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SUBJECT-INDEX**ADMINISTRATIVE LAW:**

Delegated legislation - Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987 - Held: Being subordinate legislation, the Rules could not make any provision which could have the effect of curtailing the content and scope of the substantive provision, namely, the Tenth Schedule to the Constitution of India, as otherwise, the very object of the introduction of the Tenth Schedule to the Constitution would be rendered meaningless - Constitution of India, 1950 - Tenth Schedule - Para 2(1)(a), 6 and 8.

(Also see under: Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987)

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(1) s. 2(4) (as applicable in State of Haryana) and ss.24 and 25 - public prosecutor - Assistant Public Prosecutor.
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(2)(i) s.482 - Exercise of powers u/s.482 CrPC or u/Art. 226 of the Constitution by High Court to quash criminal complaint - Private respondents filed suit for declaration of title over landed property by placing reliance upon two sale deeds/documents - Appellant filed complaint alleging commission of offences punishable u/ss.468 and 471 IPC - High Court quashed the complaint/FIR - Held: In cases where the complaint, whether lodged before a court or before the jurisdictional police station, makes out the commission of an offence, High Court would not in the ordinary course invoke its powers to quash such proceedings - In the case at hand, it was wrong for the High Court to hold that the respondents concerned were not the makers of the documents or that the filing of a civil suit based on the same did not constitute an offence - Whether or not the respondents concerned had forged the documents and if so what offence was committed by them was a matter for investigation which could not be prejudged or quashed by the High Court in exercise of its powers u/s.482 CrPC or u/Art. 226

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of the Constitution - High Court was thus wrong in quashing the FIR - Constitution of India, 1950 - Art. 226 - Penal Code, 1860 - ss.468 and 471.

(ii) s.195(1)(b)(ii) - Applicability of - Held: s.195(1)(b)(ii) is attracted only when offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in any court and during the time the same was in custodia legis - Bar contained in s.195 against taking of cognizance not attracted to the case at hand, as the sale deeds relied upon for claiming title to the property in question had not been forged while they were in custodia legis - Penal Code, 1860 - ss.468 and 471.

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(2) s. 482 read with s.401 - Quashing of criminal proceedings - Allegations leveled by prosecutrix against accused for commission of offences punishable u/ss 328, 354 and 376 on false promise of marriage - Charge-sheet filed - Charges framed - Held: In the charge sheet, Investigating Officer acknowledged that he could not find any proof to substantiate the charges - Charge-sheet was filed only on the basis of statement of prosecutrix u/s 164 - Further, in view of scientific investigation as revealed by mobile phones of prosecutrix and accused, commission of offence as alleged by prosecutrix cannot be established in trial - Therefore, judicial conscience of High Court ought

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to have persuaded it, on the basis of the material available before it, to quash criminal proceedings initiated against appellant, in exercise of inherent powers vested with it u/s 482 - Accordingly, FIR, consequential charge-sheet as also charges framed by trial court are quashed - Penal Code, 1860 - ss.328, 354 and 376.

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CONSTITUTION OF INDIA, 1950:

(1) Arts.38 and 39 - Welfare state - Meaning, features and obligations of - Discussed - Maxims - "*Salus populi suprema lex*".

(Also see under: Fee)

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(2) Art. 166 read with Rules of Executive Business, State of Bihar - Agreement/Understanding dated 18.7.2007 entered into between University and College Employees Federation and the State Government declaring non-teaching staff of Universities and constituent Colleges equivalent to the Government staff, not implemented on the plea that the agreement was not in accordance with the Rules of Executive Business - Held: Merely because of change of elected Government and the decision of the previous government not expressed in the name of Governor in terms of Art. 166, valid decision cannot be ignored and it is not open to the State to contend that those decisions do not bind them - Further, the provisions of Art. 166 are only directory and not mandatory in character and

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if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by State Government - In the instant case, it cannot be said that the decision was not taken by or on behalf of the Government - High Court has not only directed the State Government to implement the Agreement dated 18.07.2007, but also directed the Federation to call off the strike immediately in the interest of the student community - State Government directed to implement the order of the High Court - Service law - Rules of Executive Business, State of Bihar - Public interest litigation - Letter petition.

