PART III
WRITS

Writ of Habeas Corpus

No. 1—Habeas Corpus Petition Against Preventive Detention under National Security Act *(a)*

In the High Court of Judicature at Allahabad

Writ Petition No. _____ of 19

(Under Article 226 of the Constitution of India),

Ganga Ram son of Shanker Prasad, aged about 30 years, resident of house No. 5/30, Model Colony, Bulandshahr, through Smt. Rashmi Devi wife of Ganga Ram aforesaid, as next friend.

.....*Petitioner*

Versus

1. State of Uttar Pradesh, through Secretary, Home Department, Lucknow.

2. District Magistrate, Bulandshahr.

3. Superintendent, District Jail, Bulandshahr.

.....*Respondents*

To

The Hon'ble Chief Justice and His Companion Judges of the aforesaid Court.

The humble petition of the petitioner above named respectfully showeth :

(a) Habeas corpus petition may be filed for release from illegal custody of any person detained either by a State agency or by a private individual.

In regard to detention in official custody the officer or Government by whose order the person is detained as well as the officer incharge of the establishment where he or she is detained should be impleaded as respondents.

Normally no such petition lies in respect of detention in prison in execution of a sentence passed and conviction ordered by a criminal court even though the conviction may be against the weight of evidence on the record or may be based on a wrong interpretation of law. In such cases the remedy of appeal or revision under the Code of Criminal Procedure or other similar law should be availed. The High Court has also inherent power under section 482 Cr. P.C. to grant redress with a view to preventing abuse of process of court even where no appeal or revision lies. Likewise, the legality or correctness of a conviction and sentence by a Court Martial

1. The petitioner is a peaceful law abiding citizen engaged in employment as a mechanic in a local motor repairs workshop named Ashok Motors.

2. On September 2, 1984 the petitioner was arrested and served with an order of detention dated September 1, 1984 passed by District Magistrate, Respondent No.2 purporting to act under sub-section (2) of section 3 of the National Security Act, 1980. He has been detained in the District Jail, Bulandshahr, of which Respondent No.3 is the Superintendent, in pursuance of the said order.

3. The order of detention recited that Respondent No.2 was "satisfied" that it was necessary to pass the order in order to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. A true copy of the order is Annexure 1 to this petition.

4. The said order was accompanied by the grounds on which it was purported to have been made. A true copy of the grounds is Annexure 2 to this petition.

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under the Army Act, the Air Force Act or the Navy Act cannot be challenged through a habeas corpus petition. Article 227 and Article 136 of the Constitution lay down that the High Court or the Supreme Court cannot exercise its power of judicial superintendence under those articles over a court martial. There is, however, no such exclusion in Article 226 or in Article 32. Thus in very exceptional cases of lack of jurisdiction or of clear violation of the rules of natural justice or of unconstitutionality of the law under which the order has been made, the High Court or the Supreme Court may entertain a habeas corpus petition even against a detention in pursuance of an order of conviction passed by an ordinary criminal court or a Court Martial.

Whenever a question is raised regarding the illegal detention of a citizen in a writ of Habeas Corpus and the court issues the *rule nise*, a duty is cast on the State through its functionaries and in particular on those who are arrayed as respondents to the writ petition to satisfy the court that the detention of the citizen was legal and in conformity not only with the requirements of law but also with the requirements implicit in Article 22 (5) of the Constitution and to place before the court all relevant facts relating to the impugned detention with utmost fairness (*Dhananjay Sharma* v. *State of Haryana*, A 1995 SC 1795).

This writ is most frequently used in cases of preventive detention. Article 21 of the Constitution guarantees the fundamental right of life and liberty of a person which cannot be taken away except in accordance with law. Courts have power not to recognise a statutory provision as a constitutionally valid 'law' within the meaning of this Article if the provision is vague, unconscionably harsh, unreasonable or

5. The grounds were three in number and were in substance as follows :-

(i) That certain incident of communal rioting (*or*, incidents of violence and arson at M/s Ashok Motors, the workshop at which the petitioner was employed) had taken place on August 30 and 31, 1984, and the petitioner was, as revealed by intelligence reports received by Respondent No.2, the moving force behind these incidents.

(ii) That the petitioner is an office-bearer of the local unit of the R.S.S. (*or*, Muslim League *or*, C.P.M.)

(iii) That the petitioner had set up a defence committee for providing legal aid to Hindus/Muslims (*or*, workers arrested by the police in connection with the said incidents).

(iv) That earlier in August 1975 the petitioner was involved in crime No.180 Police Station Anoopshahr under section 324 I.P.C.

6. No copy of the intelligence reports received by the respondent No.2 was supplied to the petitioner, nor were any details furnished to the petitioner in regard to his role in the said incidents.

7. The grounds of detention were supplied to the petitioner in English, a language which the petitioner does not know or understand, and inspite of his request the grounds were not supplied to him in Hindi, nor were they explained to him in that language (*or*, the petitioner made a representation against the order to the State Government, Respondent

unfair, or violative of the principles of natural justice (*Meneka Gandhi* v. *Union of India*, A 1978 SC 597; *Supdt. and Remembrancer for Legal Affairs* v. *Satyen Bhowmic*, A 1981 SC 917).

Article 22 permits preventive detention without trial but subject to certain safeguards specified therein. The most important safeguard is the right of the detenue to be apprised of the grounds of detention and to have his representation against detention fairly and promptly considered by the Government. Accordingly, provisions, have been made in the National Security Act 1980 (N.S.A.), the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) and Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, clearly defining the grounds on which detention can be ordered, the authorities by which it can be ordered and requiring the furnishing to the detenue of the grounds of detention and allowing him the right to represent to the Government concerned against it and also providing for obtaining the opinion of an Advisory Board consisting of judicial experts before continuing

No.1 on Sept. 5, 1984 but the same has been rejected by the Home Secretary on behalf of Respondent No.1 on October 15, 1984. True copies of the representation and the order of rejection are respectively Annexures 3 and 4 to this petition).

8. The State Government has not delegated the power of detention under sub-section (3) of section 3 to Respondent No.2.

9. The Home Secretary had not been given any power by the Rules of Business made under Article 166 of the Constitution or Standing Orders made thereunder to pass final orders on behalf of the State Government on representations made under the Act.

10. As regards crime No.180 of 1975 the fact is that though a false F.I.R. involving petitioner was lodged by one Shiv Dayal, the same had

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the detention. The power to pass an order of preventive detention is exercisable on the subjective satisfaction of the competent authority that it is necessary to detain that person in order to prevent him from acting in future in the manner he acted in the past as disclosed in the specified grounds. It may, therefore, be based on suspicion even without legally sufficient evidence being available in support of those grounds. In a petition challenging the detention it cannot, therefore, be successfully urged that the detaining authority acted merely on suspicion or without legal evidence or that the material placed before the authority was insufficient for its satisfaction (*Monilal Roy Chowdhry* v. *W.B.*, (1976) 1 SCC 191).

Sometimes in the case of dreaded criminals the prosecution has in the past been or is likely in future to be unsuccessful because the witnesses were or are too afraid to depose against the offender or because of fear they deliberately identified a person different from the true offender at a test identification parade. In such cases the detaining authority can validly take the facts of those cases into consideration for arriving at its subjective satisfaction even though the detenue may have been earlier acquitted in respect of those charges or may not have been prosecuted at all (*Mohd. Subrati* v. *W. Bengal*, (1973) 3 SCC 250; *Golam Husain* v. *Commissioner of Police*, (1974) 4 SCC 530; *K.M. Choksi* v. *Gujarat*, (1979) 4 SCC 14). The representation of a detenu has to be disposed of with reasonable expedition, and delay in disposal of the representation violates Art. 22 (5) of the Constitution (*Kamlesh Kumar Ishwardas Patel* v. *Union of India*, (1995) 4 SCC 51, 1995 (3) SCC 639; *Rajesh Kumar* v. *State of Rajasthan*, 1996 Cr LJ 817 (Raj) DB); *Sivapackyam* v. *Govt. of Kerala*, 1996 Cr LJ 840 (Ker) DB). Once a representation was made the detenu was entitled to representation being dealt with expeditiously and if there was some ex facie delay, the obligation was on the State to explain that delay. After appreciation of the materials it was found that there had been unexplained delay in the disposal of the representation of the detenu and the Central Government failed in its duty and consequently, the order of the detention was quashed (*Rajindra* v.

been found on investigation to be false and final report had been submitted by the police and the Magistrate had accepted it on 5th October 1975.

11. The petitioner's wife is interested in the liberty of the petitioner as his next friend.

12. The petitioner submits that the detention of the petitioner is illegal on the following—

Commissioner of Police, Nagpur Division, 1994 SCC (Cr.) 1706). It is not open to the High Court or the Supreme Court to substitute its own satisfaction for that of detaining authority or to review the material for that purpose or to adjudicate on the factual correctness of the grounds (*Monilal Roy Chowdhry* v. *West Bengal*, (1976) 1 SCC 191), provided the order is passed by the competent authority, i.e., the authority empowered in this behalf by the statute or by a valid order of delegation (*Ajaib Singh* v. *Punjab*, A 1965 SC 1619).

However, as preventive detention without trial is accepted only as a necessary evil and is not looked upon with favour the courts usually interpret the provisions of such laws very strictly and also insist on the giving to the detenue an opportunity of making a representation not merely as a formality but as a real and substantial opportunity, the same being his fundamental right. This right is deemed denied or defeated if the detenue is furnished the grounds of detention in a language with which he is unfamiliar (*Razia* v. *Union Of India*, (1981) 1 SCJ 113; *Feroz Ahmad Shah* v. *State*, 1996 Cr LJ 897 (J & K); *Surjeet Singh* v. *Union of India*, A 1981 SC 1153) or when the grounds are not accompained by all the materials referred to therein which were taken into consideration by the detaining authority for arriving at its subjective satisfaction (*Kirtikumar C. Kundaliya* v. *Gujarat*, A 1981 SC 1621) or where there is delay in supplying the documents relied on (*Virendra Singh* v. *Maharashtra*, (1981) 4 SCC 562; *Hansmukh* v. *Gujarat*, (1981) 2 SCC 175), or when there is failure to consider or unexplained and undue delay in disposing of the detenue's representation against the order (*Ashok Kumar* v. *Jammu & Kashmir*, A 1981 SC 851; *Kamlesh Kumar Ishwar Das Patel* v. *Union of India*, (1995) 4 SCC 51; *Pabitra N. Rama* v. *Union of India*, (1980) 2 SCC 338). Delay of 84 days on part of Jailor in despatching representation to Central Government violated detenu's constitutional right under Article 22 (5) of the Constitution (*B. Alameln* v. *State of Tamil Nadu*, 1994 (3) Crimes 828 (SC), 1995 SCC (Cr)224).

Where the detenu is an illiterate person, non-explanation of grounds of detention to him amounts to non-communication and the order of detention is liable to be set aside (*Feroz Ahmad Shah* v. *State*, 1996 CLJ 897 (J & K). Where there were contradictions in English and Hindi version of the detention order, the detenu was deprived of a fair opportunity of making effective representation, hence the detention order was quashed (*Dilip Kumar Jain* v. *Union of India*, 1996 Cr LJ 547 (Raj) DB).

Although the court cannot go into sufficiency of the grounds for the

Grounds

(a) Because Respondent No.1 had not delegated the power of detention to Respondent No.2 and as such the order of detention was incompetent.

(b) Because the detaining authority in breach of Article 22 (5) of the Constitution and section 8 of the Act has denied to the petitioner an opportunity of making an effective representation against the order of detention inasmuch as :—

satisfaction of the authority, the satisfaction will be held to be invalid if it is *mala fide* (for fraud or bad faith invalidates all official action) or based on vague grounds or grounds extraneous to the requirements of the statute in question (*Dr. Subhawant Rai Jain* v. *Uttar Pradesh*, 1982 Cr LJ 725, All; *Shiv Prasad* v. *Madhya Pradesh*, (1981) 3 SCR 81) or if it has been mechanically recited in the order without application of mind (*Kishori Mohan* v *W.B.*, (1972) 3 SCC 845). The courts are so strict in this ragard that even if the order specifies that some activity of the person proposed to be detained was subversive of "law and order" the same cannot be upheld under the head "public order" mentioned in National Security Act, though there is only a difference of degree between the two (*Shiv Pd.* v. *Madhya Pradesh*, A 1981 SC 870; *Parimal* v. *W.B.*, (1972) 2 SCC 520). Further, the grounds should not be stale, for it would be unreasonable to base an apprehension about how a person is likely to behave in future merely on the basis of his conduct in the remote past (*Lakshman* v. *West Bengal* (1974) 4 SCC 1; *Bhut Nath Mete* v. *W.B.*, (1974) 1 SCC 645; *Ajay Dixit* v. *State of U.P.*, A 1985 SC 18). A single incident of crime committed by a person may not be indicative of his criminal propensity unless the incident is one which shows a design, system or planning (*Anil Dev* v. *West Bengal*, (1979) 4 SCC 514; *Saraswati Sheshagiri* v. *Kerala*, A 1982 SC 1165; *Nandlal Roy* v. *West Bengal*, (1972) 2 SCC 524; *Surya Prakash Sharma* v. *State of U.P*, 1994 SCC (Cri.) 1691). A solitary crime directed against a single individual on account of personal enmity and not likely to generate general panic or insecurity or a riot may not be accepted as adversely affecting 'public order'. The test is whether the acts perpetrated are of such a nature or of such potentiality as to travel beyond the immediate victims and affect the general or local public (*Parimal* v. *W.B.*,(1972) 2 SCC 520; *Golam Husain* v. *Commissioner Police*, (1974) 4 SCC 530; *Nandlal* v. *W.B.*, (1972) 2 SCC 524).

If several grounds of detention are metioned in the order of detention or in the memorandum accompaying that order then every ground must be germane and valid, for it is presumed that the subjective satisfaction of the detaining authority is based on a consideration of all the grounds collectively and it is not open to the Court to speculate whether the detaining authority would have felt satisfied or not that the detention of the person concerned was expedient on only one or more of those grounds alone. Thus even if one of the grounds stated suffers from any such infirmity as aforesaid, the whole order will fall and the court will not say that the

(i) the first ground of detention mentioned in paragraph 5 was vague as it did not disclose in what manner the petitioner was the "moving force behind the incidents".

(ii) the intelligence reports on which the "satisfaction" of the District Magistrate was founded were not supplied to the petitioner.

(iii) the grounds were neither furnished nor explained to the petitioner in the language understood by him.

(c) Because the second ground of detention was not a valid ground in as much as the petitioner has a fundamental right to be a member of any social/political organisation of his choice.

(d) Because Membership of the R.S.S. (*or*, Muslim League *or* C.P.M.) is not prohibited by or under any law, hence this fact was not relevant for the purposes of the Act.

(e) Because the third ground of detention was also illegal and irrelevant in as much as petitioner has a fundamental right to form and take part in a

detention order could be supported on the surviving grounds (*Bimla Dewan* v. *Lt. Governor*, A 1982 SC 1257). However, COFEPOSA contains a specific provision in section 5 A to the effect that an order of detention passed on several grounds will be deemed to be based on each of those grounds severally; hence the above principle does not apply to COFEPOSA (*State of Gujarat* v. *Chamanlal M. Soni*, A 1981 SC 1480, (1981) 2 SCC 24). Recently in the wake of the activities of extremists in Punjab a similar provision has been inserted in the N.S.A in 1984 vide section 5 A.

Circumstance in which persons may be detained for periods longer than three months without obtaining the opinion of the Advisory Boards-see section 14 A added by Amending Act 27 of 1987.

Another case in which detention by a State authority may be challenged is where, pending criminal investigation, an accused is detained in police lock-up or in prison without a proper remand order from a magistrate under section 167 Cr.P.C. (*Mantoo Majumdar* v. *State of Bihar*, (1980) 2 SCC 406). In such cases the existence of a valid remand order on the date of the return filed to the habeas corpus petition is accepted as sufficient, even if there was any illegality in respect of detention during an earlier period in the same continuation (*Kanhaiya* v. *State* (1979) 2 All 134, 1979 AWC 548; *Surjeet Singh* v. *State*, 1984 ALJ 375 FB; *Radhey Shyam* v. *State*, 1995 CLJ 556; 1994 ACC 645 (All); Lokendra Singh v. State of U.P., 1996 A LJ 67 (All); Manish Kumar v. Union of India, 1996 CrLJ 442 (All).

This writ is also sought where a person is detained in some governmental institution other than prison, such as a beggars home, an orphanage, a women's protection home (see, e.g. *Kalyani Chaudhri* v. *State of U.P.*, (1978) 2 Cr LJ 1003: *Neelam* v. *Chhedial*, 1986 All CJ 86); or a lunatic asylum run by a State agency. In

committee formed for the constitutionally legal purpose of rendering legal aid to persons accused of any offence and the rendering of such aid is not prohibited by or under any law.

(f) Because the fourth ground of detention namely, the petitioner's alleged involvement in crime No.180 of 1975 could not have been taken into consideration without the fact of final report having been submitted and accepted being also considered, and at any rate because it was a stale matter and moreover it pertained to a minor quarrel between two individuals which could not affect the community at large and the "satisfaction" of Respondent No.2 was vitiated on that account.

(g) Because none of the second, third and fourth grounds has any bearing on the maintenance of public order, and as such the taking into consideration of these grounds for the Respondent No.2's satisfaction vitiates the entire order of detention, for it cannot be said whether or not he would have been satisfied of the need to detain the petitioner on the first ground alone.

(h) Because the disposal of the petitioner's representation by the Home Secretary was incompetent and in effect the representation was not considered by the State Government at all, and this resulted in breach of the petitioner's constitutional right under Article 22 (5).

