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SUBJECT-INDEX**ABKARI POLICY:**

Kerala Abkari Policy - Object of - Held: Is to curb the rampant alcoholism in the State of Kerala, which claims to have the highest consumption of alcohol as against the other States in India, and whereby the younger generation is getting addicted - The objective is in pursuance of Article 47 of the Constitution which declares it to be a Directive Policy for the State to endeavour to bring about prohibition of consumption of intoxicating drinks - Constitution of India, 1950 - Article 47 - Liquor. (Also see under: Constitution of India, 1950).

State of Kerala & Ors. v. B. Surendra Das etc. 1054

ADMINISTRATION OF CRIMINAL JUSTICE:

Principle - Held: Essence of criminal justice system is to reach the truth - Underlying principle is that whilst the guilty must not escape punishment; no innocent person shall be punished unless the guilt of suspect/accused is established in accordance with law - All suspects/accused are presumed to be innocent till their guilt is proved beyond reasonable doubt in a trial conducted according to the procedure prescribed under law.

Dinubhai Boghabhai Solanki v. State of Gujarat & Ors. 932

ALL INDIA SERVICES (DEATH-CUM-RETIREMENT BENEFITS) RULES, 1958:

rr.16 and 26.

(See under: Securities and Exchange Board of India Act, 1992) 861

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APPEAL:

Second Appeal.

(See under: Code of Civil Procedure, 1908) 1097

APPROBATE AND REPROBATE:

Allotment letter - Specific condition that non-construction of building would lead to resumption of the plot under the provisions of the Acts and the Rules - Non compliance of - Demand raised for payment of non-construction fee/extension fee - In order to avoid resumption of the plot by the authority, allottee paid the extension fee - After availing the benefit of extension on payment of extension fee, allottee sent a letter to the Estate Officer demanding refund of the extension fee on the basis of amended Rule 13 of 1995 Rules - Held: Defaulting allottee cannot be allowed to approve and reprobate by first agreeing to abide by terms and conditions of allotment and later denying their liability as per the agreed terms - Once an order has been passed which is complied with, accepted by the other party who derived the benefit out of it, he cannot subsequently challenge it on any ground - Punjab Regional and Town Planning and Development (General) Rules 1995.

State of Punjab and Others v. Dhanjit Singh Sandhu 1121

BAIL:

Entitlement for - Appellant was arrested when he appeared before the CBI in response to the summons - Since then he was in custody - Supplementary charge-sheet filed by CBI - After the charge-sheet, appellant no longer required for further investigation - There was no likelihood of appellant tampering with the evidence as the copies of all the sensitive statements were not

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supplied to the appellant - Keeping in view the fact that CBI has submitted the supplementary charge-sheet and that the trial is likely to take a long time, appellant enlarged on bail, subject to conditions of furnishing personal security.

Dinubhai Boghabhai Solanki v. State of Gujarat & Ors. 932

CIRCULARS/GOVERNMENT ORDERS/
NOTIFICATIONS:

Executive orders - Binding effect of - Held: Executive orders cannot supplant the Rules framed under the proviso to Article 309 of the Constitution of India - Such executive orders/instructions can only supplement the Rules framed under the proviso to Article 309 of the Constitution of India.

Public Service Commission, Uttaranchal v. Jagdish Chandra Singh Bora & Anr. Etc. 1026

CODE OF CIVIL PROCEDURE, 1908:

s.100 - Second appeal - Substantial question of law - Held: Jurisdiction of High Court to entertain a second appeal is confined only to such appeal which involves substantial question of law.

Biswanath Ghosh (Dead) by Lrs. and Others v. Gobinda Ghosh Alias Gobindha Chandra Ghosh and Others 1097

CONSTITUTION OF INDIA, 1950:

(1) Art. 14.

