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ADMINISTRATIVE LAW:
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ADVOCATES:
Professional misconduct - Punishment - Advocate filing Vakalatnamas without any authority and subsequently filing fictitious compromises - Also reprimanded previously by Disciplinary Committee of BCI - Disciplinary Committee of State Bar Council holding the charges proved - Held: In view of the specific finding recorded by Disciplinary Committee of State Bar Council, professional misconduct committed by advocate is extremely grave and serious - He deserves punishment commensurate with degree of misconduct that meets twin objectives; i.e. deterrence and correction - Advocate debarred from practice for 3 years - Administration of justice - Practice and Procedure.

Narain Pandey v. *Pannalal Pandey* 752

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION ACT, 1987:
(i) s.10(1)(k) of the Act and clause 9.22 of the Handbook of Approval Process - Shifting of Engineering College - Requirements to be complied with - Held: Clause 9.22 of Handbook provides a complete procedure for change of location and the same is permissible subject to compliance with the procedure - In the instant case,

appellant-college had shifted to new premises without approval of AICTE and without 'No Objection Certificate' from State Government and Directorate of Technical Education - View of High Court that the College had failed to comply with requirements for grant of approval and had shifted to new site without approval of AICTE and other authorities concerned cannot be faulted with and does not call for any interference - In the circumstances, withdrawal of approval by AICTE can also not be interfered with.

(ii) ss. 10 and 23 of the Act and Regulation 8(15) of 1994 Regulations - Application for grant of approval to shifting of Engineering College - Held: It is the requirement of law that there should be strict adherence to the time schedule for grant of approval as well as for admissions without exception - The Schedule to the Regulations has statutory backing - Its adherence is mandatory and not directory - There was certainly a lapse on the part of AICTE which cannot be ignored by the Court as it had far-reaching consequences and placing the career of students admitted during these two years in jeopardy - Cost imposed upon AICTE for such irresponsible working - The costs would be recovered from salary of erring officials/ officers - Admission schedule and Schedule for granting/refusal of approval modified and directions issued accordingly - All India Council for Technical Education (Grant of Approvals for Staffing New Technical Institution, Introduction of Course and Programmes and Approval of Intake Capacity) Regulations, 1994 - Costs.

Parshavanath Charitable Trust & Ors. v. *All India Council for Tech. Edu & Ors.* 1057

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APPEAL:
(1) Appeal against acquittal - Interference with - Principles - Held: Appellate court has to be more cautious while dealing with judgment of acquittal -There should be a compelling rationale and also clear and cogent evidence, which was ignored by trial court to upset the finding of acquittal - On facts, the course of appreciation of evidence and application of law adopted by trial court was not proper - It failed to appreciate the evidence on record cumulatively and in its correct perspective by ignoring material piece of evidence and by improper appreciation of evidence - It recorded findings which are on the face of it unsustainable - This error was rightly corrected by High Court - No reason to interfere with judgment of conviction recorded by High Court.
(Also see under: Penal Code, 1860)
Radhakrishna Nagesh v. *State of Andhra Pradesh* 1114

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court - Reference to trial court judgment in such a manner would not clothe the judgment to be reflective of reasons or indicative of any analysis - Judgment passed by High Court set aside and appeal remitted to it for re-hearing.
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Kumari Shaima Jafari v. *Irphan @ Gulfam and Ors.* 792

(3) Criminal appeal by accused before High Court - Proper and fair hearing to appellants - Appeal filed by accused through advocates, who took several adjournments - Subsequently, another counsel appeared for appellants and stated that he had no instructions in the matter - High Court heard the appeal with assistance of amicus curiae and State counsel - Held: High Court took every precaution and ensured proper hearing to appellants - Penal Code, 1860 - s.302/34.
(Also see under: Penal Code, 1860)
Jeewan & Ors. v. *State of Uttarakhand* 985

ARMY ACT, 1950:
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(See under: Army Act, 1950) 440

(2) (i) s.116 - Respondent, washerman/rifleman, charge-sheeted for remaining absent without leave for more than two years - Dismissal - Held: Commanding Officer did not suffer from any disability, ineligibility or disqualification to serve on summary court-martial to try the respondent despite the fact that he had signed and issued charge sheet against him - No plea of actual or likelihood of bias was raised in writ petition - There was also no plea taken in writ petition that respondent was denied fair trial in summary court-martial - There was no violation of statutory

provisions or principles of natural justice - Respondent pleaded guilty before summary court-martial, which found him guilty - Order of dismissal, could not be said to be disproportionate or oppressive or founded on extraneous consideration - Army Rules, 1954 - rr. 31 and 39.

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(Also see under: Constitution of India, 1950)

Bhaskar Laxman Jadhav & Ors. v. *Karamveer Kakasaheb Wagh Education Society & Ors.* 767

CENTRAL EXCISE AND TARIFF ACT, 1985:
Chapter 21, Heading 21.05 - "Soft serve" - Classification - Term "ice-cream" under heading 21.05 - Common parlance test - Applicability of - 'Soft serve' served at the restaurants/outlets

commonly and popularly known as McDonalds - Held: In absence of any statutory definition or technical description, no reason to deviate from application of the common parlance principle in construing the term "ice-cream" under heading 21.05 - Fiscal statutes are framed at a point of time and meant to apply for significant periods of time thereafter; they cannot be expected to keep up with nuances and niceties of the gastronomical world - Plea of assessee that the term "ice-cream" under heading 21.05 ought to be understood in light of the standards provided in the PFA cannot be accepted - The 'soft serve' marketed by the assessee, during the relevant period, is to be classified under tariff sub-heading 2105.00 as "ice-cream" - Interpretation of statutes - Tax statutes.

Commissioner of Central Excise, New Delhi v. *M/s. Connaught Plaza Restaurant (P) Ltd., New Delhi* 365

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(3) O. 22 - Application for substitution of a respondent who was dead when Special Leave Petition was filed - Held: Court can, in the interest of justice, allow an application for amendment of Special Leave Petition and condone the delay in filing such an application for amendment if delay is satisfactorily explained - Rules 8 and 9 in O. 16 of Supreme Court Rules, will not apply in such a case - Supreme Court Rules, 1966 - O. 16, rr.8 and 9.

Gurcharan Singh v. *Surjit Singh and Anr.* 459

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(2) (i) ss.167 and 309 - Transfer of prisoner with permission of court under whose warrant undertrial had been remanded to custody - Power exercisable by court while permitting or refusing transfer - Nature of - Held: Is 'judicial' and not 'ministerial' - Any order of transfer passed in any such proceedings would be a judicial order or at least a quasi-judicial one - In the instant case, as trial court treated the matter to be administrative and accordingly permitted the transfer without issuing notice to under-trials or passing an appropriate order, High Court was right in declaring the transfer of undertrials to be void and directing their re-transfer back to Bombay jail.

(ii) Custodial torture - Report submitted by Sessions Judge - Direction issued by High Court to Government to hold inquiry against those responsible for using excessive force against undertrials and for dereliction of duty by jail doctors - Challenge to - Held: Direction by High Court

was issued entirely on the basis of the report submitted by Sessions Judge - However, that report besides being preliminary was flawed in many respects including the fact that the same did not comply with basic requirement of a fair opportunity of hearing being given to those likely to be affected - Government directed to treat the report submitted by the Sessions Judge as a preliminary inquiry and take a considered decision whether or not any further inquiry, investigation or proceedings needs to be conducted against those allegedly responsible for using excessive force against undertrials.

(Also see under: Prisoners Act, 1900)

State of Maharashtra & Ors. etc.etc. v. *Saeed Sohail Sheikh etc. etc.* 916

(3) (i) s. 202 (as amended by Amendment Act, 2005) - Duty of Magistrate - To direct inquiry and investigation - Complaint before CJM - Against an accused who was resident of an area, not falling within territorial jurisdiction of CJM - CJM issuing process for offences u/ss. 418 and 420 IPC - Held: It was incumbent upon CJM to carry out an enquiry or order investigation as contemplated u/s. 202, before issuing process - However, High Court, instead of quashing the complaint, should have directed the CJM to pass fresh orders following the procedure u/s. 202 - Matter remitted to Magistrate for passing fresh orders - Penal Code, 1860 - ss. 418 and 420.

(ii) s. 202 (as amended by Amendment Act, 2005) - Enquiry under - Scope of - Held: Scope of enquiry under this Section is restricted only to find out the truth or otherwise of allegations made in complaint for the purpose of issuing process.

(iii) s. 202 (as amended by Amended Act, 2005) - Investigation under - Nature and scope of - Held: Investigation under this provision is different from the investigation contemplated u/s. 156 - It is limited to the ascertainment of truth or falsehood of allegations made in complaint.

National Bank of Oman v. *Barakara Abdul Aziz & Anr.* 500

(4) s.401.

(See under: Rajasthan Prisoners Release on Parole Rules, 1958) 220

(5) s.482 - Complaint of cheating and forgery in renewal and encashment of Foreign Currency Non-Resident Fixed Deposits - Charges framed against Chief Manager and Senior Manager of Bank and wife and father-in-law of complainant - Quashing of - Held: Power u/s 482, to interdict a criminal proceeding would be available for exercise not only at the threshold of criminal proceeding but also at a relatively advanced stage after framing of charge - Framing of a charge against a person substantially affects his liberty - In the instant case, no positive role having been attributed to Bank officials in facilitating any action of other accused persons, proceedings against them are not maintainable - Constitution of India, 1950 - Art.21.

