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(ii) Framing of charge - Object of - Held: The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction - If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated - The charge has to contain such particulars as to the time and place of the alleged offence and the person against whom it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

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(2) s.320 - Compounding of offences - Held: The offences which are not compoundable u/s.320 cannot be allowed to be compounded even if there is any settlement between the complainant on the one hand and the accused on the other - However, even when compounding is rejected, the fact of settlement between the parties can be taken into consideration while determining the question of sentence to be awarded to the accused-appellants - Compromise - Penal Code, 1860 - ss.307, 323, 325.

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(ii) s. 303 - Right of person against whom proceedings are instituted, to be defended - Criminal proceedings against husband and wife - Both represented by one and the same counsel - Application by wife that she wanted to be defended by a counsel of her choice - Rejected by trial court - Application for transfer of the case also rejected - High Court observing that the applicant had been denied opportunity to be defended by counsel of her choice and remanding the case to a different court - Held: The attempt of the applicant to change the counsel was a dilatory tactic - There is no violation of s. 303 of the Code or Art.22 (1) of the Constitution - Constitution of India, 1950 - Art. 22(1).

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(ii) Personal appearance of complainant - Exemption granted - Complaint dismissed by trial court for default - Held: Trial court erred in holding that since the complainant had been appearing in person despite the order exempting him from personal appearance, the said exemption order had become redundant and the complainant

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(Also see under: Code of Criminal Procedure, 1973; and Bail)

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(1) Arts. 13(2), 13(3)(a) - Agreement between Union of India and respondent No.2 for supply of fruit - Arbitrator holding the said agreement as void and not enforceable as the consideration of the agreement was hit by letter dated 31.08.1990 of the Government of India, Ministry of Defence - Held: Art. 13(2) prohibits the State from making any law which takes away or abridges the fundamental rights conferred by Part-III of the Constitution - The letter was not an Act of the legislature declaring that any supply made at a rate below 20% of the reasonable rates was unlawful - The finding of the arbitrator was thus patently illegal and opposed to public policy - The award of the arbitrator set aside and the matter remitted to him for deciding the claims of the parties - Contract Act, 1872 - s.23.

Union of India v. Col. L.S.N. Murthy & Anr. 295

(2) Article 14 - Classification in taxation - Held: In taxation, there is a broader power of classification

than in some other exercises of legislation - When the wisdom of the legislation while making classification is questioned, the role of the courts is very much limited - Classification is not reviewable by the courts unless it is palpably arbitrary or wholly illusory - Discrimination resulting from fortuitous circumstances arising out of particular situations, in which some of the tax payers find themselves, is not hit by Article 14 if the legislation, as such, is of general application and does not single them out for harsh treatment - In the instant case, keeping in view the Scheme, the legislation is based on a reasonable classification - Finance Act, 1998 - ss.87(m)(ii)(b) and 88. - Cut-off date - Kar Vivad Samadhana Scheme, 1998.

(Also see under: Finance Act, 1998; and Kar Vivad Samadhana Scheme, 1998)

Union of India & ors. v. M/s Nitdip Textile Processors Pvt. Ltd. & Anr. 26

(3) Art. 14 - Held: Guarantee of equality before law is a positive concept and cannot be enforced in a negative manner - If an illegality or an irregularity has been committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts and tribunals to require the State to commit the same irregularity or illegality in their favour on the reasoning that they have been denied the benefits which have been illegally or arbitrarily extended to others - Service Law.

(Also see under: West Bengal Service Rules (Part I)).

State of West Bengal and Ors. v. Debasish Mukherjee and Ors. 1077

(4) Arts. 14 and 16.
(See under: Service law) 739

(5) Art. 19 (1) (a) - Right to information - Held: Right to information which is basically founded on the right to know, is an intrinsic part of the fundamental right to free speech and expression guaranteed under Art. 19 (1) (a) - Right to information is definitely a fundamental right of free speech.
(Also see under: Right to Information Act, 2005.)

Chief Information Commr. and Another v. State of Manipur and Anr. 505

(6) Art. 21.
(See under: Code of Criminal Procedure, 1973). 309

(7) Art. 32 r/w Art. 141, and Art. 226 - Held: These Articles confer on the Supreme Court and the High Court the power to issue directions, orders or writs for achieving the objectives of the said Articles - In public interest, courts may pass directions and even appoint committees for inducing the Government to carry out the constitutional mandate - Courts have been taking due care while exercising such jurisdiction so that they do not overstep the circumscribed judicial limits.
(Also see under: Administrative law; and Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996).

(Asha Sharma v. Chandigarh Administration and Ors. 881

(8) Arts. 32, 226 and 136 - Medical students subjected to brutality in police station - Held:

Report of Additional Chief Judicial Magistrate prima facie establishes acts and/or omissions of the various police personnel and amounted to misconduct of serious nature - Direction issued to treat the said report as a preliminary report and initiate disciplinary proceedings against the police personnel named therein - In the contempt petition, direction issued to the two contemnors not to enter into the premises of the Medical College, its administrative block, its hospital, its hostel and the residence of the medical students.

P. Mahalingam v. Monica Kumar & Anr. 571

(9) Arts. 77 and 166.
(See under: Administrative Law). 754

(10) Art.102 - Parliament - Disqualification for membership - Held: For attracting the disqualification provided in Art. 102, a person must be holder of 'office of profit' under the Government of India or the Government of any State - Returned candidate was elected Director of Corporation - He was holding an elected office and not an office by appointment - He did not hold an office of profit under the Government - Returned candidate was neither disqualified to be member of Parliament either u/Art.102 or u/s.10 of the 1951 Act - Representation of the People Act, 1951.
(Also see under: Representation of the People Act, 1950)

Gajanan Samadhan Lande v. Sanjay Shyamrao Dhotre 395

(11) (i) Art. 136 - Locus to file appeal and jurisdiction of Supreme Court - Complaint alleging illegal transfer of Government land - Order of Special Judge framing charges, set aside by High

Court and the case transferred to a different court - Original complainant died - Special leave petition filed by an Ex-Municipal Councilor - Held: Though in express terms, Art. 136 does not confer a right of appeal on a party as such, but it confers discretionary power on Supreme Court to interfere in suitable cases - In the instant case, the allegations made against respondent No.1 are serious - There is a prima facie case against her - By the impugned order not only the charge framed against her but also against all the accused has been quashed - High Court's judgment is tainted with legal infirmities and has resulted in miscarriage of justice - Therefore, interference by Supreme Court is necessary in larger public interest - Code of Criminal Procedure, 1973 - s. 401.

(ii) Art. 22(1).

(Also see under: Code of Criminal Procedure, 1973; and Administration of justice).

Ashish Chadha v. Smt. Asha Kumari & Anr.

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(12) Article 136 r/w Article 142, and Article 215 - Benefit of order in appeal to non-appellant - Appeal by writ petitioner challenging the order of Division Bench of the High Court initiating *suo motu* contempt proceedings against him and an Officer of the State Government - Officer not filing any appeal - Appeal of writ petitioner allowed - Held: It shall be too technical to deny the officer the relief by Supreme Court, which has jurisdiction for doing complete justice in any cause or matter pending before it - Therefore, the Officer shall also be entitled to the same relief as the appellant - Contempt of Courts Act, 1971 - s. 2(c).

(Also see under: Contempt of Courts Act, 1971)

H.G. Rangangoud v. M/s.State Trading Corporation of India Ltd. & ors.

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(13) Articles 226 and 22(5) - Writs - Writ of Habeas Corpus - Technical objection of respondents on question of prayer in the Habeas Corpus Petition filed by the appellants-detenus - Held: The writ of Habeas Corpus is a writ of the highest Constitutional importance being a remedy available to the lowliest citizen against the most powerful authority - Technical objection accordingly over-ruled.