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(3) Art. 226.
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(4) Art. 227 - Superintendence over DRTs and DRATs - Held: High Courts are empowered to exercise their jurisdiction of superintendence under Art. 227 in order to oversee the functioning of DRTs and DRATs - This power also extends to administrative functioning of courts/tribunals - Recovery of Debts Due to Banking and Financial Institutions Act, 1993 - s.18.

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(6)(i) Art. 233(2) - Appointment to the post of Additional District Judge through direct recruitment

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from Bar - Eligibility - Held: One of the essential requirements articulated by the expression "if he has been for not less than seven years an advocate" in Art. 233(2) is that such person must with requisite period be continuing as an advocate on the date of application.

(ii) Art. 233(2) - Expression 'advocate or pleader' - Held: Refers to legal practitioner and, thus, it means a person who has a right to act and/or plead in court on behalf of his client - For the purposes of Art. 233(2) both a Public Prosecutor and an Assistant Public Prosecutor are covered by the expression 'advocate'- Rendering of service as a Public Prosecutor or as Assistant Public Prosecutor is deemed to be practice as an advocate - Code of Civil Procedure, 1908 - ss. 2 (7) and 2(15) - 'Government pleader' - 'Pleader' - Code of Criminal Procedure, 1973 - s. 2(4) (as applicable in State of Haryana) ss.24 and 25 - Public Prosecutor - Assistant Public Prosecutor - Bar Council of India Rules - rr. 43 and 49.

(iii) Art. 233(2) - Appointment to the post of Additional District Judge through direct recruitment from Bar - Assistant District Attorney/Public Prosecutor/Deputy Advocate General - Eligibility - Held: Since private appellants did not cease to be advocate while working as Assistant District Attorney/Public Prosecutor/Deputy Advocate General, the period during which they have been working as such has to be considered as the period practicing law - Thus, all of them have been advocates for not less than seven years and were

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enrolled as advocates and were continuing as advocates on the date of the application - They fulfilled the eligibility under Art. 233 (2) of the Constitution and r. 11 of the HSJS Rules on the date of application - Haryana Superior Judicial Service Rules, 2007 - rr. 5(ii) and 11.

(iv) Art. 233 (2) - Expression "the service" occurring in Art. 233(2) means "judicial service" - Other members of the service of Union or State are excluded because Art. 233 contemplates only two sources from which District Judges can be appointed: (i) judicial service; and (ii) the advocate/pleader or in other words from Bar.

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(5) Tenth Schedule - Para 2(1)(a), 6 and 8 - Provisions as to disqualification on ground of defection - 52nd Amendment - Intent and objects of - Explained.

(Also see under: Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987)

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CONTRACT:

Commercial contract - Inapplicability of the rule of contra proferentem - Held: Rule of contra proferentem does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon.

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(Also see under: Insurance)

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ELECTRICITY ACT, 1910:

ss. 30 and 58 read with PSEB Circular No. CC23/90 and Clause 8-b of Tariff Schedule - Levy of load surcharge at additional rate - Held: Was only meant for a load which was unauthorized or not sanctioned and if a particular load of a consumer is sanctioned or authorized, load surcharge at additional rate could not be levied under Clause 8-b of the Schedule of Tariff - In the instant case, the load of TG Set detected was a sanctioned load and was not an unauthorized load - Therefore, appellant could not be held liable for load surcharge under Clause 8-b, even if by the aid of bus coupler, inter-transferability of load could be effected between TG Set of appellant and the energy supplied by respondent-Board - Demand raised against appellant quashed - Punjab State Electricity Board Circular No. CC 23/90.

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FEE:

Licence fee - Shops situated in a busy market of Old Delhi - Railway Authorities by order dated 25-5-1987, enhancing licence fee from Rs.21 per sq yards to Rs.270 per sq yards per annum -with retrospective effect from 1-11-1980 - Merely because appellants (shop licencees) have been occupying the shops for a long time, they cannot claim any special privilege - Enhanced license fee cannot be held to be unreasonable or arbitrary, and as warranting any interference by a court of equity - However, order dated 25-5-1987 should not be applied retrospectively - Enhanced license fee may be recovered from appellants from the said date in accordance with law.