(See under: Uttranchal Subordinate Engineering Service (Emergency Direct Recruitment) Rules, 2001) 1026

(2) Art.32 - Writ petition challenging appointment of Chairman, SEBI - Held: Section 4(5) of SEBI Act inter alia stipulates that Chairman and other

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members of SEBI shall be persons of "ability, integrity and standing who have shown capacity in dealing with problems relating to securities market" - Thus, statutorily, a person cannot be appointed as chairman/member of SEBI unless he or she is a person of high integrity - Therefore, selection and appointment of Chairman, SEBI could be challenged under Art. 32 on the said ground - Securities and Exchange Board of India Act, 1992 - s. 4(5).

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(3) (i) Art. 32 - Writ petition filed purporting to be in public interest - Judgment - I.A. filed praying for expunction of certain observations made in the judgment - Held: Expunging of remarks about bona fides of petitioner would not affect the decision in the writ petition - Prayer allowed - Public Interest Litigation - Expunction of remarks.

(ii) Art. 32 - Writ petition - Judgment - I.A. for directions - Held: Remarks have been made only for the purpose of decision of the writ petition and shall have no bearing on the service career of the applicant - Interlocutory application - Impleadment.

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(4) Article 47 - Liquor - Right to trade - Held: There is no fundamental right to trade in liquor - At the same time where such a trade is permitted, there cannot be any room for discrimination. (Also see under: Abkari Policy).

State of Kerala & Ors. v. B. Surendra Das etc. 1054

(5) Article 300A - Constitutional rights, vested in borrowers.

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(See under: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) 1140

(6) Art. 309 - Proviso.
(See under: Circulars/Government Orders/ Notifications) 1026

CONTRACT:

(See under: Specific Relief Act, 1963) 1097

DOCTRINES/PRINCIPLES:

Doctrine of election - Held: Is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it - Doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity - By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.

State of Punjab and Others v. Dhanjit Singh Sandhu 1121

EQUITY:

(See under: Doctrines/Principles) 1121

IAS CADRE RULES:

rr.6(2)(i) and 6(2)(ii).
(See under: Securities and Exchange Board of India Act, 1992) 861

IMPLEADMENT:

(See under: Constitution of India, 1950) 929

INTERLOCUTORY APPLICATION:

(See under: Constitution of India, 1950) 929

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INVESTIGATION:

(i) Transfer of investigation - Social activist filed PIL for stopping illegal mining in which, name of appellant and his nephew emerged as the power behind illegal mining mafia - They were impleaded as respondents and served - Next day the social activist was brutally killed - Father of activist dissatisfied with the progress of investigation filed writ petition seeking transfer of investigation - High Court initially directed further investigation to be conducted by State - On submission of final report, High Court finding that even further investigation was not impartial, by impugned order, transferred the case to CBI - Transfer challenged by State - Held: Investigation with the lapses and lacunae as also the unusual acts of omission and commission did not inspire confidence - High Court noticed that the investigation was being transferred to CBI to instill confidence of the general public in the investigation, keeping in mind the seriousness of the case having far reaching implications - No interference with the transfer of investigation to CBI.

(ii) Transfer of investigation - Rights of accused - Opportunity of hearing and impleadment of accused - Held: Fair, unbiased and transparent investigation is a sine quo non for protecting the accused - It is not necessary to give an opportunity of hearing to the proposed accused as a matter of course - If prior notice and opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation - There was no obligation for High Court to either hear or to make appellant a party to the proceedings before directing that investigation be conducted by CBI.

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(iii) Transfer of investigation - Adverse remarks recorded by High Court while considering transfer of investigation to CBI - Expunction of - Challenged to - Held: Adverse remarks recorded by High Court are not expunged - However, trial court is directed to keep in mind that any observations made by High Court, which may appear to be adverse to appellant, were confined only to the determination of the issue as to whether the investigation is to be transferred to CBI.

Dinubhai Boghabhai Solanki v. State of Gujarat & Ors. 932

JURISDICTION:

- (1) Jurisdiction of High Court to entertain second appeal.
(See under: Code of Civil Procedure, 1908) 1097
- (2) (See under: Public Interest Litigation) 861

KERALA ABKARI ACT:

(i) r.13 - Kerala Abkari Policy 2011-12 - Amendment to s.13 omitting words 'three star' from r.13(3) - Constitutionality of - Held: In the case of *B. Six Holiday Resorts*, deletion of two star hotels from the eligibility of FL-3 licences was upheld by Supreme Court - It was held therein that promotion of tourism should be balanced with general public interest and that if policy is not open to challenge the amendment of the Rules to effect the policy can also not be challenged - Deletion of three star hotels falls in the same genre as the deletion of two star hotels, which was done earlier - This being the position, the State cannot be faulted for deletion of three star hotels after a periodical revision of the policy.

