CONTRIBUTION OF ALLAHABAD HIGH COURT TO THE DEVELOPMENT OF LAW

******

'A HIGH COURT JUSTICES' CONFERENCE ON THE CONTRIBUTION OF INDIAN HIGH COURTS TO THE DEVELOPMENT OF LAW'

NATIONAL JUDICIAL ACADEMY BHOPAL

(14TH – 16TH MARCH, 2008)

****

Compiled and presented
by Justice Sunil Ambwani,
Judge, Allahabad High Court,
Allahabad.

Introduction

'The Allahabad High Court' has completed 142 years since it was established by the Royal Charter on March 17th, 1866. In the beginning the High Court administered civil, criminal, testamentary and matrimonial jurisdiction. In its journey through the times it has seen the development of civil, criminal and personal laws. After independence and the enforcement of the Constitution of India, the Court is administering justice to the largest number of people of the State. Beginning with six judges including the Chief Justice, the High Court has now a sanctioned strength of 95 judges including the Chief Justice, and has 8.25 lacs cases pending on its dockets. The High Court is administering both the Central and State laws. It would be useful to refer to the legal history of administration of justice in the State before proceeding to discuss various judgments, which have contributed to the development of law.

The Lineage

The Regulating Act, 1773 passed by British Parliament conferred the powers upon Her Majesty to constitute a Supreme Court in Bengal for the British subjects and employees of the East India Company. The Charter of 1774, however, did not repeat the limitation causing uncertainty in administration of law. The Dewani of Bengal, Bihar and Orissa was secured in 1765 by a grant, beginning a new system of administration of justice. The criminal courts designed as Faujdari Adalats were established and placed under the Collector of the Revenue. In 1775 their superintendence was entrusted to Naib Najim, who appointed Fouzdars to preside over the Courts. English judges on Dewani Adalats were appointed as Magistrates with a power to take cognizance of offences. The authority of the English Magistrates, however, was ineffective over Zamindars and land holders. These Magistrates were vested with the authority to decide petty offences in 1787. In 1790 the Courts of Circuit under the superintendence of English judges, assisted by persons well versed in Mohammedan law, were established for crime in the first instance. The Crimes and Misdemeanors Regulations were reenacted in Reg. IX of 1793.

Sadar Dewani Adalat was instituted in the Presidency under the superintendence of three or more members of the council in 1772 to hear

appeals from Dewani Adalats. British subjects were, however, excluded from their jurisdiction.

The Indian High Court Act or the Charter Act (24 & 25 Vic.c.104) were passed by the British Parliament in 1861. The former provided for abolition of the Supreme Court of Judicature and Sadar Dewani Adalats, and the constitution of the High Courts of Judicature in their place in three Presidency Towns of Calcutta, Bombay and Madras. Section 16 of the Act reserved powers to Her Majesty to constitute similar High Courts in other territories. The Indian Councils Act empowered the Governor General to create local legislatures in various provinces. Calcutta, Madras and Bombay High Court were established by the Royal Charter in the year 1862. In 1865 fresh Letters Patent were issued for these Courts, also known as amended Letters Patent.

The Royal Charter

On 17th March, 1866 the High Court of Judicature for the North Western Province consisting of the Chief Justice Sir Walter Morgan and five other judges were established by the Royal Charter. The Charter of 1866 conferred civil, criminal, testamentary and intestate as well as matrimonial jurisdiction on the new High Court. The dual system of administration of justice was amalgamated and transferred to the new High Court. The conferment of guardianship, lunacy, testamentary and intestate jurisdiction of the High Court was made by incorporating the powers exercised by the High Court at Fort William. Clause 23 of the Allahabad Charter prescribed application of the Indian Penal code for criminal jurisdiction. There was characteristic vagueness for civil cases. The cases coming before the High Court were required to be decided according to law or equity that would have been demonstrated by the Courts of trial, unless otherwise provided. On the appellate side the High Court had to apply 'the law or equity and rule of good conscience' that word to be applied by the Courts of trial. Within the Presidency Town the English law prevailed with an exception of the personal laws of Hindus and Mohammedans. Outside, the Presidency Town Regulation IV of 1793 provided, that in suits regarding succession, inheritance, marriage, caste and other religious usages, the Hindu and Mohammedan laws were to be applied by the Courts. For other persons there were no rules of guidance and judges were to act with justice, equity and good conscience.

The High Court framed the first Rules of Practice on 18th June, 1866 with the first sitting of the judges at Agra. The building and surrounding did not befit the dignity of the highest Court of Appeal and thus in the year 1869 the High Court was shifted to Allahabad in the building on the Queens' Road leaving the ceremonies quietly and unostentatiously. The Civil Courts and the Court of Judicial Commissioner in Avadh were formed by the Act XIV of 1865. In the year 1871 the Avadh Civil Court's Act (XXXII of 1871) was passed by the Governor General-in-Council to constitute and amend the laws relating to Civil Courts in Avadh. The Judicial Commissioner's Court was reconstituted as the highest Court by the Act. Section 23 of this Act provided for judicial affiliation of Avadh, for making references to the North West Province of High Court in case of any doubt about the cases to be decided. Sir Robert Stuart was appointed Chief Justice on the retirement of Sir Walter Morgan in 1871.

The Court in Oudh

Oudh was annexed to the territories of British East India Company by Lord Dalhousie, Governor General in 1856 with 12 districts, which constituted the province of Oudh under the Chief Commissioner. The

territories were united with the North Western Province known as North Western Province and Oudh. The Act VII of 1902 redesignated the province into United Province of Agra and Oudh. There were separate Courts to administer the laws in Oudh (Avadh) codified by the Oudh Laws Act XVIII of 1876. A Judicial Commissioners' Court was established in Lucknow in 1856 for disposal of civil and criminal cases, which continued to function for nearly 70 years. The Financial Commissioner was the highest Court in hierarchy, which was abolished by Act XXXII of 1871. The Addl. Judicial Commissioners were appointed, equal in status with the Judicial Commissioner to meet the increasing work. The Judicial Commissioner of these Courts were judges of Indian Civil Service except a few. The Oudh Courts Act was passed as U.P. Act No.IV of 1925 to amend and consolidate the laws relating to the Courts in Oudh and established a Chief Court of Oudh with one Chief Justice and four Puisne judges. The Chief Court amalgamated with the Allahabad High Court by the United Province High Court (Amalgamation) Order, 1948 and that the two Courts became one, by the name of "the High Court of Judicature at Allahabad".

On 27.11.1916 new building of the High Court was opened by Lord Chelmsford, the then Viceroy. By this time the High Court was 50 years old and had increased in size and work. The High Court got a new name on **11th March, 1919** with supplementary Letters Patent. The High Court was named as the **High Court of Judicature at Allahabad** with Sir Grim Wood Mear as the Chief Justice. He continued as Chief Justice for 13 years and received Prince of Wales at reception in the High Court on 12th December, 1921.

The Government of India Act, 1935 vested the High Court with the powers of superintendence over the subordinate courts.

After independence the two highest Courts of appeal within the same province were amalgamated by U.P. High Court Amalgamation Order, 1948 with Shri B. Malik as the Chief Justice of the High Court. The High Court at Allahabad administered rule of law in the entire State upto 1999, when the U.P. Reorganisation Act (29 of 2000), resulted into creation of State of Uttaranchal (now Uttarakhand).

The High Court at Allahabad is administering vast majority of laws, both substantive and procedural and is upholding rule of law in the State. It has played an important role of administering justice to the people living in far flung areas, separated from each other by thousands of miles having distinct languages, habitats and culture. It has played a creditable part in the evolution of law in the largest populated state in the country. A galaxy of eminent men have presided over the deliberations of the Court. The Chief Justice Sir Walter Morgan, Sir Robert Stuart, Sir John Edge, Sir John Stanely, Sir Shah Mohd. Sulaiman (the first Indian Chief Justice), Sir Iqbal Ahmad, Mr. Justice Syed Mahmood (1887-1893) adorned the Bench in the nineteenth century. Justice R.S. Pathak, Justice K.N. Singh and Justice V.N. Khare rose to the rank of Chief Justice of India, and have acquired lasting fame in the judiciary. The Bar likewise benefited from such luminaries as Pt. Ajodhya Nath, Sir Sunder Lal, Pt. Moti Lal Nehru, Shri P.C. Banerji, Shri Lal Gopal Mukherji, Sir Bisheshwar Nath Srivastava, Sir Tej Bahadur Sapru, Dr. Kailash Nath Katju, Dr. N.P. Asthana, Shri K.L. Misra, Shri S.N. Kacker, Shri Shanti Bhushan, Shri S.C. Khare, Shri P.C. Chaturvedi, Shri A.N. Mulla, Shri Shekhar Saran & others.

The Beginning (1866 to 1930)

Of all the judges, who had taken part in the deliberations in the High Court Mr. Justice Syed Mahmood played an important part in development of law. Educated at Christ Church College, Cambridge, he was elevated at

the age of 32 years. His short tenure of seven years brought about synthesis between ancient Hindu and Mohammedan laws and the common law imbued directly or through statutes from England. He was perhaps the first and remains unexelled. His distant footsteps still echo through the corridors of time. It was his genius to apply the principles of natural justice embodied in the maxim 'audi alteram partem' in his judgment in **Queen Empress Vs. Phopi, ILR XIII All. 171**[1]**.** Dissenting from the majority Justice Mahmood answered that mere notice on the prisoner was not enough and that it was imperative that he should either be heard in person or through counsel. The hearing is condition precedent for disposal of appeal, with the right of hearing being inherent in and the reason for it as seemed to him was that when a man asserted his right, he had to be heard, for the remedy itself implied a right which was not to be confounded with the mode of presentation.

Justice Syed Mahmood held that appeal under Section 420 of the Code of Criminal Procedure could not be disposed of in the absence of the accused and the appellant must be heard in person. He quoted Couplet Seneca from Medea (1, 199):-

"Quicunque aliquid statuerit parte inaudita altera- aequum licet statuerit, haud aequus fuerit"

Justice Mahmood also quoted the Urdu couplet to express his feeling:

"*Quarib hai yar roze maihsher,*
chupega khuston ka khoon kyun kar,
jo chup rahegi Zubane Khanjar,
Lahu Pukarega aasteen ka".

He translated it:

"O friend! the day of judgment is near, how then will it be possible to conceal by silence the blood of those killed. Even if the tung of the dagger will keep silence, the blood on the sleeve will speak out"

In the rule of personal laws of Hindus and Mohammedan his expositions are texts. He traveled into regions left unexplored by the commentators on the text and his judgments like sun light poring through the clouds revealed many a hidden truth. His judgments in **Jafri Begum Vs. Amir Mohd., ILR VII Alld. 822 and Allahdad Khan Vs. Ismail, ILR X Alld. 1289** are startling innovation in Mohammedan law.

Jafri Begum Vs. Amir Mohammad Khan I.L.R. 7 All. P. 822 (1885)[2], is a case of signal importance. The question for consideration before the Full Bench was that upon the death of a Mohammedan intestate who leaves unpaid debts with reference to the value of his estate, should be ownership devolve immediately on his heirs or such devolution is contingent upon the payment of such debts. On the questions involved in the Full Bench, the views of the High Courts so repeatedly expressed were in conflict with some of the principles of Mohammedan jurisprudence. The leading judgment of Mr. Justice Mahmood removes the cloud cast by erroneous exposition upon various aspects of Mohammedan Law. The conclusions of Mr. Justice Mahmood are based entirely on the interpretation of Quran as accepted by Mohammedan jurists. The principle of jus representation's was held to be absolutely foreign to Mohammedan Law of inheritance and the question of devolution of inheritance was to rest entirely upon the exact point of time when the person through whom the heirs claim died. The existence of debts, whether large or small, is quite immaterial. Whatever their extent, nature or amount may be, the property of the deceased is liable to their payment, and their extent regulates balance of the estate only but does not affect its devolution. Mohammedan heirs are independent owners of their specific shares and if they take their shares subject to the charge of the debts

of the deceased, their liability is in proportion to the extent of their shares. The law thus diferred from the position and qualification to the Hindu co-heirs in a joint family.

