CONTENTS

Amir Chand & Ors.; Parmeshwari *v.* 1096

Arundhati Ashok Walavalkar *v.* State of Maharashtra 355

Ashutosh Agnihotri and Anr.; Kalyan Kumar Gogoi *v.* 796

Automotive Tyre Manufacturers Association *v.* The Designated Authority & Ors. 198

B. Fine Art Auctioneers Pvt. Ltd. (M/s.) & Ors. *v.* C.B.I. & Anr. 563

Bangalore Development Authority & Ors.; Offshore Holdings Pvt. Ltd. *v.* 453

Bansi Lal *v.* State of Haryana 724

Bidyut Kumar Mitra and Ors.; State Bank of India and Ors. *v.* 298

Brij Mohan & Ors. *v.* Haryana Urban Development Authority & Anr. 12

C.I.T. (Jt.), Mumbai *v.* M/s Rolta India Ltd. 146

C.I.T., New Delhi; Indo Rama Synthetics (I) Ltd. *v.* 853

C.B.I. & Anr.; M/s B Fine Art Auctioneers Pvt. Ltd. & Ors. *v.* 563

CBI, through its S.P.; Manjit Singh @ Mange *v.* 997

CBN Mandsaur, M. P.; Daulat Ram & Anr. *v.* 1092

Chhoteylal; State of U. P. *v.* 406

Chief General Manager Mahanadi Coalfileds Ltd. & Ors.; Jiten Kumar Sahoo & Ors. *v.* 572

Commissioner of Central Excise (The) and Customs, Daman; Medley Pharmaceuticals Ltd. *v.* 741

Commissioner of Central Excise and Customs; Paulose (P.C.), M/s. Sparkway Enterprises *v.* 872

Commissioner of Central Excise, New Delhi; Usha Rectifier Corpn. (I) Ltd. (M/s.) (Presently known as M/s. Usha (I) Ltd.) *v.* 347

Commissioner of Customs (Import) *v.* Stoneman Marble Industries & Ors. 545

Daulat Ram & Anr. *v.* CBN Mandsaur, M. P. 1092

Daya Lal & Ors.; State of Rajasthan & Ors. *v.* 707

Daya Nand *v.* State of Haryana 173

Designated Authority (The) & Ors.; Automotive Tyre Manufacturers Association *v.* 198

Dhanbai Kanji Gadhvi & Ors.; Oriental Insurance Co. Ltd. *v.* 784

Dhapubai (D) by LRs. and Ors.; Ghisalal *v.* 651

Durbal *v.* State of U. P. 1062

Executive Engineer (The); Ranbir Singh *v.* 587

Executive Engineer, Karnataka Housing Board *v.* Land Acquisition Officer, Gadag & Ors. 600

Ganesan (S.) *v.* Rama Raghuraman & Ors. 27

Ghisalal *v.* Dhapubai (Dead) by LRs. and Ors. 651

Gurdial Singh & Ors. *v.* State of Punjab 556

Hari Ram *v.* Jyoti Prasad & Anr. 1076

Haryana Urban Development Authority & Anr.; Brij Mohan & Ors. *v.* 12

Himanshu @ Chintu *v.* State of NCT of Delhi 48

Indian Oil Corporation & Ors.; Keshav Prasad Sharma *v.* 838

Indo Rama Synthetics (I) Ltd. *v.* C.I.T., New Delhi 853

Industrial Investment Bank of India Ltd. *v.* M/s Jain Cables Pvt. Ltd. & Ors. 82

Jagat Singh *v.* State of H. P. 1

Jain Cables Pvt. Ltd. & Ors. (M/s.); Industrial Investment Bank of India Ltd. *v.* 82

Jha (S. K.) Commodre *v.* State of Kerala and Anr 295

Jiten Kumar Sahoo & Ors. *v.* Chief General Manager Mahanadi Coalfileds Ltd. & Ors. 572

Jyoti Prasad & Anr.; Hari Ram *v.* 1076

Kailas & Others *v.* State of Maharashtra Tr. Taluka P. S. 94

Kalathia (R.L.) & Co. *v.* State of Gujarat 391

Kalyan Kumar Gogoi *v.* Ashutosh Agnihotri and Anr. 796

Kalyaneshwari *v.* Union of India & Ors. 894

Kamalaveni Sundaram (S.); Secretary/ General Manager Chennai Central Cooperative Bank Ltd. & Anr. *v.* 66

Kamleshwar Paswan *v.* State of U.T. Chandigarh 647

Kanaka Rekha Naik *v.* Manoj Kumar Pradhan & Anr. 842

Keshav Prasad Sharma *v.* Indian Oil Corporation & Ors. 838

Krishna Murthy (B. S.) and Anr. *v.* B.S. Nagaraj and Ors. 387

Lakhan Lal *v.* State of Bihar 770

Land Acquisition Officer, Gadag & Ors.; Executive Engineer, Karnataka Housing Board *v.* 600

Land Acquisition Officer-cum-RDO, Chevella Division Ranga Reddy District *v.* A. Ramachandra Reddy & Ors. 324

Laxmichand @ Balbutya *v.* State of Maharashtra 124

Madhav Prasad Sharma; State of U.P. & Ors. *v.* 266

Mahender Singh Dahiya; State through C.B.I. *v.* 1104

Mangesh *v.* State of Maharashtra 72

Manjit Singh @ Mange *v.* CBI, through its S.P. 997

Manju Mathur (Mrs.) & Anr.; U. T. Administration, Chandigarh & Ors. *v.* 883

Manoj Kumar Pradhan & Anr.; Kanaka Rekha Naik *v.* 842

Manoj Yadav *v.* Pushpa @ Kiran Yadav & Ors. 644

Medley Pharmaceuticals Ltd. *v.* The Commissioner of Central Excise and Customs, Daman 741

Nagaraj (B.S.) and Ors.; Krishna Murthy (B.S.) and Anr. *v.* 387

Nageshwar (M.) Rao *v.* State of Andhra Pradesh 608

Narwinder Singh *v.* State of Punjab 110

New India Assurance Company ltd. *v.* Yadu Sambhaji More & Ors. 160

Offshore Holdings Pvt. Ltd. *v.* Bangalore Development Authority & Ors. 453

Oriental Insurance Co. Ltd. *v.* Dhanbai Kanji Gadhvi & Ors. 784

Pakur Jagran Manch & Ors.; State of Jharkhand & Ors. *v.* 687

Parmeshwari *v.* Amir Chand & Ors. 1096

Paulose (P.C.), M/s. Sparkway Enterprises *v.* Commissioner of Central Excise and Customs 872

Prafull Goradia *v.* Union of India 579

Prakash Chandra Mishra & Ors.; Rajendra Prasad Gupta *v.* 321

Pushpa @ Kiran Yadav & Ors.; Manoj Yadav *v.* 644

Pushpa @ Leela & Ors. *v.* Shakuntala & Ors. 334

Rabindra Kumar Pal @ Dara Singh *v.* Republic of India 929

Rajendra Prasad Gupta *v.* Prakash Chandra Mishra & Ors. 321

Rama Raghuraman & Ors.; Ganesan (S.) *v.* 27

Ramachandra (A.) Reddy & Ors.; Land Acquisition Officer-cum-RDO, Chevella Division Ranga Reddy District *v.* 324

Rameshbhai Chandubhai Rathod *v.* The State of Gujarat 829

Ranbir Singh *v.* The Executive Engineer 587

Raneef; State of Kerala *v.* 590

Republic of India; Rabindra Kumar Pal @ Dara Singh *v.* 929

Rolta India Ltd. (M/s.); C. I. T. (Jt.), Mumbai *v.* 146

Sajjan Sharma *v.* State of Bihar 629

Saraf Trading Corporation Etc. Etc. *v.* State of Kerala 371

Secretary/General Manager Chennai Central Cooperative Bank Ltd. & Anr. *v.* S. Kamalaveni Sundaram 66

Shakuntala & Ors.; Pushpa @ Leela & Ors. *v.* 334

State Bank of India and Ors. *v.* Bidyut Kumar Mitra and Ors. 298

State of Andhra Pradesh; Nageshwar (M.) Rao *v.* 608

State of Bihar; Lakhan Lal *v.* 770

State of Bihar; Sajjan Sharma *v.* 629

State of Gujarat (The); Rameshbhai Chandubhai Rathod *v.* 829

State of Gujarat; Kalathia (R. L.) & Co. *v.* 391

State of H. P.; Jagat Singh *v.* 1

State of Haryana and Anr.; United Riceland Ltd. (M/s.) *v.* 186

State of Haryana; Bansi Lal *v.* 724

State of Haryana; Daya Nand *v.* 173

State of Jharkhand & Ors. *v.* Pakur Jagran Manch & Ors. 687

State of Jharkhand; Surendera Mishra *v.* 133

State of Kerala and Anr; Jha (S. K.) Commodre *v.* 295

State of Kerala and Ors.; TGN Kumar *v.* 436

State of Kerala *v.* Raneef 590

State of Kerala; Saraf Trading Corporation Etc. Etc. *v.* 371

State of Madhya Pradesh *v.* Vishweshwar Kol 790

State of Maharashtra Tr. Taluka P. S.; Kailas & Others *v.* 94

State of Maharashtra; Arundhati Ashok Walavalkar *v.* 355

State of Maharashtra; Laxmichand @ Balbutya *v.* 124

State of Maharashtra; Mangesh *v.* 72

State of NCT of Delhi; Himanshu @ Chintu *v.* 48

State of Punjab; Gurdial Singh & Ors. *v.* 556

State of Punjab; Narwinder Singh *v.* 110

State of Rajasthan & Ors. *v.* Daya Lal & Ors. 707

State of U. P. *v.* Chhoteylal 406

State of U. P.; Durbal *v.* 1062

State of U.P. & Ors. *v.* Madhav Prasad Sharma 266

State of U.T. Chandigarh; Kamleshwar Paswan *v.* 647

State of Uttarakhand and Ors.; Vikas Kumar Roorkewal *v.* 279

State through C.B.I. *v.* Mahender Singh Dahiya 1104

Stoneman Marble Industries & Ors.; Commissioner of Customs (Import) *v.* 545

Surendera Mishra *v.* State of Jharkhand 133

TGN Kumar *v.* State of Kerala and Ors. 436

U. T. Administration, Chandigarh & Ors. *v.* Mrs. Manju Mathur & Anr. 883

Union of India & Ors.; Kalyaneshwari *v.* 894

Union of India; Prafull Goradia *v.* 579

United Riceland Ltd. (M/s.) *v.* State of Haryana and Anr. 186

Usha Rectifier Corpn. (I) Ltd. (M/s.) (Presently known as M/s. Usha (I) Ltd.) *v.* Commissioner of Central Excise, New Delhi 347

Vikas Kumar Roorkewal *v.* State of Uttarakhand and Ors. 279

Vishweshwar Kol; State of Madhya Pradesh *v.* 790

Yadu Sambhaji More & Ors.; New India Assurance Company ltd. *v.* 160

CASES-CITED

A.P. State Electricity Board *v.* CCE, Hyderabad, (1994) 2 SCC 428;
- relied on ... 745

Abdul Nazar Madani *v.* State of Tamil Nadu (2000) 6 SCC 204;
- relied on ... 282

Abdul Nazar Madani *v.* State of Tamil Nadu AIR 2000 SC 2293 ... 281

Ahmad Umar Saeed *v.* State of U.P 1996 (9) Suppl. SCR 53
- relied on ... 1004

Allarakha K. Mansuri *v.* State of Gujarat (2002) 3 SCC 57
- relied on ... 942

Amar Lal *v.* CCE, (2004) 172 ELT 466;
- held inapplicable ... 747

Amar Singh *v.* State of Haryana AIR 1973 SC 2221;
- relied on ... 31

Ambica Construction *v.* Union of India,

2006 (9) Suppl. SCR 188
- relied on ... 393

Anand Kumar *v.* State of M.P., AIR 2009 SC 2155; ... 729

Anbazhagan (K.) *v.* Superintendent of Police (2004) 3 SCC 767;
- relied on ... 282

Arulvelu & Anr. *v.* State, 2009 (14) SCR 1081
- relied on ... 30

Aruntperunjothi (T.) *v.* State through S.H.O., Pondicherry AIR 2006 SC 2475; ... 729

Ashok Kumar Pandey *v.* State of West Bengal (2004) 3 SCC 349; ... 899

Ashwathanarayana (P.M.) Setty & Ors. *v.* State of Karnataka & Ors. 1988 (3) Suppl. SCR 155
- cited ... 208

Ashwini Kumar Ghosh *v.* Arabinda Bose and Anr. AIR 1952 SC 369; ... 1004

Assam Bengal Carriers Ltd. *v.* CIT (1999) 239 ITR 862;
- approved ... 148

Association of Natural Gas *v.* Union of India (2004) 4 SCC 489;
- relied on ... 468

Baba Peer Paras Nath *v.* State of Haryana (1996) 10 SCC 500;
- relied on ... 1003

Babu *v.* State of Kerala, 2010 (9) SCR 1039
- relied on ... 30

Bachan Singh *v.* State of Punjab 1980 (2) SCC 684; ... 832

Bachan Singh *v.* State of Punjab AIR 1980 SC 898;
- relied on ... 942

Bakul Cashew Co. & Ors. *v.* Sales Tax Officer, Quilon & Anr. 1986 (1) SCR 610
- cited ... 208

Balak Ram & Anr. *v.* State of U.P., 1975 (1) SCR 753
- relied on ... 30

Bapu alias Gujraj Singh *v.* State of Rajasthan (2007) 8 SCC 66;
- relied on ... 135

Basavaraj R. Patil's case & Ors. *v.* State of Karnataka & Ors. 2000 (3) Suppl. SCR 658
- relied on ... 440

Beer Sain *v.* Commissioner of Customs (ICD) 2007 (15) SCC 362;
- relied on ... 547

Bhagwan Singh and Ors. *v.* State of M.P. (2003) 3 SCC 21;
- relied on ... 936

Bhagwati Prasad *v.* Delhi State Mineral Development Corporation 1990 (1) SCC 361;
- relied on ... 712

Bharat Heavy Electricals Ltd. *v.* Commissioner of Customs & Central Excise (2003) 9 SCC 185;
- relied on ... 747

Bhargava (S.K.) *v.* Collector, Chandigarh & Ors. 1998 (2) SCR 1158
- cited ... 207

Bharwada Bhoginbhai Hirjibhai *v.* State of Gujarat 1983 (3) SCR 280
- relied on ... 411

Bhaskar Industries Ltd. *v.* Bhiwani Denim & Apparels Ltd. & Ors. 2001(2) Suppl. SCR 219
- reaffirmed ... 439

Bhavnagar University *v.* Palitana Sugar Mill (P) Ltd. & Ors. 2002 (4) Suppl. SCR 517
- cited ... 208

Bheru lal *v.* State of Rajasthan RLW 2003 (2) Raj 1056 ... 1092

Bhola Bhagat *v.* State of Bihar (1997) 8 SCC 720; ... 773

Bholu Ram *v.* State of Punjab and Anr. (2008) 9 SCC 140; ... 839

Bhoop Ram *v.* State of U.P. (1989) 3 SCC 1 ... 773

Bhor Industries Ltd. *v.* Collector of Central Excise, Bombay (1989) 1 SCC 602; ... 745

Bimla Devi and others *v.* Himachal Road Transport Corporation and Ors. (2009) 13 SCC 530
- relied on ... 1099

Bishambhar Nath Kohli & Ors. *v.* State of Uttar Pradesh & Ors. AIR 1966 SC 573; ... 188

Bondu Ramaswamy *v.* Bangalore Development Authority 2010 (6) SCR 29
- relied on ..... 461 & 462

Brajendra Singh *v.* State of M.P. (2008) 13 SCC 161; ... 661

Budh Singh & Ors. *v.* State of U.P., 2006 (2) Suppl. SCR 715
- relied on ... 30

Cadila Laboratories (P) Ltd *v.* CCE, Vadodara, (2003) 4 SCC 12;
- relied on ... 745

Calcutta Electric Supply Corpn. *v.* CWT (1972) 3 SCC 222;
- relied on ... 349

CCE *v.* Acer India Ltd. 2004 AIR SCW 5496;
- relied on ... 743

CCE *v.* Shree Baidyanath Ayurved Bhavan Ltd., (2009) 12 SCC 419;
- relied on ... 745

Central Bank of India *v.* State of Kerala 2009 (3) SCR 735
- relied on ... 468

Chairman and MD, NTPC Ltd. *v.* Reshmi Constructions, Builders & Contractors, 2004 (1) SCR 62
- relied on ... 393

Chamarbaugwalla (R.M.D.) *v.* Union of India, 1957 SCR 930
- relied on ... 472

Chandra (S.C.) *v.* State of Jharkhand 2007 (8) SCC 279;
- relied on ... 710

CIT *v.* Kotak Mahindra Finance Ltd. (2003) 130 TAXMAN 730;
- approved ... 148

Commissioner of Central Excise, Calicut *v.* Trinity Pharmaceuticals Pvt. Ltd., reported as 2005 (188) ELT 48
- relied on ... 747

Commissioner, Hindu Religious Endowments *v.* Sri Lakshmindra Thirtha Swamiar 1954 (5) SCR 1005; ... 580

Committee of Management, Kisan Degree College *v.* Shambhu Saran Pandey and Ors. 1994 (5) Suppl. SCR 269
- distinguished ... 300

Consumer Education and Research Centre *v.* Union of India (1995) 3 SCC 42; ... 897

Dadi Jagganadhan *v.* Jammulu Ramulu and Ors. AIR 2001 SC 2699;
- relied on ... 1001

Dagdu and Ors. *v.* State of Maharashtra (1977) 3 SCC 68;
- relied on ... 936

Daily Rated Casual Labour *v.* Union of India 1988 (1) SCC 122;
- relied on ... 712

Dalmia Cement (Bharat) Ltd. & Anr. *v.* Union of India & Ors. 1996 (1) Suppl. SCR 825
- cited ... 208

Davendra Prasad Tiwari *v.* State of U.P. (1978) 4 SCC 474;
- relied on ... 936

Deep Chand *v.* State of U.P. 1959 Suppl. SCR 8
- relied on ... 469

Deepali Girishbhai Soni and Ors. *v.* United India Insurance Co. Ltd. Board (2004) 5 SCC 385
- relied on ... 784

Delhi Cloth and General Mills *v.* Joint Secretary 1978(2) ELT (J121);
- held inapplicable ... 747

Designated Authority (Anti-Dumping Directorate), Ministry of Commerce *v.* Haldor Topsoe A/S (2000) 6 SCC 626;
- cited ... 207

Devi Lal *v.* State of Rajasthan AIR 2008 SC 332; ... 729

Dhanonjoy Chatterjee *v.* State of West Bengal 1994 (2) SCC 220 ... 832

Dharambir *v.* State (NCT of Delhi) and Anr. (2010) 5 SCC 344;
- relied on ... 176 & 773

Dharampal Satyapal *v.* CCE, (2005) 4 SCC 337;
- relied on ... 745

Dharwad District PWD Literate Dalit Wage Employees Association *v.* State of Karnataka 1990 (2) SCC 396;
- relied on ... 712

Dhirajlal Girdharilal *v.* Commissioner of Income Tax, Bombay AIR 1955 SC 271;
- relied on ... 547

Disciplinary Authority-cum-Regional Manager and Ors. *v.* Nikunja Bihari Patnaik 1996 (1) Suppl. SCR 314
- cited ... 302

Dube (S.N) *v.* N.B Bhoir, (2002) 2 SCC 254
- relied on ... 1003 & 1005

Empire Industries Ltd. & Ors. *v.* Union of India & Ors. 1985 (1) Suppl. SCR 292
- cited ... 209

Esher Singh *v.* State of A.P. 2004 (2) SCR 1180
- relied on ... 1003

Executive Engineer (Electrical), Karnataka Power Transmission Corporation Ltd. *v.* Assistant Commissioner & LAO, Gadag CA Nos.1768-1775 of 2010 decided on 11.2.2010 ... 601

Fakhruddin *v.* State of Madhya Pradesh, AIR 1967 SC 1326;
- relied on ... 31

Fatehchand Himmatlal *v.* State of Maharashtra 1977 (2) SCR 828
- relied on ... 470

Federation of Hotels and Restaurants *v.* Union of India, 1989 (2) SCR 918
- relied on ... 464 & 466

Feroze N. Dotivalaz *v.* P.M Wadhwani and co., (2003) 1 SCC 14;
- relied on ... 1001

Fuerst Day Lawson Ltd. *v.* Jindal Exports Ltd. (2001) 6 SCC 356;
- relied on ... 187

Gali Venkataiah *v.* State of Andhra Pradesh AIR 2008 SC 462; ... 74

Garg (R.K.) *v.* Union of India & Ors. (1981) 4 SCC 675;
- relied on ... 187

Gautam (C.B.) *v.* Union of India & Ors. 1992 (3) Suppl. SCR 12
- cited ... 208

General Manager, Eastern Railway & Anr. *v.* Jawala Prosad Singh 1970 (3) SCR 271
- cited ... 209