(ii) r.13 - Kerala Abkari Policy 2011-12 - Amendment to r.13 introducing distance rule -

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Constitutionality of - Held: Distance rule by way of addition of Rule (3E) in Rule 13(3) is held to be bad in law - State government will not proceed to deny FL3 licenses to hotels with a classification of four star and above by resorting to their deletion under r.13(3) until the report of the one-man commission is received, and until it takes action against the non-standard restaurants which have been permitted under the sixth and seventh proviso of r.13(3).

(iii) Classification and Reclassification of Hotels - Held: Two star and three star hotels stand on a different footing as against the hotels with four star and higher classification under the tourism policy of the Government of India - Ministry of Tourism of the Government of India has issued the amended guidelines for classification/re-classification of hotels on 28.6.2012 - Classification of the hotels into star categories and heritage categories is done thereunder, and it is a voluntary scheme - If a local law prohibits the issuance of a bar licence to four star, five star, five star deluxe, heritage classic and heritage grand categories, which is otherwise necessary, such local law will prevail - In any case three star hotels will have to be placed in a different category as against the hotels with four star and higher classification, since it is not necessary for three star hotels to have an FL3 licence.

State of Kerala & Ors. v. B. Surendra Das etc. 1054

KERALA ABKARI POLICY 2011-12:
(See under: Kerala Abkari Act) 1054

LICENCE:
Bar Licence.

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(See under: Kerala Abkari Act and Abkari Policy) 1054

LIQUOR:

Right to trade.
(See under: Abkari Policy) 1054

NOTICE:

(See under: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) 1140

PUBLIC INTEREST LITIGATION:

(1) (See under: Constitution of India, 1950) 929

(2) Writ petition challenging appointment of Chairman, SEBI - Held: Petitioner has unjustifiably attacked integrity of the entire selection process - Petition does not satisfy the test of utmost good faith required to maintain public interest litigation - Petitioner could not justify invoking the jurisdiction of the Court under Art. 32.

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PUNJAB REGIONAL AND TOWN PLANNING AND DEVELOPMENT (GENERAL) RULES 1995:

(See under: Approbate and Reprobate) 1121

PUNJAB URBAN ESTATE (DEVELOPMENT AND REGULATION) RULES, 1964:

r.14 - Non-completion of building within time prescribed from the date of issue of the allotment letter - Demand of non-construction fee/extension fee - Held: Allottee having failed to abide by the terms and conditions and did not raise construction, he was liable to pay non-construction fee/extension fee which was demanded from him in order to

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enable him to avoid resumption of the plot to the appellant-authority.

State of Punjab and Others v. Dhanjit Singh Sandhu 1121

SALE:

(See under: Security Interest (Enforcement) Rules, 2002) 1140

SEBI (TERMS AND CONDITIONS OF SERVICE AND MEMBERS) RULES, 1992:

r.3(5).
(See under: Securities and Exchange Board of India Act, 1992) 861

SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992:

(i) s.4(5) - Appointment of Chairman of SEBI - Challenged on the ground of integrity, mala fides, conspiracy etc. - Held: No substance in the alleged irregularities regarding deputation of fourth respondent, alleged misstatement/non-disclosure about his pay scale/sanctioned emoluments as disclosed - Nothing which would render him a person of not high integrity - SEBI (Terms and Conditions of Service and Members) Rules, 1992 - r.3(5) - IAS Cadre Rules - rr.6(2)(i) and 6(2)(ii).

(ii) Appointment of Chairman, SEBI - Allegation of mala fide - Held: If the allegations of mala fide are established, it would vitiate the selection procedure, recommendation and appointment of fourth respondent as Chairman, SEBI - But burden of proving the allegations of mala fide would lie very heavily on petitioner - Petitioner has not made out a case of mala fide to vitiate the selection process and appointment of fourth respondent as Chairman, SEBI.