(i) Because in the absence of a valid order of detention the petitioner's detention is violative of his fundamental right of liberty granted by Article 21 of the Constitution.

(j) Because at any rate the State Government took an unreasonably long time in consideration and disposing of the representation of the petitioner, and this delay amounted to breach of his constitutional right under Article 22 (5).

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all such cases the keeper of the institution is required to produce a valid order of a competent authority under some law authorising him to keep the person under detention or under his custody and care. Minor procedural irregularities in the order of remand may, however, be ignored by the court (*Uma Kant*, v. *State of U.P.*, 1982 Cr LJ 1836). Where the plea that there was delay in the order of detention and its execution was not raised in the original petition, in the absence of the pleading the detenu was not allowed to raise the same in arguments (T.P. Abdul Majeed v. Union of India, 1996 Cr LJ 781 Ker DB).

While applying the principle of *res judicata* to a habeas corpus proceeding

Prayer : Writ of habeas corpus be issued against the respondents for production of the petitioner in this Hon'ble Court and for his being set at liberty forthwith (*or*, after quashing the order of detention Annexure 1).

(Smt. Rashmi Devi)
Next friend of Petitioner
Through

Dated Nov. 5, 1984 Advocate.

Affidavit in support of writ petition

Affidavit of Smt. Rashmi Devi wife of Ganga Ram, aged about 25 years, resident of house No.5/30, Model Colony, Bulandshahr.

The abovenamed deponent makes oath (*or*, solemnly affirms) and says as under—

1. The deponent is the wife and next friend of the petitioner Ganga Ram and is acquainted with the facts of the case.

2. The facts mentioned in paragraphs 1,2, and 11 of the accompanying writ petition are true to the personal knowledge of the deponent, the facts mentioned in paragraphs 3 to 7 thereof are based on perusal of records and the facts mentioned in paragraphs 8,9 ad 10 thereof are based on information received and believed to be true.

3. The contents of paragraphs 1 and 2 of this affidavit are true to my personal knowledge, and nothing has been concealed therein.

Rashmi Devi,
Deponent

No. 2— Application for Interim Relief, along with Habeas Corpus Petition

May it please your Lordships

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the court will look at the previous decision only in regard to pleas actually raised and decided; the principle of constructive res judicata does not apply (*Lallubhai J. patel* v. *Union of India*, A 1981 SC 728).

A habeas corpus petition may be filed either by the detenue or by someone on his or her behalf as a next friend. If the woman detained in a rescue home is of the age of consent and *sui juris*, the Court has no option but to respect her wishes (*Gian Devi* v. *Superintendent Nari Niketan*, (1976) 3 SCC 234).

For reasons given in the affidavit accompanying the writ petition the petitioner's preventive detention is patently unlawful and as such he is entitled to be set at liberty forthwith.

It is, accordingly prayed that pending hearing and decision of the writ petition the petitioner be released on interim bail.

Petitioner

No. 3— Habeas Corpus Petition Against Preventive Detention under COFEPOSA Act

Paras 1 and 2 as in precedent No.1, substituting section 3 (1) of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 for section 3 (2) of National Security Act and Secretary concerned to the State Government for District Magistrate.

Para 3 as in para 3, *ibid* substituting the words " acting ..... public order" by the words "acting in any manner prejudicial to the conservation or augmentation of foreign exchange" [*or*, smuggling goods; *or*, abetting the smuggling of goods; *or*, engaging in transporting or concealing or keeping smuggled goods; *or*, harbouring persons engaged in smuggling goods; *or*, in abetting the smuggling of goods] (*the exact words used in the detention order may be quoted*).

Other paragraphs and grounds of petition to be suitably adapted from precedent No.1 in the light of the grounds of detention furnished and the ingredients of section 3 (1) read with the definitions of "smuggling" etc., given in section 2 (e) of the Act and section 2 (39) of the Customs Act and section 23 of the Foreign Exchange Regulation Act. Broad lines on which the validity of detention can be challenged have already been indicated in the said precedent and in the notes below it.

Complaints of ill-treatment in prison or of denial of legal rights of prisoner are also often entertained in habeas corpus petitions (*Francis Coralie Mullin* v. *Delhi Administration*, A 1981 SC 746; *Sushil Batra* v. *Delhi Administration*, (1978) 4 SCC 494; *Hussainara Khatoon* v. *Stae of Bihar*, A 1981 SC 1068).

Having regard to the great importance that Courts attach to personal life and liberty, even informal communications, such as a letter or post card, from the prisoner in prison to the Court are accepted as habeas corpus petitions. However, if the petition is filed through a pleader, it is expected to be drafted in proper form and accompanied by affidavit, like other writ petitions.

The remedy of Habeas Corpus can be resorted to also where a person is

No. 4— Habeas Corpus Petition Against Preventive Detention under the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act

Paras 1, 2 as in precedent No.1, substituting section 3 (1) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980.

Para 3 as in para 3, *ibid* substituting the words "supplies of commodities essential to the community" for the words "public order" (*the exact words used in the detention order may be quoted*).

For other paragraphs and grounds of petition, precedent No.1 to be suitably adapted in the light of the grounds of detention furnished and the ingredients of section 3 (1) read with the Explanation to that sub-section and the relevant provisions of the Essential Commodities Act. Broad lines on which an order of preventive detention can be successfully challenged have already been indicated in the said precedent and the notes below it.

No. 5— Habeas Corpus Petition Against Imprisonment Pending Criminal Investigation

1. *As in para 1 of precedent No.1.*

2. On September, 15, 1995 the petitioner was arrested by a Sub-Inspector attached to Police Station Kotwali of District Faizabad.

3. On Sept. 16, 1995 the police produced the petitioner before the Judicial Magistrate Faizabad without any relevant papers such as copy of F.I.R., case diary or any entries in the general diary.

4. The said Magistrate without applying his mind to the matter and without questioning the police about the relevant materials mechanically passed an order remanding the petitioner to police custody for a period of seven days.

5. On September 23, 1995 the petitioner was again produced before the said Magistrate by the police and this time also the case diary

detained by another private individual against the wishes of the former. For instance, if a girl having attained the age of consent is not allowed by her parents to marry a man of her choice, or having married such man against her parents' or other relatives' wishes is subsequently detained by the latter and not allowed by them to accompany and live with her husbnad, man that may file a petition as the girl's next

was not produced and yet the Magistrate mechanically and without applying his mind passed an order remanding the petitioner to judicial custody for a period up to October 8, 1995.

6. The petitioner has thereafter not been produced at all before any Magistrate although the last period of remand has expired long since.

7-8 *As in para 11-12 of precedent No.1.*

Grounds

(a) Because the remand orders passed by the magistrate on September 16 and September 23, 1995 were not valid in accordance with the provisions of section 167 of the Code of Criminal Procedure.

(b) Because the continued detention of the petitioner in prison after the expiry of the last order of remand dated September 23, 1995 is otherwise than in accordance with law.

(c) Because the detention of the petitioner in prison is violative of the petitioner's fundamental rights of liberty guaranteed by Article 21 of the Constitution.

Prayer—*As in precedent No.1.*

No. 6— Habeas Corpus Petition Against Detention in Beggars' Home, Women's Protection Home, Lunatic Asylum, etc.

1. *As in para 1 of precedent No.1.*

2. On Sept 10, 1995 the petitioner had set out on a journey from Jaipur to Delhi by train on his private business.

3. On reaching Delhi railway station the petitioner found to his horror that his pocket had been picked by someone and he was thereby deprived of his journey ticket and cash.

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friend. In that case the court may require the parents or other relative to produce the girl and ascertain her genuine wihses and pass suitable orders. A minor girl's wishes are not conclusive and the court must have regard to the interest of the girl. Likewise, in cases of custody disputes between rival claimants to guardianship, the court may reject the claim of a legal guardian if the best interest of the minor dictates that its custody should remain with a different person. Again cases of illtreatment of brides by their husbands or in-laws in connection with demands of dowry are regretably becoming frequent, and in those cases the brides'

4. The ticket examiner at the railway station disbelieved the petitioner's story and handed him over to a so-called "Anti Begging Squad" wrongly and recklessly treating him to be a beggar wilfully travelling without ticket.

5. The said Squad lodged the petitioner in the Beggars' Home at Shakur Basti and from there for want of accommodation he was shifted to the Beggars' Home at Faizabad in Uttar Pradesh.

6. No order for the petitioner's detention in the Beggars' Home either at Delhi or at Faizabad was passed by any magistrate or other competent authority under any law nor was any order passed by any competent authority under any law for the petitioner's transfer from Delhi to Faizabad Beggars' Home.

7. At any rate, no such order was communicated to the petitioner, nor was the petitioner informed of any such order.

8. The petitioner managed to send information about his detention at Faizabad Beggars' Home through a post card borrowed from a sympathetic person to his father living at Jaipur. The petitioner's father is familiar with the handwriting of the petitioner and recognises it on the said post card, a true photostat copy of which is Annexure 1 to this petition.

9. The petitioner's father is interested in the liberty of the petitioner and is filing this petition as his next friend.

10. The petitioner submits that the detention of the petitioner in the Beggar's Home is illegal on the following :—

Grounds

Because the petitioner has been deprived of his liberty otherwise than in accordance with law in violation of his fundamental right guaranteed by Article 21 of the Constitution.

Prayer—*As in precedent No.1.*

[With suitable adaptations, this precedent can be used for drafting a habeas corpus petition in the event of an illegal detention

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parents, brothers or other relatives or even a genuine social reforms organisation may also resort to this remedy against the offending husband and in-laws.

In the recently awakened conscience against the system of bonded labour such petitions filed by civil liberties organisations or social workers against

of a woman in a rescue home, for victims of offences of abduction, kidnapping, or offences under the Suppression of Immoral Traffic Act, or of a sane person in a lunatic asylum, and so forth].

No. 7— Habeas Corpus Petition in Respect of Detention by Private Individual

1. The petitioner is a woman of 23 years of age and is a graduate.

2. The petitioner belonged to the Christian community but she married Sri Dilip Kumar, a Hindu youth, who was employed in the same establishment as the petitioner and with whom she was and is in love.

3. Their marriage was duly solemnised in accordance with Hindu rites in the Arya Samaj at Chandigarh on August 10, 1995 after the petitioner was admitted to the Hindu faith by voluntary conversion.

4. The relatives of the petitioner were not happy with her conversion and marriage and they absented themselves from the marriage ceremony.

5. On September 5, 1995 when the petitioner had gone out alone for shopping, her brother David persuaded the petitioner to accompany him to her parents' house for a family re-union.

6. The petitioner has since been detained by the Respondent No.1 (the petitioner's father), No.2 (the petitioner's mother) and No.3 (the petitioner's brother aforesaid) at their house against her will and she is being subjected to threats and pressure and is being coerced to disown her conversion and marriage.

7. The petitioner has somehow managed to send a letter to her husband in her own handwriting (which the petitioner's husband is familiar with and recognises) mentioning her plight and asking him to take steps for her rescue. A true photostat copy of that letter is Annexure 1 to petition.

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employers alleged to be guilty of keeping their labourers in bondage are also being entertained (*Peoples Union for Democratic Rights* v. *Union of India*, A 1982 SC 1473).

Disputes about custody of children between estranged spouses may also be entertained through habeas corpus petitions (*Gohar Begum* v. *Suggi*, A 1960 SC 93; *Rajeev* v. *Pushpa Devi*, 1984 ALJ 358; *Isabell Singh* v. *Ram Singh*, A 1985 Raj 30) though in case of facts being disputed and requiring evidence otherwise than

8. The petitioner's husband aforesaid is interested in the liberty and safety of the petitioner and accordingly files this petition as her next friend. He approached the local police authorities (Respondents Nos.4 and 5) but they expressed their inability to do anything in the matter.

9. The petitioner has a right to her liberty and to live with her husband according to her choice and Respondents Nos.1 to 3 have no right to detain her against her will. She has also a right to the assistance of the police authorities, namely, Respondent No.4 (the Senior Superintendent of Police) and No.5 (the Station Officer Incharge Police Station Kotwali within whose jurisdiction the place of the petitioner's confinement is situate) for her protection.

10. The petitioner accordingly submits this petition on the following:-

Grounds

(a) The petitioner is a major and is entitled to live with her husband. Her parents and brother have no right to force her to act against her will or to detain her.

(b) The police authorities are bound by law to act in such manner as to bring the petitioner's wrongful confinement (which is a cognizable offence) to an end.

Prayer

Writ of habeas corpus be issued against Respondent No.1 to 3 for production of the petitioner in this Hon'ble Court and for her being set at liberty forthwith;

Pending decision of the petition, direction be issued to Respondents Nos.4 and 5 to take measures for ensuring the personal safety and protection of the petitioner and for ensuring her production in this Hon'ble Court by Respondent No.1 to 3.

Petitioner's next friend

[This precedent can be adapted according to the facts of the matter in other situation, such as case of—

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on affidavit, the Court would normally require the petitioner to seek his or her remedy under the Guardians and Wards Act (*M. Basuvalingam* v. *M. Swarajyalakshmi*, A 1957 AP 704; *Gopalji* v. *M. Sheo Chand* A 1955 A 28).

(i) Petition by bride's parents, brother, etc., in case they receive information that her in-laws are torturing her on account of their dissatisfaction with the sufficiency of the dowry given on her marriage;

(ii) Petition by a child's father or mother against the other parent where there has been estrangement between the parents and the petitioner claims a preferential right to the custody of the child as against the Respondent spouse who has managed to secure the child's actual custody;

(iii) Petition to secure the release of a bonded labourer from detention by his employer].

No. 8— Petition for Writ of *Quo Warranto* *(b)*

1. The petitioner is a ratepayer in the city of Quillon.

2. Under the Kerala Municipal Corporation Act ("the Act") the Chairman of Municipal Corporation is nominated by the State Government.

3. Section 5 of the Act lays down the disqualifications for nomination as and for holding the office of Chairman, and one of them is that the person who may be nominated must not have been convicted of an offence involving moral turpitude within seven years immediately preceding his nomination. A true extract of the said section is Annexure 1 to the petition.

4. On July 10, 1995 the State Government Respondent No.2 by notification No. ____ dated July 10, 1995 published in the State Gazette nominated Sri ____ Respondent No.1 as Chairman of the Quillon Municipal Corporation. A true copy of the notification is Annexure 2 to the petition.

5. Respondent No. 1 was on March 15, 1989 convicted under section 409 I.P.C. of the offence of criminal breach of trust by agent in

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(b) Through *a writ of Quo Warranto* any holder of a public office may be required to show his title to the office. This writ has been resorted to in India even against holders of offices of the Prime Minister (*M.M. Verma* v. *Charan Singh*, 84 CWN 143, A 1980 SC 95), the Chief Justice of India (*P.L. Lakhanpal* v. *A.N. Ray*, A 1975 Del 66), a Governor (*Suryanarain Chowdhry* v. *Union of India*, A 1982 Raj 1), a High Court Judge (*Union of India* v. *Gopal Chandra Misra*, A 1978 SC 694) an Advocate General (*G.L. Karkare* v. *T.L. Shevde*, A 1952 Nag 330), a Lokayukta (*Ram*

Session Trial No.15 of 1988 by the Court of Sessions Judge, Trivandrum. His appeal (Criminal Appeal No.502 of 1989) against the conviction was dismissed by the Hon'ble High Court on Oct. 12, 1989, and only the sentence passed against him was reduced from five years to two years rigorous imprisonment. His Special Leave Petition to the Hon'ble Supreme Court was dismissed summarily on January 13, 1990. The remainder of his sentence of imprisonment was however remitted by the State Government in July 1990. True copies of the said orders are Annexures 3 to 6 respectively to the petition.

6. Respondent No.1 was thus disqualified from being nominated as and for holding the office of Chairman as the offence of criminal breach of trust involves moral turpitude.

7. The petitioner is interested in probity in public life of the city and is as such aggrieved by the nomination of a corrupt person on this highly responsible post of Chairman of the Municipal Corporation. He files this petition on the following :

Grounds

(a) Because the offence of criminal breach of trust involves moral turpitude.

(b) Because the nomination of Respondent No.1 by Respondent No.2 as Chairman of the Quillon Municipal Corporation was clearly in violation of section 5 of the Act.

Nagina Singh v. *S.V. Soni*, A 1976 Pat 36), a Chairman of a State Housing Board (*Dineshwar Pd.* v. *State*, A 1980 Pat 54) besides holders of other public offices. Resort is made to this writ when the holder of the office is alleged to lack an essential statutory qualification for the office or to suffer from a statutory disqualification or when the order of his appointment or nomination suffers from any other legal infirmity. The character of office in question being a public office is absolutely necessary for the applicability of this writ. (For characteristics of a public office, see *V.C. Shukla* v. *Delhi Administration*, A 1980 SC 1382). A seat in the Legislature does not appear to be a public office (*P.L. Sharma* v. *State*, A 1979 Raj 18; *R.S. Nayak* v. *A.R. Antulay*, (1984) 2 SCC 183), hence even if a member of Legislature is alleged to suffer from any disqualification the proper remedy seems to be not a writ of *Quo Warranto* but an election petition in the case of pre-existing qualification or a petition under Article 103 or Article 192 of the Constitution in case of a supervening disqualification.

(c) Because the Respondent No.1 is disqualified from holding the said office and is accordingly not entitled to hold it and he is thus a usurper.

Prayer

(a) Writ of Quo Warranto be issued against Respondent No.1 requiring him to show his title to hold the office of Chairman of the Quillon Municipal Corporation.

