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(2) Criminal Justice:

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(ii) Execution of warrants to compel appearance in court - Non-bailable warrant issued against appellant executed even after it had been cancelled - Held: The High Court has rightly held that the Inspector did not perform his duty in the

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(ii) Natural justice - Applicability of, to removal of Chairman/Vice-Chairman of State Bar Council by 'no-confidence motion' - Held: Concept of just

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(2) Judicial review - Change in user of land by State Government - Scope of judicial review - Held: User of the land is to be decided by the authority empowered to take such a decision and the court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary - Town planning requires high degree of expertise and that is best left to the decision of State Government to which the advise of the expert body is available - Town planning.

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(3) (i) Policy - Change of policy with the change of Government - Propriety - Held: Unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power -

The principles of governance have to be tested on the touchstone of justice, equity, fair play - In the instant case, Uniform Education system was brought in terms of the Act 2010 - Subsequently, with the change of government inviting tenders to publish the books under the old education system before the first Cabinet meeting of the new Government, would show that there was a pre-determined political decision to scrap the Act 2010 - The decision was arbitrary and oppressive to students, teachers and parents - Tamil Nadu Uniform System of School Education (Amendment) Act, 2011 - Tamil Nadu Uniform System of School Education Act, 2010.

(ii) Expert body's opinion - Scope of interference by court - Held: Courts lack expertise especially in disputes relating to policies of pure academic educational matters - Therefore, generally it should abide by the opinion of the Expert Body - Normally the courts should be slow to interfere with the opinions expressed by the experts.

(iii) State action - Arbitrariness in - Held: Whenever there is arbitrariness in State action, whether it be of the legislature or of the executive, Art. 14 of the Constitution immediately springs into action and strikes down such State action - Constitution of India, 1950 - Art.14.

(iv) Delegated legislation - Conditional legislation - Held: In case the legislature wants to delegate its power in respect of the implementation of the law enacted by it, it must provide sufficient guidelines, conditions, on fulfillment of which, the Act would be enforced by the delegate - Conferring unfettered, uncanalised powers without laying down

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(Also see under: Tamil Nadu Uniform System of School Education Act, 2010; Tamil Nadu Uniform System of School Education (Amendment), Act, 2011; Constitution of India, 1950; and Legislation.)

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(ii) Part I and Part II of the Act - Difference between - Held: Part I and Part II of the Act are quite different in their object and purpose and the respective schemes.

(iii) ss.37 and 50 - Appellate provision u/s.37 and u/s.50 - Difference between - Held: s.37 in Part I of the Act (analogous to s.39 of the 1940 Act) is not comparable to s.50 in Part II of the Act - s.37 and s.50 are not comparable because they belong to two different statutory schemes - s.37 containing the provision of appeal is part of a much larger framework that has provisions for the complete range of law concerning domestic arbitration and international commercial arbitration - s.50, on the other hand, contains the provision of appeal in a much limited framework, concerned only with the enforcement of New York Convention awards - In one sense, the two sections, though each containing the appellate provision belong to different statutes.

(iv) Part II, Chapter I - Provisions of, compared with the provisions of the Foreign Awards (Recognition and Enforcement) Act, 1961.

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ARMY ACT, 1950:

s. 71.
(See under: Service Law) 326

ARMY RULES, 1954:

r. 39 - Irregularity in constitution and conduct of court martial - Held: The act of summarily trying others for other offences relating to the same incident is not a ground for disqualification - Charges against the delinquent officer were completely different from the charges against the persons who were summarily tried - Presiding Officer did not suffer from any disqualifications

enumerated in r.39.
(Also see under: Service Law; and Constitution of India, 1950)

Union of India & Ors. v. Bodupalli Gopaldaswami 326

BAIL:

(1) Cancellation of bail - Allegations against respondent that he had huge amount of unaccounted money, in foreign banks - Held: There was no attempt on part of respondent to disclose the source of the large sums of money handled by him - The burden of proof that the said monies were not the proceeds of crime and were not tainted shifted to the respondent u/s.24 of PML Act - The amount lying in the Swiss bank was not explained by the respondent - He was also not able to establish that the huge amounts in his accounts were neither proceeds of crime nor tainted property - Manner in which he procured three different passports in his name after his original passport was directed to be deposited in court also lend support to apprehension that if released on bail, he may abscond - Bail cancelled - Prevention of Money Laundering Act, 2002 - s.4 - Code of Criminal Procedure, 1973 - s.439.

Union of India v. Hassan Ali Khan and Anr. 778

(2) Conditional anticipatory bail - Partition suit between the parties pending in civil court - Deed of partition produced by the appellant alleged to have been subjected to alterations and interpolations - Criminal complaint against appellant - High Court granting anticipatory bail

subject to the condition that in the partition suit pending between the parties, neither of the parties would use the family arrangement-cum-partition deed as evidence - Held: It is for the civil court dealing with the partition suit between the parties to examine and test the genuineness of the deed of partition produced by the appellant in support of his case - The condition put by the High Court amounts to pre-judging the issue and, as such cannot be sustained - Parties not bound by that condition.

Dinbandhu v. State of Bihar & Anr. 504

BAR COUNCIL OF INDIA RULES, 1961:
(See under: Advocates Act, 1961) 403

BAR COUNCIL OF MADHYA PRADESH RULES:
(i) rr. 121 and 122-A - Removal of Chairman/Vice-Chairman by 'no confidence motion' - Challenge to vires of r. 122-A, on the ground that s.15 of the Advocates Act, does not contemplate the framing of such Rule by State Bar Councils - Held: r. 122-A of the M.P. Rules contemplates the removal of a Chairman/Vice-Chairman by a motion of no confidence, passed by a specific majority of the members and subject to satisfaction of the conditions stated therein - It cannot be termed as vesting arbitrary powers in the elected body - Provisions of rr. 121 and 122-A of the Rules are not *ultra vires* the provisions of the Advocates Act, including s. 15 - These rules also do not suffer from the vice of excessive delegation - Amended Rules of the M.P. Rules received the approval of the Bar Council of India, particularly, r. 122-A and would not be invalidated for want of issuance of any notification - On facts, the Chairman of the

State Bar Council had lost the confidence of majority of the elected members and thus, Resolution to hold special meeting to consider requisition of 'no confidence motion' cannot be faulted with - Advocates Act, 1961 - s.15.

(ii) Object and purposes of the Rules - Explained.
(Also see under: Administrative Law)

Pratap Chandra Mehta v. State Bar Council of M.P. & Ors. 965

BIHAR REORGANISATION ACT, 2000:

s. 89 - Transfer of pending proceedings - Respondent working at Thermal Power Station, Hazaribagh dismissed from service - Suit filed before Munsif, Patna seeking declaration that dismissal was bad and inoperative in law - Suit decreed - Held: Suit filed by the respondent was not maintainable - On bifurcation of State of Bihar, Thermal Power Station Hazaribagh which was earlier part of State of Bihar, forms part of the newly created State of Jharkhand - Transfer of proceedings in terms of s. 89 was to take place by operation of law - High Court lost sight of the fact that it was affirming a decree that was no longer executable in the State of Bihar - Judgments and decrees under challenge set aside and suit dismissed - Industrial Disputes Act, 1947.

Bihar State Electricity Board & Anr. v. Ram Deo Prasad Singh & Ors. 249

BOMBAY GRAM PANCHAYATS ACT, 1958:

s. 127.
(See under: Mineral Concession Rules, 1961). 613

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CENTRAL EXCISE TARIFF ACT, 1985: Schedule - Heading 44.08, sub-heading 4408.90 - 'Laminated panels of PArt.' and 'Medium Density Fibre Board' - Held: Are classifiable under Chapter Heading 44.08 and not under Chapter Heading 44.06, as the products are similar to plywood and veneered panels, and after lamination assume a distinct marketability and bring about a change in the products - Therefore, Heading 44.08 is squarely applicable and sub-heading 4408.90 would be the appropriate sub-heading for classification of the products in question - Rules of interpretation of the Act - r.3 - Interpretation of statutes. <i>Commnr. of Central Excise, Noida v. Kitply Industries Ltd.</i>	219
CENTRAL RESERVE POLICE FORCE RULES, 1955: r. 27. (See under: Constitution of India, 1950; and Service law)	182
CIRCULARS/GOVERNMENT ORDERS/ NOTIFICATIONS: (1) Government of Andhra Pradesh Memo No. 1280/COSE/A2/2004-4 dated 20.10.2004. (See under: Service Law)	170
(2) Government of India, Ministry of Irrigation & Power letter dated 27.7.1985 - Allocation of 12% of power generated to 'mother-State" free of cost - Held: Is applicable to Joint ventures between the Union and one or more State Governments - In the instant case, the letter is not applicable. (Also see under: Constitution of India,	

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1950; Punjab Reorganization Act, 1966; and Relief) <i>State of Himachal Pradesh vs. Union of India & Ors.</i>	527
(3) Government of Rajasthan, Finance Department (Rules Division) Office Order dated 24.7.1995. (See under: Service Law)	762
(4) High Court of Karnataka Notification No. HCBB.CBD.01/2008 dated 29.12.2008. (See under: Karnataka High Court Rules, 1959)	870
(5) (i) Notification SRO No. 429/95 dated 31.2.1995, Second Schedule, Entry 17A. (ii) Circular 2439/TD dated 19.2.1996. (See under: Kerala General Sales Tax Act, 1963)	206
CODE OF CIVIL PROCEDURE, 1908: O.47, r.5. (See under: Karnataka High Court Rules, 1959)	870
CODE OF CRIMINAL PROCEDURE, 1973: (1) s. 157 (See under: Investigation)	429
(2) s.181 (4) - Applicability of - Held: It is during the trial that the petitioners would have to disprove the complainant's case that part of the cause of action arose in Patiala where the dowry Arts. were to be returned to the complainant - The complaint indicated that a part of the cause of action arose in Patiala, therefore, provision of s.181 (4) was	

attracted - High Court rightly observed that on a bare perusal of the complaint, the Patiala Court has jurisdiction to entertain the complaint - No reason to interfere with the order of the High Court - Jurisdiction.