(Also see under: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974)

Ummu Sabeena v. State of Kerala & Ors.

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(14) (i) Art. 300A - Exercise of the power of eminent domain - Scope - Held: Art. 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature - Principles of eminent domain, as such, is not seen incorporated in Art. 300A - Doctrines - Doctrine of Eminent Domain.

(ii) Art. 300A - Requirement of public purpose for depriving a person of his property - Payment of compensation to a person who is deprived of his property - Held: Any law, which deprives a person of his private property for private interest, will be unlawful and unfair and undermines the rule of law and can be subjected to judicial review - Public purpose is a pre-condition for deprivation of a

person from his property under Art. 300A and the right to claim compensation is also inbuilt in that Article and when a person is deprived of his property, the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

(iii) Art. 32-B.

(Also see under: Karnataka Land Reforms Act, 1961; The Roerich and Devika Rani Roerich Estate (Acquisition & Transfer) Act, 1996; Interpretation of Statute; and Rule of law).

K.T. Plantation Pvt. Ltd. & Anr. v. State of Karnataka 636

COMPENSATION:

Payment of compensation to person who is deprived of his property.
(See under: Constitution of India, 1950) 636

COMPROMISE:

(See under: Code of Criminal Procedure, 1973) 177

CONSUMER PROTECTION ACT, 1986:

(1)(i) Historical perspective of the consumer movement - Discussed.

(ii) Appearance before consumer fora by "authorised agent" - Permissibility - Held: The appearance of authorized agents is not inconsistent with s.33 of the Advocates Act - The legislature in its wisdom has granted permission to the authorized agents - High Court was fully justified in observing that the authorised agents do not practise law when they are permitted to

appear before the District Forums and the State Commissions - When the legislature has permitted authorized agents to appear on behalf of the complainant, then the courts can't compel the consumer to engage the services of an advocate - Advocates Act, 1961 - s.33.

(Also see under: Practice and procedure)

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(2) Restitution - Complaint against the carrier company for the goods damaged in transit - District forum holding the carrier company liable to the consignees for negligence - Held: If the amount determined by District Forum covered the price of damaged goods and the carrier had returned the said goods to the consigner and the latter having received the price of said consignment from the consignees, also retained the consignment or disposed it of but has not paid the realized amount to the carrier, the consigner would stand unjustly enriched - Matter remitted to District Forum to order the consigner to return the damaged goods or its value to the carrier - Unjust Enrichment.

Nagpur Golden Transport Company (Regd.) v. Nath Traders & Ors. 481

CONTEMPT OF COURTS ACT, 1971:

s. 2(c)(ii) - Criminal contempt - Interference with due course of judicial processing - Order passed by Single Judge of High Court in writ petition - Writ petitioner moved the State Government to implement the said order - Writ appeal filed subsequently - Meanwhile State Government processed the matter - Division Bench of the High

Court initiated *suo motu* contempt proceedings against the writ petitioner and the Officer of the State Government - Held: Even before filing of the appeal, the appellant had brought to the notice of the State Government the order passed by the Single Judge and sought its implementation - The order of the Single Judge was not stayed - Further, mere filing of the appeal would not operate as a stay of the order appealed from - The act alleged in no way prejudices or interferes or tends to interfere with the due course of any judicial proceeding - The proceeding initiated against the appellant as also the Officer is not just and appropriate but is an abuse of the process of court - Constitution of India, 1950 - Article 215. (Also see under: Constitution of India, 1950)

H.G. Rangangoud v. M/s.State Trading Corporation of India Ltd. & Ors. 97

CONTRACT:

(See under: State Financial Corporation Act, 1951) 445

CONTRACT ACT, 1872:

(1) s.23.
(See under: Constitution of India, 1950) 295

(2) s. 55.
(See under: Specific Relief Act, 1963) 605

(3) ss. 59 and 60.
(See under: Arbitration)156

CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970:

ss. 10(1) and 12A - Notification issued by Central Government u/s. 10 (1) prohibiting employment of

contract labour of trolley retrievals in the establishment of the Airport Authority of India (AAI) at the Indira Gandhi International Airport and Domestic Airport at Delhi -Applicability of the said Notification to Delhi International Airport Pvt. Ltd. (DIAL) - Appropriate government for DIAL under the CLRAA and ID Act - Held: Central Government is the appropriate government for DIAL and AAI under the CLRAA and ID Act - Entire functioning of DIAL is fully dependent on the grant of permission by the Central Government - DIAL operates and functions under the authority of the Central Government - Thus, the notification was equally binding on DIAL - DIAL to abolish all contract labour as per the terms of the notification - In the interest of justice, DIAL directed to pay Rupees five lacs to each of the erstwhile workers who were working for them as trolley retrievers till 2003 - Industrial Disputes Act, 1947.

M/s. Delhi International Airport Pvt. Ltd. v. Union of India & Ors. 1115

CRIMINAL LAW:

Grant of pardon to one of the several accused involved in an offence - Purpose of - Explained. (Also see under: Prevention of Corruption Act, 1988)

Bangaru Laxman v. State (through CBI) & Anr. 268

CUSTOMS ACT, 1962:

s.14.
(See under: Customs Valuation (Determination of Value of Imported Goods) Rules, 2007). 772

CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007: rr. 2(f),3,4 and 9(1)(c) - Determination of value of imported goods - Method of valuation - Valuation of recorded audio cassettes/CDs imported by assesseees - Value of royalty required to be paid by the assesseees for the imported goods - Held: In determining the transaction value there has to be added to the price actually paid or payable for the imported goods, royalties and the license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of sale of goods - The payment of royalty was a condition of sale - When pre-recorded music cassette is imported as against the blank cassette, definitely its value goes up in the market which is in addition to its value and therefore duty shall have to be charged on the value of the final product - Therefore, value of the royalty paid is to be included in the transaction value - Customs Act, 1962 - s.14.

Commnr. of Customs Excise, New Delhi v. Living Media India) Ltd. 772

CUT-OFF DATE:

(See under: Constitution of India, 1950) 26

DEFENCE SERVICES REGULATIONS, 1961:

Reg. 206 - Dismissal of reservist by Brigade Commander - Held: Reg. 206 cannot take away the power vested under the Army Act in the brigade commander to dismiss or remove any person working under him - Therefore, the High Court rightly held that the Brigade Commander had the power to dismiss the reservist from service

- Reg. 113 (a) is clear that an individual who is dismissed under the provisions of the Army Act is ineligible for pension or gratuity in respect of all previous service -High Court rightly rejected the claim for pension - Pension Regulations, 1961 - Regulation 113 (a) - Army Act, 1950 - s. 20 (3).

Shish Ram v. Union of India & Ors. 289

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Delay in disposal of representation of the detenu. (See under: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974) 185

DOCTRINES/PRINCIPLES:

(1) Doctrine of Eminent Domain. (See under: Constitution of India, 1950) 636

(2) Test of necessity. (See under: Code of Criminal Procedure, 1973) 309

EDUCATION/EDUCATIONAL INSTITUTIONS:

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(2) (See under: National Council of Teachers' Education Act, 1993). 555

(3) (See under: Constitution of India, 1950) 571

(4) Medical and Dental Colleges - Orissa Joint Entrance Examination-2011(OJEE-11) - Chairman, OJEE-11 directed to conduct further counseling for candidates in the waiting list, to fill up the seats vacant in the Private Medical College(s), which are the members of the appellant

Association.