(ii) s.482 - Complaint by husband against his wife and father-in-law for causing renewal and encashment of Foreign Currency Non-Resident Fixed Deposits by cheating and forgery - Accused stated to have used an old Investment Renewal Form containing old signatures of the couple which had been misplaced - Held: It prima facie discloses

commission of offences u/ss 467, 468, 471 and 120-B IPC - Order of High Court quashing the said charges in respect of the said FD against accused concerned is unsustainable, and, as such, set aside - Penal Code, 1860 - ss. 467, 468, 471 and 120-B.

Satish Mehra v. *State of N.C.T. of Delhi & Anr.* 1

(6) s.482.

(See under: Negotiable Instruments Act, 1881) 466

COMPENSATION:

(See under: Motor Vehicles Act, 1988) 414

CONSTITUTION OF INDIA, 1950:

(1) Art.14.

(See under: Service Law) 50

(2) Arts.14 and 16.

(See under: Service Law) 839

(3) Art. 20.

(See under: Penal Code, 1860) 802

(4) Art.20(3).

(See under: Investigation) 683

(5) Art. 21.

(See under: Right to Information Act, 2005) 1032

(6) (i) Art. 58(2) - Qualifications for election as President of India - Expression 'office of profit' - Connotation of - Respondent holding office of Chairman of Council of Indian Statistical Institute, Kolkata - Held: In order to be an office of profit, the office must carry pecuniary benefits or must be capable of yielding pecuniary benefits, which is not so in respect of Chairman, ISI - It was not

such a post, which was capable of yielding any profit so as to make it, in fact, an office of profit - In any event, by the 2006 amendment to s. 3 of Parliament (Prevention of Disqualification) Act, 1959, the holder of post of Chairman, ISI has been excluded from disqualification for contesting the Presidential election - Parliament (Prevention of Disqualification) Act, 1959 - s. 3.

(ii) Art. 58(2) - Qualification for election as President of India - 'Office of profit' - Respondent holding the post of Leader of House in Lok Sabha - Held: Disqualification contemplated on account of holding the said post was with regard to provisions of Art.102(1)(a) of the Constitution, besides being the position of the leader of the party in the House, which did not entail holding of an office of profit under Government - In any event, since respondent had tendered his resignation from the said post prior to filing of his nomination papers, which was duly acted upon by Speaker of the House, challenge to respondent's election as President of India on the said ground loses its relevance - Leaders and Chief Whips of Recognized Parties and Groups in Parliament (Facilities) Act, 1998.

(iii) Art. 58 - Presidential election - Held: Election of the returned candidate should not be lightly interfered with, unless circumstances so warrant.

Purno Agitok Sangma v. *Pranab Mukherjee* 585

(7) Art. 71 r/w Seventh Schedule, List I, Entry 72.

(See under: Supreme Court Rules, 1966) 585

(8) Art. 136 - Interference under, with concurrent findings of fact - Scope - Discussed.

(Also see under: Hindu Marriage Act, 1955)

U. Sree v. *U. Srinivas* 256

(9) Art. 136 - Petition for special leave to appeal - Conduct of petitioners - Held: It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to court - In the instant case, petitioners have not come up-front and clear with material facts - Court declines to grant special leave to appeal to petitioners for suppression of the material fact.

(Also see under: Bombay Public Trust Act, 1950).

Bhaskar Laxman Jadhav & Ors. v. *Karamveer Kakasaheb Wagh Education Society & Ors.* 767

(10) Art. 136 - Petition for special leave to appeal, by complainant challenging order of High Court dismissing Government Appeal by a cryptic order - Held: Regard being had to the essential constitutional concept of jurisdiction under Art. 136, application for permission to file special leave petition is allowed and applicant is permitted to prosecute the same.

Kumari Shaima Jafari v. *Irphan @ Gulfam and Ors.* 792

(11) Art. 136.

(i) (See under: Penal Code, 1860) 985

(ii) (See under: Narcotics Drugs and Psychotropic Substances Act, 1985) 1010

(12) Art. 141 - Law declared by Supreme Court to be binding on all courts - Held: High Courts cannot ignore Art. 141 - When the judgment of a court is confirmed by higher court, judicial discipline requires that court to accept said judgment, and

it should not in collateral proceedings write a judgment contrary to the confirmed judgment - If orders passed by Supreme Court were not clear to State Government or any party, it could have approached the Court for clarification - But it could not have set up a contrary plea in a collateral proceeding - Such an approach was not expected from State Government as also from High Court - Judicial discipline - Res Judicata.

Bihar State Government Secondary School Teachers Association v. *Bihar Education Service Association & Ors.* 50

(13) Art. 142.

(See under: Education/Educational Institutions) 299

(14) Art. 226.

(See under: Service Law) 174

CONTEMPT OF COURT:

(1) Contempt of order of High Court - Punishment of 2 months simple imprisonment with fine - Held: Orders and judgments of courts are meant to be obeyed and not to be disobeyed, with impunity - Appellant came forward with a lame and flippant statement that he did not understand implication of order of High Court - He passed orders in total derogation of directions contained in order of High Court - In the circumstances, order of High Court does not call for interference - However, taking into account the age of appellant and the remorse conduct displayed by him, punishment of imprisonment need not be retained - Instead, a "stern warning" is imposed apart from confirming the imposition of fine - Service law.

Gurminder Singh Kang v. *Shiv Prasad Singh & Ors.* 240

(2) Contempt proceedings - Order of State Government to adjust the appellant an Acharya Pandit in a Government Aided Institution - High Court directing to consider the case of appellant following an earlier judgment - Non-compliance of - Contempt proceedings - Dropped by High Court - Held: Court is fully satisfied that appellant was dragged for nearly 14 years and by efflux of time, he has reached the age of 60 years - Therefore, as on date, there cannot be any positive direction for his posting - Though appellant has made out a case for contempt, no purpose will be served by taking action against erring officials - Instead, appellant can be adequately compensated by way of monetary benefits - Accordingly, Department is directed to assign suitable post to appellant and corresponding monetary benefits from specified date - Service law.

Sri Debendranath Nanda v. *Shri Chandra Shekhar Kumar* 22

COSTS:

(1) (See under: All India Council for Technical Education Act, 1987) 1057

(2) (See under: Rajasthan Service Rules, 1951) 126

(3) (See under: Service Law) 1100

CRIMES AGAINST WOMEN:

(1) (See under: Penal Code, 1860) .... 802, 951 and 1114

(2) (See under: Protection of Women for Domestic Violence Act, 2005) 825

CRIMINAL LAW:

Motive.

(See under: Penal Code, 1860) 985

CUSTODIAL TORTURE:

(See under: Code of Criminal Procedure, 1973) 916

DECREE:

Execution of decree - Power of executing court - Held: A plea of nullity of a decree can always be set up before executing court - Any judgment and order which is a nullity never acquires finality and is thus open to challenge in execution proceedings.

State of Haryana & Anr. v. *Kartar Singh (D) through LRs.* 162

DELAY/LACHES:

Delay in lodging FIR.

(See under: Penal Code, 1860) 985

EDUCATION/EDUCATIONAL INSTITUTIONS:

(1) (i) Admission - In Private unaided Medical College - State Government decision to fill 85% of MBBS seats through State Pre-Medical Test 2008 (RPMT-2008) - No agreement with the College to give admission on the basis of RPMT-2008 - Held: The college could not have been directed to fill up its seats through RPMT-2008 - But the admission of 117 students was contrary to clause (2) of Regulation 5 of MCI Regulations - Since the candidates admitted by the college were not at fault, in exercise of power u/Art. 142 of Constitution, direction not to disturb their admission - Penalty imposed on the College to surrender its 107 seats to State Government phase-wise - Regulations on Graduate Medical Education, 1997 - Regulation 5(2) - Constitution of India, 1950 - Articles 19(1)(g) and 142.

(ii) Admission - In Medical College - College

entering into consensual arrangement with State Government to fill 85% of MBBS seats by the students allocated by competent authority - Filling the 85% seats in counselling from allocated students - Residual 21 seats filled by college on its own - Single Judge of High Court allowing petition of 15 students who were admitted through Pre-Medical Test - But dismissing the petition of 6 students in view of order of Medical Council of India discharging the 6 students from the course - Held: Admissions of the 6 students were in violation of Regulation 5(2) of MCI Regulations - However, invoking powers under Art. 142 of the Constitution, admission to 6 students not disturbed - Penalty imposed on the college to surrender 6 seats to State Government - Regulations on Graduate Medical Education, 1997 - Regulations 5(1) and (2) - Code of Civil Procedure, 1908 - s. 11 - Principle of Res Judicata - Constitution of India, 1950 - Art. 142.