On the law of pre-emption, his exposition in Govind Dayal Vs. Inayatullah ILR 7 All. 775 (1885) is a classic and his conclusion on the origin of the right of preemption has enjoyed acceptance with unbroken consistency. In **Gopal Pandey Vs. Parsottam Das, 5 All. 121 (FB)**[3] Syed Mahmood explained the nature of the right of occupancy drawing upon the analogy of the Roman Nuda Proprietas and Emphytusis to prove that provisions of a procedural character had really created substantive rights. In **Ishri Vs. Gopal Saran, 6 Alld. 351**[4] the Civil Law Doctrine of 'compensatio est debiti et crediti inter se contributio' was found equitable in its foundation. The Court observed:-

> *"Is there, then, anything in the Code, or any equitable consideration which would prohibit a pre-emptor-decree-holder from availing himself of the doctrine of set-off by deducting the costs allowed to him from the purchase-money which he has to deposit under the very decree which awards him costs? The Civil Procedure Code, as we have pointed out, falls short of providing any specific rule to meet exactly the case before us. The doctrine of set-off, which owes its origin to Roman jurisprudence, was well known to the civil law under the more comprehensive title to compensation, which, in the words of Story, J., may be defined to be the reciprocal acquittal of debts between two person who are indebted, the one to the other; or, as it is perhaps better stated by Pothier, compensation is the extinction of debts, of which two persons are reciprocally debtors to one another, by the credits of which they are reciprocally creditors to one another. The civil law itself expressed it in a still more concise from- compensatio est debiti et crediti inter se contributio. The civil law treated compensation as founded upon a natural equity, and upon the mutual interest of each party to have the benefit of the set-off, rather than to pay what he owed, and then to have an action for what was due to himself- (Story's Eq. Juris, ss. 1438-39). The doctrine of compensation in the civil law, of course, has never been fully adopted either in England or in this country, probably for reasons based upon the inconvenience and delay which would arise in the trial of suits. But in the case before us there can be no such inconvenience or delay; the decree which declares the plaintiff-pre-emptor entitled to obtain possession of the property in suit on payment of the purchase-money declares him, in the same breath, entitled to recovery cots from those against whom the decree has to be enforced."*

In **Mohd. Allahdad Khan Vs. Mohd. Ismail Khan, 10 Alld. 289 (FB)**[5] Syed Mahmood referred to the adoption of Roman law comparing it with Scottish and French laws, considered if he could draw any principle applicable to the doctrine of acknowledgment of paternity by a muslim male. In **Kandhiya Lal Vs. Chandar, 7 Alld. 313** (1885) (FB)[6] Syed Mahmood dissented vigourously on the question of payment in solido: "Where the subject-matter of the contract is entire, as if it be to pay wholesome to save parties, it is solely joint, and no one can bring a separate action for his share. In order to will the mere fact that the share of each is stated, give a separate right of action, if the intention be to pay only one sum in solido. Where different sums of money are contributed by several persons, and the amount raised as advance is one total sum, it was held, that the action for repayment

should be jointly brought. He referred to Story on contract Domat on civil law, Pothier's law of contracts, and Demolombe's Treatise on Contracts. The answer was given to a question that, when, upon the death of the obligee of a money bond, the right to realize the money has devolved in specific shares upon his heirs, each of such heirs cannot maintain a separate suit for recovery of his share of the money due on the bond.

Justice Mahmood said:-

"As to the advisability of applying the rules of jurisprudence to this country, I have long entertained the opinion that jurisprudence, being a science, is and must be applicable to all conditions of life where society has sufficiently advanced to render the introduction of the rules of law necessary for defining rights and deciding disputes; and I cannot help feeling that the complications which the Hindu and the Muhammadan Law of inheritance produce in connection with the devolution of rights are not greater than those produced by the laws of Europe, where the principles of jurisprudence are of course kept in view in administering justice."

In **Mohd. Salem Vs. Nabia Bibi & Ors.** he quoted extensively established the plea of 'exceptio rei judicatae'. He submitted to the full of Montesquieu's Dictum (Pensu 1, 195) 'to no modern times, one must know antiquity and each law must be followed in the spirit of all the ages'. He used Roman law to inspire himself and not to follow it blindly. He inclined towards equity more than towards common law and relied on the Court of Chancery. He quoted more often from Story than others and referred to his equity jurisprudence in every judgments. His famous description of the law of limitation as a 'statute of repose' was taken by him from Angel on the law of limitation. In **Mangu Lal & Ors. Vs. Kanhai Lal & Ors., 8 Alld. 475**[7] he quoted extensively from Story's Conflict of Laws and added – 'I adopt every word of the rules of substantial justice here laid down as distinguished from mere technical rule of procedure'.

In **Lalli Vs. Ram Prasad, 9 Alld. 74**[8] Justice Mahmood quoted Justice Story and observed; "law as science would be unworthy of the name if it did not to some extent provide the means of preventing the mischief of improvidence, rashness, blind confidence and credulity on one side and skill, avarice, cunning and gross violation of principles of morals and conscience on the other".

Mr. Viswa Nath Prasad, an Advocate from Basti, a small town in eastern U.P., had compiled the development of law by Allahabad High Court upto 1951 in his Article published in Centenary Volume of the High Court in the year 1966.

He writes; "one of the precedents, to begin with, is to be found in the Full Bench case reported in **I.L.R. 2 All. 164 (1879), Hanuman Tiwari Vs. Chirai**[9]. This was a case on Hindu Law and the question debated at the Bar was whether adoption of an only son was valid or not. The Full Bench consisting of the **Chief Justice Sir Robert Stuart,** Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie and Mr. Justice Oldfield dissented from the view of the Calcutta High Court in Upendra Lal Roy Vs. Srimati Rani Prasannamoy's (I BLR AC 221) and held that the adoption of an only son cannot, according to Hindu Law, be invalidated after it has once taken place. Subsequently, the Judicial Committee, in the case of Radha Mohan Vs. Hardai Bibi (I.L.R. 22 Mad. 398), affirmed the ratio in Hanuman Tiwari's case.

On the Law of Pre-emption the Full Bench judgment of this Court in the case of **Gobind Dayal Vs. Inayat Ullah, I.L.R. 7 All. 775 (1885)**[10]**,** has held the field ever since its pronouncement. The exposition of the nature and incidents of the right of pre-emption by Mr. Justice Dwarka Nath Mitter in

his very able judgment in the case of **Kudrat Ullah Vs. Mohini Mohan Shaha (4 Bengal Law Reports 134)**[11] seemed to be so conclusive on the subject that one could scarcely conceive of an opposite view on it. The view of Mr. Justice Mitter was that "right of pre-emption was nothing more than a mere right of repurchase, not from the vendor, but from the vendee, who is treated for all intent and purposes legal owner of the property which is the subject-matter of that right". The conclusions of Mr. Justice Mahmood in Gobind Dayal's case on the nature of right of pre-emption, are quite at variance from that of Mr. Justice Mitter, were that the nature of the right of pre-emption partakes strongly of the nature of an easement, the dominant tenement and the servient tenement of the law of easement being terms extremely analogous to pre-emptive tenements and pre-emptional tenement of the Mohamedan Law of Pre-emption. The genesis of the Law of Pre-emption has been traced to the principle embodied in 'sic utere tuo ut alienum non ladas' which created a legal servitude running with the land.

In this case the pre-emptor and vendor were Mohammedans and the vendee a non-Mohammedan. Justice Mahmood observed at page 793, "but because a Hindu is not under that Section subject to Mohammedan law of pre-emption, he cannot avail himself of any preemptive right, which that law creates only in favour of those, who are heir to its behests. And the reason is simple. The rights and obligations created by that law as indeed by every other system with which I am acquainted, must necessarily be reciprocal even if a Hindu cannot as preemptor avail himself of the Mohammedan law of preemption in a case, where vendor is Mohammedan and the purchaser is Hindu, what reason is there for holding that Mohammedan preemptor can enforce the preemptive right, where the vendor is Hindu and the purchaser a Mohammedan? He went on to hold after quoting extensively from Hamilton, Hedaya, Aini and Kanz that if it is once conceded that the sole object of the preemptive right is to prevent the intrusion of strangers, objectionable to the preemptor, it follows by common sense that if a Mohammedan preemptor can by the exercise of his preemptive right, prevent the intrusion of another Mohammedan, he should, a'fortiori, be able to do so in the case of purchaser, who belongs to a different race and creed, for, 'coeteris paribas' it may be taken that a non-Mohammedan purchaser under such conditions would be more objectionable to the Mohammedan preemptor, and would demand a more strenuous exercise of the preemptive right.

The Chief Justice Sir W. Comet Petteram in **Jagram Das Vs. Narain Lal, ILR (7) Alld. 857 (1885)**[12] declared the judgment and decree to be a nullity, where after the evidence was led and the hearing was completed except for the arguments very much completed and they took up the case from the point at which it had been left by his predecessors and pronounced the judgment and decree. The Court expressed:- "I am glad to have an opportunity of expressing my disapproval of any system, which makes it possible for a man to decide a case upon materials, which are not before him. Interpreting Section 199 of the CPC it was said that there is nothing in the Section to show that Judge may decide a case upon material, which have never been before him.

In 1887, a situation, rather unprecedented, arose in the case of **Lal Singh Vs. Ghan Shyam Singh, I.L.R. 9 All. 625**[13]**.** The objection raised was that the Court was not legally constituted in accordance with the provisions of the Letters Patent and was incompetent to dispose of the appeal. The argument of late Pt. Ayodhya Nath, counsel for the appellant, was that by clause 2 of the Letters Patent it was provided that the Court should until further provision is made in accordance with the Act consist of a Chief Justice and five Judges and the first holders of the office had been named and since there existed only a Chief Justice and four Judges, the Court

could not be treated as existing in the eye of law. The matter was heard by the entire Court and the unanimous opinion of all the Judges was that the intention behind section 2 of the Letters Patent was not to render the constitution of the Court illegal if the Crown had omitted to fill the vacancy among the Judges under the powers conferred by section 7 of the High Courts Act.

A simple proposition that mutation in revenue records do not confer proprietary title, and that in case of partition the shares cannot be decided on the basis of possession alone until the matter is decided by the Civil Court, went up to the Privy Council in **Chokhey Singh Vs. Jot Singh, 1909 (6) ALJ 100**[14]**.** The Privy Council in a matter arising out of Oudh Land Revenue Act, 1876, held that the revenue Courts deal only with the distribution of the area on partition i.e. to divide the geographical areas and boundaries of Pattis into which a Mahal was infact divided. The Civil Court had no jurisdiction to distribute areas for allotment of revenue. The question of title to the Zamindar was not necessary for that purpose and could be decided by the Civil Court.

Enrollment of Miss Cornelia Sorabji, the first women lawyer

The Sex Disqualification and Removal Act, 1919 put an end to the disability of women to join legal profession in England. A British woman qualified to the Bar in England was allowed to practice in India but an Indian woman, who qualified in India was not allowed to practice in her own country. The first Regulation VII of 1793 laid down in the pleading of causes as distinct profession that 'Men' of character and education, well versed in Mohammedan and Hindu law, preferably from Mohammedan College, Calcutta and Hindu College, Benaras, could be admitted by Sudder Dewani Adalat. The Legal Practitioners' Act, 1879 followed these regulations. A special Bench of Calcutta High Court, In re, **Regina Guha, ILR 44 Cal. 290** consisting of Chief Justice and four other judges refused her enrollment as pleader relying upon **Bobb Vs. The Law Society,** creating positive prohibition of Common Law of England founded on usage, which imposed positive prohibition against a woman practicing the profession of law and holding that women could not be allowed to be solicitors. Full Bench of Patna High Court also, In re, **Sudhanshu Bala Hajra, ILR 1 Pat. 104** rejected her application for enrollment as pleader on the ground that provisions of the Legal Practitioners' Act, 1879 did not contemplate the extension of the privilege to females.

The Allahabad High Court took the lead by enrolling Miss. Cornelia Sorabji as the first Indian lady Vakil of Allahabad High Court on **August 24, 1921** by a decision of the English Committee of the Court (as the Administrative Committee was then called), consisting of Chief Justice Sir Grim Wood Meers.