Kushal Kumar Gupta and Anr. v. Mala Gupta

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(3) (i) s.188, proviso - Offence committed outside India by citizen of India - Previous sanction of Central Government for inquiring into or trying such offences in India - Requirement of - Held: Upto the stage of taking cognizance, no previous sanction is required from the Central Government in terms of the proviso to s. 188 - However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government.

(ii) s. 188 - Offence committed outside India - Couple married in India and went abroad - Complaint against husband addressed to the police in India - Registration of complaint u/ss. 498-A and 506 IPC and ss. 3 and 4 of the Dowry Prohibition Act, 1986 - Held: Alleged offences u/ ss. 3 and 4 of the Dowry Prohibition Act occurred within the territorial jurisdiction of the criminal courts in India and could, therefore, be tried by the courts in India without obtaining the previous sanction of the Central Government - Magistrate may proceed with the trial relating to offences - However, in respect of offences alleged to have been committed outside India, the Magistrate shall not proceed with the trial without the sanction of the Central Government as envisaged in the

proviso to s. 188.

Thota Venkateswarlu v. State of A.P. Tr. Princ. Sec. & Anr.

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(4) (i) s.311 - Summoning of witness in a bribe case - In a property dispute with Nagar Palika, plaintiff filed a suit and on her leaving for abroad her father supervised the litigation - Subsequently, in respect of demand of bribe, trial against two accused u/s.7 and s.13 (2) r/w s.13 (1) (d) of Prevention of Corruption Act -Application u/s.311 CrPC requesting the Court to summon the plaintiff as a court witness - Held: Power u/s.311 CrPC should be exercised judicially not arbitrarily or capriciously -Power to summon any person as a witness can be exercised if the court forms an opinion that the examination of such a witness is essential for just decision of the case - In the instant case, plaintiff had nothing to do with the bribe case either as a complainant or as a witness to the trap arranged by the police -She was also not present at the time when the bribe was allegedly demanded - It was not necessary for the court to examine her as a court witness - Neither the accused in his application nor the High court in the judgment specified the reason as to why and how examination of the plaintiff' as a court witness was necessary - Power u/s.311 CrPC was exercised by High Court arbitrarily and, therefore, the order rendered by it directing the trial court to examine the plaintiff as a court witness set aside.

(ii) s.311 - Discretionary power under - Scope and ambit of - Held: Though s.311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said Section can be invoked only for

the ends of justice - Discretionary power should be exercised consistently with the provisions of the Code and the principles of criminal law - The discretionary power conferred u/s.311 has to be exercised judicially for reasons stated by the Court and not arbitrarily or capriciously.

Vijay Kumar v. State of U.P. and Ors. 893

(5) s.439.

(See under: Bail) 778

(6) s. 482 - Petition seeking to quash criminal proceedings for an offence punishable u/s 304-B/34 IPC -Charge sheet filed - Held: The allegations made in the complaint and the FIR are required to be looked into - Appellant will have sufficient opportunity to place his case before the court at the time of framing of the charge - At this stage no case is made out to quash the entire proceedings.

Ajay Kumar Das v. State of Jharkhand & Anr. 197

(7) ss. 154, 157 (1) and 313.

(See under: Penal Code, 1860) 429

(8) ss. 173 (8) and 482 - Investigation - High Court taking *suo motu* notice and directing CBI to investigate into the case - Held: In a case where charge-sheet has been filed, s. 173 (8) cannot limit or affect the inherent powers of High Court to pass an order u/s.482 for fresh investigation or re-investigation if it is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice - As regards investigation by CBI, High Court held that

investigation of the case by the investigating officer, even of the rank of DSP would not be fair and truthful because senior functionaries of the State police and political leaders were involved, and justice would not be done if local police investigated - Direction of High Court for investigation by CBI was justified.

State of Punjab v. Central Bureau of Investigation & Ors. 281

(9) (i) ss.211 to 215 - Framing of charge - Purpose of - Discussed.

(ii) ss.211 to 215 - Protections to and rights of the accused during investigation and trial - Held: An accused has the freedom to maintain silence during investigation as well as before the court - He may choose to maintain silence or make complete denial even when his statement u/s.313, Cr.P.C. is being recorded - He has right to fair trial - There is presumption of innocence (not guilty) and the prosecution has to prove its case beyond reasonable doubt - In case of allegation of prejudice by the accused, courts are required to examine both the contents of the allegation of prejudice as well as its extent in relation to these aspects of the case of the accused, as violation of these rights alone that may result in weakening of the case of the prosecution and benefit to the accused in accordance with law.

(iii) Non-framing of charge or some defect in drafting of the charge - Held: *Per se* would not vitiate the trial itself - It will have to be examined in the facts and circumstances of a given case - Of course, the court has to keep in mind that the

accused 'must be' and not merely 'may be' guilty of an offence - A person charged with a heinous or grave offence can be punished for a less grave offence of cognate nature whose essentials are satisfied with the evidence on record - Where the offences are cognate offences with commonality in their feature, duly supported by evidence on record, the Courts can always exercise its power to punish the accused for one or the other provided the accused does not suffer any prejudice as indicated.

(iv) Object of the Code - Held: To further the ends of justice and not to frustrate them by the introduction of endless technicalities - The object is to ensure that an accused person gets a full and fair trial along with certain well-established and well-understood canons of law that accord with the notions of natural justice.

Rafiq Ahmed @ Rafi v. State of U.P. 907

(10) (i) Chapter VI - Processes to compel appearance - Warrant of arrest - In a complaint case for offence punishable u/s 324 IPC on the date of hearing at preliminary stage, appellant being absent the court issued a non-bailable warrant against him - Held: Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Art. 21 of the Constitution - The power has to be exercised judiciously - In the instant case, having regard to nature of the complaint against the appellant and his stature in the community and the fact that he was regularly attending the court proceedings, it was not a fit

case where non-bailable warrant should have been issued - The attendance of the appellant could have been secured by issuing summons or at best by a bailable warrant - Constitution of India, 1950 - Arts. 21 and 22 (1).

(ii) Processes to compel appearance in court - Issuance of a warrant with endorsement "non-bailable" - Held: Though no such terminology is found in the Code or Form-2, nevertheless, the endorsement of the expression "non-bailable" on a warrant is to facilitate the executing authority as well as the person against whom the warrant is sought to be executed to make them aware as to the nature of the warrant that has been issued - Merely because the warrant uses the expression "non-bailable", that by itself cannot render the warrant bad in law - In order to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements, guidelines laid down to be adopted in all cases where non-bailable warrants are issued by the courts - Code of Criminal Procedure, 1973 - ss. 70, 71 and 476 r/w Second Schedule, Form-2.

(Also see under: Administration of Justice; and Compensation)

Raghuvansh Dewanchand Bhasin v. State of Maharashtra & Anr. 300

(11) Chapter XII, s. 173 (8) r/w s. 482 Cr.P.C. and Art. 226 r/w Art. 136 of the Constitution - Monitoring of investigation by Court - Gulberg Society case in State of Gujarat - Held: Bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed

by the SIT, in terms of the orders passed by the Court from time to time, there is no course available in law, save and except to forward the final report u/s 173 (2) of the Code to the court empowered to take cognizance of the offence alleged - The Chairman, SIT is directed to forward a final report, along with the entire material collected by the SIT, to the court concerned - Constitution of India, 1950 - Articles 136 and 226.

Jakia Nasim Ahesan & Anr. v. State of Gujarat & Ors. 365

COMPENSATION:

(1) The power and jurisdiction of Supreme Court and High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Arts. 32 and 226 of the Constitution to a victim whose fundamental rights under Art. 21 of the Constitution are violated are well-established - High Court has awarded Rs.2,000/- to the appellant - Having considered the case in the light of the fact-situation, the appellant does not deserve further monetary compensation.

(Also see under: Code of Criminal Procedure, 1973 and Administration of Justice)

Raghuvansh Dewanchand Bhasin v. State of Maharashtra & Anr. 300

(2) (See under: Motor Vehicles Act, 1988) 386
and 420

(3) (See under: Goa, Daman and Diu Agricultural Tenancy Act, 1964) 817

CONSTITUTION OF INDIA, 1950:

(1) (i) Art. 13 (2) - Held: Art. 13 (2) prohibits the State from making any law which takes away or

abridges the rights conferred by Part-III of the Constitution and provides that any law made in contravention of this Clause shall, to the extent of contravention be *void* - The legislative competence can be adjudged with reference to Arts. 245 and 246 read with the three lists given in the Seventh Schedule as well as with reference to Art. 13 (2) - The effect of the declaration of a statute as unconstitutional amounts to as if it has never been in existence - Rights cannot be built up under it; contracts which depend upon it for their consideration are *void* - The unconstitutional act is not the law - It confers no right and imposes no duties.

(ii) Art. 21-A - Right to education - Held: Is a fundamental right u/Art. 21-A - The right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the ground of their economic, social and cultural background - Education/Educational institutions. (Also see under: Tamil Nadu Uniform System of School Education (Amendment) Act, 2011; Constitutional Law; Administrative law; Constitution of India, 1950: and Legislation.)

State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. 1094

(2) Art. 14 - Equality before law - Concept - Explained - Held: In the instant case, the State Government has permitted grant of Selection Grade to those who had good service record, but for those who had earned censure, the same has been deferred by one year - Thus, there is a basic and fundamental difference between the two

categories of the employees - It would clearly fall in the category of reasonable classification which is permissible - Service Law.