Rajan Purohit & Ors. v. *Rajasthan University of Health Science & Ors.* 299

(2) Secondary School Teachers - Upgradation of - Not implemented - Held: Teachers have to be treated honourably and given appropriate pay and chances of promotion - It is certainly not expected of State Government to drag them to court in litigation for years together - The Court records its strong displeasure for the manner in which State Government kept on changing its stand from time to time - Judicial deprecation.

(Also see under: Service Law)

Bihar State Government Secondary School Teachers Association v. *Bihar Education Service Association & Ors.* 50

EVIDENCE:

(1) Circumstantial evidence.

(See under: Penal Code, 1860) 951

(2) Discrepancies in inquest report - Held: Discrepancy has to be material and seriously affecting the prosecution case - Every minor and immaterial discrepancy would not prove fatal to prosecution case - Inquest Report or post mortem report cannot be termed to be basic evidence or substantive evidence and discrepancies occurring therein cannot be termed to be fatal - There is sufficient evidence in the instant case to show involvement of accused persons in commission of crime.

(Also see under: Penal Code, 1860)

Jeewan & Ors. v. *State of Uttarakhand* 985

(3) (See under: Practice and Procedure) 752

EVIDENCE ACT, 1872:

(1) s.65 - Secondary evidence relating to contents of a document - Admissibility - Discussed.

(Also see under: Hindu Marriage Act, 1955)

U. Sree v. *U. Srinivas* 256

(2) s.113-B.

(See under: Penal Code, 1860) 802

FIR:

Delay in lodging of FIR.

(See under: Penal Code, 1860) 985

GUJARAT AGRICULTURAL LANDS CEILING ACT, 1960:

ss.2(1), 2(3), 2(11), 2(12) and 2(17) read with s.2(6) of Gujarat Act 25 of 1951, s.2(11) of Gujarat Act 26 of 1951 and s.2(a) of Gujarat Act 3 of 1952 - 'Bid land' - Nature of - Held: Such lands

where grass is grown or used for grazing purpose are always known as 'bid land' and would be subject to the restrictions imposed for the purpose of ascertaining the ceiling limit, unaffected by coming into force of 1976 Act as well as Amendment Act of 1974 and, therefore, determination of holding of such excess agricultural land under Act of 1960 prior to coming into force of Act of 1976 should be operated upon - Saurashtra Land Reforms Act, 1951 (Act 25 of 1951), Saurashtra Barkhali Abolition Act, 1951 (Act 26 of 1951) - Saurashtra Estates Acquisition Act, 1952(Act 3 of 1952) - Gujarat Agricultural Lands Ceiling (Amendment Act), 1972 (Act 2 of 1974) - Urban Land (Ceiling and Regulation) Act, 1976.

State of Gujarat & Another v. *Manoharsinhji Pradyumansinhji Jadeja* 507

GUJARAT AGRICULTURAL LANDS CEILING (AMENDMENT ACT), 1972:

(See under: Gujarat Agricultural Lands Ceiling Act, 1960) 507

IDENTIFICATION:

Identification of accused - Voice sample.

(See under: Investigation) 683

HINDU MARRIAGE ACT, 1955:

(i) s.13(1)(ia) - Divorce - Grant of - In favour of husband - On ground of "mental cruelty" - Held: Justified - The husband, who pursued a career in music, clearly deposed about the constant and consistent ill-treatment meted out to him by the wife as she showed her immense dislike to his "sadhna" under the guidance of his father who was also his "guru" and exhibited total indifference and, in a way, contempt to the tradition of teacher

and disciple - She made wild allegations about conspiracy in the family of her husband to get him re-married for dowry without an iota of evidence on record to substantiate the same - Husband proved his case of mental cruelty which was foundation for seeking divorce.

(ii) s.25 - Permanent alimony - Grant of - Held: While granting permanent alimony, no arithmetic formula can be adopted - It shall depend upon the status of parties, their respective social needs, financial capacity of husband and other obligations - Regard being had to the status of husband, the social strata to which the parties belong and further taking note of earlier orders of Supreme Court in the case, permanent alimony fixed at Rs.50 lacs, to be deposited before trial court, out of which Rs.20 lacs to be kept in a fixed deposit in the name of minor child of parties.

U. Sree v. *U. Srinivas* 256

HIRE-PURCHASE:

Vehicle purchased by petitioner on hire-purchase basis - Complaint by petitioner that respondent-financier had forcibly taken custody of the said vehicle - Criminal proceedings initiated against respondents before Judicial Magistrate - Quashed by High Court in criminal revision - Held: In an agreement of hire purchase, the purchaser remains merely a trustee / bailee on behalf of financier/financial institution and ownership remains with the latter - Thus, in case the vehicle is seized by financier, no criminal action can be taken against him as he is re-possessing the goods owned by him.

Anup Sarmah v. *Bhola Nath Sharma and Ors.* 360

IDENTIFICATION OF PRISONERS ACT, 1920:

s. 5.

(See under: Investigation) 683

INVESTIGATION:

Identification of accused - Voice sample - Power of Magistrate to issue summons to accused to appear before Investigating Officer and give his voice sample - Held: Taking voice sample of an accused by police during investigation is not hit by Art. 20(3) of the Constitution - However, there is no specific provision either in the Code of Criminal Procedure or in any other law under which a Magistrate can authorize the investigating agency to record voice sample of a person accused of an offence - There being difference of opinion as regards the interpretation of the provisions of s.53 CrPC and s. 5 of the Prisoners Act so as to trace the power of Magistrate to authorise obtaining of voice sample of accused, matter referred to larger bench - Code of Criminal Procedure, 1973 - ss.2(h), 53, Explanation (a), and s.54A - Identification of Prisoners Act, 1920 - s. 5 - Constitution of India, 1950 - Art.20(3).

Ritesh Sinha v. *The State of Uttar Pradesh & Anr.* 683

JUDICIAL DEPRECATION:

(See under: Education/Educational Institutions) 50

JUDICIAL DISCIPLINE:

(See under: Constitution of India, 1950) 50

JUDICIARY:

Judicial officer.

(See under: Rajasthan Service Rules, 1951) 126

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:

s.7-A r/w r.12 of 2007 Rules - Claim of juvenility - Application by appellant that on the date of commission of alleged offence, he was a juvenile - Held: In a case where genuineness of school leaving certificate has not been questioned, Court of Session and High Court were not justified in placing reliance on certain statements made by mother of accused in cross-examination - Court of Session also committed an error in placing reliance on the certificate issued by village Chowkidar - When law gives prime importance to date of birth certificate issued by school first attended, genuineness of which is not disputed, there is no question of placing reliance on certificate issued by village Chowkidar - Appellant was a juvenile on the date of incident and has to be tried by Juvenile Justice Board - Court of Session directed to make over the files to Juvenile Justice Board to proceed with trial, so far as appellant is concerned.

Jodhbir Singh v. *State of Punjab* 230

KARNATAKA STAMPS ACT, 1957:

Schedule, Article 5(e)(i) - Explanation (ii) - Stamp duty - Levy of - On Sale Deed - On the basis of market value of property on the day of execution - Writ petition seeking refund of stamp duty - Single Judge of High Court allowing the petitions and directing refund - Writ appeal - Filed after delay of 449 days - Division bench of High Court dismissing the appeal on ground of delay as well as on merit - Held: Delay in filing writ appeal ought to have been condoned - Since Division Bench did not advert to substantial ground urged by

State, matter remitted to it for consideration afresh on merit.

State of Karnataka & Ors. v. *Vivekananda M. Hallur & Ors.* 249

[KERALA] ABKARI ACT:

ss.55(a) and (i), 57A(2)(ii) and 58 - Sale by accused, a retail vendor, of spurious liquor adulterated with methyl alcohol - Death of one person while others developed serious sickness - High Court enhanced sentence from two years to 5 years RI - Held: High Court was fully justified in taking into account the death of a person, as a result of consuming the illicit liquor, sold by appellant - There was absolutely no illegality or lack of jurisdiction in the order of High Court - However, in view of the fact that in the case of supplier co-accused, sentence of life imprisonment has been reduced to 10 years RI, sentence of appellant also reduced to 3 years RI being minimum u/s.57A(2)(ii) - Sentence / Sentencing.

Soman v. *State of Kerala* 1155

LAND ACQUISITION ACT, 1894:

ss. 23(1-A), 23(2) and 28 as amended by Amendment Act, 1984 - Benefits claimed by filing application u/ss 151 and 152 CPC after the compensation enhanced by reference court and grant of 15% solatium and 6% interest by its order dated 17.5.1980 had attained finality on dismissal of State's appeal by High Court and SLP by Supreme Court - Held: An award and decree having become final under LA Act cannot be amended or altered seeking enhancement of statutory benefits under amended provisions by

filing petitions u/s 151 and s.152, CPC.

