subsequent amendment – Workmen entitled to enhanced rate of interest: *General Manager S.E.C.L. Johilla, Area G.M. Complex Naurajzbad, District Umaria (M.P.), Vs. Gajanan Wadnekar, I.L.R. (2005) M.P. 406 (D.B.)*

– **Section 4-A Penalty Act** – Delay in payment of compensation – Employer extended all facilities for treatment – Imposition of penalty uncalled for: *General Manager S.E.C.L. Johilla, Area G.M. Complex Naurajzbad, District Umaria (M.P.), Vs. Gajanan Wadnekar, I.L.R. (2005) M.P. 406 (D.B.)*

– **Section 4 – Explanation II, 30 and Letters Patent Clause X** – Intra-Court Appeal against order of learned Single Judge – Death of workmen in accident during the course of employment – Compensation – Calculation of – Where death results from the injury 40% of monthly wages multiplied by relevant factor or in the alternative Rs. 20,000/- whichever is more – Deceased getting monthly wages of Rs. 1500/- – Where in case of death wages exceeds Rs. 1,500/- his monthly wages for purposes of compensation would be Rs. 1000/- – Appellant entitled to Rs. 78,824/- with interest @ 6% p.a.: *Smt. Sushila Bai Vs. M.P.E.B., I.L.R. (2004) M.P. 579 (D.B.)*

– **Section 4-A** – Compensation when can be said to “fall due” – Has to be decided on evidence in each case – No rigid Meaning is capable of being given: *M/s. Rewa Coalfields Ltd., Burhar Vs. Chainoo, I.L.R. (1971) M.P. 322*

– **Sections 4,30 and Motor Vehicles Act, LIX of 1988. Sections 166,173** – Motor accident – Driver negligence – Death of driver – Remedy lay under the Act of 1923 – Claim by relatives under the Motor Vehicles Act – Tribunal rightly rejected claim petition: *Sidamma Vs. Vikram Reddy, I.L.R. (2005) M.P. 831 (D.B.)*

– **Section 10** – Obligation of employee to give notice of accident to employer – Purpose of – Knowledge of accident to employer – Sufficient compliance – Section 11 – Medical examination of workmen – Employer's privilege – Employer to take steps for it – Workmen appeared before Civil Surgeon for medical Examination but not examined – Effect of: *M.P. Mining Corporation, Satna Vs. Munda Kol, I.L.R. (1987) M.P. 714*

– **Section 11** – Medical examination of workmen – Employer's privilege – Employer to take steps for it: *M.P. Mining Corporation, Satna Vs. Munda Kol, I.L.R. (1987) M.P. 714*

– **Section 11** – Workman appeared before Civil Surgeon for Medical examination but not examined – Effect of: *M.P. Mining Corporation, Satna Vs. unda Kol, I.L.R. (1987) M.P. 714*

– **Section 12** – Liability of the Principal under Section 12 of the Act: *Smt. Surajbai Vs. Cement Corporation of India Ltd., Bilaspur, I.L.R. (1991) M.P. 392*

– **Section 19 And 4-A (3)** – Accident of Motor vehicle – Liability to pay compensation is on the owner – Vehicle is insured – Insurer liable to pay penalty also: *New India Assurance Company Ltd., Raipur Vs. Bhukhan, I.L.R. (1989) M.P. 489*

– **Section 19, 4-A(3)** – Section 19 only bars the jurisdiction of the Civil court and not the tribunal – Accident of Motor Vehicle – Liability to pay Compensation is on the owner – Vehicle is insured – Insurer liable to pay penalty also: *New India Assurance Company Ltd., Raipur Vs. Bhukhan, I.L.R. (1989) M.P. 489*

– **Section 22** – Claim not premature because of continuance of minority of applicants – Could be made through next friend or guardian: *Smt. Lauki Devi Vs. Sardar Gurlal Singh, I.L.R. (1988) M.P. 398*

– **Section 22 and Limitation Act, Indian (XXXVI of 1963)**, Section 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 – Claim not premature because of continuance of minority of applicants – Could be made through next friend or guardian: *Smt. Lauki Devi Vs. Sardar Gurlal Singh, I.L.R. (1988) M.P. 398*