Miss. Hajra was granted special leave to appeal by judicial committee of the Privy Council on November 28th, 1922, against the judgment of Patna High Court on depositing 400 pound as security for costs (which was beyond her means). The Secretary of State for India consented on the letter of Mr. Madhusudan Das to treat the matter of public interest and did not insist on deposit of cost. A big majority supported the passing of Legal Practitioners' (Women) Act XXI of 1923 in the Legislative Assembly by which the women were allowed to practice as lawyers. In 1995 the newly established lady Advocates retiring room, was inaugurated at Allahabad High Court as Cornelia Sorabji Hall.

The Period Before Independence

With the advent of the 20th Century the statute law began to grow and with it the complexion of the judicial precedents also began to change. The litigation in respect of agricultural tenants and the devolution of tenancy also increased. The Courts had also to determine the extent to which the personal laws in the country was to be applied. One of such cases is reported in **Acharji Ahir Vs. Harai Ahir, A.I.R. 1930 All. 822**[15]. This case came up before a Division Bench consisting of Mukerji and Boys, JJ. and related to agricultural tenancy, and the judgment in this case lays down an important principle of law and it is that the ordinary rule of Hindu law that properties acquired while the family was joint and with the help of ancestral or joint family property should be regarded as joint family property and that the burden of proof that it was self-acquired property of a single member should be on that member applied to a case where the property in question is a tenancy.

Constitution of seven Judges Full Bench is not a frequent phenomenon in the life of any High Court. "Has the High Court the power to order a legal practitioner to pay personally the costs of an application, or suit in appropriate circumstances", was the question referred to the Full Bench consisting of Mears, C.J., Sulaiman, Boys, Banerji, Young, Sen and Niamatullah, JJ. This controversy arose in Execution First Appeal- **Mahant Shanta Nand Gir Vs. Mahant Basudeva Nand, A.I.R. 1930 All. 225**[16]**.** The Bench hearing the appeal came to the conclusion that "it was a reprehensible proceeding which amounted to an abuse of the process of Court", inasmuch as such an appeal, according to the Bench, should not have been filed; and consequently it issued notice to the Advocate, who had filed it, to answer why he should not be made personally liable for costs.

The view taken by Sulaiman, Banerji and Niamatullah, JJ. was that "it could not be said that the Allahabad High Court, in addition to the powers conferred upon it by the Letters Patent and the powers which the courts situated within its territorial jurisdiction exercised at the time of their abolition, did also possess all the powers of the Supreme Court of the Presidency towns and the province over which the Allahabad High Court exercised jurisdiction was never within the territorial jurisdiction of any of the three Supreme Courts or practitioners in this country". In their answer they observed: "It may however be conceded that the Supreme Court possessed the inherent jurisdiction as the King's Bench Division possessed over its officers. It may further be conceded that the three Presidency High Courts of Calcutta, Bombay and Madras have, over and above, the powers conferred upon them by their respective Charters acquired other powers formerly possessed by their respective Supreme Courts even though the territorial jurisdiction of the Presidency High Courts now extends over the whole of the Presidencies, and not only the Presidency towns to which the jurisdiction of the Supreme Court was limited. In this sense one may say that the Presidency High Courts which have superseded the Supreme Courts, have inherited the inherent jurisdiction of the King's Bench Division". On this premise, the conclusion of Sulaiman, Banerji, Sen and Niamatullah, JJ. was that inherent powers of the Supreme Court of Calcutta were not conferred on the Allahabad High Court by the High Courts Act of 1861 and no power to exercise inherent disciplinary jurisdiction over legal practitioners independently of the Legal Practitioners Act and the Indian Bar Councils Act now exists in the Allahabad High Court in respect of the professional or other misconduct or to pass an order for costs against him or impose a fine which are not contemplated by the Act. It was also held by Justice Niamatullah in his separate answer to the reference that if a legal practitioner appearing for one side or other is to be proceeded against for costs of the case for something done professionally, an immense confusion was likely to

be occasioned and the right to receive and the liability to pay costs under Section 35, C.P.C. must be treated like any other question in the case, and no court of appeal can ever be justified in making it a matter for consideration over the heads of the parties to the case, an action which has all the attributes of a disciplinary measure to which different consideration should apply, hence section 35, C.P.C. could not be deemed to confer any power to award costs against a legal practitioner except to the extremely limited extent. On the original and the genesis of the difference in the nature of the Allahabad High Court's jurisdiction from that exercised by the High Courts in Presidency towns, this Judgment has always been considered to be a leading one.

Mr. Justice Raza and Mr. Justice Visheshwar Nath sitting on the Bench of Oudh Chief Court, decided **Madho Singh Vs. Kalloo Singh, 1932 RD 547**[17] and held that where a redeeming co-mortgager having a charge of the share of the other co-mortgager in the property under Section 95 of the Transfer of Proper Act allows mutation to be made in favour of the representative of other co-mortgager, he is not estopped from recovering possession of the share subject to the charge. Madho Singh was found to have acquired a charge on the share of Nanhe Singh, who represented a co-mortgager in the property.

A corollary, the question whether a decree obtained against a person, who is not rightful heir, but whose name is recorded in the revenue records, will not be binding on the person, who claims adversely to the person, whose name is recorded in the Khewat, the principle was evolved in **Amar Chandra Vs. Parmanand, AIR 1934 Alld. 474**[18] by Suleman, C.J. and Mukherjee, J. It appears to be simple proposition of law but went on long way to develop the principle.

Whether a Barrister enrolled in England and admitted as an Advocate of the High Court can maintain a suit for his fee was answered by the Allahabad High Court in the Civil Revision, **Nihal Chand Shastri Vs. Dilawar Khan reported in A.I.R. 1933 All. 417**[19]. Nihal Chand Shastri who was enrolled in England as a Barrister was practicing as an Advocate of this High Court at Muzaffarnagar. He sued Dilawar Khan for his fee. The decree in plaintiff's favour was impugned in the aforesaid Civil Revision in the High Court. The question of maintainability of a suit by a Barrister for his fee having been decided earlier by a Full Bench, the matter had to be referred to a larger Bench of five Judges, namely Mukerji, Acting C.J., Young, King, Thom and Niamatullah, JJ. The answer of the Full Bench to the reference was that the peculiar position of a Barrister-at-law in England disappears in the province of Agra on his being admitted as an Advocate of the High Court, inasmuch as he combines in himself the capacities of a Barrister and Solicitor of England. In England a Barrister could not act, nor receive instructions from a client except through a Solicitor but this disability could not operate against him if he has been enrolled as an Advocate of this Court. In the words of the Acting Chief Justice "they do not practise as Barristers but as Advocates and the rules permit them to see their clients, settle their fee and to act for them". The ratio upon which the conclusions of the Full Bench were founded was that the English Barrister practices in the courts in these provinces not by virtue of being a Barrister but by dint of his enrolment as an Advocate. Such a suit was held to be maintainable and the earlier Full Bench in I.L.R. 25 All. 509 was overruled.

A very illuminating judgment of a Full Bench of this Court considered the scope and applicability of the Hindu Widow Remarriage Act, 1856. In the case of **Bhola Umar Vs. Musammat Kaushilla, AIR 1937 Alld. 230**[20]**,** the Full Bench consisting of Sulaiman, C.J., Mukerji and King, JJ. has laid down that the Act was intended to render remarriage valid and

to legalise the legitimacy of children. "It conferred a benefit on those who could not remarry, but at the same time imposed a restriction on them. It was not intended to deprive those who already possessed the right to remarry of whatever rights they enjoyed in their deceased husbands' properties". Retention or forfeiture of interest was held merely to be a legal incident of the custom of remarriage and in cases where a Hindu widow's right to remarry was governed by the custom of her caste, the question of retention or forfeiture of her interest in her deceased husband's estate should also be governed by custom.

The question whether a Hindu not a leper by birth but subsequently becoming afflicted by leprosy was completely divested of his rights in the ancestral property, came up before a Full Bench consisting of Sulaiman, C.J., Benner and Bajpai, JJ. The judgment in **Mool Chand Vs. Mt. Chahata Devi** is reported in **A.I.R. 1937 All. 605**[21]. The answer of the Full Bench proceeding upon the interpretation of various tests on Hindu Law was that a person who had not been leper from birth, but was afflicted with leprosy of a samious or virulent type at the time of death of his father and had previously acquired an interest in the joint family property by birth, would not be completely divested of such an interest though debarred from claiming partition.

The Court observed:-

> *"It is thus clear that there is a great preponderance of authority in favour of the view which has been expressed in this Court and according to which there is not a complete destruction of the proprietary interest of a member of the family who becomes a leper subsequently, but that the disqualification is a personal one and is confined to his right of claiming a partition or being allotted a share at the time of division, so that if it so happens that there is no other coparcener left except himself and he comes the sole member of the family and there has been no occasion for partition, he acquires the entire estate and becomes the owner of it, with the result that on his death it would devolve on his legal heirs and not on the heirs of the last deceased coparcener."*

In the same issue **Ajudhia Prasad & Anr. Vs. Chandan Lal, A.I.R. 1937 All. 610**[22], is reported another noteworthy pronouncement of the Full Bench consisting of Sulaiman, C.J., Thom and Bennet, JJ. It was a case involving a contract by a minor and it was laid down that a minor is not estopped from pleading that the contract is void on ground of minority despite the false representation as to his age coming from him. Equally important principle contained in the decision of the Full Bench is that it is hardly open to an Indian Court to invent a new rule of equity for the first time contrary to the English Law and if the law in England is clear and there is no statutory enactment to the contrary in India, one should hesitate to introduce any supposed rule of equity in conflict with that law.

Now, we come to a leading case in the realm of criminal law and it is the famous Meerut conspiracy case, **S.H. Jhabawala and others Vs. Emperor, reported in A.I.R. 1933 All. 690**[23]. The accused in this case were prosecuted under section 121-A, I.P.C. for conspiracy. Almost every aspect of law relating to criminal conspiracy has been touched in the judgment of Sulaiman, C.J. and Young, J. but only a few of them may be referred to. The principle laid down in this case is that any conspiracy to change the form of the Government of India or of any local Government even though it may amount to an offence under another section of the Code would not be an offence under section 121-A of the Indian Penal Code, unless it is a conspiracy to overawe such Government by means of a criminal force or

show of criminal force but a conspiracy to establish the complete independence of India as distinct from obtaining for it the status of a self-governing dominion within the British Empire or a perfectly democratic or a republican form of Government in India outside the British Empire, would be tantamount to conspiring to deprive His Majesty of the Sovereignty of British India and such a conspiracy comes within section 121-A. The Full Bench has further laid down that as in law the King never dies, it is enough for the prosecution to prove that there was conspiracy to deprive the King Emperor of the Sovereignty of British India and the question whether the conspiracy is expected to succeed in the lifetime of His Majesty the King Emperor or that of his successor was wholly immaterial. The Court held:-

> *"It is important to note that the offence of criminal conspiracy is complete as soon as two or more person agree to do or cause to be done an illegal act, or an act which is not legal by illegal means. It is immaterial whether the illegal act is the ultimate object of such an agreement or is merely incidental to that object. For the purpose of S.121-A it is not necessary that any act or illegal omission shall take place in pursuance of the conspiracy. The agreement in itself is enough to constitute the offence. The case for the prosecution was put forward in the complaints which were filed before the Magistrate".*

On the question whether a High Court has the power to arrest for contempt of itself a person residing outside the jurisdiction of that court which arose in **Emperor Vs. B.G. Horniman (I.L.R. 1944 Alld. 665)**[24]**,** the pronouncement of the Allahabad High Court has been unequivocally recognized as laying down the correct law on the subject. Mr. Horniman, Editor and Publisher of the 'Bombay Sentinel' published an article containing words which had tendency to bring the High Court of Allahabad into contempt. Two successive notices were issued to Horniman and on his failing to appear in response to them, a bailable warrant of arrest against him was issued. The Chief Magistrate passed an order enlarging Horniman on bail of Rs.1,000 without deposit, with one surety in a like amount to appear before the High Court of Judicature at Allahabad. Against this order Horniman preferred a revision in the Bombay High Court which held that there was no power in the Allahabad High Court to arrest a man for contempt of itself outside the jurisdiction of that High Court, nor has any High Court power to arrest a person for contempt of another High Court and consequently the order of the Chief Presidency Magistrate was set aside. When the hearing of this contempt case against Horniman came up before the Allahabad High Court in the Division Bench of Collister and Allsop, JJ. they considered it useless to reissue process to Bombay and contended itself by issuing a warrant to I.G. Police, U.P. to have it executed if and when the respondent set his foot within the local jurisdiction of the Allahabad High Court. However, the reasoning of the Bombay High Court was not accepted by the Division Bench of Allahabad and the view that the Division Bench of Allahabad took was that:

> *"A contempt of the High Court is an act made punishable under a law for the time being in force within the meaning of section 4, Cr.P.C. and such offence can be enquired into according to the provisions of that Code as set out in Section 5 (2) and consequently where a contempt had been committed within the territorial jurisdiction of a High Court in India, such court is competent to issue process to secure the attendance of the offender wherever he*

may be residing in British India as in the case of an offence under the Penal Code or under any other Act."