State of Haryana & Anr. v. *Kartar Singh (D) through LRs.* 162

LAND LAWS:
'Bid land'.
(See under: Gujarat Agricultural Land Ceiling Act, 1960) 507

LEADERS AND CHIEF WHIPS OF RECOGNIZED PARTIES AND GROUPS IN PARLIAMENT (FACILITIES) ACT, 1998:
(See under: Constitution of India, 1950) 585

LIFE INSURANCE CORPORATION OF INDIA (STAFF) REGULATIONS, 1960:
Regulations 39(1) and 46(2).
(See under: Service Law) 35

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969:
s.12-B - Power of MRTP Commission to award compensation - Compensation applications dismissed by Competition Appellate Tribunal on the ground that appellants had not initiated separate proceedings either u/s 10 or s. 36B of the Act - Held: The powers vested in MRTP Commission under sub-s. (3) of s. 12-B are independent of its powers u/s 10 and s. 36B - Impugned orders of Competition Appellate Tribunal set aside - Applications directed to be decided on merits.

Girish Chandra Gupta v. *M/s Uttar Pradesh Industrial Development Corporation Ltd. & Ors.* 287

MOTOR VEHICLES ACT, 1988:
(i) s.168 - Determination of compensation - Just compensation - Concept of - Explained.

(ii) ss.166 and 168 - Accident - Multiple grievous injuries and fractures all over the body of claimant - Held: Claimant entitled to compensation for loss of earning capacity as well as for permanent disability - Compensation of Rs.13.48 lakhs with interest @ 7.5%, awarded.

K. Suresh v. *New India Assurance Co. Ltd. and Anr.* 414

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, ACT, 1985:
(1) (i) s.15 - Search and seizure - Independent witness - Non-examination of - Effect - Appellant found driving a car loaded with bags of contraband (poppy straw) - Convicted on the basis of evidence of official witnesses - Held: In a case of this nature, it is better if prosecution examines at least one independent witness to corroborate its case - However, in absence of any such witness, if statements of official witnesses are reliable and no animosity is established against them by accused, conviction based on such statements cannot be faulted with - In the instant case, prosecution had taken necessary steps to summon the witness, but he did not appear - Besides, no animosity was established on the part of official witnesses by accused in defence - Conviction and sentence (RI of 10 years) and fine in terms of s.15(c) affirmed.

(ii) s.15 - Search and seizure - Taking of samples - Procedure - Appellant found driving a car loaded with two bags of contraband (poppy straw) -

Conviction - Held: Plea that the police should have taken two samples each from the two bags without mixing, not tenable.

Sumit Tomar v. *The State of Punjab* 404

(2) (i) s.42 - Non-compliance of - Held: Provisions of s. 42 or s. 50 being mandatory, require exact and definite compliance as opposed to principle of substantial compliance - Trial court clearly recorded that IO did not reduce secret information in writing nor did he send the same to higher officer or to police station for registration of the case - In view of total non-compliance of s. 42, non-involvement of any independent witness at any stage of investigation and presence of Tehsildar-cum-Executive Magistrate being doubtful, prosecution has failed to prove its case beyond reasonable doubt - Accused acquitted - Constitution of India, 1950 - Art.136.

(ii) ss. 42, 50 and 57 - Compliance of - Held: These provisions provide separate rights and protections - They are neither inter-linked nor inter-dependent so as to dispense compliance of one with the compliance of the other - In fact, they operate in different fields and at different stages - That distinction has to be kept in mind by courts while deciding such cases - Sending of report as required u/s. 57 the following day will be no compliance, factually and/or in eyes of law to provisions of s. 42.

Kishan Chand v. *State of Haryana* 1010

(3) (i) s.42(2) [as pre-amended] and s.15 - Reporting of information reduced to writing to higher officer - Non-compliance - Effect - Held: On facts, the information was received by

Investigating Officer on 4-2-1994, thus, s.42(2) as amended w.e.f. 2-10-2001 would not apply, and instead the pre-amended s.42(2) would govern the case - IO, while on patrol duty, had received secret information against accused - However, no effort was made by him to reduce the information into writing and inform his higher authorities instantaneously or even after a reasonable delay - There was patent illegality in the prosecution case, which was incurable - Conviction u/s.15 set aside.

(ii) s.42(2) - Reporting of information reduced to writing to higher officer - Amendment of sub-s.(2) of s.42 w.e.f. 2-10-2001 - Effect - Held: After amendment, the word 'forthwith' stood amended by words 'within 72 hours' - Resultantly, absolute certainty brought in by binding the officer concerned to send intimation to superior officer within 72 hours from time of receipt of information - This provides greater certainty to the time in which action should be taken as well as renders safeguards provided to an accused more meaningful.

(iii) s.42(2) - Amendment of - Held: Cannot be applicable with retrospective effect - Law as it existed at the time of commission of offence would be the law which will govern rights and obligations of parties.

(iv) s.42 - Compliance with - Is mandatory and not optional.

Sukhdev Singh v. *State of Haryana* 964

NATURAL JUSTICE:

Revocation of patent by Controller - By placing reliance on recommendation of Opposition Board, but without giving copy thereof to either of the

parties - Held: Order of Controller is vitiated for violation of principles of natural justice and, as such, set aside - Direction to Controller to dispose of the matter afresh after hearing all parties - Patents Act, 1970 - s. 25(2).

Cipla Ltd. v. *Union of India & Ors.* 102

NEGOTIABLE INSTRUMENTS ACT, 1881:

(i) ss. 138 and 139 - Dishonour of cheques for mismatching of signatures - Held: Just as dishonour of a cheque on the ground that account has been closed is a dishonour falling in first contingency referred to in s.138, so also dishonour on ground that "signatures do not match" or that "image is not found", which too implies that specimen signatures do not match the signatures on cheque, would constitute a dishonour within the meaning of s.138 - So long as the change is brought about with a view to preventing the cheque being honoured, dishonour would become an offence u/s.138 subject to other conditions being satisfied - Allegations of fraud and the like are matters that cannot be investigated by a court u/s 482 Cr.P.C. and shall have to be left to be determined at trial after evidence is adduced by parties - Code of Criminal Procedure, 1973 - s.482.

(ii) ss.138 and 139 - Dishonour of cheque - Presumption in favour of holder - Held: Is rebuttable - Return of cheque by bank on ground of 'stop payment' although has been held to constitute an offence, s.138 cannot be applied in isolation ignoring s.139 - In cases arising out of 'stop payment' situation, ss. 138 and 139 will have to be given a harmonious construction, otherwise

s.139 would be rendered nugatory.

M/s. Laxmi Dyechem v. *State of Gujarat & Ors.* 466

PARLIAMENT (PREVENTION OF DISQUALIFICATION) ACT, 1959:

s. 3.

(See under: Constitution of India, 1950) 585

PATENTS ACT, 1970:

s. 25(2).

(See under: Natural Justice) 102

PENAL CODE, 1860:

(1) (i) s.300, Exception 1 and s. 304 (Part-I) - Death caused under grave and sudden provocation - Tests to be applied - Explained - Held: In the instant case, keeping in view that deceased and accused were real brothers, and factum of deceased being in a drunken state abusing and assaulting his father, it can be reasonably held that there was sudden and grave provocation to accused, who gave a 'tobru' blow on head of deceased which proved to be fatal - There was no previous animosity between parties - Further, there was neither any premeditation nor an intention to kill the deceased - This brings the offence within Exception 1 to s.300 - Accordingly, accused convicted u./s 304 (Part-I) and sentenced to 10 years RI.

(ii) ss. 302 and 304 - Distinction between - Explained.

Budhi Singh v. *State of H.P.* 848

(2) ss. 302, 307, 148, 450 r/w. ss. 149 and 120-B.

(See under: Rajasthan Prisoners Release on Parole Rules, 1958) 220

(3) s. 302 r/w s.34 - Murder - Three accused - Two accused caught hold of the victim and the third stabbed him several times causing his death - Conviction and sentence of imprisonment for life, upheld by High Court - Held: Accused had participated with common intention in committing murder of deceased - Cumulative effect of oral and documentary evidence was that all the three accused had been found guilty of offence punishable u/s. 302 read with s. 34 - There is no reason to interfere with concurrent finding of conviction and order of sentence passed by courts below - There is some delay in lodging of FIR, but the same stands fully explained - Motive - Evidence - Constitution of India, 1950 - Art. 136 - Delay in lodging of FIR.

Jeewan & Ors. v. *State of Uttarakhand* 985

(4) ss.302, 326 and 341 and s.302 r/w s.34 - Homicidal attack on the brother and mother of the witness leading to their death - Conviction by courts below - Held: Facts evident from record lead to clear conclusion that the witness was present at the place of occurrence and was an eye witness to the incident - His testimony supported in its essential details by testimony of other witnesses - Evidence of the witness was credible notwithstanding that he was a related and interested witness - Conclusion arrived at, by courts below not shown to be perverse deserving reversal - Conviction upheld.

Raju @ Balachandran & Ors. v. *State of Tamil Nadu* 109

(5) ss. 302 and 376 - Rape and Murder - Circumstantial evidence - Acquittal by trial court - Conviction by High Court - Held: There was sufficient evidence to hold appellant guilty of committing the murder - But no cogent or admissible evidence regarding rape of victim - The only evidence as regards rape is the opinion of doctor who conducted post-mortem, which was not safe to rely upon as he was not examined as a witness - Conviction of appellant u/s.302 confirmed.