Orissa Private Medical & Dental Colleges Association v. Chairman, Orissa Joint Entrance Examination-2011 & Ors. 107

ELECTION LAWS:

Election to students' bodies - Judicial intervention - Election in Jawaharlal Nehru University (JNU) - Complaints that elections not taking place in accordance with Lyngdoh Committee recommendations accepted by Supreme Court - Held: As regards the time period of holding elections, no variation in Lyngdoh Committee recommendation is called for - Since the recommendations of the Lyngdoh Committee are very salutary in nature, no major changes allowed except those mentioned in the judgment, which are absolutely necessary.

University of Kerala v. Council, Principals', Colleges, Kerala & Ors. 488

EVIDENCE:

Contradictions in statements of witnesses - Murder trial - Seventeen accused - Incident was over within a very short time - Held: In such a case even if minor contradictions appeared in the evidence of witnesses, it is to be ignored for the reason that it is natural that exact version of the incident revealing any minute detail i.e. meticulous exactitude of individual acts cannot be expected from the eye-witnesses.
(Also see under: Penal Code, 1860)

Ramachandran & Ors. Etc. v. State of Kerala 923

EVIDENCE ACT, 1872:

s.74(2) - "Public records kept in any State of private documents" - Held: A certified copy of annual return is a public document - Companies Act, 1956 - ss.159, 163 and 610 - Negotiable Instruments Act, 1881 - s.138.
(Also see under: Code of Criminal Procedure, 1973; and Negotiable Instruments Act, 1881)

Anita Malhotra v. Apparel Export Promotion Council & Anr. 76

FIR:

Two FIRs in respect of the same incident - Held: Filing of another FIR in respect of the same incident having a different version of events is permissible.
(Also see under: Code of Criminal Procedure, 1973).

Shiv Shankar Singh v. State of Bihar & Anr. 247

FINANCE ACT, 1998:

ss. 87 (m) (ii)(a) and (b) - 'Tax arrears' - Connotation of - Application of Kar Vivad Samadhana Scheme, 1998 to 'tax arrears' in respect of the amount of excise duty, interest, fine or penalty determined as due or payable as on 31.3.1998, or which constituted the subject matter of the demand notice or a show cause notice issued on or before 31.3.1998, but remaining unpaid as on the date of making a declaration u/s 88 - High Court declared s.87(m)(ii)(b) as violative of Article 14 of the Constitution in so far as it seeks to deny the benefit of the Scheme to those who were in arrears of duties etc. as on 31.3.1998, but to whom notices were issued after

31.3.1998, and struck down the expression "on or before the 31st day of March 1998" - Held: The classification made by the legislature appears to be reasonable for the reason that it has grouped two categories of assesses, namely, the assesseees whose dues are quantified but not paid and the assesseees who are issued with the Demand and Show Cause Notice on or before a particular date - The Legislature has not extended this benefit to those persons who do not fall under this category or group - The distinction so made cannot be said to be arbitrary or illogical which has no nexus with the purpose of legislation - The findings and the conclusion reached by the High Court cannot be sustained - The impugned common judgment and order is set aside - Central Excise Act, 1944 - s. 11A - Constitution of India, 1950 - Article 14 - Interpretation of Statutes - Legal fiction.

(Also see under: Constitution of India, 1950; and Kar Vivad Samadhana Scheme, 1998)

Union of India & Ors. v. Nitdip Textile Processors Pvt. Ltd. & Anr.

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GOVERNMENT CONTRACTS:

Tender - Eligibility criteria - Supply of food under Supplementary Nutrition Programme of Integrated Child Development Scheme (ICDS) -- Contract granted - Challenge to - Held: Writ petition was rightly dismissed by High Court - The EOI had deliberately stressed on the need of precise measurements for preparation of the food - The food was to be prepared in the manner prescribed by the Government for safety and nutrient composition of the food - The procedure adopted was necessary to ensure that there was "zero

infection" in the food as the beneficiaries were infants from the age group of 6 months to 3 years and pregnant and lactating mothers - The condition in EOI of asking for minimum Rs. 1 crore turnover for the last three years was also not arbitrary - Writ petitioner was not eligible at all to be even considered in the tender process.

Shagun Mahila Udyogik Sahakari Sanstha Maryadit v. State of Maharashtra & Ors.

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GOVERNMENT RESIDENCES (CHANDIGARH ADMINISTRATION GENERAL POOL) ALLOTMENT RULES, 1996:

(i)r.13 - Allotment of accommodation - Retention of Government accommodation on subsequent appointment after retirement - Held: No new house for any category/post should be earmarked unless the house already earmarked for such category/post has been vacated and placed in the general pool of the Chandigarh Administration for allotment in accordance with the Allotment Rules - No case of retention of government accommodation beyond the periods specified in the table to r.13(2) of the Allotment Rules shall be entertained by any authority under the Allotment Rules - An order of eviction and damages was passed against the appellant - The matter in that behalf is still pending final hearing before the Single Judge - With regard to the interim order passed by the High Court, the State is directed to allot to the Officer an alternative accommodation under the category as per her entitlement, in pursuance of her appointment as State Information Commissioner, as directed in the judgment

(ii) r.7 - Earmarking of houses - Held: r.7 provides

for earmarking of houses for specified officers from different branches of the State Administration and those houses which have not been so earmarked for any particular class of Government employees would be allotted to the general pool of the Chandigarh Administration - r. 7 does not suffer from the vice of arbitrariness, as earmarking of houses is a known concept in relation to allotment of houses - In the instant case, the Single Judge of the High Court gave a clarificatory direction that when earmarked houses are occupied by an officer, who is at that time not entitled to that house, another house would not be earmarked for any particular officer, until the occupied house is vacated - One exception was carved out in favour of SSP, Chandigarh - This clarificatory direction is not violative of any rule or is otherwise impermissible - There is no reason to interfere with imposition of such a condition which is in conformity with the spirit of the said Rule.

(iii) r.11 - Out-of-Turn Allotments - Held: r.11 is a very comprehensive rule which deals with the specific situations where Out-of-Turn Allotment is permissible - The Allotment Rules and the guidelines are intended to control the exercise of discretion by the authorities concerned in granting Out-of-Turn Allotments - In the instant case, the absolute restriction on Out-of-Turn Allotments imposed by Single Judge of the High Court was not just and fair and was opposed to the statutory provisions of the Allotment Rules - Therefore, such a restriction is not sustainable.

(iv) r.8 - Interpretation of - Held: The purpose of r.8 is not to allow discretionary allotment but is to provide overall powers of coordination and control

to the Administrator, U.T., Chandigarh - The words 'for the purposes of allotment to any class or category of eligible government servant' appearing in r.8 mean the allotment made in terms of the Allotment Rules - Adding or withdrawing houses to the general pool is a power vested in the authority under r.8, but allotments still are to be made in accordance with the substantive rules enabling the authorities to make regular allotments.

(v) r.9 - Objections regarding allotment of accommodation - Held: r.9 requires the authorities to invite applications for allotment of accommodation and also provides the manner in which the allotment of houses is to be made including showing the seniority of the applicants category-wise - There is no provision requiring invitation of objections - Directions issued by Single Judge regarding invitation of objections from aggrieved officers who might assert preferential claim is set aside.

(vi) r.11 - Allotment of two houses to a single officer and/or to his family, one in Chandigarh and one in some other part of the same State; and the period of retention of the allotted house after the employee is retired, promoted, transferred or is sent on deputation - Held: The said issue is of serious concern - In absence of any such specific rule, it is directed that the State shall not allot two different houses to one government servant - In terms of r.11(1)(b) of the Allotment Rules, such allotment can be made in some circumstances but every effort should be made to ensure that such situations arise only in exceptional circumstances.