(iii) Appointment of Chairman, SEBI - Allegation of conspiracy - Held: Charge of conspiracy has to be taken seriously - Charge of criminal intent and conduct had to be clearly pleaded and established by evidence of very high degree of probative value - No notice of such allegations can be taken based only on pure conjectures, speculations and interpretation of notings in the official files - Appointment of fourth respondent is strictly in conformity with the procedure prescribed - Petitioner has not placed on record any material to establish that any conspiracy was hatched to ensure selection of fourth respondent as Chairman, SEBI - All India Services (Death-cum-Retirement Benefits) Rules, 1958 - rr.16 and 26.

(Also see under: Constitution of India, 1950)

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SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002:

(i) s.13(8) - Right of borrower - Held: Provision contained in s.13(8) is specifically for the protection of the borrowers in as much as, ownership of the secured assets is a constitutional right vested in borrowers and protected u/Art. 300A of the Constitution - Therefore, secured creditor as a trustee of the secured asset cannot deal with the same in any manner it likes and such an asset can be disposed of only in the manner prescribed in the SARFAESI Act - Therefore, creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all

possible steps for retrieving his property - Such a notice is also necessary to ensure that the process of sale will ensure that the secured assets will be sold to provide maximum benefit to the borrowers - Notice is also necessary to provide the required opportunity to the borrower to take all possible steps for retrieving his property or at least ensure that in the process of sale the secured asset derives the maximum benefit and the secured creditor or anyone on its behalf is not allowed to exploit the situation of the borrower by virtue of the proceedings initiated under the SARFAESI Act - Constitution of India, 1950 - Article 300A.

(ii) s.13 - Sale of Non-performing asset - Sale consideration only Rs.10,000 above the reserve price whereas property worth much more - Held: Secured creditors are expected to take bonafide measures to ensure that there is maximum yield from such secured assets for the borrowers - Sale null and void being in violation of provisions of s.13 and rr.8 and 9 and liable to be set aside - Security Interest (Enforcement) Rules, 2002 - rr.8 and 9.

(iii) s.13 - Sale of Non-performing asset - Single Judge of High Court after holding that the sale was invalid as there was violation of Rules, directed borrowers to make payments to the Bank with clear direction that on such payment, insofar as the bank is concerned its dues would be settled - Not only borrowers made the payment as directed which was accepted by bank, the bank even accepted the said judgment and did not file any appeal thereagainst - Only the buyer filed the appeal - Once the payment is made to the buyer by borrowers the possession of the property shall be delivered to the borrowers with no further liability towards the bank.

(Also see under: Security Interest (Enforcement) Rules, 2002)

J.Rajiv Subramaniyan & Anr. v. M/s. Pandiyas & Ors. 1140

SECURITY INTEREST (ENFORCEMENT) RULES, 2002:

(i) rr.8 and 9 - Held: Any sale effected without complying with the Rules would be unconstitutional and null and void.

(ii) r.8(8) - Sale by any method other than public auction or public tender shall be on such terms as may be settled between the parties in writing - No terms were settled between the parties that the sale can be effected by Private Treaty - Borrowers were not even called to the joint meeting between the bank and the sale agent - There was violation of rules rendering the sale void.

J. Rajiv Subramaniyan & Anr. v. M/s. Pandiyas & Ors. 1140

SERVICE LAW:

(1) Disciplinary proceedings - Punishment of dismissal from service on 23.4.1985 - Full Bench of High Court ordered reinstatement on the ground that non-supply of enquiry report to the delinquent employee and directed the disciplinary authority to grant an opportunity to the employee to reply to enquiry report and pass appropriate orders after granting personal hearing to him - Bank completed the disciplinary proceedings and passed an order of dismissal with retrospective effect - Challenged - Held: Direction of Full Bench of High Court for reinstatement was a direction for reinstatement for the purpose of holding a fresh enquiry from the stage of furnishing the report and no more - Bank passed an order of dismissal on 22.11.2001 with

effect from 23.4.1985 which is absolutely unacceptable as would amount to annulment of the earlier judgment of the Full Bench of High Court - When on the date of non-furnishing of enquiry report, delinquent officer was admittedly not under suspension, but was in service, he would continue in service till he is dismissed from service in accordance with law or superannuated in conformity with the Regulations - Order of removal cannot be made retrospective.