Madala Venkata Narsimha Rao v. *State of A.P.* 951

(6) (i) s.304-B - Dowry death - Applicability of s.304B - Expression 'soon before' - Proximity test - Main ingredient of the offence to be established - Held: Is that soon before the death of the deceased, she was subjected to cruelty and harassment in connection with demand of dowry - Expression "soon before" is a relative term and it would depend upon circumstances of each case - There must be existence of a proximate or live link between the effect of cruelty based on dowry demand and the death.

(ii) s.304-B - Dowry death - Concept of deeming fiction - Held: s.304B is an exception to the cardinal principles of criminal jurisprudence that a suspect is entitled to protection of Art.20 of the Constitution, as well as, presumption of innocence in his favour - Concept of deeming fiction applied by Legislature to the provisions of s.304B - Once the ingredients of s.304B are satisfied it will be called dowry death and by deemed fiction of law the husband or the relatives will be deemed to have committed that offence - Such deeming

fiction, however, is a rebuttable presumption - Constitution of India, 1950 - Art. 20 - Evidence Act, 1872 - s.113B.

(iii) s.304B r/w s.34 and s.498A - Dowry death - Death of married woman - Conviction - Held: Justified - Death was not normal as evidenced by postmortem certificate and also the report of Chemical Examiner - Possibility of death due to poisoning - Evidence disclosed that accused were demanding cash apart from other things - On the date of death, torture meted out to deceased at the hands of her in-laws - Legal requirements for offence falling u/ss.304B and 498A IPC with the aid of s.113B of Evidence Act conclusively proved - Evidence Act, 1972 - s.113B.

Kashmir Kaur & Anr. v. *State of Punjab* 802

(7) (i) ss.376(2)(f) and 363 - Rape - Of minor girl - Conviction - Held: In order to establish conflict between ocular and medical evidence, there has to be specific and material contradictions - Absence of injuries on body of victim not of any advantage to accused - Merely because, some fact was not recorded or stated by doctor at a given point of time and subsequently such fact was established by FSL Report, would not by itself substantiate plea of contradiction or variation - No reason to disbelieve the statement of victim and other witnesses, particularly when they stood lengthy cross-examination without any material damage to the case of prosecution.

(ii) ss.376(2)(f) and 363 - Plea of accused that there was no direct evidence connecting him to commission of crime - Held: Not tenable - On facts, presence of element of mens rea on part of

accused cannot be denied - He had fully prepared himself - Direct link of accused with commission of crime well established by statement of witnesses, recoveries made, Medical Report and FSL Report - Statement of victim credible, truthful and, thus, can safely be relied upon - Such statement fully corroborated by independent witnesses.

(iii) s.376 and s.375, Explanation - Rape - Penetration - Intact hymen - Inference - Held: The mere fact that hymen was intact and there was no actual wound on private parts of victim not conclusive of fact that she was not subjected to rape - Even if there is no penetration, it does not necessarily mean that there is no rape.

Radhakrishna Nagesh v. *State of Andhra Pradesh* 1114

(8) ss. 411 and 412 - Dacoity - Stolen property (4 kg silver) sold to accused (jeweller) - Conviction by courts below u/ss. 411 and 412 - Held: Courts below have not recorded a finding that accused was aware that silver chips presented to him were procured by commission of dacoity or that he knew or had reason to believe that presenter of silver chips belonged to a gang of dacoits - Therefore, conviction u/s. 412 set aside - However, conviction u/s.411 maintained, but sentence reduced to 1 year RI.

Pramod Bhanudas Soundankar v. *State of Maharashtra* 199

(9) ss. 418 and 420.

(See under: Code of Criminal Procedure, 1973) 500

(10) s.466 - 'Forgery' - Explained.

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

Satish Mehra v. *State of N.C.T. of Delhi & Anr.* 1

PLEA:

New Plea.

(See under: Practice and Pocedure) 1100

PRACTICE AND PROCEDURE:

(1) Divorce petition by husband - On ground of cruelty - Conclusion recorded by courts below relating to desertion by wife - Held: Liable to be overturned, since there was no prayer or pleading with regard to desertion in divorce petition.

(Also see under: Hindu Marriage Act, 1955)

U. Sree v. *U. Srinivas* 256

(2) Misconduct by advocate - Disciplinary Committee of State Bar Council, on the basis of oral and documentary evidence, holding the charges proved - Disciplinary Committee of BCI, accepting the oral submission and affidavit of advocate, reversing the finding of Disciplinary Committee of State Bar Council - Held: Mere oral submission unsupported by oral or documentary evidence on behalf of advocate did not justify reversal of thorough and well-considered finding by Disciplinary Committee of State Bar Council based on analysis of oral and documentary evidence let in by complainant in support of complaint - Findings of Disciplinary Committee of State Bar Council restored - Evidence.

(Also see under: Advocates).

Narain Pandey v. *Pannalal Pandey* 752

(3) New Plea - Raised before Supreme Court - Permissibility - Held: Not permissible -

Determination of new plea may deprive either of the parties of a right to appeal to Supreme Court - Such deprivation can be construed as prejudicial to the rights and interest of the parties - However, new questions raised, being substantial legal questions, require determination.

(Also see under: Service Law)

State of Punjab v. *Gian Chand & Ors.* 1100

PRESIDENTIAL AND VICE PRESIDENTIAL ELECTIONS ACT, 1952:

ss. 14 to 20.

(See under: Supreme Court Rules, 1966) 585

PRISONERS ACT, 1900:

s.29 - Transfer of prisoners - Held: Transfer in terms of sub-s. (1) of s.29 is permissible only in distinct situations covered by clauses (a) to (d) - The provision does not deal with undertrials who do not answer the description given therein - Transfer under sub-s. (2) of s.29 is also permissible only if it relates to prisoners confined in circumstances indicated in sub-s. (1) of s.29.

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

The State of Maharashtra & Ors. etc.etc. v. *Saeed Sohail Sheikh etc. etc.* 916

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

s. 12 - Proceedings before trial court - Interim maintenance granted by trial court - Set aside by High Court on production of marriage certificate showing the first marriage of appellant with another man - Held: In the absence of any valid decree of nullity or necessary declaration, court will have to proceed on the footing that relationship between parties is one of marriage and not in the

nature of marriage, and appellant would be entitled to claim maintenance and other benefits under the Act - Mere production of a marriage certificate issued u/s 13 of Special Marriage Act in support of claimed first marriage of appellant was not sufficient for High Court, to render a complete and effective decision with regard to marital status of parties and that too in a collateral proceeding for maintenance - Order of High Court set aside.

Deoki Panjhiyara v. *Shashi Bhushan Narayan Azad & Anr.* 825

PUNJAB CIVIL SERVICES RULES:
Vol. II - r. 11.5(1), Note 2.
(See under: Service Law) 1100

RAJASTHAN PRISONERS RELEASE ON PAROLE RULES, 1958:
rr.2 (d), 9 and 10 A(i) - Application for release on 'Parole', by appellant, a life convict, who was sentenced to remain in prison for the rest of his life - Held: In view of the order of the Court, appellant is not entitled to normal parole in terms of r.9 - However, in emergent cases involving humanitarian consideration, Authority concerned is free to pass appropriate orders in terms of r. 10 A(i) and as directed in the judgment - Code of Criminal Procedure 1973 - s.401 - Penal Code, 1860 - ss. 302, 307, 148, 450 r/w. ss. 149 and 120-B.

Krishan Lal v. *State of Rajasthan & Anr.* 220

RAJASTHAN SERVICE RULES, 1951:
r.54 - Salary and allowances for the period under suspension - Judicial Officer faced criminal trial - Placed under suspension pending trial and appeal - Acquittal - Suspension continued during

departmental proceedings after dismissal of criminal appeal - Held: Suspension of petitioner cannot be said to have been rendered wholly unjustified upon acquittal by trial court and during pendency of appeal before High Court - However, in view of findings of trial court and High Court, petitioner's continued suspension after decision in criminal appeal was wholly unjustified - Petitioner entitled to full pay and allowances from the date of decision in criminal appeal - Charges in departmental proceedings having not been proved and petitioner having been exonerated and period of suspension having been treated as period spent on duty, he is entitled to be considered for promotion notionally from the date an officer junior to him was promoted, with all consequential benefits, with 6% interest from date of decision of criminal appeal - Service law - Judicial officer - Suspension - Costs.

Gurpal Singh v. *High Court of Judicature for Rajasthan* 126

REFERENCE TO LARGER BENCH:
Power of Magistrate to authorise obtaining of voice sample of accused - Referred to larger bench.
(See under: Investigation) 683

REGULATIONS ON GRADUATE MEDICAL EDUCATION, 1997:
Regulations 5(1) and (2).
(See under: Education/Educational Institutions) 299

RES JUDICATA:
(1) (See under: Constitution of India, 1950) 50
(2) (See under: Education/Educational

Institutions) 299

RIGHT TO INFORMATION ACT, 2005:

(i) s. 2(h) - 'Public authority' - Held: Public Service Commission shall be a public authority within the scope of s.2(h).

(ii) ss. 8(1)(g), and 11 - Disclosure of names and addresses of members of interview board constituted by State Public Service Commission - Held: Would be opposed to the very spirit of s. 8(1)(g) and would ex facie endanger their lives or physical safety - Marks are required to be disclosed but disclosure of individual names would hardly hold relevancy either to the concept of transparency or for proper exercise of right to information - Therefore, Commission is not bound to disclose such information - Constitution of India, 1950 - Art. 21.