(b) Notification No._____ dated July 10, 1995 a copy of which is Annexure 2 issued by Respondent No.2 be quashed.

(c) The said office be declared vacant.

No. 9— Petition for Writ of Certiorari in respect of Judicial Proceedings *(c)*

1. The petitioner is the landlord of house No. 345, Arjun Nagar, Gorakhpur, and Respondent No. 3 was its tenant for residential purposes.

2. The petitioner was employed in the U.P. Civil Service (Executive) and was posted at various places in the State during his service and was given official quarters at the place of posting.

This writ is sometimes resorted to where there is a dispute between two rival claimants to appointment or promotion to a civil post or a post in a University or other like post (*D.P. Pathak* v. *Punjab*, 1980 Lab IC 676, 1980 Serv LJ 305, (1980) 1 Serv LR 845; *Mahesh Chandra Gupta* v. *General Manager*, M.P.S.R.T.C., (1979) 3 Serv LR 545; *B.B. Singh* v. *Chairman, Legislative Council*, 1980 Lab IC NOC 97, All). The direct interest of the petitioner is not strictly insisted on in respect of the Writ of *Quo Warranto* (*P.L. Sharma*, supra), but the Court may neverthless decline to entertain the petition of a mere busybody who is in no way affected by the appointment (*Krishna Kant Jaiswal* v. *Vice Chancellor, B.H. University*, A 1984 All 350). Moreover, a futile writ of *Quo Warranto* will not be issued (*P.L. Lakhanpal*, supra; *M.M. Verma*, supra).

This writ is sometimes resorted to with a view to challenging the validity of an official act performed by the holder of the office; in such cases while a collateral challenge is not permitted, a direct challenge may be entertained (*State of Haryana* v. *Haryana Co-operative Trading Co.*, (1977) 1 SCC 271, A 1977 SC 237). A writ of *quo warranto* challenging appointment to the post on ground of want of qualifications after long period cannot be entertained (*M.S. Mudhol* v. *S.D. Halegkar*, (1993) 3 SCC 591, (1993) 4 SLR 364).

(c) A writ of *Certiorari* can be sought against an order or decision of an inferior court or tribunal or other authority (including Government) which is obliged to act judicially before passing an order or taking a decision of that nature. Thus it

3. The petitioner was last posted at Aligarh as Additional District Magistrate (City) and was residing with his family in an official residence in Civil Lines, Aligarh.

4. The petitioner was due to retire from service on attaining the age of superannuation on 30th April 1992 and was expected thereupon to vacate his official residence.

5. The petitioner gave notice to Respondent No.3 well in time about his need to occupy his house under the latter's tenancy as the petitioner on his retirement intended to settle down in Gorakhpur and did not own or possess any other house except the one under the tenancy of Respondent No.3.

6. The petitioner on 1st December 1991 filed an application under section 21 (1) (A) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act ("the Act") for eviction of Respondent No.3 from the said building and for its release in favour of the petitioner before the Prescribed Authority (Civil Judge, Gorakhpur) Respondent No.1. This was registered as Rent Control Case No.258 of 1991. A true copy of the application is Annexure 1 to the petition.

7. Respondent No.3 contested the application by filing a Written Statement, a true copy of which is Annexure 2 to the petition. A perusal of the same would show that the facts mentioned in paras 1 to 5 above were not disputed by Respondent No.3 who merely took some legal pleas hereinafter appearing.

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is not necessary for the maintainability of a petition for this writ that the body which passed the order should be a regularly constituted court or that it should have the usual trapping of a court or tribunal. An executive authority in respect of policy decision or acts of purely administrative nature, will not be amenable to this writ, but if its order or decision, not being a policy decision but one required to be objective on the facts of a case, is likely to affect the rights of any person or have civil consequences for him then, normally, even an executive authority is expected to act judicially (e.g. an order of cancellation of a licence, vide *City Corner* v. *P.A. to Collector*, A 1976 SC 143) or at any rate fairly, i.e., in accordance with the basic principles of natural justice viz., absence of bias and *audi alteram partem* (hear the other side) *A.K. Kraipak* v. *Union of India*, A 1970 SC 150). However, even if the order or decision is going to have civil consequences for any person it does not necessarily follow that the person be given an opportunity of hearing; for the applicability of the rules of natural justice is ordinarily subject to provision to the

8. The petitioner has since retired from service and has vacated his official residence in Aligarh as he was required under Government Orders governing allotment of official accommodation, and as he and his family had nowhere else to go was invited by his-in-laws in Varanasi to live with them until he was able to make any other arrangement. The petitioner had no choice but to accept that invitation and has since June 1992 been reluctantly living with his in-laws in Varanasi but finds it humiliating and embarrassing to depend on the hospitality and generosity of his in-laws.

9. After exchange of affidavits between the parties and hearing Respondent No.1 on 13th March 1993 dismissed the petition upholding the following pleas of Respondent No.3 namely—

(a) The petitioner could build another house for himself with the aid of his provident fund and gratuity received by him on his retirement.

(b) The petitioner had been comfortably living with his in-law in Varanasi and could continue to live there as his in-laws had not required him to vacate the two rooms of their house which had been given by them to the petitioner without rent.

(c) The application under section 21 was not maintainable as it was premature having been filed even before the petitioner's retirement.

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contrary in any "law" (which includes any statutory rule or regulation by whatsoever name called). For instance, if a non-penal order is passed terminating the services of a temporary government servant or probationer or reverting an employee from a higher post held by him in an officiating capacity to his substantive post or rank, or retiring an employee after a reasonable length of service though a few years before the normal age of superannuation, the employee has no right to be heard before the order is passed (*Union of India* v. *J.N. Sinha*, A 1971 SC 40; *Champaklal C. Shah* v. *Union of India*, A 1964 SC 1854); in respect of exercise of powers under a contract also the other contracting party has no general right to hearing (*Jai Narain Singh* v. *Bihar*, A 1980 Pat 24); surveillance of a habitual offender may be started without any opportunity to him, for the furnishing of such opportunity would defeat the very purpose of secret surviellance (*Malak Singh* v. *Punjab*, A 1981 SC 760). In numerous other situations also, due to practical difficulties the need for urgency etc., the rules of natural justice may be excluded. However, even in such cases the requirement of good faith, i.e., absence of malice in fact or malice in law, is insisted on (*Manager, Govt. Branch Press* v. *Belliappa*, (1979) 1 SCC 477; *S. Venkataraman* v. *Union of India*, (1979) 2 SCC 491) as is obligatory in respect of even acts and orders of an executive nature (*A.K. Kraipak* v. *Union of India*, A 1970 SC 150, a case of selection for promotion).

A true copy of the judgment of Respondent No.1 is Annexure 3 to the petition.

10. The petitioner appealed against the said judgment to the Court of District Judge, Gorakhpur. The appeal was registered as R.C.A. No.55 of 1993 and was transferred by the District Judge to the Court of III Additional District Judge Respondent No.2.

11. Respondent No.2 on November 15, 1995 dismissed the appeal without hearing the full arguments of the petitioner's Counsel cutting him short within a couple of minutes of the commencement of his arguments, and affirmed the aforesaid findings of the Prescribed Authority Respondent No.1 and further added that it was unreasonable and contrary to the concept of social and economic justice enshrined in the Preamble to the Constitution that a well-to-do landlord should be allowed to eject a less affluent tenant. A true copy of the judgment of Respondent No.2 is Annexure 4 to the petition.

12. The petitioner submits that he has no other remedy open to him against the judgments, Annexures 3 and 4, except to approach this Hon'ble Court under Articles 226 and 227 of the Constitution.

13. The petitioner accordingly files this petition on the following:

The applicability of the rules of natural justice cannot be excluded by legislation to any matter where such exclusion would have the effect of curtailing a person's fundamental rights guaranteed by, say, Article 14, 19, 21 (*Maneka Gandhi* v. *Union of India*, A 1978 SC 597; *R.D. Shetty* v. *I.A Authority*, (1979) 3 SCC 489) or 22 (5) of the Constitution. (For Articles 21 and 22, see notes *ante* under precedents relating to Habeas Corpus).

The principles of natural justice are, however, not rigid rules but are flexible and vary with difference in situation (*State of Gujarat* v. *Anand Municipality*, A 1993 SC 1196; *Union of India* v. *W.N. Chadha*, A 1993 SC 1082; *Ravi S. Naik* v. *Union of India* A 1994 SC 1558). There is exclusion of the application of *audi alteram partem* rules to cases where nothing unfair can be inferred by not affording an opportunity to present and meet a case (*Union of India* v. *W.N. Chadha*, A 1993 SC 1082 at page 1102). It is upto the competent authority to decide whether in the given circumstances the opportunity to be provided should be a prior one or post-decisional opportunity. Normal rule, of course, is prior opportunity (*State of U.P.* v. *Vijay Kumar Tripathi*, A 1995 SC 1130). Principle of natural justice is not to be stressed too far, for the principle of natural justice does not mean that personal hearing be afforded in each case, it depends upon the facts and circumstances of each case (*Pyare Lal Tandan* v. *State*, 1994 ALJ 288 (All) DB). The principles of

Grounds

(a) Because section 21, sub-section (1A) of the Act provides that where a landlord has on account of his employment been living in a different city and is required on cessation of his employment to vacate the accommodation provided by his employer his need for residential occupation of a building owned by him shall be deemed sufficient, and Respondents Nos. 1 and 2 had committed a manifest error of law in ignoring this legal presumption, which was a relevant factor in deciding the petitioner's application.

(b) Because Respondents Nos. 1 and 2 had by basing their decision on the ground of the petitioner's means to build another house taken in to account a factor which was irrelevant for purposes of deciding an application under section 21 of the Act.

(c) Because Respondent No.2 had by referring to the respective financial capacity of the parties again taken into account an irrelevant factor.

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natural justice do not imply a right to hearing before passing of impugned order. Affording post facto hearing and judicial review ensure sufficient compliance with principles of nutural justice (*Haryana Warehouse Corporation* v. *Ram Avtar*, (1996) 2 SCC 98).

The right of oral hearing and inquiry and of cross-examination of witnesses would be insisted on in case of disciplinary action governed by Article 311 (2) of the Consitution, but not in case of imposition of minor penalties or in respect of numerous other adverse orders by various statutory authorities where an opportunity of submitting a written explanation would be deemed sufficient, e.g., penal action against a student on allegations of use of unfair means at an examination or of other misconduct (*Hiranath Misra* v. *Principal, Rajendra Medical College*, A 1973 SC 1260). In some cases where the authority is obliged to take immediate action in the public interest it is deemed sufficient if a post-decisional opportunity is given to the party against whom action was taken so that if the explanation subsequently preferred is satisfactory the action earlier taken may be reversed or recalled to the extent practicable (*Swadeshi Cotton Mills* v. *Union of India*, A 1981 SC 818; *Maneka Gandhi* v. *Union of India*, A 1978 SC 597). No opportunity of making representations or objections is required to be given in respect of legislative act of Legislature or, unless expressly required by the statute, in respect of making of a rule or other instrument of a legislative character (*Lakshmi Khandoori* v. *State of U.P.*, A 1981 SC 873).

So far as proceedings in a Court or a formally constituted tribunal which has some or all the trappings of a court are concerned, there is hardly any scope for

(d) Because Respondent No.2 had committed a manifest error of law in relying on the indeterminate theoretical concept of social and economic justice as overriding the specific and unambiguous provisions of section 21 of the Act, the constitutionality of which was neither questioned nor open to question before him.

(e) Because Respondents Nos.1 and 2 had committed a manifest error of law in holding the petitioner's application to be premature as they ignored the Explanation to section 21 (1A) which provides that an application on the ground mentioned in that sub-section can be filed up to one year before the date of the landlord's retirement.

(f) Because Respondent No.2 had also acted in breach of the principles of natural justice by declining to hear the arguments of the petitioner's Counsel.

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exclusion of the applicability of the rules of natural justice, though even in respect of such purely judicial proceedings a summary procedure could be laid down by the legislature in respect of less important cases, e.g., small cause suits and trials for petty offences. Moreover, in a civil suit oral examination and cross-examination of witnesses is a must at the final hearing stage but affadavit not cross-examined may be accepted at the stage of interlocutory proceedings. Cases of a civil nature may also be finally disposed of on the basis of affidavits by tribunals, where the provisions of C.P.C. do not apply in toto, e.g., eviction cases between landlord and tenant under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, though the tribunals are manned by presiding officers of regular civil courts (*Manilal Tripathi* v. *Kamla Devi*, 1981 ALJ NOC 127).

A civil court is given express power of reviewing its orders and decisions in certain circumstances (section 114 and O. 47); so is the Supreme Court (Article 137 of the Constitution); the High Court as a Court of plenary jurisdiction has inherent power to review its orders in exercise of writ jurisdiction (*Shivdeo Singh* v. *State of Punjab*, A 1963 SC 1909). A criminal court (including the High Court) has, however, no inherent power to reveiw (*State of Orissa* v. *Ram Chander*, A 1979 SC 37, (1979) 2 SCC 305). A court or quasi-judicial tribunal or authority has no inherent power to review its decisions unless such power is expressly conferred by the law under which the court or tribunal is constituted (*Harbhajan Singh* v. *Karan Singh*, A 1966 SC 641, (1966) 2 SCR 817). But if the original order passed by it was vitiated by breach of the rules of natural justice the court or other judicial or quasi-judicial tribunal or authority can, even in the absence of any express provision in that behalf, treat the earlier order as *non-est*, whether by formally recalling it or otherswise, and proceed to pass a fresh order after following the rules of natural justice (*Chet Singh* v. *State of Punjab*, (1977) 2 SCC 499). Moreover, purely routine orders of an interlocutory nature are not necessarily immune from recall even though no

(g) Because the facts being undisputed the only possible order that Respondents Nos.1 and 2 could have passed in view of the provisions of section 21 of the Act was to allow the petitioner's application for release of the house in his favour and to evict Respondent No.3.

Prayer

(i) A writ of Certiorari be issued calling for bringing up the record of the aforesaid proceedings before Respondents Nos.1 and 2 and quashing the judgments and orders copies of which are Annexures 3 and 4 and (ii) in their place an order be passed under section 21 of the Act allowing the petitioner's application for release of the house No.345, Arjun Nagar, Gorakhpur in favour of the petitioner and for eviction of Respondent No.3 therefrom with costs of both the courts/tribunals below.

(iii) Costs of this petition be awarded against Respondent No.3.

[This precedent can be adapted to meet numerous similar other situations, for instance, to question decisions of revenue courts (including Board of Revenue or State Revenue Tribunal), consolidation of holdings tribunals, tribunals constituted under the Urban Land (Ceiling or Regulation) Act or similar State laws relating to agricultural rural land, customs, income tax or sales tax or motor vehicles tax, etc., tribunals, Company Law Board, revisional decisions of Chancellor or Vice-Chancellor of a University in service matters or

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express provision for review may be found in the statute (*Debi Prasad* v. *Khelawan*, A 1957 All 67 DB in which *C.B. Agarwala J.'s* judgement contains an excellent summary of the law on the subject of review).

A writ of *certiorari* may thus be issued in cases of want, excess or abuse of jurisdiction (which includes cases of violation of principles of natural justice, and of exercise of power of review where non exists), and exercise of jurisdiction on grounds extraneous to those on which it is exercisable or after disregard of relevant grounds (*H.T. Kamath* v. *Ahmad Ishaque*, A 1955 SC 233; *S. Govinda Menon* v. *Union of India*, A 1967 SC 1274; *Asst. Collector, C.E.* v. *National Tobacco Co.*, A 1972 SC 2562; *Geep Flashlight* v. *Union of India*, A 1977 SC 456). It may also be sought on grounds of manifest error of law, even though the error may not go to the root of jurisdiction (*H.T. Kamath*, supra; *S. Govinda Menon*, supra). However, the writ may not be sought merely to correct a wrong finding on facts arrived at on a matter within the jurisdiction of the tribunal, for the High Court or Supreme Court do not exercise appellate jurisdiction under Articles 226 and 32 while dealing with such writ petitions (*Syed Yaqub* v. *Radhakrishnan*, A 1964 SC

election disputes, decisions of election tribunals hearing petitions challenging election to local bodies, etc., and of statutory arbitrators (such as Registrar, Co-operative Societies) and so forth].

No. 10— Petition for Writ of Certiorari and Mandamus in respect of Quasi-Judicial Proceedings

1. The petitioner was employed under the State of Uttar Pradesh (Respondent No.1) holding the civil post of assistant office superintendent in the Collectorate, Meerut, having been appointed to that post by the

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477; *Nagendra N. Bora* v. *Commissioner*, A 1958 SC 398; *Babhutmal* v. *Laxmibai*, A 1975 SC 1297) a manifestly wrong finding on a jurisdictional fact may, however, it is arguable, be corrected on certiorari as a tribunal cannot be permitted, by giving such finding, to confer jurisdiction on itself where none exists (*Roshanlal Mehra* v. *Ishwardas*, A 1962 SC 646 a case relating to revisional power; see, however, *Labh Kr.* v. *Jaiwardhan*, A 1983 SC 535; *Basappa* v. *Nagappa*, A 1954 SC 440; *Raja Anand Brahma Shah* v. *State of U.P.*, A 1967 SC 1081).