Girnar Traders *v.* State of Maharashtra, 2011 (3) SCC 1;
- relied on ... 461

Godawat Pan Masala Products I.P. Ltd. & Anr. *v.* Union of India & Ors. 2004 (3) Suppl. SCR 239
- cited ... 207

Gopinath Ghosh *v.* State of W.B. 1984 Supp. SCC 228; ... 773

Government of Andhra Pradesh *v.* P. Laxmi Devi AIR 2008 SC 1640; ... 580

Gramophone Company of India Ltd. *v.* Birendra Bahadur Pandey & Ors. 1984 (2) SCR 664
- cited ... 209

Gujarat Narmada Valley Fertilizer Co. Ltd. *v.* Collector of Excise and Customs (2005) 7 SCC 94;
- relied on ... 745

Gullapalli Nageswara Rao & Ors. *v.* Andhra Pradesh State Road Transport Corporation & Anr. AIR 1958 SC 308; ... 206

Gurcharan Dass Chadha *v.* State of Rajasthan AIR 1966 SC 1418;
- relied on ... 282

Gurdeep Singh @ Deep *v.* State (Delhi Administration), 1999 (2) Suppl. SCR 693
- relied on ... 1005

Gurpreet Singh *v.* State of Punjab, 2005 (5) Suppl. SCR 90
- relied on ... 31

Hansraj H. Jain *v.* State of Maharashtra 1993 (3) SCC 634;
- distinguished. ... 14

Hanumant Govind Nargundkar *v.* State of M.P. 1952 SCR 1091;
- relied on ... 1110

Hari Ram *v.* State of Rajasthan and Anr. (2009) 13 SCC 211;
- followed ... 176

Hari Singh Gond *v.* State of Madhya Pradesh (2008) 16 SCC 109;
- relied on ... 135

Haryana Financial Corporation and Anr. *v.* Kailash Chandra Ahuja 2008 (10) SCR 222
- relied on ... 301
- cited ... 209

Helen Rubber Industries & Ors. *v.* State of Kerala & Ors. 1972 K.L.T. 794;
- cited ... 439

Himalaya Drug Company *v.* C.C.E. (2005) 187 ELT 427
- held inapplicable ... 747

Himanshu Singh Sabharwal *v.* State of M.P. and Ors. (2008) 4 SCR 783;
- relied on ... 281

Hindustan Petroleum Corporation Ltd. *v.* CCE (2007) 210 ELT 407 (CESTAT;
- held inapplicable ... 747

Hindustan Polymers *v.* CCE (1989) 4 SCC 323;
- relied on ... 745

Hindustan Zinc Ltd. *v.* CCE, (2005) 2 SCC 662;
- relied on ... 745

Hinsa Virodhak Sangh *v.* Mirzapur Moti Kuresh Jamaat AIR 2008 SC 1892; ... 580

Hitendra Vishnu Thakur *v.* State of Maharashtra, 1994 (1) Suppl. SCR 360 ... 1011

Hoechst Pharmaceuticals Ltd. *v.* State of Bihar, 1983 (3) SCR 130
- relied on ... 463

Hotel Balaji & Ors. *v.* State of A.P. & Ors. 1993 Supp (4) SCC 536; ... 188

Hukam Chand Etc. *v.* Union of India & Ors. 1973 (1) SCR 896
- cited ... 208

Indian Cable Co. Ltd. *v.* CCE 1994(74) ELT 22(SC);
- relied on ... 743

Indian Cable Company Ltd.., Calcutta *v.* Collector of Central Excise and Ors. (1994) 6 SCC 610;
- relied on ... 745

Ishwari Khetan Sugar Mills (P) Ltd. *v.* State of U.P. 1980 (3) SCR 331
- held inapplicable ... 466

ITC Ltd. *v.* Collector of Central Excise, Patna, (2003) 1 SCC 678;
- relied on ... 745

Jagannath Ramanuj Das *v.* State of Orissa and Anr. 1954 (5) SCR 1046; ... 580

Jameel Ahmed *v.* State of Rajasthan, AIR 2004 SC 588
- relied on ... 1003

Jana Yadav *v.* State of Bihar (2002) 7 SCC 295 ... 934

Janki Narayan Bhoir *v.* Narayan Namdeo Kadam (2003) 2 SCC 91; ... 661

Jardine Henderson Limited *v.* Workmen & Anr. (1962) Supp 3 SCR 582;
- cited ... 209

Jasbir Singh *v.* State of Punjab 2006 (7) Suppl. SCR 174
- relied on ... 439

Jaswant Sugar Mills Ltd., Meerut *v.* Lakshmi Chand & Ors. 1963 Supp (1) SCR 242;
- relied on ... 201

Jayantilal Amrit Lal Shodhan *v.* F.N. Rana & Ors 1964 (5) SCR 294;
- cited ... 209

Jayjit Ganguly *v.* Union of India CWP No. 412 of 2002 decided on 15th December 2004 ... 898

Jijubhai Nanabhai Kachar *v.* State of Gujarat, 1994 (1) Suppl. SCR 807
- relied on ... 463

Jindal Thermal Power Company Ltd. *v.* Dy. CIT (2006) 154 TAXMAN 547;
- approved ... 148

Jolly George Varghese & Anr. *v.* The Bank of Cochin 1980 (2) SCR 913
- cited ... 209

Jose (T.V.) (Dr.) *v.* Chacko P.M., 2001 (3) Suppl. SCR 366
- relied on ... 336

K.B. Handicrafts Emporium & Ors. *v.* State of Haryana & Ors. 1993 Supp (4) SCC 589; ... 188

K.S.R.T.C. *v.* Abdul Latheef Kerala 2005 (3) KLT 955;
- cited ... 439

Kailas and Ors. *v.* State of Maharashtra JT 2011 (1) 19; ... 580

Kailash *v.* State of M.P. (2006 (11) SCC 420;
- relied on ... 74

Kalawati and Ors. *v.* State of Himachal Pradesh 1953 SCR 546;
- relied on ... 936

Kalyan Singh, London Trained Cutter, Johri Bazar, Jaipur *v.* Smt. Chhoti and Ors., AIR 1990 SC 396 ... 1080

Kartar Singh *v.* State of Punjab, 1994 (2) SCR 375
- relied on ... 1002

Karuppusamy & Anr. *v.* State of Tamil Nadu (2006) 11 SCC 459
- relied on ... 74

Kashibai *v.* Parwatibai (1995) 6 SCC 213; ... 661

Kedia Agglomerated Marbles Ltd. *v.* CCE, (2003) 2 SCC 494;
- relied on ... 745

Kehar Singh *v.* State (Delhi Administration) (1988) 3 SCC 609
- relied on ... 942

Kerala State Electricity Board *v.* Indian Aluminium Co. Ltd. 1976 (1) SCR 552
- relied on ... 467

Kesavanand Bharati *v.* State of Kerala 1973 (4) SCC 225; ... 580

Kraipak (A.K.) & Ors. *v.* Union of India & Ors. 1970 (1) SCR 457 ... 201
- relied on ... 204

Krishna (A. S.) *v.* Madras State, 1957 SCR 399
- relied on ... 464 & 466 & 470

Krishnamurthi & Co. (M/s.) Etc. *v.* State of Madras & Anr. 1973 SCR 54
- cited ... 209

Kunhayammed *v.* State of Kerala (2000) 6 SCC;
- relied on ... 747

Kurukshetra Central Co-operative Bank Ltd *v.* Mehar Chand 2007 (15) SCC 680;
- relied on ... 710

Kwality Biscuits Ltd. *v.* CIT (2000) 243 ITR 519;
- distinguished ... 148

Lakshmaiah (T.N.) *v.* State of Karnataka (2002) 1 SCC 219;
- relied on ... 136

Land Acquisition Officer, City Improvement Trust Board *v.* H. Narayanaiah 1977 (1) SCR 178 ... 461

Laxmanan (K.) *v.* Thekkayil Padmini (2009) 1 SCC 354; ... 661

Liyakat *v.* State of Uttranchal, 2008 Cri LJ 1931 (SC);
- relied on ... 1006

Lok Ram *v.* Nihal Singh and Anr. (2006) 10 SCC 192; ... 838

Maan Singh *v.* Union of India, 2003 (2) SCR 129
- relied on ... 269

Machi Singh *v.* State of Punjab 1993 (3) 470; ... 832
- relied on ... 942

Madhu Limaye *v.* The State of Maharashtra 1978 (1) SCR 749
- relied on ... 439

Madhya Pradesh High Court in Itarsi Oil and Flours (P.) Limited *v.* CIT (2001) 250 ITR 686;
- approved ... 148

Madhya Pradesh Industries Ltd. *v.* Union of India & Ors. (1966) 1 SCR 466;
- cited ... 209

Mafatlal Industries Ltd. & Ors. *v.* Union of India & Ors. 1996 (10) Suppl. SCR 585
- followed ... 206
- held inapplicable ... 375

Mahabir Vegetable Oils (P) Ltd. & Anr. *v.* State of Haryana & Ors. 2006 (2) SCR 1172
- cited ... 208

Managing Director, ECIL, Hyderabad & Ors. *v.* B. Karunakar & Ors. 1993 (2) Suppl. SCR 576
- cited ... 209

Maneka Gandhi *v.* Union of India & Anr. 1978 (2) SCR 621
- cited ... 208

Maneka Sanjay Gandhi *v.* Rani Jethmalani (1979) 4 SCC 167;
- relied on ... 282

Manoj Narain Agrawal *v.* Shashi Agrawal & Ors. 2009 (5) SCR 976
- relied on ... 439

Manu Sharma *v.* State (NCT of Delhi) (2010) 6 SCC 1;
- relied on ... 934

Matru Alias Girish Chandra *v.* The State of Uttar Pradesh (1971) 2 SCC 75
- relied on ... 1117

Mohammed (P.P.) *v.* K. Rajappan & Ors., (2008) 17 SCC 624;
- relied on ... 336

Mohan Mali and Anr. *v.* State of M.P. AIR 2010 SC 1790;
- relied on ... 176

Mohd. Ali Khan *v.* CWI, 1997 (2) SCR 658
- cited ... 1002

Mohinder Singh Gill & Anr. *v.* The Chief Election Commissioner, New Delhi & Ors. 1978 (2) SCR 272
- relied on ... 204

Moolchand Chhotalal *v.* Amritbai Manji Khoda Bhai and Ors. (1976) MPLJ 382 ... 661

Moriroku UT India (P) Ltd. *v.* State of Uttar Pradesh and Ors. (2008) 4 SCC 548;
- relied on ... 745

Mulla & Anr. *v.* State of Uttar Pradesh (2010) 3 SCC 508
- relied on ... 832

Munithimmaiah *v.* State of Karnataka 2002 (2) SCR 825
- relied on ... 462

Murli Manohar and Co. & Anr. *v.* State of Haryana & Anr. (1991) 1 SCC 377; ... 188

Mussauddin Ahmed *v.* State of Assam (2009) 14 SCC 541;

- relied on ... 409

Muzumdar (S.V.) & Ors. *v.* Gujarat State Fertilizer Co. Ltd. & Anr. 2005 (3) SCR 857

- relied on ... 438

Nagarjuna Construction Company Limited *v.* Government of Andhra Pradesh and Ors. 2008 (14) SCR 859

- held inapplicable ... 301

Naiksatam (J.A.) *v.* Prothonotary & Senior Master, High Court of Bombay & Ors. 2004 (5) Suppl. SCR 287

- cited ... 209

Narsingh Das *v.* Mangal Dubey ILR 5 All 163 (1882) (FB);

- approved ... 321

Naseem Ahmed *v.* Delhi Admn (1974) 3 SCC 668;

- relied on ... 1110

Nasiruddin and Ors. *v.* Sita Ram Agarwal, 2003 (1) SCR 634

- relied on ... 1001

National Insurance Company Limited *v.* Boghara Polyfab Private Ltd., 2008 (13) SCR 638

- relied on ... 393

National Insurance Company Ltd. *v.* Deepa Devi & Ors., 2007 (13) SCR 134

- distinguished ... 336

Noorjahan *v.* Moideen 2000 (2) KLT 756;

- cited ... 439

Official Liquidator *v.* Dayanand 2008 (10) SCC 1;

- relied on ... 710

Oriental Insurance Co. Ltd. *v.* Hansrajbhai V. Kodala and Ors. (2001) 5 SCC 175 ... 784

Orissa State Electricity Board & Anr. *v.* Indian Aluminum Co. Ltd. (1975) 2 SCC 431;

- cited ... 208

Ossein and Gelatine Manufacturers' Association of India *v.* Modi Alkalies and Chemicals Limited & Anr. 1989 (3) SCR 815

- cited ... 209

Palani (S.) Velayutham & Ors. *v.* District Collector, Tirunelveli, Tamil Nadu & Ors. 2009 (12) SCR 1215 ... 441

Paokai Haokip *v.* Rishang AIR 1969 SC 663

- relied on ... 800 & 806

Pfizer *v.* Commissioner of Central Excise 2002 (146) ELT;

- held inapplicable ... 747

Poonacha (K.K.) *v.* State of Karnataka 2010 (10) SCR 1022

- relied on ... 462

Poonacha *v.* State of Karnataka 2010 (10) SCR 1022
- relied on ... 474

Prafulla Kumar Mukherjee *v.* Bank of Commerce Ltd., Khulna AIR 1947 PC 60 ... 466

Prakash Kumar @ Prakash Bhutto *v.* State of Gujarat, 2005 (1) SCR 408
- relied on ... 1003

Prakash Singh & Ors. *v.* Union of India & Ors. 2006 (6) Suppl. SCR 473
- relied on ... 415

Pratap Singh *v.* State of Jharkhand and Anr. (2005) 3 SCC 551; ... 176
- followed ... 771

Prithi *v.* State of Haryana (2010) 8 SCC 536
- relied on ... 52

Province of Bombay *v.* Khushaldas S. Advani & Ors. 1950 SCR 621
- relied on ... 201

Province of Madras *v.* Boddu Paidanna and Sons (1942) FCR 90; ... 743

PTC India Limited *v.* Central Electricity Regulatory Commission 2010 (3) SCR 609
- cited ... 207

Pulicherla Nagaraju alias Nagaraja Reddy *v.* State of A.P. AIR 2006 SC 3010
- distinguished ... 74

Quebec Railway, Light Heat & Power Co. *v.* Vandray, AIR 1920 PC 181 ... 1002

R *v.* Immigration Appeal Tribunal & Anr. [1988] 2 All ER 65;
- cited ... 209

Radha Mohan Singh *v.* State of UP, 2006 Cri LJ 1121 (1125) (SC)
- relied on ... 1011

Radheshyam Khare (Shri) & Anr. *v.* The State of Madhya Pradesh & Ors. AIR 1959 SC 1440;
- cited ... 207

Rahgunath *v.* State of Haryana (2003) 1 SCC 398;
- relied on ... 942

Raj Kumar *v.* Haryana State 2007 (7) SCC 609;
- relied on ... 601

Raj Narain Saxena *v.* Bhim Sen and Ors. AIR 1966 Allahabad 84 (FB);
- approved ... 321

Raja (M.) *v.* CEERI Educational Society, Pilani 2006 (12) SCC 636;
- relied on ... 710

Rajendra and Anr. *v.* State of Uttar Pradesh (2009) 13 SCC 480 ... 50

Rajwanshi (B.B.) *v.* State of U.P. & Ors. 1988 (3) SCR 469
- cited ... 209

Ram Babu *v.* State of Uttar Pradesh (2010) 5 SCC 63
- relied on ... 50

Ram Krishna Ramanath Agarwal *v.* Secretary, Municipal Commissioner, Kamptee 1950 SCR 15; ... 743

Rama Krishna (S.) *v.* S. Rami Reddy (D) by his LRs. & Ors., 2008 (6) SCR 1236 2008 AIR 2066;
- relied on ... 30

Raman Nair *v.* State of Kerala 1999 (3)] KLT 714;
- cited ... 439

Ramesh Chandra Kachardas Porwal & Ors. *v.* State of Maharashtra & Ors. 1981 (2) SCR 866
- cited ... 208

Ramji Singh *v.* State of Bihar, AIR 2001 SC 3853;
- relied on ... 31

Ramraj *v.* State of Chhattisgarh (2010) 1 SCC 573;
- relied on ... 832

Ranbaxy Laboratories Ltd. *v.* Commissioner of Central Excise, Pune, (2003) 9 SCC 199;
- relied on ... 747

Ranjan Singh Lalan *v.* Union of India (2006) 6 SCC 613;
- relied on ... 900

Raunaq International Ltd. *v.* I.V.R. Constructions LTD. (1999) 1 SCC 492;
- relied on ... 903

Ravinder Singh *v.* State of Maharashtra, 2002 (3) SCR 622
- relied on ... 1008

Ravindranathan (K.) Nair *v.* Commissioner of Income Tax, Ernakulam 2000 (5) Suppl. SCR 244
- relied on ... 547

Redaul Husain Khan *v.* National Investigation Agency 2010 (1) SCC 521;
- distinguished ... 592

Regional Manager, U. P. SRTC, Etwah and Ors *v.* Hoti Lal and Anr. 2003 (1) SCR 1019
- cited ... 302

Regional Transport Officer, Chittoor & Ors. *v.* Associated Transport Madras (P) Ltd. & Ors. 1981 (1) SCR 627
- cited ... 208

Reliance Industries Ltd. *v.* Designated Authority & Ors. 2006 (6) Suppl. SCR 1
- cited ... 207

Reserve Bank of India *v.* Peerless General Finance and Investment Co. Ltd. & Ors. 1987 (2) SCR 1
- cited ... 208

Roy (A.K.) *v.* Union of India & Ors. (1982) 1 SCC 271;
- relied on ... 187

Rustom Cavas Jee Cooper *v.* Union of India 1970 (3) SCR 530 ... 466

S &S Enterprise *v.* Designated Authority & Ors. 2005 (2) SCR 255

- relied on ... 203

Sahara India (Firm), Lucknow *v.* Commissioner of Income Tax, Central-I & Anr. 2008 (6) SCR 427

- cited ... 207

Sales Tax Commissioner *v.* Modi Sugar Mills 1961 SCR 189

- relied on ... 375

Salgaocar (V.M.) & Bros. (P) Ltd. *v.* C.I.T., (2000) 5 SCC 373;

- relied on ... 747

Samatha *v.* State of Andhra Pradesh and Ors. AIR 1997 SC 3297 ... 97

Sambamurthy (P.) & Ors. *v.* State of Andhra Pradesh & Anr. (1987) 1 SCC 362;

- cited ... 209

Sambhaji Hindurao Deshmukh & Ors. *v.* State of Maharashtra (2008) 11 SCC 186;

- relied on ... 942

Sangaraboina Sreenu *v.* State of A.P. 1997 (3) SCR 957

- distinguished ... 113

Sanichar Sahni *v.* State of Bihar 2009 (10) SCR 112

- relied on ... 31

Sankar Dastidar *v.* Shrimati Banjula Dastidar and Anr., AIR 2007 SC 514

- relied on ... 1079

Saraswati Industrial Syndicate Ltd. & Ors. *v.* Union of India 1975 (1) SCR 956

- cited ... 208

Saseendran Nair *v.* General Manager 1996 (2) KLT 482,

- cited ... 439

Satendra Prasad Jain *v.* State of U. P. 1993 (4) SCC 369;

- distinguished ... 327

Satnam Overseas (Export) & Ors. *v.* State of Haryana & Anr. (2003) 1 SCC 561;

- relied on ... 187

SBP & Co. *v.* Patel Engineering Ltd. & Anr. 2005 (4) Suppl. SCR 688

- cited ... 208

Secretary, Staste of Karnataka *v.* Uma Devi 2006 (4) SCC 1;

- relied on ... 710

Selvarajan *v.* Race Relations Board [1976] 1 All ER 12;

- cited ... 209

Shamnsaheb M. Multtani *v.* State of Karnataka 2001 (1) SCR 514

- distinguished ... 113

Shankarlal Aggarwala & Ors. *v.* Shankarlal Poddar & Ors. AIR 1965 SC 507;
- cited ... 207

Sharma (M.P.) and Ors. *v.* Satish Chandra, District Magistrate, Delhi and Ors. (1954) SCR 1077
- relied on ... 938

Shenyang Matsushita S. Battery Co. Ltd. *v.* Exide Industries Ltd. & Ors. 2005 (2) SCR 332
- cited ... 208

Shinde Brothers *v.* Deputy Commissioner AIR 1967 SC 1512;
- relied on ... 743

Shivaji Dayanu Patil and Anr. *v.* Vatschala Uttam More (1991) 3 SCC 530;
- relied on ... 162

Shivaji Sahebrao Bobade & Anr. *v.* State of Maharashtra, 1974 (1) SCR 489
- relied on ... 30