(iii) ss.2(f) and 2(j)) - Expressions 'information', and 'right to information' - Explained.

Bihar Public Service Commission v. *Saiyed Hussain Abbas Rizwi & Anr.* 1032

SAURASHTRA BARKHALI ABOLITION ACT, 1951:

(See under: Gujarat Agricultural Lands Ceiling Act, 1960) 507

SAURASHTRA ESTATES ACQUISITION ACT, 1952:

(See under: Gujarat Agricultural Lands Ceiling Act, 1960) 507

SAURASHTRA LAND REFORMS ACT, 1951:

(See under: Gujarat Agricultural Lands Ceiling Act, 1960) 507

SCAM:

2G Spectrum Scam - Prayer for making Finance Minister an accused and for carrying out

investigation against him - Held: The materials available on record do not lead to conclusion that Finance Minister conspired with Telecom Minister or that he attempted to hide illegalities in award of licences - In view of materials on record, it cannot be said that Finance Minister had misused his position or conspired or colluded with Telecom Minister so as to fix low entry fee by non-visiting spectrum charges fixed in 2001 - There is also no material made available to conclude that Finance Minister abused his official position or used any corrupt or illegal means for obtaining any pecuniary advantage for himself or for any other person - No case is made out against him.

Subramanian Swamy v. *A. Raja* 873

SENTENCE / SENTENCING:

Awarding of appropriate punishment - Taking into consideration the consequences of culpable act and its impact on other people - Principles from judicial pronouncements, culled out.

(Also see under: [Kerala] Abkari Act)

Soman v. *State of Kerala* 1155

SEARCH AND SEIZURE:

(See under: Narcotic Drugs and Psychotropic Substances Act, 1985) 404

SERVICE LAW:

(1) Appointment on compassionate ground - Held: Delay in raising such a claim is contradictory to the object sought to be achieved - The norms governing compassionate appointment have to be strictly followed - Where claims for compassionate appointment exceed the available vacancies, a selection process based on comparative compassion gradient of eligible candidates, has

to be adopted - In the instant case, judicial redress, for appointment on compassionate ground was sought after nine years and under OM dated 5.5.2003, appointment on compassionate ground is permissible within three years of the death of the bread winner - Department of Personnel and Training, Government of India, O.M. dated 5.5.2003.

The Chief Commissioner, Central Excise and Customs, Lucknow & Ors. v. *Prabhat Singh* 209

(2) Appointment - Temporary appointment - In a project - Through Employment Exchange - Appointee joining another department - Later repatriated to parent department - Not permitted to join parent department - Held: Initial appointment was in violation of Arts.14 and 16 of the Constitution - As appointment was temporary, appointee cannot claim any lien in respect of the said post - Appointee has no right to challenge the advertisement - Constitution of India, 1950 - Arts.14 and 16.

State of Madhya Pradesh & Ors. v. *Ku. Sandhya Tomar & Anr.* 839

(3) (i) Disciplinary proceedings - Punishment imposed in disciplinary proceeding set aside by court / tribunal on technical grounds - Held: Once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, it must remit the case to the disciplinary authority, to conduct the enquiry from the point it stood vitiated, and conclude the same.

(ii) Disciplinary proceedings - Delay - Held: Court/ tribunal should not generally set aside departmental enquiry, and quash the charges on

the ground of delay in initiation of disciplinary proceedings, as such power is de hors the limitation of judicial review - Same principle applicable in relation to delay in conclusion of disciplinary proceedings - Matter remitted to disciplinary authority to enable it to take fresh decision - Life Insurance Corporation of India (Staff) Regulations, 1960 - Regulations 39(1) and 46(2).

Chairman, LIC of India & Ors. v. *A. Masilamani* 35

(4) Judicial officer - Suspension.

(See under: Rajasthan Service Rules, 1951) 126

(5) Pension - Commutation - Table for calculation of commutation substituted by a Circular - Affecting the employees of Punjab State Electricity Board retiring between 31-7-2003 and 31-10-2006 - Writ petition by the employees retiring between the said period challenging the Circular - New plea raised by State that Circular was issued due to financial crunch and that under the Rules, the respondents-employees had option to withdraw the request of commutation - Held: New pleas are not permissible to be raised for the first time before Supreme Court - But new questions raised are substantial legal questions and are having far reaching consequences and require discussion and determination - Impugned judgment also lacks proper reasoning - Therefore, matter remitted to High Court for fresh decision in accordance with law - Punjab Civil Services Rules Vol. II - r. 11.5(1), Note 2 - Practice and Procedure - New Plea - Permissibility.

State of Punjab v. *Gian Chand & Ors.* 1100

(6) Reservation - Option of choice/preference on selection - Reserve category candidate securing higher position on merit than general category candidates - Option of choice/preference against posts earmarked for reserved category - Held: A reserved category candidate who is adjudged more meritorious than open category candidates is entitled to choose the particular service/cadre/ post as per his choice/preference and he cannot be compelled to accept appointment to an inferior post leaving more important service/cadre/post in reserved category for less meritorious candidate of that category - On his appointment to the service/cadre/post of his choice/preference, reserved category candidate cannot be treated as appointed against the open category post.

Alok Kumar Pandit v. *State of Assam & Ors.* 87

(7) Termination/Dismissal - Dismissal - Member of Armed Reserved - Prosecution of, for offences punishable u/s 4 of Tamil Nadu Prohibition of Eve-Teasing Act and s.509 IPC - In departmental inquiry punishment of dismissal imposed - Subsequently, acquittal in criminal case - Held: Mere acquittal of an employee by a criminal court has no impact on disciplinary proceedings - In the absence of any provision in service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on him to claim any benefit including reinstatement - In the instant case, delinquent cannot be said to have been honourably acquitted by criminal court - Even otherwise, he is not entitled to claim reinstatement since Tamil Nadu Service Rules do not provide so - Tamil Nadu Prohibition of Eve-

Teasing Act, 1998 - s.4 - Constitution of India, 1950 - Art. 226.

Deputy Inspector General of Police & Anr. v. *S. Samuthiram* 174

(8) Upgradation - Secondary School Teachers of Bihar Subordinate Education Service - Upgradation and merger of in Bihar Education Service - Notification dated 11.4.1977 and State Government Resolution dated 7.7.2006 - Held: The decision to merge the cadres is a matter of policy - It is for the State to decide as to which cadres should be merged so long as the decision is not arbitrary or unreasonable - Resolution dated 7.7.2006 is well reasoned and justified and is upheld - Notification dated 19.11.2007 will stand quashed - Constitution of India, 1950 - Art.14 - Administrative law - Policy decision.

Bihar State Government Secondary School Teachers Association v. *Bihar Education Service Association & Ors.* 50

(9) (See under: Contempt of Court) .... 22 and 240

SUPREME COURT RULES, 1966:

(1) O. 16, rr. 8 and 9.

(See under: Code of Civil Procedure, 1908) 459

(2) O. 39, rr. 13 and 20 - Election petition challenging the election of President of India - Held: Does not deserve a full and regular hearing as contemplated under r. 20 of O. 39 and, as such, is dismissed under r. 13 of O. 39 - Presidential and Vice Presidential Elections Act, 1952 - ss. 14 to 20 - Supreme Court Rules, 1966 - O. 39, rr. 13 and 20 - Code of Civil Procedure,

1908 - s. 141 - Constitution of India, 1950 - Art. 71 r/w Seventh Schedule, List I, Entry 72.

Purno Agitok Sangma v. *Pranab Mukherjee* 585

TAMIL NADU PROHIBITION OF EVE-TEASING ACT, 1998:
s.4.
(See under: Service Law) 174

URBAN LAND (CEILING AND REGULATION) ACT, 1976:
s.2(o) - "Urban land" - Held: Would mean any land situated within the urban agglomeration referred to as such in Master Plan and would exclude any such land which is mainly used for the purpose of 'agriculture' - 1976 Act would govern only such of those lands which would fall within its area of operation within urban agglomeration to specific exclusion of agricultural lands and consequently the continued application of un-amended Act of 1960 would remain without any restriction.

State of Gujarat & Another v. *Manoharsinhji Pradyumansinhji Jadeja* 507

WITNESSES:
(i) Evidence of related and interested witness having enmity with accused - Appreciation of - Held: A court should examine the evidence of such a witness with greater care and caution than the evidence of a third party disinterested and unrelated witness - Where related and interested witness may have some enmity with assailant, the bar would need to be raised and evidence of witness would have to be examined by applying a standard of discerning scrutiny - However, this is only a rule of prudence and not one of law.

(ii) Witnesses - Different categories of witnesses - Explained.

Raju @ Balachandran & Ors. v. *State of Tamil Nadu* 109

WORDS AND PHRASES:
(1) "Consider" - Meaning of - Dictionary meaning - Term "consider" postulates consideration of all relevant aspects of a matter - Clear connotation to the effect that there must be active application of mind.

Chairman, LIC of India & Ors. v. *A. Masilamani* 35

(2) 'Lien' - Meaning of, in the context of service law.