(Also see under: Service Law)

State of Rajasthan & Ors. v. Shankar Lal Parmar 762

(3) Arts. 14 and 16.
(See under: Service Law) 635

(4) Art. 22 (5)
See under: Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1985) 458

(5) (i) Arts. 131 (b) and 363 - Suit - Plaintiff -State claiming its share in the power generated in Bhakra-Nangal and Beas Projects - Held: As regards submergence of large area in construction of the projects, plaintiff cannot make any claim on the basis of the rights of Raja of Bilaspur prior to the merger of the Bilaspur State with the Dominion of India - However, the plaintiff as a successor State of the composite State of Punjab, has the statutory right u/s 78 of the Punjab Reorganisation Act, 1966 to the utilization of power and also the constitutional right to equal treatment vis-a-vis the other successor States and, as such, has cause of action to file and maintain the suit as against the respective States - Such a claim is not barred under Art. 363 - More over, as u/s 78 (1) the Central Government failed to determine the rights of the plaintiff, it has cause of action to file the suit against it also - However, as State of Rajasthan was never a part of composite State of Punjab, its rights are not affected by the 1966 Act and,

thus, plaintiff has no cause of action to file the suit against it - Supreme Court Rules, 1966 - O. 23, r. 6 (a) - Punjab Reorganization Act, 1966 - s. 78.

(ii) Arts. 131 (b) and 262 (2) - Suit - Plaintiff-State claiming its share in power generated in Bhakra-Nangal and Beas Projects - Maintainability of - Held: The relief claimed does not relate to inter-State river water or use thereof, but pertains to sharing of power generated in the said projects and such a dispute was not barred under Art. 262 (2) of the Constitution r/w s. 11 of Inter-State Water Disputes Act, 1956.

(iii) Art. 131 (b) - Suit - Limitation - Plaintiff-State claiming its share in power generated in Bhakra-Nangal and Beas Projects - Suit filed in 1996 - Resisted as barred by limitation - Held: Suit was not barred by limitation, delay or laches, as the Art. does not prescribe any period of limitation to file such a claim - Moreover, there has been no final allocation of power from the said projects to the plaintiff as yet and the arrangements were only interim or *ad hoc* - Until a final decision was taken the claim of plaintiff for appropriate allocation of power from the two Projects was alive and cannot be held to be stale or belated - Limitation - Delay/ laches.

(Also see under: Punjab Reorganization Act, 1966; and Relief)

State of Himachal Pradesh v. Union of India & Ors. 527

(6) Art. 136.
See under: Environmental Laws) 374

(7) Art. 142 read with O. 47 r. 6 of Supreme Court Rules, 1966 - Unaccounted moneys of Indian citizens in foreign banks - Order passed by Supreme Court directing the High Level Committee constituted by Central Government to be appointed as Special Investigation Team including Director, Research and Analysis Wing therein and to be headed by two retired Judges of Supreme Court as its Chairman and Vice-Chairman - I.A. filed by Union of India seeking modification of the order - Maintainability of - In view of difference of opinion regarding maintainability of the I.A., the matter referred to larger Bench - Supreme Court Rules, 1966 - O. 47, r.6.

Ram Jethmalani & Ors. v. Union of India & Ors.

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(8) Art. 226 - Writ petition - Scope of - High Court issuing series of interim orders effecting changes in timings of several trains, adding of coaches to several trains etc. - Held: Going into details of railway administration and train schedule management are totally alien to judicial review and beyond judicially manageable standards - Railway administration is a specialized field - It has to cater to the needs of the entire country - High Court cannot interfere in regard to one sector without any material or information nor can it direct introduction of trains or additional coaches of a particular category or change in timings of a train - It has been repeatedly emphasised that courts should not interfere in matters of policy or in the day-to-day functioning of departments of governments or statutory bodies - The malaise of interference in the functioning of Railway

administration is a matter of concern - Order of High Court set aside - Administrative Law - Judicial review - Railways - Public interest litigation.

Union of India & Ors. v. J.D. Suryavanshi 158

(9) Art. 226 - Writ petition challenging the order determining the stamp duty dismissed by High Court on the ground of alternative remedy - Held: Single Judge of the High Court should have examined the facts of the case to find out whether the determination of the value of the property purchased by the appellant and the demand of additional stamp duty were exorbitant so as to make the remedy by way of revision requiring deposit of 50% of the demand before the revision is entertained, ineffective and call for interference under Art. 226 - The orders of High Court set aside and writ petition remanded to it for consideration afresh in accordance with law - Rajasthan Stamp act, 1998 - s.65.

(Also see under: Rajasthan Stamp act, 1998)

Har Devi Asnani v. State of Rajasthan & Others 599

(10) Art. 226 r/w Art. 136 - Limitation for filing of writ petition - Held: Though no period of limitation has been provided for filing a petition under Art. 226, but one of the several rules of self-imposed restraint is that the High Court may not enquire into a belated or stale claim and may deny relief to the petitioner if he is found guilty of laches - Further, during the intervening period, rights of third parties may have crystallized - Interference by Supreme Court in such matters would be warranted only if it is found that the exercise of

discretion by High Court was totally arbitrary or was based on irrelevant consideration - In the instant case, the discretion exercised by High Court to entertain and decide the writ petition filed by the respondent on merits and allowing his claim cannot be said to be vitiated by any patent legal infirmity - Land Acquisition Act, 1894 - ss. 4 and 6.

(Also see under: Land Acquisition Act, 1894)

Royal Orchid Hotels Limited and Another v. G. Jayaram Reddy And Ors. 701

(11) Arts. 226 and 136 - Scope of, as regards disciplinary proceedings - Held: It is for the departmental authorities to conduct an inquiry in accordance with the prescribed rules - The role of the court in the matter of departmental proceedings is very limited and it cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record - In the instant case, two Benches of the High Court have recorded concurrent findings that there is no violation of the principles of natural justice, that the charges have been established against all the appellants and that the punishment awarded is not disproportionate to the offences alleged - Therefore, to re-appreciate the evidence and to come to a different finding would be beyond the scope of Art. 136 - The judgments and orders passed by High Court suffer from no infirmity - Service Law - Central Reserve Police Force Rules, 1955 - r.27.

(Also see under: Service law)

Sanjay Kumar Singh v. Union of India & Ors. 182

(12) Arts. 226 and 136 - Writ petition challenging the order of General Court Martial - Held: The charges against the delinquent officer were technical in nature - While the Court may not interfere with the findings of guilt, in such a case, having regard to the nature of offences, the Court may consider the proportionality of punishment to find out whether it is perverse and irrational - Even if accepting the finding of guilt, the punishment of dismissal from service is shockingly disproportionate to the gravity of the offences held to have been proved - Accordingly, the order of dismissal set aside and punishment of forfeiture of 8 years of service for purpose of pension and service reprimand imposed - Judicial review. (Also see under: Service Law; and Army Rules, 1954)

Union of India & Ors. v. Bodupalli Gopalaswami 326

(13) Art. 226 r/w Art. 136. (See under: Code of Criminal Procedure, 1973) 365

(14) Arts. 231 and 22 (5) r/w Arts. 226 and 32. (See under: Administration of Justice as also under Compensation) 300

CONSTITUTIONAL LAW:

(i) Colourable legislation - Held: When power is exercised in bad faith to attain ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal, it is called colourable exercise of power - Therefore, whether a statute is constitutional or not is, thus, always a question of power of the legislature to enact that Statute - Legislation.

(ii) Amending Act, if struck down whether old law would revive - Held: Where the Amendment Act is struck down by the court being invalid, on the ground of arbitrariness in view of the provisions of Art. 14 of the Constitution or being violative of fundamental rights enshrined in Part-III of the Constitution, such Act can be described as *void ab-initio* - In such a situation, the Act which stood repealed, stands revived automatically - This proposition of law is, however, not applicable so far as subordinate legislation is concerned - Constitution of India, 1950 - Art. 13 (2).

(Also see under: Tamil Nadu Uniform System of School Education Act, 2010; Administrative law; Constitution of India, 1950: and Legislation.)

State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. 1094

CRIMINAL JURISPRUDENCE:

(i) Offences of grave nature vis-à-vis offence of lesser grave nature - Held: Usually an offence of grave nature includes in itself the essentials of a lesser but cognate offence - Wherever an accused is charged with a grave offence, he can be punished for a less grave offence finally, if the grave offence is not proved - But even in those cases, the Court has to be cautious while examining whether the ingredients of the offences are independently satisfied.

(ii) Prejudice - Held: To show prejudice to an accused, it has to be shown that the accused has suffered some disability or detriment in the protections available to him under the Indian criminal jurisprudence - Courts should make a

close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage - Administration of Criminal Justice. (Also see under: Penal Code, 1860; Code of Criminal Procedure, 1973; and Interpretation of Statutes)

Rafiq Ahmed @ Rafi v. State of U.P. 907

CRIMINAL LAW:

Doctrine of constructive criminal liability. (See under: Penal Code, 1860) 377

DEEDS AND DOCUMENTS:

Sale agreement/General Power of Attorney/Will - Scope of - Advantages of registration of documents which purport or operate to create, declare, assign, limit or extinguish any right, title or interest - Explained. (Also see under: Transfer of Property)

Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & anr. 848

DELAY/LACHES:

(1) (See under: Limitation) 425

(2) (See under: Service law) 444

(3) (See under: Constitution of India, 1950) 527

DELHI DEVELOPMENT ACT, 1957:

ss.22, 56.

(See under: Delhi Development Authority (Disposal of Developed Nazul Land)

Rules, 1981) 838

DELHI DEVELOPMENT AUTHORITY (DISPOSAL OF DEVELOPED NAZUL LAND) RULES, 1981: rr.4, 6 - Government of India, 1961 scheme for

acquisition, development and disposal of land - Amendment of - Held: Sub-r. (1) of r.4 stated that the Authority may, in conformity with the plans, and subject to the other provisions of the rules, allot Nazul land to individuals and other categories of persons - Sub-r. (2) of r.4 further provided that the Authority shall in conformity with plans and subject to the Rules dispose of the Nazul Land by auction to the categories of institutions named in clauses (a) to (g) in sub-r. (2) of r.4 - r.6 of the Rules did not stipulate the conditions for allotment under the 1961 Scheme and the Scheme being an administrative scheme could be amended without a statutory rule - Delhi Development Act, 1957 - ss.22, 56.

Delhi Administration Through its Secretary v. Umrao Singh 838

DELHI SHOPS AND ESTABLISHMENTS ACT, 1954: s. 2 (9) r/w s. 2 (5) - 'Establishment' and 'commercial establishment' - Held: The two companies carrying on trade or business for private gain fall within the definition of 'commercial establishment' and consequently, under the definition of 'establishment' as defined in sub-ss. (5) and (9) of s. 2 respectively - Employees Provident Fund and Miscellaneous Provisions Act, 1952 - s. 7-A.