(vii) r.13 - Retention of government accommodation - Held: A government servant cannot be permitted to retain the accommodation beyond 4 to 6 months, which period is permissible under the substantive rules - rr.13(1) and 13(2) are comprehensive, specific and provide more than reasonable time for a government servant to vacate the accommodation allotted to him/her - r.13(5) is not sustainable and the authorities are directed not to take recourse to the said provision under any circumstance - No case of retention of government accommodation beyond the periods specified in the table to r.13(2) shall be entertained by any authority under the Allotment Rules - The directions are passed being conscious of the fact that the Allotment Rules are in place and that the authorities are acting fairly and judiciously.

(viii) Allotment of accommodation - Duty of authorities - Held: The authorities are expected to be consistent in their decisions and bring certainty to the Allotment Rules - This can only be done by making fair, judicious and reasoned decisions on the one hand and refraining from amending the Allotment Rules except in exceptional and extraordinary circumstances on the other.

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

Asha Sharma v. Chandigarh Administration and Ors. 881

INCOME-TAX APPELLATE TRIBUNAL

(RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 1963:

r. 4 - Appointment of Members of Income-Tax Appellate Tribunal - Claim for appointment by wait-listed candidates - Held: Until the Appointments

Committee approved the list of waitlisted candidates, such candidates are not persons selected for appointment - If the Central Government has taken a decision through the Appointments Committee of the Union Cabinet to undertake appointments in future after amendment of the Rules, it cannot be held that the reason given by the Central Government in not making any further appointments because of the proposed amendments to the Rules was not a justifiable or proper reason.

Union of India & Anr. v. Pradip Kumar Kedia 196

INDUSTRIAL DISPUTES ACT, 1947:

(1) (See under: Contract Labour (Regulation and Abolition) Act, 1970). 1115

(2) Workmen's rights in case of transfer of an undertaking - Held: Without consent, the workmen cannot be forced to work under different management and in that event, those workmen are entitled to retirement/retrenchment compensation in terms of the Act - Single Judge of the High Court was conscious of the fact that these workmen failed to avail the VRS within the stipulated time and also did not retire from the service - However, the workmen cannot be compelled to join the transferee company against their wish/consent and all along workers had been fighting for their cause in various forums - Also the Single Judge had passed the said order, after hearing all the parties in the nature of mandatory directions to the Management - Thus, the Single Judge was justified in passing the order - Management directed to comply with the directions

issued by the Single Judge of the High Court.

Sunil Kr. Ghosh & Ors. v. K. Ram Chandran & Ors. 236

INJUNCTION:

Temporary injunction.
(See under: Code of Civil Procedure, 1908) 109

INTERNATIONAL LAW:

(i) Declaration of European Convention for the Protection of Human Rights, 1950
(ii) Universal Declaration of 1948.
(See under: Right to Information Act, 2005). 505

INTERPRETATION OF STATUTES:

(1) Deeming provision - Held: Is a legal fiction and an admission of the non-existence of the fact deemed - Therefore, while interpreting a provision creating a legal fiction, the court has to ascertain the purpose for which the fiction is created - Prevention of Corruption Act, 1988 - s.5(2).
(Also see under: Prevention of Corruption Act, 1988)

Bangaru Laxman v. State (through CBI) & Anr. 268

(2) Fiscal legislation - Held: Has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment - Central Excise Act, 1944.
(Also see under: Central Excise Act, 1944)

Ranbaxy Laboratories LTD. v. Union of India and Ors. 1

(3) Harmonious construction - Held: No statute should be interpreted in such a manner as to render a part of it redundant or surplusage - When a procedure is laid down statutorily and there is no challenge to the said statutory procedure, the court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision - Thus, a construction which leads to redundancy of a portion of the statute cannot be accepted in the absence of compelling reasons.

(Also see under: Right to Information Act, 2005; and Constitution of India, 1950)

Chief Information Commr. and Another v. State of Manipur and Anr. 505

(4) Legal Fiction.
(See under: Finance Act, 1998; and Kar Vivad Samadhana Scheme, 1998).26

(5) (i) Rules framed under the Statute - Interpretation of - Held: They should be read as a part of the statute itself and require to be interpreted as *intra vires* to the Act under which they have been issued.

(ii) Exemption notification - Interpretation of - Held: Since exemption notifications are issued under delegated legislative power, they have full statutory force - An exemption notification has to be strictly construed - The conditions for taking benefit under the notification are also to be strictly interpreted - When the wordings of notification is clear, then the plain language of the notification must be given effect to - By way of an interpretation or construction, court cannot add or substitute any word while construing the notification either to grant

or deny exemption -Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption notification.

(Also see under: Central Excise Rules, 1944)

Saraswati Sugar Mills v. Commissioner of Central Excise, Delhi-III 579

(6) Statute depriving a person of his property - Scope for judicial review - Held: Though the impugned Act was not included in the IXth Schedule but since the Act was protected by Art. 31A, it was immune from challenge on the ground of violation of Art. 14 - Constitution of India, 1950 - Arts. 14 and 31A - Roerich and Devika Rani Roerich Estate (Acquisition & Transfer) Act, 1996. (Also see under: Karnataka Land Reforms Act, 1961; The Roerich and Devika Rani Roerich Estate (Acquisition & Transfer) Act, 1996; Constitution of India, 1950; Interpretation of Statute; and Rule of law)

K.T. Plantation Pvt. Ltd. & Anr. v. State of Karnataka 636

JUDGMENTS/ORDERS:

(1) Judicial determination - Reasoned decisions - Necessity of - Duty of judges to give finality to litigation - Held: Duty is cast on the judges to give finality to the litigation so that the parties would know where they stand - Proper reasoning is an imperative necessity which should not be sacrificed for expediency - The requirement of providing reasons obliges the judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the

functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system.

(Also see under: Administrative Law)

State of Uttaranchal & Anr. v. Sunil Kumar Vaish & Ors. 754

(2) Requirement of a Judge to act fairly as also to act above suspicion of unfairness and bias - Test of "real likelihood of bias"- Revision petition before the High Court dismissed by the same Judge, who at the trial stage had recused from the case - Held: The impugned Judgment, passed by the Judge subsequent to his recusal at trial stage for personal reasons, is against the principle of natural justice and fair trial - Impugned Judgment of High Court set aside and the matter remanded to it for disposal of the revision petition afresh.

Narinder Singh Arora v. State (Govt. of NCT of Delhi) and Ors. 436

KAR VIVAD SAMADHANA SCHEME, 1998:

Nature and scope of the Scheme - Held: The Scheme is a step towards the settlement of outstanding disputed tax liability - The Scheme is a complete Code in itself and exhaustive of the matter dealt with therein - It is statutory in nature and character - While implementing the Scheme, liberal construction may be given but it cannot be extended beyond conditions prescribed in the statutory scheme - Therefore, the courts must construe the provisions of the Scheme with reference to the language used therein and ascertain what their true scope is by applying the normal rule of construction - Further, the object of the Scheme and its application to Customs and

Central Excise cases involving arrears of taxes has been explained in detail by the Trade Notice No. 74/98 dated 17.8.1998 - It is a settled law that the Trade Notice, even if it is issued by the Revenue Department of any one State, is binding on all the other departments with equal force all over the country - However, the Trade Notice, as such, is not binding on the courts but is certainly binding on the assessee and can be contested by him - Interpretation of Statute - Finance (NO.2) Act, 1998 - ss. 87(m) (ii) and 88 - Trade Notice No. 74/98 dated 17.8.1998 issued by the Commissioner of Central Excise and Customs, Ahmedabad-I - Practice and Procedure. (Also see under: Finance Act, 1998)

Union of India & Ors. v. M/s Nitdip Textile Processors Pvt. Ltd. & Anr.