– **Section 30** – Appeal against award by Commissioner for workmen's Compensation – Deceased underground minor in the employment of appellant drawing salary Rs 3858.20 per month – After duty travelling in a mini bus towards his residence – Death in the motor accident occurred due to hitting the barrier put by appellant demarcating the bound of its premises – Section 3 – Travelling by bus and crossing and recrossing the barrier is an obligatory part for reporting to duty – Appellant also charging Rs. 3.50 for crossing the barrier and Accident occurred before the bus could cross out the barrier – Incident has to be held to have occurred during the course of employment – Award of compensation rightly granted by the Commissioner – No interference in appellate jurisdiction necessary – Words and phrases – 'Casual connection' – In the course of employment stretches from the time workmen enters employer's premises till he goes out of the same after his duty – The barrier was put by employer – Since employer could not provide conveyance it arranged for a private vehicle and charged fare for that – Accident occurred due to hitting the said barrier – Necessarily there was a casual connection with the employment as deceased was returning home in that bus after death: *Western Coalfields Ltd., Chhindwara Vs. Shamshad Bano, I.L.R. (2000) M.P. 1131*

– **Section 30** – Appeal against award – Deceased murdered – Dead body found in the factory premises – Criminal case under Section 302, I.P.C. pending – Section 3(1) of the Act – Ingredients – If the accident arose out of and during the course of employment – Deceased could have been killed anywhere because of his enmity with the murderer – Murder had no relation with the employment – Cannot be held that accident arose out of the employment. *Bharat Heavy Electricals Ltd. Bhopal Vs. Smt. Gyan Kaur, I.L.R. (2000) M.P. 518*

– **Section 30** – Appeal – Deceased 'forest Guard' working under the Field Director, project Tiger – Duty also includes preservation of wild animals – Such a 'forest guard' is a 'workmen' under Section 2(1) (n) and items (xxii) of (xxiii) of Schedule II of the Act.: *State Vs. Smt. Sushila Bai Thakur, I.L.R. (1999) M.P. 768*

– **Section 30** – No independent right of appeal given to insurer – Avails the right of appeal given to employer – Third proviso to Section 30(1) equally applicable to an appeal filed by insurer – Appeal by insurer without certificate of deposit – Not maintainable: *New India Assurance Co. Ltd. Vs. Smt. Savita Sen, I.L.R. (2004) M.P. 423 (F.B.)*

– **Section 30** – Appeal – By insurer – Against award – Requirement of Third proviso to Section 30(1) – To accompany certificate of deposit with memorandum of

appeal – Beneficial legislation – Has to be interpreted in a manner which helps in achieving the object sought to be achieved – No independent right of appeal given to insurer – Avails the right of appeal given to employer – Third proviso to Section 30(1) equally applicable to an appeal filed by insurer – Appeal by insurer without certificate of deposit – Not maintainable: *New India Assurance Co. Ltd. Vs. Smt. Savita Sen*, I.L.R. (2004) M.P. 423 (F.B.)

– **Section 30** – Appeal – Appellant transport company – Deceased employed as conductor proceeding in a jeep insured by the insurer for work of employer – Not employed in connection with the motor vehicle insured – Accident – Death of conductor – Liability not covered by the insurance policy: *Managing Director, Drug Transport Co. Pvt. Ltd., Durg Vs. Commissioner of Workmen's Compensation-Cum-Labour Court, Durg*, I.L.R. (1992) M.P. 110

Workmen's Compensation Act (LXIII of 1923)

– **Sections 4 and 30** – Death during the course of employment – Deceased employed as driver – On way to Vairawal from Jabalpur – Death enroute due to heart attack – Allegation that due to strain of over work death occurred – Allegation that there was no second driver remained unchallenged – Death due to accident arising out of employment proved – Claimant entitled to compensation – Insurance policy between owner and insurer – Insurance company cannot be absolved: *Oriental Insurance Company Ltd. Vs. Smt. Sumantari Bai*, I.L.R. (2003) M.P. 77

Workmen's Compensation Act (Amending Act) (XXX of 1995)

– **Section 4-A, Sub-section 3-A – Right to receive penalty amount** – Accident prior to coming into force of Amending Act – Amendment not retrospective – Penalty amount has to be credited to claimant and not to State Government – Order of Commissioner modified: *Ramesh Vs. Commissioner For Workmen's Compensation, Indore*, I.L.R. (2002) M.P. 352

Writ of Certiorari

– **When can be issued**: *Sardar Govind Rao Vs. The State of Madhya Pradesh*, I.L.R. (1959) M.P. 172 (F.B.)