(Also see under: Employees Provident Fund and Miscellaneous Provisions Act, 1952; Evidence Act, 1872; and Interpretation of Statutes)

M/s L.N. Gadodia & Sons & Anr. v. Regional Provident Fund Commissioner 508

DOCTRINES/PRINCIPLES:

(1) Doctrine of constructive criminal liability. (See under: Penal Code, 1860) 377

(2) Doctrine of lifting the veil - Held: In order to test the constitutional validity of the Act, where it is alleged that the statute violates the fundamental rights, it is necessary to ascertain its true nature and character and the impact of the Act - Thus, courts may examine with some strictness the substance of the legislation and for that purpose, the court has to look behind the form and appearance thereof to discover the true character and nature of the legislation.

(Also see under: Tamil Nadu Uniform System of School Education Act, 2010; Administrative law; Constitution of India, 1950: and Legislation.)

State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. 1094

(3) Principle of finality. (See under: Practice and Procedure). 870

(4) Principle of natural justice. (i) (See under: Constitution of India, 1950; and Service Law) 182

(ii) (See under: Administrative Law) 965

EDUCATION/EDUCATIONAL INSTITUTIONS.

(1) Fee structure - Revision of. (See under: Gujarat Professional Technical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007) 829

(2) Uniform Education system - Historical

background for implementation of - Discussed.

*State of Tamil Nadu & Ors. v. K. Shyam
Sunder & Ors.* 1094

ELECTRICITY ACT, 2003:

(1) s. 62 - Determination of Tariff - Interest on differential amount - Held: s.62 (6) cannot be pressed into service to claim interest on the differential amounts - It does not state that if the finally determined tariff is less than the provisional tariff or an existing tariff continued by a statutory notification, then interest shall be payable on the differential amount - NTPC was not responsible for the delay in process of determination of tariff - Once the tariff was finalized subsequently, NTPC adjusted the excess amount which it received - Tariff charged at the relevant time was as per the previous notifications - Interest came to be provided subsequently by a Notification under the Regulations of 2004 - Thus, the principles of equity, justice and fair-play could not have been brought in, to award interest to the Electricity Boards.

(Also see under: Interest)

*NTPC Ltd. v. M.P. State Electricity
Board & Ors.* 651

(2) s. 67 (2) r/w ss. 42 (1) and 43 (1) - Duty of distribution licensee to supply electricity on request - Held: The appellant has a statutory right to apply for and obtain supply of electricity from the distribution licensee and the latter has a corresponding statutory obligation to supply electricity to the appellant - Distribution licensee directed to find out an alternate way to supply electricity to the house of appellant; otherwise, to follow the provisions of sub-s. (2) of s. 67 for

carrying out the work for supply of electricity to the house of the appellant.

*Sri Chandu Khamaru v. Smt. Nayan
Malik & Ors.* 112

EMPLOYEES PROVIDENT FUND AND
MISCELLANEOUS PROVISIONS ACT, 1952:

(1) s. 7-A of Provident Fund Act r/w s. 2 (9) of Delhi Shops and Establishments Act - Clubbing of two companies for the purposes of the Provident Fund Act - Held: The Provident Fund Commissioner was justified in drawing the inference of integrity of finance, management and workforce in the two concerns and in taking a view that the said companies had to be clubbed together for the purposes of their coverage under the Act - Delhi Shops and Establishments Act, 1954 - ss. 2 (5) and 2 (9).

(Also see under: Delhi Shops and Establishments Act, 1954; Evidence Act, 1872; and Interpretation of Statutes.)

*M/s L.N. Gadodia & Sons & Anr. v. Regional
Provident Fund Commissioner* 508

(2) s.12 - Liability of employer to pay provident fund - Held: Employer is under an obligation to pay provident fund to its employees in accordance with the statutory scheme - Employer cannot be compelled to pay the amount in excess of its statutory liability for all times to come just because it had paid provident fund in excess of its statutory liability for sometime.

*Marathwada Graming Bank Karamchari
Sanghatana and Another v. Management of
Marathwada Gramin Bank and Others* 269

ENVIRONMENTAL LAWS:

Protection and Preservation of Victoria Memorial Hall, Kolkata and its green surroundings - Held: Expert Committee recommended that parking activities add to pollution load around the Victoria Memorial Hall and thus, the parking of vehicles on all sides of the Victoria Memorial Hall compound should be totally banned - Constitution of India, 1950 - Art. 136 - Public Interest Litigation.

Friends of Victoria Memorial v. Howrah Ganatantrik Nagarik Samity & Ors. 374

EVIDENCE ACT, 1872:

s. 106 - Burden of proof - Held: When any fact is especially within the knowledge of any person, the burden of proving that fact lies on him - This rule expects such a party to produce the best evidence before the authority concerned, failing which the authority cannot be faulted for drawing the necessary inference.

(Also see under: Employees Provident Fund and Miscellaneous Provisions Act, 1952; Delhi Shops and Establishments Act, 1954; and Interpretation of Statutes.)

M/s L.N. Gadodia & Sons & Anr. v. Regional Provident Fund Commissioner 508

FOREIGN AWARDS (RECOGNITION AND ENFORCEMENT) ACT, 1961:

s.6.

(See under: Arbitration and Conciliation Act, 1996) 1

GOA LAND USE (REGULATIONS) ACT, 1991:

s. 2.

(See under: Goa, Daman and Diu

Agricultural Tenancy Act, 1964) 817

GOA, DAMAN AND DIU AGRICULTURAL TENANCY ACT, 1964:

ss. 18A, 18K and 3 - Enhancement of compensation for the acquired land - Held: When the Notification was issued for land acquisition, the Land Use Act whereby land vest in tenant could be valued only as an agricultural land, was not in force - Thus, market value of the land could be determined with reference to the development potential for non-agricultural purposes - Mere fact of obtaining of sanction from Mamlatdar for sale of such land would not depress the price of the land nor would it affect its potential for being developed as residential or industrial use - In spite of s. 3 which prohibits conversion of agricultural land for non-agricultural use in public interest, compensation was determined as Rs. 78 per sq. m. for neighbouring agricultural land acquired under the same Notification - Order of High Court modified by increasing the compensation from Rs. 17 per sq. m. to Rs. 78 per sq. m. - Goa Land Use (Regulations) Act, 1991 - s. 2.

Rajendra Vassudev Deshpurabhu (dead) Through Lrs. & Ors. v. Deputy Collector (retd.) & Land Acquisition Officer, Panaji 817

GUIDELINES:

Issuance of non-bailable warrants - Guideline laid down.

(See under: Code of Criminal Procedure, 1973) 300

GUJARAT PROFESSIONAL TECHNICAL

EDUCATIONAL COLLEGES OR INSTITUTIONS
(REGULATION OF ADMISSION AND FIXATION
OF FEES) ACT, 2007:

s. 10 (3) - Fee structure - Revision of - Held: The unaided educational institutions are entitled to collect the extra cost on account of payment of revised pay and allowances to the teaching and non-teaching staff through the fees collected from the students and this aspect will be taken into consideration by the Fee Regulatory Committee while determining the fees for the academic years 2011-2012, 2012-2013 and 2013-2014 and subsequent period of three years in accordance with the provisions of the Act and the observations made in the judgment - The fee structure determined by the Fee Regulatory Committee for the years 2008-2009, 2009-2010 and 2010-2011 shall be binding on the unaided professional educational colleges or institutions for a period of three years and the fee so determined shall be applicable to a student who is admitted to a professional educational college or institution in that academic year and shall not be revised till the completion of his professional course in that college or institution - Education/Educational Institutions.

*Fee Regulatory Committee v. Kalol
Institute of Management, Etc.* 829

HINDU LAW:

'Math' and 'temple'.
(See under: Tamil Nadu Hindu Religious and
Charitable Endowments Act, 1959) 475

INTEREST:

(1) Payment of interest on differential amounts -
On the ground of justice, equity and fair play -
Held: In the instant case, interest could not be
claimed either on the basis of equity or on the
basis of restitution.

(Also see under: Electricity Act, 2003).

*NTPC Ltd. v. M.P. State Electricity Board
& Ors.* 651

(2) (See under: Land Acquisition) 390

(3) (See under: Relief) 527

INTERNATIONAL LAW:

New York Convention awards.

(See under: Arbitration and Conciliation
Act, 1996) 1

INTERPRETATION OF STATUTES:

(1) Legal fiction - Held: When a legal fiction is
created, it shall be given full effect - Generally
legal fiction is created to advance public policy
and preserve the rights of certain individuals and
institutions - Legal fiction tends to treat an
imaginary state of affairs as real and entails the
natural corollaries of that state of affairs.

(Also see under: Maharashtra Regional
and Town Planning Act, 1966; and
Administrative Law)

*MIG Cricket Club v. Abhinav Sahakar
Education Society and Ors.* 141

(2) Legislation by incorporation - Held: Where a
provision is physically lifted and made part of
another provision, it shall fall within the ambit and
scope of principle akin to 'legislation by

incorporation' which normally is applied between an existing statute and a newly enacted law - Penal Code, 1860 - ss.396.

(Also see under: Penal Code, 1860)

Rafiq Ahmed @ Rafi v. State of U.P. 907

(3) Purposive construction - Provident Funds Act - Held: Is a welfare enactment and should be construed so as to advance the object with which it is passed and any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided.

(Also see under: Employees Provident Fund and Miscellaneous Provisions Act, 1952; Delhi Shops and Establishments Act, 1954; and Evidence Act, 1872)

M/s L.N. Gadodia & Sons & Anr. v. Regional Provident Fund Commissioner 508

(4) Statement of Objects and Reasons appended to the Bill - Held: Is not admissible as an aid to the construction of the Act to be passed, but it can be used for limited purpose for ascertaining the conditions which prevailed at that time which necessitated the making of the law, and the extent and urgency of the evil, which it sought to remedy as also for appreciating the true intent of the legislature or to find out the object sought to be achieved by enactment or even for judging the reasonableness of the classifications made by such Act.