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KARNATAKA LAND REFORMS ACT, 1961:

ss.110 and 140 - Exemption provisions - Exemption u/s 107 for lands used for cultivation of linaloe - Power to withdraw the exemption u/ s.110 - Constitutional validity of s.110 - Withdrawal of exemption vide notification dated 08.03.1994 issued u/s 110 - Notification in question not laid before the Legislature - Validity of the Notification - Held: Power to withdraw exemption has not been conferred on the State Government, but evidently retained by the Legislature - The legislative will was to make s.107 subject to s.110 and not the will of the delegate, therefore, overriding effect has to be given to s.110 - s.110 cannot be said as void due to excessive delegation of legislative powers - Further, the Act including s.110 was placed in IX Schedule and, therefore, immune from challenge in a court of law - Land used for linaloe

cultivation would be governed by the provisions of the Act which is protected under Art. 31B of the Constitution having been included in the IX Schedule - The appellant-company could not have held the land used for the cultivation of linaloe on the date of the commencement of the Act - Further on withdrawal of exemption by notification dated 08.03.94, appellant-company became disentitled to hold the land - Non-laying of the notification dt.8.3.94 u/s140 of the Act before the State Legislature was a curable defect and did not affect the validity of the notification or action taken thereunder - Opportunity of hearing has not been provided as a pre-condition for exercising powers u/s 110 of the Act - Constitution of India, 1950 - Art. 31B - Administrative Law - Delegated legislation.

(Also see under: The Roerich and Devika Rani Roerich Estate (Acquisition & Transfer) Act, 1996; Constitution of India, 1950; Interpretation of Statute; and Rule of law).

K.T. Plantation Pvt. Ltd. & Anr. v. State of Karnataka

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LABOUR LAWS:

- (1) (See under: Contract Labour (Regulation and Abolition) Act, 1970). 1175
- (2) (See under: Industrial Disputes Act, 1947). 236

LAND ACQUISITION ACT, 1894:

(1) (i) ss. 5A, 4 and 6 - Acquisition of premises for public purpose - Notification and declaration u/ss. 4 and 6 - Challenged - On the ground that report by the Second Land Acquisition Officer was vitiated due to non-compliance of s. 5A(2) and

non-application of mind by the officer concerned to the objections u/s. 5A(1) - Held: Owners were not given any hearing as contemplated u/s 5A(2) which was their substantive right - Report submitted by the Second Land Acquisition Officer was utterly laconic, bereft of any recommendations and not satisfactory - Notification u/s. 4 and declaration u/s. 6 quashed and set aside.

(ii) s.5A - Right under - Scope of - Held: s. 5A(1) gives a right to any person interested in any land which has been notified that the land is needed for a public purpose to raise objections - Hearing contemplated u/s.5A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report - Report of the Collector is not an empty formality - Thereafter, declaration u/s. 6 has to be made only after the appropriate Government is satisfied on consideration of the report made by the Collector u/s 5A(2) - The Act being an expropriatory legislation, its provisions are to be construed strictly.

Kamal Trading P. Ltd, (Now known as Manav Investment & Trading Co. Ltd.) v. State of West Bengal 529

(2) (See under: Roerich and Devika Rani Roerich Estate (Acquisition and Transfer) Act, 1996) 636

LEGISLATION:

(1) Abolition of death penalty - Held: It is not for the judiciary to repeal or amend the law, as that is in the domain of the legislature - It is only the legislature which can abolish the death penalty and not the courts - As long as the death penalty

exists in the statute book it has to be imposed in some cases, otherwise it would tantamount to repeal of the death penalty by the judiciary. (Also see under: Penal Code, 1860; and Sentence/Sentencing)

Ajitsingh Harnamsingh Gujral v. State of Maharashtra 1000

(2) Need for framing the rules. (See under: Practice and procedure). 814

LIMITATION:

(See under: Right to Information Act, 2005). 505

LIMITATION ACT, 1963:

s.15(2) - Period of limitation under - Computation of - Notice u/s.80, CPC given before expiry of limitation - Held: In computing the period of limitation, the period of notice would be mandatorily excluded since the notice was given within the limitation period - Code of Civil Procedure, 1908 - s.80.

M/s. Disha Constructions and Ors. v. State of Goa and Anr. 496

NATIONAL COUNCIL OF TEACHERS' EDUCATION ACT, 1993:

s.17 - Withdrawal of recognition - Held: Inspection was conducted more than once and deficiencies were pointed out which seriously affected the capacity of the institution to impart quality education and training to future teachers - Withdrawal of recognition was justified - Prayer for permitting the students to continue in the appellant-institution for the session 2011-12 on sympathetic ground also rejected - Education/

Educational institutions.

Shri Morvi Sarvajanic Kelavni Mandal Sanchalit MSKM B.Ed. College v. National Council for Teachers' Education 555

NEGOTIABLE INSTRUMENTS ACT, 1881:

s.138 - Complaint against a Director of a Company for dishonour of cheque - Held: Such a complaint should specifically spell out how and in what manner the Director was in charge of or was responsible to the accused-Company for conduct of its business; and mere bald statement, as in the instant case, that she was in charge of and was responsible to the company for conduct of its business is not sufficient.

Anita Malhotra v. Apparel Export Promotion Council & Anr. 76

PENAL CODE, 1860:

(1) s. 302 - Murder - Accused burnt his wife and three children to death - Conviction u/s. 302 and sentence of death by courts below - Held: Prosecution established the entire chain of circumstances which connects the accused to the crime - Accused had pre-planned the diabolical and gruesome murder in a dastardly manner - He did not act on any spur of the moment - He cannot be reformed and rehabilitated - Death sentence upheld.

(Also see under: Sentence/Sentencing).

Ajitsingh Harnamsingh Gujral v. State of Maharashtra 1000

(2) ss. 302/34 - Murder with common intention - Victim-deceased shot in broad daylight - Acquittal

by trial court, set aside by High Court as regards the appellant and another co-accused - There being the divergence in views as regards conviction/acquittal of the appellant, the matter referred to larger Bench.

Prem Singh v. State of Haryana 949

(3) s.302/149 and s.307/149 - Unlawful assembly causing murder of one person and serious injuries to two others - Applicability of s.149 - Held: Once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act - It is obligatory on the part of the court to examine that if the offence committed is not in direct prosecution of the common object, it yet may fall under second part of s.149, if the offence was such as the members knew was likely to be committed - "Common object" may also be developed at the time of incident - In the instant case, there was enough evidence on record to establish that the accused-appellants were present, armed with weapons - Trial court as well as the High Court proceeded in correct perspective and rightly applied the provisions of s.149 - As the participation by the accused was governed by second part of s.149, overt act of an individual lost significance - Conviction upheld. (Also see under: Evidence).

Ramachandran & Ors. Etc. v. State of Kerala 923

(4) ss.307, 323, 325. (See under: Code of Criminal Procedure, 1973; and Sentence/Sentencing) 177

(5) ss. 354 and 394.
(See under: Code of Criminal Procedure, 1973) 135

(6) ss. 399 and 402 - Conviction and sentence of 5 years RI imposed by trial court, affirmed by High Court - Held: The orders under challenge do not suffer from any legal infirmity nor do they suffer from any perversity in appreciation of evidence on record - However, in the facts and circumstances of the case, the sentence is reduced to 3 years RI under both the counts.

Birbal B. Chouhan & Anr. v. State of Chhattisgarh. 151

(7) ss. 364-A and 120-B - Kidnapping of a minor boy for ransom - Conviction and sentence of imprisonment for life awarded by trial court, affirmed by High Court - Out of three convicts, one filing the appeal - Held: From the evidence of the witnesses, it is clearly established that the accused persons, particularly, the appellant, kidnapped the minor boy of the complainant, demanded ransom from him for release of the child and also threatened that if the demand was not met his son would be killed - High Court was right in maintaining the conviction and the sentence and its judgment does not suffer from any infirmity. (Also see under: Sentence/Sentencing.)

