

PARBHANI
DISTRICT AND SESSIONS COURT
PARBHANI



**3rd WORK-SHOP OF JUDICIAL OFFICER
IN PARBHANI DISTRICT
2015-2016**

**SUMMARY/GIST OF PAPERS OF SECOND WORKSHOP
HELD ON 31st January, 2016**



**Under the guidance of the Hon'ble Justice
Shri Tanaji Vishwasrao Nalawade, Judge Bombay High
Court and Guardian Judge of Parbhani Judicial District.**

**LIST OF JUDICIAL OFFICERS IN
PARBHANI JUDICIAL DISTRICT**

<i>Sr. No.</i>	<i>Name of Judicial Officer</i>	<i>Designation</i>
1.	Hon'ble Smt. M.S.Jawalkar	The Principal District & Sessions Judge, Parbhani.
2.	Shri.R.M.Sadrani	District Judge-1& Addl.Sessions Judge, Parbhani.
3.	Shri. C.W. Saindani	District Judge-1& Addl.Sessions Judge, Hingoli.
4.	Shri. D.N. Argade	District Judge-1& Addl.Sessions Judge, Vasmat.
5.	Shri.A.A. Sayeed	District Judge-1& Addl.Sessions Judge, Gangakhed.
6.	Shri.M.P.Divate	District Judge Addl.Sessions Judge, Hingoli.
7.	Shri.V.K.Kadam	Ad-hoc District Judge1-, Parbhani
8.	Shri.P.S.Ghate	Ad-hoc District Judge2-, Parbhani
9.	Shri.S.G.Thube	Ad-hoc District Judge3-, Parbhani
10.	Shri.S.N.Sonwane	Civil Judge Senior Division, Parbhani
11.	Shri.R.D.Bodhane	Chief Judicial Magistrate, Parbhani
12.	Shri.S.K.Tikile	Civil Judge Senior Division, Hingoli
13.	Shri.P.S.Vithalni	Civil Judge Senior Division, Vasmat
14.	Shri.A.A.Ghaniwale	Jt. Civil Judge Senior Division, Parbhani
15.	Shri.S.B.Dige	Civil Judge Senior Division,

		Gangakhed
16.	Shri.A.S.Lanjewar	Jt. Civil Judge Jr.Div.& JMFC., Parbhani
17.	Shri.Satish B.Hiwale	2 nd Jt. Civil Judge Jr.Div.& JMFC., Parbhani
18.	Shri.V.G.Choukhande	3 rd Jt. Civil Judge Jr.Div.& JMFC., Parbhani
19.	Sow.T.M.Deshmukh-Naik	4 th Jt. Civil Judge Jr.Div.& JMFC., Parbhani
20.	Sow.B.S.Pal	5 th Jt. Civil Judge Jr.Div.& JMFC., Parbhani
21.	Shri.M.E.Pawar	6 th Jt. Civil Judge Jr.Div.& JMFC., Parbhani
22.	Shri.S.S.Kadam	Jt. Civil Judge Jr.Div.& JMFC., Gangakhed
23.	Shri.A.S.Alewar	2 nd Jt. Civil Judge Jr.Div.& JMFC., Gangakhed
24.	Shri.A.M.Joshi	Jt. Civil Judge Jr.Div.& JMFC., Vasmat
25.	Shri.K.U.Telgaonkar	2 nd Jt. Civil Judge Jr.Div.& JMFC., Vasmat
26.	Shri.P.P.Deshmane	3 rd Jt. Civil Judge Jr.Div.& JMFC., Vasmat
27.	Shri.P.R.Shinde	Jt. Civil Judge Jr.Div.& JMFC., Hingoli
28.	Shri.G.B.Deshmukh	2 nd Jt. Civil Judge Jr.Div.& JMFC., Hingoli
29.	Shri.S.S.Gaikwad	3 rd Jt. Civil Judge Jr.Div.& JMFC., Hingoli
30.	Shri.A.B.Shendge	Civil Judge Jr.Div.& JMFC., Aundha
31.	Shri.P.P.Modi	Civil Judge Jr.Div.& JMFC., Kalamnuri
32.	Shri.M.Z.A.A.Q.Qurashi	Civil Judge Jr.Div.& JMFC., Sengaon
33.	Shri.S.Y.Kadam	Civil Judge Jr.Div.& JMFC., Sonpeth
34.	Shri.V.N.Girwalkar	Civil Judge Jr.Div.& JMFC.,

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Summary / Gist of the paper on the subject
“ Law relating to amendment of pleadings, judgments, decrees and orders”

A) Amendment of pleadings:-

-Meaning and object:

1- Pleading means plaint or written statement. A plaintiff's pleading is his plaint, a statement of claim in which the plaintiff sets out his cause of action with all necessary particulars and defendant's pleading is his written statement, a defence in which the defendant deals with every material fact alleged by the plaintiff in the plaint and also states new facts which are in his favour, adding such legal objections as he wishes to take to the claim. Where the defendant in his written statement pleads a set off or counterclaim, the plaintiff may file his written statement thereto.

2- Amendment means, to make correction to what is already written in the plaint or written statement. It may happen that sometimes, one cannot plead all the material ideas and that is why there is need of amendment in the pleadings. Order VI Rule 17 of the Code of Civil Procedure deals with amendment of pleadings. Rule 17 reads as under:-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

3- The object of the rule is that the Court should try the merits of the

cases that come before the Court and should consequently allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. Ultimately, Courts exist for the purpose of doing justice between the parties and not for punishing them, and they are empowered to grant amendment of pleadings in the larger interest of doing full and complete justice to the parties. Provisions for the amendment of pleadings are intended for promoting ends of justice and not for defeating them. Rule 17 of Order VI confers wide discretion on a court to allow either party to alter or amend his pleading at any stage of the proceedings on such terms as it deems fit. However, such discretion must be exercised judicially and in consonance with well established principles of law. The proviso as inserted by the Amendment Act, 2002 however, puts further restrictions on power of the court in allowing amendment.

Amendment affecting jurisdiction :

4- An amendment of a plaint, which if granted would oust the jurisdiction of the Court, can be allowed. After such amendment, the court should return the plaint for a presentation to the proper court. While considering whether the amendment is to be granted or not, the court does not go into the merits of the matter and decide whether or not the plaint made therein is bonafide or not. Just because an amendment takes the suit out of the jurisdiction of that court, is not ground for refusing that amendment.

5- In the case, **Mount Mary Enterprises Vs. Jeevratna Medi Treat Pvt., 2015 (5) Mh.L.J. 214**, the Hon'ble Supreme Court held that, “ the amendment application made by the plaintiff should have been granted, especially in view of the fact that, it was admitted by the plaintiff and that the suit property was initially under valued in the plaint and by virtue of the amendment application, the plaintiff wanted to correct the error and wanted

to place correct market value of the suit property in the plaint. The nature of the suit was not to be changed by virtue of granting the amendment application because the suit was for specific performance. The main reason assigned by the trial Court for rejection of the amendment application was that, upon enhancement of the valuation of the suit property, the suit was to be transferred to the High Court on its original side. That is not a reason for which the amendment application should have been rejected. The amendment application should not have been rejected by the trial Court and the High Court should not have confirmed the order of rejection. Impugned judgment delivered by the High Court and the order of the trial Court, rejecting amendment application set aside. The appeal is allowed and the trial Court is directed to permit the appellant/plaintiff to amend the plaint as prayed for in the amendment application so as to change valuation of the suit property.”

General principles for leave to amend:-

6- The rules confers a very wide discretion on courts in the matter of amendment of pleadings. As a general rule, leave to amend will be granted to enable the real question in issue between the parties to be raised in pleadings, where the amendment will occasion no injury to the opposite party and can be sufficiently compensated for by costs or other terms to be imposed by the order. Ordinarily, the following principles should be born in mind in dealing with applications for amendments of pleadings-

(i) all the amendments should be allowed which are necessary for determination of the real controversies in the suit;

(ii) the proposed amendment should not alter and be a substitute for the cause of action on the basis of which the original *lis* was raised;

(iii) inconsistent and contradictory allegations in negation to the

admitted position of facts or mutually destructive allegations of facts would not be allowed to be incorporated by means of amendment;

(iv) proposed amendments should not cause prejudice to the other side which cannot be compensated by means of costs;

(v) amendment of a claim or relief barred by time should not be allowed;

(vi) no amendment should be allowed which amounts to or results in defeating a legal right to the opposite party on account of lapse of time;

(vii) no party should suffer on account of technicalities of law and the amendment should be allowed to minimize the litigation between the parties;

(viii) the delay in filing petitions for amendments of pleadings should be properly compensated for by costs;

(ix) error or mistake which if not fraudulent should not be made a ground for rejecting the application for amendments of pleadings;

7- All amendments should be allowed which satisfy the two conditions:-

(a) of not working injustice to the other side, and

(b) of being necessary for the purpose of determining the real questions in controversy between the parties.

The general rule in the matter of allowing amendment is that, all amendments are to be allowed which do not purport to set up a new case and which would not work injustice to other side and will be necessary for the purpose of determining the real question in controversy between the parties. Therefore the main points to be considered before a party is allowed to amend his pleadings, are; firstly, whether the amendment is necessary for the determination of real question in controversy; and secondly, can the amendment be allowed without injustice to other side.

The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the

determination of the real question in controversy. If that condition is not satisfied, the amendment should not be allowed. On the other hand, if the amendment is necessary to decide the “real controversy” between the parties, the amendment should be allowed even though the court may think that the party seeking the amendment will not be able to prove the amended plea. This is the basic test which governs the courts' unchartered powers of amendment of pleadings. No amendment should be allowed *when it does not satisfy this cardinal test*. The second condition is also equally important, according to which no amendment will be allowed which will cause injustice to the opposite party. It is settled law that the amendment can be allowed if it can be made without injustice to the other side. But it is also a cardinal rule that “there is no injustice if the other side can be compensated by costs.

8- In the case **Walchandnagar Industries Ltd. Mumbai Vs. Indraprastha Developers Pune, 2015 (3) Mh.L.J. 786**, the Hon'ble Bombay High Court observed that, while deciding an application for amendment, the court is not required to deal with the disputed questions of fact involving in appreciation or re-appreciation of evidence on record. The Court has to be satisfied on the fulfillment of certain conditions and has to balance the conflicting interest. The process involves the following steps to be taken:

(a) To read all the averments in the plaint together and to find out what is the real controversy involved in the matter and the cause of action stated for the reliefs claimed.

(b) To read the proposed amendment to find out and as to how and in what manner it is necessary to decide the real controversy involved in the suit, to get the reliefs claim, or to avoid the multiplicity of the litigation.

(c) To find out whether the conditions precedent for grant of an amendment at the pretrial stage or, as the case may, after the commencement of the trial, are satisfied.