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GIFT TAX ACT, 1958:

(1) s. 4(1) (c) - Gift to include certain transfers - Revocable gift of equity shares made by assessee in February 1982, finally held to be a valid gift - Bonus shares received by transferee as holder of equity shares - Gift revoked in 1988 within the window period - Re-assessment order seeking to tax the assessee treating bonus shares as gift by assessee - Upheld by High Court - Held: Since High Court has not noticed the provisions of s. 4 (1) (c), matter remanded to it for consideration

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afresh, keeping in view the provisions of s. 4 (1) (c) as also the assessment order for Assessment year 1982-83.

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(2) ss. 16B and 16B (3) - Applicability of - Questions whether no interest u/s. 16B was chargeable and whether s. 16B(3) was applicable to the facts of the case - High Court had allowed the appeals relying on its judgment passed in two other appeals whereby it was held that assessee was liable to pay interest on the gift tax levied - Held: Matter is remitted back to High Court, in view of the fact that the judgment on which High Court based its decision has been set aside by Supreme Court and that matter was remanded to High Court for de novo consideration.

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HARYANA SUPERIOR JUDICIAL SERVICE RULES, 2007:

rr. 5(ii) and 11.

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INCOME TAX ACT, 1961:

(i) Chapter XIV-B - Scope of - Explained - ss. 158 BB, 158 BC and 158 BD read with ss. 132 and 139 -Detection of undisclosed income of assessee during search of another concern - Plea of assessee that since it had paid Advance Tax, its income could not be said to be undisclosed - Held:

Payment of Advance Tax, which is based upon estimated income, cannot tantamount to the disclosure of the total income, which must be declared in the return - Disclosure of total income by filing of return u/s 139 is mandatory even after payment of Advance Tax by an assessee - In view of the fact that the assessee had not filed its return of income by the due date, Assessing Officer was correct in assuming that the assessee would not have disclosed its total income.

(ii) s.158 - "Undisclosed income" - Held: Undisclosed income is defined by s. 158B as that income "which has not been or would not have been disclosed for the purposes of this Act" - The only way of disclosing income, on the part of an assessee, is through filing of a return, as stipulated in the Act and, therefore, an "undisclosed income" signifies income not stated in the return filed - Income to be deemed as undisclosed - Explained.

(iii) s.158 - "Undisclosed income" and tax deducted at source - Held: Since the tax to be deducted at source is also computed on estimated income of an assessee for relevant financial year, mere deduction of tax at source, also, does not amount to disclosure of income, nor does it indicate the intention to disclose income most definitely when the same is not disclosed in the returns filed for assessment year concerned.

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INSURANCE:

(i) Contract of Insurance - Interpretation of - Held: While construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the court to add, delete or substitute any words - Since upon issuance of an insurance policy, the insurer undertakes to indemnify the loss suffered by the insured on account of risks covered by the policy, its terms have to be strictly construed in order to determine the extent of liability of insurer - It is not permissible for court to substitute the terms of contract itself, under the garb of construing terms incorporated in the agreement of insurance - No exceptions can be made on the ground of equity.

(ii) Insurance - Policy terms - Non-compliance - Effect - Appellant, a government company, in the business of insuring exporters - Respondent purchased insurance policy for purpose of insuring shipment to a foreign buyer/importer - Foreign buyer committed default in making payments - Claims presented by respondent-insured rejected by appellant-insurer - Validity - Held: Respondent-insured failed to comply with the requirement under clause 8(b) of the insurance agreement, of informing the appellant-insurer about the non-payment of outstanding dues by the foreign importer within the stipulated time except in two cases - Liability of appellant-insurer exonerated to that extent - Thus, only two claims deserve to be allowed - Other claims dis-allowed.

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INTERPRETATION OF STATUTES:

Reading down a provision.

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ORISSA LEGISLATIVE ASSEMBLY

(DISQUALIFICATION ON GROUND OF
DEFECTION) RULES, 1987:

(i) rr. 6(1) and (2) - Petition for disqualification of Members of Legislative Assembly on ground of defection, filed by a person, who was President of State Unit of political party but was not a Member of Legislative Assembly - Held: Is maintainable - Although, sub-r.(2) of r. 6 provides that a petition in

relation to a Member for the purposes of sub-r. (1) may be made in writing to the Speaker by any other Member, such a provision is neither contemplated nor provided for in the Tenth Schedule itself - In a case where all the four Members elected to the Assembly from the political party concerned, changed their allegiance from the said party to the ruling party, there would be no one to bring such fact to the notice of the Speaker and ask for disqualification of the said Members - Therefore, provisions of sub-rr. (1) and (2) of r. 6 have to be read down to make it clear that not only a Member of the House, but any person interested, would also be entitled to bring to the notice of the Speaker the fact that a Member of the House had incurred disqualification under the Tenth Schedule - Constitution of India, 1950 - Tenth Schedule - Para 2(1)(a), 6 and 8 - Interpretation of Statutes - Reading down a provision - Locus standi.