State of Madhya Pradesh & Ors. v. *Ku. Sandhya Tomar & Anr.* 839

(3) "Soon before" - Meaning of.
(See under: Penal Code, 1860) 802

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REFERENCE MADE BY
HON'BLE THE CHIEF JUSTICE OF INDIA
SHRI ALTAMAS KABIR
IN THE MEMORY OF
LATE SHRI U.C. BANERJEE,
FORMER JUDGE OF SUPREME COURT OF INDIA
ON 9TH JANUARY, 2013

BIOGRAPHICAL SKETCH OF HON'BLE MR. JUSTICE U.C. BANERJEE,

Hon'ble Mr. Justice U.C. Banerjee was born on 18th November, 1937 in the family of Late Shri Nalin Chandra Banerjee, a very eminent criminal and constitutional Lawyer. He graduated from Scottish Church College, Kolkata and pursued the Bar Course at England. He was called upon to the Bar by the Inner Temple, London in December 1964.

His Lordship joined Calcutta Bar as a Barrister in early 1965 and picked up lucrative practice at the Original side of the Calcutta High Court. He also practiced in the Appellate side in Civil and Criminal Writ matters as well as Revenue matters. He was elevated to the Bench at Calcutta High Court in January, 1984. Justice Banerjee apart from being the Presiding Judge of the Environment Bench at the Calcutta High Court, was the Presiding Judge of the Principal Appellate Bench (Original Side) in the Calcutta High Court and was appointed as Chief Justice of Andhra Pradesh High Court on February 1, 1998 and was elevated to the Supreme Court Bench on December 9, 1998. He retired from Supreme Court on November 17, 2002.

Hon'ble Mr. Justice U.C. Baneerjee was part of Coram in more than 300 cases, out which 180 judgments were authored by His Lordship himself. The first judgment delivered by His Lordship on 10th December, 1998 at Supreme Court was in the

matter of Municipal Corporation of Delhi Vs. Nirmal Sachdeva (Smt.) & Ors. and last judgment delivered by His Lordship on 14th November, 2002 was Lallan Rai & Ors. Vs. State of Bihar.

Justice Banerjee was one of the Founding Council Members of SAARC Law and was also elevated as President, SAARC Law (India Chapter). He was also well known in the aviation industry of the country and chaired two courts of enquiry-one with regard to Vayudoot Crash near Guwahati in 1989 and the other Indian Airlines Aircraft at Imphal in 1991.

His Lordship also conducted the Godhra Train Fire Enquiry set-up by the Railway Ministry as one member Committee.

Justice Banerjee passed away at a private Hospital at Kolkata following a brief illness. He is survived by his son Mr. Amitesh.

I and my Brother and Sister Judges join the bereaved family in conveying our heartfelt condolences and pray to Almighty God to give strength to the family to bear this irreparable loss with fortitude.

May the departed soul rest in peace.

GIST OF CASES FOR REFERENCE OF HON'BLE MR. JUSTICE U.C. BANERJEE

State of Punjab Vs. Gurdeep Singh

(1999 (7) SCC 714.

His Lordship in an important judgment on the issue of Probative value of extra-judicial confession namely **State of Punjab Vs. Gurdeep Singh (1999 (7) SCC 714)** gave an important legal proposition, when His Lordship held that Confession in common acceptation means and implies acknowledgment of guilt—Its evidentiary value and its acceptability however, shall have to be assessed by the Court having due regard to the credibility of the witnesses. In the event

however, the court is otherwise in a position having due regard to the attending circumstances to believe the witness before whom the confession is made and is otherwise satisfied and the confession is in fact voluntary and without there being any doubt in regard thereto, an order of conviction can be founded on such evidence.

Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shukla & Ors. (2002 (6) SCC 127).

His Lordship in **Chandra Prakash Tiwari & Ors. Vs. Shakuntala Shukla & Ors. (2002 (6) SCC 127** gave an important decision on the issue of "Implied Repeal", when His Lordship held in the cases of specific law vis-a-vis general law, earlier provision, having its origin in a statue covering a specific field will not be considered to be impliedly repealed by general provision framed later on. It was further held by His Lordship that a special law in the absence of specific repeal by the later general law, could not be deemed to have been impliedly repealed.

Sisir Kumar Mohanty and Ors. Vs. State of Orissa & Ors. (2002 (9) SCC 219).

His Lordship in **Sisir Kumar Mohanty and Ors. Vs. State of Orissa & Ors. (2002 (9) SCC 219)** gave a significant observation on the issue of delay in final disposal. His Lordship observed that the Bench and the Bar have collective responsibility to set right the system. His Lordship held that faith, belief and confidence of the people cannot but be termed to be the hallmark of the judicial system of this country and if matters proceed for more than three decades, there would neither be faith or belief nor confidence in the judiciary—a State of affairs which cannot but imply a total failure and breakdown of the entire constitutional system of the country. In a progressive society the judiciary must be active and should be able to dispense justice in the quickest possible time.

Kulwant Kaur & Ors. Vs. Gudial Singh Mann (Dead) by Lrs. & Ors.

(2001 (4) SCC 262).

His Lordship in **Kulwant Kaur & Ors. Vs. Gudial Singh Mann (Dead) by Lrs. & Ors. (2001 (4) SCC 262)** has given an important decision on the functionality of special or local laws. His Lordship held that special local Law could remain functional only as long as there is no specific provision to the contrary legislated by the Parliament. The moment such a law comes into conflict with Central legislation it becomes inapplicable and is deemed to be repealed.

REFERENCE MADE BY ATTORNEY GENERAL FOR INDIA SHRI GOOLAM E VAHANVATI IN THE MEMORY OF LATE SHRI U. C. BANERJEE, FORMER JUDGE OF SUPREME COURT OF INDIA ON 9TH JANUARY, 2013

My Lord Justice Kabir, Chief Justice of India, Hon'ble Judges of the Supreme Court, my colleague Mr. Rohinton F. Nariman, Solicitor General of India and other Law Officers, Mr. M.N. Krishnamani, President of the Supreme Court Bar Association, Members of the Bar, Ladies & Gentlemen.

We have gathered today to mourn the death of and to pay tributes to Justice U C Banerjee, former Judge of this Hon'ble Court who died on 5 November 2012, after a brief illness.

Interestingly, in several write-ups relating to Justice Banerjee which are available on the internet, he has been described as a "Bengali Indian Jurist." The use of the first two words, "Bengali" and "Indian" appeared to me a little unusual, but his description as a jurist is fully justified given his profound interest in jurisprudence and the development of the law. This aspect can be aptly illustrated with reference to his learned judgment in the case of **Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Others,** in (2001) 1 SCC 182. This judgment was given on 18 October 2000, Shortly before the judgment was rendered there was a sea change in the Administrative law in England with regard to the principles pertaining to bias in natural justice. In the Locabail judgment the Court of Appeal exhaustively considered the law and redefined the approach to the celebrated judgment in Dimes case (3 House of Lords Cases 759), accepting the treatment of

Australian Courts dilution of the Dimes principle and rejecting the automatic disqualification principle replacing it with the *de minimis* rule. Around the same time, the House of Lords also gave the celebrated judgment in **Pinochet's case,** where the judgment of the House of Lords in the Extradition proceedings was reviewed and set aside on the ground that one of the Law Lords had not disclosed his interest in the case because of his association with Amnesty International.

At that time, it was extremely interesting to note that shortly after the significant changes in the approach towards "bias", Justice Banerjee of our Court set out the entire development of the law and recognized that the English Courts had sounded a different note on the approach towards bias. He noted that the automatic disqualification theory rule stood diluted. In his judgment in the **Kumaon Mandal Case,** Justice Banerjee incorporated the English approach into Indian law and accepted the test that instead of a mere apprehension of bias, there should be a real danger of bias. Therefore, in my humble opinion, the reference to Justice Banerjee as a Jurist was fully justified.

His interest in law and the developments in the law stemmed from the fact that he was a Barrister who had studied law at the Inner Temple, London and had graduated from the Inner Temple in December 1964, after studying at the Scottish Church College of the University of Calcutta in 1961.

Justice Banerjee's father, Nalin Chandra Banerjee, was an eminent criminal and constitutional lawyer. Justice Banerjee started his career as a Barrister in the Calcutta High Court in 1965, and after less than 20 years of practice was appointed a Permanent Judge of the Calcutta High Court in 1984. In February 1988 he became the Chief Justice of the Andhra Pradesh High Court. He was elevated as a Judge of this Hon'ble Court in December 1988 and he distinguished himself in this Court, from which he retired in 2002.

Another significant judgment given by Justice Banerjee is the concurring judgment in **Ashok Hurra's** case**,** which dealt with the circumstances in which a Curative Petition could be filed. In stirring words, he said that manifest injustice is curable in nature rather than incurable and this Hon'ble Court would lose its sanctity if procedural law prevented rectification of injustice. He ended by saying - "Gone are the days when implementation of the draconian system of law or interpretation thereof were insisted upon – flexibility of the law courts presently are its greatest virtue and as such justice oriented approach is the need of the day to strive and forge ahead in the 21st century".