(d) The grant of amendment does not fall within the conditions of prohibitory in nature laid down in the precedents.

The Hon'ble High Court further observed that, there is no change in the law laid down by the Apex Court prior to an amendment introducing the proviso to Order VI Rule 17 of the Civil procedure Code and even after an amendment, the criteria to be applied remains the same to the extent that, the Court must be satisfied on the following conditions when it allows an amendment:

(a) The amendment necessary for determining the real controversy involved in the matter and to avoid multiplicity of the litigation should be liberally allowed.

(b) It should not change the nature or basic structure of the suit.

(c) The change in the nature of the relief claimed shall not be considered as a change in the nature of the suit and the power needs to be exercised for doing full and a complete justice between the parties.

(d) The amendment changing cause of action setting up a fresh claim, which has become barred by limitation since the date of institution of the suit, should not be allowed. As a general rule, the court should decline the amendments if a fresh suit on the amended plaint would be barred by limitation on the date of the application.

(e) The amendment causing injustice and prejudice of an irremediable character which cannot be compensated by awarding cost, should not be allowed.

(f) The Court should discourage *mala fide* amendment designed to delay or protract the legal proceedings.

9- The Hon'ble Bombay High Court in **Bharat Petroleum Corporation Ltd. Vs. Precious Finance Investment Pvt.Ltd. 2006(6) Bom. Cr. 510** has given following guidelines/criteria for grant of amendment of pleadings:-

(i) The proviso to Order 6 Rule 17 is procedural and not a part of substantive law. It does not deal with the power of the Court

and also does not specifically take away the power of the court to allow the amendment after the commencement of trial. It only empowers the court to reject the application if it comes to the conclusion that in spite of "due diligence", the parties could not have sought the amendment before the commencement of trial.

(ii) The proviso to Rule 17 of Order 6 of the Code of Civil Procedure, in the present form and context, is directory and not mandatory. While dealing with the application under Order 6 Rule 17 courts can apply the principles/guidelines laid down by the Supreme Court and High Courts before the Amendment Act of 2002 came into force, if the amendment is found to be necessary for the purpose of determining the real questions in controversy between the parties even after the commencement of trial.

(iii) While dealing with the application under Order 6 Rule 17 made after commencement of the trial, the court should, all the time and at all the stages, bear in mind the force, impact and vigour of the provision and see that it is maintained and not nullified and that the application is not filed to delay the trial.

(iv) The commencement of the trial as mentioned in proviso to Order 6 Rule 17 of C.P.C. must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of documents.

(v) Once a prayer for amendment is allowed the original pleadings should incorporate the changes in a different ink or an amended pleading may be filed wherein with the use of a highlighter or by underlining in red the changes made may be distinctly shown.

(vi) The applicant should specifically set out which portions of the original pleadings were sought to be deleted and what were the averments which were sought to be added or substituted in the original pleadings. The applications giving a vague idea of the nature of the intended amendment and then annex a new written statement with the application Page 3259 to be substituted in place of the original written statement cannot be and should not be allowed.

(vii) The applicant, seeking amendment, should offer sufficient and proper explanation mentioning the particular circumstances against which an amendment was sought to be

enable the court to reach the conclusion that inspite of due diligence the applicant could not have raised the matter before the commencement of trial.

(viii) Once a prayer for amendment is allowed the party should incorporate the amendment in the pleadings within the time limited for that purpose or else within 14 days as provided by Order 6 Rule 18 of the C.P.C. As far as possible the courts while allowing the amendment should direct the party to carry out amendment within time frame.

(ix) When one of the parties has been permitted to amend his pleading, an opportunity has to be given to the opposite party to amend his pleading. The opposite party shall also have to make an application under Order 6 Rule 17 of C.P.C. which, of course, would ordinarily and liberally be allowed. Such amendments are known as “consequential amendments”. However, a new plea cannot be permitted to be added in the garb of a consequential amendment, though it can be applied by way of an independent or primary amendment.

(x) An amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. The plaintiff cannot be allowed to amend his pleadings to alter materially or substitute his cause of action or the nature of his claim. However, adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. The courts are, therefore, required to take more liberal view in allowing amendment of written statement than of plaint and question of prejudice is less likely to operate with same rigour in former than in latter case.

(xi) The courts while deciding the application for amendment should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Amendment need to be allowed to avoid uncalled for multiplicity of litigation.

(xii) The defendant has a right to take an alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn and it should not result in defeating a legal right accruing to the plaintiff on account of lapse of time.

(xiii) The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.

(xiv) If it is permissible for the plaintiff to file an independent suit, the same relief which could be prayed for in a new suit should be permitted to be incorporated in the pending suit by way of an amendment. Such amendment would curtail multiplicity of legal proceedings.

(xv) Inconsistent plea, in a given case, can also be allowed to be raised by the defendants in the written statement. However, an inconsistent plea which would displace the plaintiff completely from the admissions made by the defendants in the written statement, however, cannot be allowed. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants.

(xvi) The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments should be allowed more liberally than those which are sought to be made after commencement of the trial and after conclusion thereof.

(xvii) The Court can allow amendment of pleadings even at the appellate stage for the purpose of determining the real question in controversy between the parties or if it is necessary for the effective decision of the case. However, the delay in seeking an amendment must be explained satisfactorily and that it should not cause injustice to the other side or it should not affect the right already accrued to the other side. At appellate stage none of the parties could be allowed to withdraw the admissions or pleadings, if the rights are accrued to the other side.

(xviii) If the application for amendment is allowed after the commencement of trial and if the proposed amendment has the effect of altering the nature of the defence the plaintiff can claim re-examination of the witness/es and if he makes such claim the court should allow such prayer.

(xix) While considering whether an application for amendment should be allowed, the court is not expected to go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.

(xx) An amendment once incorporated relates back to the date of the suit. However, the doctrine of 'relation-back' in the context of amendment of pleadings is not one of universal application and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking amendment was filed.

(xxi) An application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation. On the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing the amendment in the interest of justice. The plea of limitation being a mixed question of law and fact can be made a subject matter of the issue after allowing the amendment prayed for.

Amendment to written statement :

10- The principles applicable the amendment of a plaint are in general, applicable to the amendment of a written statement. The Hon'ble Supreme Court in the case, **Usha Balasaheb Swami and others vs. Kiran Appaso Swami and Others AIR 2007 SC 1663**, explained the law relating to applicability of law relating to amendment of pleadings to the amendment of written statements. It is observed that, the prayer relating to the amendment to plaint and that of written statements stand on different levels. The general principle is that amendment should not be allowed which substitutes a cause of action in nature of the claim. The Hon'ble Supreme Court held that there is no counterpart in the principles relating to the amendment of the written statement. Hence, the Court said that

addition or substitution of written statement would not be objectionable; whereas addition or subtracting cause of action by the plaintiff may be objectionable. Hence the Hon'ble Apex Court has held that the Court should be more liberal in allowing the application of amendment of the written statement than in the case of plaintiff as question of prejudice would be far less in the former than in the latter.

Leave to Amend when refused:

11- Generally, in the following cases leave to amend will be refused by the Court:-

(a) Where the amendment is not necessary for the purpose of determining the real question in controversy between the parties. The "real controversy" test is the basic test and it is the primary duty of the court to decide whether such amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. Therefore, if the amendment is not necessary or is merely technical or useless or without any substance, it will be refused.

(b) Where the plaintiff's suit would be wholly displaced by the proposed amendment.

(c) Where the effect of amendment could be to take away from the defendant, a legal right which has accrued to him by lapse of time, amendment.

(d) Where the amendment would introduce a totally different, new and inconsistent case, and the application is made at a late stage of the proceedings.

(e) Where the application for amendment is not made in good faith.

Amendment after commencement of trial -Proviso to Rule 17:-

12- While amendments proposed before the commencement of trial are

to be allowed liberally, those which are sought after commencement of trial, are to be put to test according to the conditions set forth in the proviso to Rule 17. Said proviso added by the Amendment Act of 2002, indicates that once the trial commences, no amendment should be allowed except where it is found necessary on account of subsequent events subsequent to the framing of issues or on account of any fact coming to the knowledge of the party concerned after framing of issues which he could not have discovered with due diligence before the issues were framed.

13- Question arises when the trial of a suit commences. Generally, the trial commences with the performance of the first act or step necessary to proceed with the trial. First step necessary to go ahead with the trial of the suit is framing of issues. In the case of *Union of India and others vs. Major General Madan Lal Yadav* reported in [1996] 4 SCC 127, the Hon'ble Supreme Court held that, trial means act of proving or judicial examination or determination of the issues including its own jurisdiction or authority in accordance with law of adjudging guilt or innocence of the accused including all steps necessary thereto. The trial commences with the performance of the first act or steps necessary or essential to proceed with the trial.

14- In the case *Ajendraprasadji N. Pande Vs. Keshavprakashdasji* AIR 2007 SC 806, the Hon'ble Supreme Court held that, where the defendant sought amendment of written statement after the commencement of trial and after evidence of 3 witnesses were over and documentary evidence, was tendered, it was held by the Supreme Court that no ground was raised in the petition to show that despite due diligence the matter could not be raised earlier and as such amendment at such stage would cause prejudice to the plaintiff and the matter squarely fell within the proviso to this rule.

15- The entire object of the introduction of the 'proviso' is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises to that parties had sufficient knowledge of each other's case. It also helps in checking the delays in filing in seeking amendments. Yet, the proviso is not a complete bar and an exception is provided therein. If application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial.

16- In the case, **Vidyabai and others vs. Padmalatha and another, 2009 (4) Mh.L.J. (SC) 30**, the Hon'ble Supreme Court held that, "the date on which the issues are framed is the date of first hearing. Provisions of the Code envisage taking of various steps at different stages of the proceedings. Filing of an affidavit in leave of examination-in-chief of the witness, would amount to commencement of proceedings. It is the primal duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6, Rule 17 of the Code restricts the power of the Courts. It puts an embargo on exercise of its jurisdiction. The Court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisages therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint."

17- In **Baldev Singh vs. Manohar Singh AIR 2007 SC 2832**, the Hon'ble Supreme Court held that amendment of written statement shall not be allowed when the trial of the suit has already commenced. It is also held that, 'commencement of trial' as used in the proviso must be understood in limited sense as meaning final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments.

Doctrine of “relation back”:-

18- Normally, an amendment relates back to the pleading, but the doctrine is not absolute, unqualified or of universal application. In appropriate cases, the court may order that the amendment would take effect from the date an application was made or the amendment was allowed and not from the date when the plaint or written statement was presented.