A statute may, however, confer on the tribunal final power to decide even such jurisdicional facts, in which case Certiorari cannot be sought on the ground of erroneous finding (*India Pipe Fitting Co.* v. *F.M.A. Baker*, A 1978 SC 45). A finding of fact which is based on no evidence at all (*Mukunda Bose* v. *Bangshidhar*, A 1980 SC 1524) or which is so perverse that no reasonable person could arrive at it (*Nanha* v. *Deputy Director Consolidation*, A 1976 All 91, FB) is, however no finding in the eye of law and may be reviewed as such on Certiorari. Likewise, a finding which is reached through misapplication or non-application of the relevant legal principles (*Nanha*, supra) or is based merely on surmises and conjectures, as distinguished from circumstantial inferences, (*Subhash Chandra* v. *Board of Revenue*, (1980) 3 SCC 234) or on misreading of evidence or of pleadings (*Nanha*, supra; *Rukmanand* v. *Bihar*, A 1971 SC 746) may be quashed on Certiorari. A tribunal is, however, not bound, in the absence of express statutory provision in that behalf, by the strict rules of admissibility and reception of evidence contained in the Evidence Act, the C.P.C. or the Cr.P.C., and may be allowed to act on any piece of evidence which a reasonably prudent person may consider to have probative value (*Nand Kishore Pd.* v. *State of Bihar*, A 1978 SC 1277) including, say, what would be considered by a Civil or Criminal Court to be hearsay evidence (*State of Haryana* v. *Ratan Singh*, A 1977 SC 1512) or a certified copy of an application or a registered deed where the original was not summoned and signature of the purported executant on the original was not formally proved but there exist no circumstances to cast doubt on the genuineness of the original document.

Unlike a consensual arbitrator (who may validly make an unspeaking award), a tribunal or other quasi-judicial authority (inlcuding a statutory arbitrator) is normally expected to pass a reasoned, i.e. speaking order, for failure to give reasons, unfairly

Collector, Meerut, (Respondent No.2) on September 10, 1970. A true copy of the appointment order is Annexure 1 to this petition.

2. On April 22, 1991, disciplinary proceedings were commenced against the petitioner by issuance of a charge-sheet. A true copy of the charge-sheet is Annexure 2 to this petition.

3. The petitioner replied to the charge-sheet denying the charges and asking for supply to him of copies of the documents relied on in the charge-sheet and also demanding an oral inquiry at which he might cross-examine the witnesses against him and produce witnesses in his defence. A true copy of the petitioner's reply is Annexure 3 to this petition.

4. Neither the said documents were furnished to the petitioner, nor was any oral inquiry held.

5. On June 1, 1991, the Additional District Magistrate (Respondent No.3) passed an order saying that the petitioner's reply was not satisfactory and purporting to dismiss the petitioner from service. A true copy of his order is Annexure 4 to this petition.

6. The petitioner preferred an appeal against the said order to the Commissioner, Meerut Division (Respondent No. 4) who dismissed the same on October 15, 1991. A true copy of his order is Annexure 5 to this petition.

7. The petitioner on July 15, 1994 filed a claim before the Public Services Tribunal (Respondent No.5) constituted under U.P. Public

deprives the party against which the order is made from knowing whether the authrotity arrived at its decision on valid grounds or not. A writ of Certiorari may, therefore, be issued for quashing such decisions (*Siemans* v. *Union of India*, A 1976 SC 1785; see however, *Rana Natwar Singh* v. *State*, A 1980 MP 129, FB). The tribunal may, whenever its order is quashed on any procedural ground, thereafter pass a freash order in accordance with law (*Anand Narain Shukla* v. *State of M.P.*, A 1979 1923).

There had been conflict of opinion on the question of the consequences of non-supply of the Inquiry officer's report to the delinquent employee. A constitution Bench of the Supreme Court, has settled the conflict thus— (i) An employee is entitled to a copy of the inquiry report even if the statutory rules do not permit the furnishing of the report or are silent on the subject; (ii) Whenever the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority, the delinquent employee will have the right to receive the enquiry officer's report whatever be the nature of punishment; (iii)

Services Tribunals Act, 1976 ("the Act") contending that the aforesaid orders passed against him were void on various grounds. A copy of the said claim petition is Annexure 6 to this petition.

8. The Tribunal by its order dated September 15, 1994 (a true copy of which is Annexure 7 to this petition) dismissed the claim of the petitioner as time barred being filed more than three years after the order of the Additional District Magistrate, Annexure 4 though it was within three years from the date of the appellate order of Commissioner, Annexure 5.

9. The petitioner has no other alternative efficacious remedy against the aforesaid order as a civil suit to question these orders is barred by section 6 of the Act.

10. The petitioner gave notice to the State Government (through the Secretary, General Administration Department) Respondent No.1 on October 1, 1994 demanding reinstatement of the petitioner on his post with back wages, continuity of service and other consequential benefits, but although more than six weeks have passed the petitioner has not received any response to the said demand. The petitioner is not being paid any salary or being otherwise treated as in service.

Failure to ask for the report cannot be construed as waiver of the right. Report is to be furnished whether the employee asks for it or not; (iv) The law laid down in *Union of India* v. *Mohd. Ramzan Khan*, A 1991 SC 471 is applicable to all employees in all establishments— Government, public or private; (v) Whether prejudice has been caused on account of denial of report has to be considered on the facts of each case. The relief to be granted to the employee would depend on the actual consequence of denial of the report; (vi) The ratio of *Ramzan Khan* is prospective and is to be applied only to those orders of punishment which are passed by the disciplinary authority after Novermber 20, 1990; (vii) Orders of punishment passed before November 20, 1990 where inquiry report was not furnished should not be disturbed and the proceedings cannot be reopeneed on that account (*Managing Director* v. *Karunakar*, (1993) 4 SCC 727, A 1994 SC 1074).

Parites : In a petition for a writ of Certiorari or Prohibition, even though it may arise out of a litigation between private parties in an inferior court or tribunal, not only the opposite-party to the litigation but also the inferior court or tribunal whose order, decision or jurisdiction is sought to be assailed must be impleaded as a respondent, though normally such *pro forma* respondent does not enter appearance to contest unless *mala fide* in pleaded against it.

Mandamus may be sought against government or any other authority, whether executive or judicial, in order to compel it to discharge its public functions in

11. The petitioner accordingly prefers this writ petition under Article 226 of the Constitution on the following :

Grounds

(a) Because the Additional District Magistrate (Respondent No.3) was an authority subordinate to the District magistrate (Respondent No. 2) who had appointed the petitioner to the post of Assistant Office Superintendent

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accordance with law. It would lie not only against a positive act or order of the authority but even against its inaction where the authority fails to discharge its legal duty to act in a certian manner. It is not only necessary that the authority should be under a legal duty in the matter but also that the petitioner should have a legal right. A mere busybody without any sufficient or substantial interest or right in the matter cannot aproach the court (*Jasbhai* v. *Roshan Kumar*, A 1976 SC 578) though in respect of "public interest litigation" the principle of *locus standi* has been considerably liberalised (*S.P. Gupta* v. *President of India*, 1981 SCC Supp 87, A 1982 SC 149).

Where a matter is entrusted by law to the discretion of an authority, the High Court or the Supreme Court will not in exercise of its jurisdiction to issue a Writ of Mandamus substitute its own discretion for that of the authority (*State of M.P.* v. *G.C. Mandwar*, A 1954 SC 493). Where, however, the authority in the purported exercise of its discretionary power, misapplies or misinterprets the law and thereby misconceives the scope of its discretion, or fails to take relevant factors, which are required by law to be considered, into account, or takes irrelevant factors or extraneous purposes into consideration, the Court will interfere (*Asstt. Controller of E.D.* v. *Prayag Das Agarwal*, A 1981 SC 1263; *Rohtas Industries* v. *S.D. Agarwal*, (1969) 1 SCC 325). Such an order of the statutory authority is vitiated by malice in law (*S.Venkataraman* v. *Union of India*, A 1979 SC 49). An order passed in bad faith, i.e., actuated by malice in fact is also not a valid order, for good faith is an essential condition of the exercise of every public power (*Pratap Singh* v. *State of Punjab*, A 1964 SC 72 ; *C.S. Rowji* v. *State of A.P.*, A 1964 SC 962; *State of Punjab* v. *Gurdial Singh*, A 1980 SC 319; *Mohinder Singh Gill* v. *C.E.C.*, A 1978 SC 851). In such cases the Court would normally strike down the order and leave or require the authority to pass a fresh order in accordance with law (*State of Mysore* v. *C.R. Sheshadri*, A 1974 SC 460, (1974) 4 SCC 308). However, in exceptional cases where the facts are undisputed and do not requre to be investigated afresh and where on the application of correct legal principles as laid down by the High Court the matter can on being remitted back to the authority to pass such specific order as ought to be passed by the authority, an order of promotion instead of a mere direction to consider the petitioner's case for promotion as is usually ordered. *District Registrar* v. *M.B. Koyakutty*, (1979) 2 SCC 150.

A Mandamus cannot be issued against the Legislature or any of its Houses.

and as such was not competent, in view of clause (1) of Article 311 of the Constitution, the pass the order of dismissal Annexure-4.

(b) Because the order of dismissal Annexure-4 was passed without giving the petitioner a reasonable opportunity of showing cause as required by clause (2) of Article 311 of the Constitution and rule 55 of the Civil Services (Classification, Control and Appeal) Rules.

(c) Because the Pubic Services Tribunal in taking the view that the petitioner's claim was time-barred had committed a manifest error of law in that it had ignored the proviso to section 4 (1) of the Act according to which no claim against the order of dismissal could ordinarily be entertained by the Tribunal until the petitioner had exhausted the remedy of departmental appeal provided by the Service Rules. In view of this proviso the time taken in pursuing the departmental remedy was liable to

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not only because any irregularity of procedure is not in view of Article 122 and 212 of the Constitution justiciable, but also on general constitutional principles, though the validity of an Act of Legislature or an act of delegated legislation can always be examined by the Courts on the ground either of violation of a fundamental right (vide Article 13 of the Constitution) or of violation of any other constitutional provision, or on the ground that the Legislature has abdicated its responsibility by granting excessive delegation of its pwers to the executive (*In re Delhi Laws Act*, A 1951 SC 332; *Kerala S.E.B.* v. *Indalco*, (1976) 1 SCC 466). A House of Parliament or a State Legislature while exercising its contempt jurisdiction or passing any order in its privilege jurisdiction is, however, according to the Supreme Court an "authority" within the meaning of Artice 12 or Article 226 of the Constitution, and a citizen can approach the court with a complaint of breach of his fundamental right (In re President Ref., U.P. Assembly Case, A 1965 SC 745), but Houses of Parlicament and of State Legislature and their presiding officers have not acquiesced in this view and continue to insist that they are not subject to courts' jurisdiction in these matters. A piece of subordinate legislation can also be assailed on the ground that the quasi-legislative authority has in promulgating it exceeded the powers delegated to it (*State of Kerala* v. *K M C Abdulla & Co.*, A 1965 SC 1585).

A writ of Mandamus lies not only against government and other authorities under the government or governmental officers exercising statutory powers, but also against autonomous corporations if they are entrusted with the discharge of public functions. Corporations, amenable to Mandamus are not only those created by or under any law, *i.e.*, statutory corporations such as Life Insurance Corporation, Nationalised Banks, Universities, State Financial Corporations, State Electricity Boards, State Road Transport Corporation, etc., (*Sukhdev* v. *Bhagwan Ram*, A 1975 SC 1331), but even companies (registered under the

be excluded in accordance with the principle underlying section 15(2) of the Limitation Act.

Prayer

(i) A writ of Certiorari be issued calling for bringing up the record of the proceedings before the Additional District Magistrate (Respondent

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Companies Act), societies (registered under the Societies Registration Act) and co-operative societies (registered under the Co-operative Societies Act). If such company or society is an instrumentality of the government created by the latter for more convenient discharge of its functions.

The tests for determining whether a body is an instrumentality or agency of government, approved in subsequent decisions as summarised in *Ajay Hasia* v. *Khalid Mujib*, A 1981 SC 487, (1981) 1 SCC 722, are as follows : (1) If the entire share capital is held by government it would go a long way towards indicating that the body is such an instrumentality; (2) If the financial assistance of the State meets almost the entire expenditure of the body it would afford some indication of the body being such an instrumentality; (3) It would be indicative of the same, if the body enjoys monopoly status which is State conferred or State protected; (4) Existence of deep and pervasive State control may indicate that the body is such instrumentality; (5) Its functions are of public importance and closely related to governmental functions, that too would point in the same direction; (6) If a department of government is transferred to a corporation, it would strongly lead to such inference (See also *Housing Board Haryana* v. *Haryana Housing Board Employees Union*, A 1996 SC 434; *Unni Krishnan* v. *State of A.P.*, A 1993 SC 2178; *U.P. Warehousing Corporation* v. *Vijai Narain*, A 1980 SC 840; *Tekraj Vasanti* v. *Union of India*, A 1988 SC 469; *All India Sainik Schools Employees Association* v. *Sainik School Society*, A 1989 SC 88; *Central Inland Water Corporation* v. *Brojo*, A 1986 SC 1371; *State Enterprises* v. *CIDC*, (1990) 3 SCC 280). A private educational institution not an instrumentality of the State merely because it has received affiliation or recognision from the State (*Unni Krishnan* v. *State of A.P.*, A 1993 SC 2178). If a writ petition is directed against such a body the relevant facts and circumstances on the basis of which it is claimed to be an instrumentality of the State should be clearly pleaded and cannot, unless well known or accepted in other judicial decisions, be assumed. But even if the body is an instrumentality of the State, writ petition will not lie against it unless it acts either in contravention of some statutory provision or in a discriminatory and arbitrary manner and in breach of fundamental right of equality guaranteed by Article 14 of the Constitution (*Ajay Hasia* v. *Khalid Mujib*, A 1981 SC 487)

A writ of Mandamus will not, however, be against a private individual or against a co-operative society, other society or company which is not an instrumentality of the State, unless such individual or body has benefited from the impugned order of, and is in collusion with, the authority against which Mandamus

No.3), the Commissioner of the Division (Respondent No.4) and the Public Services Tribunal (Respondent No.5) and quashing the orders Annexures Nos.4, 5 and 7 passed by them respectively;

(ii) A writ of Mandamus be issued against Respondents No.1 and 2 directing them to forbear from acting upon the orders Annexures Nos.4, 5 and 7 and to treat the petitioner as having continued in service throughout and to pay his salary and allowances and to give all other consequential benefits of continuity in service treating the said orders as *non-est;*

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is sought, in which case such private individual or body should also be impleaded as a respondent along with the authority so that the order may be equally binding on him or it (*Sohan Lal* v. *Union of India*, A 1957 SC 529). Where there is unexplained delay in filing the writ petition, and the writ petition suffers from laches, the same is liable to be dismissed (*S.A. Rasheed* v. *Director of Mines and Geology*, A 1995 SC 1739; *Bihar State Housing Board* v. *State of Bihar*, A 1995 Pat 131 DB).

Even against a government or other authority (including an instrumentality of State, as explained above) Mandamus can be sought only in respect of its discharge or non-discharge of public functions but not in respect of exercise by it of its powers under a contract (*Radhakrishna Agarwal* v. *State of Bihar*, A 1977 SC 1496), even if the exercise of such contractrual power be contended to be violative of the principle of *audi alteram partem (Jai Narain Singh* v. *State of Bihar*, A 1980 Pat 24). However, Courts will interfere if the government or other authority acts in a discriminatory manner at the threshold of entering into a contract, e.g, by awarding contract to an ineligible party (*Ramanna D. Shetty* v. *I.A. Authority*, A 1979 SC 1628) or by refusing without good ground to entertain the case of an eligible party, by 'blacklisting' it or otherwise (*Erusian Equipment Co.* v. *W. Bengal*, A 1975 SC 260). Mandamus may also lie in respect of exercise of even outwardly contractual powers if the contract is pursuant to a statutory duty (see decision in *Radhakrishna Agarwal* v. *State of Bihar*, A 1977 SC 1496; *Gujarat State Financial Corporation* v. *Lotus Hotels*, A 1983 SC 848, (1983) 3 SCC 379).

A formal demand to the authority is normally necessary before approaching the court for Mandamus (*State of Haryana* v. *Chanan Mal*, A 1976 SC 1654). A writ of Mandamus may also be combined with a Writ of Certiorari, Prohibition or Quo Warranto.

Writ of Prohibition : Like a Writ of Certiorari it lies only against an inferior Court, tribunal or other quasi-judicial authority (see notes on this topic under precedents re : Certiorari). It does not lie against a purely executive authority though often pleaders, on account of its phonetic and etymologic resemblance with an order of prohibitory injunction under the Specific Relief Act or under the C.P.C., seek this writ even against executive authorities also. Actually, Mandamus itself, unlike an order or mandatory injunction, can be both in positive terms as well as negative terms, directing the authority to act in a certain maner as also directing it to

(iii) In the alternative to relief No.(ii) above, direction or order be issued to the Tribunal, Respondent No.5 to treat the petitioner's claim petition as within time and to decide the same on merits afresh in accordance with law.

(iv) Costs of this petition be awarded against Respondents Nos.1 to 3.

[This precedent can be adapted to meet numerous similar service matters, e.g. to question an order of termination of service, reversion, compulsory retirement, denial of promotion, determination of seniority, reduction of pension, etc., and also in other than service matters where the authorities are required to follow the rules of natural justice or rules of fair play].

No. 11—Petition for a Writ of Mandamus against Government or an Officer of Government

1. The petitioner is owner of house No.65, Ashok Marg, Patna.

2. On May 15, 1991 the State Government (Respondent No.1) issued a notification under section 4 of the Land Acquisition Act 1894 ("the Act") proposing to acquire certain lands including plot No.65 on which the petitioner's house is situated. A true copy of the notification is Annexure No.1 to this petition.

3. On July 10, 1994 the State Government issued a notification under section 6 of the Act in respect of the same lands. A true copy of the notification is Annexure No.2 to the petition.