On constitutional matters the pronouncement of every High Court and so of the Allahabad High Court ever since the commencement of the constitution, have proceeded in an unabated course but few of them can be said to have retained their significance owing to the fact that there has scarcely been any case of importance which has not been greeted with the pronouncement of the Supreme Court. Despite this, a few pronouncements of our Court on constitutional questions would always be reckoned for their erudition and juristic principles.

The Republic of India: After 26th January, 1950

The people of India enacted and gave to themselves a Constitution, adopted by Constituent Assembly on 26th November, 1949 and came into force on 26th January, 1950. The Constitution of India established complete political independence and established India, as a sovereign, secular and democratic republic. The judiciary was visualised as an independent institution with duties to interpret and administer laws and to protect the rights of the people. The High Courts in the States, constituted as Courts of record, were allowed to have same powers as before for administration of justice, with additional and supplementary powers under Art.226 of the Constitution of India. These writs are not confined to enforcement and protection of fundamental rights, but to all cases, where breach of a right is alleged. These enormous powers have allowed the High Courts to play an important role in development of law.

In **Cheddi Lal Vs. Chotte Lal, AIR 1951 Alld. 199**[25]**,** a Full Bench sitting at Lucknow considered the vexed question of the invasion on the right of co-sharer by other co-sharer in respect of joint land. The Court referred to **Robert Watson Company Vs. Ram Chandra Dutt, 18 Cal. 10 PC** in which Sir Barnes Peacock and **Midnapur Zamindari Co. Ltd. Vs. Naresh Narain Roy, AIR (11) 1924 PC 144** by Sir John Edge, had held that in India the lands are held in common by co-sharers and that grant of injunctions will leave the land uncultivated for years making them waste or jangal. The Court also referred the cases from Calcutta and Lahore and cleared the cloud over the law, in holding that the right of the co-sharer in respect of joint land should be kept separate and distinct from the question as to what relief should be granted to a co-sharer. A co-sharer is entitled to object to another co-sharer exclusively appropriating land to himself to the detriment of other co-sharers. The question of relief, however, should depend upon the circumstances of each case and that injunction should be granted, when the plaintiff cannot be adequately compensated at the time of partition or that any greater injury would result in refusing the relief.

In **Dharnidhar & Ors. Vs. Chandra Shekhar & Ors., AIR 1951 Alld. 774**[26] a Full Bench of the Court, deciding the question of equity between joint tort-feasors, departed from the view taken in **English Goods Merry Weather Vs. Nixon, (1799) 8 T.R. 186; 101 E.R. 1337**, by Lord Henyon, C.J. by Court of common law and held that where a decree against two or more joint tort-feasors imposes a joint severely liability upon each one of the judgment debtor, if one of them is made liable to pay the entire amount, justice and fair play requires that he should be able to share the burden with the compeers i.e. the other judgment debtors or any other tort-feasors, who is, or would, if sued, be liable in respect of some damage. It was found that the doctrine of contribution developed by equity in England is essentially founded not on contract, but is the result of 'equity of burden and benefit'.

In **Asiatic Engineering Company Vs. Achhru Ram, AIR 1951 Alld. 746**[27], Justice Malik, C.J. speaking for the Full Bench held that the assets of a company can be evacuee property under the Administration of Evacuee Property Act. The fact that company is a distinct legal person different from its shareholders would not take away the jurisdiction of the custodian. The status of a property as evacuee property has to be decided in the light of special provisions of the Act the majority shares were held by Muslims and they had acquired property in Pakistan. The custodian could secure and manage evacuee properties, which do not belong only to the owner but also joint owners.

In **Moti Lal Vs. State of U.P., AIR 1951 Alld. 257**[28], a five judges' Bench speaking through Chief Justice Malik, explained the executive power under Art.53 (1), 154 (1), 289 (2) (3) and 298 in the Constitution, which was only one year old by that time that in the written Constitution the executive power must be such power as is given to the executive or is implied, ancillary or inherent. It must include all powers that may be needed to carry into effect aims and object of the Constitution. It must mean more than merely executing the laws. The power to issue permanent permits on a route on which State buses were operating under the Motor Vehicles Act, 1939 was called in question. Justice Sapru held that State is juristic person for the purposes of Art.14 and 19 (1) (g) and that it cannot discriminate against any person in his own favour. It will be negation of guarantee under Art.14. He stated in the matter argued by Shri G.S. Pathak, Sir Allda Krishna Swami Ayyer for the applicant and Shri Pyare Lal Banerjee, Advocate General for the State that in case of public highways State, assuming that the ownership of them vests in the State, is trustee for the public, which has an unlimited right of user of these highways. The effect of statutory vesting of the streets in the District Board, Municipal Board or the professional government, is not to transfer to the bodies concerned, the ownership of the soil or the right over which the street exists, all that vesting involved is transfer of public ownership of only so much of the air stated above and so much of the soil surface below as is reasonably necessary for the public body concerned to manage the streets vested in it. It cannot be presumed that the intention of the legislature was to confer upon the bodies concerned the rights of private property of a private owner. This celebrated case was the first exposition of the written constitution by the High Court and relied upon 'Grammar of Politics' by Prof. Harold Laski; 'Principles of Politics' by Prof. Sidgwick and 'Comparative Politics' by Sir John Marriott (para 255), and Bagehot on the English Constitution (para 255 to 260). The Court said:-

> *"Whatever be the origin and history of the grant of these highways, the one thing that is certain is that in the case of public highways the State, assuming that the ownership of them vests in the State, is a trustee for the public which has an unlimited right of user of these highways. The effect of a statutory vesting of the streets in the District Board, Municipal Board, or the provincial Government is not to transfer to the bodies concerned, the ownership of the soil or the right over which the street exists. The street qua street vests in the District Board, Municipal Board or Provincial Government concerned. All that vesting involves is a transfer to public ownership of only so much of the air stated above and so much of the soil surface below as is reasonably necessary for the public body concerned to manage the streets vested in it. It cannot be presumed that the intention of the legislature was to confer upon the bodies concerned the rights of private property of a private owner.*
>
> *A more reasonable way of looking at the matter, in my opinion, is that the right of the owner had been abridged only to the*

extent necessary for the discharge of duties which had been cast on the public bodies concerned.

The result of all this discussion is that bus-drivers have a right to ply motor buses on the public highways in question subject, of course, to the right of the State to lay down conditions for the better regulation of traffic, etc."

High Court Vs. Legislative Assembly

On March 21st, 1964 the Legislative Assembly of Uttar Pradesh proceeded to pass a resolution that it is of the definite view that Mr. Justice N.U. Beg and Mr. Justice G.D. Sehgal, the judges of the High Court hearing the matter of Keshav Singh as well as his counsel Mr. Solomon have committed contempt of the House. The judges had directed Shri Keshav Singh, the applicant to be released on bail on furnishing security to the satisfaction of the District Magistrate, Lucknow. He was imprisoned by the Legislative Assembly for having committed contempt and breach of privilege in publishing a pamphlet bearing his signatures and some other persons and had written a disrespectful letter to the Speaker of the House. He was directed to be detained in District Jail, Lucknow for seven days. In a petition under Section 491 of Code of Criminal Procedure, 1898 and under Art.226 of the Constitution of India the Court took notice and passed the orders of release. The House felt offended and by resolution dated March 21st, 1964, it directed Keshav Singh to be immediately taken into custody and also directed the two judges and the Advocate should be brought in custody before the House. The judges rushed to the Allahabad High Court with petition under Art.226 of the Constitution alleging that the resolutions were violative of Art.211 of the Constitution and that under Art.226 they were competent in making an order to release Keshav Singh. A Full Bench of 28 judges of the High Court sat together on the same day on March 23rd, 1964 and while admitting the petition issued notice to the Speaker to show cause and stayed the execution of the warrant. Similar petition was filed by Mr. Solomon, the Advocate of Shri Keshav Singh. The application was again heard by a Full Bench of 28 judges on 25th March and same interim orders were passed. On the same day a clarificatory resolution was passed by the House providing opportunity to the persons named in the order including the High Court judges for explanation. The warrants were withdrawn.

The incidence were of such importance that the President decided to exercise his powers and made reference to the Supreme Court under Art.143 (1) of the Constitution on March 26th, 1964. The seven judges' Bench of the Supreme Court in **Special Reference No.1 of 1964 reported in AIR 1965 SC 745**[29] heard the arguments of Mr. C.K. Daphtari, Attorney General of India; Mr. M.C. Setalvad; Mr. G.S. Pathak; Mr. H.M. Sarvai; Mr. N.A. Palkiwala; Mr. K.L. Misra and other, and held that it was competent for the Division Bench of the High Court to deal with the petition of Keshav Singh challenging the legality of the sentence imposed on him by the Legislative Assembly. The judges did not commit contempt of Legislative Assembly in ordering the release of Keshav Singh; it was not competent for the Legislative Assembly to direct production of the two judges and Advocate before it in custody or to call for their explanation; it was competent for the Full Bench of the High Court to deal with the petition and that in a case, where a person, who is not member of the House of the Legislature commits contempt outside the four-walls of the legislative chamber, the High Court has powers to entertain petition challenging the orders of the decision of the Legislative Assembly. In such case the judge did not commit contempt of the Legislature and the Legislature is not competent to take proceedings

against him. In this case though the judgment was not delivered by the High Court but the situation, which arose due to the confrontation between High Court with the Legislative Assembly, the Supreme Court could get an occasion to develop the law, which interpreted the powers of the legislature and judiciary and resolved the issue.

In **Laxmikant Jhunjhunwala Vs. State of U.P., AIR 1965 Alld. 420**[30] a Full Bench of this Court was considering the constitutional limitations of retrospective validation of taxing laws. State Act imposing cess was declared void ab initio by the Supreme Court on the ground of incompetency of State legislature. The parliament passed an act declaring the action taken under State law as valid without furnishing authority of law required for it. The Full Bench held the act to be unconstitutional on the grounds that Parliament validating an act done in exercise of a power purporting to have conferred by an invalid State Act is not the same thing as enacting the provisions of the State Act. Chief Justice M.C. Desai held that legislative power of the Parliament is similar to that of the Commonwealth Parliament; it has confined to certain selected matters even though one of them is residuary matter. A law operating merely as an expost facto law is not within the power conferred upon Parliament though laws validating retrospectively acts of the executive government, which at the time, when they were done were not authorised by law but were necessary under rule, "salus populi suprema lex" would be within the power. Such a law would not be within the power of the Parliament. The Parliament has no power to override the provisions of the Constitution and declare an act done under an unconstitutional act, as valid indirectly overriding its provisions. The power in our legislature to validate something done under the authority of the invalid act enacted by another legislature is foreign to the federal structure envisaged by our Constitution.

A path breaking decision given by Full Bench in **Ramji Dixit Vs. Bhrigu Nath, AIR 1965 Alld. 1**[31] was rendered by Chief Justice M.C. Desai holding that female, who has inherited a holding before enforcement of U.P. Zamindari Abolition and Land Reforms Act from the last male holder and has become bhumidhar can transfer such holding and such transfer would remain valid and effective even after her lifetime.