Shivappa *v.* State of Karnataka (1995) 2 SCC 76;
- relied on ... 936

Shivji Nathubhai *v.* Union of India & Ors. 1960 SCR 775
- cited ... 207

Shri Sitaram Sugar Company Ltd. & Anr. *v.* Union of India & Ors. 1990 (1) SCR 909
- cited ... 208 & 210

Shrikant Anandrao Bhosale *v.* State of Maharashtra (2002) 7 SCC 748
- distinguished ... 135

Som Dutt Datta *v.* Union of India and Ors. AIR (1969) SC 414;
- followed. ... 295

Sridhar Bhuyan *v.* State of Orissa AIR 2004 SC 4100; ... 74

Standard Chartered Bank and Ors. *v.* Directorate of Enforcement and ors. AIR 2005 SC 2622; ... 1002

State Bank of India and Ors. *v.* D.C. Aggarwal and Anr. 1992 (1) Suppl. SCR 956
- distinguished ... 300

State Bank of India and Ors. *v.* S.N. Goyal 2008 (7) SCR 631
- cited ... 302

State Bank of Patiala & Ors. *v.* S.K. Sharma 1996 (3) SCR 972
- cited ... 209
- held inapplicable ... 301

State of A.P. *v.* Thakkidiram Reddy, 1998 (3) SCR 1088
- relied on ... 31

State of Bihar *v.* Shree Baidyanath Ayurved Bhawan (P) Ltd. (2005) 2 SCC 762;
- relied on ... 745

State of Goa *v.* Sanjay Thekaram, (2007) 3 SCC 755
- relied on ... 1006

State of H.P. *v.* Mango Ram 2000 (2) Suppl. SCR 626
- relied on ... 410

State of Haryana & Ors. *v.* Charanjit Singh [(2006) 9 SCC 321] ... 888

State of Karnataka *v.* Azad Coach Builders Pvt. Ltd. & Anr 2010 (12) SCR 895
– followed ... 373

State of Karnataka *v.* Bantara Sudhakara @ Sudha & Anr. 2008 (10) SCR 1161
- relied on ... 409

State of M.P. *v.* Hari Har Gopal & Ors., (1969) 3 SLR 274 (SC);
- relied on ... 269

State of Madhya Pradesh & Anr. *v.* Dadabhoy's New Chiri Miri Ponri Hill Colliery Co. Pvt. Ltd. 1972 (2) SCR 609
- cited ... 208

State of Madhya Pradesh & Ors. *v.* Ramesh Chandra Bajpai [(2009) 13 SCC 635]; ... 887

State of Maharashtra *v.* Bharat Chaganlal Raghani, 2001 (3) SCR 840
- relied on ... 1008

State of Maharashtra *v.* Damu (2000) 6 SCC 269;
- relied on ... 936

State of Maharashtra *v.* Dhanendra Shriram Bhurle 2009 (11) SCC 541;
- distinguished ... 592

State of Maharasthra *v.* Chandraprakash Kewalchand Jain 1990 (1) SCR 115
- relied on ... 410

State of Punjab & Ors. *v.* Bakshish Singh, 1998 (1) Suppl. SCR 478
- distinguished ... 269

State of Punjab *v.* Gurmit Singh & Ors. 1996 (1) SCR 532
- relied on ... 410

State of Punjab *v.* Mohinder Singh (1983) 2 SCC 274;
- distinguished ... 135

State of Rajasthan *v.* Jaggu Ram AIR 2008 SC 982; ... 729

State of T.N. *v.* K. Sabanayagam & Anr. 1997 (5) Suppl. SCR 345
- cited ... 207

State of U.P. *v.* Ram Swarup & Anr., 1975 (1) SCR 409
- relied on ... 30

State of UP *v.* Satish, 2005 (2) SCR 1132
- relied on ... 1006

State of Uttar Pradesh *v.* Nandu Vishwakarma and Ors. (2009) 14 SCC 501;
- relied on ... 942

State of West Bengal *v.* Kesoram Industries Ltd. 2004 (1) SCR 564
- relied on ... 468

State of West Bengal *v.* Mohammed Khalid 1994 (6) Suppl. SCR 16 ... 1011

State thr. Superintendent of Police, CBI/SIT *v.* Nalini and Ors. (1999) 5 SCC 253;
- relied on ... 936

State *v.* Nalini (1999) 5 SCC 253;
- relied on ... 1003

Subedar Tewari *v.* State of U.P. 1989 Supp (1) SCC 91;
- relied on ... 1110

Sudarshan Silks & Sarees *v.* Commissioner of Income Tax, Karnataka 2008 (6) SCR 456
- relied on ... 547

Suman *v.* State of Rajasthan and Anr. 2009 (13) SCALE 716 ... 839

Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. *v.* State of Maharashtra, JT 2010 (12) SC 287;
- relied on ... 30

Suresh Chandra Bahari *v.* State of Bihar 1995 Supp (1) SCC 80
- relied on ... 1110

Surinder Pal Jain *v.* Delhi Administration 1993 Supp (3) SCC 681;
- relied on ... 1110

Swadeshi Cotton Mills *v.* Union of India 1981 (2) SCR 533
- relied on ... 204

Swamy Sharaddananda *v.* State of Karnataka, 2007 (7) SCR 616
- relied on ... 1006

T.M.A. Pae Foundation *v.* State of Karnataka AIR 2003 SC 355; ... 580

Tansport ans Dock Workers Union *v.* Mumbai Port Trust 2010(12) Scale 217; ... 580

Tarseem Kumar *v.* Delhi Administration 1994 Supp (3) SCC 367;
- relied on ... 1110

Tata Chemicals Limited (2) *v.* Union of India & Ors. 2008 (5) SCR 320
- cited ... 207

Tata Chemicals Limited *v.* Union of India & Ors. (2007) 15 SCC 596;
- cited ... 207

The Assistant Commissioner, Assessment-II, Bangalore and Ors. *v.* Valliappa Textiles Ltd. and Ors., AIR 2004 SC 86 ... 1002

The Cannanore Spinning and Weaving Mills Ltd. *v.* Collector of Customs and Central Excise, Cochin & Ors. (1969) 3 SCC 221;
- cited ... 208

The New Prakash Transport Co. Ltd. *v.* The New Suwarna Transport Co. Ltd. 1957 AIR 232
- cited ... 209

The State of Bombay *v.* Kathi Kalu Oghad and Ors. (1962) 3 SCR 10;
- relied on ... 938

The State of Gujarat & Anr. *v.* Shri Ambica Mills Ltd., Ahmedabad & Anr. (1974) 4 SCC 656;
- cited ... 208

Titagarh Paper Mills Ltd. (M/s.) *v.* Orissa State Electricity Board & Anr. (1975) 2 SCC 436; ... 188

Topandas *v.* State of Bombay 1955 SCR 881
- relied on ... 31

Tractoroexport, Moscow (M/s.) *v.* M/s Tarapore & Company & Anr.. 1970 (3) SCR 53
- cited ... 209

Triveni Engineering & Industries Ltd. *v.* CCE, (2000) 7 SCC 29;
- relied on ... 745

U.P. State Road Transport Corporation and Anr. *v.* U.P. Parivahan Nigam Shishukhs Berozgar Sangh and Ors. (1995) 2 SCC 1; ... 574

Uday *v.* State of Karnataka 2003 (2) SCR 231
- relied on ... 410

Ujagar Prints *v.* Union of India, 1988 (3) Suppl. SCR 770
- relied on ... 463

Umar Abdul Sakoor Sorathia *v.* Intelligence Officer, Narcotic Control Bureau AIR 1999 SC 2562; ... 934

Umesh Singh and Anr. *v.* State of Bihar (2000) 6 SCC 89;
- relied on ... 773

Undavalli Narayana Rao *v.* State of Andhra Pradesh, AIR 2010 SC 3708; ... 729

Union Carbide India Ltd. *v.* Union of India (1986) 2 SCC 547;
- relied on ... 745

Union of India & Anr. *v.* Cynamide India & Anr. 1987 (2) SCR 841
- cited ... 209

Union of India *v.* Col. J.N. Sinha & Anr. (1970) 2 SCC 458;
- relied on ... 204

Union of India *v.* Datta Linga Toshatwad (2005) 13 SCC 709;
- relied on ... 269

Union of India *v.* Delhi Cloth and General Mills AIR 1968 SC 922;
- relied on ... 745

Union of India *v.* Elphinstone Company Ltd., 2001 (1) SCR 221
- cited ... 1002

Union of India *v.* Harbhajan Singh Dhillon 1972 (2) SCR 33
- relied on ... 463

Union of India *v.* Harsoli Devi, 2002 (2) Suppl. SCR 324
- relied on ... 1002

Union of India *v.* K.M. Shankarappa 2000 (5) Suppl. SCR 117
- cited ... 209

Union of India *v.* Mohan Lal Capoor (1973) 2 SCC 836;
- cited ... 209

Union of India *v.* Sonic Electrochem (P) Ltd., (2002) 7 SCC 435;
- relied on ... 745

United Riceland Limited & Anr. *v.* State of Haryana & Ors. 104 STC 362; ... 188

Vashisht Narain Sharma *v.* Dev Chandra (1955) 1 SCR 509;
- relied on ... 800

Venkata (T.) Reddy & Ors. *v.* State of Andhra Pradesh (1985) 3 SCC 198;
- relied on ... 187

Vijay @ Chinee *v.* State of Madhya Pradesh 2010 (8) SCR 1150
- relied on ... 410

Vishin N Khanchandani & Anr *v.* Vidya Laxmidas Khanchandani & Anr. 2000 (2) Suppl. SCR 415 ... 1004

Viveka Nand Sethi *v.* Chairman, J&K Bank Ltd. & Ors. 2005 (3) SCR 1095
- cited ... 210

Waman Rao *v.* Union of India, (1981) 2 SCC 362
- relied on ... 747

Whirpool of India *v.* ESI Corporation, (2000) 3 SCC 185,
- cited ... 1002

Willie (William) Slaney *v.* State of M.P. 1955 SCR 1140
- relied on ... 31

Yudhishter *v.* Ashok Kumar 1987 (1) SCR 516
- cited ... 208

SUBJECT-INDEX

ADMINISTRATION OF JUSTICE:

(1) Abuse of process of law.

(See under: Constitution of India, 1950) .... 829 and 894

(2) Administration of Criminal Justice:

(i) Criminal cases relating to offences against State, corruption, dowry death, domestic violence, sexual assault, financial fraud and cyber crimes – Need to be fast tracked – Immediate and urgent steps required to be taken in amending the procedural and other laws – The investigators need to have professional orientation and modern tools – Police reforms as directed in *Prakash Singh's* case suggested to be carried out.

(Also see under: Penal Code, 1860 and Evidence)

State of U. P. v. *Chhoteylal* 406

(ii) (See under: Code of Criminal Procedure, 1973) 436

ADMINISTRATIVE LAW:

Natural Justice.

(i) (See under: Customs Tariff (Identification, Assessment And Collection Of Anti-Dumping Duty on Dumped Articles And For DeterminationoOf Injury) Rules, 1995) 198

(ii) (See under: Service Law) 298

ADVOCATES:

Advocates – Responsibility of, to advise the client to try for mediation.

(See under: Alternative Disputes Redressal) ... 387

AIRPORTS:

Service Tax.

(See under: Finance Act, 1994) 872

AIRPORTS AUTHORITY OF INDIA ACT, 1994:

s.3.

(See under: Words and Phrases) 872

ALLAHABAD HIGH COURT RULES, 1952:

Chapter 8, Rule 5 – Special appeal – Writ petition challenging the order of appellate authority passed in exercise of appellate jurisdiction in terms of Service Rules of 1991 – Allowed by Single Judge of High Court – Special appeal before Division Bench of High Court – Held: Has been rightly held by Division Bench of the High Court as not maintainable.

State of U. P. & Ors. v. *Madhav Prasad Sharma* 266

ALTERNATIVE DISPUTES REDRESSAL:

Mediation – Disputes involving family and business relationships – Resolution of, by mediation – Responsibility of lawyers – Held: It is the responsibility of lawyers to advise their clients to try for mediation for resolving the disputes, especially where family and business relationships are involved, otherwise the litigation would drag on for years and decades – Lawyers as well as litigants ought to follow Mahatma Gandhi's advice in the matter and try for arbitration/mediation – This is also the purpose of s.89 – In the instant case, dispute was between the brothers – Matter referred to the Bangalore Mediation Centre –

Code of Civil Procedure, 1908 – s.89 – Advocates.

B. S. Krishna Murthy and Anr. v. *B.S. Nagaraj and Ors.* 387

ANTI DUMPING:

(See under: Customs Tariff Act, 1975 and Customs Tariff (Identification, Assessment And Collection Of Anti-Dumping Duty On Dumped Articles And For Determination Of Injury) Rules, 1995) 198

ANTIQUITIES AND ART TREASURES ACT, 1972:

ss.3 and 25.
(See under: Constitution of India, 1950) 563

APPEAL:

(1) (i) Appeal against acquittal – When two views are possible, the one in favour of the accused should be accepted – Presumption of innocence is a fundamental principle of criminal jurisprudence – On facts, absence of definite assertion from the prosecution side, about the specific role and involvement of the acquitted accused who are all poor tribals – Order of acquittal of these accused upheld – Criminal jurisprudence.

Rabindra Kumar Pal @ Dara Singh v. *Republic of India* 929

(ii) Appeal against acquittal.
(See under: Penal Code, 1860) 27

(2) Similar relief to non-appellants.
(See under: Constitution of India, 1950) 334

(3) Special appeal.

(See under: Allahabad High Court Rules, 1952) 266

ARMED FORCES:

Prosecution of a Naval Officer.
(See under: Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978) 295

BAIL:

Grant of – Criminal assault on College Professor – His right palm chopped of – Alleged motive for attacking the Professor was that he incorporated a question for B.Com. paper criticizing Prophet Mohammed and Islam – Prosecution case that the accused, a dental surgeon, stitched the back of an injured assailant in pursuance of a previous plan – Further allegation that respondent was member of PFI – High Court granted bail – Held: There was no allegation that the accused was one of the assailants – Even there was no prima facie proof that he was involved in the crime – Therefore, proviso to s.43D(5) of the Unlawful Activities (Prevention) Act was not violated – Even a dentist can apply stitches in an emergency – Prima facie the only offence that can be leveled against the accused is u/s.202 IPC, of omitting to give information of the crime to the police – It is a bailable offence – In the absence of any evidence to prove that PFI is a terrorist organization, the accused cannot be penalized merely for belonging to the PFI – No reason for denial of bail to accused – Penal Code, 1860 – s.202 – Unlawful Activities (Prevention) Act, 1967 – s.43D(5), proviso.

State of Kerala v. *Raneef* 590

BANGALORE DEVELOPMENT AUTHORITY ACT, 1976:

ss. 19(1), 27 and 36 – Applicability of provisions of s.11-A of Land Acquisition Act, to BDA Act – Held: Object of the BDA Act being planned development, acquisition is merely incidental – Acquisition stands on a completely distinct footing from the scheme formulated which is subject matter of execution under provisions of BDA Act – A conjoint reading of ss. 27 and 36 of BDA Act makes it clear that where a scheme lapses, the acquisition may not – Where upon completion of acquisition proceedings, the land has vested in the State Government in terms of s.16 of the L.A. Act, the acquisition would not lapse as a result of lapsing of the scheme u/s 27 of BDA Act – Neither of the Acts contain any provision in terms of which property vested in the State can be reverted to the owner – This being the scheme of the acquisition within the framework of the BDA Act, r/w relevant provisions of LA Act, it will not be permissible to bring the concept of 'lapsing of acquisition' as stated in provisions of s.11-A of L.A. Act into Chapter IV of BDA Act – Language of s.36 of BDA Act clearly mandates legislation by incorporation and as per the scheme of the two Acts effective and complete implementation of State law without any conflict is possible – The provisions of ss. 6 and 11-A of L.A. Act which provide for time frame for compliance and consequences of default thereof are not applicable to BDA Act – BDA Act is a self-contained code – Interpretation of Statutes – Legislation by incorporation – Constitution of India, 1950 – Article 246 and 254 – Seventh Schedule – List II – Entries 5 and 8 – List III – Entry 42 – Land Acquisition Act, 1894 – ss. 6 and 11-A.

(Also see under: Constitution of India, 1950)

Offshore Holdings Pvt. Ltd. v. *Bangalore Development Authority & Ors.* *453*

CENTRAL EXCISE ACT, 1944:

(1) s.11A – Demand – Limitation – Suppression of relevant facts – Non-payment of duty on the testing equipment manufactured for the purpose of testing the final products – L-4 licence not obtained by the assessee nor was the fact of manufacturing of the said equipment disclosed to the revenue – The said knowledge of manufacture acquired by the revenue only subsequently – Held: In view of non-disclosure of such information by the assessee and suppression of relevant facts, the extended period of limitation was rightly invoked by the revenue.

(Also see under: Central Excise Rules, 1944)

M/s. Usha Rectifier Corpn. (I) Ltd. (Presently known as M/s. Usha (I) Ltd.) v. *Commissioner of Central Excise, New Delhi* 347

(2) (i) Object of the Act – Discussed.
(ii) s.3 – "Physician Samples" manufactured and distributed as free samples – Held: Liable to excise duty – Sale is not necessary condition for charging excise duty – Prohibition on the sale of physician samples intended for distribution to medical practitioner as free samples by rule 65(18) of Drugs Rules shall have no bearing or effect on the levy of excise duty – Constitution of India, 1950 – Seventh Schedule, List I, Entry 84 – Drugs and Cosmetics Act, 1940 – Drugs and Cosmetics Rules, 1945 – r.96(1)(ix) – Central Excise Valuation Rules, 1975.

(Also see under: Drugs and Cosmetics Act,

1940, Drugs and Cosmetics Rules, 1945 and Central Excise Valuation Rules, 1975)

Medley Pharmaceuticals Ltd. v. *The Commissioner of Central Excise and Customs, Daman* 741

CENTRAL EXCISE RULES, 1944:

rr.9 and 49, Explanation – Captive consumption – Manufacture of testing equipment by assessee for testing its own final products – Testing equipment manufactured within the factory – Admission by assessee that the import of testing equipment was avoided to save foreign exchange and the parts and components were purchased to develop the testing equipment – Demand of duty on testing equipment – Held: Duty payable on the testing equipment – It was admitted by the assessee that they had undertaken such manufacturing process of the testing equipments to avoid importing of such equipment – Such a statement confirmed the position that such testing equipments were saleable and marketable – Explanations to Rule 9 and 49 provide that excisable goods manufactured and consumed or utilized within the factory premises as such are deemed to have been removed from the premises immediately for such consumption or utilization and duty is leviable on such excisable goods.

(Also see under: Central Excise Act, 1944)

M/s. Usha Rectifier Corpn. (I) Ltd. (Presently known as M/s. Usha (I) Ltd.) v. *Commissioner of Central Excise, New Delhi* 347

CENTRAL EXCISE VALUATION RULES, 1975:

s.6(b)(ii) – Valuation of 'Physician's samples' – Held: To be valued on pro-rata basis – Central

Excise Act, 1944.

(Also see under: Central Excise Act, 1944, Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945)

Medley Pharmaceuticals Ltd. v. *The Commissioner of Central Excise and Customs, Daman* 741

CENTRAL SALES TAX ACT, 1956:

s.5(3) – Sale in the course of export – Exemption from sales tax – Exporter of tea – Purchasing tea from tea planters – Claim for exemption – Held: Though there is no agreement on record to indicate that the purchase was made for the purpose of export, but, there is a clear finding by the assessing authority that the export documents indicated that the entire exports were effected pursuant to prior contract or prior orders of foreign buyers and, therefore, the claim for exemption was genuine – The appellate authority and the Appellate Tribunal having upheld the said finding of fact, it would not be appropriate to reopen the same – Kerala General Sales Tax Act, 1963.

(Also see under: Kerala General Sales Tax Act, 1963)

Saraf Trading Corporation Etc. Etc. v. *State of Kerala* 371

CIRCULARS/GOVERNMENT ORDERS/ NOTIFICATIONS:

Circular No. 13/2001 dated 9.11.2001 issued by CBDT.

(See under: Income Tax Act, 1961) 146

CODE OF CIVIL PROCEDURE, 1908:

(1) s. 34 – Interest – Plaint re-presented five years

and six months after its return – Interest on principal amount – Held: Interest is awardable pendente lite taking into consideration the facts and circumstances of the case and not as a matter of course – Section 34 does not empower the court to award pre-suit interest which would ordinarily depend on the contract between the parties – Direction of the High Court to pay interest for the period from return of the plaint to its re-presentation set aside – Rent Control and Eviction.

Secretary/General Manager Chennai Central Cooperative Bank Ltd. & Anr. v. *S. Kamalaveni Sundaram* 66

(2) s.89.
(See under: Alternative Disputes Redressal) 387

(3) s.151 – Application for withdrawal of suit – During pendency of the application, plaintiff filed another application praying for withdrawal of the earlier withdrawal application – Maintainability of the second application – Held: Application praying for withdrawal of the earlier withdrawal application was maintainable since there was no express bar in filing such an application – Section 151 gives inherent powers to the court to do justice – It has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted – Inherent powers of Court.