Akram Khan v. State of West Bengal 459

PENSION REGULATIONS, 1961:

Reg.113 (a).
(See under: Defence Services Regulations, 1961) 289

PRACTICE AND PROCEDURE:

(1) (See under: Kar Vivad Samadhana Scheme, 1998). 26

(2) (See under: Code of Criminal Procedure, 1973 as also under Summons/Process) 387

(3) Rules for regulation of practice by agents, representatives, registered organizations and/or non-advocates before consumer fora - Held: In order to ensure smooth, consistent, uniform and unvarying functioning of the National Commission, the State Commissions and the District Forums, direction issued to the National Commission to frame comprehensive rules regarding appearances of the agents, representatives, registered organizations and/or non-advocates appearing before the National Commission, the State Commissions and the District Forums governing qualifications, conduct and ethical behaviour of agents/non-advocates/representatives, registered organizations and/or agents appearing before the consumer forums.

C. Venkatachalam v. Ajitkumar C. Shah and others 814

PREVENTION OF CORRUPTION ACT, 1988:

(1) s. 5(2) - Power of Special Judge to grant pardon at investigation stage - Held: On a harmonious reading of s. 5 (2) of the P. C. Act with the provisions of s. 306, specially s. 306 (2) (a) of Cr.P.C. and s. 26 of the P. C. Act, the Special Judge under the P. C. Act, while trying offences, has the dual power of the Sessions Judge as well as that of a Magistrate, and conducts the proceedings under the Code both prior to as well as after the filing of charge sheet, for holding

the trial - Therefore, the power of granting pardon, prior to the filing of the charge-sheet, is within the domain of judicial discretion of the Special Judge before whom such a prayer is made, as in the instant case, by the prosecution - Code of Criminal Procedure, 1973 - s. 306(2)(a) - Interpretation of Statutes.

(Also see under: Interpretation of Statutes)

Bangaru Laxman v. State (through CBI) & Anr. 268

(2) s.19 - Sanction for prosecution - Significance and importance of - Held: The sanction is not an empty formality but a sacrosanct act which affords protection to government servants against frivolous prosecutions - Validity of sanction order depends upon the material placed before the sanctioning authority - In the instant case, cognizance had already been taken against the appellants by the trial court - High Court while considering challenge to the sanction order, therefore, rightly held that it was open to the appellant to question the validity of the sanction order during trial on all possible grounds.

Dinesh Kumar v. Chairman, Airport Authority of India and Anr. 260

PREVENTIVE DETENTION:

Delay in disposal of representation.
(See under: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974) 185

PUNJAB PROHIBITION OF COW SLAUGHTER ACT, 1955:

(i) s.8 - Conviction under, by courts below,

reversed by High Court - Held: In upsetting the concurrent finding of the courts below, about the identification of the accused persons, High Court did not give any reason - The revisional jurisdiction of High Court u/s.439 Cr.P.C. is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice - It cannot be held that the interference by the High Court on the question of identification of the accused persons in facts of the case was either proper or legally sustainable - Code of Criminal Procedure, 1973 - s.439 - Revision.

(ii) ss.3, 4, 8 - Ownership of the place where act of slaughtering done - Requirement of - Held: Reading of s.3 and s.4 together would show that the person contravening s.3 cannot put up a defense that the act of slaughter was being done in a place, of which he is not the owner or in respect of which he does not have the conscious possession - Slaughter of cows, subject to exceptions u/s.4, in any place, is prohibited u/s.3 and penalty for doing so is provided u/s.8 - The case of the accused persons was not covered under the exceptions in s.4 - No such defense was ever taken - Therefore, order of acquittal by High Court was legally not sustainable.

State of Haryana v. Rajmal and Another 347

RANBIR PENAL CODE:

ss.302, 109, 147, 148, 149.
(See under: Bail). 1054

REFERENCE TO LARGER BENCH:

(See under: Penal Code, 1860).949

REPRESENTATION OF THE PEOPLE ACT, 1951:
 ss.10, 100(1)(a) - Disqualification from contesting elections - State Government having more than 25% share in a Corporation - Returned candidate was an elected Director of the Corporation - Held: Since returned candidate was neither managing agent nor manager nor secretary in the Corporation, s.10 of the Act is not attracted - Returned candidate is, therefore, not disqualified u/s.10.

(Also see under: Constitution of India, 1950)

Gajanan Samadhan Lande v. Sanjay Shyamrao Dhotre 395

RETROSPECTIVE OPERATION:

(See under: Right to Information Act, 2005). 505

RIGHT TO INFORMATION ACT, 2005:

(i) ss. 7, 18(1) and 19(1) - No response to application seeking information u/s 6 - Remedy - Held: The applicant after having applied for information u/s 6 and then not having received any reply thereto, it must be deemed that he has been refused the information - The situation is covered by s. 7 and the remedy is provided by way of appeal u/s 19 - Applicant directed to file appeals u/s 19 in respect of the requests made in his applications - Appeal - Interpretation of Statutes - Limitation.

(ii) ss. 18 and 19 - Scope of and difference between the two procedures - Explained.

(iii) s. 24(4) - Act not to apply to certain organizations - Notification dated 15.10.2005, issued by State Government notifying the exemption of certain Government organizations

from the purview of the Act - Held: s. 24 does not have any retrospective operation - Therefore, no notification issued in exercise of the power u/s 24 can be given retrospective effect - Even otherwise, the exemption does not cover allegations of corruption and human right violations - Government of Manipur Notification dated 15.10.2005 - Retrospective operation.

(iv) Object of the Act - Held: The Act has been enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic and to curb corruption - Declaration of European Convention for the Protection of Human Rights (1950); and Universal Declaration of 1948.

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

Chief Information Commr. and Another v. State of Manipur and Anr. 505

ROERICH AND DEVIKA RANI ROERICH ESTATE (ACQUISITION & TRANSFER) ACT, 1996:

Constitutional validity of the Act - Plea of repugnancy between the provisions of Land Acquisition Act, 1894 and the 1996 Act - Held: Plea is not acceptable - Under Art. 254 of the Constitution, a State law passed in respect of a subject matter comprised in List III would be invalid if its provisions are repugnant to a law passed on the same subject by Parliament and that too only if both the laws cannot exist together - If the dominant intention of two legislations is different, they cover different subject matter then merely because the two legislations refer to some allied or cognate subjects, they do not cover the same

field - The 1996 Act primarily falls under Entry 18 List II, since the dominant intention of the legislature was to preserve and protect Roerichs' Estate covered by the provisions of Karnataka Land Reforms Act, on the State Government withdrawing the exemption in respect of the land used for linaloe cultivation - On the other hand, Land Acquisition Act, 1894 is an Act which fell exclusively under Entry 42 List III and enacted for the purpose of acquisition of land needed for public purposes for companies and for determining the amount of compensation to be made on account of such acquisition, which is substantially and materially different from the Acquisition Act whose dominant purpose is to preserve and protect "estate" governed by Art.31A(a) read with Art.31A(2)(a)(iii) of the Constitution - Therefore, no assent of the President was required under Art. 254(2) of the Constitution to sustain the impugned Acquisition Act, which falls under Art. 31A (1)(a) of the Constitution - Constitution of India, 1950 - Arts. 31A and 254(2) - Land Acquisition Act, 1894.