4. No opportunity of filing objections against the proposed acquisition was given to owners of land as required by section 5A of the Act.

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desist from acting in another manner.

A Writ of Prohibition is much rarer than a Writ of Certiorari. The difference between the two is that the former prohibits the judicial or quasi-judicial authority (for short, "tribunal" including a court as well as an executive authority required to follow a quasi-judicial procedure) from acting further in a matter while the latter quashes an order already passed by the authority. Hence, in the former case the High Court would generally expect the aggreived party to raise the objection, being canvassed before the High Court, before the inferior tribunal itself and only if the latter overrules the objection, then to approach the High Court seeking a Writ of Certiorari. For after all even an objection as to jurisdiction can be raised before the

5. The State Government in the said notification under section 6, Annexure 2, invoked the provisions of section 17 (1) of the Act on the ground that it was satisfied that there was urgent need to acquire the land for purposes of establishing a Community Television Centre and that section 17 of the Act was applicable.

6. The Collector, Patna (Respondent No.2) has issued notice to the petitioner under section 9 of the Act on July 20, 1994. A true copy of the same is Annexure 3 of the petition.

7. The petitioner on July 30, 1994 gave notice to Respondents Nos.1 and 2 demanding that they desist from acting in pursuance of the said illegal orders (Annexures 1, 2 and 3), but they have ignored the said notice and are instead insisting on taking immediate possession of the petitioner's said land.

8. The petitioner has no alternative or efficacious remedy available to him except to approach this Hon'ble Court under Article 226 of the Constitution on the following—

Grounds

(a) Because the purported satisfaction of Respondent No.1 under section 17 (1) of the Act was no "satisfaction" in the eye of law and section 17 (1) could not be invoked legally in that—

Firstly, the petitioner's land was not 'waste or arable land' but had a house built thereon, whereas section 17 (1) does not apply to such land;

Secondly, the very fact that the State Government took such a long time in issuing the notification under section 6 after having issued the notification under section 4 shows that the State Government itself did not

concerned tribunal (*Chanan Singh* v. *Registrar, Co-operative Societies*, A 1976 SC 1821). The party complaining may in such cases raise a preliminary objection as to jurisdiction before the tribunal concerned and invite its decision thereon, and if the latter overrules the objection, then the party may ask for Certiorari against the order overruling the objection and for Prohibition against the tribunal proceeding further. In some cases, however, the tribunal has either expressly or impliedly already taken the view that it does have jurisdiction although on the true view of the law it does not. The High Court or where a breach of fundamental right is involved, the Supreme Court may in such cases not insist on the party undergoing unnecessary harassment, trouble and expense likely to be entailed and incurred by its having to defend itself before a tribunal not possessed of the requisite jurisdiction

treat the matter as urgent; on the other hand, the preferring and disposal of objections under section 5A would have taken much less time;

Thirdly, the need for a Community Television Centre could not be treated by any reasonable person to be exceptionally urgent need;

Fourthly, that in view of the above the purported "satisfaction" of the State Government suffered from malice in law and from want of fulfilment of conditions precedent laid down in section 17(1).

(b) Because no declaration under section 6 could be issued after the expiration of a period of three years from the publication of notification under section 4, in view of the second proviso to section 6 (1).

(c) Because under Article 300-A of the Constitution the petitioner's property cannot be acquired otherwise than in accordance with law.

Prayer

(i) A Writ of Mandamus be issued to Respondents Nos.1 and 2 to forbear from acting upon orders Annexures Nos.1, 2 and 3 and to treat them as *non est* and to desist from interfering with the petitioner's ownership and possession of house and plot No.65 aforesaid, and a direction or Order be issued to quash the said orders Annexures Nos.1, 2 and 3.

(*Calcutta Discount Co.* v. *I.T.O.*, A 1961 SC 372).

Lack of jurisdiction may be of several kinds. The matter in respect of which the proceeding has been initiated may be outside the scope of the powers entrusted to the authority; or the conditions precedent for the proposed exercise of the power may be lacking or the facts on which the jurisdiction may be dependent may be non-existent; or the procedure being followed by the authority may be contrary to the rules or natural justice applicable to the matter, e.g., the authority may be baised or interested; or it may have denied the party affected a right to be heard (see generally, *H.V.Kamath*, supra; *Calcutta Discount Co.*, supra). Where jurisdiction of the tribunal is dependent on determination of facts then the tribunal should first be allowed to determine the facts and a pre-emptive approach to the High Court will be countenanced (*D.V.C.* v. *Superintendant of Commercial Taxes*, A 1976 Cal 136). The allegations regarding the violation of Constitutional provision should be specific, clear and unambiguous and should give relevant particulars (*Amrit Banaspati Co. Ltd.* v. *Union of India*, A 1995 SC 1340.

If the facts alleged in writ petition are not specifically controverted, they shall be deemed to have been admitted in favour of the petitioner (*Tikka Bai* v. *Divisional Commissioner Bikaner*, 1995 (3) WLC 525 Raj; *Sitaram* v. *Assistant Commissioner, Jamkhandi*, 1995 (3) Kar LJ 501 Kant). The High Court exercising

(ii) Costs of this petition be awarded to petitioner against Respondents Nos.1 and 2.

No. 12—Like Petition against a Statutory Corporation

Apart from other paragraphs adapted from precedent No.11, add in the beginning—

1. Respondent No.1 is a Corporation constituted by [or, under].....Act, [*or*, rule.....made under.....Act] and is charged with the performance of public functions and duties laid down in the said Act [*or*, rule] and as such is an "authority" within the meaning of Articles 12 and 226 of the Constitution.

No. 13—Like Petition against a Non-Statutory Body

(a government company, society or co-operative society, etc.)

Apart from other paragraphs adapted from precedent No.11, add:—

[1. Respondent No.1 is a government company registered as such under the Companies Act, and cent percent (*or*, more than 50%- specify exact or appropriate percentage as may be ascertained) of its share capital is subscribed by the Central Government and/or the State Government.

[*Or*, Respondent No.1 is a society registered under the Societies Registration Act, and is wholly (*or*, specify correct extent) financed by the Central government and/or the State Government].

[*Or*, Respondent No.1 is a co-operative society registered under the Co-operative Societies Act (specify name of Act applicable in particular State) and its share capital is wholly (*or*, partly—specify correct or approximate extent as may be ascertained) subscribed by the Central Government and/or the State Government].

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the power under Article 226 of the Constitution is not like an appellate authority to consider the dispute. It has to see whether the impugned order is based on records or whether the authorities have applied their own mind to the relevant facts (*State of U.P.* v. *Committee of Management of S.K.M. Inter College*, (1995) 2 MLJ (SC) 79). The court refuses to grant the discretionary relief, when the person approaches it with unclean hands or blameworthy conduct (*State of Maharashtra* v. *Digambar*, (1995) 3 ALT 11 SC).

Jurisdiction may, moreover, be territorial or pecuniary or with reference to

2. The main objects as specified in the Memorandum of Association of Respondent No.2 are—

(a) .....

(b) ..... etc.

3. The said functions were originally performed directly by.....Department of the Central/State Government and the said Government decided to and did promote and form Respondent No.1 as an autonomous body for the more efficient performance of those functions.

(*Or*, The said activities were originally carried out by various units in the private sector and because of various evils found in the operation of these units the Central/State Government decided that it would be in the public interest to have the said activities carried out exclusively through an official sponsored and controlled agency with a view to ensuring that the Directive Principle of State policy [specify, with particular Article of the Constitution] mentioned in part IV of the Constitution was duly observed).

(*Or*, The said unit was originally a private enterprise but under the scheme of notification approved by Parliament/ State Legislature it was vested in the Central/State Government and under section ..... of the.....Act it stood transferred to the Government company (Respondent No.1) which was sponsored and formed at the initiative of the said Government in anticipation /pursuance of said legislation.

4. The Central/State Government exercises its substantial control over the affairs of Respondent No.1 in that—

(i) Appointment and removal of Directors/ Auditors/officers/ staff : (relevant provisions to be referred to).

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subject-matter. In some cases jurisdiction of the tribunal may have been ousted by some statutory provision; where it is so a Writ of Prohibition against the tribunal will be quite apropriate.

Successive Writ Petitions

Where the earlier writ petition has been dismissed as not pressed or withdrawn without leave to file fresh writ petition on the same cause of action, second writ petition for the same relief is barred (*Syed Nizam* v. *First Addl. Civil Judge, Faizabad*, A 1995 All 255, *Pradeep Goel* v. *Regional Manager, Region II*, 1992 1.CD 84 (All). Where an earlier writ petition is pending, a second writ petition containing similar

(ii) Control of funds budget audit (including facts relating to extent of Governmental accountability to Legislature for its affairs): (relevant provisions to be referred to).

5. Facts showing creation of monopoly, if any, in favour of Respondent No.1 (relevant provisions to be quoted).

6. That in view of the facts stated in the foregoing paragraphs Nos. 4 and 5 the Respondent No.1 is an instrumentality of the Central/State Government and as such is an "Authority" or "State" within the meaning of Article 12 and 226 of the Constitution.

No. 14— Petition for Writ of Prohibition and other Ancillary Reliefs against Proceedings in a Court

1. The petitioner was prosecuted for an offence under section 392, I.P.C. in the Court of Sessions Judge, Sultanpur, (Respondent No.1) in Sessions Trial No.18 of 1993 which resulted in acquittal of the petitioner on September 25, 1994. A copy of the order of the said Court of Session is Annexure No.1 to this petition.

2. No appeal against the said order of acquittal of the petitioner was filed by the State Government within time, and the said order has become final.

3. On July 15, 1995 the Public Prosecutor namely the District Government Counsel (Criminal) (Respondent No.2) under instruction from the States Government (Respondent No.3) made an application to the said Court for a review of its judgment dated September 25, 1994. A true copy of the application is Annexure No.2 to this petition.

4. The said Court (Respondent No.1) has by its *exparte* order dated October 15, 1995 entertained the application and directed notice

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prayer does not lie (*Atif Ahmad* v. *Chief Minister, UP*, 1996 All LJ 101 (All) DB).

Joint Writ Petition

Where the petitioners have common cause of action viz. grouse against the same order, joint writ petition by them is maintainable (*Jagat Narayan Sharma* v. *State of Rajasthan*, A 1995 Raj 155; *Nilamadhaba* v. *Orissa University of A & T*, A 1983 Ori 17; *Balwinder Singh* v. *University of Jammu*, A 1983 J & K 19; *Teja Singh* v. *Union Territory Chandigarh*, A 1982 P & H 169 (FB)). In dealing with applications for compensation for the enforcement of the right to life, enshrined in Artele 21 of the Constitution, the Court should not adopt a hypertechnical approach

to be issued to the petitioner to show cause. A true copy of the said order is Annexure 3 to the petition.

5. The notice aforesaid has put the petitioner's liberty into jeopardy for the second time after he had already been acquitted finally.

6. The petitioner submits that the said Court has no jurisdiction to proceed in the matter.

7. The petitioner has no other efficacious remedy against the continuance of the proceedings and accordingly files this petition under Article 226 of the Constitution on the following :—

Grounds

(a) Because the Court of Sessions, Respondent No.1, has not been empowered by the Code of Criminal Procedure 1973 to review any judgment nor does that court possess any inherent power in that behalf.

(b) Because the review sought amounts to re-trial of the petitioner by the trial Court without any order of any superior Court in that behalf, and in view of the judgment dated September 25, 1994 (Annexure 1) having become final, such re-trial is barred by the provisions of section 300 of the said Code and is also violative of the petitioner's fundamental right against double jeopardy guaranteed by Article 20 (2) of the Constitution.

Prayer

A Writ of Prohibition be issued to Respondent No.1 prohibiting it from proceeding further in the proceedings initiated by the application dated July 15, 1995 given by respondent No.2 under instructions from Respondent No.3.

A Writ of Certiorari be issued calling for the bringing up of the record of the said proceedings and quashing the order passed by Respondent No.1, copy of which is Annexure 3.

Costs against Respondents Nos.2 and 3.

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which would defeat the ends of justice. The court must look at the substance and not the form (*M.C. Mehta* v. *Union of India*, A 1987 SC 1086).

Defences-plea of alternative Remedy

No. 15— Petition for like Relief against Proceedings before a Tribunal

1. The petitioner company is owner of a shoe factory.

2. Respondent No.3 was employed in the petitioner's factory as Assistant Manager on salary of Rs.2,500/- per mensem besides Rs.1000/- per mensem as dearness allowance under a contract which provided for termination of service by three months' notice or emoluments or damages in lieu thereof on either side.

3. The petitioner on November 2, 1993 terminated the services of Respondent No.3 by a notice and simultaneously paid him a sum of Rs.10,500/- which was equivalent to his emoluments for three months.

4. Respondent No.3 was later instigated by some politicians inimically disposed towards the petitioner to approach the State Government (Respondent No.1) and those politicians also persuaded the State Government to make a reference of the case of termination of services of respondent No.3 as an industrial dispute to the Labour Court, Respondent No.2. A true copy of Government notification dated March 15, 1994 under section 10 read with section 2A of the Industrial Disputes Act, 1947 ("the Act") is Annexure 1 to this petition. No particulars of the said enmity or of the said politicians are being given as no relief is being claimed on the basis of "malice in fact".

5. In pursuance of the said reference the Labour Court registered a case No.3 of 1994, issued notice to the petitioner, whereupon the petitioner raised a preliminary objection before the Labour Court contending that the reference was void as Respondent No.3 was not a workman within the meaning of the Act. A true copy of the written objection is Annexure 2 to the petition.

The existence of alternative remedy is not a complete bar and does not oust the jurisdiction of the court to the entertainment of the writ petition. It is a self imposed rule (*B.D.A. Ltd.* v. *State of U.P.*, A 1995 All 277 DB). The bar of alternaive remedy does not apply where the impugned order is without jurisdiction or against the principles of natural justice (*Amar Singh* v. *State*, A 1995 Raj 151). The plea of alternative remedy is entertained by the courts as a rule of prudence and not as a rule of law. In cases where a person has understandably a strong case and his rights are so grossly violated that conscience is shaken, a court shall fail in its duty if it

6. The Labour Court on June 20, 1994 overruled the objection by an order, a true copy of which is Annexure 3 to the petition, holding that the Labour Court was not competent to examine the validity of the order of the Government and called upon the petitioner to justify the order of termination of service of Respondent No.3 by adding evidence on merits.

7. The petitioner contends that the proceedings before Respondent No.2 are without jurisdiction, and that the petitioner has a right not to be put to unnecessary harassment and expense in attempting to satisfy the Labour Court that the petitioner was justified in terminating the service of Respondent No.3.

8. The petitioner gave notice to the State Government (Respondent No.1) on May 15, 1994 demanding withdrawal or cancellation of its illegal order of reference, but to no avail. A copy of the notice is Annexure 4 to this petition.

9. The petitioner has no alternative and efficacious remedy except to approach this Hon'ble Court under Article 226 of the Constitution and hereby does so on the following:

Grounds

(a) Because the authority of the State Government to make an order of reference under section 10 of the Act is confined to a case involving a "workman" as defined in section 2 (s) thereof. Respondent No.2 being employed in a managerial capacity and being also in receipt of emoluments exceeding Rs.600/- per month could not be treated as a workman. Thus the necessary condition precedent for exercise of the power of the State Government did not exist, and the order was thus without jurisdiction and void *ab initio.*

(b) Because the Labour Court has committed a manifest error in taking the view that it cannot examine the validity of the order of reference.

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shall deny the remedy on the ground of alternative remedy available (*Sundararaju* v. *State Bank of India*, 1995 (II) MLJ 426 Mad).

Where alternative remedy which is adquate and equally efficacious is available, writ petition under Article 226 is not maintainable (*Commercial Credit Corp.* v. *V. Commissioner Madras Corporation*, A 1996 Mad 93 DB).

It had inherent power to examine the validity of the order of reference on which its own jurisdiction depended.

(c) Because the continuance of the said proceedings amounts to a restriction unauthorised by law, on the petitioner's fundamental right to carry on his business.

Prayer

(1) A Writ of Prohibition against Respondents No.2 prohibiting it from continuing further with the proceedings in Case No.3 of 1994.

(ii) A Writ of Certiorari calling for the bringing up of the records of the said case and quashing order dated June 20, 1994 Annexure 3.

(iii) A Writ in the nature of Mandamus, Order or Direction, directing the State Government, Respondent No.1, to desist from acting further on its Notification dated March 15, 1994 Annexure 1 and to treat it as *non est*.

(iv) Costs against Respondents Nos.1 and 3.

PART IV
ELECTION PETITIONS

ELECTION PETITIONS (a)

IN THE HON'BLE HIGH COURT OF JUDICATURE
AT ALLAHABAD

Election Petition No. **of 200**

Sri Khuda Baksh, son of Mohd. Baksh,
resident of Phulpur, Etawah .....*Petitioner*

Versus

1. Sri Rameshwar Nath,
   M.L.A., *mohalla* Barahi Tola, Etawah.
2. Sri A (with particulars)
3. Sri B "
4. Sri C "
5. Sri D " .....*Respondents*

Election petition, under section 80-A, 81 of the Representation of the Peoples Act, 1951, challenging the election of Sri Rameshwar Nath to the U. P. Legislative Assembly, from the single member Etawah, Constituency No.150, result of which was declared on.....

The above named petitioner, most respectfully submits as under :

(a) *Presentation :* An election petition has to be presented to the High Court by any candidate at the election or by an elector. 'Elector' means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

While being presented, the petition should be accompanied by as many copies thereof as there are respondents impleaded in the petition [section 81 (3)]. Every such copy must be attested by the petitioner under his own signature to be a true copy of the petition.