Rajendra Prasad Gupta v. *Prakash Chandra Mishra & Ors.* 321

(4) O.I, r. 8 – Suit filed alleging that the defendants

had made illegal/unauthorized construction over a public street – Trial court decreed the suit and issued permanent injunction directing removal of unauthorized construction – Decree challenged, on the ground that the suit was bad for non-compliance of the provisions of O.I, r.8 – Held: Any member of a community may successfully bring a suit to assert his right in the community property or for protecting such property by seeking removal of encroachment therefrom and in such a suit he need not comply with the requirements of O. I, r. 8 – In that view of the matter, the suit filed was maintainable – Public property – Protection of.

(Also see under: Limitation Act, 1963 and Suit)

Hari Ram v. *Jyoti Prasad & Anr.* 1076

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.125 – Maintenance to wife – Enhanced by High Court to Rs.4000/- per month – Challenged – Plea that State amendment allowed maintenance upto Rs.3000/- per month only – Held: Section 125 has been further amended in Madhya Pradesh by a subsequent amendment of 2004 which does not contain any upper limit in the maintenance to be granted u/s 125 and it is left to the discretion of the Magistrate – Moreover, after the amendment to s.125, by the Code of Criminal Procedure (Amendment) Act, 2001 which deleted the words “not exceeding five hundred rupees in the whole”, all State amendments to s. 125 by which a ceiling has been fixed to the amount of maintenance to be awarded to the wife have become invalid – Maintenance.

Manoj Yadav v. *Pushpa @ Kiran Yadav & Ors.* 644

(2) s. 164 – Recording of confessions and statements – Procedure to be followed by the Magistrate – Reiterated – On facts, procedural lapse on the part of the Judicial Magistrate in recording confessional statements – Accused in their confessional statements, made exculpatory statements – Thus, confessional statements with regard to accused other than A-1 and A-3, not admissible.

(Also see under: Penal Code, 1860)

Rabindra Kumar Pal @ Dara Singh v. *Republic of India* 929

(3) ss. 205, 313, 482 and 483 r/w Article 227 of the Constitution – Powers of High Court – Complaint for offence punishable u/s 138 of NI Act – Petition u/s 482 by accused before High Court praying for dispensing with personal presence before Magistrate – General directions by High Court to all criminal courts as regards cases involving offences technical in nature and not involving moral turpitude, to invoke the discretion u/s 205 CrPC and a further direction that only a summons shall be issued at the first instance – Held: The satisfaction whether or not an accused deserves to be exempted from personal attendance has to be of the Magistrate and none else and this discretion cannot be circumscribed by any general directions – Similarly, the direction to accept and consider written statement of the accused is not in accord with the language of s.313 CrPC nor with the dictum laid down by Supreme Court – Inherent powers of High Court u/s 482 and power of superintendence under Article 227 of the Constitution have to be exercised sparingly and

only in appropriate cases – In the instant case, High Court exceeded its jurisdiction u/s 482 CrPC and/or Article 227 of the Constitution in laying down the general directions which are inconsistent with the clear language of ss. 205 and 313 CrPC – Impugned order containing general directions set aside – Constitution of India, 1950 – Article 227 – Judicial propriety – Administration of Criminal Justice.

TGN Kumar v. *State of Kerala and Ors.* 436

(4) ss. 221(1) and (2) – Framing of charge – Conviction by trial court u/s 304-B IPC – High Court converting the conviction to one u/s 306 IPC – Held: Nature of offence punishable u/ss 304-B and 306 IPC are not of distinct/different categories – High Court appropriately converted the conviction from s. 304-B to 306 IPC.

(Also see under: Penal Code, 1860)

Narwinder Singh v. *State of Punjab* 110

(5) s.235 r/w s.354, s.433-A.
(See under: Sentence/sentencing) 829

(6) s.313.
(i) (See under: Penal Code, 1860) 1

(ii) (See under: Penal Code, 1860 and Criminal Trial) 629

(7) s.319.
(See under: Constitution of India, 1950) 838

(8) (i) s.389 – Suspension of sentence pending appeal – Respondent, a sitting M.L.A. convicted u/ss. 147, 326 r/w s. 149 IPC and sentenced to seven years rigorous imprisonment – Appeal filed by respondent alongwith another convict before

High Court – High Court granting bail to him on the ground that he was a sitting M.L.A. – Held: High Court ought to have considered the serious nature of allegations, the findings recorded by trial court and the alleged involvement of respondent in more than one case for deciding as to whether it was a fit case for suspending the sentence awarded by trial court and his release on bail during pendency of appeal – The High Court was mainly impressed by the fact that respondent was a sitting M.L.A. – There was another convict also who had preferred appeal challenging the judgment of trial court – Law treats all equally – The order of High Court is set aside and matter remitted to it for consideration afresh – Penal Code, 1860 – ss. 147, 326 r/w s.149.

(ii) s.482 – Scope of, while hearing the applications seeking suspension of sentence filed by the convicted person – Held: High Court in exercise of its power u/s.482 can always pass order and may hear even an intervener while considering the application seeking suspension of the sentence pending appeal.

Kanaka Rekha Naik v. *Manoj Kumar Pradhan & Anr.* 842

(9) (i) s.406 – Transfer petition – Petitioner's father brutally murdered in broad daylight – Accused belonging to powerful gang operating in the State – Records showed threat administered to the petitioner and family by accomplices of the accused – No action taken by police or State Government to afford protection to petitioner/his family or to thwart threats made by accused – Four accused already enlarged on bail but police or State Agency not taken steps for cancellation

of their bail order – Sincerity/effectiveness of prosecuting agency apparent from such conduct – The reluctance of the witnesses to go to the court at Haridwar in spite of receipt of repeated summons bound to hamper the course of justice – Petitioner able to make out a case that there would be failure of justice and resultant acquittal of the accused only on account of threats to the witnesses – On the facts and circumstances of the case and in the interest of justice, the transfer of the case from Haridwar to Delhi ordered.

(ii) s.311 – Power of court to summon and examine witnesses – Role of Presiding Judge – Held: The Judge has to take participatory role in the trial – He is not to act like a mere tape-recorder to record whatever is stated by the witnesses – s.311 CrPC and s.165 of the Evidence Act confer vast and wide powers on court to elicit all necessary materials by playing an active role in the evidence collecting process – Evidence Act – s.165.

Vikas Kumar Roorkewal v. *State of Uttarakhand and Ors.* 279

(10) s.475.
(See under: Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978) 295

COMPENSATION:
(See under: Motor Vehicles Act, 1939) 160

CONDUCT OF ELECTION RULES, 1961:
r. 15.
(See under: Representation of the People Act, 1951) 796

CONSTITUTION OF INDIA, 1950:

(1) Articles 14, 16 and 226.
(See under: Service Law) 707

(2) Article 20(2).
(See under: Service Law) 266

(3) Articles 27, 14, 15 and 32 – Article 27 – When attracted – Held: Article 27 is a provision in the Constitution, and not an ordinary statute – It is attracted when the statute by which the tax is levied specifically states that the proceeds of the tax would be utilized for a particular religion – Article 27 would be attracted even when the statute is a general statute, like the Income Tax Act or the Central Excise Act or the State Sales Tax Acts, which do not specify for what purpose the proceeds would be utilized provided that a substantial part of such proceeds are in fact utilized for a particular religion.

(Also see under: Haj Committee Act, 2002)

Prafull Goradia v. *Union of India* 579

(4) (i) Articles 32, 14 and 19 – Public interest litigation – Petition under Article 32 by a non-governmental organization – Seeking direction to Union of India and other States to ban mining and manufacturing activities in asbestos or its allied products – Held: There is no law banning the use of asbestos in various manufacturing processes despite its adverse effects on human health – All the laws in force have been complied with and directions of Supreme Court in the case on similar issue have been carried out – More so, there is lack of specific data as also there are vague averments in the writ petition – Also, the writ petition is a result of business rivalry and has been

filed by the petitioner at the behest of other industries to ultimately cause material and business gains to that or such other companies – Thus, it lacks bona fide and is complete abuse of process of law – Certain directions issued – Public interest litigation.

(ii) Article 32 – Public interest litigation – Maintainability of – Held: Petitions which are bona fide and genuine, not motivated by extraneous considerations and in public interest alone, are entertained in this category – Litigant is under an obligation to disclose true facts and approach the Court with clean hands – Courts while exercising jurisdiction has to take great care that wide jurisdiction should not become a source of abuse of process of law by disgruntled litigant.

Kalyaneshwari v. *Union of India & Ors.* 894

(5) Article 136.
(See under: Penal Code, 1860) 27

(6) Article 136 – Appeal – Similar relief to non-appellants – Claims Tribunal allowed two claim petitions filed by heirs of two victims of a motor accident and held them entitled to specified amounts of compensation – Appeal before Supreme Court only in one case by heirs of one of the deceased – Directions given to insurance company for payment of compensation to heirs of both the deceased in both the cases – Motor Vehicles Act, 1988 – Appeal.

(Also see under: Motor Vehicles Act, 1988)

Pushpa @ Leela & Ors. v. *Shakuntala & Ors.* 334

(7) Article 136 – Application u/s.319 CrPC to

implead respondents no. 3 to 9 as co-accused in the trial of the petitioner – Trial court allowed the application – High Court set aside the order of trial court – Special leave petitions – Plea of petitioner that question of prejudice is not relevant in proceedings u/s.319 – Held: The question of prejudice in proceedings u/s.319 may not be relevant at the stage of proceedings before the trial court u/s.319 but it is certainly relevant to proceedings under Article 136 which is discretionary jurisdiction – Article 136 is not a regular form of appeal – It is a residual provision which enables the Supreme Court to interfere with any order of any court or tribunal in its discretion and in exceptional circumstances – In the instant case, the impugned judgment of High Court did not cause any prejudice to the petitioner since no observation on merits of the case was made by the High Court against the petitioner – Merely because the petitioner alleged that respondent Nos. 3 to 9 were also guilty of the same crime is not relevant to interfere with the impugned judgment u/Article 136 when no prejudice had been caused to the petitioner – Trial court directed to complete the trial uninfluenced by any observations made by the High Court – Code of Criminal Procedure, 1973 – s.319.

Keshav Prasad Sharma v. *Indian Oil Corporation & Ors.* 838

(8) Articles 226 and 136 – Jurisdiction under – Two paintings seized by A.S.I. – F.I.R. registered by CBI for offences punishable u/s. 120-B IPC and u/s 25 r/w s.3 of Antiquities and Art Treasures Act, and charge-sheet filed – Writ petition before High Court seeking to quash the FIR and the

charge-sheet – Held: After registration of FIR, CBI made detailed investigation in the matter and also filed charge-sheet –Trial court having taken cognizance of offences has framed charges against all concerned – High Court rightly refused to exercise its discretion under Article 226 – On facts and in the circumstances, it is not possible at this stage to quash the FIR and the court is not inclined to exercise discretion under Article 136 – Trial court would proceed to consider as to whether the paintings in question are antiquities as alleged by prosecution – Antiquities and Art Treasures Act, 1972 – ss. 3 and 25 – Penal Code, 1860 – s. 120-B

M/s B. Fine Art Auctioneers Pvt. Ltd. & Ors. v. *C.B.I. & Anr.* 563

(9) Article 227.
(See under: Code of Criminal Procedure, 1973) 436

(10) (i) Article 246, Seventh Schedule, List III, Entry 42, List II, Entries 5 and 8 – Acquisition of land under Bangalore Development Authority Act, 1976 – Held: BDA Act provides for formulation and implementation of schemes relating to development – Acquisition of land is neither its purpose nor its subject, but is merely an incidental consequence of principal purpose of development of land – The State Legislature is competent to enact such a law and it is referable to power and field contained in Article 246(2) r/w Entries 5 and 18 of List II of Seventh Schedule – Entry 42 of List III relates to ‘acquisition and requisitioning of property’ – Development is not a subject that finds a place either in the Concurrent List or in the Union List – It cannot be said that Entry 42 of List III

denudes the State Legislature of the power to the extent that in an enactment within its legislative competence, it cannot incidentally refer/enact in regard to the subject matter falling in Concurrent List.

(ii) Article 246, Seventh Schedule, Lists I, II and III – Legislative power of the Centre and the States – Held: It is the essence of a Federal Constitution that there should be distribution of legislative powers between the Centre and the Provinces – Entries in the legislative Lists are not the source of power for the legislative constituents, but they merely demarcate the fields of legislation – The power to legislate flows, amongst others, from Article 246 – Land Acquisition Act relates to Entry 42 of List III while BDA Act is relatable to Entries 5 and 18 of List II – Doctrine of separation of powers.

(iii) Article 254 – Rule of repugnancy – Held: Repugnancy would arise only when the provisions of Provincial law and those of Central legislation both are in respect of the matter enumerated in concurrent list, and they are repugnant to each other – To examine the repugnancy the doctrine of pith and substance is to be applied – Repugnancy would arise in the cases where both the pieces of legislation deal with the same matter but not where they deal with separate and distinct matters, though of a cognate and allied character – To the doctrine of occupied field resulting in repugnancy, the principle of incidental encroachment would be an exception – On due application of the principle, BDA Act is actually referable to Entry 5, List II of the Seventh Schedule – Even if s.36 of BDA Act is said to be traceable

to Entry 42 of List III, in that event this reference would have to be suppressed to give weightage to provisions aimed at development referable to Entries 5 and 18 of List II – Doctrines of pith and substance, overlapping, and incidental encroachment, doctrines of ancillariness, Concept of fragmentation (disintegration), doctrine of severability – Discussed – Interpretation of Constitution – Legislative entries – Interpretation of Statutes – Precedent.

(Also see under: Bangalore Development Authority Act, 1976)

Offshore Holdings Pvt. Ltd. v. *Bangalore Development Authority & Ors.* 453

(11) Articles 367(2) and 213(2) – Held: An ordinance promulgated by the President or the Governor has the same force and effect as an Act of Parliament or Act of State Legislature – Articles 367(2) and 213(2) make it abundantly clear that an ordinance operates in the field it occupies with the same rigour as an Act – Haryana General Sales Tax (Second Amendment) Ordinance no.2 of 1990.

(Also see under: Haryana General Sales Tax Act, 1973)

United Riceland Ltd. v. *State of Haryana and Anr.* 186

(12) (See under: Secularism) 929

(13) Seventh Schedule, List I, Entry 84. (See under: Central Excise Act, 1944) 741

CONTRACT:

Construction contract – Claim for additional work carried out – Refused on the ground that the claim

was laid after receiving final payment – Held: If there is accepted claim, the court cannot reject the same merely because the contractor has issued "No Due Certificate" – Principles as regards claims after acceptance of final bill, enumerated – In the instant case, the contractor accepted the amount of the final bill under protest – The contractor had performed additional work and had a genuine claim which was considered in detail and was rightly allowed by trial court – High Court without adverting to factual details erred in reversing the judgment and decree of trial court on the ground of estoppel – Instead of remitting the matter to High Court, claim examined on merits – Judgment of High Court set aside and judgment and decree of trial court restored – Estoppel.

R. L. Kalathia & Co. v. *State of Gujarat* 391

CRIMES AGAINST WOMEN:

(1) (See under: Penal Code, 1860) .... 94, 110, 406 and 724

(2) (See under: Sentence/sentencing) 829

CRIMINAL COURTS AND COURT MARTIAL (ADJUSTMENT OF JURISDICTION) RULES, 1978:

Rule 3 r/w s.475, Cr.P.C. – Naval Officers-accused arrested for offences punishable u/ss. 143, 147, 148. 452, 307, 326, 427 r/w s.149, IPC – Remanded to judicial custody – Application by the Commanding Officer of the Naval unit for handing over the accused for trial under the Navy Act – Held: Not maintainable at this stage since the investigation had not been completed and charge-sheet was yet to be submitted – The option

as to whether the accused be tried before the criminal court or by a court martial could be exercised only after police had completed investigation and submitted the charge-sheet and the provisions of the Rules could not be invoked in a case where police has merely started the investigation against the personnel who is subject to Military, Naval or Air Force law – Navy Act, 1957 – Code of Criminal Procedure, 1973 – s.475.

S. K. Jha Commodre v. *State of Kerala and Anr.* 295

CRIMINAL JURISPRUDENCE:

(See under: Appeal) 929

CRIMINAL LAW:

(1) Benefit of doubt.

(See under: Penal Code, 1860) .... 629 and 1062

(2) Framing of charges.

(i) (See under: Penal Code, 1860) 110

(ii) Framing of charge – Accused charged with offences punishable u/s 302 read with s.120-B IPC – Conviction by Supreme Court u/s. 304(Part II)/34 IPC – Held: Unless parties satisfy the court that there has been failure of justice from non-framing of charge under a particular provision and some prejudice has been caused to them, conviction under such provision of law is sustainable – Penal Code, 1860 – s. 304(Part-II)/34.

(Also see under: Penal Code, 1860 and Criminal Law)

S. Ganesan v. *Rama Raghuraman & Ors.* 27

(3) (i) Motive; Right of self defence.
(See under: Penal Code, 1860) 27

(ii) Motive – Held: In cases based on circumstantial evidence, motive for committing the crime assumes great importance – Absence of motive would put the court on its guard to scrutinize the evidence very closely to ensure that suspicion, emotion or conjecture do not take the place of proof – In a case where there is motive, it affords added support to the finding of the court that the accused was guilty of the offence charged with.
(Also see under: Penal Code, 1860 and Evidence)

State through C.B.I. v. *Mahender Singh Dahiya* 1104

CRIMINAL TRIAL:
Framing of charges and examination of accused u/s. 313 CrPC in State of Bihar – Patna High Court asked to take note of the neglectful way in which some of the courts in the State appear to be conducting trials of serious offences and take appropriate corrective steps – Code of Criminal Procedure, 1973 – s.313 – Penal Code, 1860 – s.302.
(Also see under: Penal Code, 1860)

Sajjan Sharma v. *State of Bihar* 629

CUSTOMS TARIFF ACT, 1975:
(1) s.9-A – Anti dumping duty – Refund of – Held: In view of the fact that importers and its constituent members have passed on the burden of levy on third persons, they cannot claim refund of the anti-dumping duty levied – Doctrine of unjust enrichment is attracted – Customs Tariff

(Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.
(Also see under: Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995)

Automotive Tyre Manufacturers Association v. *The Designated Authority & Ors.* 198

(2) (i) s.130-A – Application by Revenue – Held: It is for the party applying for reference to clearly state the question of law which he seeks to be referred – In the instant case, the Revenue did not assail the Tribunal's finding to the effect that the facts in the case were similar to those in the cited judgment – Unless the correctness of facts, on the basis whereof an inference is drawn by the Tribunal, is put in issue, a question of law does not arise from its order – Revenue did not discharge its burden u/s 130-A in as much as it did not specifically challenge the Tribunal's finding as being perverse – Therefore, the High Court was justified in declining to issue direction to the Tribunal to make a reference u/s 130A.

(ii) s.111(d), 112 and 125 – Confiscation of imported goods – Redemption fine and penalty – Held: A standard formula cannot be laid down for imposition of redemption fine and penalty under the provisions of the Act and each case has to be examined on its own facts but when a final fact finding body returns a finding that the facts obtaining in each of the cases before it are similar, and such finding is not questioned, levy of redemption fine or penalty uniformly in all such

cases cannot be construed as laying down an absolute formula.

Commissioner of Customs (Import) v. *Stoneman Marble Industries & Ors.* 545

CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND COLLECTION OF ANTI-DUMPING DUTY ON DUMPED ARTICLES AND FOR DETERMINATION OF INJURY) RULES, 1995:

(i) Rules 4, 5, 6, 10 11, 17 r/w s. 9 of Tariff Act – Functions of Designated Authority (DA) – Quasi judicial in nature – Investigation and findings by DA as to existence, degree and extent of alleged dumping, determination of normal value, export price and margin of dumping and determination of injury – Held : DA performs quasi-judicial functions under the Tariff Act read with Rules and is bound to act judicially – While determining the existence, degree and effect of the alleged dumping the DA determines a 'lis' between the persons supporting the levy of duty and those opposing the said levy – Customs Tariff Act, 1975 – s.9-C.

(ii) Rules 4,5,6 and 17 – Investigation as to existence degree and extent of alleged dumping and final finding thereon – Opportunity of oral hearing – Held: DA is obliged to follow the principles of natural justice – The procedure prescribed in the Rules imposes a duty on DA to afford to all the parties, who have filed objection and adduced evidence, a personal hearing before taking a final decision in the matter – Even written arguments are no substitute for an oral hearing – In the instant case, the entire matter had been

collected by the predecessor of the DA, but the final findings in the form of an order were recorded by the successor DA who had no occasion to hear the appellants – The final order of the new DA offends the basic principle of natural justice and, as such, is quashed – Consequently, the decision of the Tribunal is set aside and the notification dated 27.4.2006 is quashed – Administrative Law – Principles of natural justice – Oral hearing – Doctrines – Audi alteram partem.