In **Rita Rani Singh Vs. Raghuraj Singh, AIR 1965 Alld. 380**[32] Justice B. Dayal speaking for the Full Bench interpreted the jurisdiction conferred under Clause 12 of the Letters Patent to appoint guardian of a minor and held that Allahabad High Court has jurisdiction to pass orders with regard to custody of minors. The power to deal with matter connected with infants, idiots and lunatics cannot be treated as a part of ordinary original civil jurisdiction only. The matter of infants is a special jurisdiction conferred upon High Court by the letters patent. The Court did not agree that this power is dead letter. The normal course for every litigant is to use the provisions of Guardian and Wards Act and to approach principal Civil Court of original jurisdiction and the High Court would be loath to exercise special powers vested in it under Art.12 of the letters patent except in very special circumstances, when the Court finds that substantial injustice is likely to occur, if the special power is not exercised. Only 3 or 4 cases had arisen in 100 years history of the Court to exercise such power in exceptional circumstances.

A five judges' Bench speaking through Chief Justice M.C. Desai in **Zila Parishad Vs. Smt. Shanti Devi, AIR 1965 Alld. 590**[33] interpreted the words 'Act done' within the meaning of U.P. General Clauses Act, 1904.S.4 (2) does not always include the omission to do an act. The non-payment of the contractors' bills is part of cause of action only in a suit of breach of contract. The nonpayment would not be a civil wrong under the U.P.

General Clauses Act to come within the purview of Section 192 of the U.P. District Boards Act for filing a suit for damages. It would only be claimed in a matter of breach of contract.

In **Parbhoo Vs. Emperor, AIR 1941 Alld. 402** (F.B.) the High Court held that the accused, who puts forward a plea based on a general exception in the Indian Penal Code is entitled to be acquitted, if upon a consideration of the evidence as a whole (including the evidence given in support of the plea based on such a general exception) a reasonable doubt is created in the mind of the Court whether the accused person is entitled to the benefit of the said exception. The matter was referred to a Bench of nine judges. Speaking for the Court the Chief Justice Oak held in **Rishikesh Singh Vs. State, 1970 Crl.L.J. 132**[34] that the majority decision in Parbhoo Vs. Emperor is still a good law. Explaining Section 105 of the Indian Evidence Act, 1872, placing the burden of proof on the person, who relies upon burden of proving the existence of circumstances to fall in any of the general exception and that the Court shall presume the absence of such circumstances, it was held that the accused, who pleads an exception is entitled to be acquitted upon a consideration of the evidence as whole, including the evidence led by the accused, reasonable doubt is created in the mind of the Court about the guilt of the accused. The Court held that burden of proof and presumptions have to be considered together. When there is ample evidence from both the sides, the fate of the case is no longer determined by presumptions or burden of proof to by careful selection of the correct version, based on doubt, on preponderance of probability, which is to be so compulsive or overwhelming in the case of choice in favour of conviction, so as to remove all reasonable doubt.

The scope of inherent powers under Section 561A of the Criminal Procedure Code, 1898 (Section 482 in the new Criminal Procedure Code 1973), was subject matter of great debate. A difference of opinion was noticed in **Raj Narain Vs. State, AIR 1959 Alld. 315** (FB) and **Sadhu Singh Vs. State, AIR 1962 Alld. 193.** One Mahesh, a convict moved an application for rehearing of the criminal appeal, after admitting additional evidence in respect of a telegram, which his father has sent alleging that he was arrested on previous day of the occurrence of a crime. The question whether additional evidence could be admitted and the judgments in the appeals reviewed, left the judges pondering on the views expressed in two cases. A five judge Bench speaking through Justice D.S. Mathur in **Mahesh Vs. State of U.P., 1971 Crl.L.J. 1674**[35] was reminded of the observations of Justice Mahmood in **Narsingh Das Vs. Mangal Dubey, 1883 ILR (5) Alld. 163** that:-

> "The Courts are not to act upon the principal that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principles that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed……."

The Court held that the High Court is not possessed of general power to review, revise or reconsider the judgment or order duly pronounced in a criminal appeal or criminal revision, though the judgment or order can be so reviewed, revised or reconsidered in exceptional circumstances, in exercise of the inherent power under Section 561-A Criminal Procedure Code, provides that the inherent power is so exercised to give effect to any order under the Code of Criminal Procedure and to prevent abuse of the process of any Court or to secure the ends of justice.

An action in Libel under Section 500 of the Indian Penal code through newspaper, and the trial, which resulted into conviction by the

Magistrate and thereafter acquittal by Addl. Sessions Judge of **Jhabbar Mal Sharma**, Babu Ram Misra and Banarasi Dutt Sharma. They were editors and publishers of the newspaper 'Hindu Sansar'. One Shri Chakradhar, the Superintendent of Police was appointed as Home Member of Maharaja of the estate of Tehri. His appointment was not liked by many persons. The article in the newspaper charged him quite definitely with heavily drunkenness and second charge of most process character that when he was drinking at Haridwar, he uttered to the Income Tax Commissioner extremely indecent word before the wife and daughter of the Income Tax Commissioner (Mr. Kher). The question that engaged the attention of the Court was whether the defendant or the accdused could conceal the defence as much as he can and not to put his defence to the plaintiff or complainant in the cross-examination. When all the evidence on the charge was collected and examined the accused departed entirely from the charge made in the newspaper and brought up something else, which occurred at different moment of time and something else, which was alleged to have been said not to Mr. Kher but to the complainant's own son and something, which if anything happened at all, might as we would see from the context be most easily capable of the most innocent explanation. Sir Grimwood Mears, the Chief Justice sitting with Mr. Justice Kandall discussed the issue and after quoting in abundance from the case law laid down the proposition that, "A plaintiff or complainant has an absolute right to know exactly the allegations or charges upon which the opposite side are going to rely, and they must be put to him or to his appropriate witness clearly specifically and with the utmost plainness so that he may have an opportunity of admitting them wholly or in part or denying them wholly or in part and by calling witnesses to rebut such allegations or charges as he denies. We protest forcibly against such practice and we will show how grossly unfair it was to the complainant as it must be in every case".

"There is in every case an imperative duty upon the Magistrate to put into operation the provisions of s. 342, at the moment, when the complainant and all the witnesses called for the prosecution have been examined in full sense in which the word is used".

The criminal appeal was allowed and the order of Magistrate convicting the accused was confirmed with sentence of three months' simple imprisonment on the editor and publishers.

Sir Grimwood Mears made certain observations in **Emperor Vs. Jhabbar Mal, 115 I.C. 1929 page 872**[36], which are of great relevance today as under:-

> *"Most clearly it is of importance to every one in India who may for good or for bad reasons suddenly find themselves the object of newspaper attack. It is also of great importance to judicial officers and practitioners, who should at least understand the principles upon which a highly technical action of this kind should be tried and the importance in every case of putting to the opposite party the specific facts upon which reliance is going to be placed either to obtain a civil decree or conviction. We have intentionally repeated time and time again, our criticisms of the manner in which this case was conducted and we have done so in the endeavour to drive home the point to the consciousness of judicial officers and practitioners throughout the Province.* ***This case is also a matter if importance to newspaper editors and publishers. As regards the press it is highly desirable that nothing we have said in this case should be taken as any limitation whatever to the rights which newspapers have and upon the public duty which newspapers are***

called upon to perform. A newspaper has a public duty to ventilate abuses. It has a public duty to demand that officials from the lowest to the highest shall do their duty. If an official fails in his duty, a newspaper is absolutely within its rights in publishing facts derogatory to such official and making fair comment on them. But the newspaper must get hold of facts, not falsehoods, and provable facts as well. Let us take this particular case as an example. What would have been the prudent and proper course for the accused to follow? They had received a communication that the Home Member of Tehri was habitually drunk, and on a certain occasion had said extremely indecent things to Mr Kher in the present of his wife and daughter. Later on, they heard that the Home Member had committed himself disgracefully and beyond belief, unless he were drunk at the time, and had grossly insulted a man in a high position amongst Hindus. We know what they did. They printed the accusation without making the slightest enquiry as to whether they could prove the charges made.

Now what would a prudent editor have done in the circumstances if he thought it was his duty, in the public interest, to follow up the accusation? He would have made the most careful enquiries relating to the Kher and Rawal incidents, and to that general reputation of the Home Member as regards sobriety. He would have got statements signed by persons deposing to the incidents, and if, he believed in their integrity, he would have published an article of a character safely within what he believed could be proved and what his informants pledged themselves to prove. Thus, before he had printed a single word, he would have got together his evidence, knowing quite well that, if he failed to prove the charge, he would either have to apologize, which might not in the circumstances have been by any means sufficient, or stand a civil or criminal trial. If the accused in this case had made the enquiries before they printed the articles which they ultimately did, nobody can believe the articles would have ever been printed. On enquiry they found they had no evidence whatever to support the Kher and Rawal incidents."

The Dress Code

An interesting question with regard to the dress prescribed for lawyers to appear in the Court, arose out of a writ petition by Shri Prayag Das practicing in the district of Buland Shahar to insist upon wearing Dhoti and Kurta in the Courts. The High Court in **Prayag Das Vs. Civil Judge, Buland Shahar, AIR 1974 Alld. 133**[37] held that Rule 12 of the Allahabad High Court Rules are not void or ineffectual. These rules were framed under Section 34 (1) of the Advocates' Act, 1961 prescribing a dress but do not provide for penalty nor preclude the Court from refusing to hear an Advocate not waring the prescribed dress. The Court held that while it possesses the legal power to prevent the Advocate-petitioner from appearing before it otherwise than in the prescribed dress, the exercise of power cannot be said to be vitiated merely for the reason that the same is not exercised against all the other members of the Bar. The Court discussed Rule 615 of the Allahabad High Court General Rules (Civil) 1957 prescribing a particular dress for both men and lady Advocates in the Civil Courts.

The Bold and Courageous

The High Court at Allahabad shook up the entire legal world by delivering a bold and courageous judgment in **Shri Raj Narain Vs. Smt. Indira Nehru Gandhi**[38] decided on 12.6.1975 declaring the election of Smt. Indira Gandhi, the then Prime Minister of the country to be invalid on the grounds that she had adopted corrupt practices in her. The reference to this judgment is not by way of any contribution of the High Court to development of law. The compilation, however, will be incomplete as a reference to Allahabad High Court has become synonymous with this judgment. The judgment established the supremacy of the judiciary and shines like a bright star in judicial firmament. On the following day of the judgment, a state of internal emergency was proclaimed in India and to protect the elections, the election laws were amended pending appeal in the Supreme Court. The Constitutional 39th amendment inserted Art.329 (A) making special provisions regarding election disputes of the Prime Minister and Speaker depriving the defeated candidate the opportunity to question the validity of his elections. A large number of persons were detained in various States. The High Court at Allahabad once again rose to the occasion and held in **V.K.S. Choudhary Vs. State of U.P.**[39] that fundamental rights including Art.21 is not suspended during the period of internal emergency.

The judgments in Raj Narain Vs. Smt. Indira Nehru Gandhi delivered by Hon'ble Mr. Justice J.M.L. Sinha and the judgment in V.K.S. Chaudhary Vs. State of U.P. were upset by the Supreme Court. In **Smt. Indira Nehru Gandhi Vs. Raj Narain, AIR 1975 SC 2299** the constitutional validity of 39th amendment was upheld and the elections were saved and in **A.D.M. Jabalpur Vs. S.S. Shukla, 1976 Supp. SCR 172** the judgment in V.K.S. Chaudhary Vs. D.M. Allahabad and the judgments of other High Courts were set aside.

A Karta of the family firm could be arrested in the course of the recovery proceedings of the sales tax even after discontinuance of business by a joint Hindu family. In taking this view Justice Yashodanandan sitting for Full Bench in **Kunj Behari Lal Vs. Sales Tax Officer, AIR 1975 Alld. 144**[40] held that even after discontinuance of business by a joint Hindu family tax assessed and penalty imposed, on it for a period prior to such discontinuance, become the liabilities of every member of such family including its Karta as if he himself was a dealer and he would be liable to arrest in recovery proceedings.

In **Gangadhar Vs. Raghubar Dayal, AIR 1975 Alld. 102**[41] Justice N.D. Ojha speaking for the Full Bench held that Section 144 CPC is not exhaustive and restitution can be granted by the Court under its inherent powers. Explaining the principle in the maxim '*actus curiae neminem gravabit'* it is the duty of the Court to grant restitution, when a person has been deprived of his property due to an order of the Court, which has subsequently been varied or reversed as being erroneous, even if such person could not invoke the powers of the Court under Section 144 CPC.