The provision has been held to be mandatory in *Sharifuddin Abdul Gani Lone*, A 1980 SC 303, (1980) 1 SCC 403, following which it has been held in *Ved Prakash* v. *Sukhan Lal*, A 1984 Del 276 that even a Photostat copy not attested to be a "true copy" is not enough; and in *Gopal Pd.* v. *Archana Kuwar*, A 1984 Del

1. That the petitioner was a candidate on behalf of the Congress Party in the last General Election for the U.P. Legislative Assembly from the single member Etawah Assembly Constituency No.150 and Sri Rameshwar Nath respondent No.1 who was declared elected was a Janta Party candidate. Four other candidates viz. Sarvasri A, B,C, and D also contested the said election.

2. That the polling for the said Etawah Assembly constituency No. 150, was held on.....and the counting took place on.....

280, that filing of copies subsequent to expiry of limitation (45 days) could not cure the earlier omission.

Since provisions of Civil Procedure Code apply to the trial of an election petition, O. 6, R. 16, 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act.

If the court on examination of the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. O. 6, R. 16, itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objection and strike out the pleadings (*Dhartipakar* v. *Rajiv Gandhi*, A 1987 SC 1577 at page 1584; overruled *Vidya Charan Shukla* v. *G.P. Tripathi*, A 1963 MP 356)

Only parts of election petition which contain allegations of corrupt practice and have not been pleaded in Form 25, read with Rule 94-A and section 83 (1) of the Representation of Peoples Act, 1951 can be struck off. Other separate issues can be adjudicated on merits (*Shipra* v. *Shanti Lal Khoiwal*, A 1996 SC 1691).

Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the tiral of the election petition cannot proceed for want of cause of action. The emphasis of law is to aviod a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner (*Dhartipakar* v. *Rajiv Gandhi*, A 1987 SC 1577; *F.A.Sapa* v. *Singola*, A 1991 SC 1557).

It is true that the charge of corrupt practice under section 123 is treated akin to a charge in a criminal trial. The trial of an election petition is like a trial in the criminal case and the burden to prove corrupt practice is on the petitioner. But when the petitioner has adduced evidence to prove that the returned candidate had committed corrupt practice, the burden shifts on the returned candidate to rebut the

3. That on the last mentioned date the result of the said election was declared by the Returning Officer, and Respondent No.1 was declared to be elected to the U.P. Legislative Assembly from the aforesaid Constituency by a margin of 755 votes against the petitioner. The details of the votes secured by each candidate are given as under :

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evidence (*R. Puthunamar Alhithan* v. *P.H. Pandian*, A 1996 SC 1599). The Court insists upon a strict proof of such allegation of corrupt practice, and does not decide the case on preponderance or probabilities (*S. Baldev Singh Mann* v. *S.Gurucharan Singh*, A 1996 SC 1109).

As regards allegation of corrupt practice relating to use of vehicle, the three essentials as required by section 125 (3) of the Representation of People Act 1951 must be pleaded (*Dhartipakar* v. *Rajiv Gandhi*, A 1987 SC 1577 at p. 1593).

Where election petition is based on corrupt practice alleged to be perpetrated by the successful candidate, the facts constituting corrupt practice must be alleged in the petition (*Ram Charan* v. *Bhola Shankar*, A 1987 All 134). The material facts and full particulars of corrupt practice must be given in the petition, on failure the election petition is liable to be dismissed (*Subhash Desai* v. *Sharad J. Rao*, A 1994 SC 2277; *Onawal Islam* v. *S.K. Kanta*, A 1994 SC 1733, *F.A. Sapa* v. *Singora*, (1991) 3 SCC 375, A 1991 SC 1557; *Azhar Hussain* v. *Rajiv Gandhi*, A 1986 SC 1253, (1986) 2 SCR 782, 1986 All LJ 625; *K.C.Madhava Kurup* v. *K. Muraleedharan*, A 1991 Ker 20).

In order to constitute corrupt practice it must be shown that the act was done during the election compaign between the date when the returned candidate became a 'candidate' and the date of poll, and that it was the act of the candidate or his agent or any other person with his consent. Unless all these constituent parts of the corrupt practice are pleaded to constitute the cause of action raising a triable issue and are then proved by evidence, the corrupt practice cannot be held to be pleaded and proved. A mere display of the video cassette does not prove all the constituent parts of the corrupt practice (*Manohar Joshi* v. *Nitin Bhaurao Patil*, (1996) 1 SCC 169 at 194). For law on booth capturing- see *S.Baldev Singh Mann* v. *S. Gurucharan Singh*, A 1996 SC 1109.

The word 'Hindutva' by itself does not invariably mean Hindu religion and it is the context and the manner of its use which is material for deciding the meaning of the word 'Hindutva' in a particular text. It cannot be held that in the abstract the mere word 'Hindutva' by itself invaribly must mean Hindu religion. The so-called plank of the political party may at best be relevant only for appreciation of the context in which a speech was made by a leader of the political party during the election campaign, but no more for the purpose of pleading corrupt practice in the election petition against a particular candidate (*Manohar Joshi* v. *Nitin Bhaurao Patil*, (1996) 1 SCC 169 at 198). The principles as governing challenge to election and setting aside are the same. The onus to prove that on account of breach of the statutory provisions, the result of the election has been materially affected is on the

	Votes
(1) Sri Rameshwas Nath (Janta Party)	12,043
(2) Sri Khuda Baksh (Congress)	11,288
(3) Sri A (Muslim Majlis)	9,966
(4) Sri B (C.P.M.)	1,113

election petitioner. An election is not to be set aside on the "*ipse dixit*" of the witnesses (*Pan Bai* v. *Imarat Singh*, 1995 MPLJ 950 (MP).

The concept of "proper party" is alien to the election disputes, only contesting candidates are necessary party to an election petition, other persons are neither necessary nor proper parties to an election petition (*Iqbal Singh* v. *Avtar Singh*, A 1993 P & H 314).

Where the only question involved in the petition is whether the rejection of the nomination papers of the petitioner is legal and proper, the Returning Officer and the District Election Officer are not necessary parties, the only persons mentioned in section 82 of the Representation of People Act, 1951 are to be arrayed as parties (*Subhan Knan* v. *J.H.Patel*, A 1996 Kant 167; A 1991 SCW 772 followed).

In view of the provisons of section 82 of the Act, all the contesting candidates must be arrayed as parties to the writ petition. Where all such contesting respondents have not been arrayed as parties, the petition is liable to be dismissed, defect cannot be removed by resorting to the provisions of O. 1, R. 10 or O.6, R. 17, by impleading the necessary parties (*Kallappa Laxman Malabade* v. *Prakash Kallappa Awade*, A 1996 Bom 5).

The code of Civil Procedure being applicable to the trial of election petitons, an allegation made in the petition not specifically denied shall be deemed to have been admitted (*Ram Singh* v. *Col. Ram Singh*, A 1986 SC 3). The question of appreciation of evidence is not to be pleaded, instead it is the duty of the court to consider whether the documents produced by the parties prove the facts in issue (*Birad Mal Singhvi* v. *Anand Purohit*, A 1988 SC 1796 (para 12).

Limitation : Under section 81, limitation for a petition is 45 days from the date of the election of the returned candidate or if there are more than one candidate returned at the election and the dates of their elections are different, the later of those dates. It should be noted that an election petition cannot be filed before the date of the election of the returned candidate. Where the Courts are closed due to vacations, the election petition may be filed on the opening day by invoking the provisions of section 10 of the General Clause Act, though section 5 of the Limitation does not apply to election petitions (*Simhadri Satya Narayan Rao* v. *M. Buda Prasad*, 1991 (I) SCJ 281 (SC); *Manohar Joshi* v. *N.P. Patil*, A 1996 SC 796).

Defence : Points usually raised in defence are of two kinds, technical and substantial. Defects of a formal nature like non-joinder, improper framing of petition, absence of particulars, wrong verification, non-complaince with the requirements of security or presentation, limitation, wrong presentation, absence of proper

4. The election of the respondent No.1 Sri Rameshwar Nath to the U.P. Legislative Assembly from the single Member Etawah Assembly Constituency No.150 is void, inter alia, on the following :

Grounds

(a) Because respondent No.1 was, on the date of his nomination, disqualified to be chosen a member of the Legislative Assembly, under section 9-A of the Representation of the People Act, 1951 as he had a share as well as interest in a subsisting contract with the government of Uttar Pradesh in the name of Anandkar Printing Press, Etawah, and its parent firm Anandkar Karyalay Limited, Etawaah, for the publication of Electoral Rolls and other papers connected with the General Election. His nomination was thus improperly accepted, and the acceptance materially affected the result of the election in so far as it concerned the respondent.

(b) Because the said respondent himself and with his consent his agents and workers published statement of facts which were false and which were believed to be false or were not believed to be true in relation to the personal character and conduct of the petitioner as well as in relation to his candidature. The statements are contained in a fortnightly magazine known as 'Etawah Samacshar' and election bulletins headed 'Vigyapti' issued recently for this election. These statements were reasonably calculated to prejudice the prospects of the petitioner's election.

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affidavit, non attestation or inaccuracy of copies etc., are defence of a technical nature. While in a civil suit mere technical irregularities or omissions on the part of a plaintiff may be condoned they are not normally condoned in an election petition, for (i) the Courts are wary of disturbing the verdict of the electorate, (ii) the right to challenge an election is a statutory right and not a common law right, (iii) allegations of corrupt practice are in the nature of quasi-criminal charges and are strictly construed. Because of these considerations the pleader for the petitioner has to be extra careful in ensuring that all statutory provisions are strictly complied with. Substantial defence will consist of denial of the corrupt practices alleged and explanation of the allegations of fact. As an election petition can be maintained only on one or more grounds mentioned in sections 100 and 101 an attempt is made in the written statement to show that such grounds do not exist or that the allegations made in the petition are insufficient to make out such grounds.

Recrimination (section 97) : If one of the prayer in the petition is a declaration that any candidate other than the returned candidate has been duly elected, the returned candidate or any other party to the petition may file a recrimination

The respondent thereby committed the corrupt practice mentioned in section 123 (4) of the Act. The particulars of this corrupt practice are given in Schedule 1 annexed hereto.

(c) Because the said respondent himself and with his consent his agents and workers made an appeal to the Hindu electors to vote for the respondent on grounds of race, community and religion and to refrain from voting for the petitioner on the ground of his being a Muslim. They described him a Pakistani and published and propagated statements which had the effect of promoting or attempting to promote feelings of enmity or hatred between different classes of citizens of India, on the ground of religion and community. They were made to excite the religious sentiments of the voters against the petitioner. These publications and statements were calculated to prejudice the prospects of your petitioner's election and to further the prospects of the respondent's election. The respondents thereby committed the corrupt practice mentioned in section

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and lead evidence in support of it to prove that the election of the candidate sought to be declared elected would have been void if he had been returned. In other words, the claim that any other candidate may be declared elected can be defeated on all available grounds as if that candidate had been a returned candidate and a petition had been presented challenging his election. No recrimination is permitted unless the returned candidate or any other party who wants to make it, has within 14 days from the date of comencement of the trial given notice to the court of his intention to recriminate and has also given security as required by section 117 of the Act. The grounds of recrimination are usually stated in a document which is ordinarily known as petition of recrimination and has to be drafted and verified like an election petition, of course, with suitable changes. The right to recriminate is a special right and arises only when a declaration is claimed about any particular candidate having been elected. The right is not there if no such claim has been made. A recriminatory petition becomes unnecessary and need not be heard if the petitioner in the election petition withdraws his prayer for a declaration that he or any other candidate has been duly elected.

To a recrimination notice under section 97 of the Representation of People Act, the provisions of section 5 of the Limitation Act, 1963 are not applicable (*Anwari Basavaraj Patil* v. *Siddaramaiah*, (1993) 1 JT (SC) 328, A 1993 SCW 3950.

An appeal against an order under section 98 and 99 made by the High Court in an election petition lies to the Supreme Court under section 116-A of the Act and is to be heard as an appeal from the original decree. It has to be preferred within 30 days from the date of the order appealed from. The Supreme Court, for sufficient cause may entertain an appeal even after the expiry of the prescribed period.

123 (3A) of the Act. Details of such false and malicious statements and the manner in which they were propagated are set out in Schedule 1 and 2 hereto annexed, which form part of this petition.

(d) Because the said respondents far exceeded the prescribed maximum limit of the election expenses, and thereby committed the corrupt practice laid in section 123 (6) of the said Act as he failed to keep separate and correct account of all expenditure incurred by him in connection with the election and that the election account, i.e., election returns lodged by the respondents are false in material respects, vide details given in Schedule 3 annexed hereto.

(e) Because the said respondent himself and with his consent his agents and workers hired and procured vehicles for the conveyance of the electors to the polling stations and back to their places and thereby the respondents committed the corrupt practice specified in section 123 (5) of the said Act. Details of the polling stations to which electors were so carried is given in Schedule 4 annexed hereto.

(f) Because the said respondent himself and with his consent his agents procured the assistance of Government Officials to further the prospects of his election. He appointed a large number of such persons as polling agents and took their help in canvassing and influencing the voters. The names of such Government Officials are set out in Schedule 5 annexed hereto.

(g) Because 499 valid votes cast in favour of the petitioner had been wrongly declared to be invalid by the Returning Officer while 270 invalid votes were wrongly declared by the Returning Officer to be valid votes in favour of the said respondent. The details of the ballot papers and the polling stations at which they were casts are set out respectively in Schedules 6 and 7 annexed hereto.

Prayer

Wherefore it is respectfully prayed that :

(i) It be declared that the election of respondent No. 1 is void;

(ii) It be declared that the petitioner has been duly elected.

INDEX TO PART I

(For Index of Precedents, See Table of Contents)

	PAGE
Accord and Satisfaction, what is	308
mere accord is no defence	308
plea of payment	309
Accounts, liability to, how pleaded	73
particulars of	60
particulars in a suit for	60
Aquiescence, how pleaded	313
necessary elements of	313
mere silence is not	314
Addition of parties, (See Parties to suit)	
Additional pleadings, when allowed	133
should not be inconsistent with previous pleading ...	134
should not set up new matter	134
Adjustment, plea of	309
Admissions	
Previous, are evidence	41
Admissions and Denials	
should be recorded in written statement	286
how to be recorded in written statement	287
every allegation of plaint to be admitted or denied ...	287
anything not alleged in plaint need not be denied ...	287
risk of denying a fact which should be admitted ...	288
of matters of law unnecessary	288
of damages unnecessary...	289
of relief unnecessary	289
non-appearance of defendant or not filing written statement	296
(*see also* **Written Statement** and **Denial**)	
Adoption, particulars of	73
Adverse Possession, particulars of	73
Affidavit, how to be drafted	410
rules for drafting	412
amendment not permissible...	411

PAGE

importance of 410
affirmative case, when to be pleaded... 303
how to be pleaded 303
should not be pleaded when mere traverse sufficient... 304
Agreement, how pleded 74
Implied, how pleaded 44,74
Aliens, Suits by or against 243,244
Alternative pleadings, permissible 84
facts to be separately alleged 86
Ammbassadors, Suits by or against 243
Amendment of pleadings
compulsory and voluntary 121
when necessitated 121
statutory rules of 121,135
leave for, is discretionary 137
when appellate court can interfere 331
wide powers of court 135
to be freely granted 137
grant of, rule; refusal, exception... 140
even if original omission due to carelessness ... 139
general principles of grant of 140
different kinds of 160
terms on which allowed... 175
when refused 143
when necessary, test of 137
when unnecessary 143
when wanted for raising a purely technical plea ... 143
when injurious to opponent 143
when adding new cause of action after limitation 145,172
when it takes awaay defendant's plea of limitation 145,146
when not applied for in good faith... ... 147,222
when it changes the character of suit 148,152
when it does not change the character of suit... 156
when applied for after delay 141,142,147,172,148
when even change allowed 149,159
when offends any provision of law 147
when plaint not maintainable 148
inconsistent ground allowed 149

PAGE

instances of change 152
instance of no change 156
when plaint not maintainable 148
Formal amendment, always allowed 160
Amendment as to relief... 161
not allowed when relief claimed time-barred ... 172
alternative relief can also be claimed 162
amount claimed can be reduced... 163
—when cannot be reduced 163
—when can be increased 164
—not allowed when *de novo* trial necessary ... 161
—when necessitated by altered circumstances ... 164,169
Amendment as to parties (*see* **Parties to suit**)
at what stage allowed 165
should be applied for with promptitude 140,166
when refused for delay... 141
not allowed after conclusion of trial 141,166
when may be granted in appeal 141,168
due to subsequent events, when allowed 164,169
of cause of action arising from suit itself not allowed 150,171
form of amendment 223
newly added party may challenge 223
Amendment, how made... 175
return of pleading for amendment... 175
original pleading to be refiled after amendment ... 163
time to be fixed for amendment... 176
time can be extended 176
consequence of failure to amend within time ... 176
opportunity to opponent for additional pleading given after 175
in cases of addition or substitutioon of parties ... 223
Amendment and limitation 172
introduction of new cause of action after limitation, not allowed 172
adding fresh relief after limitation 172
formal amendment allowed after limitation ... 174
amendment as to parties how affects limitation ... 218