(Also see under: Customs Tariff Act, 1962)

Automotive Tyre Manufacturers Association v. *The Designated Authority & Ors.* 198

DELAY/LACHES:

Delay in lodging FIR.

(See under: FIR and Penal Code, 1860) .... 48 and 406

DELHI POLICE ESTABLISHMENT ACT, 1946: s.3.

(See under: Terrorist and Disruptive Activities (Prevention) Act, 1987) 997

DOCTRINES/PRINCIPLES:

(1) *Audi alteram partem*.

(See under: Customs Tariff (Identification, Assessment And Collection Of Anti-Dumping Duty On Dumped Articles And For Determination of Injury) Rules, 1995) 198

(2) (i) Doctrine of ancillariness.

(ii) Concept of fragmentation (disintegration).

(iii) Doctrine of incidental encroachment.

(iv) Doctrine of occupied field.

(v) Doctrine of overlapping.

(vi) Doctrine of pith and substances.

(vii) Rule of repugnancy.

(viii) Doctrine of separation of powers.

(ix) Doctrine of severability.
(See under: Constitution of India, 1950) 453

(3) Doctrine of double jeopardy.
(See under: Service Law) 266

(4) Doctrine of equal pay for equal work.
(See under: Service Law) 883

(5) Doctrine of merger.
(See under: Judgments/Orders) 741

(6) Doctrine of unjust enrichment.
(See under: Kerala General Sales Tax Act, 1963) 371

DRUGS AND COSMETICS ACT, 1940:

(i) Object of the Act – Discussed.

(ii) Prohibition on the sale of physician samples intended for distribution to medical practitioner as free samples by r.65(18) of Drugs Rules – Held: Shall have no bearing or effect on the levy of excise duty since excise is duty on manufacture and duty is payable whether or not goods are sold – The Central Excise Act and the Drugs Act and the Rules made thereunder, operate in entirely two different fields having different objects, purposes and schemes – The conditions or restrictions contemplated by one statute should not be lightly and mechanically imported and applied to fiscal statue for non levy of excise duty, thereby causing a loss of revenue – Interpretation of statutes.

(Also see under: Central Excise Act, 1944 and Drugs and Cosmetics Rules, 1945)

Medley Pharmaceuticals Ltd. v. *The Commissioner of Central Excise and Customs, Daman* 741

DRUGS AND COSMETICS RULES, 1945:

Rule 96(1)(ix) – Labeling – Label "Physician Samples-Not to be sold" – Process of labeling is distinct or different from overprinting on the label of a physician's sample – Manufacture for the purpose of the Central Excise Tariff Act cannot be said to be incomplete until 'Physicians Sample-Not to be Sold' is printed on the label – Drugs and Cosmetics Act, 1940.

(Also see under: Central Excise Act, 1944 and Drugs and Cosmetics Act, 1940)

Medley Pharmaceuticals Ltd. v. *The Commissioner of Central Excise and Customs, Daman* 741

ELECTION LAWS:

Trial of election petition – Rule of appreciation of hearsay evidence – Application of – To determine whether the result of the election of the returned candidate was materially affected due to change of venue of the polling station – Held: Rule of appreciation of hearsay evidence would apply – Evidence – Hearsay evidence.

(Also see under: Representation of the People Act, 1951 and Evidence)

Kalyan Kumar Gogoi v. *Ashutosh Agnihotri and Anr.* 796

ESTOPPEL:

(See under: Contract) 391

EVIDENCE:

(1) (i) Age of prosecutrix – Medical evidence and oral testimony – The evidence of prosecutrix and her elder brother stating her age as 13 years at the relevant time – Medical evidence indicating her age as 17 years – Held : The trial court on consideration of evidence on record rightly recorded a categorical finding that the prosecutrix was about 17½ years of age at the time of occurrence – It cannot be said that best evidence has been withheld – There is no rule, much less an absolute rule that two years have to be added to the age determined by the doctor – High Court fell in grave error in observing that prosecutrix could be even 19 years of age at the time of occurrence.

(ii) Evidence of the victim of rape – Held: A victim of sexual assault is not an accomplice to the crime – Her evidence is similar to that of an injured complainant or witness – The testimony of prosecutrix, if found reliable, by itself may be sufficient to convict the culprit and no corroboration of her evidence is necessary – Court must be sensitive and responsive to the plight of such victim of sexual assault.

(Also see under: Penal Code, 1860)

State of U.P. v. *Chhoteylal* 406

(2) Circumstantial evidence:

(i) Circumstantial evidence – Offences punishable u/ss 302/120-B IPC – Evidence against 'mastermind'/'kingpin' of criminal conspiracy – Appreciation of – Penal Code, 1860 – ss. 302/

120-B.

(Also see under: Penal Code, 1860 and Terrorist And Disruptive Activities (Prevention) Act, 1987)

Manjit Singh @ Mange v. *CBI, through its S. P.* 997

(ii) Circumstantial evidence – Suspicion, no matter how strong, cannot and should not be permitted to take the place of proof – Therefore, courts are to ensure a cautious and balanced appraisal of the intrinsic value of the evidence produced in Court.

(Also see under: Criminal Law and Penal Code, 1860)

State through C.B.I. v. *Mahender Singh Dahiya* 1104

(iii) (See under: Penal Code, 1860) 27

(3) Confession – Extra-judicial confession. (See under: Penal Code, 1860) 124

(4) (i) Hearsay evidence – Meaning of.

(ii) Hearsay evidence – Not received as relevant evidence – Reasons for – Explained.
(Also see under: Representation of the People Act, 1951)

Kalyan Kumar Gogoi v. *Ashutosh Agnihotri and Anr.* 796

(5) (See under: Penal Code, 1860) .... 556 and 929

(6) Suicide note – Evidentiary value of – Held: The authorship of the suicide note was not proved by producing witnesses nor the said document

was sent to handwriting expert along with the admitted signature of the deceased for comparison – Prosecution could not establish nexus of the deceased with the said note – Onus was on the accused to establish his defence by sufficient evidence to rebut presumption that he had caused the dowry death, which he failed to discharge – Courts below were right in ignoring the said note – Penal Code, 1860 – ss.304B and 498A.

(Also see under: Penal Code, 1860 and Evidence Act, 1872)

Bansi Lal v. *State of Haryana* 724

EVIDENCE ACT, 1872:

(1) s.105.

(See under: Penal Code, 1860) 133

(2) (i) s.113A and s.113B – Distinction between – Explained.

(ii) s.113B – Necessary ingredients – Discussed.

(Also see under: Penal Code, 1860 and Evidence)

Bansi Lal v. *State of Haryana* 724

(3) s.165.

(See under: Code of Criminal Procedure, 1973) 279

FINANCE ACT, 1994:

s.65, Clause 105 (zzm) and 3(d) – Licence granted by Airports Authority of India(AAI) to appellant for collecting airport admission ticket charges on behalf of AAI for which the appellant was required to pay monthly licence fees – Liability of the appellant to pay service tax – Held: Though the appellant deposited monthly licence

fees to AAI but it collected the required fees from the users of the facility and provided all facilities to such customers – Appellant being a person authorized by AAI to provide taxable service in express terms and conditions, it became liable to pay tax as in terms of the operation of s.65, Clause 105 (zzm) – Service Tax.

(Also see under: Words and Phrases)

P.C. Paulose, M/s. Sparkway Enterprises v. *Commissioner of Central Excise and Customs* 872

FIR:

(1) Delay in lodging FIR – Plea that FIR was registered belatedly and the time was used to falsely implicate the accused because of previous enmity – Held: Plea not tenable – The sequence of facts did not lead to an inference that there was delay in registration of FIR or it lacked spontaneity.

(Also see under: Penal Code, 1860 and Witnesses)

Himanshu @ Chintu v. *State of NCT of Delhi* 48

(2) Delay in registration of FIR – A village girl kidnapped from her village and taken to city – FIR registered after 10 days – Held: The brother has given a plausible explanation – The delay in registration of the FIR has been reasonably explained – Delay/Laches.

(Also see under: Penal Code, 1860 and Evidence)

State of U. P. v. *Chhoteylal* 406

GOVERNMENT AND AIDED HOSTELS MANAGEMENT RULES, 1982:
rr.5, 9 and 11.
(See under: Service Law) 707

GUIDELINES/SUGGESTIONS:
(1) (See under: Administration of Justice and Penal Code, 1860) 406

(2) (See under: Alternative Disputes Redressal) 387

(3) (See under: Contract) 391

HAJ COMMITTEE ACT, 2002:
Constitutional validity of the Act – Challenge to – Writ petition – Plea of the petitioner that he is a Hindu but has to pay direct and indirect taxes, part of whose proceeds go for the purpose of Haj pilgrimage, which is only done by Muslims – Held: Article 27 would be violated if a substantial part of the entire income tax/ central excise/customs duties/sales tax or any other tax collected in India, were to be utilized for promotion or maintenance of any particular religion or religious denomination – It is nowhere mentioned in the writ petition as to what percentage of any particular tax has been utilized for the purpose of the Haj pilgrimage – If only a relatively small part of any tax collected is utilized for providing some conveniences or facilities or concessions to any religious denomination, that would not be violative of Article 27 of the Constitution – Thus, there is no violation of Article 27 nor of Articles 14 and 15 of the Constitution – Constitution of India, 1950 – Articles 27, 14, 15 and 32.

(Also see under: Constitution of India, 1950)

Prafull Goradia v. *Union of India* 579

HARYANA GENERAL SALES TAX ACT, 1973:
s.9(1)(b) – Exemption under – Assessment year 1990-91 – Held: The benefit of the exemption contained in s.9(1)(b) is available to the dealer only upto 15th October, 1990 i.e. the date when Ordinance no.2 of 1990, deleting s.9 was promulgated – The dealer would not be liable to pay purchase tax on the purchase of paddy made by them upto 15th October, 1990 – Haryana General Sales Tax (Second Amendment) Ordinance no.2 of 1990.
(Also see under: Constitution of India, 1950)

M/s. United Riceland Ltd. v. *State of Haryana and Anr.* 186

HARYANA GENERAL SALES TAX (SECOND AMENDMENT) ORDINANCE NO.2 OF 1990:
(See under: Haryana General Sales Tax Act, 1973 as also Constitution of India, 1950) 186

HINDU ADOPTION AND MAINTENANCE ACT, 1956:
(i) s.7, proviso – Held: Consent of wife is a condition precedent for adoption by a male Hindu – Consent should either be in writing or reflected by an affirmative/positive act voluntarily and willingly done by her – Presence of wife as a spectator in the assembly of people who gather at the place where the ceremonies of adoption are performed cannot be treated as her consent – Wife's silence or lack of protest on her part also would not give rise to an inference that she had consented to the adoption – No evidence was

produced to prove that the wife was a signatory to the adoption deed or was present at the time of its execution and/or registration – Therefore, the contents of adoption deed could not be made basis for assuming that the wife was a party to the adoption – Wife had succeeded in proving that the adoption was not valid – Therefore, the suit for partition based on adoption was not maintainable.

(ii) s.7, proviso – Interpretation of the term 'consent' used in the proviso – Held: The term 'consent used in the proviso to s.7 and the explanation appended thereto has not been defined in the Act – Therefore, while interpreting the provision, the court has to keep in view the legal position obtaining before enactment of the 1956 Act and the object of the new legislation and apply the rule of purposive interpretation and if that is done, it would be reasonable to say that the consent of wife envisaged in the proviso to s.7 should either be in writing or reflected by an affirmative/positive act voluntarily and willingly done by her – Interpretation of statutes – Purposive interpretation.

(Also see under: Hindu Law)

Ghisalal v. *Dhapubai (D) by LRs. and Ors.* 651

HINDU LAW:

Old and new law relating to adoption – Comparison between – Hindu Adoption and Maintenance Act, 1956.

Ghisalal v. *Dhapubai (D) by LRs. and Ors.* 651

IDENTIFICATION/TEST IDENTIFICATION PARADE:

Identification – Photo identification and

identification of the accused by the witnesses done for the first time before the trial court without being corroborated by Test Identification Parade or any other material – Evidentiary value – Held: Though such identification is permissible but cannot be given credence without further corroborative evidence – On facts, for many days, eye-witnesses never came forward before the IOs and the police personnel claiming that they had seen the occurrence – As such, their testimony about the identification of the accused other than A-1 and A-3 before the trial court for the first time without corroboration by previous TIP, not credible – As regards A-1 and A-3, they were identified which was also corroborated by the evidence of slogans given in their name and each one of the witnesses asserted the said aspect, thus, their identification can be relied upon.

(Also see under: Penal Code, 1860 and Code of Criminal Procedure, 1973)

Rabindra Kumar Pal @ Dara Singh v. *Republic of India* 929

INCOME TAX ACT, 1961:

(1) s.115JB(2) – Explanation, Clause (i) read with proviso – Appellant-assessee had revalued its fixed assets as on 31.03.2000 (relevant to assessment year 2000-01) – Resultant surplus stood added to the cost of the assets – Revaluation reserve of equivalent amount was created on the liability side – During assessment year 2001- 02, Rs.26,11,74,000/-, being the differential depreciation, transferred out of revaluation reserve and credited to P & L Account which the A.O. disallowed and consequently the said sum of Rs. 26,11,74,000/- stood added back

to the net profits – Challenge to, by assessee – Held: Clause (i) of the explanation to s.115JB(2) mandates reduction from the net profits the amount(s) withdrawn from the reserves earlier created, provided such amount(s) is credited to P & L Account – Adjustment made in the P & L Account was primarily in the nature of contra adjustment in the P & L Account and not a case of effective credit in the P & L Account (as contemplated in clause (i) of Explanation) – The proviso to clause (i) of the Explanation to s.115JB(2) comes in the way of the claim for reduction made by the assessee under clause (i) to the Explanation – As the amount of revaluation reserves had not gone to increase the book profits at the time it was created, the benefit of reduction cannot be allowed.

Indo Rama Synthetics (I) Ltd. v. *C.I.T., New Delhi* 853

(2) ss. 115JA/115JB and 234B/234C – MAT Companies – Interest on tax calculated on book profits – Held: Interest u/ss 234B and 234C shall be payable on failure to pay advance tax in respect of tax payable u/ss 115JA/115JB – Circular No. 13/2001 dated 9.11.2001 issued by CBDT.

Jt. C. I. T., Mumbai v. *M/s Rolta India Ltd.* 146

INDUSTRIAL RECONSTRUCTION BANK OF INDIA ACT, 1984:
s.40 – Enforcement of claims by the Reconstruction Bank (IRBI) – Industrial concern defaulting in repayment of loan given by IRBI – Subsequent transfer of undertakings of IRBI to Industrial Investment Bank of India Ltd. (IIBIL) in 1997 – Application by IIBIL against industrial

concern u/s. 40 of the 1984 Act before the High Court – Held: Maintainable – Industrial Reconstruction Bank (Transfer of Undertaking and Repeal) Act, 1997 – ss. 4(4), 13(2)(b).

Industrial Investment Bank of India Ltd. v. *M/s Jain Cables Pvt. Ltd. & Ors.* 82

INDUSTRIAL RECONSTRUCTION BANK (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 1997:
ss. 4(4), 13(2)(b).
(See under: Industrial Reconstruction Bank of India Act, 1984) 82

INHERENT POWERS OF COURT:
(1) (See under: Code of Civil Procedure, 1908) 321

(2) (See under: Code of Criminal Procedure, 1973) 436

INTERIM ORDERS:
(See under: Service Law) 707

INTERPRETATION OF CONSTITUTION:
Legislative entries – Interpretation of.
(See under: Constitution of India, 1950) 453

INTERPRETATION OF STATUTES:
(1) Legislation by incorporation.
(See under: Bangalore Development Authority Act, 1976) 453

(2) Purposive interpretation.
(See under: Hindu Adoption And Maintenance Act, 1956) 651

(3) (See under: Terrorist and Disruptive

Activities Prevention Act, 1987) 997

INTEREST:

(See under: Code of Civil Procedure, 1908) 66

JUDGMENTS/ORDERS:

Doctrine of merger – Held: In case, the appeal is dismissed without reasons, such order entail application of the doctrine of merger, wherein the superior court upholds the decision of the lower court from which the appeal has arisen – Doctrines – Precedent.

(Also see under: Central Excise Act, 1944, Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945)

Medley Pharmaceuticals Ltd. v. *The Commissioner of Central Excise and Customs, Daman* 741

JUDICIAL PROPRIETY:

Dispensing with personal presence of accused in court – High Court issuing general directions as regards dispensing with personal presence of accused u/s 205 and to accept written statement of the accused u/s 313 CrPC – Held: In the light of guidelines laid down by Supreme Court, further directions on same issue laid down by High Court are uncalled for – Code of Criminal Procedure, 1973 – ss. 205, 313 and 482 – Constitution of India, 1950 – Article 227.

TGN Kumar v. *State of Kerala and Ors.* 436

JUDICIARY:

Judicial Officers – Code of Conduct – Held: Judges' official and personal conduct must be in

tune with the highest standard of propriety and probity.

Also see under: Maharashtra Civil Services (Discipline and Appeal) Rules, 1979)

Arundhati Ashok Walavalkar v. *State of Maharashtra* 355

JURISDICTION:

(1) (See under: Constitution of India, 1950) 563

(2) (See under: Service Law) 707

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

(1) s.2(k), 2(l), 7-A, 20 and 49 – Determination of juvenility – Held: All persons below the age of 18 years on the date of commission of offence would be treated as juveniles, even if the claim of juvenility is raised after they have attained the age of 18 years on or before the date of commencement of the 2000 Act and were undergoing sentence upon being convicted – In the instant case, appellant was convicted u/s.376 r/w s.511, IPC – His age at the time of commission of offence was about 16 years, therefore, he is held to be a juvenile, within the meaning of s.2(l) of the amended 2000 Act – The sentence imposed is set aside and he is directed to be produced before the Juvenile Justice Board, for passing appropriate orders in accordance with the provisions of 2000 Act – Juvenile Justice Act, 1986 – s.2(h) – Juvenile Justice (Care and Protection of Children) Rules 2007 – rr.12 and 98 – Penal Code, 1860 – s.376 r/w s.511.

Daya Nand v. *State of Haryana* 173

(2) s.2(k), 2(l), 7A, 20 and 49 – Juvenile –

Determination of – Commission of offence punishable u/s. 302/34 IPC, in the year 1985 – Accused not 'juvenile within the meaning of the Juvenile Justice Act, 1986, but had not completed 18 years of age when offence was committed – Held: Accused entitled to the benefit of the 2000 Act – Accused would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of the commencement of the Act of 2000 – Accused have undergone sentence of more than three years, the maximum period provided under the 2000 Act, thus, sentences of life imprisonment awarded to them are set aside – Sentence/ Sentencing – Juvenile Justice Act, 1986 – Juvenile Justice (Care and Protection of Children) Rules, 2007 – rr. 12 and 98 – Penal Code, 1860 – s. 302/34.

Lakhan Lal v. *State of Bihar* 770

JUVENILE JUSTICE ACT, 1986:
s.2(h).
(See under: Juvenile Justice (Care and Protection of Children) Act, 2000) .... 173 and 770

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES 2007:
rr.12 and 98.
(See under: Juvenile Justice (Care and Protection of Children) Act, 2000) .... 173 and 770

KERALA GENERAL SALES TAX ACT, 1963:
s.44 – Refund – Exporters of tea – Claim for exemption from sales tax found genuine – Claim

for refund – Declined on the ground that refund can only be claimed by the dealer – Held: All the authorities have clearly recorded a finding that it is only the dealer of the tea on whom the assessment has been made, who can claim refund of excess tax and since the exporter is not the dealer, and the tax collected from him has been remitted by the dealer to the Government, exporter cannot claim the refund – In view of the facts of the case, doctrine of unjust enrichment is not attracted – Central Sales Tax Act, 1956 – Doctrine of unjust enrichment.
(Also see under: Central Sales Tax Act, 1956)

Saraf Trading Corporation Etc. Etc. v. *State of Kerala* 371

LABOUR LAWS:
Back wages – Award of Labour Court directing reinstatement of workman with 50% back wages – State Government filing writ petition challenging the part of the award granting back wages – Single Judge of the High Court setting aside the award in toto and directing compensation to be paid to workman – Order affirmed by Division Bench of High Court – Held: The order of the Single Judge as well as of the Division Bench was well beyond the scope of the prayers in the writ petition – A party must be held to be bound by its pleadings – The orders of High Court are set aside and that of the Labour Court is restored to the extent of reinstatement – Pleadings – Relief.