Pradeep Tandon did not succeed in the Combined Pre Medical Test for admission to one of the seven medical colleges. He questioned the validity of the reservation made by Government of U.P. for certain classes of candidate. In **Pradeep Tandon Vs. State, AIR 1975 Alld. 1**[42] the Court did not approve the ground of backwardness of the rural/ hill areas in Uttarakhand Division of the State and reservations on that ground, as the reservation was based on generalization without any social survey or investigation. The judgment was reversed by the Supreme Court.

In **Ghurpatari Vs. Smt. Sampati, AIR 1976 Alld. 195**[43] the discretion in the customs of Oudh Thakurs, where daughters' son were disinherited, was held not applicable to daughters' daughter.

In the same year the Court was concerned with the contract of sale of land or decree for its specific performance in consolidation of holdings, in which plots could be changed while allotment of the compact chak. A Full Bench in **Mahendra Nath Vs. Smt. Baikunthi Devi, AIR 1976 Alld. 150**[44] held that a person, who gets contract for sale or decree for specific performance has got no interest in the land. He can only enforce the contract compelling the other side to execute sale deed. The rights and liabilities under the contract do not attach to the land.

A bid-sheet in an auction is not an instrument and does not create any right or liability to attract stamp duty under Section 2 (16) (e) of the Stamp Act. In setting aside the demand of stamp duty Justice R.B. Misra speaking for the Full Bench in **Mohd. Yaqoob Khan Vs. The Chief Controlling Revenue Authority, AIR 1977 Alld. 93**[45] explained that an instrument includes every document by which any right or liability or purports to be created. The same Bench in **Gajepal Singh, AIR 1977 Alld. 79**[46] held that the right to recover tolls from vehicle crossing a river bridge was capital gain and not revenue receipt. The payment of premium in installments would not convert the premium into rent and thus document will not be stamped as lease.

In **M/s Saraya Sugar Mills (P) Ltd., Gorakhpur Vs. Commissioner of Income Tax, AIR 1979 Alld. 405**[47] the Full Bench of this Court held that interest paid under U.P. Sugarcane Purchase Tax Act on arrears of cane purchase price is not deductible expense under Section 37 (1) of the Income Tax Act. Interest as well as penalty is civil sanction against admitted evasion of tax. The object of both is to render evasion or infraction of the law unprofitable and to secure to the state compensation for damages. Any expenditure due to infraction of law by the assessee is not a deductible item.

In **Smt. Ram Peary Vs. Gauri, AIR 1978 Alld. 318**[48] Justice Hari Swaroop sitting at Lucknow held that the effect of the doctrine of 'lis pendence' is not to annul the conveyance but only to render it subservient to the rights of the parties in the litigation. Such conveyance thus yields to the adjudication of the rights obtained by the contractor in the consequence of decree obtained in a suit for specific performance of contract.

An interesting judgment on the law of repeal of statutes delivered by Hari Swaroop in **Mohan Agrawal Vs. Union of India, AIR 1979 Alld. 170**[49] held:-

> "The effect of a repeal is to dry up the source of power. Repeal of an enactment only means that the power to create new law there under is abolished and no further law in exercise of that power can be made. If something has emerged in exercise of the power, the source of which has been dried it can continue to remain as an independent unit or may die with the parent act depending upon the nature of the source of power. If the source of power is a constitution act, the law survives as an independent unit, and if the source of power is legislative power other than that contained in the constitution act the law ends with the drying out of its power source subject to such savings as the law may provide."

In **Umesh Chand Vinod Kumar Vs. Krishi Utpadan Mandi Samiti, Bharthana, AIR 1984 Alld. 46**[50] the Court permitted the 'little Indian' to initiate public interest litigation, on a single set of Court fee in a writ petition to seek constitutional remedies. Where large number of persons on account of their economic disadvantage approach the Court either in person or through an association, they will be able to maintain a single writ petition for the cause.

In **Democratic Bar Association, Allahabad Vs. High Court of Judicature at Allahabad, AIR 2000 Alld. 300**[51], a Full Bench set aside the

amendment in the rules for designation of Senior Advocates and held that the Full Court can delegate the power to a Committee to screen the names but that disapproval by the Committee would not constitute disapproval by the Full Court.

The powers of the High Court to issue writ of certiorari, and to interfere with the findings recorded by the subordinate courts, which are Courts of fact was put to question in **Nanha Vs. Deputy Director of Consolidation, Kanpur in 1975 AWC 1**[52]**.** A Full Bench upheld the tests that if the finding is perverse in the sense that no reasonable person could possibly come to that conclusion or that it erroneously ignores a vital plea or material evidence, which affects the result, a manifest error of law apparent on the face of record leading to failure of justice can be said to be established. If a Court or Tribunal based its findings on consideration of all relevant evidence and that the appellate or revisional Court or Tribunal while affirming the finding does not refer to some of the material or contrary evidence, it cannot be said that it has been ignored from consideration, so as to entitle the High Court to interfere under Art.226 of the Constitution of India.

In **Abdul Hameed Vs. Mohd. Ishaq, AIR 1975 Alld. 166**,[53] five judges sitting at Lucknow found that private agreement of tenancy between landlord and third person in contravention of general or special order of the District Magistrate is void and his possession can be overlooked and in the eye of law the accommodation shall be deemed to be vacant to pass special orders of allotment under Section 7 (2) of the Act. The Court relied upon Section 23 of the Contract Act to hold that such contracts were void as the object of the agreement was unlawful.

In **R.M. Devi Vs. Rent Control and Eviction Officer, AIR 1976 Alld. 516**[54], five judges were required to consider whether vacancy would occur in case a tenant sublet either the whole or a portion of his accommodation, the Court held that contract of tenancy between landlord and tenant is single and indivisible. Contract is not empowered when the lessee sublets the portion of the accommodation. Contract would still remain single and indivisible. In the absence of any specific provision under the Rent Act the District Magistrate has no power to break up this unity of contract of letting by treating the portion of the accommodation as vacant and letting it to some other person.

In **Chandra Kanta Vs. State, AIR 1977 Alld. 270**[55] five judges' Bench held, interpreting Art.228 A (3) as amended by Constitution 42nd amendment (repealed by Constitution 43rd Amendment Act, 1977) that the writ petition questioning constitutional validity of state law can be heard by Division Bench at the admission stage, and it is not necessary that it should be listed before the Full Bench. Another five judges' Bench in **B.P. Gautam Vs. R.K. Agrawal, AIR 1977 Alld. 103**[56] found that the conversion of appeal into revision under Section 115 CPC is discretionary matter. In **Balbeer Singh Vs. Atma Ram, AIR 1977 Alld. 211**[57], five judges' Bench found that omission to sue for all reliefs can be rectified by filing a second suit. Such a suit is not barred by Order 2 Rule 2 CPC, if the plaintiff obtains the leave of the Court under Order 2 Rule 2 (3) for filing a suit for ejectment subsequently.

In **Bhuwal Vs. Deputy Director, Consolidation, AIR 1977 Alld. 488**[58] five judges' Full Bench while interpreting paragraph 14 of the U.P. High Court (Amalgamation) Order, 1948 found that the first proviso to paragraph 14 is not in conflict with any provision of the Constitution and is not invalid on that account on the coming into force of the Constitution. It is no more than allocation of cases arising out of certain district to the judges of the Allahabad High Court sitting at Lucknow. Another Full Bench of five

judges in **Suresh Chandra Vs. State, AIR 1977 Alld. 515**[59] upheld the validity of U.P. Milk Act, 1976 and U.P. Milk and Milk Products Control Order, 1977, as the Act did not seek to regulate interstate trade and commerce in milk or milk products. The act and the control order were held to be valid and were not violative of Art.301 of the Constitution.

A notification issued by the State Government on June 28th, 1977 to forfeit the book entitled Munaquib-e-Ahle-Bait in praise of the members of the household of the Holi Prophet. The book severely criticized the rule of Amir Moaviya, who is held in high esteem by Sunni Muslims. A Full Bench in **Azizul Haq Kausar Naquvi Vs. The State, AIR 1980 Alld. 149**[60] comprising Mr. Justice S. Mallick, Mr. Justice P.N. Harkauli and Mr. Justice S.J. Haider held that passages found objectionable do not contain any matter, which may be characterized as written in bad test or couched in offensive or intemperate language and that the publication could not be said to be a criminal act punishable under Section 152 (A) of the Indian Penal Code.

On the issue of admissibility of the injury reports and post mortem reports, which is of utmost importance as the correctness of both ocular and circumstantial evidence produced by the prosecution is tested on its basis, a Full Bench of this Court in **Saddiq & Ors. Vs. State, 1981 (18) Alld. Criminal Cases 58**[61] was confronted with the question in 1980 as to where the genuineness of any document is not disputed, the entire document is taken to be true or correct and may be read as substantial evidence under Section 294 (3) Cr.P.C. The Court held that the very object of enacting Section 294 Cr.P.C. would be defeated if the signature and the correctness of the contents of the post mortem report are still required to be proved by the doctor concerned, even if its genuineness is not disputed by the accused. The Court held that an injury report filed by the prosecution under sub-section (1) of Section 294, whose genuineness is not disputed by the accused may be read as substantive evidence under sub-section (3) of Section 294 Cr.P.C.

In another Full Bench this Court in **Smt. Sundri Vs. Union of India, AIR 1984 Alld. 277**[62] held that the word 'passenger' for the purposes of compensation in the event of death occurring in an accident, as defined in the Indian Railways Act, 1890, would include within its ambit a person traveling by train without a ticket or under some other lawful authority. The Court interpreted the beneficial legislation in favour of passenger by conjuring the term 'bonafide passenger' and interpreted the law to restrict the benefit of Section 82-A of the Act only to a person travelling with valid ticket or some lawful authority.

Upholding the validity of U.P. Gangster and Antisocial Activities (Prevention) Act, 1986 a Full Bench in **Ashok Kumar Dixit Vs. State of U.P., AIR 1987 Alld. 235**[63] held that the term 'antisocial' confess idea of an act on the part of person, who is opposed to or hostile to society. The legislature was competent to declare such activities as substantive offence and provide for deterrent sentence. The act and not the status of the person is punishable. The activities of gangsters are an offence as they pose a great threat to an orderly society and therefore such activities call for more deterrent punishment and speedier trial.

In **Ram Lal Yadav Vs. State of U.P., 1989 AWC 270**[64] a seven judges' Bench did not accept that the High Court has inherent powers to interfere with the arrest of person by a police officer even if it is in violation of Section 41 (1) (a) of Cr.P.C., when no offence is disclosed in the FIR or the investigation is malafide. The Court found that inherent powers to prevent an abuse of the process of the Court would come into play only after charge sheet is filed and not during the course of investigation. In such case the High Court can always issue writ of mandamus under Art.226 of the Constitution of India. The guidelines for quashing first information are

wholesome and have guided the Court in deciding thousands of cases in writ petitions.

The delay of three years between notifications under Section 28 (1) and Section 32 (4) of the U.P. Avas Avam Vikas Parishad Adhiniyam, 1964, analogous to Section 4 and 6 of the Land Acquisition Act and the effect of amendment in Section 6 came for consideration in **Doctors' Sehkari Grah Nirman Samiti Ltd., Agra Vs. Avas Avam Vikas Parishad, U.P., 1984 UPLBEC 525**[65] Justice H.N. Seth speaking for the Full Bench drew distinction between adoption by incorporation and by reference of certain provisions of an act in another statute. The Court held that the legislature did not for the purposes of acquisition of land in connection with the Adhiniyam either incorporated the provisions of Sections 4 and 6 of the Land Acquisition Act or did it intend that such acquisition proceedings should be carried on in accordance with the provisions contained in those sections. The restrictions by amendment to Section 6 of the Land Acquisition Act will have no impact on the notifications to be issued under Section 32 (4) of the Adhiniyam. The Court held:-

> *"Where a statute is incorporated by reference into a development statute, the repeal or amendment of the first statute does not affect the second. Accordingly any amendment made in the incorporated provisions of the Act in the year 1967 will have no bearing whatsoever on the question of acquisition of property in connection with a scheme formulated under the Adhiniyam which acquisition has to be carried out in accordance with the procedure laid down in the Act as amended in its application to Uttar Pradesh in the year 1965, i.e. the year in which the Adhiniyam was enacted."*

Payment of Court fees under Section 7 (iv) (b) and under Section 7 (i) of the U.P. Court Fees Act, sufferred a conflict between two full bench decisions, in **Galib Rasool Vs. Mangu Lal, AIR 1949 All 382** a full bench and five judges in **Asharfi Lal Vs. Firm Thakur Prasad Kishori Lal, AIR 1970 All 197 (FB)**. The matter was resolved by seven judges in **Ragho Prasad Vs. B. Pratap Narain, AIR 1976 Alld. 470 (FB)**[66]. The Court explained that the word 'appeal' embraces both an appeal against a preliminary decree and an appeal against a final decree. There appears no reason whatever for confining the word 'appeal', in the main part of the sub-section to appeal against preliminary decrees. Section 7 (iv) (b) of the Act governs appeals against final decrees also, for computation of Court fees payable thereon. The proviso, however, does not say anything as to how the amount on which the relief sought in an appeal against final decree is to be valued. The Court fees payable in such case will be determined, the amount on which the reliefs sought is valued by the appellant in the memorandum of appeal.