PAGE

no question of limitation if really no new person added 219
— or when defendant is made plaintiff or *vice versa* 222
effect of section 21 Limitation Act 222
when can change of parties be made after limitation 222
amendment in description of parties or their capacity 175
Amendment of opponent's pleading 121
when advisable 126
when to be applied for 126
by striking out (see **Striking out**)... ... 126
Antecedent debt 74
particulars of necessity... 75
Anticipation of defence in plaint, not allowed 34
Appeal
right to 324,326
from original decree 325
from appellate decree 325
—to Supreme Court 326
from orders 325,327,328
who may 326,351
—a legal representative... 326,351
—receiver 352
—a guardian 352
—new guardian in case of death of old 352,359
—one of several plaintiffs or defendants may ... 353
—others to be impleaded as respondents 356
who should be added as respondent 356
all parties to decree need not be impleaded in appeal 354
court's power to implead a party in 357
(*See also* **Memo of appeal** and **Grounds of appeal**)
by indigent person, separate petition for 358
Applications, nature of 363
drafting and contents of... 363
form of 363
under C.P.C. 363
in execution 364
for reference 364
for review 365

PAGE

for revision 369
for succession certificate 374
under Insolvency Act 375
under Arbitration Act 379
under Guardians and Wards Act... 376
under Transfer of Property Act 376
Balance of account, when to be pleaded 41
Bahi Khata, entries in, not to be pleaded 41
Benami, how pleaded 75
Breach of trust, how pleaded... 71
Brevity, how to attain 46
Cause title, what it consists of... 251
Cause of action
what is 181,266
distinguished from transactions giving rise to ... 181
facts constituting, to be alleged in plaint 267
risk in not correctly stating 267
plaintiff entitled to succeed only on, set up 267
essentials of a
—in suits on contract 267
—in suits on tort 268
—in suits for declaration 268
when demand before suit constitutes 37,257
joinder of several causes of action 188
—by several plaintiffs, when permitted... ... 188
—against seveal defendants permitted... ... 188
—exception 189
what claims can be joined with those for immovable property 190
leave to join other claims... 190
—how taken 190
—when should be taken 190
joinder of claims in personal capacity with those in representative capacity... 190
examples of same causes of action 182
examples of different causes of action 184
several causes of action treated as one 187

PAGE

obligation and collateral security... 187
successive claims arising out of one obligation ... 187
splitting of, not allowed 179
—consequence of... 179
when separate trials can be ordered in case several causes of action joined 190
separate trials cannot be ordered in case of misjoinder 191
misjoinder of causes of action (see **Misjoinder**)
date of accural of, to be alleged in plaint ... 255
in cases of contract 267
in cases of tort 268
object of stating date of... 256
pronote and original consideration are distinct ... 184

Code of Civil Procedure

Sec. 2(2) 328
Sec. 2(14) 327
Sec. 2(20) 49
Sec. 9 ... 17,306,324
Sec. 10 284,299
Sec. 11 ... 178,312
Sec. 16,17,19,20 258
Sec. 21 307
Sec. 34,35 281
Sec. 35-A 269,304
Sec. 47 339
Sec. 80 36
Sec. 83 244
Sec. 84 243
Sec. 85, 86, ... 243,244
Sec. 87-A, 87-B 243,244
Sec. 91 224
Sec. 92 ... 223,338,354
Sec. 96 325
Sec. 99 ... 196,214,226,325
Sec. 100 325
Sec. 100 A 325
Sec. 101,102 326,334
Sec. 104 326,328
Sec. 105 328,333
Sec. 106 325
Sec. 107 165,350
Sec. 108 165
Sec. 146 352
Sec. 149 359
Sec. 151 357
Sec. 153 234

O.1,r.1 189,201
O.1,r.3 189,202
O.1,r.6 203
O.1,r.7 284
O.1,r.8 224
O.1,r.9 208,243
O.1,r.10 ... 210,217,246
O.1,r.13 284
O.2,r.1 178
O.2,r.2 ... 181,178,179,180,182 271,317,318
O.2,r.4 189
O.2,r.5 129,190
O.2,r.6 191
O.2,r.7 196
O.3,r.2 236

	PAGE
O.6, r.1	5
O.6, r.2 ...	14,27,28,34,39, 46,64,84
O.6, r.3	49
O.6, r.4 ...	28,42,62,63,122
O.6, r.5 ...	14,58,122,121
O.6, r.6	28,36
O.6, r.7	59,134
O.6, r.8	62
O.6, r.9	32
O.6, r.10	42,62,63
O.6, r.11	43,59
O.6, r.12	44,74
O.6, r.13	38
O.6, r.14 ...	50,51,53,54
O.6, r.15	54
O.6, r.16 ...	14,85,121,126,175
O.6, r.17	14,121
O.6, r.18	177
O.7, r.1	34,251,252,254,266,273
O.7, r.2	271,272
O.7, r.3	60
O.7, r.4	37,255
O.7, r.5	266
O.7, r.6	255,263
O.7, r.7	270,275
O.7, r.8	84,266
O.7, r.11	15, 60,121,130,264
O.8, r.2	301
O.8, r.3	33,34,288
O.8, r.4	297,298
O.8, r.5	7,287,296
O.8, r.6	316,317
O.8, r.6 A to 6 G ...	320
O.8, r.7	285
O.8, r.8	285
O.8, r.9	5,14,121
O.8, r.10	296
O.10, r.1	6,7,13
O.10, r.2	13
O.11	16
O.12	16
O.14, r.2	300
O.20, r.19	329,316
O.21, r.50	234
O.21, r.72,92	329
O.27, r.1	54
O.29, r.1	53
O.30, r.1 ...	18,54,232
O.30, r.2 ...	232,233,235
O.30, r.3	235
O.30, r.4	235
O.30, r.5	236
O.30, r.6	236
O.30, r.8	236
O.30, r.10	237
O.31, r.1	243,247
O.31, r.2	208,243
O.32, r.7	247
O.34, r.1	208,247
O.34, r.14	271
O.40, r.1	245
O.41, r.1	331
O.41, r.2	332
O.41, r.3	348
O.41, r.4	356,354
O.41, r.11	327
O.41, r.20	357
O.41, r.22	359,361
O.41, r.33	360
O.42	325
O.43 r.1	325,328
O.44, r.1	358
Appendix A Form No. 1	230
do. No.43 ...	275

	PAGE
Company, registered, suit by or against...	239
unregistered, suit by or against	242
Complex sentences, to be avoided	48
Compound pleas, allowed, ...	302
Condition of mind, how pleaded	42
Condition precedent	
what is	35
performance of, not to be pleaded	36
when to be pleaded	36
if part of cause of action, to be pleaded	37
non-performance of, to be explained	37
preliminary steps necessary to sue	263
Confession and Avoidance	
what is	300
distinguished from traverse	300
must be clearly and specifically pleaded	301
should be specifically pleaded in the written statement	301
cannot be pleaded later...	301
when can be raised later	302
can be pleaded together with traverse	301
Construction of pleadings	
primary consideration in...	9
should be liberal	10
Contract, how pleaded	74
implied, how pleaded	44
cause of action in a suit on	267
parties to suit on	203
particulars of	74
Co-operative Society, suits by or against	241
Corporation, suits by or against	239
of two kinds	239
cause-title in suit by or against	239
signatures and verifications by	53
name of officer signing need not be mentioned in heading	239
name of officer on whom summons desired, to be mentioned	239

PAGE

Costs need not be claimed in plaint 281
Counter-Claim 320
distinguished from set off 320
Court, cannot set up new case... 108
rule applies to appellate court, also 108
may grant different relief 278
Court, duty of
to record admissions and denials... 13
to examine parties before issues... 13
to strike out offensive pleadings... 14
to order further and better particulars 14
to clarify pleas 14
Court-fee, valuation for, to be stated in plaint 260
how determined when alternative reliefs claimed ... 260
when several claims joined 260
Cross-objection
how to be drafted 359
cannot be directed against a person not party to appeal 360
whether can be directed against a co-respondent ... 360
valuation of, ... 361
by indigent respondent 361
Cruelty, particulars of 76
Custom, to be specifically pleaded 25
particulars of 25
Damages, particulars of,
general and special, distinction between 32
general, need not be pleaded... 32
—amount claimed to be specified... ... 271
—cannot be allowed more than those claimed ... 271,273
special, must be pleaded 32
—must not be claimed more than actual 271
—when can extraordinary damages be claimed ... 272
—future anticipated damages must be claimed ... 272
—particulars of 79
—when necessary to sustain a suit 33
—how pleaded 32
—defendant need not plead to 33
facts in aggravation of, to be pleaded 33

	PAGE
do. mitigation, of, do.	34
Measure of	
—in breach of contract...	272
—in tort	272
—future damages when taken into consideration ...	272
nominal damages, when allowed...	272
Dates to be stated in figures and words...	46
Defence (see also **Written Statement**)	
any number of defences can be taken	285
—even if they are inconsistent	285
—but they should not be mixed up	285
not to be frivolous	304
affirmative case, when to be set up in	303
various forms of	284
confession and avoidance, or special defence ...	284
dilatory pleas	284,299
objection in point of law...	284,299
peremtory pleas	284
traverse (see **Denial**)	284
accord and saitsfaction...	308
acquiescence	313
estoppel	311
illegality	315
jurisdiction	306
justification	315
laches	316
limitation	305
payment or adjustment	309
res judicata	312
set-off	316
equatiable set-off	317
section 41 or section 53 A, Transfer of Property Act	316
ground arising after institution of suit, may be raised	285
—should not be anticipated in plaint	34
special defences	305
Defendants (see also **Parties to suit**)	
liability of each defendant to be shown in plaint ...	266

PAGE

joinder of 201
misjoinder and non-joinder of 207
numberous how to be impleaded... 224,252
wrong description of, immaterial if proper person served 252
titles of, to be given in plaint 252
order in, which, to be named in plaint 252
Demand, before suit, when not necessary to plead... 257
when necessary, ... 257
only first demand should be pleaded when there are successive demands 258
meaning of "on demand"... 257
Denial (see also **Traverse** and **Admissions and Denials**)
should be specific and not general 289
consequence of a denial not specific 290,294
facts not denied stand admitted 294
exceptions to the above rule 295
denials of matters of law unnecessary 288
denial of damages unnecessary 289
denail of relief unnecessary 289
court's power to require undenied facts to be proved 296
of allegation made with diverse circumstances ... 293
not to be evasive 296
of compound allegations, how made 292
denial and confession and avoidance can be pleaded together or in alternative... 302
Departure in pleading not allowed 134
except by amendment petition 134
Dilatory pleas, what are 299
how to be taken 299
when to be taken 299
when to be decided 299
should be definite 299
Discovery, when allowed before particulars 123
Document, effect of, how pleaded 31
whole, need not be set out 31
when exact words of, to be stated 32
language of the, to be used in suit on 47

	PAGE
Duty, of court (see **Court**)	
—of Judge (see **Judge**)	
—of pleader (see **Pleader**)	
Easement, how pleaded	22
particulars of, to be given	77
Effect of documents (see **Document**)	
Election Petition	20,59,131,381
Embarrassing pleadings, not allowed...	129
Equitable set-off (see **Set-off**)	
Envoys, suits by or against	243
Estoppel, should not be lightly pleaded...	311
how pleaded	311
specimen of plea of	311
Evidence	
not to be pleaded	39
—three practical applications of this rule	42
(i) condition of mind	42
(ii) notice	43
(iii) implied contract	44
instances of pleading evidence	39
—previous admission are	41
—police report is	41
—balance of account is...	41
—and facts sometimes indistinguishable	39
disclosure of, cannot be compelled	57
Ex-parte cases, proof if necessary in...	296
Facts, not law, to be pleaded	21
only material facts to be pleaded (see **Material Facts**)	27
all -do- -do- ...	27
material, what are	27
not material at present stage not to be pleaded ...	34
if doubtful, to be pleaded...	27
—not evidence	39
in aggravation of damages, to be pleaded ...	33
in mitigation of -do- -do-	34
Firm, suit by or against	232
cause-title in a	233
not necessary to disclose namens of partners ...	233

PAGE

must be brought in the names of partners if firm outside India 232
manager 231,236
plaintiff to obtain order of court, on whom summons to be served in a 235
how to serve summons in case of dissolved firm ... 235
who can defend suit against a firm 233,234
title of written statement 236
appearance of a partner under protest 236
procedure in case of appearance under protest ... 236
single individual carrying on business in assumed name cannot sue in that name but can be sued ... 237
if dead, his legal representative should be impleaded 234
members of a joint family carrying on business, suits by or against... 237
Foreign Law, should be pleaded 25
Foreign States, Ambassadors, etc.,- suits by or against... 243
Form of pleadings 46
Form of particulars 82
Form, prescribed by C.P.C. should be used 48
Frame of suit
considerations in 178
suit to include whole claim 178
penalty of omission to include whole claim ... 178,269
—whether omission intentional or accidental ... 179
all grounds of claim to be alleged 178
all causes of action need not be joined 187
joinder of causes of action (see **Cause of Action**) ... 188
Fraud
how pleaded 62
duty of pleader pleading... 62
general allegations of, not sufficient 63
—must be specifically pleaded 63
when this rule relaxed 65
particulars of, should be stated 65
—must be substantially proved as laid 66
one kind of, alleged, another proved 66
cannot be allowed to be raised after the pleading ... 66

PAGE

Fraudulent intention, how pleaded 42
Frivolous pleas, should not be raised... ... ... 269, 304
Fundamental rule of pleadings 16
Further particulars (see **Particulars**)
Future interest (see **Interest**)
Future mesne profits (see **Mesne profits**)
General Damages (see **Damages**)
Gift, how pleaded 23
Government, suit by, or against, how brought 231
notice under section 80 against, to be alleged in plaint 36
Grounds of Appeal
meaning of 331
every mistake can be 333
—except mistake not affecting decision 333
mistake must be material 334
no irregularity not affecting merits can be a ... 334
mistake must arise from pleading and evidence ... 334
what new grounds not arising from pleading can be taken 338
examples of new grounds which cannot be taken ... 340
point abandoned or waived cannot be 346
subsequent events cannot be 347
—except when original becomes inappropriate ... 347
rules for drafting 347
should be distinctly stated 348
—should be concise 348
—should not be argumentative 348
should be separately stated 349
evidence or rulings should not be referred in ... 348
vague or general grounds not allowed 348
—not to be heard if not alleged in memo 348
(see also **Memo of Appeal**)
Heirship, how pleaded 21
History, of pleadings 8
Idol, can sue or be sued in its own name 228
whether suit by or against, lies in manager's name 228
Illegality, how pleaded 315
facts, showing, when need not be repeated in written statement 315

PAGE

Immaterial facts, instances of... 29
Implied contract, how pleaded 44
Inconsistent Pleadings,
when allowed and when not 84
risk in raising 87
general principle 88
Inducement (see **Matters of inducement**)
Insanity of party, to be alleged in plaint 246, 252
Insolvents, suits in respect of their property 244
Intention, how pleaded 42
Interest, future, rate of, need not be specified 281
separate suit for, does not lie 281
allowed even if not claimed 281
should be claimed 281
Institution of suit, how made... 251
Issues, settlement of 15
Joinder, of causes of (see **Causes of action**)
—of plaintiffs 192
—of defendants 193, 201
(see also **Misjoinder** and **Parties to suit**)
Joint Hindu Family, suit on behalf of, may be filed by manager 237
not necessary to say that a manager sues as such... 237
suits against 237
when manager's representation presumed ... 237
Judge, duty of
to master principles of pleading 13
to see that rules of pleading are observed 15
to exclude irrelevant evidence 14
to apply correct law to proved facts 15
to ascertain points of differences 13
to record admissions, denials 13
Jurisdiction
facts showing, to be clearly alleged in plaint ... 258
allegation in plaint, how should be made 258
plea regarding, in defence 307
when can be raised in appeal 307
vague form of 307
facts on which based, to be alleged 308
valuation for, to be alleged in plaint 259

PAGE

how determined 260
of Appellate Court 315
Justification, how to be pleaded 315
particulars of, to be alleged 315
to be sparingly pleaded 315
risk of frivolous pleading... 315
Laches, no defence unless amounts to waiver 316
no independent defence 316
Language of pleadings
to be precise 47
language of an Act when to be used 47
language of a document when to be used 47
pronouns to be avoided 47
"if" and "but" to be avoided 48
repetition to be avoided 48
complex sentences to be avoided... 48
passive voice to be avoided 48
Law, judge bound to apply correct 21
judge not bound by the view of, pleaded by parties 21
objections in point of (see **Objections in point of Law**)
facts bringing case within rule of 22
pleading not allowed 24
conclusions of, not to be pleaded 21,27
not sufficient, if facts not pleaded 24
when tolerated 25
foreign, to be pleaded 25
customary, or usage to be pleaded 25
matters of, need not be traversed 290
Legal pleas, can be raised in pleading 26
(see also, **Objections in point of Law**)
Legal necessity, particulars of, ... 79
Legal presumption, matters of, not be pleaded 37
Liability, how pleaded 32
absence of, how pleaded 23
Limitation (see also, **Adverse possession**)
exemptions from, to be shown in plaint 263
ground of, need not be specifically alleged 263

PAGE

consequence of not alleging 264
—rule not strictly construed 264
for set-off or counter claim 322
plea of, to be specifically raised... 305
plea of, when can be heard even if not pleaded ... 305
when can be raised in appeal for first time ... 305
form of a 305
in case of addition of new party... 172
for possession, Articles, 64 and 65, distinguished ... 306
in case of amendment of suit as to parties ... 172
Lunatics, how can sue and be sued 246
Malice, how pleaded 42
Manager, of joint family 237
Material facts
what are 27
all and only, to be pleaded 28
exceptions to the above rule 35
(1) condition precedent... 35
(2) matters of legal presumptions... 37
(3) matters of inducement 38
test to determine 29
instances of 30
instances of not 29
if doubtful, to be pleaded... 28
demand before suit not always a material fact ... 29
inability of defendant not a material fact 30
taking a case out of a rule or exception 31
facts bringing a case under statute are 31
facts affecting damages are 32
(see **Damages**)
facts not material at present stage 35
Matters of Law (see **Law**)
Matters of inducement
what are 38,269
may be pleded 38,269
to be reduced to a minimum 38