Ranbir Singh v. *The Executive Engineer* 587

LAND ACQUISITION ACT, 1894:
(1) (i) s.4(1) – Land acquisition for State Housing Board – Issuance of Notification dated 06.02.1992

– Determination of market value – Evidence relating to auction sales – Reference Court relying upon auction sale dated 02.01.1989 of a larger plot in the vicinity arrived at the market value as Rs. 4,62,494/- per acre – Compensation determined as Rs.2,17,372/- per acre, after deducting 53% towards development factor – However, the High Court relied on auction sale of a smaller plot dated 20.11.1989 – Compensation increased to Rs. 4,42,000/- per acre, after deducting 33% towards development factor – Held: Having regard to the proximity of location and the size of the acquired land, the reference court was justified in relying upon the auction sale transaction of a larger plot – The acquired lands being within the municipal limits with considerable development potential, adopting a cumulative increase of 10% per annum for three years, the market value as on 6.2.1992 will be Rs. 4,92,460/- per acre – A deduction of 20% is to be made to off-set the impact of competitive-hike involved in the auction sale – Having regard to the partial access to infrastructural facilities, a deduction of 40% towards cost of development is applied – Thus, rate per acre for the acquired land as on 06.02.1992 determined as Rs. 2,95,500/- per acre.

(ii) Market value of acquired land – Determination of comparable sale transaction – Auction Sale – Held: Element of competition in auction sales makes them unsafe guides for determining the market value – But where an open auction sale is the only comparable sale transaction available (on account of proximity in situation and proximity in time to the acquired land), the court may have to, with caution, rely upon the price disclosed by such auction sales, by providing an appropriate

deduction or cut to off-set the competitive-hike in value.

Executive Engineer, Karnataka Housing Board v. *Land Acquisition Officer, Gadag & Ors.* 600

(2) ss. 4(1) r/w s. 17 (as amended in Andhra Pradesh) – Land acquisition for public purpose – Issuance of preliminary and final Notification – Award not passed within stipulated period – Subsequent publication of another preliminary and final Notification – Relevant date for determination of market value for the purpose of compensation – High Court took the relevant date as the date of publication of the second preliminary Notification and awarded compensation at the rate of Rs. 15,000/- per acre – Held: State Government had clearly abandoned the earlier Notifications by issuing the subsequent Notifications – High Court was justified in holding that the compensation should be determined with reference to the date of publication of the second preliminary notification – Quantum of compensation awarded by High Court also does not call for interference since it was determined with reference to a sale transaction just a few days prior to the publication of the second preliminary notification.

Land Acquisition Officer-cum-RDO, Chevella Division Ranga Reddy District v. *A. Ramachandra Reddy & Ors.* 324

(3) (i) Allotment of land to land losers – Land acquisition for development of a city – Formulation of Scheme by State Urban Development Authority – Allotment of land to land losers/oustees – Rate

to be charged in regard to such allotment – Actual land cost plus development charges for the plots allotted to oustees/land losers or market price/ normal allotment price – Held: Land owners should be allotted plots under the scheme at the initial price at which the Layout/Sector plots were first offered for sale after the acquisition – Merely because HUDA delayed the allotment in spite of the applications of the oustees and the order of the High Court, and made the allotments only after a contempt petition was filed, does not mean that the oustees become liable to pay the allotment price prevailing as on the date of allotment.

(ii) 'Normal allotment rate' – Meaning of.

Brij Mohan & Ors. v. *Haryana Urban Development Authority & Anr.* 12

(4) ss. 6 and 11-A.
(See under: Bangalore Development Authority Act, 1976) 453

LAND LAWS AND AGRICULTURAL TENANCY:
De-reservation of gochar land.
(See under: Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949) 687

LEGISLATION:
(1) Legislation by incorporation.
(See under: Bangalore Development Authority Act, 1976) 453

(2) Procedural and other laws need to be amended in order to fast track the trial of criminal cases of corruption, dowry death, domestic violence, sexual assault, financial fraud and cyber crimes.
(See under: Administration of Criminal Justice

and Penal Code, 1860) 406

LIMITATION:
(See under: Maharashtra Civil Services (Discipline and Appeal) Rules, 1979) 355

LIMITATION ACT, 1963:
s.22 – Suit filed alleging that the defendants had illegally encroached on a public street – Trial court decreed the suit and issued permanent injunction – Decree challenged on the ground that the suit was barred by limitation – Held: The suit could not be said to be barred by limitation as encroachment on a public street is a continuing wrong and, therefore, there existed a continuing cause of action – s.22 would apply – Code of Civil Procedure, 1908.

Hari Ram v. *Jyoti Prasad & Anr.* 1076

MAHARASHTRA CIVIL SERVICES (DISCIPLINE AND APPEAL) RULES, 1979:
rr.3 (iii), 5 (1) (vii) – Misconduct by Judicial Officer – Charged with travelling ticket less in a local train and misusing her official identity card – Punishment of compulsory retirement by disciplinary authority – Justification of – Held: Justified – Offence as alleged against the officer in memo of charges, established on her own showing, thus, the Inquiry officer was justified in holding that charges levelled against her stood proved – Punishment of compulsory retirement awarded to her not disproportionate to the offence.
(Also see under: Judiciary)

Arundhati Ashok Walavalkar v. *State of Maharashtra* 355

MAINTENANCE:

(See under: Code of Criminal Procedure, 1973) 644

MOTOR VEHICLES ACT, 1939:

ss. 110A and 92A – Claim for no-fault compensation u/s.92A – Allowed by the Supreme Court holding that the fire and explosion of the petrol tanker resulting in the death of victim was due to accident arising out of the use of the motor vehicle, the petrol tanker – Applications u/s.110-A – Dismissed by Claims Tribunal, however allowed by the High Court holding that the order of the Supreme Court u/s.92A was conclusive on the issue – Held: On the basis of the evidences led by the opposite party, no new points were raised before the Claims Tribunal that can be said to have not been raised before the Supreme Court u/s. 92A – Decision rendered by the Supreme Court on an application u/s 92A was completely binding on the Claims Tribunal – Claims Tribunal could not come to any finding inconsistent with the decision of the Supreme Court.

New India Assurance Company ltd. v. *Yadu Sambhaji More & Ors.* 160

MOTOR VEHICLES ACT, 1988:

(1) ss. 163-A and 166 – Proceedings both u/ss. 163-A and 166 – Permissibility of – Motor accident resulting in death of a person – Application u/s.166 by legal heirs of the deceased – Subsequent application u/s. 163-A claiming no-fault compensation – Application u/s.163A partly allowed by the Tribunal – Thereafter, Tribunal permitting the claimants to proceed with the application filed u/s. 166 – Order of the Tribunal

upheld by High Court – Held: Claimant must opt/elect to go either for a proceeding u/s.163-A or u/s.166 but not under both – Claimants having obtained compensation, finally determined u/s. 163-A were precluded from proceeding further with the petition filed u/s. 166 – Thus, order of the Tribunal permitting the claimants to proceed further with the petition filed u/s. 166 as upheld by the High Court, not sustainable and is set aside.

Oriental Insurance Co. Ltd. v. *Dhanbai Kanji Gadhvi & Ors.* 784

(2) s.166 – Motor Accident – Right leg of claimant fractured – Claimant suffered 32% permanent disability – Her leg was shortened by two inch – PW1, one of the witnesses to the accident, took the appellant to the doctor's clinic – Claimant filed complaint in the office of SSP – Compensation claim – Tribunal awarded compensation of Rs.1,36,547/- along with 9% interest – High Court set aside the award – Held: Filing of complaint by the claimant is not disputed as it appears from the evidence of PW.3, the Assistant Complaint Clerk in the office of Superintendent of Police, Hisar – Consequently, the decision of the Tribunal cannot be reversed on the ground that nobody came from the office of SSP to prove the complaint – PW1 is not related to the appellant but as a good citizen, he extended his help to her to ensure that she got medical treatment – His evidence cannot be disbelieved just because he did not file a complaint himself – Finding of the High Court that as the claim petition was filed after four months of the accident, the same was "a device to grab money from the insurance company" was perverse in the absence of any material – In a

road accident claim, strict principles of proof in a criminal case are not attracted – Judgment of High Court quashed and that of the Tribunal restored.

Parmeshwari v. *Amir Chand & Ors.* 1096

(3) s.166 r/w. ss.2(30) and 50 – Fatal accident – Claim petitions by heirs of deceased persons – At the time of accident offending truck in possession of transferee but change of ownership not recorded in registration certificate – Truck covered under insurance policy taken out in the name of recorded owner – Claims Tribunal held the claimants entitled to compensation – Liability to pay compensation – Held: In view of the omission to change the name of owner in certificate of registration, the transferor (recorded owner) must be deemed to continue as the owner of the vehicle for the purposes of the Act – Therefore, he was equally liable for payment of compensation amount – Further, since the insurance policy was taken out in his name, he was indemnified and the liability will be shifted on the insurer.

(Also see under: Constitution of India, 1950)

Pushpa @ Leela & Ors. v. *Shakuntala & Ors.* 334

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

s.8 r/w s.18 – Accused cultivating opium under a licence – Recovery of undeclared opium from the field of the accused – Confession by the accused that they had withheld the opium to sell it in the market in an unauthorized manner – Conviction u/s. 8 r/w s.18 by courts below – Held: Justified – Rule 13, which makes it obligatory for an opium

producer to make a declaration to the Lambardar as to the quantity of opium produced everyday, was not complied with – Even though no independent witness supported the prosecution story, the evidence of the official witness is supported by the recovery of the opium and also by the confessions made by the accused that they had withheld the opium to sell it in the market – Narcotic Drugs and Psychotropic Substances Rule, 1985 – r. 13.

Daulat Ram & Anr. v. *CBN Mandsaur, M.P.* 1092

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES RULES, 1985:

r. 13.

(See under: Narcotic Drugs and Psychotropic Substances Act, 1985) 1092

NATURAL JUSTICE:

(1) Oral hearing.

(See under: Customs Tariff (Identification, Assessment And Collection Of Anti-Dumping Duty On Dumped Articles And For Determination of Injury) Rules, 1995) 198

(2) (See under: Service Law) 298

NAVY ACT, 1957:

(See under: Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978) 295

PENAL CODE, 1860:

(1) s.84 – Applicability of – Act done by a person by reason of unsoundness of mind – Held: Burden to prove unsoundness of mind u/s.105 of Evidence

Act is on the accused – In the instant case, the case of the accused did not come within the exception contemplated u/s.84 – The prosecution had proved that immediately after the accused shot dead the deceased, he threatened his driver of dire consequences – Not only that, he ran away from the place of occurrence and threw the weapon of crime in the well in order to conceal himself from the crime – Moreover, the fact that the accused was running a medical shop showed that he was mentally fit for same – Evidence Act, 1872 – s.105.

Surendera Mishra v. *State of Jharkhand* 133

(2) s.120-B.
(See under: Constitution of India, 1950) 563

(3) ss. 147, 326 r/w s.149.
(See under: Code of Criminal Procedure, 1973) 842

(4) s.202.
(See under: Bail) 590

(5) s.302.
(See under: Sentence/Sentencing) 829

(6) s.302 – Brutal murder – Accused burnt his wife and daughters – Dying declaration of daughter recorded by police – The declarant stated that accused came home late at night in an inebriate state and poured kerosene oil first on her mother and then on her and her sisters and when declarant tried to escape, accused caught hold of her, and in the process he himself received burn injuries – Conviction by trial court based on dying declaration – High Court held that the dying declaration did not inspire confidence and ordered acquittal – Held: The fact that the accused received burn

injuries was corroborated by the medical evidence – Dying declaration was recorded after the doctor certified fitness of the declarant to give dying declaration – There was no reason to disbelieve the dying declaration – High Court erred in passing order of acquittal – Order of conviction passed by trial court restored with sentence of life imprisonment.

State of Madhya Pradesh v. *Vishweshwar Kol* 790*

(7) s.302 – Death of appellant's wife due to cyanide poisoning – Allegation that appellant had mixed up cyanide in a cold drink bottle and given it to his wife to drink – Acquittal by trial court – Conviction by High Court u/s.302 and sentence of imprisonment for life – Held: There was no proof of the appellant's guilt and on the basis of the evidence on record it would be quite unsafe to hold him guilty of murder – Trial court had taken the perfectly correct view in the matter – High Court arrived at a completely erroneous conclusion regarding the appellant's guilt – Judgment of High Court set aside and that of trial court restored.

M. Nageshwar Rao v. *State of Andhra Pradesh* 608

(8) s.302 – Murder – Unlawful assembly carrying fire-arms caused the death of informant's uncle – Appellant's father and brother were seen as members of the unlawful assembly and were duly named in the Fard-e-beyan/FIR – Weapons carried by them were also identified and expressly mentioned in the Fard-e-beyan – Though appellant was not identified as one of the accused at the time of the commission of the offence, he was

later named among the accused – Conviction of accused-appellant – Challenge to – Dispute as to whether appellant was one of the accused taking part in the commission of the offence – Held: The informant did not name the appellant as one of the accused – The appellant was not named in the FIR – In the circumstances, it will not be wholly safe to maintain the conviction of the appellant u/s.302 and applying the rule of caution, he must be given the benefit of doubt – Conviction of appellant set aside – Code of Criminal Procedure, 1973 – s.313.

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

Sajjan Sharma v. *State of Bihar* 629

(9) s. 302 – Rioting, arson and murder of three persons – Christian Missionary from Australia, engaged in propagating and preaching Christianity in the tribal area – Father alongwith his two minor sons burnt to death by 50-60 miscreants – Conviction and sentence of 14 accused – High Court modifying death sentence awarded to A-1 to life imprisonment and upholding life imprisonment imposed on A-3 and acquitted the others – Held: Letters addressed by A-3 to the trial judge wherein he confessed his guilt, in the course of trial lend ample corroboration to his identification before the trial court by PW-23, even though no TIP was conducted by Judicial Magistrate – A-3 also addressed a letter to his sister-in-law, inculpating himself and A-1 – A-3 though denied the letters but it amounts to confession and lend support to the evidence in identification before the trial court for the first time

– A-3 in his statement u/s. 313 Cr.P.C. admitted to have set fire to the vehicles and confessed his guilt – Death of the victims by setting fire by the miscreants cannot be ruled out – Even in the midst of uncertainties, witnesses specified the role of A-1 and A-3 – However, more than 12 years having elapsed since the act was committed, life sentence awarded by the High Court upon them not enhanced – Sentence/Sentencing – Evidence.

(Also see under: Identification/Test Identification Parade and Code of Criminal Procedure, 1973).

Rabindra Kumar Pal @ Dara Singh v. *Republic of India* 929

(10) s.302 – Testimony of PW-1 that the accused persons assaulted his father and nephew with knives and spears, which led to their death – Three accused – Suggested previous enmity between the accused and PW1 – Incident occurred in the dead of night during mid winter – Witnesses claimed to have identified the accused with the aid of lantern and torches – Trial court acquitted all the accused – High Court, however, relied upon the evidence of PW-1, and reversed the order of acquittal – Meanwhile A-1 and A-3 died – Appeal by A-2 – Held: The lantern and the torch though allegedly seized were not produced in the court – Evidence of PW 1 did not inspire confidence, and presence of PWs 2 and 3 at the scene of offence was doubtful – Trial court rightly gave the benefit of doubt to the accused – The view taken by trial court was plausible and could not be held as perverse – High Court ought not to have interfered with the judgment of the trial court merely because there was a possibility of taking a

different view – A-2 entitled to benefit of doubt and acquitted.

Durbal v. *State of U.P.* 1062

(11) s.302/34.
(See under: Juvenile Justice (Care and Protection of Children) Act, 2000) 770

(12) ss.302/34 – Murder – Previous enmity of A-2 with the victim-deceased – A-2 came on the spot with other accused and pointed towards the deceased – One of the boys accompanying A-2 fired a shot at the deceased – Conviction of A-1 to A-4 by courts below – Appeal by A-2 and A-3 – Held: Evidence of eye-witness was duly corroborated by other witnesses – Discrepancies in the depositions of the prosecution witnesses were minor and not material to shake their trustworthiness and involvement of A-2 and A-3 – Complicity of A-2 and A-3 was duly established by medical and other evidence – Conviction upheld.

(Also see under: FIR and Witnesses)

Himanshu @ Chintu v. *State of NCT of Delhi* 48

(13) s.302 and s.201 – Diabolic murder – Circumstantial evidence – Allegation against accused of strangulating of his wife to death and dismemberment and mutilation of body parts – Trial court held that the circumstances pointed out towards the guilt of the accused and convicted him u/s.302 and s.201 – Acquittal by High Court on the ground that the prosecution failed to connect the accused with the alleged murder – Held: Prosecution had miserably failed to connect the

accused with the alleged murder of his wife – Explanation given by accused consistently from beginning was that the deceased had left him voluntarily – As regards the circumstances relating to the state of affairs that existed in the hotel room, the evidence of the hotel staff was inconsistent – Finger print expert was not able to connect the palm prints of body parts recovered with the palm prints of the deceased – The reports submitted by the doctors contained numerous discrepancies – Identification marks given by the witnesses did not coincide with the reports and, therefore, no reliance could be placed upon them for establishing the identity of the body parts as that of the deceased – An adverse inference against the accused cannot be drawn merely because he remained in hiding till he was arrested – Order of acquittal justified – Circumstantial evidence.

(Also see under: Criminal Law and Evidence)

State through C.B.I. v. *Mahender Singh Dahiya* 1104

(14) ss. 302, 302/34 and 302/120-B – Conviction based on circumstantial evidence – Out of the three accused prosecuted for assassination of an Additional Collector of Customs, two charged with offences punishable under Penal Code and ss. 3(2) and 3(3) r/w s. 3(1) of TADA Act – The third one was extradited from Singapore and in view of Extradition Treaty was charged only with ss. 302 and 120-B, IPC – Designated Court convicting all the three accused of the offences punishable u/ss. 302, 302/34 and 302/120-B IPC with imprisonment for life and acquitting the two accused of the offences punishable under TADA Act – Held: The evidence on record presents an

unimpeachable evidence against the accused, clearly indicating the modus operandi and the motive – The Designated Court has rightly convicted and sentenced the accused u/ss 302, 302/34 and 302/120-B IPC –It also rightly acquitted the accused of the charges under TADA Act – Terrorist and Disruptive Activities (Prevention) Act, 1987 – ss.3(2) and 3(3) r/w s. 3(1) – Evidence – Circumstantial evidence.

(Also see under: Terrorist and Disruptive Activities Prevention Act, 1987 and Evidence)

Manjit Singh @ Mange v. *CBI, through its S. P.* 997

(15) ss.302, 307 – Murder – Lathi blows given by accused-father to his three children resulting in death of 2 – Conviction u/s.302 and award of death sentence – Held: Evidence of eye witnesses was supported by the medical evidence – The nature of the injuries revealed that they were the result of a direct attack in a brutal and violent manner with a lathi – However, the case did not fall under the category of the rarest of the rare case – The offence was committed while the accused was in an inebriate condition and after a quarrel with his wife – The accused was a rickshaw puller aged about 28 years and a migrant in Chandigarh with the attendant psychological and economic pressures – To meet the ends of justice, sentence commuted to imprisonment for life – Sentence/ Sentencing.

Kamleshwar Paswan v. *State of U.T. Chandigarh* 647

(16) s.304(Part-I)/s.34 – Attempt made by accused to construct drain towards the victim's house in

violation of injunction order passed in favour of the victim – Altercation between the parties – Accused and others armed with gandasa and dangs inflicting injuries on the victim and on the eye-witnesses – Conviction of accused u/s.302/ 34 with life imprisonment by courts below on the basis of evidence of the injured eye witnesses – Held: Incident took place all of a sudden – No prior intention on part of the accused to commit murder – Thus, conviction modified from s.302/ 34 to s.304 (Part-I) r/w s.34 with 5 years rigorous imprisonment – Evidence – Witnesses – Sentence/Sentencing.

Gurdial Singh & Ors. v. *State of Punjab* 556

(17) s.304(Part-I)/s.302 – Accused's sister had love affair with the victim-deceased which was not liked by the accused – When accused saw the deceased with his sister, he assaulted him with a knife – Deceased died after three days – Conviction u/s.302 with life sentence – Held: It was a clear cut case of loss of self control that the accused caused injuries to deceased – Blow was not with full force as was apparent from the medical evidence – The act was not pre-meditated – The accused had not taken any undue advantage nor did he act in cruel or unusual manner – In the facts and circumstances of the case, conviction of the accused altered from s.302 to s.304 (Part-I) with ten years rigorous imprisonment.

Mangesh v. *State of Maharashtra* 72

(18) s.304 (Part-II)/s.302 – Quarrel between parties – Victim, under the influence of liquor, refused to leave the house of the accused – Accused dragged the victim out of his house and also

inflicted blow on his head with a spade, resulting in his death seven days later – Conviction u/s.302 by High Court setting aside the order of acquittal by trial court – Held: Accused had no intention to kill the victim – However, blow was given on a vital part – Accused convicted u/s. 304 (Part-II) with five years of rigorous imprisonment – Evidence – Extra-judicial confession – Witnesses – Sentence/Sentencing.