(ii) rr. 6(1) and (2) - Doctrine of reading down.

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PENAL CODE, 1860:

(1) (i) s. 302 read with s. 34 - Murder caused by two brothers - Conviction by trial court of both the accused - High Court affirming conviction of appellant and acquitting his brother - Held: Evidence discloses that both accused brothers had an old enmity with deceased over a well - On date of incident, deceased was attacked by both accused inasmuch as appellant assaulted the deceased by

stones while his brother facilitated execution of common design by sitting on his chest - Judgment of High Court acquitting one of the accused set aside and that of trial court convicting both restored.

(ii) s. 34 - Common intention - Explained.

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(2) s.302 r/w s. 34 - Fight between two rival groups - Death of two persons due to lathi blows inflicted by appellants - Conviction - Appellants taking plea of right of private defence - Held: Complainant party had gone to the field of the appellants and there was a fight between both the groups - Appellants fought to repel the attack and in course of the incident, both sides sustained injuries, as a result of which, one person of complainant's side died - In the circumstances, appellants entitled to plea of private defence in this regard - However, they had no right to invoke the right of self defence by chasing the other person and causing fatal injuries on him - Reasonable apprehension from the side of the appellants disappeared when they noticed that the victim was running away from the scene in order to escape - Appellants exceeded their limit when they chased the victim at some distance, pushed him down and inflicted several blows with lathis due to which he died - Conviction of appellants u/s.302 r/w s.34 IPC and the life sentence awarded to them, thus, justified - Evidence Act, 1872 - s.105.

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(3) ss.328, 354 and 376.

(See under: Code of Criminal Procedure, 1973) 504

(4) ss.468 and 471.

(See under: Code of Criminal Procedure, 1973) 545

(5) s.477A.

(See under: Prevention of Corruption Act, 1988) 398

PREVENTION OF CORRUPTION ACT, 1988:

Offences under - Applicability of the Probation of Offenders Act - Appellant, a retired employee of Post Office - Convicted by trial court u/s.477A IPC r/w s.13(1)(c) and 13(2) of the Prevention of Corruption Act - However, instead of awarding sentence, trial court released the appellant under Probation of Offenders Act - High Court sentenced appellant to one year u/ss.477A IPC and u/ s.13(1)(c) read with s.13(2) of Prevention of Corruption Act for one year - Held: Since s.7 as well as s.13 of Prevention of Corruption Act provide for a minimum sentence of six months and one year respectively in addition to the maximum sentences as well as imposition of fine, claim for grant of relief under Probation of Offenders Act is not permissible - In cases where a specific provision prescribes a minimum sentence, provisions of Probation Act cannot be invoked - No valid ground to interfere with the impugned order of High Court - Probation of Offenders Act, 1958 - Penal Code, 1860 - s.477A.

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disproportionate to his known sources of income - Based upon recommendations of High Powered Review Committee, order passed by State Government prematurely retiring the appellant from service - Held: Recommendation made by the High Powered Review Committee was indubitably arbitrary - There was no material before the Committee to conclude that appellant possessed assets beyond his known source of income - Order passed by State Government suffered from vice of arbitrariness - Impugned order of premature retirement of appellant quashed - Since appellant still not reached the age of superannuation, direction given for his reinstatement - However, as appellant had not challenged the order of premature retirement on the ground that the action taken by the Government was malafide, it would not be appropriate to grant of full backwages on reinstatement - Appellant shall be paid 30% of the backwages from the date of order of premature retirement till reinstatement - Jammu and Kashmir Civil Services Regulations, 1956 - Article 226(2) and 226(3). <i>Rajesh Gupta v. State of Jammu and Kashmir and Others</i>	557
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