Failure to amend- Rule 18:-

19- If a party, who has obtained an order for leave to amend, does not amend accordingly within the time specified for that purpose in the order or if no time is specified then, within 14 days from the date of the order, he shall not be permitted to amend after expiry of the specified time or of 14 days unless the time is extended by the court. It does not, however, result in dismissal of the suit. Again, the court has discretion to extend the time even after the expiry of the period originally fixed.

B) Amendment of judgment, decree & orders:-

20- Section 29) of Civil Procedure Code speaks about judgment. Judgment means the statement given by the judgment on the grounds of a decree or order.

As per section 2(2) of Code of Civil Procedure, decree means the formal expressing of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of plaint and the determination of any question within section 144 but shall not include;

(a) any adjudication from which an appeal lies as an appeal from an order;

(b) any order of dismissal for default;

Explanation: A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit, it may be partly preliminary and partly final.

Section 2(14) Code of Civil Procedure states about order. Order means the formal expression of any decision of a Civil Court which is not a decree.

21- As per Section 152 of the Code of Civil Procedure, clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.

Object:-

22- The object behind allowing the amendment of judgments, decrees, orders under this section is to provide a remedy in cases of casual omissions or negligence by the ministerial staff of the court in preparing the records or even by the court and to give effect to the meaning and intention of the court. The basis of the provision under section 152 of the Code is founded on the maxim, '*actus curiae neminem gravabit*' i.e. an act of the court shall prejudice no man. This maxim is founded upon justice and good sense and affords a safe and certain guide for administration of law.

23- It is the duty of the court to see that records are true and

present the correct state of affairs. An arithmetical mistake is a mistake in calculation, while a clerical mistake is a mistake of writing or typing error from an accidental slip or omission or an error due to careless mistake or omission made unintentionally or unknowingly. A matter requiring elaborate arguments or evidence on question of fact or law, for its discovery cannot be categorized as an error arising out of accidental slip or omission in order to bring it within the scope of section 152. The Hon'ble Supreme Court in the case, **Niyamat Ali Molla Vs. Sonargaon Housing Co.Society Ltd.****AIR 2008 SC 225**, held that, the provision under section 152 is not to be construed in a pedantic manner. Decree can be corrected by court under section 151 as well as under section 152. Thus, where the statements in the body of the plaint sufficiently described suit property, correction of the schedule of the suit property in the decree accordingly by the executing court is proper and no interference is called for. In another case, **Tilak Raj Vs. Baikunthi Devi AIR 2009 SC 2136**, the Hon'ble Supreme Court held that, in case of genuine and *bona fide* mistake regarding *Khasra* number of the suit property in decree, direction can be given by the Court for correction of the mistake in order to cut short the litigation. Therefore, in this case, instead of directing the appellant to seek remedy under section 152 before the court passing decree, the Hon'ble Supreme Court itself directed correction of the decree.

24- There are only two cases in which the court can amend or vary a decree or order after it is drawn up and signed, namely--

- 1) under its inherent powers, when the decree or order does not correctly state what the court actually decided and intended; and
- 2) under this section, where there has been a clerical or arithmetical mistake, or an error arising from an accidental slip or omission;

The statutory power to amend is based on two important principles, namely,

- 1) an act of the court must not prejudice a party, and
- 2) it is the duty of the courts to see that their records are true and represent the correct state of affairs.

The mistakes must be patent and apparent on the face of the record and not latent errors whose discovery depends on elaborate arguments on questions of law and fact.

25- The power of rectification of clerical, arithmetical errors or accidental slip does not empower the court to have a second thought over the matter and to find that a better order or decree should be passed. There should not be a reconsideration of the merits of the matter to come to a conclusion that it would have been better and in the fitness of things to have passed an order as is sought to be passed on rectification. On a second thought, the court may find that it may have committed a mistake in passing an order in certain terms, but every such mistake does not commit its rectification in the exercise of powers under this section. It is to be confined to something that was initially intended, but was left out or added, against such intention. In the case **Dwarkadas Vs. State of M.P. AIR 1999 SC 1031**, the Hon'ble Supreme Court held that the omission in not granting *pendente lite* interest, is not an accidental omission or mistake and neither the trial court nor the appellant court has power to award *pendente lite* interest under section 152 of the Code.

26- In the case of **Bijay Kumar Saraogi vs. State of Jarkhan AIR 2005 SC 2435**, the Hon'ble Supreme Court held that a mere perusal of section 152 makes it clear that it can be invoked for the limited purpose of correcting clerical errors or arithmetical mistakes in the judgment. The same cannot be invoked for claiming a substantive relief which was not granted under the decree, or as a pretext to get the order which was attained finality, reviewed.

27- In the case, **State of Punjab vs. Darshan Singh AIR 2003 SC 4179**, the Hon'ble Supreme Court held that the settled position of law is that, after the passing of judgment, decree or order, the same becomes final subject to further avenues of remedy provided under the law. The omission sought to be corrected which goes to the merit of the case is beyond the scope of section 152. It implies that this section cannot be pressed into service to correct an omission which is intentional, however erroneous as may be.

Application for amendment of decree or order:-

28- Application for amendment of decree or order is not a continuation of the suit or proceeding in which it is made but an independent proceeding. Only a party to a suit or decree can make an application for an amendment under this provision. Moreover, the jurisdiction can also be exercised by the court *suo motu* . Though the code does not require a notice to be given to the opposite party before a judgment, decree or order is amended, equity requires that prior to allowing an amendment, an opportunity be given to the party who will be affected by amendment to present its case. An order amending the decree without notice to the party affected is a nullity. Once a judgment, decree or order is amended, it takes effect from the date of the original judgment, decree or order and not from the date of the amendment. A decree which has been fully satisfied cannot be amended.

Amendment in proceeding:-

29- As per section 153 of the Code, the Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be

made for the purpose of determining the real question or issue raised by or depending in such proceeding. This sections confer a general power on the court to amend defect and errors in 'any proceeding in a suit' and to make 'all necessary amendments' for the purpose of determining the real question at issue between the party to the suit. The object underlying this provision is to minimize litigation and to avoid a multiplicity of proceedings. It seeks to ensure that technicality does not stand in the way of substantial justice and a party is not refused a just relief merely because of some mistake, negligence inadvertence or even an infraction of the rules of the procedure.

Conclusion:-

30- Thus, in view of the above, the law can be summarised that amendments should be allowed if an application is moved at a pre-trial stage, and even at a later stage if the party wants to introduce the facts in respect of subsequent development as it would be necessary to avoid multiplicity of proceedings. The amendment is not permissible if the very basic structure of the plaint is changed or the amendment itself is not *bona fide*. In case the facts were in the knowledge of the party at the time of presenting the pleadings, unless satisfactory explanation is furnished for not introducing those pleadings at the initial stage, the amendment should not be allowed. Amendment should also not be permitted where it withdraws the vital admissions of the party or the amendment sought is not necessary to determine the real controversy involved in the case.

Hence this summary is concluded.

Members of Core Group :-

Sd/-

Shri. D.N. Argade,
District Judge-1, Basmath.

Sd/-

Smt. M.S. Jawalkar,
Principal District & Sessions Judge
Parbhani.

Sd/-

Shri. A.A. Sayeed,
District Judge-1, Gangakhed

Sd/-

Shri. R.M. Sadrani,
District Judge-1, Parbhani

Sd/-

Shri. S.G. Thube,
Ad-hoc District Judge-2,
Parbhani.

Sd/-

Shri. S.N. Sonwane,
Civil Judge (S.D.) Parbhani.

* * *

Part Ist : PROBLEMS OF UNDERTRIAL AND SOLUTIONS.

AND

Part IInd. : THE BIRTH AND DEATH REGISTRATION ACT.

Part Ist

PROBLEMS OF UNDERTRIAL AND SOLUTIONS.

Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care.

- Mahatma Gandhi

INTRODUCTION:

1. One of the most neglected aspects of criminal justice system is the delay caused in the disposal of cases and detention of the accused pending trial. These undertrial prisoners are detenus put in prison mainly under non-bailable offences and persons who are unable to produce sufficient sureties in cases of bailable offences. It is the result of an arrest for an alleged offence not followed by grant of bail. Sometimes they are denied justice for long stretch of time. They are separated from their family for the best part of their life eventhough they may be innocent. In different Indian prisons they are found in a sizeable number. In certain cases they have to live in prison for a longer period than the period of imprisonment which would be awarded to them if they were found guilty.

2. The law enforcement authorities are doing these without any legal authority because prisons are primarily meant for lodging convicts and not for housing persons under trial. The evils of contamination in jail

are well-known. There are various problems for the undertrial detention. The problem is not confined to India alone. It has been reported even from countries like USA and England. In certain countries, the feeling has been growing that the decision of the court on the merits may sometimes itself depend on the detention or release of the accused pending trial. The problem of persons in prison has received attention at length even in United Nations.

THE HARBINGER OF UNDERTRIAL PRISONERS:

3. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. If a person is deprived of his liberty under a procedure which is not reasonable, fair or just such deprivation would be violative of his fundamental right. He can enforce such fundamental right and secure his release. An undertrial prisoner can effectively invoke this Article against the authorities who unnecessarily detains him in prison.

4. Speedy trial is not specifically enumerated as a fundamental right. But the broad interpretation given to Article 21 in **Maneka-Gandhi v. Union-of India (AIR 1978 SC 597)** include it also within the purview of Article 21. So a procedure which does not ensure a reasonably quick trial cannot be regarded as reasonable, fair and just and it falls within the ambit and scope of Article 21 of the Constitution of India.

5. In the case of **Maneka-Gandhi (Supra)**, Hon'ble Justice Bhagwati held that Article 21, though couched in negative language, confers the fundamental right to life and liberty. It does not exclude Article 19. Even if there is a law prescribing procedure for depriving a person of personal liberty and there is consequently no infringement of

the fundamental right conferred by Article 21, such law in so far as it abridges or takes away any fundamental rights under Article 21 would have to meet the challenge of Article 21. Such law would also be liable to be treated with reference to Article 14. The expression personal liberty in Article 21 is of the widest amplitude and covers a variety of rights which go to constitute the personal liberty of men and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19(1). Thus articles 19(1) and 21 are not mutually exclusive.

REASONS FOR UNLAWFUL DETENTION:

6. There are large number of persons in the Indian jails undergoing incarceration even before a trial. Various reasons are attributed for this detention. One of the reasons of this long pre-trial detention is our highly unsatisfactory bail system. Persons who are undergoing imprisonment for lack of furnishing proper bail are mostly poor and illiterate. The bail system here is controlled by the financial capacity of the accused. It is based on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. This system of bails operate very harshly against the poor. The rich people are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties. The reason is that the amount of surety imposed by the courts are very excessive. This thrusts a lot of persons behind bars. The Legal Aid Committee appointed by the Government of Gujarat under the Chairmanship of Hon'ble Mr. Justice Bhagwathi has expressed this glaring inequality.