State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. 1094

(5) (See under: Central Excise Tariff Act, 1985) 219

INVESTIGATION:

FIR - Recording of - On the basis of information, a 'Dehati Nalish' (and not a formal FIR) registered - FIR lodged later, but it did not contain signature of the author - Contradictions in statements of IO and the Head Constable accompanying him, about recording of FIR in police station - Recoveries disbelieved by High Court - Copy of FIR not sent to Illaqua Magistrate - Held: Investigation/proceedings have been conducted without observing the provisions of Cr.PC - Regulation 710 cannot override the requirement of s.157 (1) CrPC - Code of Criminal Procedure, 1973 - s. 157 - Madhya Pradesh Police Regulations - Regulation 710.

JAMMU AND KASHMIR CIVIL SERVICES (JUDICIAL) RECRUITMENT RULES, 1967.

(See under: Social Status Certificate) 690

JUDGMENTS/ORDERS:

(1) Finality of judgment.
(See under: Practice and Procedure) 870

(2) Nullifying the judgment of a competent court by bringing a legislation - Permissibility - Held: A judicial pronouncement of a competent court cannot be annulled by the legislature in exercise of its legislative powers for any reason whatsoever. (Also see under: Constitution of India, 1950; and Legislation.)

State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. 1094

JUDICIAL REVIEW:

(1) (See under: Administrative Law; and Maharashtra Regional and Town Planning

Act, 1966)	141
(2) (See under: Constitution of India, 1950)	158 and 326

JURISDICTION:

(See under: Code of Criminal Procedure, 1973)	232
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KARNATAKA HIGH COURT RULES, 1959:

Chapter 3, r. 5 of High Court Rules r/w O. 47, rr. 1 and 5, CPC and Notification dated 29.12.2008 issued by Karnataka High Court - Review of judgment delivered at Circuit Bench - Listing of review petition as per roster of Circuit Bench - Held: r. 5 of Chapter 3 of High Court Rules will prevail over r.5 of O.47 CPC - There is no inconsistency between r.5 of Chapter 3 of High Court Rules and r.5 of O.47, CPC - The words 'absence or other cause for a period of six months' in r. 5 of O. 47, CPC and the words 'by reason of death, retirement or absence' in r. 5 of Chapter 3 of High Court Rules, in essence refer to the same causes, due to which the review application cannot be heard by the same bench which passed the original order - Therefore, listing of review petition before a different Bench and hearing and deciding the same by that Bench as per Notification dated 29.12.2008, was valid as per rules - Code of Civil Procedure, 1908 - O.47, r.5 - High Court of Karnataka Notification No. HCBB.CBD.01/2008 dated 29.12.2008.

(Also see under: Practice and Procedure).

<i>Malthesh Gudda Pooja v. State of Karnataka & Ors.</i>	870
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KARNATAKA PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DRUG-OFFENDERS, GAMBLERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND SLUM-GRABBERS ACT, 1985:

(i) s. 3 - Order of detention - Held: The detention order refers to the activities and involvement of the detenu in as many as 11 cases - It is the subjective satisfaction of the detaining authority that in spite of the continuous activities of the detenu causing threat to maintenance of public order, he was getting bail one after another and indulging in the same activities - In view of continuous activities of the detenu, and habitually repeating the same type of offences, the Court concurs with the reasoning of the detaining authority as approved by the Government and upheld by the High Court.

(ii) s.3 r/w Art. 22 (5) of the Constitution - Detention order - Disposal of representation - Limitation - Held: There is no constitutional mandate under Clause (5) of Art. 22, much less any statutory requirement to consider the representation before confirming the order of detention - The competent authority can consider the representation only after the order of confirmation - However, no objection was raised on behalf of the detenu in this regard - Constitution of India, 1950 - Art. 22 (5) - Preventive detention.

D.M. Nagaraja v. The Government of Karnataka & Ors.

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KERALA GENERAL SALES TAX ACT, 1963:

Second Schedule, Entry 17A - Margarine used for preparing bakery products and confectionaries

- Taxability @ 4% or 8% - Held: Margarine is used as a substitute for butter and is used in preparation of food Arts. specially for preparing bakery products and also used in confectionary industry - Though one may not consume margarine directly or may not use for normal cooking, the fact is that margarine is used for preparing bakery items which are consumed by human beings and, therefore, margarine is also edible and is eligible to benefit of rate of tax of 4% - Sales Tax - Notification SRO No. 429/95 dated 31.2.1995, Second Schedule, Entry 17A - Circular 2439/TD dated 19.2.1996.

Aluva Sugar Agency v. State of Kerala. 206

LAND ACQUISITION ACT, 1894:

ss. 4 and 6 - Land acquired for public purpose - Diversified to private persons and entities - Held: The power of *eminent domain* to compulsorily acquire the land of private persons cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the land owners of their constitutional right to property with a view to favour private persons -In the instant case, the land owner has succeeded in convincing the Division Bench of High Court that the action taken by the Corporation to transfer his land to the private entity was wholly illegal, arbitrary and unjustified and there is no valid ground to interfere with the impugned judgment - Administrative Law - Power of *eminent domain*.

(Also see under: Constitution of India, 1950)

Royal Orchid Hotels Limited and Another V.G. Jayaram Reddy and Ors. 701

LAND ACQUISITION.

(1) Compensation.

(See under: Goa, Daman and Diu Agricultural Tenancy Act, 1964) 817

(2) Interest on differential amount between tentative price and final price - Held: Interest till the date of deposit in 1997 would be payable @ 15%, and thereafter 8% - Notices of demand were served on the allottees not immediately after finalization of the compensation by the court and payment or deposit of the enhanced amount by the Board in the year 1997, but after a period of more than a year some time in 1999 - The respondents will be liable to pay interest to the appellant-Board on the differential amount between the tentative price and the final price at the rate of 8% per annum from the date of deposit or payment of the enhanced compensation by the Board in 1997 till payment of the differential amounts by the allottees.

Kerala State Housing Board & Ors. v. Kerala State Housing Board, Nellikode Housing Colony Allottees Assn. & Ors. 390

LAND LAWS AND AGRICULTURAL TENANCY:

Right of pre-emption.

(See under: Punjab Pre-emption Act, 1913). 122

LEGISLATION:

Bringing a legislation in order to nullify the judgment of a competent court - Held: Would amount to trenching upon the judicial power and no legislation is permissible which is meant to set aside the result of the mandamus issued by a court even though, the amending statute may not

mention such an objection - The rights embodied in a judgment could not be taken away by the legislature indirectly - The legislature cannot by bare declaration, without anything more, directly overrule, reverse or override a judicial decision - However it can, in exercise of the plenary powers conferred upon it by Arts. 245 and 246 of the Constitution, render a judicial decision ineffective by enacting a valid law fundamentally altering or changing the conditions on which such a decision is based - The legislature, in order to revalidate the law, can re-frame the conditions existing prior to the judgment on the basis of which certain statutory provisions had been declared *ultra vires* and unconstitutional - Judgment.

(Also see under: Tamil Nadu Uniform System of School Education Act, 2010; Constitution of India, 1950; Administrative law; and Constitution of India, 1950.)

State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. 1094

LETTERS PATENT:

(See under: Arbitration and Conciliation Act, 1996) 1

LIMITATION:

(1) Condonation of delay - Conviction and sentence - Revision Petition - Dismissed by High Court for delay of more than fifteen months - Held: High Court dismissed the appellant's revision quite mechanically applying the bar of limitation and without giving any allowance to the circumstances of the appellants - Under the Patna High Court Rules, a revision against conviction can be entertained only after the revision-petitioner

surrenders before the court below - Thus, when the revision filed by the appellants was taken up by the High Court they were already in jail - In case, the revision was dismissed after consideration on merits, the appellants would have continued to remain in jail to serve out their sentence and would have completed their sentence 15 months earlier - High Court should have condoned the delay in filing the revision by the appellants and examined their case on merits - Revision petition restored to its original file - Patna High Court Rules.

(Also see under: Administration of justice).

Abdul Ghafoor & Anr. v. State of Bihar 425

(2) Limitation for filing writ petition.
(See under: Constitution of India, 1950) 701

(3) (See under: Constitution of India, 1950) 527

MADHYA PRADESH FINANCIAL CODE:

r. 84.
(See under: Service Law) 444

MADHYA PRADESH POLICE REGULATIONS:

Regulation 710
(See under: Penal Code, 1860; and Investigation) 429

MAHARASHTRA LAND REVENUE CODE, 1966:

s. 64.
(See under: Mineral Concession Rules, 1961). 613

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966:

ss.31 (1), 37 (2) - Sanction to draft development

plan - Held: Development Plan existing prior to the coming into force of the Act shall be deemed to be a sanctioned Development Plan u/s.31 (1) of Act - In the instant case, the Development Plan existing prior to the commencement of the Act showed the area in question as reserved for "playground" which was modified to "school and cultural society" by State Government in exercise of its power u/s.37 (2) and earmarked for the "school and cultural centre" by a notification - Such a course was permissible under law.

(Also see under: Administrative Law; and Interpretation of Statutes)

MIG Cricket Club v. Abhinav Sahakar Education Society and Ors. 141

MAHARASHTRA ZILA PARISHADS AND PANCHAYAT SAMITIS ACT, 1961:
s. 151 (1).
(See under: Mineral Concession Rules, 1961) 613

MAXIMS:

Maxim, "*quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud*" - An authority cannot be permitted to evade a law by "shift or contrivance" - Held: It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance - Education/Educational Institutions:

(Also see under: Tamil Nadu Uniform System of School Education Act, 2010; Administrative law; Constitution of India,

1950: and Legislation)

State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. 1094

MINERAL CONCESSION RULES, 1961:

r. 27 (1) (d) - Mining lease - Lessee from the State Government - Demand for Zilla Parishad Cess (ZP cess) and Gram Panchayat Cess (GP cess) - Held: The lessee is not liable to pay ZP cess or GP cess to the State Government under the lease deed - Maharashtra Zila Parishads and Panchayat Samitis Act, 1961 - s. 151 (1) - Bombay Gram Panchayats Act, 1958 - s. 127 (1) - Maharashtra Land Revenue Code, 1966 - s. 64.

