has inserted a new Article 39-A in Part-IV of the Constitution. This article directs the State to secure equal justice and free legal aid to one and all, irrespective of economic and other disabilities. This constitutional provision also has helped the emergence of the Public Interest Litigation in India.

The following analysis shows the nature and scope of public interest litigation.

Any voluntary organization or a public spirited persons can file a petition in the Court to deal with the provisions which have a public interest.

ANALYSIS — EVIDENCE AFFIDAVIT UNDER ORDER 18 RULE 4 C.P.C.

Whether the Chief Evidence Affidavit under Order 18(4) C.P.C., without a further Statement that the Affidavit has been prepared based on the Evidence of the Deponent is liable to be rejected?

By

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As a sequel to the recent Amendment of C.P.C., with effect from 1.7.2002 under Order 18(4) C.P.C., has been substituted and Rule 1 provides that in every case examination-in-chief of the Witness shall be on an Affidavit and copy thereof shall be supplied to the opposite parties by the party who calls them for evidence. However, where a witness is not a party under control he can take recourse to Order 16(1) C.P.C. and after he is summoned he can be asked to file an Affidavit or be examined in Court as laid down in 2005 (2) ALD 230 (F.B.). In otherwords, where summons would be issued under Order 18(4) C.P.C., may not apply. The Court has a discretion to direct examination in Court or by Affidavit as laid down in AIR 2003 SC 189–*Salem Bar Association v. Union of India*, subject to exception as provided under Order 16(1) C.P.C., in the case of issue of summons where the witness is not under the control of the parties, it is inevitable, in all cases whether appealable or non-appealable examination-in-chief has to be done on affidavits only.

Be this, as it may

Mere filing an Affidavit, is not the beyol and end all the matter unless the deponent appears before the Court and confirms and appears for cross-examination as laid down by the Full Bench 2005 (2) ALD 230 (F.B.). Thus this practice is being followed and there is no controversy at all.

But the entire controversy is with respect to failure to mention in the Evidence Affidavit, that the Evidence Affidavit has been prepared based on the evidence deposed by the Deponent and its legal affect.

It is suggested based on authorities in the absence of such a statement that the evidence is prepared based on the evidence deposed by the deponent, the evidence affidavit is not evidence affidavit and as a concomitance thereof pursuant to the substitution of Order 18 Rule 4 C.P.C., which specifically sets out the procedure, and is to be rejected. Keeping in view the intention of substitution of Order 18 Rule 4 C.P.C., which is confirmed by the Supreme Court in AIR 2003 SC 189

To the extent of diligent search made by the Writer, subject to any other authority if available the foundation for this article is the authority laid down in AIR 2005 Bom. 294 to 297, the relevant portion is delineated as follows:

Paragraph 8 : "In my opinion therefore

all Affidavits of Witnesses by way of Examination-in-Chief under Order 18(4) C.P.C., must be prepared, affirmed and filed in the manner discussed in the judgment and the Affidavit may also contain a Statement by the witnesses that the Affidavit has been prepared based on the evidence deposed by him before the persons who has recorded his evidence. In that event name shall be disclosed. Needless to say such recording of evidence can only be by a Lawyer or Commissioner appointed under C.P.C. and to ensure protection both to the Lawyer and the Witnesses the signed or initial transcript must be maintained till the deposition is complete. This procedure is a part of the trial of a Suit.

It is made clear the procedure is to be followed in Courts and Tribunal.

Another ingredient to be complied with

Yet another mandatory compliance is with regard to the verification as provided under C.P.C. Affidavit not properly verified cannot be admitted in evidence as laid down in AIR 1970 SC 625

Affidavits not properly verified are not Affidavit in the eye of Law and cannot be relied on. (Please See AIR 1982 Del. Page 220)

Whether the Court can permit to file another chief affidavit to fill up the lacuna either due to failure to mention in the Affidavit, the Affidavit is prepared on the basis of evidence adduced by the Deponent or *de facto* verification?

In 2013 (1) ALD 137, it is laid down, Affidavit in lieu of Chief-Examination cannot be allowed to be withdrawn when once it was acted upon and documents mentioned therein were marked as the Affidavit in view of Chief-Examination would form part of the record which was dealt with by the Full Bench AIR 2005 AP 253. Hence it follows Chief Affidavit which form part of the record cannot be allowed to be withdraw and Fresh Affidavits to fill up the Lacuna cannot be permitted to be filed.

Emphasis

An Affidavit not following the procedure is not the Affidavit contemplated and will have to be rejected.

The purpose of this article is of day-to-day importance and requires momentum.

Any sophisticated contra view is worth welcome for the benefit of Bench and Bar.