7. In the case of *Hussainara Khatoon v. Home Secy, State*

of Bihar (AIR 1979 SC 1360) has observed that:

"It is a travesty of justice that the poor, because the bail procedure is beyond their meagre means, have to suffer long years in pre-trial detention. Risk of monetary loss is not the only deterrent against fleeing from justice. The antiquated procedure perpetuated by the new Code, which insists on a bond with a monetary obligation invariably supported by sureties whose solvency must be proved, operates very harshly against the poor, beyond their means. They are exploited, suffer deprivation and losses and are unable to defend themselves. The discriminatory nature of the bail system becomes all the more acute by reason of the mechanical way in which it is customarily operated. Hence to eliminate the evil effects of poverty and assure fair and just treatment to the poor in the administration of justice, it is imperative that the bail system should be thoroughly reformed so that it should be possible for the poor, as easily as the rich, to obtain pre-trial release without jeopardising the interests of justice.

But even under the law as it stands today the Courts must abandon the antiquated concept under which pre-trial release is ordered only against bail with sureties.

But even while releasing the accused on personal bond it is necessary to caution the Court that the amount of the bond which it fixes should not be based merely on the nature of the charge. The decision as regards the amount of the bond should be an individualised decision depending on the individual financial circumstances of the accused and the probability of his absconding. Moreover, when the accused is released on his personal bond, it would be very harsh and oppressive if he is required to satisfy the Court regarding his solvency. An enquiry into his solvency can become a source of great harassment to him and often result in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond."

PROBLEMS OF UNDERTRIAL PRISONER:

A. VIOLENCE:

8. Prisons are often dangerous places for those they hold. Group violence is also endemic and riots are common. In a three-day riot and stand-off in the Chappra District prison in Bihar towards the end of March, 2002, 6 prisoners died in the shootout that occurred when commandos of the Bihar Military Police were called in to quell the riots. Incidents of internal violence are there where meek and first time offenders are tortured and made to do all menial tasks for their senior inmates. Failure of compliance many times increases their woes.

B. CRIMINALISING EFFECT OF A PRISON:

9. There are severe chances of contamination of the first time, circumstantial and young offenders into full-fledged criminals being huddled with hard core criminals of heinous crimes in the same prisons. It is an oft given quote that prisons are universities of crime, where people go in as under-graduates and come out with Ph.Ds. in crime. There should be scientific and psychological classification of inmates/prisoners. The courts in Delhi have taken leap bounding step in this regard by creation of separate Family Courts. As for the first time the subjects of family disputes are taken at distance from the regular criminals, this is the first step in avoiding their mixing with the other criminals.

C. OVERCROWDING:

10. Prisons are overcrowded and there is shortage of adequate space. Congestion in jails, particularly among undertrials has been a matter of concern. Majority of the inmates constitute those who are

awaiting trial. To decrease the prison overcrowding the under-trial population has to be reduced drastically. The three wings of the criminal justice system would have to act in harmony to achieve this goal.

D. SEXUAL ABUSE:

11. Prisons are institutions that lodge people of same sex together. Being removed from their natural partners, forces the prisoners to look for alternative ways to satisfy their sexual urges. This often finds vent in homosexual abuses where young and feeble are targeted. Resistance leads to aggravated violence. At times, prisoners are subjected to massive homosexual gang-rapes. Apart from causing severe physical injuries and spreading sexually transmitted diseases including HIV/AIDS, it also induces severe trauma in prisoners forcing some of them to commit suicide. The victims carry a lot of anger and frustration in themselves, which they take out on the next innocent person.

E. HEALTH PROBLEMS:

12. When the common citizen of country cannot enjoy the safe and healthy condition it is farce to think of the same in the prisons meant for criminals. Most of the prisoners already come from socio-economically disadvantaged sections of the society where diseases, malnutrition and absence of medical services are prevalent. When such people are cramped in with each other in unhealthy conditions, infectious and communicable diseases spread easily.

F. DRUG ABUSE:

13. Besides murder, attempt to murder and other serious anti-personal offences, people booked under the anti-drug laws constitute a substantial percentage of the prison population. Being in prison and cut off from the free world, sees an increased desperation to get the banned

substances to satisfy their addictions to drugs. Since prison is an environment where there is a captive, bored, largely depressed population eager for release from the grim everyday reality, this also increases the danger of fresh prisoners being inducted into drug abuse. These are some of the grave issues that prisoners face inside the prison complex. Over the time mounting up of every accused in prisons would require creation of more prisons, but there is only limited fund and resources that the government is allowed to spend on such infrastructural requirements.

G. MENTAL ILLNESS OF PRISONERS:

14. It has been estimated that the prevalence of severe mental illness in jails and prisons is three to five times higher than that in the community (Lamb et al 1998). Mental illness may develop during imprisonment or be present even before admission to the prison. Among people who are biologically prone to mental disorders, the stress of being in prison can precipitate the illness. Such disorders can also develop due to the prevailing prison conditions (structural and social factors such as overcrowding, dirty and depressive environment, poor food quality, inadequate medical care, lack of meaningful activity, enforced solitude or lack of privacy, isolation from social networks, etc), due to torture or other human rights violations. In addition, prisoners are deprived of their liberty leading to deprivation of choices taken for granted in the outside community: they can no longer freely decide where to live, with whom to associate and how to fill their time, and must submit to discipline imposed by others. Communication with families and friends is often limited. Moreover, prisoners may have guilt feelings about their offences and anxiety about how much of their former lives will remain intact after release in addition to the stigma associated with having been in a prison.

DELAYED INVESTIGATION:

15. However, low bench strength seems pale in comparison to the role played by police and prosecution functionaries in delaying investigation and trial processes. It is well known that a great majority of undertrials languish in prisons because the police do not finish investigation and file the charge-sheet in time.

WOMEN UNDERTRIAL PRISONERS:

“ The marginalisation and discrimination experienced by women in society does not stop at the prison entrance. Rather it continues to impinge on their lives even when in State custody, perhaps in its most aggravated forms.”

-Hon'ble Justice Geeta Mittal.

16. These few words explain the whole story of plight of the women prisoners. Apart from stigma and humiliations the women has to take care of their children, few of which give birth within the boundaries of the prison itself.

17. As far as women in prisons are concerned, the women prisoners are found to suffer from a variety of health problems in the custodial environment - for eg gynecological, obstetric, physical, and mental. Care is needed in all these aspects as well as rehabilitation.

18. Fortunately the number of female prisoners confined in the jails of the country is small. It is very important that female prisoners should be guarded, trained, and supervised by female only. With the exception of superintendent and few necessary members of the staff, the whole of the staff of the female jail consist of woman. Not only

should the staff immediately in contact with female prisoners consist of female. But the visitors should also be women as far as possible. The training of females in handicrafts also differs from that of males.

19. In ***Sunil Batra vs. Delhi Administration (1980 S C 1579)***, the Hon'ble Supreme Court issued several directives to the government regarding prison administration and observed that the norms laid down by the international organizations must be followed so as to respect the sanctity of the basic human rights of the prisoners. In this case, a letter written by a prisoner in Tihar Jail directly to the judges of the Supreme Court, complaining that the jail warden had pierced a baton into the anus of a prisoner to extract money from the victims relatives, was treated by the Hon'ble Supreme Court as a petition and proceedings were initiated.

20. In ***Sheela Barse vs. State of Maharashtra (1983 SC 378)***, a letter from Sheela Barse, a journalist, complaining of custodial violence to women prisoners while confined in the police lock-ups in the city of Mumbai, was treated as a Writ Petition. The Hon'ble Supreme Court in this case issued various directions to the State of Maharashtra conferring protection to women prisoners in police lock ups.

21. In the case of ***D.K. Basu vs. State of West Bengal (1997 SC 610)***, the the Hon'ble Supreme Court held that the precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenues and other prisoners in custody, except according to procedure established by law by placing such reasonable restrictions as one permitted by law. The Court laid down a number of guidelines which are required to be followed in all cases of arrest and detention.

22. In ***Anil Yadav and Ors. v. State of Bihar and Bachcho Lal Das, Superintendent, Central Jail, Bhagalpur, Bihar [1982 (2) SCC***

195] a petition was filed regarding blinding of under- trial prisoners at Bhagalpur in the **State** of Bihar. According to the allegation, their eyes were pierced with needles and acid poured into them. The Hon'ble Supreme Court had sent a team of the Registrar and Assistant Registrar to visit the Central Jail, Bhagalpur and submit a report to the Court. The Hon'ble Supreme Court passed comprehensive orders to ensure that such barbarous and inhuman acts are not repeated.

23. In ***Munna and Ors. v. State of Uttar Pradesh and Ors.*** [1982 (1) SCC 545] the allegation was that the juvenile under- trial prisoners have been sent in the Kanpur Central Jail instead of Children's Home in Kanpur and those children were sexually exploited by the adult prisoners. The Hon'ble Supreme Court ruled that in no case except the exceptional ones mentioned in the Act, a child can be sent to jail. The Hon'ble Supreme Court further observed that the children below the age of 16 years must be detained only in the Children's Homes or other place of safety. The Hon'ble Supreme Court also observed that "a Nation which is not concerned with the welfare of the children cannot look forward to a bright future.". Thereafter, in a series of cases, the Court treated Post Cards and letters as writ petitions and gave directions and orders.

24. In ***Sheela Barse v. State of Maharashtra (AIR 1983 SC 378)***, **Sheela Barse**, a journalist, complained of custodial violence to women prisoners in Bombay. Her letter was treated as a writ petition and the directions were given by the court.

25. In ***Dr. Upendra Baxi (I) v. State of Uttar Pradesh and Anr.*** (1983 (2) SCC 308)two distinguished law Professors of the Delhi University addressed a letter to this Court regarding inhuman conditions which were prevalent in Agra Protective Home for Women. The court heard the petition on a number of days and gave important directions by

which the living conditions of the inmates were significantly improved in the Agra Protective Home for Women.

26. In ***Veena Sethi (Mrs.) v. State of Bihar and Ors. (AIR 1983 SC 339)*** some prisoners were detained in jail for a period ranging from 37 years to 19 years. They were arrested in connection with certain offences and were declared insane at the time of their trial and were put in Central Jail with directions to submit half-yearly medical reports. Some were convicted, some acquitted and trials were pending against some of them. After they were declared sane no action for their release was taken by the authorities. The Hon'ble Supreme Court ruled that the prisoners remained in jail for no fault of theirs and because of the callous and lethargic attitude of the authorities. Even if they are proved guilty the period they had undergone would exceed the maximum imprisonment that they might be awarded.