Ultra Tech Cement Ltd. (Earlier Ultratech Cemco Ltd.) v. State of Maharashtra & Anr. 613

MOTOR VEHICLES ACT, 1988:

(1) ss.66, 88 (1), (7) - Seizure of vehicle for want of valid permit - Temporary permit issued to the respondent by State Transport Authority, Bihar to ply stage carriage vehicle for route Motihari in Bihar to Siliguri in West Bengal - Held: In the absence of counter-signature of the State Transport Authority, West Bengal, on the temporary permit issued by the State Transport Authority (Bihar), the respondent had no valid permit for the part of the route inside the State of West Bengal - The plying of the vehicle of the respondent in the Siliguri region within the State of West Bengal was thus in contravention of s.66 (1) of the Act - The authorities, therefore, were well within their powers to detain and seize the vehicle.
(Also see under: West Bengal Motor Vehicles

Tax Act, 1970)

State of West Bengal & Ors. v. Mani Bhushan Kumar 793

(2) ss.166 and 140 - No fault liability - Award of compensation of Rs. 1,60,000/- reduced by High Court to Rs. 25,000/- u/s. 140 of the Act - Held: The tribunal held that the appellant, while driving the motor vehicle, met with an accident not because of the fault of the owner of the vehicle or because of the fault of the other vehicle, but because of the oil spill on the road - Thus, negligence can be attributable only on the person who was driving the vehicle and thus, not entitled to compensation under the Insurance Policy - High Court was justified in invoking the beneficial legislation and in directing the Insurance Company to pay limited amount by way of compensation on the basis of no fault liability.

A.Sridhar v. United India Insurance Co. Ltd. & Anr. 386

(3) Compensation - Assessment of - Motor vehicle accident - According to the doctor, the pillion rider suffered 75% disability -High Court arrived at the loss of earning capacity in a sum of Rs. 8,16,000/- - but reduced the disability to 50% - Held: High Court erred in reducing the disability to 50% while calculating the loss of income - While making disability assessment, there is an element of guess work, but that guess work must have reasonable nexus to the available material/evidence and the quantification made - The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but, that, can be done only by assigning

cogent and acceptable reasons - Thus, disability suffered by the claimant is taken at 75% and keeping in view the loss of earning capacity of the claimant assessed by the High Court, the loss of earning capacity of the claimant is arrived at Rs. 6,12,000/-.

D. Sampath v. United India Insurance Co. Ltd. & Anr. 420

NATURAL JUSTICE:

(1) (See under: Constitution of India, 1950; and Service Law) 182

(2) (See under: Administrative Law) 965

PATNA HIGH COURT RULES:

(See under: Limitation) 425

PENAL CODE, 1860:

(1) s. 302/34 - Conviction and sentence - Trial court convicted the main accused u/s. 302 and sentenced him to life imprisonment - High Court upheld conviction of the main accused as also passed similar order of conviction against the co-accused - Held: It is proved and established that the co-accused had the common intention of killing the deceased - They intentionally became a party to commit the murder of the deceased - Order of conviction and sentence passed against them by High Court, upheld - Doctrine of constructive criminal liability.

Mahesh & Anr. v. State of Madhya Pradesh 377

(2) ss. 148, 302 and 302/149 - Fifteen persons accused of murdering a co-villager - Held-Trial court recorded a finding that the wife of the

deceased, claiming herself to be the eye witness, roped in certain persons in the crime falsely and there were improvements in her statement in court - Disbelieving her statement, trial court acquitted six accused and High Court acquitted four more - The witness on whose information 'Dehati Nalish' (not a forma FIR) was recorded, turned hostile - Courts below have not given much credence to the statement of the witness on the basis of whose statement FIR was recorded and who claimed himself to be the eye-witness - There was discrepancies in the statements of IO and the Head Constable accompanying him - Further, proceedings at the investigation stage have been conducted without observing the provisions of Cr.P.C. - Besides, copy of FIR was not sent to the Illaqa Magistrate, and there were lapses/suspicion in the investigation as regards recording of FIR, recovery of weapons and inconsistencies in the statements of the witnesses - The accused in their statements u/s 313 Cr.P.C. have stated that they were falsely implicated because of the village factional rivalry - In the circumstances, the accused are acquitted on benefit of doubt - Code of Criminal Procedure, 1973 - ss. 154, 157 (1) and 313 - Madhya Pradesh Police Regulations - Regulation 710 - Investigation.

Shivlal & Anr. v. State of Chattisgarh 429

(3) ss. 302 and 307 - Held: The evidence and the other material on record clearly establish the guilt of the accused and, as such, his conviction is upheld - As regards the sentence, though the accused caused three murders, he had no pre-plan or pre-meditation to eliminate the family of his brother - Accused has unblemished

antecedents - This is not a rarest of rare case - Death penalty imposed by High Court is set aside and the life imprisonment awarded by trial court restored - Sentence/Sentencing.

Sham @ Kishor Bhaskarrao Mmatkari v. State of Maharashtra 744

(4) (i) ss.302, 396 - Allegation of dacoity and murder - Charge-sheet filed u/ss.396, 201 - Conviction u/ss.302 and 201 - Held: Prosecution was able to establish its case beyond reasonable doubt on the basis of the circumstantial evidence - No prejudice was caused to the appellant by his conviction u/s.302 though he was initially charged u/s.396 r/w s.201 - The incriminating evidence was clearly put to the accused in his statement u/s. 313 Cr.P.C. - The circumstances which constitute an offence punishable u/s.302 were literally put to him, as s.302 itself is an integral part of an offence punishable under s.396 - The appellant was not able to demonstrate any prejudice which he suffered in his right of defence, fair trial and in relation to the case of the prosecution - On the application of principle of 'cognate offences', there was no prejudice caused to the rights of the appellant - Conviction upheld.

(ii) ss.302, 396 - Essential ingredients - Held: The ingredients of both these offences, to some extent, are different inasmuch as to complete an offence of 'dacoity' u/s.396, five or more persons must jointly commit the robbery while u/s.302 even one person by himself can commit the offence of murder - But, to attract the provisions of s.396, the offence of 'dacoity' must be coupled with murder - The ingredients of s.302 become an

integral part of the offences punishable u/s.396 - Resultantly, the distinction with regard to the number of persons involved in the commission of the crime loses its significance as it is possible that the offence of 'dacoity' may not be proved but still the offence of murder could be established - The provisions are clear and admit no scope for application of any other principle of interpretation except the 'golden rule of construction', i.e., to read the statutory language grammatically and terminologically in the ordinary and primary sense which it appears in its context without omission or addition - These provisions read collectively put the matter beyond ambiguity that the offence of murder, is by specific language, included in the offences u/s.396 - It will have the same connotation, meaning and ingredients as are contemplated under the provisions of s.302 - Interpretation of statutes.

(iii) ss.302, 396 - Sentencing for the offence under - Jurisdiction of court - Held: Under s.396, wide discretion is vested in the courts in awarding punishment - The court, in exercise of its jurisdiction can award sentence of ten years with fine or even award sentence of life imprisonment or sentence of death, as the case may be while u/s.302, the court cannot, in its discretion, award sentence lesser than life imprisonment.

(iv) ss.302, 396 - Distinction between - Discussed. (Also see under: Criminal jurisprudence; Code of Criminal Procedure, 1973; and Interpretation of statutes)

Rafiq Ahmed @ Rafi v. State of U.P. 907

(5) ss.325, 506 (2), 333, 342 and 114 - Conviction

- Sentence reduced by High Court to 1½ years - Held: Two of the appellants were females and had not physically assaulted the complainant - Even the other appellant was not alleged to have used any force against the complainant in the incident and has served the sentence - The incident took place nearly ten years back - In the facts and circumstances, sentence awarded to the appellants modified and reduced to the period undergone.

Nasib Hussain Siddi and Ors. v. State of Gujarat 627

(6) ss. 326 and 324 - Conviction -Sentence u/s. 326 reduced from four years to two years rigorous imprisonment and the amount of fine increased from Rs.5,000/- to Rs.50,000/- - However, two years sentence and fine u/s. 324 maintained.

Baljinder Singh @ Bittu V. State of Punjab 631

PENSION REGULATIONS FOR ARMY (PART I):

Reg. 16 (a).
(See under: Service Law) 326

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION), ACT,1995.

(See under: Service Law) 635

POWER OF ATTORNEY ACT, 1882:

ss. 1-A and 2.
(See under: Transfer of Property) 848

PRACTICE AND PROCEDURE:

Listing of writ appeal for hearing, after review petition was allowed at Dharwad Bench of

Karnataka High Court - Held: When an application memo is filed in a matter where review has been granted, the Bench dealing with such memo or application is bound to proceed on the basis of the said order granting review, in view of the principles of finality and *res judicata* and ought to have listed the writ appeal for hearing and could not have examined the correctness or validity of review order - Review - *Res judicata* - Principle of finality - Judgment.

(Also see under: Karnataka High Court Rules, 1959)

Malthesh Gudda Pooja v. State of Karnataka & Ors. 870

PREVENTION OF FOOD ADULTERATION ACT, 1954:

s. 9 - Appointment of food inspectors - Power of - Held: s. 9 vests power in the State Government to appoint such persons as it thinks fit, having the prescribed qualifications to be Food Inspectors for the local areas assigned to them, as prescribed u/r. 8 of the Rules - If the High Court found that the medical officers were not trained in food inspection and sampling work, it could also direct that the medical officers be given the required training to function as Food Inspector -The direction by the High Court with regard to appointment of Food Inspectors against 34 posts which were lying vacant and appointment of Sanitary Inspectors as Food Inspectors in the meanwhile is set aside - Prevention of Food Adulteration Rules, 1955 - r. 8.