Laxmichand @ Balbutya v. *State of Maharashtra* 124

(19) s.304(Part-II)/34 – Culpable homicide not amounting to murder – A married couple hitting the victim and causing his death – Circumstantial evidence – Conviction by trial court u/s 302 r/w s.120-B – Acquittal by High Court – Held: The High Court neither dealt with any of the incriminating circumstances pointed out by the prosecution nor did it address itself to the relevant issues involved in the appeal – Therefore, judgment of the High Court suffers from perversity and is set aside – There are circumstances in favour of the accused to show that in spite of the fact that they had committed the offence they did not intend to kill the deceased, but exceeded their right of self-defence – They are accordingly convicted u/s 304(Part II)/34 with a sentence of 5 years RI – Sentence/Sentencing – Mitigating circumstances – Evidence – Circumstantial evidence – Criminal Law – Motive – Right of self defence – Appeal against acquittal – Constitution of India, 1950 – Article 136.

(Also see under: Criminal Law)

S. Ganesan v. *Rama Raghuraman & Ors.* 27

(20) s.306 – Suicidal death of a pregnant woman in her matrimonial home within 4 years of her marriage – Husband and in-laws convicted by trial court u/s 304-B – High Court converting the conviction of husband u/s 306 and acquitting the in-laws – Held: There was no evidence of any demand for dowry soon before the death – High Court concluded that deceased had not committed suicide on account of demands for dowry but due to harassment caused by her husband and it had compounded the acute depression from which deceased was suffering after the murder of her father – High Court was fully justified in convicting the husband u/s 306 – Criminal Law – Framing of charges.

(ii) ss. 304-B and 306 – Dowry death and abetment of suicide – Explained.
(Also see under: Code of Criminal Procedure, 1973)

Narwinder Singh v. *State of Punjab* 110

(21) s.323 – Altercation between two sides over a land dispute – Free fight between them – One person on complainant's side died of 'Gatra' injuries inflicted by two out of the four accused – Complainant as also the accused received injuries – Acquittal by trial court – High Court convicting one of the accused u/ss 302 and 307 r/w s.34 IPC and acquitting the remaining two – Held: Trial Court has rightly observed that a free fight had taken place in which members of both the sides got injured and one died – The main blow in the chest of the deceased was given by the accused who died pending appeal and other two have been acquitted by the High Court – In the circumstances, conviction of appellant is converted

from s.302 to s. 323 – He has served about one year and seven months of sentence – Considering his age being 82 years and other ailments, the period already undergone would be sufficient – Sentence/Sentencing – Code of Criminal Procedure, 1973 – s.313.

Jagat Singh v. *State of H. P.* 1

(22) (i) ss. 363, 366, 368 and 376 – Kidnapping, wrongful confinement and rape – Conviction by trial court with 7 years R.I. – Acquittal by High Court – Held : Prosecutrix being less than 18 years of age, was removed from the lawful custody of her brother and was taken to a city by two adult males under threat and kept in a room for many days where one of the accused had forcible sexual intercourse with her – The High Court was not at all justified in taking a different view from the trial court – High Court has dealt with the matter with casual approach and its judgment is not only cryptic and perfunctory but it has also not taken into consideration the crucial evidence on record – Rape is a heinous crime, and once it is established, justice must be done to the victim of crime by awarding suitable punishment to the accused – Judgment of High Court set aside and that of trial court restored – Evidence – Sentence/ sentencing.

(ii) s.90 and s.375, Clauses 'Firstly' and 'Secondly' – Rape – Expressions 'against her will' and 'without her consent' – Explained – Held: The concept of consent in the context of s. 375 has to be read with s.90.

(iii) s.375, Clause 'Sixthly' – Held: Prosecutrix at the relevant time being about 17 ½ years of age,

Clause 'Sixthly' would not be applicable.

(Also see under: Evidence)

State of U. P. v. *Chhoteylal* 406

(23) s.376 r/w s.511.

(See under: Juvenile Justice (Care and Protection of Children) Act, 2000) 173

(24) ss. 459, 354, 323, 506(2) r/w s. 34 – Conviction under – Young woman, belonging to Scheduled Tribe beaten with fists and kicks, stripped naked and then paraded on the road of the village by accused persons – Conviction u/ss. 452, 354, 323, 506(2) r/w s.34 and also u/s. 3 of the SC/ST Act and sentenced to various terms of RI – High court acquitting the accused for the offence u/s. 3 of the SC/ST Act, however, upholding conviction under IPC – As regards imposition of fine, each accused directed to pay fine of Rs. 5000/- to the victim – Held: Order passed by the High Court convicting the accused under various provisions of the IPC and fine imposed upheld, though sentence was too light considering the gravity of the offence – Instant case deserves total condemnation and harsh punishment – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – s. 3.

Kailas & Others v. *State of Maharashtra Tr. Taluka P. S.* 94

(25) s.498-A – Suicide by married woman – Allegation of maltreatment and cruelty against husband on account of demand of dowry – Held: In the instant case, there was demand of scooter by the accused in close proximity of the death – The demand was consistent and persistent – Conviction upheld – Evidence Act, 1872 – s.113B.

(Also see under: Evidence and Evidence Act, 1872)

Bansi Lal v. *State of Haryana* 724

PLEADINGS:
(See under: Labour Laws) 587

PRACTICE AND PROCEDURE:
Omission to refer provision of law which is the source of power, or mentioning of a wrong provision – Held: Would not by itself render the government order invalid or illegal, if government had the power under an appropriate provision of law.

(Also see under: Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 and Santhal Parganas Settlement Regulations, 1872)

State of Jharkhand & Ors. v. *Pakur Jagran Manch & Ors.* 687

PRECEDENT:
(1) (See under: Constitution of India, 1950) 453

(2) (See under: Judgments/Orders) 741

PUBLIC INTEREST LITIGATION:
(See under: Constitution of India, 1950) 894

PROPERTY:
Public Property – Protection of.
(See under: Code of Civil Procedure, 1908 and Suit) 1076

RELIEF:
(See under: Labour Laws) 587

RENT CONTROL AND EVICTION:
(See under: Code of Civil Procedure, 1908) 66

REPRESENTATION OF THE PEOPLE ACT, 1951:
(i) s.100(i)(d)(iv) – Election petition – Allegation that change of venue of the polling station was illegal and deprived many voters from exercising their right due to chaos – Declaration sought to the effect that election of the returned candidate from the constituency was void, and order directing re-polling in the polling station notified be made – Petition dismissed by High Court – Held: Defeated candidate totally failed to prove that the election of the returned candidate was materially affected because of non-compliance with the provisions of the Act or Rules or orders made under it – Thus, order passed by the High Court upheld – Conduct of Election Rules, 1961 – r. 15.

(ii) s. 100 (i)(d)(iv) – Grounds for declaring election to be void – Result of election of returned candidate whether materially affected because of change of venue of the polling station – Standard of proof to be adopted – Held: It would be proof beyond reasonable doubt or beyond pale of doubt and not test of proof – Election of a returned candidate should not normally be set aside unless there are cogent and convincing reasons – Burden of proving that the votes not cast would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate lies upon one who objects to the validity of the election – Court has to see whether the burden has been successfully discharged by the election petitioner.

(Also see under: Election Laws and Evidence)

Kalyan Kumar Gogoi v. *Ashutosh Agnihotri and Anr.* 796

SALES TAX:

(1) (See under: Haryana General Sales Tax Act, 1973 as also Constitution of India, 1950) 186

(2) (See under: Central Sales Tax Act, 1956 and Kerala General Sales Tax Act, 1963) 371

SANTHAL PARGANAS SETTLEMENT REGULATIONS, 1872:

Regulations 24 and 25 – De-reserving or de-notifying gochar (village grazing land) – Power of State Government – Identification of the said land as suitable for construction of hospital – Notification by State Government de-notifying and releasing gochar land – Held: Land recorded as a gochar in the record-of-rights of a village in pursuance of a settlement under the Regulations, can be re-opened and altered at any time with the previous sanction of the State Government, without waiting for the next settlement – Thus, Notification is valid – Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 – s. 38 (2).

(Also see under: Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 and Practice and Procedure)

State of Jharkhand & Ors. v. *Pakur Jagran Manch & Ors.* 687

SANTHAL PARGANAS TENANCY (SUPPLEMENTARY PROVISIONS) ACT, 1949:

(i) s. 2(1) – Scope of – Held: De-reservation or

re-categorisation of a land recorded as gochar in the record-of-rights is not within the scope of the Act –s. 2(1) cannot be treated as the source of power to issue a Notification de-reserving gochar.

(ii) s. 38 – Grazing land shall not be cultivated – Prohibition u/s. 38(1), in regard to non-grazing use – Applicability of – Held: If the land is not recorded as gochar or village grazing land, or if the land ceases to be shown as gochar or village grazing land in the Record-of-Rights for valid reasons, bar u/s. 38(1) would not apply.

(Also see under: Santhal Parganas Settlement Regulations, 1872 and Practice and Procedure)

State of Jharkhand & Ors. v. *Pakur Jagran Manch & Ors.* 687

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989:

s. 3.

(See under: Penal Code, 1860) 94

SECULARISM:

Concept of – Held: State will have no religion – It shall treat all religions and religious groups equally and with equal respect without in any manner interfering with their individual right of religion, faith and worship –There is no justification for interfering in someone's religious belief by any means – Constitution of India, 1950.

(Also see under: Penal Code, 1860 and Code of Criminal Procedure, 1973)

Rabindra Kumar Pal @ Dara Singh v. *Republic of India* 929

SENTENCE/SENTENCING:

(1) Conviction u/s. 302 IPC – Punishment – Held: Normal rule is to award punishment of life imprisonment – Punishment of death should be resorted to only for the rarest of rare cases which is to be examined with reference to the facts and circumstances of each case – Court to take note of the aggravating as well as mitigating circumstances – Penal Code, 1860.

Rabindra Kumar Pal @ Dara Singh v. *Republic of India* 929

(2) Death sentence or life imprisonment – In case of rape and murder of young girl of tender age – Difference of opinion between Judges on sentencing part – Matter referred to larger Bench – Held: The broad principle is that the death sentence is to be awarded only in exceptional cases – The appellant was a young man, only 27 years of age, it was obligatory on the trial court to have given a finding as to a possible rehabilitation and reformation and the possibility that he could still become a useful member of society in case he was given a chance to do so – In the light of the findings recorded by one of the two Judges for life sentence, it would not be proper to maintain the death sentence on the appellant – At the same time, the gravity of the offence, the behaviour of the appellant and the fear and concern such incidents generate in ordered society, cannot be ignored – The death sentence awarded is commuted to life which must extend to the full life of the appellant subject to any remission or commutation at the instance of the Government for good and sufficient reasons – Crime against women – Penal Code, 1860 – s.302 – Code of

Criminal Procedure, 1973 – s.235 r/w s.354, s.433-A.

Rameshbhai Chandubhai Rathod v. *The State of Gujarat* 829

(3) Mitigating circumstances. (See under: Penal Code, 1860) 27

(4) (See under: Juvenile Justice (Care and Protection of Children) Act, 2000) 770

(5) (See under: Penal Code, 1860) .... 1, 124, 406, 556 and 647

SERVICE LAW:

(1) Appointment – Government undertaking – Appointment of appellants who had undertaken apprenticeship with the undertaking – Writ petitions by respondents seeking quashing of the appointments – Direction by High Court to fill up the post from the merit list prepared earlier without giving preference to those who had undertaken apprenticeship with the government undertaking – Held: Appellants were impleaded as party respondents in the writ petitions for the first time after ten years – They were not initially impleaded though primary relief was sought against them – Appellants have got three promotions and other candidates have been appointed to the posts – Thus, writ petitioners not entitled to any discretionary relief – Order passed by the High Court set aside.

Jiten Kumar Sahoo & Ors. v. *Chief General Manager Mahanadi Coalfileds Ltd. & Ors.* 572

(2) Pay-scale – Dietician and Senior Dietician under the Director, Health Services, Chandigarh Administration – Claim for pay scales at par with

their counterparts under the Government of Punjab – Held: Not justified – The nature and quantum of duties and responsibilities of the Dietician and Senior Dietician under the Director, Health Services, Chandigarh Administration were not comparable or equivalent in any way with their counterparts under the Government of Punjab – Doctrine of equal pay for equal work could not be invoked since the two sets of employees were not similarly situated – Doctrines – Doctrine of equal pay for equal work – Inapplicability of.

U. T. Administration, Chandigarh & Ors. v. *Mrs. Manju Mathur & Anr.* *883*

(3) (i) Regularization – Legal principles relating to regularization and parity in pay – Discussed.

(ii) Regularization – Persons appointed as Superintendents in aided non-governmental Hostels – Claim for absorption and regularization in government service or salary on par with Superintendents in Government Hostels – Held: Not maintainable – The persons employed in the aided hostels are the employees of the respective organizations running those hostels and are not the employees of the Government – Government and Aided Hostels Management Rules, 1982 – rr.5, 9 and 11.

(iii) Temporary employee – Part-time cooks and chowkidars employed on temporary basis in the Government hostels, with few years of service – Claim for regularization by framing a special scheme – Held: Not maintainable – Service for a period of one or two years or continuation for some more years by virtue of final orders under challenge, or interim orders, would not entitle them

to any kind of relief either with reference to regularization or for payment of salary on par with regular employees of the Department – If there was a one time scheme for regularisation of those who were in service prior to a cut off date, there cannot obviously be successive directions for scheme after scheme for regularization of irregular or part-time appointments – Interim order.

(iv) Regularisation – Jurisdiction of High Courts to direct regularization, absorption or permanent continuance – Held: High Courts, in exercising power under Article 226 of the Constitution will not direct regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts – Constitution of India, 1950 – Articles 14, 16 and 226.

State of Rajasthan & Ors. v. *Daya Lal & Ors.* 707

(4) Retirement – Compulsory retirement.
(See under: Maharashtra Civil Services (Discipline and Appeal) Rules, 1979) 355

(5) Termination/Dismissal/Removal from service/ Discharge:

(I) Dismissal from service – Branch Manager – Subjected to disciplinary inquiry – Punishment of dismissal – Writ petition on the grounds of non-supply of vigilance report and refusal by Bank to summon the documents and the witnesses mentioned in the list – Held: The delinquent officer neither raised the issue of non-supply of the documents during the entire course of the inquiry

proceedings nor was it canvassed even before the Single Judge of the High Court – Besides, he failed to submit within stipulated time the list of documents and witnesses and, therefore, could not complain of breach of procedural requirement – The challenge before the Single Judge was restricted to denial of natural justice for non-supply of vigilance report – But the recommendations of the CVC were not taken into consideration by the authorities concerned – The delinquent officer failed to prove any prejudice or that the non-supply of C.V.C. report has resulted in miscarriage of justice – State Bank of India (Supervising Staff) Service Rules – r.50(11) – Clause (4), Note – Administrative Law – Natural justice.

(ii) Disciplinary inquiry – Non-supply of documents to delinquent employee – Held: Except in cases falling under "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice – It was incumbent on the delinquent officer to plead and prove the prejudice caused by the non-supply of the documents – He has failed to place on record any facts or material to prove what prejudice has been caused to him – State Bank of India (Supervising Staff) Service Rules.

State Bank of India and Ors. v. *Bidyut Kumar Mitra and Ors.* 298

(iii) Termination of service – Police Constable – Departmental proceedings for unauthorized absence from duty – Delinquent sanctioned leave without pay – Subsequently, services terminated – Plea of double punishment – Held: Single Judge of High Court erred in quashing the order of

termination holding that the delinquent was inflicted with two punishments – Rule 4 of the Service Rules of 1991, defining the penalties in clear terms, makes it clear that sanction of leave without pay cannot be treated as a penalty – There is no question of awarding two punishments in respect of one charge – Doctrine of double jeopardy has no application in the case – Judgment of Single Judge set aside – Matter remitted to Single Judge of High Court for disposal afresh – Uttar Pradesh Subordinate Police Officers/ Employees (Punishment and Appeal) Rules, 1991 – Rules 4,7 and 8 – Constitution of India, 1950 – Article 20(2).

State of U. P. & Ors. v. *Madhav Prasad Sharma* 266

SERVICE TAX:

(See under: Finance Act, 1994) 872

STATE BANK OF INDIA (SUPERVISING STAFF) SERVICE RULES:

(See under: Service Law) 298

SUIT:

Suit for Permanent Injunction alleging that the defendants had made illegal/unauthorized construction over a public street – Trial court decreed the suit and issued permanent injunction directing removal of unauthorized construction – Decree affirmed by first appellate court as also by High Court – Challenge to, on the ground that it was not proved that the suit land was a public street in which encroachment was made by the defendant – Held: On appreciation of the evidence, all the three courts below have recorded findings of fact that the suit land is a part of the public

street where the appellant had encroached upon – The evidence on record proved that there existed a public street of 10 feet width and also that the appellant had encroached upon the said street – Decree passed by the trial court confirmed.

(Also see under: Code of Civil Procedure, 1908 and Limitation Act, 1963)

Hari Ram v. *Jyoti Prasad & Anr.* 1076

TAX/TAXATION:

(1) MAT provisions – Object of – Held: Is to bring out the real profit of the companies – The thrust is to find out the real working results of the company.

Indo Rama Synthetics (I) Ltd. v. *C.I.T., New Delhi* 853

(2) Service tax.
(See under: Finance Act, 1994) 872

TEA:

Exemption from sales tax.

(See under: Central Sales Tax Act, 1956 and Kerala General Sales Tax Act, 1963) 371

TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987:

(i) s.12 – Designated Court – Jurisdiction of – Held : By virtue of s.12 of the Act, the Designated Court may also try any other offence with which the accused may be charged at the same trial if the offence is connected with such other offence and, further, if it is found that the accused has committed any other offence under any other law, the Designated Court may convict such person of such other offence and pass any sentence

authorized by the Act or such other law for the punishment thereof – Interpretation of statutes.

(ii) s.15 – Confession made to police officer – Held: Shall be admissible in the trial of a co-accused for offence committed and tried in the same case together with the accused who makes the confession – Confession of an accused can be used against him as well as other co-accused even if they are acquitted of offence under TADA Act.

(iii) s.20-A(1) – Cognizance of offence – Held: Expression "District SP" has been used in order to take the sanction of a senior officer of the district, when the prosecution wants to record any commission of an offence under the Act – In the instant case, investigation was entrusted to CBI, therefore, the CBI SP could authorize the police to record the information about the commission of the offence under the Act – TADA Rules, 1987 – r. 15 – Delhi Police Establishment Act, 1946 – s.3

(iv) ss. 3(1), 3(2) and 3(3) – Prosecution – Held : Section 3 gives due importance to the aspect of intent – A person can be charged with s. 3(1) only when the prosecution has established that the offence was committed with the intent to awe the Government or to achieve one or other ends mentioned in s. 3(1) – In the instant case, the prosecution has not proved that the murder was committed with the intention to cause terror – Designated Court was, therefore, justified in dismissing the charges framed under the Act – Penal Code, 1860 – ss.302, 302/34 and 302/120-B – Interpretation of Statutes.

(Also see under: Penal Code, 1860 and Evidence)

Manjit Singh @ Mange v. *CBI, through its S. P.* 997

TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) RULES, 1987:
r. 15.
(See under: Terrorist and Disruptive Activities Prevention Act, 1987) 997

UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967:
s.43D(5), proviso.
(See under: Bail) 590

URBAN DEVELOPMENT:
Acquisition of land for planned development.
(See under: Bangalore Development Act, 1976) 453

UTTAR PRADESH SUBORDINATE POLICE OFFICERS/ EMPLOYEES (PUNISHMENT AND APPEAL) RULES, 1991:

Rules 4, 7 and 8.
(See under: Service Law) 266

WITNESSES:
(1) Hostile witness – Testimony of – Admissible value – Held: The evidence of a hostile witness remains the admissible evidence and it is open to the court to rely upon the dependable part of that evidence which is found to be acceptable and duly corroborated by some other reliable evidence available on record.

(Also see under: Penal Code, 1860 and FIR)

Himanshu @ Chintu v. *State of NCT of Delhi* 48

(2) (See under: Penal Code, 1860) .... 124 and 556

WORDS AND PHRASES:
(1) Airport authority' and 'taxable service' – Meaning of – Finance Act, 1994 – s.65, Clauses 3(d) and 105(zzm) – Airports Authority of India Act, 1994 – s.3.
(Also see under: Finance Act, 1994)

P.C. Paulose, M/s. Sparkway Enterprises v. *Commissioner of Central Excise and Customs* 872

(2) Expression:
'District SP'– Connotation of.
(See under: Terrorist and Disruptive Activities (Prevention) Act, 1987) 997

(3) Expression 'unsoundness of mind' – Meaning of.

Surendera Mishra v. *State of Jharkhand* 133

(4) "Natural justice" – Connotation of.