	PAGE
Mesne profits, future	
should be claimed	281
separate suit for, ...	186
Measures of Damages (see **Damages**)	
Memo of appeal (see also **Appeal**)	
how to be drafted	330
what it should contain	330
heading of	330
grounds of appeal, how stated in (see **Grounds of appeal**)	333
new grounds which can be taken	338
new grounds which cannot be taken	340
relief sought to be stated in	350
valuation of appeal to be stated	331
signature on	351
counsel's certificate when required on	351
when new persons appear, a note of it to be made in	351
Mind, condition of, how pleaded	42
Minor, should be so described in cause title of plaint ...	246,252
name of guardian of, to be mentioned	246,252
attainment of majority by...	247
Misconduct, how pleaded	61,71
Misjoinder	
what is	192
of causes of actioon	192
of plaintiffs and causes of action	192
of defendants and causes of action	193
no, if a defendnat is *pro forma*	196
objection of, when to be raised	196
separate trial in cases of, permissible joinder ...	191
Misrepresentation, how pleaded	69
Mistake, in particulars, how corrected...	69
Money suits, precise amount claimed to be alleged in ...	273
decree cannot be given for more than sum claimed in	273
Mortgage suits, parties to	247
consequence of omission of necessary parties ...	248
one claiming paramount title should not be impleded in	248
Multifariousness, what is	193
Mutts (Math), suits by or against	230

PAGE

Names, of persons, places and things how stated... ... 47,60
Negligence, how pleaded 69
New case, court cannot set up... 108
Non-joinder, of plaintiff 207
of defendants 207
objection as to, to be raised before issues 207
how pleaded 207
consequence of not raising 207
when can be raised later 207
suit cannot be dismissed for 207
Notice, how to be pleaded 43
when precise terms or form of, material 44
waiver of plea as to 115
Numbers, to be expressed in figures and words 46
Numerous persons, suit by or against, how brought (see **Representative Suit**)
Object, of pleadings 8
Objections in point of law
what are 299
how to be framed 300
when to be heard and decided 300
Opponent's pleading, revision of 126
amendment of (see **Amendment**)
striking out of 126
Oral pleadings, what is 6,93
when necessary 7
Paragraphs, separate facts in separate... 48
to be numbered consecutively 48
Particulars
meaning of 57
object of 57
distinguished from 'material facts' 57
duty of court to insist on 58
duty of pleader to insist on 57
application for, in what cases to be made 122
when to be made... 122
—can be called for *suo motu* 122

PAGE

in what cases, should be given 57
terms on which ordered 125
cannot be exacted when oppressive or unreasonable 124
—do— of a mere denial 124
—do— of an immaterial allegation 125
—do— of evidence 125
—can be exacted even if applicant must himself know the facts 125
can be ordered, even if they disclose evidence ... 125
consequence of disobedience of order about ... 126
when discovery ordered before 123
applications for, to be made with promptitude ... 123
consequence of not obtaining 50,122
further, when allowed, ... 122,133
introducing new cause of action, not allowed ... 134
—of accounts 60
—in a suit for accounts... 73
—of adverse possession... 73
—of agreement 74
—of adoption 73
—of adultery 61
—of antecedent debt 74
—of benami transaction... 75
—of breach of trust 71
—of breach of contract... 76
—of breach of duty 76
—of cruelty 76
—of coercion 68
—of collusion 69
—of custom 76
—of desersion 77
—of easement 77
—of fraud 62
—of immorality of debt 78
—of justification 78
—of legal necessity 79
—of medical negligence 71

PAGE

—of misconduct 61,71
—of misrepresentation 69
—of mistake 69
—of negligence 69
—of places 60
—of representation 79
—of special damages 79
—of time and date 60
—of title (one's own) 80,81
—of title (of opponent)... 81
—of title (of third person) 81
—of undue influence 66
form of 82
when long 82
mistake in 81
modes of revision of 121
need not be in application form 83
pleading to 83
terms on which ordered 125

Parties to suit (see also, **Joinder, Misjoinder, Plaint**)
how named in plaint 252
"proper" and "necessary" parties, meaning of ... 197
when several plaintiffs having separate causes of action can join 193
—relating to joint right 198
co-sharers not joining as plaintiff may be made defendant 198
all co-sharer need not join in suit against trespasser 199
—on contract 203
—for tort 206
—in mortgage suits 208
by or against, an idol 228
— do. insolvents and their receivers 244,316
— do. aliens 244
— do. Foreign States, Ambassadors, Envoys ... 243
— do. Government 231
— do. firm 232
— do. corporations 239

PAGE

— do. societies 241
— do. trustees 242
— do. unregistered associations... 242
— do. numerous persons (see **Representative Suits**)
— do. minors 246
— do. Municipal Board... 240
— do. *math* 230
— do. joint Hindu family 237
— do. lunatics 246
— do. receiver 244
amendments as to 210
addition, substitution and striking off 210
—even if it would incease valuation of the suit ... 215,216
party not to be added if resulting in complexity of issues 214
—when suit in the name of dead person 212
—allowed when only one defendant out of several was dead 212
when intervenor to be impleaded... 214,218
inherent power of court to allow... 213,217
no one can be made plaintiff without his consent ... 216
no new plaintiff added without consent of existing plaintiff 216
new party and limitation 218

Partnership *(see Firm)*

Passive voice, to be avoided... 48

Pauper appeals, (see **Appeals**)

Payment, how pleaded 309
mode and time of, should be alleged 309
by third person, may be pleaded... 309
plea of approaching that of set off 310
form of plea of 309

Peremptory pleas, what are... 284

Permission to sue (see **Representative Suits**)

Persons, names of, how to be stated 47

Petitions,
under Representation of People Act 381
for writs 388
in public interest litigation 404
under Railway Claims Tribunal Act 405

PAGE

under Administrative Tribunal Act 405
under Recovery of Debts Due to Banks and Financial Institutions Act 407
under Family Courts Act 408
under Consumer Protection Act 408
Places, names of, how stated... 47
particular of 60
Plaint, what is a 251
contents of a 251
object of 251
essentials of 251
rejection of 130
(1) *Its heading and title*
What they should contain 251
wrong description of defendant immaterial if proper persons served 252
description of a party 252
minor should be so described in 253
guardian's name to be mentioned in 253
representative capacity of party to be alleged in ... 253
order in which defendants should be named in ... 252
(2) *Body of plaint*
how drawn up 254
consists of formal portion and substantial portion ... 254
contents of formal portion 254
each particular in separate para... 254
date of cause of actioon, how stated in, ... 254
facts showing jurisdiction to be stated in 258
valuation to be given, for court-fee purposes ... 259
— do. for jurisdiction 261
minority or insanity of party to be alleged in ... 262
name of guardian need not be alleged in 262
exemptions from limitation to be shown 263
consequence of not alleging exemptions 264
plaintiff's representative character to be alleged in 262
preliminary steps entitling him to sue to be alleged in 263
limitation ... 263

PAGE

(3) *Substantial portion of plaint*
what it should contain 266
liability of each defendant to be shown in 266
fact constituting cause of action to be alleged in ... 266
(see **"Cause of Action"**)
matters of inducement 269
suit on contract 267
suit on tort 268
suit for declaration 268
avoid frivolous, vexatious allegations 269
(4) *Relief* (see **Relief**) 269
damages 271
redundant 273
general 275

Plaintiff, (see also **Parties to Suits**)
joinder of 192,198
misjoinder of 207
non-joinder of 207
numerous, procedure in case of... 223,252

Pleas, peremptory, what are 284
frivolous, should not be taken 304
alternative and inconsistent, how far allowed ... 84
legal 26

Pleaders, duty of
to draft clear and correct pleadings 3,4,16
to acquaint themselves with facts and law 3,4,16
to determine material facts 29
to apply for particulars 58
in pleading fraud 62

Pleading
general 3
—in suit 5
—in other civil proceedings 17
—in writ proceedings 18
—in election petition 20
fundamental rules of 16

PAGE

duty of Judge to master principles of 13
—affirmative case (see **Affirmative Case**)
—law (see **Law**)
—condition precedent, not necessary 35
—damages, general 32,289
— do. special 32,289
to contain all material facts and material facts only 27
—facts not material at present stage 34
—matters of legal presumption, not necessary ... 37
—matters of inducement, allowed 38
—matters of evidence 38
to matters of law, unnecessary 28,288
to particulars 83
to relief, unnecessary 289
additional, when allowed... 133
should not be inconsistent with previous 134
alternative (see **Alternative Pleading**)
amendment of (see **Amendment**)
brevity in, how to attain... 46
to be both concise and precise 47
construction of 9
should not be too strict 11
primary consideration in 11
definition of, in C.P.C. 3
defects and omissions in, how removed by Judge ... 13
technical defects in, no ground for dismissal of suit 13
departure in 134
embarrasing 129
form of 48
to contain full particulars 57
forms of, given in C.P.C. 48
history of 8
inconsistent 84
instances of bad 24
—foreign law 25
—custom 25
—tolerable 25

PAGE

(see also, **Inconsistent Pleadings**)
language of, to be concise 47
meaning of 5
object of 8
oral, what are 6
to be divided into paragraphs 48
precision in, how to attain 47
prolixity in 48
scandalous 127
signature on (see **Signature**)
striking out of 126
unnecessary details to be omitted in 47,128
vague, how dealt with by Judge 13
verification of (see **Verification**)
variance between,-and proof of (see **Variance**)
Precision, how to attain 47
Presumption, matters of legal, need not to be pleaded ... 37
matters which "may be presumed" to be pleaded ... 38
Promissory note, consideration of, need not be pleaded in suit on 38
unless a substantive ground of claim 38
Pronouns, to be avoided in pleadings 47
Proof and Pleading, variance between (see **Variance**)
Receiver, suits by or against 245
Redundant relief (see **"Relief"**)
Reference, on Point of Law 364
Rejection, of Plaint 130
of election petition 131
Relief, different kinds of 269
alternative 269
when damages claimed 271
in money suits 273
all claimable reliefs to be claimed 270
should not be claimed in written statement 284
except in counter claim 284
grounds of relief not be mixed up with 275
court can grant proper, even if not claimed 275
redundant relief 273

PAGE

risk in claiming 274
declaration in suit for possession 275
should be stated in memo of appeal 350
general relief, not neessary to claim 275
relief for costs 281
need not be denied by defendant... 289
different from that claimed, when can be given ... 277
relief not founded on plaint allegation cannot be given 275
larger than claimed cannot be given 275
future interest should be claimed 281
future mesne profits should be claimed 281
amendment in (see **Amendment**)
Repetition, to be avoided 48
Replication, what is 5
Representation, particulars of ... ...
Representation of the People Act ... ...
Representative suit
general 223, 225
notice of 226
permission for, ... 226
is an enabling and not compulsory procedure
Representative capacity, to be alleged in cause title ... 252
—also in body of plaint... 255
Res judicata, how pleaded 312
Review,
effect of appeal on 366
grounds of 369,366,367
Revision of Pleading (see also **Amendment**)
several modes of 121
opponent's pleading 122
—by applying for further particulars 123
—by striking out or amending 126
—scandalous matters 127
—unnecessary matters... 128
—embarrasing matters... 129
—voluntary amendment... 133
Revision, general 369
conditions of 370

	PAGE
Scandalous pleading, not allowed	127
Second Appeal	350
Set-off	
legal	316
legal distinguished form equitable	317
defendant not bound to claim	320
distinguished form adjustment	319
equitable, defendant bound to claim	320
how to be pleaded	318
cannot be claimed unless written statement filed...	6,317
how far can be claimed about time-barred debts ...	318
distinguished from counter-claim	319
court-fee on	319
Signature	
includes mark	49
includes stamp	49
even literate person can affix stamp	49
initials	49
on pleading, by party	49
by agent, when permitted	50
by pleader not permitted	50
authority to make, to agent, essential	50
way in which obtained immaterial	51
need not be specific	50
meaning of "absence" of party	50
permission to make, formal order for	50
formal application by agent for	50
no notice of application for, needed	50
on blank paper not sufficient	49
on behalf of corporation, how made	53
defect in, curable	55
how objection about, dealt with	56
Society, suit by or against	241
Special damages (see **Damages**)	
Special defence (see **Confession and Avoidance**)	
Striking out of opponent's pleading	
—in what cases should be applied for	126

PAGE

—that it is unnecessary... 128
at what stage should be applied for 126
when scandalous, unnecessary or embarrassing ... 127,128,129
meaning of scandalous pleading... 127
examples of embarrassing pleadings 129
scandalous matter not struck off if relevant ... 129
third persons or court, scandalous matter in respect of 129

Striking off, of parties (see **Parties to suit**)

Subsequent events

no notice, of, to be taken 116
when notice to be taken... 116
amendments due to 164,169
during pendency of appeal 168
subsequent pleading when allowed 168
—not to be inconsistent with previous pleading ... 171

Substitution of parties (see **Frame of suit**)

Suit, frame of (see **Frame of suit**)

parties to (see **Parties to suit**)
instituted by plaint 251
on contract 203
for specific performance 204
by landlords 205
for partition 205
for injunction 206
for tort 206
—relating to Hindu religious and charitable endowments ... 228
—by or against Mutt 230
—by or against Muslim Waqf 231
—by or against government 231
—by or against partnership 232
—by or against HUF firm 232
—by or against joint Hindu family 237
—by or against Corporation 239
—by or against Societies 241
—by or against Co-operative Societies 241
—by or against unregistered associations 242

PAGE

—by or against trustees 242
—by or against foreign states 243
—by or against ambassadors and envoys 243
—by or against insolvents and receivers 244
—by or against other receivers 245
—by or against minors and lunatics 246
—by aliens 244
—against rulers of former Indian States 244
—mortgage 247
—under section 92 CPC 249
—interpleader 249
Sums, to be stated in figures and words... 46
Technical defects, in pleading, no ground of dismissal ... 14
Things, to be called by correct name 47
Time, particulars of 60
Title of plaint, what it consists of 251
Title of property, particulars of 80
need not be alleged when opposite party estopped from denying 81
or when party pleading is in possession 80
particulars of, of opposite party when need not be given 80
particulars of, of third person should be given ... 80
to be pleaded when both parties in joint possession... 80
Tort, cause of action in suit on 268
parties in suit on 206
Transfer of Property Act, Sections 41, 53-A
defence of, how pleaded... 24,316
Traverse, what is 284
of compound allegations... 292
may be pleaded with special defence 300
Trustees, Executors Administrators
suit by, or against 242
all must join in suits by, or against 243
except those out of India 243
Undue influence, how pleaded 66
cannot be urged if not pleaded 67
Unnecessary matter, to be struck off from pleading ... 128

PAGE

Unregistered company, or society, suit by or against must be brought in names of members 241
Unsoundness of mind (*see*, **Insanity**)
Usage of trade, should be pleaded 25
Vague, pleading how to be dealt with 14
Valuation, for court-fee, to be given in plaint 259, 260
for jurisdiction —do— 261
how determined 261
when subject matter does not admit of 261
when several claims added 261
when alternative relief claimed 261
Variance between pleading and proof
not allowed normally 93
reason for the rule 93
when allowed 93
every variance not fatal... 102
test to determine whether fatal 101
plaintiff if entitled to rely on defendant's case ... 94
entirely new case not to be set up 106, 107
—unless the same appears from evidence ... 112
court not to set up new case 108
negotiable instrument and original debt 115
Verification of pleading
object of 51
responsibility of 52
by whom to be made 52
mode of 52
by unregistered companies 54
by corporation, mode of 54
meaning of "person acquainted"... 54
by one having no personal knowledge, not allowed 53
application for permission for 52
court's power to insist on party's own 52
—when to be exercised 52
if to be made before Judge 52
defect in 55
—cured by amendment 55
how objection about, to be dealt with 56

	PAGE
Voluntary amendment of pleadings	
—by filing further particulars	133
—by filing additional pleading	133
—by amendment	134
—statutory provision	135
—when leave granted	137
—when refused	143
Way, right of, how pleaded	22
Writ petition, general	18,388
habeas-corpus	397
mandamus	398
prohibition	400
certiorari	402
quo-warranto	401
judicial superintendence...	388
directions and orders	389
Written statement	
by several defendants, when joint can be filed ...	283
—when different advisable	283
—when separate should be filed through seperate pleaders	283
—failure to file	296
plaintiff's, governed by same rule as defendant's ...	282
drafting of	282,283,286
requirements of a	282
formal petition of	283
body of	284
forms of defence	284
several pleas	286
heading of	283
how admissions and denials recorded in	286
denials and non-admissions	287,293
every allegation of plaint to be admitted or denied in	287
exceptions to the above rule	287
denials to be specific	289
denials not to be evasive	296
denials of compound allegations how drafted ...	292
facts not specifically denied in, taken as admitted ...	294
no relief to be claimed in	284

PAGE

except when making counter-claim 284
dilatory pleas 299
objection in point of law 299
special defence 300
compound pleas 302
setting up affirmative case 303
frivolous pleas 304
Some special defences
limitation 305
jurisdiction 306
accord and satisfaction 308
payment or adjustment 309
estoppel 311
promissory estoppel 312
res judicata 312
bar of O.2, R.2 313
bar of Insolvency Act 313
acquiescence 313
waiver 314
illegality 315
justification 315
laches 326
set off 316
counter claim 320
limitation for set off or counter claim 322
(see also **Defence**)