State of Rajasthan & Ors. v. High Court of Judicature for Rajasthan, Jodhpur Through its Registrar General 808

PREVENTION OF FOOD ADULTERATION RULES, 1955:

r. 8.
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(1) (See under: Constitution of India, 1950) 158

(2) (See under: Environmental Laws) 374

(3) Sex workers - Problems of - Panel set up - Held: Suggestions made by the Panel in its Third Interim Report be seriously taken into consideration by the Central Government, the State Governments and other authorities and all efforts be made to implement the suggestions expeditiously - Central Government and the State Government of Delhi requested to provide proper office and infrastructure for functioning of the Panel expeditiously - In pursuance of earlier order dated 24.08.2011, the States or Union Territories which have not yet made payment are directed to make payment.

Budhadev Karmaskar v. State of West Bengal 397

PUNJAB PRE-EMPTION ACT, 1913:

s.15 (as amended by Haryana Amendment Act 10 of 1995) - Right of pre-emption - Suit for pre-emption filed by co-sharer - During pendency of the suit s. 15 amended in 1995 - Held: Haryana Amendment Act 10 of 1995 is not a declaratory Act and, therefore, it has no retrospective operation - The pre-emptor must have the right to pre-empt on the date of sale, on the date of filing of the suit and on the date of passing of the decree by the court of the first instance - Since the Amendment Act came into force during the pendency of the suit, in the instant case, in the absence of "right of pre-emption" on the date of passing of the decree by the court of the first instance, all the three courts below including the High Court rightly dismissed the suit of the plaintiff.

Pirithi v. MohanSingh & Ors. 122

PUNJAB REORGANIZATION ACT, 1966:

s. 78 - Rights and liabilities in regard to Bhakra-Nangal and Beas Projects - Suit under Art. 131 of the Constitution - Held: s. 78 (1) confers a legal right on the plaintiff as a successor State to receive and utilize the power generated in Bhakra-Nangal and Beas Projects - As there is only a 'tentative, *ad hoc* or interim arrangement' arrived at in the meeting held on 17.4.1967 and there is no final agreement between the successor States of the composite State of Punjab, Supreme Court, therefore, has the jurisdiction to decide the extent to which the plaintiff-State would be entitled to receive and utilize the power generated in the two Projects and, as such, the suit is not barred by the scheme of ss. 78 to 80 - Constitution of India, 1950 - Art. 131.

(Also see under: Constitution of India, 1950; and Relief)

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RAJASTHAN STAMP ACT, 1998:

s. 65 (1), proviso - Revision of order determining the stamp duty - Requirement of deposit of 50% of recoverable amount - Held: Proviso to s.65 (1) is constitutionally valid - The right of appeal or revision is not an absolute right, but is a statutory right which can be circumscribed by the conditions in the grant made by the statute - Revision. (Also see under: Constitution of India, 1950)

Har Devi Asnani v. State of Rajasthan & Ors. 599

REFERENCE TO LARGER BENCH:

(See under: Constitution of India, 1950). 63

REGISTRATION ACT, 1908:

ss. 17 and 49.
(See under: Transfer of Property) 848

RELIEF:

Entitlement of plaintiff-State to receive power generated in Bhakra-Nangal and Beas Projects - It is declared that plaintiff-State is entitled to 7.19% of the share of the composite State of Punjab from Bhakra-Nangal Project w.e.f. 1.11.1966 and from Beas Project with effect from the dates of production in Unit I and Unit II - Since defendants 2 and 3 have utilized power in excess of what was due to them under law, it is held that the

plaintiff-State will be entitled to the interest at the rate of 6% on the amounts determined by the Union of India to be due from them - Interest.

(Also see under: Constitution of India, 1950; and Punjab Reorganization Act, 1966)

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REVISION:

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(2) (See under: Rajasthan Stamp Act, 1998) 599

RIGHT TO INFORMATION ACT, 2005:

(i) ss. 8 (1) (e), 2 (f), 2 (i), 2 (j), 3, 24 and 9 - Public examination - Examinee's right to inspect his evaluated answer-books in a public examination or taking certified copies - Scope of - Held: Answer-book is a document or record in terms of s. 2 (i) and as such the evaluated answer-book is also an 'information' under the Act - Every examinee has the right to access his evaluated answer-books, by either inspecting them or take certified copies thereof, unless the evaluated answer-books are found to be exempted u/s. 8 (1) (e) - Examining bodies (Universities, Examination Boards, CBSE etc.) are neither security nor intelligence organisations - Disclosure of information with reference to answer-books also does not involve infringement of any copyright - Thus, the exemption u/ss. 24 and 9 would not apply

to them.

(ii) s. 22 - Overriding effect of - Right of an examinee seeking inspection of his answer-books or seeking certified copies thereof - Effect of decision in *Maharashtra State Board* on such right - Held: Decision of Supreme Court in *Maharashtra State Board* and the subsequent decisions following the same, would not affect or interfere with the right of the examinee seeking inspection of answer-books or taking certified copies thereof - Provisions of the RTI Act would prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations.

(iii) s. 8 (1) (e) - Held: Examining body does not hold the evaluated answer-books in a fiduciary relationship, qua the examiner - Not being information available to an examining body in its fiduciary relationship, the exemption u/s. 8 (1) (e) is not available to the examining bodies with reference to evaluated answer-books and the examining bodies will have to permit inspection sought by the examinees.

(iv) Right of inspection of evaluated answer-books or seeking certified copies thereof by examinee - Limitations, conditions or safeguards to such right - Held: Portions of answer-books containing information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, should be removed, covered, or otherwise severed from the non-exempted part of the answer-books, u/s. 10 - Right to access information does not extend beyond the period during which the examining body is expected to

retain the answer-books - s. 8 (3) nowhere provides that records or information have to be maintained for a period of twenty years or more nor override any rules or regulations governing the period for which the record, document or information is required to be preserved by any public authority.

(v) s. 8 - Interpretation of - Held: Is not to be construed strictly, literally and narrowly - When s. 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals.

(vi) Enforcement of RTI Act - Held: Should be enforced strictly - Necessary information under clause (b) of s. 4 (1) relating to securing transparency and accountability in the working of public authorities and in discouraging corruption to be brought to light - Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens - Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty.

(vii) Object and reasons of the RTI Act - Explained.

Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors. 1028

RULES OF INTERPRETATION OF CENTRAL EXCISE
TARIFF ACT, 1985:
r.3

(See under: Central Excise Tariff Act, 1985) 219

SALES TAX:

(See under: Kerala General Sales Tax Act, 1963) 206

SENTENCE/SENTENCING.

(1) Death sentence - Accused committed murder of wife and four children as also caused injuries to another daughter with knife and axe taking help of a hired person - Held: The act was a ghastly and brutal one - It falls in the category of rarest of rare cases in which death sentence should have been given - Reasoning of the High Court reducing the award of death sentence to life sentence is strange - Thus, notice issued to the accused as to why the life sentence awarded to him by the High Court should not be enhanced to death sentence.

State of U.P. v. Alok Verma 105

(2) (See under: Penal Code, 1860). 627,
631, 744 and 907

SERVICE LAW:

(1) Appointment/Recruitment/Selection:

(I) Appointment/Selection -Held: All appointments to public office have to be made in conformity with Art. 14 of the Constitution - There can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement - Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Arts. 14 and 16 - On facts, the advertisement clearly shows that there was no power of relaxation

- High Court erred in directing that the condition with regard to the submission of the disability certificate either along with the application form or before appearing in the preliminary examination could be relaxed -Order of High Court set aside - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act,1995 - Constitution of India, 1950 - Arts. 14 and 16.

Bedanga talukdar v. Saifudaullah Khan & Ors. 635

(II) Private Schools - Grant-in-aid posts - Filling up of - State of Andhra Pradesh Memo No. 1280/COSE/A2/2004-4 dated 20.10.2004 imposing ban on filling up of existing vacancies - Held: The Memo was issued after the schools had been given permission to fill up the vacant posts - It was not given retrospective effect - Therefore, no interference is called for with the judgments of the High Court that the ban would not be applicable to the recruitment process already initiated by the management of the private schools nor would the rationalization process apply to such schools.

Govt. of A.P.& Ors. v. Sri Sevadas Vidyamandir High School & Ors. 170

(2) Date of birth - Correction of - Held: Court or tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth recorded in the service book - If a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly, beyond the time fixed by his employer, he cannot

claim, as a matter of right, correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is erroneous - No court/tribunal can come to the aid of those who sleep over their rights - High Court ought not to have directed correction of the date of birth of the employee under r. 84 - Delay/laches - Madhya Pradesh Financial Code - Rule 84.

State of M.P. & Ors. v. Premlal Shrivastava & Ors. 444

(3) Disciplinary proceedings - Water tanker and escort vehicle of CRPF attacked by militants - Five personnel out of six on the escort vehicle killed - Appellants were found guilty of charges of disobedience of orders, committing gross misconduct and displaying cowardice in execution of their duties - Punishment of dismissal from service imposed - Held: Inquiry Officer referred to the statements of the appellants and other materials and came to the conclusion - Charge-sheet was supplied to appellants much in advance - List of witnesses was supplied to appellants and it was mentioned therein that any other witnesses could be examined - Appellants themselves refused to avail services of Defence Assistant -- Appellants failed to show any prejudice to have been caused to them - Therefore, it cannot be said that inquiry proceedings are vitiated or there is any violation of principles of natural justice - Central Reserve Police Force Rules, 1955 - r. 27 - Principles of natural justice - Constitution of India, 1950.

(Also see under: Constitution of India, 1950)

Sanjay Kumar Singh v. Union of India & Ors. 182

(4) Pension and pensionary benefits - Army - Officer dismissed from service after trial by General Court Martial - Order by President of India forfeiting pension of the delinquent officer - Held: The power and discretion vested in the President by virtue of reg. 16 (a) of the Pension Regulations, to forfeit and deny the pension in full or in part to an officer, who is dismissed or cashiered, is independent of the punishment imposed u/s. 71 of the Act by the court martial - Pension Regulations for Army (Part I) - Regulation 16 (a).