(Also see under: Karnataka Land Reforms Act, 1961; Constitution of India, 1950; Interpretation of Statute; and Rule of law)

K.T. Plantation Pvt. Ltd. & Anr. v. State of Karnataka 636

RULE OF LAW:

Rule of law as a concept finds no place in Indian Constitution, but has been characterized as a basic feature of Indian Constitution which cannot be abrogated or destroyed even by the Parliament and in fact binds the Parliament - Rule of law as an overarching principle can be applied by the

constitutional courts, in rarest of rare cases, and can undo laws which are tyrannical, violate the basic structure of the Constitution, and the cherished norms of law and justice.

(Also see under: Karnataka Land Reforms Act, 1961; Roerich and Devika Rani Roerich Estate (Acquisition & Transfer) Act, 1996; Constitution of India, 1950; and Interpretation of Statutes)

K.T. Plantation Pvt. Ltd. & Anr. v. State of Karnataka 636

SEARCH AND SEIZURE:

Legality of search and seizure - Held: An illegal search does not vitiate the seizure of the article.

(See under: Punjab Prohibition of Cow Slaughter Act, 1955) 347

SENTENCE/SENTENCING:

(1) (i) Death sentence - 'Rarest of rare case' - Held: Death sentence should only be given in the rarest of rare cases - On facts, the accused burnt living members of his family to death which is a horrible act causing excruciating pain to the victim, and this could not have been unknown to the accused - He did not act on any spur of the moment provocation - He had pre-planned the diabolical and gruesome murder in a dastardly manner - Such person who instead of protecting his family kills them in such a cruel and barbaric manner cannot be reformed or rehabilitated - Balance sheet is heavily against him - Thus, all the requisites for death penalty are satisfied - Instant case belongs to the category of rarest of rare cases - Death sentence awarded to the accused upheld.

(ii) Death sentence - Broad guidelines to award

death sentence - Stated.

(Also see under: Penal Code, 1860).

Ajitsingh Harnamsingh Gujral v. State of Maharashtra 1000

(2) Reduction of sentence - Fight between two brothers - Conviction and sentence - Settlement between the parties - Held: The parties were related to each other - Incident took place 19 years back - Accused were in twenties at that time - They have already served substantial part of sentence - Offence u/s.307 not compoundable - Therefore, conviction upheld, however, sentence reduced to period already undergone - Penal Code, 1860 - ss.307, 323, 325.

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

Gulab Das & Ors. v. State of M.P. 177

(3) Sentence u/s 364A IPC - Object of - Held: The statement of objects and reasons introducing s.364A in the IPC makes it clear that cases relating to kidnapping for ransom is a crime which called for a deterrent punishment, irrespective of the fact that kidnapping had not resulted in death of the victim - Considering the alarming rise in kidnapping of young children for ransom, the legislature in its wisdom provided for stringent sentence - Therefore, in such cases no leniency is to be shown in awarding sentence, on the other hand, it must be dealt with in the harshest possible manner and an obligation rests on the courts as well.

(Also see under: Penal Code, 1860)

Akram Khan v. State of West Bengal 459

SERVICE LAW:

(1) Career Advancement Scheme.

(See under: West Bengal Service Rules (Part I)) 1077

(2) Judicial officer - Date of birth - Correction of, in the service record - Held: No determination of the judicial officer's date of birth was made as contemplated and required in r. 2 - Nothing was shown about the firm date of birth recorded in the service record of the judicial officer - Judicial officer had not asked for any alteration in the date of birth but his prayer had been for recording correct date of birth in the relevant service record - High Court on the administrative side, would objectively determine the judicial officer's date of birth in accordance with the statutory provisions after giving an opportunity to the judicial officer - Impugned order modified - Andhra Pradesh Public Employment (Recording and Alteration of Date of Birth) Rules, 1984 - rr. 2, 2-A, 2(4).

High Court of A.P. v. N. Sanyasi Rao 403

(3) Promotion and grant of consequential benefits - Munsif in State Judicial Services, suspended from service - Thereafter, reinstated, posted on a lower post - Subsequently, Officer superannuated - In a writ petition, the Division Bench directed the High Court on its administrative side to consider the case of promotion of the Officer as also consequential benefit in accordance with law - Held: Promotion is not a matter of right much less a fundamental right, more particularly, when promotion in the subordinate judiciary is to be dealt with by the High Court which has complete control over the subordinate judiciary in view of Art. 235 -Record shows that till the Officer was

superannuated from service, he was discharging duties as Additional Munsif and was never confirmed in the cadre of Munsif - Thus, his claim for promotion to higher post could not have been considered - Earlier, claiming similar relief, the Officer had filed petition which was dismissed and also attained finality and thus, it would operate as *res judicata* - Also all rights and claims of the Officer got crystallized - High Court erred in directing to consider the case of the Officer for promotion - Order of the High Court set aside. (Also see under: Supreme Court Rules, 1966)

High Court of Judicature at Patna v. Madan Mohan Prasad & Ors.

972

(4) (i) Seniority - Inter-se seniority of direct recruits - Determination of - Held: Seniority is an incidence of service and where the service rules prescribe the method of its computation, it is squarely governed by such rules - In absence of a rule governing seniority, an executive order may be issued to fill up the gap - Only in the absence of a rule or executive instructions, the court may have to evolve a fair and just principle of seniority, which could be applied in the facts and circumstances of the case - In the instant case, no record has been brought before the Court to ascertain merit wise position of the persons who were directly recruited and as there is no rule prescribed for determination of seniority, the Court is left with only the guideline flowing from the executive instruction of 1946, in order to evolve a just policy, for determination of seniority - The 1946 instruction refers to acceptance of age of the candidate as the determining factor for seniority - Such a basis is not fortuitous and is otherwise just and reasonable - Accordingly, the seniority of the

officers who were recommended on the same date must be decided by their respective age.

(ii) Seniority - Determination of - Held: Is a vital aspect in the service career of an employee - His future promotion is dependent on it - Therefore, determination of seniority must be based on some principles, which are just and fair - This is the mandate of Arts. 14 and 16 - Constitution of India, 1950 - Arts. 14 and 16.

D.P. Das v. Union of India and Ors. 739

SOCIAL STATUS CERTIFICATE:

Scheduled tribe certificate issued to petitioner-father and petitioners-son and daughter - Cancellation of, by the Caste Scrutiny Committee - High Court upheld the decision of Committee - Held: The decision of the Committee and High Court is not disturbed - However, whatever advantage the petitioners had derived on the basis of their 'Caste Certificates', may not be disturbed and the cancellation of their respective 'Caste Certificates' would not deprive them of the benefits which they have already enjoyed - However, none of the petitioners would be entitled to take any further advantage of reservation in future - The results of the petitioners would be published.

Dattu S/O Namdev Thakur v. State of Maharashtra and Ors. 475

SPECIFIC RELIEF ACT, 1963:

(i) s.9 - Specific performance of contract - Non-performance by plaintiff of its obligation under the contract within stipulated time - Effect of - Held: In the instant case, prior to signing of the agreement, the terms were discussed between the parties and the plaintiff-purchaser willingly took upon itself

the burden of obtaining clearance from the Urban Land Ceiling Authorities within the time stipulated in the agreement - The parties clearly intended time to be the essence of the contract which was also evident from the commercial nature of the transaction and the surrounding circumstances - Since the plaintiff did not discharge its burden within the time specified, it was not entitled to a specific performance of the contract - Moreover, suppression by the plaintiff of the fact that it refused to accept the cheque of Rs.10 lakhs was a material fact - Contract Act, 1872 - s.55 - Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

(ii) Plea for discretionary relief of specific performance - Suppression of material fact by plaintiff - Effect of - Held: When discretionary remedy is prayed for by a party, such party must come to court on proper disclosure of facts - The plaint filed before the court in such cases must state all facts with sufficient candour and clarity - Where the plaintiff is shown to have materially misled the court or to have abused its process, or to have attempted to do so, the discretionary relief of specific performance can be denied to him - To enable the court to refuse to exercise its discretionary jurisdiction, suppression must be of a material fact - Material fact would mean a fact material for the purpose of determination of the *lis*.