State Bank of Patiala and Another v. Ram Niwas Bansal (Dead) Through Lrs. 984

(2) Selection.

(See under: Uttranchal Subordinate Engineering Service (Emergency Direct Recruitment) Rules, 2001) 1026

SPECIFIC RELIEF ACT, 1963:

s.16(c) - Specific performance - Readiness and willingness to perform contract - Held: For compliance of s.16(c) it is not necessary for the plaintiff to aver in the same words used in the Section i.e. ready and willing to perform the contract - Readiness and willingness of person seeking performance means that the person claiming performance has kept the contract subsisting with preparedness to fulfill his obligation and accept the performance when the time for performance arrive - Sequence of facts and events showed that plaintiffs were always ready and willing to discharge their obligation and perform their part of the agreement - Therefore, there was sufficient compliance of the requirements of s.16(c) on their part.

Biswanath Ghosh (Dead) by Lrs. and Others v. Gobinda Ghosh Alias Gobindha Chandra Ghosh and Others

STATE BANK OF PATIALA (OFFICERS') SERVICE REGULATIONS, 1979:

Regulation 19(1), proviso - Date of superannuation - Entitlement to back wages, till the date of superannuation or till the date of dismissal - Held: First proviso to Regulation 19(1) states that the period of service can be extended by the discretion of the competent authority and such extension has to be desirable in the interest of the Bank - Unless an extension is granted by a positive or an affirmative act by the competent authority, an officer of the bank retires on attaining age of 58 years or upon the completion of 30 years of service, whichever occurs first - Order of dismissal was passed on 22.11.2001 while the employee completed 30 years of service on 25.2.1992 - Claim for grant full salary for the whole period till the order of removal not sustainable - His continuance by virtue of the order passed by the High Court has to be treated as a deemed continuance for the purposes of finalization of the disciplinary proceeding only.

State Bank of Patiala and Another v. Ram Niwas Bansal (Dead) Through Lrs. 984

STRICTURES:

Expunction of remarks:
(See under: Constitution of India, 1950) 929

UTTRANCHAL SUBORDINATE ENGINEERING SERVICE (EMERGENCY DIRECT RECRUITMENT) RULES, 2001:

r.5(4) - Selection for the post of Junior Engineer under the 2001 Rules - Advertisement and the 2001 Rules did not provide any weightage to be given to trained apprentices - Rules 2001 ceased to exist on 11.11.2002 - On 31.7.2003, 2003 Rules

framed - Rules 2003 superseded all existing Rules but Rule 5(4) of 2001 Rules transposed by Rule 5(4) of the 2003 Rules - Rule 5(4) of the 2003 Rules provided that the marks obtained in the written examination and the marks obtained in the interview shall be increased by 10 extra marks in case of trained apprentices - Claim by respondents-writ petitioners to make selection after giving benefit of 10 additional marks to the candidates for completed apprenticeship - Held: All the candidates including the respondents participated in the selection process under 2001 Rules being fully aware that no preference was given to the trained apprentices - Therefore, it cannot be said that any vested right had accrued to the trained apprentices, under the 2001 rules - Rules of 2003 came into force on 31.7. 2003 and no retrospective effect was given to it - 2003 Rules could not have the effect of amending the 2001 Rules which had already ceased to exist in terms of Rule 6 thereof w.e.f. 11.11.2001 - It was wholly impermissible to alter the selection criteria which was advertised in 2001 - As no preference was given to the trained apprentices in 2001 Rules, many eligible candidates in that category may not have applied - Therefore, giving such preference would be clear infraction of Art. 14 of the Constitution of India - Service law - Selection.

Public Service Commission, Uttaranchal v. Jagdish Chandra Singh Bora & Anr. Etc. 1026