In taxation matters the Allahabad High Court has emphasized the requirement of notice and the reasons to be communicated along with the notice to void arbitrary action of the assessing authorities. In **M/s Jamania Cold Storage and Ice Plant Vs. Director of Horticulture & Ors., 1992 UPTC 1265**[67] Rule 25 in the U.P. Trade Tax Rules for the purposes of granting eligibility certificate under Section 4-A provides for grant of opportunity for deciding application within the time bound period of 30 days. This rule was enacted in pursuance of judgment to provide a complete procedure within a time bound period. In **Mithilesh Kumar Tripathi Vs. Commissioner of Income Tax & Ors., 2006 UPTC 155**[68] the Court took a lead to develop the law by holding that in order to avoid arbitrary action of the assessing authority, so as to enable the assessee to file fresh return in pursuance of the notice under Section 147 and 148 of the Income Tax Act, to

explain as to how the other income has escaped assessment, reasons should be communicated along with notice. In **M/s Manaktala Chemicals Pvt. Ltd. Vs. State of U.P. & Ors., 2006 UPTC 1128**[69] the Court held that opportunity of hearing before granting approval for extension of limitation is necessary and reasons must be communicated. After this judgment regular notices are being issued by the Commissioner, Trade Tax, and hearings have been given and replies are being considered for giving permission for extension of limitation.

When the excess tax is found refundable and the amount was refunded the department was not paying interest for several years. In **M/s Triveni Fuels Alld. & Anr. Vs. State of U.P., 2006 UPTC 370**[70] the High Court interpreted that under Section 29 of the U.P. Trade Tax Act, not only the interest on excess amount but interest on interest, which ought to have been paid should also be refunded.

The High Court had an occasion to explain the doctrine of 'stare decisis', and references made to larger Bench in Full Bench judgment in **Natraj Chhabigrih, Sigra Vs. State of U.P. & Anr., AIR 1996 Alld. 375**[71]**.** Hon'ble A.P. Misra, J. in a majority judgment held that self-disciplined rule of 'stare decisis' is followed for administering justice. It gives stability and uniformity in the administrative law both to the subject and courts. The rule keeps courts within its bounds and inspite of different opinions they follow this procedure with respect. Otherwise common settled law could be unsettled any day. The Court held:-

> *"This shows how naturally the self discipline rule of 'stare decisis' is followed by the Judges in administering justice. But this in no way is stumbling block for the development and progress of law. Every word of a statute or Constitution is dynamic not static otherwise fast changing social orders, needs and requirements with resultant problems and crisis unless interpreted so, would instead of rendering justice wold result in injustice. No one is infallible. So also we rendering judgments. That is why, while maintaining the rigour of binding judicial precedent, if such judgment is perpetuating, continuing injustice, the error of which is apparent on the face of record or against any binding judicial precedent, against any constitutional or statutory provisions, contrary to any settled principle of law or even with the change of social fabric requires reconsideration being of public importance, to set back on the track another equally important principle is evolved by referring such matters to a larger Bench. Both principles of 'stare decisis' and 'reference' are not contrary but complementary to each, evolving and developing the law with an eye solely to render justice. All methodologies, principles, procedures are coined by Judges in aid to and are subservient to deliver justice to the subject. They are not to be interpreted which restricts this reach. It is in essence, within this sphere, catena of authorities are to be found as cited at the Bar."*

In the same judgment difference between the law, which could be declared ultra vires either beyond the legislative competence or in conflict with or offending any provisions of the Constitution was explained. There is difference between the two. Where a law is beyond the legislative competence it is said to be nullity. It is truly 'still born'. The laws declared ultra vires on the ground that are inconsistent with any provision of the Constitution, are validated, when cause of such offend is removed. It remains eclipsed by offending the Constitution. Eclipse denotes, it being

screened by such constitutional provision, not to be seen. The moment the screen is removed the law is alive and enforceable.

The provision of grant of anticipatory bail under Section 438 has been omitted in its application to U.P. by U.P. Act No.16 of 1976 w.e.f. 28.11.1975. There is no relief provided to the persons apprehending arrest in alleged false prosecutions, giving rise to thousands of writ petitions filed every year, for stay of arrest as soon as the first information report is lodged or a case is registered by the police. The Courts, in order to do justice, started giving directions to the Magistrates to consider the bail application in a time schedule. These directions gave rise to a peculiar situation, where the Magistrate was required to consider the bail in the absence of the police report or the material necessary for consideration of bail application. The question was referred and came up for consideration of the five judges' Bench in **Vinod Narain Vs. State of U.P., 1996 Crl.L.J. 1309**[72] Justice B.M. Lal speaking for the majority held that Magistrate or Courts of sessions cannot be commanded to consider the bail application in a time schedule fixed by the Court. The subordinate Court should be allowed to work according to the circumstances of the case in a reasonable manner and that no straight-jacket mandamus should be issued. No Court can grant interim bail for moving bail application in pending case except for the contingency contemplated by Section 389 Cr.P.C.

In preventive detention matters the acquittal of the detenue in a criminal case, which is a ground for his detention was not held to be sufficient to render the detention illegal. The contrary view expressed by the Court in 1986 was reconsidered by five judges' Bench in **Ram Lal Vs. State of U.P., 2005 Crl.L.J. 1364**[73]**.** The Court held that the order of acquittal would not act as a bar to preventive detention, on the basis of the same incident on which the order of acquittal has been recorded. A preventive detention order may be passed with or without prosecution in anticipation, after discharge and even after acquittal. The authorities, who have the power to revoke or modify the preventive detention order may not be directed to consider the case of detenue on the basis of the subsequent order of acquittal, particularly since the detenue can make representation at any stage on fresh grounds.

In **Rana Pratap Singh Vs. State of U.P., 1995 (1) ACJ 145**[74], five judges' Bench found in a matter of suspension of fire arm license pending enquiry into its cancellation, prior hearing under Section 17 of the Arms Act, 1959, is not a legal necessity. Where there is sufficient material to show that possession of fire arm is going to endanger public peace and safety, a post decisional hearing or an appeal is sufficient remedy. The Court held that the rights to carry non-prohibited fire arms do not come within the purview of right to life under Art.21 of the Constitution. No one indeed can subscribed to the theory that it is only an armed man, who can lead life of dignity and self respect. Right to carry fire arm is no more than a privilege.

In **Committee of Management, Pt. Jawahar Lal Nehru Inter College, Bans Gaon Vs. Deputy Director of Education, Gorakhpur, AIR 2005 Alld. 101**[75] the Court held that Regional Deputy Director of Education while deciding the management disputes of educational institutions, exercises quasi judicial powers and where there are rival claims to elections, he must decide the question of validity of elections, prima facie, in deciding question of actual control over the affairs of the institution.

In the absence of the provisions of anticipatory bail in the State the High Court is faced every year with thousands of writ petitions, for quashing the first information report with a primary object to stay the arrest of the accused. A 7 judges' Bench in **Smt. Amaravati Vs. State of U.P., 2005, Cr.L.J. 755**[76], held that the arrest of the accused is not must, if a cognizable

offence is disclosed in the first information report on in a criminal complaint. The use of the word 'may' in Section 41 of the Criminal Procedure Code cannot be interpreted as 'must' or 'shall'. The police should rather follow the decision of the Supreme Court in Jogendra Kumar's case before deciding whether to arrest or not. It was further held that the High Court should not ordinarily direct that the bail application should be considered on the same day.

In a bail matter in **Smt. Gopa Chakravarthy Vs. State of U.P., 2007 (9) ADJ 309 (LB)**[77] the Court held that a bribe giver is an accomplice in a crime in a corruption matter. He abets in the offence against society.

Public Interest Litigation

A larger number of public interest litigation matters are pending in the Court. The pollution in river Ganga and Yamuna, restoration of natural water resources and reservoirs; criminalisation in politics; indiscriminate allowance of security personnel to political leaders and criminals; the pathetic condition in jails, and the negligence in searching out missing children, are being monitored by the Court. The condition of juvenile homes, is also being monitored by the Court. In a case following the Supreme Court's directions the Court has apprehended thousands of unqualified and unauthorised medical practitioners, closed unauthorised medical colleges and stopped the use of methods for medical treatment with no proven record including faith healing.

Conclusion

Post 1990 the Allahabad High Court faced tough challenge from adhoc and unstable State Governments, barely holding in place by fractured verdicts delivered by the electorate to constitute Legislative Assembly. Repeated amendments in local laws to suit the parties in power, arbitrary exercise of powers, frequent change of policies, degradation of moral values in society and corruption in the government has overburdened the Court. Most of the litigation is now generated by overindulgence of political leaders in self service and whimsical exercise of powers. The entire State machinery is divided on caste lines. The fight between Backward classes and Dalits has raised several important issues. The bad governance has thrown up thousands of cases, offering a real challenge to the High Court to deliver justice. The arrears in the High Court have accumulated, not only because of the nagging vacancies but also by the increased filing, leaving the judges struggling with over one thousand new cases on any working day. The High Court is flooded with the revenue cases and matters relating to employment in State Government and local bodies. About fifty thousand writ petitions were filed in last three years in the matters of selections to special training to the bachelor training certificate course; appointment of Shiksha Mitras (a scheme to temporarily fill up vacancies of teachers in primary schools) and repeated cancellation of selections to the police force. The frequent amendments to the rules of reservation made by successive governments to suit their political agenda have left the High Court grappling with social inequities. The largest High Court of the country has done a commendable job in maintaining the rule of law in the State. The people of the State have reposed faith and tremendous confidence in the High Court. The judges and the lawyers have responded to this faith with responsibility. The maintenance of rule of law has been the single most contributing factor of the High Court of Allahabad to the people of the State.

This compilation is not a result of any meticulous research. It is not a complete document. The references were collected with the help of the Centenary Volumes of 1966 and 1992, and given by colleagues and friends on the Bench and in the Bar. I may have missed a number of cases, which have contributed to the development of law. There are several opinions, which were substituted by a more firm and authoritative pronouncement from the Supreme Court.

I pay my tributes to all those great judges and lawyers, who have contributed to make the Allahabad High Court a great institution.