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(5) Recruitment.
(See under: Social Status Certificate) 690

(6) Selection Grade - Grant of - Eligibility - Government of Rajasthan Office order dated 24.7.1995 providing that grant of selection grade to employees who have earned censure will be deferred by one year - Held: Not illegal, arbitrary, unconstitutional nor without authority of law - *Devi Singh's* case clarified - However, State Government would not be entitled to make recoveries from the employees concerned - Constitution of India, 1950 - Art. 14 - Government of Rajasthan, Finance Department (Rules Division) Office Order dated 24.7.1995.

(Also see under: Constitution of India, 1950)

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(7) Termination/Removal/Dismissal:

(I) Dismissal - Punishment - Proportionality of -

Appellant, a Constable in the Provincial Armed Constabulary (P.A.C.), was charged with negligence and dereliction of duty and was also arrested in a criminal case for stealing of a bottle of foreign liquor - Placed under suspension and departmental proceedings initiated - Inquiry Officer found him guilty - Consequently, Respondents dismissed him from service - Order of dismissal upheld by appellate authority, State Public Service Tribunal as also High Court - Held: Acquittal of appellant in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different - The department was able to prove the case on the standard of preponderance of probabilities - The appellant belongs to a disciplinary force and the members of such a force are required to maintain discipline and to act in a befitting manner in public - The punishment of dismissal from service cannot be said to be shocking to conscience and, therefore, does not call for any interference - Penal Code, 1860 - s.392.

Samarbahadur Singh v. State of U.P. & Ors. 136

(II) Dismissal - Army - Commandant - Held: In the circumstances, the punishment of dismissal from service is shockingly disproportionate to the gravity of the offences held to have been proved - Accordingly, the order imposing punishment of dismissal from service set aside - Consequently, order forfeiting the pension also set aside - Instead, punishment of forfeiture of 8 years of service for purpose of pension and service reprimand

imposed - Further, the Officer will not be entitled to any back wages from the date of his dismissal to the date of his superannuation - Army Act, 1950 - s.71.

(Also see under: Army Rules, 1954; and Constitution of India, 1950)

Union of India & Ors. v. Bodupalli Gopaldaswami 326

(III) Dismissal from service - Absence from duty without leave/information - Dismissal from service - High Court holding that the order of punishment awarded was legal and valid - Justification of - Held: Justified - Contention that period of absence of the appellant having been regularized, the said charge of unauthorized absence would fall through not tenable since period of the unauthorised absence was not condoned by the authority but the same was simply shown as regularised for the purpose of maintaining a correct record - Appellant was a habitual absentee without leave and, therefore, deserved no sympathy.

Om Prakash v. State of Punjab and Ors. 263

(IV) Termination - Services of a peon working on contract basis terminated - Division Bench of High Court stayed the termination order and also specifically ordered that the respondent be allowed to continue to work - Held: The Division Bench of High Court while admitting the appeal, ought not to have passed an order so as to allow the appeal itself even at that interim stage - Order passed by the Division Bench was illegal, without jurisdiction and was passed without any application of mind

- Matter remitted back to Division Bench of the High Court.

Mukhya Karyapalak Adhikari, U.P. Khadi Tatha Gramodyog Board Karmik Anubhag, Lucknow & Anr. v. Santosh Kumar. 246

(V) Termination - Assistant teacher - Working not satisfactory, probation extended time and again - Subsequently, termination of services - Held: The service of the appellant was not found to be satisfactory by the authorities and the said fact was brought to the notice of the appellant continuously and repeatedly so as to give him an opportunity to improve his performance, however, his performance and service were not improved - The appointment letter issued to the appellant specifically mentioned that his service would be regularised only when his performance during the probation period is found to be good/satisfactory - Thus, so long an order is not passed holding that the service of the appellant is good and satisfactory, it could not have been held that his service could be regularised automatically by a deeming provision - Uttar Pradesh Ashaskiya Arabi Tatha Farsi Madarson Ki Manyata Niyamawali - r. 26 - Interpretation of.

Mohd. Salman v. Committee of Management & Ors. 237

SEX WORKERS:
Welfare of sex workers.
(See under: Public Interest Litigation) 397

SOCIAL STATUS CERTIFICATE:
Candidates belonging to Scheduled Castes or

Scheduled Tribes - Seeking age relaxation for the post of Munsif - Held: If there is no age relaxation in the Rules, the same cannot be brought in by any judicial interpretation - The advertisement required the persons concerned to be of less than thirty five years of age at the relevant time - There was no age relaxation in favour of the candidates belonging to the Scheduled Castes or Scheduled Tribes, though there was a quantum of reservation provided for them - Jammu and Kashmir Civil Services (Judicial) Recruitment Rules, 1967.

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STAMP ACT, 1899:
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STRICTURES:

Adverse remarks - Expunction of - Held: In the instant case, the Court had not to decide the issue of justification of the tenure-holders for retaining the possession of the land; rather the question was, as to who was in actual physical possession of the land - The applicant cannot be permitted to make out a new case to justify expunging of adverse remarks - More so, while making certain observation against the applicant, the guidelines laid down by the Supreme Court in *Mohd. Naim* had strictly been observed - Remarks were made as it was necessary to do so while deciding the controversy involved therein - However, submission made by the applicant that it has rendered great service for down trodden and poor farmers and thus applicant should not be deprived of the opportunity to represent poor peasants - In view

thereof, para 145 of the earlier judgment modified - Land Acquisition Act, 1894.
(Also see under: Administration of Justice).

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TAMIL NADU HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 1959:

ss.6 (13) and 6 (20) - 'Math' and 'temple' - Ingredients of - Explained - Held: The oral and documentary evidence led in the case clearly establish that the suit property belongs to the Math and it is being used to celebrate Guru Pooja in the honour of the founder of the Math and the Mathadhipathis regularly - There is nothing to show that the installation of idol of Meenakshiamman was with the object of dedicating the premises as a place of public religious worship - The suit property with the installed idols is declared to be the property of the plaintiff-Math - The possession and control of the suit property with the place of worship (Meenakshiamman temple) vests with the plaintiff Math - Directions given as regards management of the Math - Hindu Law.

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TAMIL NADU UNIFORM SYSTEM OF SCHOOL EDUCATION ACT, 2010:

(i) s.3 (as amended by Act 2011) - Validity of - Held: Whole exercise of amending the Act 2010 was carried out most hurriedly - The entire exercise by the Government was arbitrary, discriminatory and oppressive to students, teachers and parents -Students could not be expected to revert back to the syllabus and textbooks applicable prior to 2010 after the academic term of 2011-12 has begun as they would be utterly confused and would be put to enormous stress - Tamil Nadu Uniform System of School Education (Amendment) Act, 2011.

(ii) s.18 - Scope of - Discussed.

(iii) Object of the enactment - Held: To enforce the uniform education system in the State of Tamil Nadu in order to impart quality education to all children, without any discrimination on the ground of their economic, social or cultural background. (Also see under: Tamil Nadu Uniform System of School Education (Amendment) Act, 2011; Constitutional Law; Constitution of India, 1950; Administrative law; and Legislation.)

State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. 1094

TAMIL NADU UNIFORM SYSTEM OF SCHOOL EDUCATION (AMENDMENT) ACT, 2011:

Validity of the Act - Held: Not valid - High Court as well as the Supreme Court had upheld the validity of the Act 2010 - The Amendment Act nullified the effect of the judgment of the High Court approved by Supreme Court and repealed the

Act 2010, which was not permissible - Passing the Act 2011, amounted to nullify the effect of the High Court and Supreme Court's judgments and such an act simply tantamounted to subversive of law -Amendment Act was an arbitrary piece of legislation and violative of Art. 14 and was mere pretence to do away the Uniform System of Education in terms of Act 2010 - s.18 of Act 2010 itself enabled the Government to issue any executive direction to remove any difficulty to enforce the statutory provisions of the Act 2010 - Tamil Nadu Uniform System of School Education Act, 2010 - Constitution of India, 1950 - Art. 14. (Also see under: Tamil Nadu Uniform System of School Education Act, 2010; Constitutional Law; Constitution of India, 1950; Administrative law; and Legislation.)

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UTTAR PRADESH KRISHI UTPADAN MANDI ADHINIYAM, 1964:

(i) s.9 - Purchase of specified agricultural produce in bulk within the market area for its use in manufacturing commercial product - Requirement of obtaining licence - Held: Sale of specified agricultural produce from any place in the market area is prohibited unless the person concerned

has a licence - The statute provides for an exception of having a licence or from paying the market fee if sale of agricultural produce is made to a person for his "domestic consumption" in "retail sale" - "Purchase of agricultural produce in bulk cannot be termed to have been made for "domestic consumption"- The company is required to take license u/s.9 (2) of the Act 1964 - U.P. Krishi Utpadan Mandi Niyamavali, 1965 (the Rules 1965) - Rule 70.

(ii) Object of the Act - Stated.

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Pratap Chandra Mehta v. State Bar Council of M.P. & Ors. 965

(3) Expressions 'assessable' and 'cess assessable on land' - Explained.

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JUDGES OF THE SUPREME COURT OF INDIA

(From 02.09.2011 to 11.10.2011)

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(From 02.09.2011 to 11.10.2011)

Hon'ble Mr. Justice Chandramauli Kr. Prasad, Judge, Supreme Court of India was on leave for five days from 26.09.2011 to 30.09.2011 on full allowances.

Hon'ble Mr. Justice S.S. Nijjar, Judge, Supreme Court of India was on leave for two days from 10.10.2011 to 11.10.2011 on full allowances.

**ERRATA
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<i>Page No.</i>	<i>Line No.</i>	<i>Read for</i>	<i>Read as</i>
207	9	to the benefit	to the benefit <u>of</u>
216	10 from bottom	"CIRCUAR	"CIRCULAR
403	15	as <u>it</u> counsel	as <u>its</u> counsel
659	11 from bottom	(a) First three of these <u>three</u> Civil Appeals	(a) First three of these Civil Appeals
871	13	Held: When an application memo is	Held: When an application <u>or</u> memo is