*Citadel Fine Pharmaceuticals v.
M/s. Ramaniyam Real Estates P. Ltd.
& Anr.*

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STATE FINANCIAL CORPORATION ACT, 1951:
s.29 - Contract of sale - Sale of Unit to respondent

on down payment of Rs. 8 lacs - Balance amount of Rs.32 lacs was to be paid on installments, which was not paid - Held: The contract having been acted upon, it could not be unilaterally abrogated on the sweet will of any of the two sides - In terms of the contract, the respondents were obliged to pay the balance consideration amount of Rs.32 lacs along with interest as provided in the sale letter - In default of payment, it was the statutory right of the Corporation to take possession of the Unit u/s. 29 of the Act - Corporation had not only the right to retain Rs.8 lacs paid to it as part consideration but also to realise the balance amount of consideration, in accordance with law.

*Industrial Promotion and Investment Corpn.
of Orissa Ltd. v. Tuobro Furguson
Steels P. Ltd.*

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STRICTURES:

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

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SUMMONS/PROCESSES:

Service of summons - Held: Since the respondents refused to accept the summons, they would be deemed to have been served -- Practice and procedure.

(Also see under: Code of Criminal Procedure,
1973).

*Punjab State Warehousing Corporation
Faridkot v. M/s Sh. Durga Ji Traders
& Ors.*

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SUPREME COURT RULES, 1966:

O. 16, r. 10(1) proviso - Requirement of - Held:

When a petition for special leave is filed beyond the period of limitation prescribed and is accompanied by an application for condonation of delay, the Court should not condone the delay without notice to the respondent - Once the Court forms an opinion that sufficient cause is made out for condonation of delay then issuance of notice to the respondent to show cause as to why delay should not be condoned may become an empty formality - In order to see that the respondent does not incur unnecessary expenditure for coming to Delhi from far off places and engage an advocate for contesting the said application, delay is condoned *ex-parte* - However, if the respondent is not issued a notice, then a right would be available to him at the stage of hearing to point out that the Court was not justified in condoning the delay and that the leave, if granted, should be revoked or notice issued should be dismissed. (Also see under: Service law).

High Court of Judicature at Patna v. Madan Mohan Prasad & Ors. 972

TAMILNADU URBAN LAND (CEILING AND REGULATION) ACT, 1975:
(See under: Specific Relief Act, 1963) 605

TAXATION:

(1) Tax or Fee - Determination of the character of a levy - True test - Held: Is the primary object of the levy and the essential purpose intended to be achieved.

(Also see Building and Other Construction Workers Welfare Cess Act, 1996; and Building and Other Construction Workers (Regulation of

Employment and Conditions of Service) Act, 1996)

Dewan Chand Builders & Contractors. v. Union of India & ors. 214

(2) Settlement of disputed tax liability.
(See under: Finance Act, 1998; Constitution of India, 1950; and Kar Vivad Samadhana Scheme, 1998) 26

TRANSFER PETITION:

Matrimonial dispute between couple whose marriage had been performed at Jaipur - Husband filing a case u/s 9 of Hindu Marriage Act and another under Guardians and Wards Act in Family Court at Jaipur - Subsequently wife shifted to Delhi and filed transfer petitions seeking transfer of cases to Delhi - Held: Transfer petitions filed by the wife are allowed - Let both the cases be transferred from the Family Court at Jaipur to a Family Court of competent jurisdiction in Delhi. (Also see under: Child and Family Welfare)

Deepti Bhandari v. Nitin Bhandari & Anr. 547

UNJUST ENRICHMENT:

(See under: Consumer Protection Act, 1986) 481

WEST BENGAL SERVICE RULES (PART I):

r.55(4) - Applicability of - Career advancement scheme - Benefit given to an employee, who initially was appointed as a Section Writer/Typist in the Original Side of the Calcutta High Court, later promoted as Typist, Grade I and subsequently selected as an LDA - His seniors' claim for re-fixation of pay at par with his pay u/

r.55(4) or under any other service law principle - Held: The employee was given a higher pay for wholly erroneous reasons - He was promoted to the post of Typist, Grade I although he was not confirmed in the lower post at that time - He was appointed as LDA as a direct recruit on 9.9.1985 and, therefore, he was not entitled to the benefit of second higher scale with effect from 1.4.1989, as that benefit was available only at the end of 20 years service under the career advancement scheme - The fact that a mistake was committed in the case of the employee concerned, by extending the benefit under Career Advancement Scheme cannot be a ground to direct perpetuation of mistake by directing similar benefit to other senior employees - Therefore, neither under r.55(4) nor under the general principles of service jurisprudence, the seniors were entitled to claim benefit of re-fixation of their pay at par with the pay of the employee concerned - Service Law - Career Advancement Scheme.

(Also see under: Constitution of India, 1950)

State of West Bengal and Ors. v. Debasish Mukherjee and Ors. 1077

WORDS AND PHRASES:

(1) "Component" - Meaning of - Held: In order to determine whether a particular article is a component part of another article, the correct test would be to look both at the article which is said to be component part and the completed article and then come to a conclusion whether the first article is a component part of the whole or not - One must first look at the article itself and consider what its uses are and whether its only use or its primary or ordinary use is as the component part

of another article - In common parlance, components are items or parts which are used in the manufacture of the final product and without which, final product cannot be conceived of.

Saraswati Sugar Mills v. Commissioner of Central Excise, Delhi-III 579

(2) Expression, 'material fact' - Meaning of.

M/s. Citadel Fine Pharmaceuticals v. M/s. Ramaniyam Real Estates P. Ltd. & Anr. 605

(3) Word 'slaughter' - Meaning of.

State of Haryana v. Rajmal and Another 347



THE

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JUDGES OF THE SUPREME COURT OF INDIA

(From 02.09.2011 to 16.12.2011)

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26. Hon'ble Mrs. Justice Gyan Sudha Misra
27. Hon'ble Mr. Justice Anil R. Dave
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JUDGES OF THE SUPREME COURT OF INDIA**
(From 21.10.2011 to 16.12.2011)

1. Hon'ble Mr. Justice Aftab Alam, Judge, Supreme Court of India was on leave for one day on 31.10.2011 and nine days from 01.11.2011 to 09.11.2011 on full allowances.
2. Hon'ble Mr. Justice S.J. Mukhopadhaya, Judge, Supreme Court of India was on leave for two days from 03.11.2011 to 04.11.2011 on full allowances.
3. Hon'ble Mr. Justice J. Chelameswar, Judge, Supreme Court of India was on leave for one day on 30.11.2011 on full allowances.
4. Hon'ble Mr. Justice Deepak Verma, Judge, Supreme Court of India was on leave for one day on 07.12.2011 on full allowances.
5. Hon'ble Mr. Justice A.K. Patnaik, Judge, Supreme Court of India was on leave for one day on 12.12.2011 on full allowances.
6. Hon'ble Mr. Justice H.L. Gokhale, Judge, Supreme Court of India was on leave for two days from 13.12.2011 to 14.12.2011 on full allowances.

**ERRATA
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<i>Page No.</i>	<i>Line No.</i>	<i>Read for</i>	<i>Read as</i>
250	3 rd Line from bottom	set <u>a side</u>	set <u>aside</u>
417	13	set aside by High <u>and</u>	set aside by <u>High Court and</u>