****

INDEX OF CASES

31. Ramji Dixit Vs. Bhrigu Nath, AIR 1965 Alld. 1[31]
32. Rita Rani Singh Vs. Raghuraj Singh, AIR 1965 Alld. 380[32]
33. Zila Parishad Vs. Smt. Shanti Devi, AIR 1965 Alld. 590[33]
34. Rishikesh Singh Vs. State, 1970 Crl.L.J. 132[34]
35. Mahesh Vs. State of U.P., 1971 Crl.L.J. 1674[35]
36. Emperor Vs. Jhabbar Mal, 115 I.C. 1929 page 872[36]
37. Prayag Das Vs. Civil Judge, Buland Shahar, AIR 1974 Alld. 133[37]
38. Shri Raj Narain Vs. Smt. Indira Nehru Gandhi[38]
39. V.K.S. Choudhary Vs. State of U.P.[39]
40. Kunj Behari Lal Vs. Sales Tax Officer, AIR 1975 Alld. 144[40]
41. Gangadhar Vs. Raghubar Dayal, AIR 1975 Alld. 102[41]
42. Pradeep Tandon Vs. State, AIR 1975 Alld. 1[42]
43. Ghurpatari Vs. Smt. Sampati, AIR 1976 Alld. 195[43]
44. Mahendra Nath Vs. Smt. Baikunthi Devi, AIR 1976 Alld. 150[44]
45. Mohd. Yaqoob Khan Vs. The Chief Controlling Revenue Authority, AIR 1977 Alld. 93[45]
46. Gajepal Singh, AIR 1977 Alld. 79[46]
47. M/s Saraya Sugar Mills (P) Ltd., Gorakhpur Vs. Commissioner of Income Tax, AIR 1979 Alld. 405[47]
48. Smt. Ram Peary Vs. Gauri, AIR 1978 Alld. 318[48]
49. Mohan Agrawal Vs. Union of India, AIR 1979 Alld. 170[49]
50. Umesh Chand Vinod Kumar Vs. Krishi Utpadan Mandi Samiti, Bharthana, AIR 1984 Alld. 46[50]
51. Democratic Bar Association, Allahabad Vs. High Court of Judicature at Allahabad, AIR 2000 Alld. 300[51]
52. Nanha Vs. Deputy Director of Consolidation, Kanpur in 1975 AWC 1[52]
53. Abdul Hameed Vs. Mohd. Ishaq, AIR 1975 Alld. 166,[53]
54. R.M. Devi Vs. Rent Control and Eviction Officer, AIR 1976 Alld. 516[54]
55. Chandra Kanta Vs. State, AIR 1977 Alld. 270[55]
56. B.P. Gautam Vs. R.K. Agrawal, AIR 1977 Alld. 103[56]
57. Balbeer Singh Vs. Atma Ram, AIR 1977 Alld. 211[57]
58. Bhuwal Vs. Deputy Director, Consolidation, AIR 1977 Alld. 488[58]
59. Suresh Chandra Vs. State, AIR 1977 Alld. 515[59]
60. Azizul Haq Kausar Naquvi Vs. The State, AIR 1980 Alld. 149[60]
61. Saddiq & Ors. Vs. State, 1981 (18) Alld. Criminal Cases 58[61]
62. Smt. Sundri Vs. Union of India, AIR 1984 Alld. 277[62]
63. Ashok Kumar Dixit Vs. State of U.P., AIR 1987 Alld. 235[63]
64. Ram Lal Yadav Vs. State of U.P., 1989 AWC 270[64]
65. Doctors' Sehkari Grah Nirman Samiti Ltd., Agra Vs. Avas Avam Vikas Parishad, U.P., 1984 UPLBEC 525[65]
66. Ragho Prasad Vs. B. Pratap Narain, AIR 1976 Alld. 470 (FB)[66]
67. M/s Jamania Cold Storage and Ice Plant Vs. Director of Horticulture & Ors., 1992 UPTC 1265[67]

68. Mithilesh Kumar Tripathi Vs. Commissioner of Income Tax & Ors., 2006 UPTC 155[68]
69. M/s Manaktala Chemicals Pvt. Ltd. Vs. State of U.P. & Ors., 2006 UPTC 1128[69]
70. M/s Triveni Fuels Alld. & Anr. Vs. State of U.P., 2006 UPTC 370[70]
71. Natraj Chhabigrih, Sigra Vs. State of U.P. & Anr., AIR 1996 Alld. 375[71]
72. Vinod Narain Vs. State of U.P., 1996 Crl.L.J. 1309[72]
73. Ram Lal Vs. State of U.P., 2005 Crl.L.J. 1364[73]
74. Rana Pratap Singh Vs. State of U.P., 1995 (1) ACJ 145[74]
75. Committee of Management, Pt. Jawahar Lal Nehru Inter College, Bans Gaon Vs. Deputy Director of Education, Gorakhpur, AIR 2005 Alld. 101[75]
76. Smt. Amaravati Vs. State of U.P., 2005, Cr.L.J. 755[76]
77. Smt. Gopa Chakravarthy Vs. State of U.P., 2007 (9) ADJ 309 (LB)[77]

SUBJECT INDEX

CIVIL LAW

1. Gopal Pandey Vs. Parsottam Das, 5 All. 121 (FB)[3]
2. Ishri Vs. Gopal Saran, 6 Alld. 351[4]
3. Kandhiya Lal Vs. Chandar, 7 Alld. 313 (1885) (FB)[6]
4. Mangu Lal & Ors. Vs. Kanhai Lal & Ors., 8 Alld. 475[7]
5. Lalli Vs. Ram Prasad, 9 Alld. 74[8]
6. Gobind Dayal Vs. Inayat Ullah, I.L.R. 7 All. 775 (1885)[10]
7. Kudrat Ullah Vs. Mohini Mohan Shaha (4 Bengal Law Reports 134)[11]
8. Jagram Das Vs. Narain Lal, ILR (7) Alld. 857 (1885)[12]
9. Mahant Shanta Nand Gir Vs. Mahant Basudeva Nand, A.I.R. 1930 All. 225[16]
10. Madho Singh Vs. Kalloo Singh, 1932 RD 547[17]
11. Ajudhia Prasad & Anr. Vs. Chandan Lal, A.I.R. 1937 All. 610[22]
12. Cheddi Lal Vs. Chotte Lal, AIR 1951 Alld. 199[25]
13. Asiatic Engineering Company Vs. Achhru Ram, AIR 1951 Alld. 746[27]
14. Zila Parishad Vs. Smt. Shanti Devi, AIR 1965 Alld. 590[33]
15. Gangadhar Vs. Raghubar Dayal, AIR 1975 Alld. 102[41]
16. Mahendra Nath Vs. Smt. Baikunthi Devi, AIR 1976 Alld. 150[44]
17. Smt. Ram Peary Vs. Gauri, AIR 1978 Alld. 318[48]
18. Balbeer Singh Vs. Atma Ram, AIR 1977 Alld. 211[57]
19. Ragho Prasad Vs. B. Pratap Narain, AIR 1976 Alld. 470 (FB)[66]
20. Committee of Management, Pt. Jawahar Lal Nehru Inter College, Bans Gaon Vs. Deputy Director of Education, Gorakhpur, AIR 2005 Alld. 101[75]

CONSTITUTION LAW

1. Moti Lal Vs. State of U.P., AIR 1951 Alld. 257[28]
2. Special Reference No.1 of 1964 reported in AIR 1965 SC 745[29]

3. Laxmikant Jhunjhunwala Vs. State of U.P., AIR 1965 Alld. 420[30]
4. V.K.S. Choudhary Vs. State of U.P.[39]
5. Pradeep Tandon Vs. State, AIR 1975 Alld. 1[42]
6. Mohan Agrawal Vs. Union of India, AIR 1979 Alld. 170[49]
7. Chandra Kanta Vs. State, AIR 1977 Alld. 270[55]
8. Suresh Chandra Vs. State, AIR 1977 Alld. 515[59]
9. Natraj Chhabigrih, Sigra Vs. State of U.P. & Anr., AIR 1996 Alld. 375[71]

CRIMINAL LAW

1. Queen Empress Vs. Phopi, ILR XIII All. 171[1]
2. S.H. Jhabawala and others Vs. Emperor, reported in A.I.R. 1933 All. 690[23]
3. Emperor Vs. B.G. Horniman (I.L.R. 1944 Alld. 665)[24]
4. Rishikesh Singh Vs. State, 1970 Crl.L.J. 132[34]
5. Mahesh Vs. State of U.P., 1971 Crl.L.J. 1674[35]
6. Emperor Vs. Jhabbar Mal, 115 I.C. 1929 page 872[36]
7. Azizul Haq Kausar Naquvi Vs. The State, AIR 1980 Alld. 149[60]
8. Saddiq & Ors. Vs. State, 1981 (18) Alld. Criminal Cases 58[61]
9. Ashok Kumar Dixit Vs. State of U.P., AIR 1987 Alld. 235[63]
10. Ram Lal Yadav Vs. State of U.P., 1989 AWC 270[64]
11. Vinod Narain Vs. State of U.P., 1996 Crl.L.J. 1309[72]
12. Ram Lal Vs. State of U.P., 2005 Crl.L.J. 1364[73]
13. Rana Pratap Singh Vs. State of U.P., 1995 (1) ACJ 145[74]
14. Smt. Amaravati Vs. State of U.P., 2005, Cr.L.J. 755[76]
15. Smt. Gopa Chakravarthy Vs. State of U.P., 2007 (9) ADJ 309 (LB)[77]

ELECTION LAW

1. Shri Raj Narain Vs. Smt. Indira Nehru Gandhi[38]

FAMILY LAW

1. Jafri Begum Vs. Amir Mohammad Khan I.L.R. 7 All. P. 822 (1885)[2]
2. Mohd. Allahdad Khan Vs. Mohd. Ismail Khan, 10 Alld. 289 (FB)[5]
3. I.L.R. 2 All. 164 (1879), Hanuman Tiwari Vs. Chirai[9]
4. Musammat Kaushilla, AIR 1937 Alld. 230[20]
5. Mool Chand Vs. Mt. Chahata Devi, A.I.R. 1937 All. 605[21]
6. Ghurpatari Vs. Smt. Sampati, AIR 1976 Alld. 195[43]

INTERPRETATION OF STATUTES

1. Smt. Sundri Vs. Union of India, AIR 1984 Alld. 277[62]

LAND ACQUISITION LAW

1. Doctors' Sehkari Grah Nirman Samiti Ltd., Agra Vs. Avas Avam Vikas Parishad, U.P., 1984 UPLBEC 525[65]

PRACTICE AND PROCEDURE

1. Lal Singh Vs. Ghan Shyam Singh, I.L.R. 9 All. 625[13]
2. Nihal Chand Shastri Vs. Dilawar Khan reported in A.I.R. 1933 All. 417[19]
3. Rita Rani Singh Vs. Raghuraj Singh, AIR 1965 Alld. 380[32]
4. Prayag Das Vs. Civil Judge, Buland Shahar, AIR 1974 Alld. 133[37]
5. Umesh Chand Vinod Kumar Vs. Krishi Utpadan Mandi Samiti, Bharthana, AIR 1984 Alld. 46[50]
6. Democratic Bar Association, Allahabad Vs. High Court of Judicature at Allahabad, AIR 2000 Alld. 300[51]
7. B.P. Gautam Vs. R.K. Agrawal, AIR 1977 Alld. 103[56]
8. Bhuwal Vs. Deputy Director, Consolidation, AIR 1977 Alld. 488[58]

RENT AND EVICTION

1. Abdul Hameed Vs. Mohd. Ishaq, AIR 1975 Alld. 166,[53]
2. R.M. Devi Vs. Rent Control and Eviction Officer, AIR 1976 Alld. 516[54]

REVENUE LAW

1. Chokhey Singh Vs. Jot Singh, 1909 (6) ALJ 100[14]
2. Acharji Ahir Vs. Harai Ahir, A.I.R. 1930 All. 822[15]
3. Amar Chandra Vs. Parmanand, AIR 1934 Alld. 474[18]
4. Ramji Dixit Vs. Bhrigu Nath, AIR 1965 Alld. 1[31]
5. Nanha Vs. Deputy Director of Consolidation, Kanpur in 1975 AWC 1[52]

STAMP ACT

1. Mohd. Yaqoob Khan Vs. The Chief Controlling Revenue Authority, AIR 1977 Alld. 93[45]
2. Gajepal Singh, AIR 1977 Alld. 79[46]

TORT

1. Dharnidhar & Ors. Vs. Chandra Shekhar & Ors., AIR 1951 Alld. 774[26]

TAXATION

1. Kunj Behari Lal Vs. Sales Tax Officer, AIR 1975 Alld. 144[40]
2. M/s Saraya Sugar Mills (P) Ltd., Gorakhpur Vs. Commissioner of Income Tax, AIR 1979 Alld. 405[47]

3. M/s Jamania Cold Storage and Ice Plant Vs. Director of Horticulture & Ors., 1992 UPTC 1265[67]
4. Mithilesh Kumar Tripathi Vs. Commissioner of Income Tax & Ors., 2006 UPTC 155[68]
5. M/s Manaktala Chemicals Pvt. Ltd. Vs. State of U.P. & Ors., 2006 UPTC 1128[69]
6. M/s Triveni Fuels Alld. & Anr. Vs. State of U.P., 2006 UPTC 370[70]

****