SOLUTIONS:

RIGHT TO SPEEDY TRIAL AND EXPEDITIOUS CRIMINAL TRIAL:

27. Fundamental rights are not teasing illusions but are meant to be enforced effectively. On a no. of matters cases were adjourned or delayed but now the court has a right to quash the case or the proceedings to meet ends of justice. In the case ***Katar Singh v. State of Punjab, [1994 SCC (3) 569]***, it was declared that right to speedy trial is an essential part of fundamental right to life and liberty. The Hon'ble Apex Court has held in the case of ***State of U.P. v. Kapil Dev Shukla [MANU/SC/0266/1972]***, that if there is an unwarranted delay then the prosecution can be quashed to prevent the harassment of the accused. The Hon'ble Apex Court was of the opinion that because of the delay, it is not possible to hold a fair trial. The same view was reiterated by the Hon'ble Apex Court in the case ***Santosh Dev v. Archana Gupta, (1994***

JIC 406). The Hon'ble Apex Court has further held in the case of **Rajdev Sharma v. State of Bihar (1998 ACC 834)**, that the speedy trial is one of the fundamental rights guaranteed under Article 21 of the Constitution of India. In the case of **Ramanand Chaudhari v. State of Bihar, (AIR 1994 SC 94)** and **State of Bihar v. Uma Shankar Jaiswal (AIR and AIR 1981 SC 641)** , **Abdul Rahman Antuky v. R.S. Nayak, (AIR1988SC153)**, the same view has been expressed. The Hon'ble Apex Court has laid down in **Antuley's case (supra)** that the prosecution can be quashed on the ground of delay as the speedy trial is the fundamental right guaranteed to the accused under Article 21 of the Constitution of India and prolonged trial is violation thereof.

**EFFECTIVE IMPLEMENTATION OF 436-A
OF THE CODE OF CRIMINAL
PROCEDURE:**

28. The Hon'ble Supreme Court in its order dated 5.9.2014 in **Writ Petition No. 310/2005 – Bhim Singh Vs Union of India & Others** relating to undertrial prisoners, has directed for effective implementation of Section 436A of the Code of Criminal Procedure by directing the jurisdictional Magistrate / Chief Judicial Magistrate / Sessions Judge to hold one sitting in a week in each jail / prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of section 436A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the under-trial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436A pass an appropriate order in jail itself for release of such under-trial prisoners who fulfill the requirement of section 436 A of Cr P. C.

FREE LEGAL AID:

The poor in their contact with the legal system have always been on the wrong side of the law. They have always come across "law for the poor" rather than "law of the poor".

29. ***Hussainara Khaton vs Home Secretary, State of Bihar, Patna (AIR 1979 SC 1369)*** "Free legal services to the poor and the needy is an essential element of any 'reasonable, fair and just' procedure. "

RIGHT TO LEGAL AID:

30. The Hon'ble Supreme Court recently in its two judgements upheld the right to consult and be defended by a legal practitioner as constitutional right available to all accused persons by virtue of Articles 21 and 22(1) of the Indian Constitution. While upholding the death sentence handed out in the case of ***Ajmal Kasab vs. State of Maharashtra, (AIR 2012 SC 3565)***, the Hon'ble Supreme Court held that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, one would be provided legal aid at the expense of the State.

31. The Hon'ble Supreme Court remarked that the obligation to provide him with a lawyer at the commencement of the trial is absolute unless the accused voluntarily makes an informed decision and tells the court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally. Failure to do so would vitiate the trial and the resultant conviction and

sentence, if any, given to the accused. The Hon'ble Supreme Court in the decision directed all the magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned magistrate liable to departmental proceedings.

32. The Hon'ble Supreme Court, again, in ***Rajoo @ Ramakant vs State Of M.P. (AIR 2012 SC 3034)***, ruled that free assistance must be provided to all poor accused, irrespective of the severity of the crime attributed to them, at every stage of the three-tier justice delivery system and could not be restricted to the trial stage only. Neither the Constitution nor the Legal Services Authorities Act makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody. This makes it abundantly clear that legal services shall be provided to an eligible person at all stages of the proceedings, trial as well as appellate. It is also important to note that in view of the constitutional mandate of Article 39-A, legal services or legal aid is provided to an eligible person free of cost.

33. **SOLUTIONS UNDER-TRIALS:**

- 1) *Undertrial prisoners should be lodged in separate institutions away from convicted prisoners. There should be proper and scientific classification even among undertrial prisoners to ensure that contamination of first time and petty offenders into full fledged and hardcore criminals.*
- 2) *Under no circumstance should they be put under the charge of convicted prisoners.*
- 3) *Institutions meant for lodging undertrial prisoners should*

be as close to the courts as possible.

- 4) *Provisions of Section 167 of the CrPC with regard to the time limit for police investigation in case of accused undertrial prisoners, should be strictly followed both the police and courts.*
- 5) *All undertrial prisoners should be effectively produced before the presiding magistrates on the dates of hearing.*
- 6) *The possibility of producing prisoners at various stages of investigation and trial, in shifts should be explored.*
- 7) *Video conferencing between jails and courts should be encouraged and tried in all states beginning with the big Central jails and then expanding to District and Sub jails.*
- 8) *Committee require to consistute amongs representatives from the local police, judiciary, prosecution, district administration and the prison department at a fairly high level, to visit the Sub jails under their jurisdiction at least once every month and review delay in cases of prisoners if any and adopt suitable measures.*
- 9) *Police functions should be separated into investigation and law and order duties and sufficient strength be provided to complete investigations on time and avoid delays.*
- 10) *The criminal courts should exercise their available powers under Sections 309, 311 and 258 of the CrPC to effectuate the right to speedy trial.*
- 11) *With undertrial prisoners, adjournments should not be granted unless absolutely necessary.*
- 12) *The class of Compoundable offences under the IPC and other laws should be widened.*
- 13) *Remand orders should be self-limiting and indicate the date on which the undertrial prisoners would be automatically entitled to apply for bail.*
- 14) *Computerise the handling of criminal cases and with the*

help of the National Informatics Centre, develop programmes that would help in managing pendency and delay of different types of cases.

CONCLUSION :

34. It has in this piece that legal and public policy responses to the undertrial problem should not proceed solely on the proportion of undertrials in the prison population; rather, it must take a holistic view of the problem. This includes paying closer attention to the length of time undertrials spend in pre-trial detention. Something which the Section 436A strategy fails to do as well as introducing a Centrally sponsored public defenders programme that weeds out the overt or structural discrimination in the criminal justice system. It is only through looking beyond the headline-grabbing figures that the spectre of unjustified undertrial detention in India will be quelled.

* * *

PART IInd**BIRTH AND DEATH REGISTRATION ACT.****INTRODUCTION:**

35. According to World Health Organization (WHO), globally two-third of 56 million annual deaths are not registered and almost half of the world's children go unregistered. These statistics show alarming need to ponder upon necessity of registration of birth of every child and death of every individual. In this background that there should be registration of birth and death of every individual and for dealing with these aspects, the Registration of Births and Deaths Act, 1969 is enacted.

BIRTH REGISTRATION :

36. "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents."

**- 1989 United Nations Convention on the
Rights of the Child (CRC), Article 7.**

THE REGISTRATION OF BIRTHS AND DEATHS ACT, 1969 :

37. The Registration of Births and Deaths Act, 1969 which is a Central legislation provides about different facets of births and deaths registration. This Act under Section 8 provides about persons who are required to register birth and deaths. Further there is a provision under Section 13 of the Act regarding delayed registration of births and deaths. Also name of child is also required to be registered according to Section 14 of the Act. After taking entry of birth or death in birth and death register, procedure for registration is done. In such way, this Act mandates about necessity of registering birth and deaths of an individual.

DELAYED REGISTRATION OF BIRTHS AND DEATHS:

38. Insofar as the provisions to Section 13(3) of the Birth And Death Registration Act (“the Act”) is concerned, the said provisions need to be construed in background of sub-section (2). sub-section (2) contemplates entry of delayed death or delayed birth provided the information is furnished within one year of event. It stipulates that the entry can be registered only with written permission of prescribed authority and on payment of prescribed fees and production of an affidavit made before a Notary Public or any other office authorised in this behalf by the State Government. The word “prescribed” has been defined 2 (e) to mean prescribed by Rules under Act of 1969. In contradistinction, sub-section (3) specifically mentions the Magistrate of First Class or Presidency Magistrate who are competent to pass the orders to enter the information relating to death or birth if it is more than one year after the event. Thus, it does not empower the rulemaking authority and hence the discretion to specify the authority which is stipulated sub-section (2) is deliberately not provided for in sub-section (3). The authorities empowered for such delay beyond one year are Magistrates of First Class or a Presidency Magistrate. The said phrases are explained in Section 3 of the Code of Criminal Procedure, 1973. sub-section (3) stipulates that unless the context otherwise requires any reference in any enactment passed before commencement of 1973 Code to a Magistrate of First Class needs to be construed as a reference as Judicial Magistrate First Class. Similarly, reference to Presidency Magistrate needs to be construed as reference to Metropolitan Magistrate. sub-section (4) of Section 3 again states that when such functions exercisable by Magistrate under any other law involves appreciation or sifting of evidence or formulation of any decision which exposed any person to any before a Notary Public or

any other office authorised in this behalf by the State Government. The word “prescribed” has been defined 2 (e) to mean prescribed by Rules under Act of 1969. In contradistinction, sub-section (3) specifically mentions the Magistrate of First Class or Presidency Magistrate who are competent to pass the orders to enter the information relating to death or birth if it is more than one year after the event. Thus, it does not empower the rulemaking authority and hence the discretion to specify the authority which is stipulated sub-section (2) is deliberately not provided for in sub-section (3). The authorities empowered for such delay beyond one year are Magistrates of First punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before in any Court, such power needs to be exercised by a judicial Magistrate If power is administrative or executive in nature such as granting of licence, suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, the said powers can be exercised by the Magistrate

39. Here, the Judicial Magistrate or Presidency Magistrate under section 13 (3) is obliged to pass an order after due verification of correctness of birth or death. The said verification necessarily will involve appreciation or sifting of evidence but then we do not find it necessary to go to sub-section (3) of Section 13 for the present.

40. Section 13 sub-section (3) permits the State Government or Central Government to prescribe fees only. Thus, the rule to be made under said provision at the most can prescribe fees. In this background, when sub-section (2) of Section 30 entry (f) is looked into, it speaks of an authority which may grant permission for registration of birth or death under section 13 (2). This is in consonance with stipulation in that sub-section. Absence of any mention of Section 13 sub-section (3) therefore

clearly shows absence of power with rulemaking authority to specify an authority other than Judicial Magistrate or Presidency Magistrate to exercise powers under Section 13 (3).