It is to Justice Banerjee's credit that he was one of the founder members and later President of SAARC Law. His keen interest in various aspects of law and teaching can be seen from the fact that he was an Adviser and Professor at the Rajiv Gandhi School of Intellectual Property Law of the Indian Institute of Technology, Kharagpur, a Governing Council member at the Scottish Church College, Kolkata, the National Law School of India University, Bangalore and the NALSAR University of Law in Hyderabad. He was also the founder President of the National Academy of Legal Studies and Research.

Justice Banerjee also headed two Commissions of Inquiry into plane crashes – one with regard to the Vayudoot Crash near Guwahati in 1989, and the other the Indian Airlines aircraft crash at Imphal in 1991. His report showed his keen insight into the aviation industry.

He presided over the Environment Bench at the Calcutta High Court. He gave several speeches relating to the environment, highlighting his judgment in the Calcutta Wetlands case and also affirming the need to strike a balance between development and environmental protection. When the law was developing he emphasized that development and environment must go hand in hand.

There was some element of controversy when he took up the Commission of Inquiry at the instance of the Indian Railways into the fire on the Sabarmati Express at Godhra. Despite the controversy, Justice Banerjee was unfazed. In fact in an interview, when he was told that one Judge had made disparaging remarks about Justice Banerjee's having tarnished the image of Gujarat, he responded with laughter and said "In that case I had better not go to Gujarat". On a more serious note he quickly added "I have no time for such things. I am doing a job and that is all".

Justice Banerjee is survived by his son Amitesh. Justice Banerjee died at the relatively early age of 74, after a brief illness at a private Hospital in Kolkata. I fully reciprocate the sentiments expressed by the Hon'ble Chief Justice of India and pray that his soul rests in peace. I offer my sincerest condolences on behalf of the Bar to his son and family.

REFERENCE MADE BY
SHRI M.N. KRISHNAMANI, PRESIDENT
SUPREME COURT BAR ASSOCIATION
IN THE MEMORY OF
LATE SHRI U.C. BANERJEE,
FORMER JUDGE OF SUPREME COURT OF INDIA
ON 9TH JANUARY, 2013

Justice U.C. Banerjee joined the Bar in 1965. From1965 upto his elevation as a judge in the Calcutta High Court, he had roaring work. He had the advantage of his father being a giant in the Bar. His father N.C. Banerjee was a leading criminal lawyer in the High Court. UC Banerjeee was a Barrister. He had wide-ranging work in all the branches of law. He was regularly appearing in Original Side, Appelate Side, Criminal Side, Writ Jurisdiction and Revenue-matters. Hardly any subject was alien to him and unknown to him. He was an all-rounder. He was the office-Junior of the eminent Senior Lawyer Sri Som Nath Chetterjee our former Speaker of Lok Sabha. Eversince he became a judge of this Hon'ble Court in 1998, I had lots of opportunities to interact with him and of appearing before him. I found him to be really nice and sweet. He had a little problem of short-temper. But his greatness was such that he would overcome that and recover from it just in one or two minutes and would smile again!

NALSAR

When he was the Chief Justice of Andhra Pradesh High Court in 1998, he took great efforts in founding National Academy of Legal Studies and Research, popularly known as NALSAR in Hyderabad. It is one of the pioneer Law Schools in the country today. He used to tell me with pride : "I got NALSAR founded-you know?". In his whole life, 3 fields were very dear to him :

1. Education
2. Environment

3. Devotion to God.

He was responsible for NALSAR to come into existence with the colossal support of the then Chief Minister of Andhra Pradesh. In NALSAR itself, he founded two more institutions in two subjects in which he had matchless expertise and interest:

1. Dept. of Environmental Studies
2. Dept. of Intellectual property Studies.

A rare gesture

Justice U.C. Banerjee's son Sri Amitesh Banerjee who is a lawyer in Calcutta High Court told me :

> **"Sir after NALSAR came into existence my father treated it as his own chiild that NALSAR became my elder sister and I became her younger brother!"**

Not only he continued to show keen interst in NALSAR but he donated his entire commuted pension to NALSAR. This kind of gesture is very rare indeed.

Erudite Judgements

Justice UC Banerjee wrote a good number of judgments as a judge of Calcutta High Court and as the Chief Justice of Andhra Pradesh High Court. After elevation to Supreme Court, he became an active participant in the Bench even as a junior judge. In his short tenure of less than 4 years, he rendered over 60 erudite judgments, besides innumerable other judgments and orders.

His judgments in Skippers case, (2002 (9) SCC 387) Curative Jurisdiction case (2002 (4) SCC 388) Arms Act case from Maharashtra (2003 (1) SCC 506) and a few mentioned by the learned Attorney General are very significant according to me. In many of his judgments one can see very deft handling of the subject, in a clear and stylish English language and even poetic musings now and then.

Legal Education

Apart from establishing NALSAR, Justice U.C. Benerjee

was the Chairman of Legal Education wing of the Bar Council of India and contributed a lot, for it.

He became the Chairman of Indian Council for Legal and Professional. Training of lawyers. This programme was originally started in UK. In UK, the joining and the undergoing of this training in legal and professional ethics and updating of one's knowledge and skills in advocacy were mandatory. This was started in India in 2002, though this training here is only on voluntary basis. As the Chairman of this Institute, Justice U.C. Benerjee's emphasis was fairness to the court, fairness to the one's own clients and fairness to the opposite party. One's skills in Advocacy consisted only on these three angles of fairness for him.

Right now, Hon'ble Mr. Justice P.S. Sadhasivam is the Chairman of this Council.

SAARCLAW

Justice UC Banerjee was one of the founders of SAARCLAW. Till his demise, he was the President of SAARCLAW. Even as a High Court Judge in Calcutta, he organised a marathon conference of SAARCLAW titled : "Forum of Judges-1987" on the Protection of Intellectual Property Rights in association with World Intelectual Property Organisation, which is a UN Agency.

ENVIRONMENT

Apart from his contribution to legal education, he showed keen interest in improving the Environment. In this field, "Protection of Wet-land" was his moto. When "World Trade Centre" premises were to come in, as a judge of the High Court, he ruled that the World Trade Centre should come, but not at the cost of the wet-land! He was successful in allowing development without any sacrifice of a bit of wet-land.

In Satyanarayana Park Case, a huge market was to come in place of a park. He saw to it that the park was saved and the market came underneath the park! Justice Banerjee consulted botanists and horticulturists to ensure that only such

plants were planted which may not affect the market underneath, taking into account the possibility of a roots of plants and trees producing cracks in future in the building underneath by Geotropism.

Another environmental problem tackled by him was the Moninpur Marg Case. In Monipur Marg, there was a mortuary. Since human-bodies were strewn around in open, grave inconvenience was caused to the local people by the bad-smell and pollutive atmosphere created by uncared for stinking human-bodies. Because of his efforts, facilities for preservation of human-bodies and for pollution-free atmosphere were brought in.

CONCLUSION

Only those who have seen him in the Supreme Court would know how active and dynamic he was in functioning as a judge. He was a multi-faceted personality. But everything has to come to an end.

The Lord says in Bhagavad Gita (Chapter II Verse : 27):

("Jatasya hi dhruvam Mrityu,

dhruvam janma mritasya cha")

meaning :

"For the born, death is unavoidable and for the dead birth is unavoidable."

Then, the Lord asks in the same verse :

"Is there any point in grieving over the unavoidable?"

As an ardent Devotee of God, his soul had already merged into the Lotus Feet of the Lord upon leaving his mortal coils on 5.11.2012 and attained everlasting peace.

Yet, with these words, I extend my heart-felt condolences to the bereaved family on behalf of the bar and on my personal behalf as well.

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508	2	**Urband**	**Urban**

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(From 24.08.2012 to 14.12.2012)

1. Hon'ble Shri. Altamas Kabir, Chief Justice of India
2. Hon'ble Mr. Justice D.K. Jain
3. Hon'ble Mr. Justice P. Sathasivam
4. Hon'ble Mr. Justice G.S. Singhvi
5. Hon'ble Mr. Justice Aftab Alam
6. Hon'ble Mr. Justice R.M. Lodha
7. Hon'ble Mr. Justice H.L. Dattu
8. Hon'ble Dr. Justice B.S. Chauhan
9. Hon'ble Mr. Justice A.K. Patnaik
10. Hon'ble Mr. Justice T.S. Thakur
11. Hon'ble Mr. Justice K.S. Radhakrishnan
12. Hon'ble Mr. Justice Surinder Singh Nijjar
13. Hon'ble Mr. Justice Swatanter Kumar
14. Hon'ble Mr. Justice Chandramauli Kr. Prasad
15. Hon'ble Mr. Justice H.L. Gokhale
16. Hon'ble Mrs. Justice Gyan Sudha Misra
17. Hon'ble Mr. Justice Anil R. Dave
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20. Hon'ble Mr. Justice J.S. Khehar
21. Hon'ble Mr. Justice Dipak Misra
22. Hon'ble Mr. Justice J. Chelameswar
23. Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla
24. Hon'ble Mr. Justice Ranjan Gogoi
25. Hon'ble Mr. Justice Madan B. Lokur

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