Writ of Habeas Corpus

– **Wife wrongfully confined by husband either for illegal purpose or even in order to enforce his rights as husband** – Action of husband not legal – Court not concerned with rights under Hindu Marriage Act or Hindu Adoption and Maintenance

Act – Right by husband cannot be enforced by physical confinement – Things to be considered in issuing writ of *Habeas Corpus* – Choice of minor regarding custody – When immaterial: *Ramsewak Vs. Gangaram, I.L.R. (1966) M.P. 1009 (D.B.)*

Zamindari Abolition Act, Madhya Bharat (XIII of 1951)

– **Section 3 (1)** – Notification – Date of vesting 2-10-1951 – Plaintiff's suit in tehsil on 06-10-1951 against Zamindar under Section 319-A of Qanoon Mal for rein statement of Gair Maursi Tenant – Zamindar ultimately succeeded before Revenue Board – Plaintiff's petition in High Court under Article 27 of the Constitution – Plaintiff's vested rights against proprietor not enforceable against state in whom all the rights vested under the Zamindari Abolition Act – Possession – Distinction between possession which is illegal possession and possession which is likely to be lost by enforcement of superior right – Section 41 – Possession contemplated in – Is actual possession and not a right to possess – Demarcation line – Actual possession was considered to be just basis: *Daryaosingh Vs. Pyarelal, I.L.R. (1960) M.P. 950 (D.B.)*

– **Section 38 (2)**, Proviso and Madhya Bharat Land Revenue and Tenancy Act, Section 74(1) – Word “Person” in – Includes an artificial person: *Anandji Kalyanji Idol of Jain Vs. Daulat Singh, I.L.R. (1963) M.P. 247 (D.B.)*

– **Section 41** – Possession contemplated in – Is actual possession and not a right to possess – Demarcation line – Actual possession was considered to be just basis: *Daryaosingh Vs. Pyarelal, I.L.R. (1960) M.P. 950 (D.B.)*

Zamindari Abolition Act, Madhya Bharat, Samvat 2008 (XIII of 1951)

– **Sections 3 (1) and 4 (1) (a)** – Decree passed prior to Act – Statutory Consequences of the subsequent Act to be given effect to: *Ramsingh Vs. Ramkaran, I.L.R. (1965) M.P. 897 (D.B.)*

– **Sections 3 (2)** – Relates to inferior rights: *Ramsingh Vs. Ramkaran, I.L.R. (1965) M.P. 897 (D.B.)*

– **Sections 3 (2)** – Words “Right in or over the land to which notification relates” in – Do not refer to proprietary rights: *Ramsingh Vs. Ramkaran, I.L.R. (1965) M.P. 897 (D.B.)*

– **Sections 3 (2) and 3 (1)** – To be construed harmoniously – Words “Right in or over the land to which notification relates” in sub-section (2) of Section 3 – Do not refer to proprietary rights – Section 3(2) – Relates to inferior rights – Sections 3(1) and 4(1)(a) – Decree passed prior to Act – Statutory consequences of the subsequent Act to be given effect to – Section 41, Proviso – Does not save Proprietary rights to continue pending litigation – Proviso to be construed in relation to subject matter of principal

section – Section 4(1) (a) – Word “cultivable” in – Includes cultivated land – Interpretation of Statute – 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 – Execution – Executing Court, Power of, to refuse execution on ground that decree became inexecutable: *Ramsingh Vs. Ramkaran, I.L.R. (1965) M.P. 897 (D.B.)*

– **Sections 4 (1) (a)** – Word “Cultivable” in – Includes cultivated land: *Ramsingh Vs. Ramkaran, I.L.R. (1965) M.P. 897 (D.B.)*

– **Sections 41, Proviso** – Does not save proprietary rights to continue pending litigation: *Ramsingh Vs. Ramkaran, I.L.R. (1965) M.P. 897 (D.B.)*

Zamindari Abolition Act, Madhya Bharat (XVI of 1959)

– **Section 38** – Whether confers powers on the Revenue Officer to determine dispute between person seeking to deposit on basis of alleged status and another person questioning his right – Land Revenue and Tenancy Act, Madhya Bharat – Section 15 and Notification dated 7.5.56, under Section 16 – Power of, Government to appoint Naib – Tehsildar and Additional Naib-Tehsildar – Power of Tehsildar – Can be exercised by Additional Naib-Tehsildar after appointment – Interpretation of Statute – 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 – To be strictly construed: *Ayyub Khan Vs. Fundilal, I.L.R. (1969) M.P. 343 (F.B.)*