41. The provisions of Rule 10(3) of the Registration of Births and Death Rules, 1976 to that extent must yield to section 13 (3) and also therefore need to be read down accordingly. Hence, authority like Executive Magistrate mentioned in Rule 10(3) does not possess jurisdiction to pass any order authorizing delayed registration of birth or death.

REGISTRATION OF BIRTHS AND DEATHS CAN BE DONE THE PLACE OF OCCURRENCE:

42. The event can be registered at the place of occurrence only. An event, which has taken place in Bombay, will be registered with the concerned local Registrar in Bombay within whose jurisdiction the event has occurred. The event cannot be registered in Goa. Section 7 (2) read with Section 23 (2) of the Act make it very explicit that the Registrar has to register only those events of birth and death which take place in his jurisdiction.

43. As per provisions of section 7 (2) of the Act the event of births/deaths can be registered only at the place of occurrence. When the event of death occurred in a road accident at Hyderabad could not be registered in the area of residence of the deceased in Goa on the ground that the dead body was cremated there. The event birth/death is to be registered under section 13(3) of the Act, at the place, where the event took place. In such cases, the registration should be made only on order of the Magistrate having jurisdiction over the area concerned.

**REGISTERING EVENT OF BIRTH IN
RESPECT OF AN ABANDONED CHILD:**

44. Registration of birth of an abandoned child should be made in accordance with the procedure laid down in section 8 (1) (e) of the Act. Entries in the register of births relating to parents of such child should be either “un-known” or whatever the actual position. The names of adoptive parents should not be entered in place of natural parents (i.e. father and mother).

**REGISTRAR IS LIABLE TO PAY LATE FEE IN
CASES OF ANY DELAY ON HIS PART IN
REGISTERING AN EVENT UNDER SECTION
13(1) AND 13(2) OF THE ACT:**

45. Section 13(2) is attracted when the information required as per section 8 or section 9 of the Act is furnished after thirty days but within one year of the date of occurrence of the event. However, section 13(3) is attracted when an event has not been registered within one year of occurrence. Section 13 only speaks of payment of late fee under relevant sub-sections by the party concerned. There is no provision for payment of late fee by the registrar for any delay on his part in registering an event. However, the Registrar can be penalized for any undue delay on his part in registering an event. Section 23(2) provides that any Registrar or Sub-Registrar who neglects or refuses without reasonable cause, to register any birth or death occurring in his jurisdiction or to submit any return as required by sub-section (1) of section 19 of the Act, shall be punishable with fine which may extend to Rs.50.

**LIMIT PRESCRIBED FOR DELAYED
REGISTRATION OF BIRTHS & DEATHS
UNDER SECTION 13(3) OF THE ACT:**

46. Under the provisions of section 13(3) of the Act, as it exists at present, there is no time bar on delayed registration of such events.

**WHETHER ADDITION OF NAME IN OLD BIRTH REGISTER
COULD BE MADE IN RESPECT OF EVENTS OCCURRED
AND REGISTERED PRIOR TO THE COMING INTO FORCE
OF THE RBD ACT, 1969?**

47. By virtue of provision of 31(2) of the Registration of Births and Deaths Act, 1969 the entries made in respect of births and deaths under the repealed law would, therefore, be deemed to have been made under the provision of this Act and continue in force until superseded by anything done or any action taken under this Act. It, therefore, follows that the events registered before the enforcement of this Act 1969 will continue to be regulated under the provisions of the aforesaid Act.

**REVISION CAN BE FILED AGAINST AN
ORDER OF REJECTION OF
APPLICATION UNDER THE ACT:**

48. Section 5 of Cr.P.C. provides that, Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. In the provision of the Registration of Births and Deaths Act, 1969 do not provide

Specific provision for appeal or revision. Then, as per 5 of Cr.P.C read with Section the provisions of Cr.P.C. are applicable.

49. Section 397 of Cr.P.C. provided that, in cases where no appeal has been provided by law or in cases where the remedy of appeal has for any reason failed to secure fair justice the criminal procedure code (in short Cr PC) provides for another kind of review procedure, viz. revision. Revision lies both in pending and decided cases and it can be filed before the Hon'ble High Court or Hon'ble Court of Session. Very wide discretionary powers have been conferred on the Hon'ble Sessions Court and the Hon'ble High Court. Therefore, order of rejection of application under Section 13 of the Act is revisionable.

CASE-LAWS:

50. In ***Karimabibi W/o Gulam Mohammad Mustufa Karodiawad and Others v. Ankleshwar Municipality and Others, (AIR 1998 Guj. 42)***, has issued the following directions.

“Admittedly, the application filed by the respondent Nos. 2 and 3 was under sub-section (3) of Section 13 of the said Act. If the above provision of sub-section (3) of Section 13 are considered, then it would be quite clear that it is the duty of the learned Judicial Magistrate to verify the correctness of the date of birth before allowing the application filed before him. When the law expects that he has to verify correctness of the birth, it is expected from him that he must hear the persons who would be interested in disputing or supporting the said application. No doubt the said Act of 1969 does not lay down any procedure as to how and in what manner the application is to be presented by the petitioner to the learned Judicial Magistrate. Not only that, the said Act of 1969 is not making any provision for the proceeding for filing such an application, but no

procedure is also laid down by any rules framed under the said Act or by any other specific provisions of any Act. Therefore, in these circumstances when any application is presented under Section 13 of the said Act after a period of 1 year from the date of birth or date of death,

(1) It would be incumbent on the applicant to state the reasons/grounds in his application as to why the earlier entry in the death or birth register could not be made and why he could not give the information regarding the same to the competent authority.

(2) He must justify his late action in filing such an application by making necessary averments in his petition.

(3) It is also further necessary for him to state the purpose of which he wants the entry in the birth register or the death register.

(4) He must also state in the said application as who are likely to be affected by the said entry in the birth register or death register.

(5) When all the above stated details are given in the application, it is also incumbent on the Magistrate to issue notice to those persons who are likely to be affected by his order.

(6) He should also insist on issuing a proclamation as is required while issuing a succession certificate.

(7) Without following the above stated procedure, the Magistrate should not proceed to dispose of such an application because the granting of such relief is going to create a right in favour of the applicant and obligation against certain persons.

(i) When the obligations are created against such persons, they must have a reasonable opportunity to challenge the said act of the petitioner.”

Ori. 56), has held as under :

“Section 13(3) casts an onerous duty on the Magistrate to verify the correctness of the birth or death and thereafter, pass an order. There cannot be any manner of doubt that an entry with regard to the date of birth of a person confers a valuable right and when such an entry was not contemporaneously made for some reason or the other and can be made only after a Magistrate passes an order after verifying the correctness of the same, the Magistrate must make an inquiry in that respect. Without any inquiry worth the name, and passing an order mechanically on the basis of affidavit filed, would tantamount to passing an order on total non-application of mind and in the eye of law, it would not be a verification as contemplated under Section 13(3). Such an order cannot be sustained in law.”

52. The application lies before the Judicial Magistrate having local jurisdiction over the place where the birth or death occurred. Because, the Registrar under section 8 can register the births and deaths which occurred in his jurisdiction only and the Judicial Magistrate can give the direction to such Registrar only.

Submitted with all respect and honour to the Hon'ble The Principal District Judge and Sessions Judge, Parbhani.

Date:8th January 2016.

Yours faithfully

(Shri. C.W.Saindani)
District Judge-1 and
Addl. Sessions Judge,Hingoli

(Shri. M. P. Divate)
District Judge-2, Hingoli

(Shri. V. K. Kadam)
Adhoc- District Judge-1,
Parbhani.

(Shri. P.S. Ghate)
Adhoc- District Judge-2,
Parbhani.

(Shri. R. D. Bodhane)
Chief Judicial Magistrate,
Parbhani.

* * *

DISCUSSION OF LEGAL QUESTIONS :

DISCUSSION OF LEGAL QUESTIONS IN OPEN HOUSE:

LAW RELATING TO AMENDMENT OF PLEADINGS,
JUDGMENTS, DECREES AND ORDERS

UNDER TRIAL PRISONER

Registration of Births & Deaths

Que 1: How due diligent has to be decided on application itself or party can give evidence for that purpose ? (Questioning by Shri.V.G.Chaukhande, 3rd Jt. Civil Judge Jr.Divn., Parbhani.)

Ans: Affidavit also amounts the evidence. (by Mr.A.A. Ghaniwale, Jt. Civil Judge S.D., Parbhani.)

If, it is mentioned in the application and supported by affidavit, then there is no necessity to adduce evidence. Whatever they have deposed in the affidavit. Then similar statement can state in oral evidence. (by Shri.A.D.Pundlik, Civil Judge Jr.Dn., Purna)

Sale deed has executed before two years and he has given evidence on the sale deed. So, he is due diligent. As per O 6 R 17 of the Code of Civil Procedure, the court can not compel to the parties to proceed with wrong pleading. At that time amendment should be rejected. (by Mr.S.M. Patil, Civil Judge Jr.Divn., Manwath).

In pendency of suit, if amendment is proposed after

amendment of that Act. Whether evidence can be adduced by way of examination and proved due diligent. As per O 8 R 17 of the Code of Civil Procedure, there is summary enquiry. In given case evidence can be adduced by the parties, so far as it is summary enquiry. In the evidence by way of affidavit, the court can decide the same and it should be allowed. If the plaintiff is coming before the court and filing affidavit that he came to knowledge and immediately filed application. The deceased comes with a document that he has knowledge, then there is no need of evidence. (by Hon'ble Shri A.A.Sayeed, District Judge, Gangakhed)

Cross is must for that purpose. (by Hon'ble Smt.M.S.Jawalkar, Principal District Judge, Parbhani)

Amendment is just and proper, by imposing certain costs, the court can allow the amendment (by Hon'ble Shri R.M.Sadrani, District Judge-1, Parbhani)

Que 2: Whether the permission/application for amendment can be granted to amend the pleading, after pronouncement of the Judgment ? (Questioning by Shri.V.N.Girwalkar, Civil Judge Jr.Divn., Palam.)

Ans: It depends upon by the nature of the amendment.(by Shri A.A.Ghaniwale, Jt.Civil Judge S.D., Parbhani.)

Que 3: In one case, in plaint name of village is shown Sonpeth and in decree, it is shown as sengaon. Gut number is the same but village is shown different. So the plaintiff applied for amendment in the decree. But pleading is silent about village sonpeth. Whether the amendment application is tenable and is to

be allowed.? (Questioning by Smt.B.S.Pal, 5th Jt. Civil Judge J.D. Parbhani.)

Ans: If the parties are admitted on that point, then permission can be granted.(by Hon'ble Smt.M.S.Jawalkar, Principal District Judge, Parbhani)

The plaintiff has to show lacuna and he has to change is pleading firstly. If there is amendment in pleading, then judgment is to be amended. (by Shri S.M.Patil, Civil Judge J.D.Manwat).

It is not necessary to amend the pleading. (by Shri S.K.Tikhile, Civil Judge Sr.Divn, Parbhani.)

As per Order 6 R 17, the plaintiff has to make amendment in pleading and as per section 152, the Court sumomotu can give permission to amend the pleading. The Hon'ble Supreme Court held that Executing Court can add, alter and amend the pleading. (by Shri S.B.Hiwale, 2nd Jt. Civil Judge J.D. Parbhani.)

As per section 152 of the Code of Civil Procedure, clerical Arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. The basis of this provision is founded on the maxim, '*actus curiae neminem gravabit*' i.e. an act of the court shall prejudice no man. If plaint is corrected then it is the duty of the Court to correct the Judgment. O 21 R 22 notice is necessary. (by Shri A.A. Ghaniwale, Jt. Civil Judge Sr.Dn., Parbhani)

There is no necessity to amend in the plaint because suit is already decided. (by Shri S.N.Sonwane, Civil Judge Sr.Divn., Parbhani)

As per section 153, the Court may at any time as per costs or otherwise if it deems fit. Amendment can be made for the purpose of determination of real question or issue raised in such proceeding. Then court can amend pleading. (by Shri P.R.Shinde, Jt. Civil Judge J.D., Hingoli).

If pleading is not amended by the parties. Then question be raised before Executing Court. All these circumstances are covered under section 47 of the Code of Civil Procedure and question arising between the parties to the suit in which decree was passed, it shall be determined by the Executing Court. It is for the Executing Court to decide whether that property is within the meaning of that decree. The parties are every right to file written statement. (by Hon'ble Shri M.P.Divate, District Judge-2, Hingoli.)

Amendment in the pleading is to be carried out and consequently issue is required to be corrected and judgment followed decree. (by Hon'ble Shri R.M.Sadrani, District Judge-1, Parbhani.)

As per my opinion, issue raised by Palmadam, it is jurisdiction of the Appellate Court and not Executing Court. (by Shri.T.N.Quadari, Civil Judge J.D. Parbhani).

The Court has every power. Direct decree can not be changed. The Court has to take precaution prior to the attachment (by Hon'ble Smt.M.S.Jawalkar, Principal Dist. Judge, Parbhani)

Que 4: Whether the application is necessary regarding consequential amendment in written statement at different places ?(Questioning by Shri.T.N.Quadari, Civil Judge Jr.Divn., Pathri)

Ans: If there is written statement and some admissions are given, therefore, proposed amendment has to be before the Court. Whether amendment can be allowed, that will be decided by the Court. Therefore, application is must. (by Hon'ble Smt.M.S.Jawalkar, Principal Dist. Judge, Parbhani)

The court has to take liberal view. (by Hon'ble Shri C.W.Saindani, District Judge-1, Hingoli)

O 22 R 4 of the CPC, Lrs of the documents are entitled to depend only on point of legal character only. Their Lrs are not suppose to file written statement. They can say that they are Lrs of the deceased. (by Hon'ble Shri A.A.Sayeed, District Judge-1, Gangakhed.)

Que 5: Whether the amendment is granted in execution proceeding for relief of compensation ? Original decree is for recovery of possession and compensation, but execution is filed only for possession. (Questioning by Shri.S.B.Hiwale, 2nd Civil Judge Jr.Divn., Parbhani)

Ans: If execution is pending then compensation is also allowed.(by Hon'ble Smt.M.S.Jawalkar, Principal Dist. Judge, Parbhani)

At this stage, if amendment is allowed in RD then he can apply for compensation because RD is filed within time. (by Hon'ble

Shri A.A. Sayeed, District Judge-1, Gangakhed)

Que 6: One suit is filed for specific performance of the contract. Suit is dismissed for property 3 Hectors, but actually it is 3H 2R. Whether amendment is allowed ? (Questioning by Hon'ble Shri.R.M.Sadrani District Judge-1, Parbhani)

Ans: Section 227 of the Code of Civil Procedure permission to amend after the judgment.(by Shri.R.U.Nagargoje, Civil Judge, Jr.Dn., Jintoor)

If there is no specific contract then amendment should not be granted.(by Shri.A.A. Ghaniwale, Jt. Civil Judge Sr.Dn., Parbhani)

Section 21 and 22, if plaintiff has not claimed that can be claim at time of Judgment. If the Court came to conclusion, then amendment should be allowed.(by Hon'ble Shri A.A.Sayeed, District Judge, Gangakhed.)

Que 7: One partition suit is filed by wife against the husband. In mediation it is settled for Rs.10,00,000/-, but in the plaint there is no pleading for maintenance. Whether amendment is allowed ? (Questioning by Shri A.S.Alewar, 2nd Jt. Civil Judge Jr.Dn., Gangakhed.)

Ans: If it is mentioned in compromise terms and condition, then amendment is not necessary because it is compromise decree. (by Hon'ble Smt.M.S.Jawalkar, Principal Dist. Judge, Parbhani)

CRIMINAL SIDE

Que 8: Criminal case u/s 379 of the Indian Penal Code is pending. Accused is under trial prisoner. Charge sheet is pending at Mokka Court at Aurangabad. Whether the said case can entertain by Judicial Magistrate F.C. ? (Questioning by Shri .A.S.Alewar, 2nd Jt. Civil Judge Jr.Dn., Gangakhed.)

Ans: The offence which he has committed, it is connection to Mokka Court.(by Hon'ble Smt.M.S.Jawalkar, Principal Dist.Judge, Parbhani)

Que 9: One Under Trial Prisoner filed complaint against the Jailer for not giving proper treatment in jail. Jailer has also lodged complaint against him under section 353 of the Indian Penal Code. What order is expected from JMFC ? (Questioning by Sow.T.M.Deshmukh-Naik, 4th Jt. Civil Judge Jr.Dn., Parbhani)

Ans: Police filed application in my Court for permission to arrest the Under Trial Prisoner in that crime under section 353 of the Indian Penal Code. I gave direction to concern police to sought permission before JMFC. (by Hon'ble Shri R.M.Sadrani, Addl. Sessions Judge, Parbhani)

Production warrant should be sent to Jailer. Permission is not required. Firstly record statement of Under Trial Prisoner and treated it as Misc.Appl.Number.(by Hon'ble Shri A.A.Sayeed, Addl. Sessions Judge, Gangakhed).

Magistrate should verify about injuries and then complaint be recorded as to whether there are injuries to prisoner and sent

him before Medical board. (by Shri S.N.Sonwane, Civil Judge Sr.Divn., Parbhani)

As per Jail Manual Magistrate can call report. He has given reference of Sureshdada Jain's case. Hon'ble Supreme Court observed that Jail authority can give facility to under trial prisoner from Government hospital. (by Shri S.B.Hiwale, 2nd Jt. Civil Judge Jr.Dn., Parbhani.)

Que 10: Due to order of solvent surety, prisoners can not give bail, so, only surety order be passed. (Questioning by Shri.V.G.Chaukhande, 3rd Jt. Civil Judge Jr.Dn., Parbhani)

Ans: Basically it has to see Under trial prisoner is having property, his antecedent, his relation, then bail be granted. Surety amount should be fixed reasonably. As amount is heavy, they can not apply for surety. We can see whether he is habitual offender or not. If Under trial prisoner is out of Maharashtra State, then his landed property should be verified. After granting bail to UTP, direction be given to accused to attend regularly in the Court. It should not suppose that he should remain in jail. (by Hon'ble Smt.M.S.Jawalkar, Principal Dist. Judge, Parbhani)

Que 11: If two to three crimes are against one Under Trial Prisoner, then Whether there is any provision that all crimes can be tried in one Court ? (Questioning by Shri.V.G.Chaukhande, 3rd Jt. Civil Judge Jr.Dn., Parbhani)

Ans: All matters are taken one by one because investigation is different. Magistrate should see Article 21. (by Hon'ble Smt.M.S.Jawalkar, Principal Dist. Judge, Parbhani)

Que 12: Whether as per proviso 14 of the the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989, Court should take cognizance? (Questioning by Shri.S.B.Hiwale 2nd Jt. Civil Judge Jr.Dn., Parbhani)

Ans: Some cases of under trial u/s 379, 380 of the Indian Penal Code, stolen amount is Rs.2,000/- to 5,000/-, but due to not giving bail, they are in jail. He made proposal for Jail Court to reduce the Under Trial Prisoners. If a woman committed theft and she is in jail since one month. Then her plea be taken and after her plead guilty, set off be given to her. Liberal view be taken. (by Hon'ble Shri M.P.Divate, Addl. Sessions Judge, Hingoli :

In section 379, 380 of the Indian Penal Code, punishment is 3 months. If accused is in jail since 1½ months, then his plea be taken and after his plead guilty, by giving set off, he be released.

Shri Sonwanesaheb, Civil Judge Sr.Divn., Parbhani (suggestion) : If the accused is not plead guilty, then speedy trial be taken by giving dates of 8 days, issue letter to police to serve summons strictly.(by Shri Hiwale, Jt. Judicial Magistrate F.C.Parbhani)

Maximum accused are in jail due to non granting of bail by JMFC Courts. If one case is on one day then it is not possible to take all cases early (by Hon'ble Shri R.M.Sadranisaheb, Addl. Sessions Judge, Parbhani.)

Liberal view be taken while granting bail.(by Hon'ble Shri A.A.Sayeed, Addl. Sessions Judge, Gangakhed).

Example given that at Chandrapur, there were 21 cases against two accused under section 379, 380 of the Indian Penal Code. He tried to take 5/6 cases together and he was ready to take case early, but UTP are not ready to plead guilty. (by Hon'ble Shri V.K.Kadam, Ad-hoc Addl.Sessions Judge, Parbhani.)

Note be taken of accused that he pleaded not guilty. Then case be transferred to Fast Track Courts(by Hon'ble Smt.M.S.Jawalkar, Principal Dist. Judge, Parbhani)

Que 13: What is the procedure to issue birth/death certificate within time or earlier ? (Questioning by Shri.S.M.Patil, Civil Judge Jr.Dn., Manwat)

Ans: In my opinion, notice be given to Municipal Council and Grampanchayat and if they have given reply that there is no note in their register about date of birth and date of death of any person, thereafter, order be passed. (by Hon'ble Shri M.P.Divarte, Addl. Sessions Judge, Hingoli :

The guidelines have been given in the case of Karimabibi w/o Gulam Mohammad Mustufa Karodiawad and other V/s Ankleshwar Municipality and others reported in A.I.R. 1998 Gujrat 41.(by Hon'ble Shri R.M.Sadrani, Addl.Sessions Judge, Parbhani

Que 14: Whether pass port can issue without having any birth certificate or any document ? (Questioning by Shri .V.G.Chaukhande, 3rd Civil Judge Jr.Dn., Parbhani)

Ans: Proclamation be issued and affidavit also be taken.

Besides this Court should call Sarpanch, Police Patil, Kotwal, Head Master of that school. Magistrate can suo motu call them by issuing summons.(by Hon'ble Shri M.P.Divarte, Addl.Sessions Judge, Hingoli.)

Record from hospital be called and verified by giving notice to the hospital. (by Hon'ble Shri A.A.Sayeed, Addl.Sessions Judge, Gangakhed)

There are no maternity hospital at Kalamnuri, so there are no birth certificates of hospital. (by Shri. P.P.Modi, Judicial Magistrate F.C., Kalamnuri)

Que 15: Whether matter of issuance of birth certificate can be treated as uncontested ? (Questioning by Smt. T.M.Deshmukh-Naik, 4th Civil Judge Jr.Dn., Parbhani)

Ans: : You should call Municipal Council employee and call say and after filing say, it be treated as contested. Issue letter to Municipal council to call register for verification. (by Hon'ble Shri M.P.Divarte, Addl.Sessions Judge, Hingoli).

Que 16: Whether registration of Births & Deaths can be done at any place? In other word, Whether registration of Births & Deaths can be done at any place irrespective of the place of occurrence? Whether an event, which has taken place in Bombay, can be registered in Goa?

Ans: The event can be registered at the place of occurrence only. An event, which has taken place in Bombay, will be registered with the concerned local Registrar in Bombay within whose

jurisdiction the event has occurred. The event cannot be registered in Goa.

Que 17: Which section of the RBD Act, 1969 indicate that the registration of events should be done according to place of occurrence?

Ans: Section 7 (2) read with Section 23 (2) of the RBD Act, 1969 make it very explicit that the Registrar has to register only those events of birth and death which take place in his jurisdiction.

Que 18: Whether the event of death occurred in a road accident at Hyderabad could be registered in the area of residence of the deceased in Goa on the ground that the dead body was cremated there?

Ans: As per provisions of section 7 (2) of the RBD Act, 1969 the event of births/deaths can be registered only at the place of occurrence. The event, which has taken in Hyderabad, should be registered with the concerned Registrar in whose jurisdiction the event has occurred. As such the event of death under reference could not be registered in Goa. In such cases, it is expected that the event of death might have been reported to the Registrar of births and deaths of the area where the death has occurred by the police officer in charge of Thana under Section 8 (1) (e) of the RBD Act, 1969.

Que 19. Whether death certificate could be issued in respect of a person who has been missing and has not been heard of for seven years?

Ans: The death under section 2 (b) of the Registration of Births & Deaths Act, 1969, means the permanent disappearance of all evidence or life after live-birth has taken place. It will be question, a fact in each case, for the purpose of this Act, whether “death” has taken place as defined in the Act. In view of the entries to be filled in the death register, it is difficult to advise that these columns in death register can be filled on the basis of “burden or proof” only.

Que 20. What procedure for registration is to be followed in case of medico-legal cases of death occurred in hospitals?

Ans: In case of medico-legal cases, the hospital authorities/physicians should inform the Registrar concerned, details thereof for follow up action in obtaining required certificate from the police authorities. The object is that on receipt of the information the local Registrar could register the event of death without completing the column of cause of death, making a remark in the remarks column that the “inquest report is awaited”. The cause of death could be filled in later on receiving the inquest report.

Que 21. Whether a Still Birth Certificate could be issued under the provisions of Act and the State Rules?

Ans: According to section 2(1) (a) of the Act, word/term “birth” means live birth or still birth. As such, extract from still birth register (form no 9) could be issued in form no.5 with an appropriate changes in the wording in that form such as information has been taken from the original records of still birth----- date of still birth and place of still birth instead of word “birth” given in that form.

Que 22: Whether extracts of birth/ death under section 12 could be given free of charge also in respect of the events registered under section 13 of the Act?

Ans: Section 12 of the Act contemplates giving of extracts free of charge to the person giving information under section 8 or section 9 thereof. The provision of this section is, therefore, not applicable in relation to the event registered under section 13.

Que 23: Whether events occurring prior to the date of enforcement of the RBD Act, 1969 can be registered ?

Ans: The events of births and deaths which occurred prior to the coming into force the RBD Act, 1969 can be registered under the provisions of the Act. The provisions of section 13 which related to delayed registration can also be applied in registration of such events.

Que 24: Whether the Registrar is liable to pay late fee in cases of any delay on his part in registering an event under section 13(1) and 13(2) of the Act?

Ans: Section 13(2) is attracted when the information required as per section 8 or section 9 of the Act is furnished after thirty days but within one year of the date of occurrence of the event. However, section 13(3) is attracted when an event has not been registered within one year of occurrence. Section 13 only speaks of payment of late fee under relevant sub-sections by the party concerned. There is no provision for payment of late fee by the registrar for any delay on his part in registering an event. However, the Registrar can be penalized for any undue delay on his

part in registering an event. Section 23(2) provides that any Registrar or Sub- Registrar who neglects or refuses without reasonable cause, to register any birth or death occurring in his jurisdiction or to submit any return as required by sub-section (1) of section 19 of the Act, shall be punishable with fine which may extend to Rs.50.

Que 25: Whether the event of birth could be registered at the place other than the place of occurrence under the provisions of delayed registration as laid down in section 13(3) of the Act?

Ans: The event birth/death is to be registered under section 13(3) of the RBD Act, 1969 at the place, where the event took place. In such cases, the registration should be made only on order of the Magistrate having jurisdiction over the area concerned.

Que 26: Whether there is any time limit prescribed for delayed registration of births & deaths under section 13(3) of the Act?

Ans: Under the provisions of section 13(3) of the Act, as it exists at present, there is no time bar on delayed registration of such events.

Que 27: Whether penalty can be imposed under section 23(4) if any person fails to report the name of the child to the Registrar within the time prescribed in the state rules?

Ans: In case where the birth of a child has been registered without name and the parent or guardian of the child gives information regarding name of the child the Registrar after the prescribed period of 12 months, the Registrar shall enter name

in the register on payment of a late fee of rupees two. If the information is delayed without any reasonable cause he shall also be punishable with a fine which may extend to ten rupees under section 23(4) of the RBD Act, 1969 and the corresponding State Rules.

Que 28: Whether the date of birth can be corrected on the strength of a declaratory decree obtained by another party from a competent court?

Ans: The application for correction of age has to be made by the person concerned and not by another person.

Que 29: Whether addition of name in old birth register could be made in respect of events occurred and registered prior to the coming into force of the RBD Act, 1969?

Ans: By virtue of provision of 31(2) of the Registration of Births and Deaths Act, 1969 the entries made in respect of births and deaths under the repealed law would, therefore, be deemed to have been made under the provision of this Act and continue in force until superseded by anything done or any action taken under this Act. It, therefore, follows that the events registered before the enforcement of this Act 1969 will continue to be regulated under the provisions of the aforesaid Act.

Que 30: Whether corrections in the name of father and grand-father could be made in the birth entries on the basis of court's judgment?

Ans: Section 15 of the Registration of Births and Deaths Act, 1969 provides for correction or cancellation of entry in the register.

For this purpose, it has to be proved to the satisfaction of the Registrar that any relevant entry is erroneous in form or in substance (etc.). Even then, the original entry is not to be deleted or altered and a marginal entry is to be made. Rule 11 then deals with specific procedure to be followed. It does not seem to be a case of any formal error but the entries seem to be erroneous in substance.....if erroneous at all. For this purpose sub-rule (4) specifically provides for declaration by two credible persons having knowledge of the facts of the case. Further, the Registrar may before arriving at the satisfaction like to give opportunity to show cause to the mother or the persons who had given the report earlier.

Que 31: The report of death aboard ship from the Director General, shipping is usually received very late after the actual deaths has taken place. Whether such events have to be registered under section 13 of the Act?

Ans: The registration of death on the basis of a report from Director General, shipping do not fall in the same category as the events that occur on land for which the Act casts duty on specified persons. Therefore section 13 is not attracted in case of registration of events reported by Director General, shipping.

Que 32: It may be clarified whether births occurring in hospitals in towns have to be registered by the registrar of the area in which the hospitals are situated or is it possible to register such births at the place of the normal residents of the concerned families?

Ans: The events occurring in a hospital will be registered with the registrar of the area in which such hospital falls. They will not be

registered at the place of normal residence, since registration is done at the place of occurrence.

Que 33: As per section 13(1) of the RBD Act 1969, registration of events after the expiry of specified period is possible on payment of prescribed late fee. It has been reported from certain parts of the country that due to public disturbances and imposition of curfew etc. or in similar other situation births and deaths could not be registered within the specified time limit. In some cases the events could not be registered for more than two months. Whether payment of late fee under section 13(1) of the Act and corresponding states rules can be waived by the state Govt. in such situation? Whether the power of waiving can be exercised by the authority of the state Govt. itself?

Ans: It may be seen that the substantive provision in section 13 speaks of "payment" of such late fees as may be prescribed. There is no provision either in this section or anywhere in the Act which provides for any exemption from payment of late fee. The section 30 authorizes the state Govts. to make rules with approval of the Central Govt. and clause (1) of sub-section (2) of this section provides for making rules for the fees payable for registration made under section 13. Thus it is seen that legislative intent as incorporated in the section 13(1) of the Act is that late fees shall be payable in case of delayed information but the quantum of fee only can be prescribed by rules made by the state Govts. in exercise of powers under section 30 of the Act. The Act does not provide for waving of late fee under any circumstances in case the information is delayed beyond the period specified for the purpose. Next point is whether a provision for exemption can be made in the rules. The law is settled on the point that subordinate legislation

shall remain within the scope of the Act wide Chaman Lal Vs. State of U.P. (AIR 1955 S.C. 435) the subordinate legislation can not be beyond the statute vide state of Assam Vs. Kidwai reported in (1957) S.C.R. 295 (317). In the instant case neither Act provides for any exemption nor does it authorize making of rules which may provide for exemption. Where statute provides for payment of fee in a particular matter the provision for exemption from payment of such fee becomes an essential legislative function. It cannot be delegated unless the statute lays down the policy and specifies the class or classes of cases in which, and circumstances under which exemption may be granted. Since there is no such provision in the statute in the instant case, provision for exemption cannot be made in the rules. The authority to make rules to carry out the purposes of the Act as mentioned in section 30(1) does not extend to the making of rules for the purposes not envisaged under the Act, not authorized by the Act. In the present circumstances as the law stands at present there is no scope for exercising any power of exemption either by any state Govt. or by the Central Govt.

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