Automotive Tyre Manufacturers Association v. *The Designated Authority & Ors.* 198

REFERENCE MADE BY
HON'BLE THE CHIEF JUSTICE OF INDIA
SHRI S.H. KAPADIA
IN THE MEMORY OF
LATE SHRI A.N. RAY
FORMER CHIEF JUSTICE OF INDIA
ON 27TH JANUARY 2011

Mr. Attorney General, Mr. Solicitor General, Shri Ram Jethmalani, President of the Supreme Court Bar Association, Shri D.K Garg, President of AOR Association, Members of the Bar, Ladies and Gentlemen.

We meet this morning to mourn the death of Justice Ajit Nath Ray, former Judge of the Calcutta High Court and former Chief Justice of India.

Justice Ray was born on 29th January, 1912. He came from a distinguished family. His grandfather, late Debendra Nath Ray was the Physician of Lord Lytton, the Governor-General. His father late Sati Nath Ray was a lawyer and President of the Bar Association of Alipore Court in Calcutta. Initially, Justice Ray had planned to join the Indian Civil Service but later went to Oxford where he graduated with a degree in History from Oriel College. He had studied at Presidency College at Calcutta. He got a First Class B.A. (Hons.) in History. He was called to the Bar from Gray's Inn, London in 1939. Close friends in London included Shri Jyoti Basu. While Chief Justice of India, Oxford University honoured him with an Honorary Doctorate degree in Civil Laws.

On the morning of 25th December, 2010, 34 days short of completion of 34 years of life as a retired former Chief Justice of India, Justice Ray breathed his last. He was 99 years old.

An absolute perfectionist. Justice Ray led a modest existence with habits carried out with clockwork precision. Till

the very end of his life, he woke up at 5 O' Clock in the morning and retired to bed by 9.30 in the night. There was a time designated for everything in between including an hour of the day for a crossword puzzle. A set routine was central to Chief Justice Ray's inherent personality. In all his waking hours, Chief Justice Ray would hardly ever indulge himself. For the 99 years that he lived to see, his cupboard had one watch and three suits to show. The only worldly things that excited Chief Justice Ray was listening to the radio, sharing chocolates with his grandchildren and having a cup of Darjeeling tea. A true believer in the power of simple living and high thinking. He would never touch alcohol or cigarettes. He would never buy expensive clothing. He even sold off his Rover, a car that he was rather fond of, when he set out for Delhi to pursue his ambitions as a Supreme Court Judge in 1969.

Chief Justice Ray's sense of detachment had its roots in his involvement with the Ramakrishna Mission Society whose values he advocated. Deeply religious, Chief Justice Ray would spend a good part of his morning praying to Lord Ramakrishna and reading the teachings of Swami Vivekananda. Religion made Chief Justice Ray reticent. Negativity in any form was repulsive to his mind. He remained calm in the face of criticism.

A prompt decision maker. On his date of retirement, there were only 10,000 cases pending in the Supreme Court.

Justice Ray got enrolled as an Advocate in the Calcutta High Court and stood elevated as an Additional Judge of the Calcutta High Court on 23rd December, 1957 and a Permanent Judge on 23rd October, 1959.

He was President of the Governing Body of the Presidency College, Calcutta from 1959. He was an Honorary Treasurer of the Asiatic Society, Calcutta from 1962 to 1965. He was also a President of the Society for the Welfare of Blind at Narendrapur. He was also a Member of the Karma Samity of Visva Bharati

in Shantiniketan between 1963 to 1967 and later on he became a Life Member of the Sansad of Visva Bharati On retirement he dedicated his life to the services of Ramakrishna Mission.

Justice Ray was elevated as a Judge of the Supreme Court of India on 1.8.1969. He became the Chief Justice of India on 26.4.1973. He remained Chief Justice till 28.1.1977 when he retired. Justice Ray breathed his last on 25.12.2010 in his Calcutta residence. He was 98 years old. He has left behind him his only son Justice Ajoy Nath Ray, former Judge of the Calcutta High Court as well as Chief Justice of Allahabed and Sikkim High Court. His wife, the eldest daughter of late Atulya Charan Mukherjee, a renowned lawyer of the yester years of the Calcutta High Court had pre-deceased His Lordship.

We cannot ignore the contribution of Justice Ray to the development of law. His judgments covered wide spectrum from commercial law to constitutional law. The most striking feature of his judgments, as indicated hereinbelow, shows clarity, accuracy and thorough knowledge of the legal maxims. If one analyses his judgments carefully one finds that his judgments were well structured. The issues were well formulated. The contentions were well enumerated. The reasoning was put point-wise. All this gave clarity, accuracy and brevity to the judgments. We need to emulate Justice Ray's style of writing judgments. Here was a Judge whose judgments were in classical mould. In the words of Shri K.N. Bhat, Senior Advocate, Supreme Court of India, ''Justice Ray was a stickler to convention and etiquette''

Analysis of the Judgments of Chief Justice Ray in Constitutional matters

(a) In the case of *Smt. Indira Gandhi v. Raj Narain* reported in 1975 (Supp.) SCC 1 the challenge was to the constitutional validity of the 39th Amendment on the basis of the basic structure doctrine enunciated in the case of *Kesavananda Bharti's* case [(1973) 4 SCC 225], particularly clause (4) of

Article 329A.

Held: While striking down clause (4), the learned Chief Justice goes on to observe ''the constituent power is sovereign. Parliament may create forum to hear election disputes. Parliament may itself hear election disputes. However, it has to apply norms. However, in validating the election clause (4) of Article 329A has passed a declaratory judgment and not a law. The constituent power can exercise judicial power but it has to apply law. In the present case, the constituent power had no law to apply and therfore offends the rule of law."

Held: In this judgment the learned C.J.I. said ''Reasonableness of legislative measures is unknown to the Constitution. The Constitution of India has denied the due process as test of invalidity of law.''

(b) In *Kesavananda Bharati's* case [(1973) 4 SCC 225], he observes:

''If the theory of basic structure is applied to ordinary legislation it will denude the Parliament and State Legislation of the power of legislation and deprive them of laying down legislative policies and this will be encroachment on the separation of powers''

(c) Today when the economy has opened to regulatory regime and bue deference is required to be shown to the experts in regulatory matters, one must keep in mind the observations of Ray, C.J., in *Sukhdev Singh's* case [(1975) 1 SCC 421].

''Regulations made under statutory powers is comprised in delegated legislation. Delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of the statute.''

(d) In the case of *State of Kerala v. N. M. Thomas* reported in (1976) 2 SCC 310, the learned judge observed:

''Discrimination is the basis of classification and therefore classification has to be founded on intelligent differentia having nexus to the object sought to be achieved. Article 16 (1) is affirmative whereas Article 14 is negative in its language. Article 16 (4) indicates one of the methods of achieving equality embodied in Article 16 (1).

Equal protection of laws involves classification.''

(e) In the case of *St. Xavier's College v. State of Gujarat,* reported in 1974 (1) SCC 717, the question which arose for determination was whether the minorities based on religion or language have the right to establish and administer educational institutions for imparting general secular education within the meaning of Article 30 of the Constitution.

Held: While declaring that the impugned sections cannot be applied to minority institutions, Ray, C.J., holds ''in case an educational institution is established by a minority to conserve its distinct language, script or culture the right to establish and administer such institution would fall both under Article 29 (1) and under Article 30(1). The minorities can choose to establish an educational institution which is purely of a general secular character and is not designed to preserve language, script or culture. The right to establish and administer such an institution is guaranteed by Article 30(1) and the fact that such an institution does not conserve the distinct language of a minority will not take it out of Article 30(1) because

the whole object of Article 30 is to ensure equality between the majority and the minority."

In his span of Judgeship of 19 years, he dug for springs for fresh water. He opened new frontiers of Constitutional law.

Conclusion:

I and my brethren would like to convey the deep sympathy and condolence to the bereaved family of late Chief Justice Shri A.N. Ray. May his soul rest in peace!

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REFERENCE MADE BY
HON'BLE THE CHIEF JUSTICE OF INDIA
SHRI S.H. KAPADIA
IN THE MEMORY OF
LATE SHRI V. BALAKRISHNA ERADI,
FORMER JUDGE, SUPREME COURT OF INDIA
ON 27TH JANUARY 2011

Mr. Attorney General, Mr. Solicitor General, Law Officers, Shri Ram Jethmalani, President of the Supreme Court Bar Association, Shri D.K. Garg, President of AOR Association, Members of the Bar, Ladies and Gentleman.

My brother and sister Judges and I learnt with deep regret of the passing away of Justice V. Balakrishna Eradi on 30th December, 2010. He died at the age of 88 at a Private hospital in Calicut.

Born at Calicut in the State of Kerala on 19th June, 1922, Justice Eradi had his early education at the Zamorin's High School and Zamorins College, both in Calicut. He received his B.A. degree from the Madras Christian College, Madras in 1941 with first rank in Sanskrit. He studied Law at the Madras Law College and received his Bachelor of Law Degree in 1943 with first rank in Madras Presidency. He was enrolled as an Advocate in Madras High Court as a junior to Shri K.K. Menon, who was then the Government Pleader of Madras and later Advocate General in the composite Madras State. He was appointed by the Madras Government as Junior Counsel to conduct several Government cases. In April, 1967 he was appointed Additional Judge of the Kerala High Court and six months later he was appointed as Permanent Judge. During his tenure as a Judge of the Kerala High Court, he was appointed as Chairman of the High Court Committee for suggesting ways and means of raising the standard of legal education in the State. He was appointed

Chief Justice of the High Court of Kerala in January 1980 and was elevated to the Supreme Court a year later. While functioning as Judge of the Supreme Court, Justice Eradi was appointed by the Government of India as Chairman of the Ravi and Beas Waters Tribunal for adjudication of the dispute regarding sharing of the Punjab river waters between States of Punjab, Haryana and Rajasthan. Justice Eradi retired from the Bench of the Supreme Court on attaining the age of superannuation in 1987. After retirement, he was appointed as President of the National Consumer Disputes Redressal Commission, a post he held until he retired in 1997. In 1999, he was appointed as Chairperson of the National Company Law Tribunal and Appellate Tribunal, a High Level Committee to examine the existing laws relating to winding up proceedings of companies in order of re-modulate in line with the latest development in the corporate law.

As a lawyer he worked assiduously on his briefs, the habit which he carried in his judgments.

Justice Eradi was actively connected with cultural and social service organizations. He was president of International Centre for Kathakali, New Delhi since 1982. He was the president of Swaralaya, a Carnatic music society of India. He was a membur of the Council of Management of Sri Sathya Sai Central Trust from its inception in 1972.

After retirement he stayed in New Delhi with his wife Saraswathi Eradi and later shifted to Calicut.

Analysis of his Judgments.

(a) In the case of *S.S. Moghe v. Union of India,* reported in (1981) 3 SCC 271, one of the contentions advanced by the petitioners was that Rule 6(2) of Aviation Research Centre [Technical] Services Rules violated Article 16 of the Constitution. It was also challenged on the ground

of excessive delegation of powers. It was held that the provision for constituting the Screening Committee to judge the suitability of the persons in the field of eligibility for permanent appointment was absolutely reasonable. It was subject to the supervisory control of High Power Committee. It was held that when supervisory powers ere entrusted to High and Responsible body, it is reasonable to assume that the powers will be exercised fairly and not arbitrarily.

(b) In the case of *R.S. Makashi v. I.M. Menon,* reported in (1982) 1 SCC 379, the learned Judge held that ‘‘when personnel drawn from different sources are being absorbed and integrated in a new department on deputation it is just and wholesome principle commonly applied in service jurisprudence that their inter se seniority in the parent department be respected during the period of deputation in the new department. Thus, the impugned Rule did not violate Article 14 and Article 16 as urged on behalf of petitioners. [Case of fixing inter-se seniority]

(c) Case of child Custody - *Smt. Elizabeth Dinshaw v. Arvand M. Dinshaw,* reported in 1987 (1) SCC 42.

Facts: Custody of the child after divorce in U.S.A. American Court granting decree for child’s custody to the mother. Father secretly brings the child to India against the express orders of the U.S. Court. Habeas Corpus Petition filed before the Supreme Court of India for restoration of the child’s custody.

Held: It is the duty of the courts in all countries to see that a parent doing wrong by removing the child out of the country does not gain advantage by his or her wrongdoing. A court should pay regard to the

orders of the competent foreign court unless it is satisfied beyond reasonable doubt that to do so would inflict serious harm on the child.

Among the spiritual, cultural and social service organizations with which he was active was the International Center for Kathakali in New Delhi; he was elected its President in 1982. He served as President of Swaralaya, a music society. He became a member of the council of management of the Sri Sathya Sai Baba central trust in 1972 and was a trustee of the Sri Sathya Sai Baba Institute of Higher Medical Sciences Hospital at Puttaparthy in Andhra Pradesh. He served also as a trustee of the Delhi Bhagwati Saptah Trust. He was the author of *Consumer Protection Jurisprudence* (New Delhi: LexisNexis, Butterworths, 2005).

Apart from legal erudition, his judgmants are replete with enunciations of policy and reflections of service jurisprudence, civil law as well as constitutional law. The greatest quality that Justice Eradi had as a Judge was that of humility. As we all know, that quality takes a Judge very far, and makes him, as years grow, more and more learned and erudite. As a man, he was simplicity notwithstanding of his learning and knowledge. Indeed, it can well be said that in several respects, he was the embodiment of the great tradition and culture of South India. He was a pious man.

In conclusion, this is what I would say of Justice Eradi:

“Let men trained in ethics and morality, insult or praise, let Lakshmi (wealth) accumulate or vanish as she likes, let death come today or at the end of a Yuga (Millennium), men with discretion will not deflect from the path of rectitude”.

My brothers, sister and I hereby convey our condolences to Smt. Saraswathi Eradi, wife of late Justice Eradi and his daughter Ms. Sathi Menon. May the departed soul rest in peace!

*****

REFERENCE MADE BY
ATTORNEY GENERAL FOR INDIA
SHRI G.E. VAHANVATI
IN THE MEMORY OF
LATE SHRI A.N. RAY,
FORMER CHIEF JUSTICE OF INDIA
AND SHRI V. BALAKRISHNA ERADI,
FORMER JUDGE, SUPREME COURT OF INDIA
ON 27TH JANUARY 2011

My Lord Justice Kapadia, Chief justice of India, Hon'ble Judges Mr. Ram Jethmalani, the president of the Supreme Court Bar Association, Office Bearers of the Bar Association, the Learned Solicitor General, Mr. Gopal Subramanium, other Law Officers, Members of the Bar, Ladies and Gentlemen.

We are assembled here to mourn a double tragedy; the loss of two very senior judges of this Hon'ble Court, one who died at the age of 99, and the other who died at the age of 89.

God grants a lease of life to all the things he creates. Sometimes he gives a long lease. Sometimes he grants a short tenure, but in all cases the tenure comes to an end, however extended it may be. And so it has happened in the cases of former Chief Justice of India, A N Ray and a former judge of this Hon'ble Court, V Balakrishna Eradi, the long leases have expired.

CHIEF JUSTICE A N RAY

My first tribute will be to Chief Justice A N Ray. Justice Ajit Nath Ray was born on 29 January 1912. He was educated at the Ripon School and Presidency College at Calcutta with an M.A. in Modern History. Like several distinguished lawyers from Calcutta, he went to study in England and was educated at the Oriel College at Oxford. He was called to the Bar by Gray's Inn

in 1939. He practiced in the High Court of Calcutta. In 1959, AN Ray became president of the Governing Body, Presidency College in Calcutta and he was Honorary Treasurer of the Asiatic Society from 1962 to 1965. He was involved in social service being associated with organizations such as the Society for the Welfare of the Blind in Narendrapur.

When Justice AN Ray came to this court on 1 August 1969, he struck his own independent path. He gave lonely dissents in the Banks *Nationalization* case and the *privy purse Abolition* case and was one of the six dissenters in the *Keshavananda Bharti* case.

Mr. B Sen writes in his recent autobiography that Justice AN Ray was an able judge, quick in decision making and in time several malpractices concerning listing of cases were removed. Mr. Sen describes him as a humble, scrupulously honest, deeply religious and a loyal friend. My friend Bhaskar Gupta recounts a delightful story which illustrates how kind and indulgent Justice Ray was towards juniors. Bhaskar was conducting a suit in the Calcutta High Court in a Hire-Purchase Agreement case Bhaskar kept on referring to the Hire Purchase Agreement as the "HP" agreement. Justice Ray corrected him twice and finally said, "If you continue to talk of HP, I will be reminded of a sauce in England" Bhaskar never made the mistake of using abbreviations again.

And then an event took place in April 1973 whlch changed the destiny of the judiciary in this country and the life of Chief Justice AN Ray. the Government appointed Justice Ray as the Chief Justice of India superseding three senior Judges. As could be expected, this was a highly controversial decision. Ever since Jawaharlal Nehru's desire to appoint MC Chagla directly as the Chief Justice of the Supreme Court was aborted in 1950, the principle of seniority as the basis for appointing the Chief Justice had become a convention, though it was not part of the Constitution or of any law.

KN Bhat, Senior Advocate and former Additional solicitor General has written an obituary for Chief Justice AN Ray which makes interesting reading. He makes a point that no one can accuse Chief Justice Ray of scheming for this appointment. Justice Ray did not maneuver or manipulate to become Chief Justice of India. He perhaps felt that if he did not accept the offer, somebody down the line would have taken it up anyway. This act, coupled with the decision in the case of *ADM Jabalpur v. Shivakant Shukla,* (1976) 2 SCC 521, made him controversial.

Justice Ray made no attempt to placate the vocal members of the Bar. That is probably why, when he retired on 28 January 1977, the Bar did not even offer the customary farewell cup of tea.

This, however, does not detract from his contribution to law in this country. It was Chief Justice AN Ray who in 1974 in *Erusian Equipment & Chemicals Ltd. v. State of west Bengal & Anr,* (1975) 1 SCC 70, declared that the Government is a Government of laws and not of men and that all activities of the Government have a public element and therefore, there should be fairness and equality.

There is an interesting footnote to the Erusian judgment. In 1969, Justice K K Mathew had given a dissent in the Full Bench of the Kerala High Court in the case of *V. Punnen Thomas v. State of kerala,* AIR 1969 kerala 81. Justice Mathew, later on, was part of the bench which decided the matter in the Supreme Court when the path breaking judgment was written by Justice AN Ray.

Very few people understand the importance of the judgment in *K Ramdas Shenoy v. The Chief Officers, Town Municipal Council Udipi & Ors.,* (1974) 2 SCC 506, where Chief Justice Ray enforced the scheme in a residential area for planned orderliness. This could well be described as the judgment which

was the precursor to the subsequent judgments on public interest litigation as well as *locus standi.*

Justice Ray's judgments were crisp and precise. His style was not laborious. He was not long winded. This was reflected in his judicial demeanor also. He was not overawed by faces. He was a no-nonsense judge. KN Bhat writes that even his worst critics acknowledged that he was honest. He was respected for this.

If Chief justice Ray felt hounded and paranoid after his retirement, he did not bend or bow. He accepted the solitude of retirement. He declined offers of diplomatc assignments made to him subsequently by Government. He refused to be appointed as an Ambassador to the USA or High Commissioner to the U.K. He chose to continue to live in Calcutta and devoted his life to the Ramakrishna Mission.

We are here to pay tribute to a man who has made his peace with God. If he made mistakes, history will judge him. This is not the time or place for us to judge him.

There have been two Chief justices AN Ray. One, the father, who became Chief justice of India and the other, the son, who became Chief Justice of the Allahabad High Court and latet the Sikkim High Court. We pray that God give the family peace and that the departed soul rests in peace.

JUSTICE V BALAKRISHNA ERADI

The second Judge of this Hon'ble Court who died recently was Justice V Balakrishna Eradi who died on 30 December 2010. Justice V Balakrishna Eradi was born in the State of kerala on 19 June 1922. He was educated in Calicut. He then moved to Madras where he graduated from Madras Christian College in 1941 with distinction and First Rank in Sanskrit. He took the BL Degree from Madras Law College in 1943 securing First Class. After developing his own independent practice in

the Madras High Court and after being appointed as the Madras Government Counsel in certain cases he then shifted back to Ernakulam when the new High Court of kerala was established in November 1956.

Justice Eradi quickly established a flourishing practice in Ernakulam. In 1961, he was appointed as Sr. Govt. Pleader in the Kerala High Court. He conducted several important government cases, apart from doing extensive private practice.

In April 1967, Justice Eradi was appointed Additional Judge of the karala High Court and confirmed as Permanent Judge six months later. He became Chief Justice of the Kerala High Court in January 1980 and was elevated to the Supreme Court on 30th January, 1981. Justice Eradi was party to over 300 Judgments.

During his tenure in the Supreme Court of 6 years, he himself wrote several judgments. One of the important judgments is in the case of *Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth* - (1984) 4 SCC 27 wherein Justice Eradi exhaustively discussed the principle of *audi alteram partem* and held that it was entirely inapplicable to the process of evaluation of answer sheets. He held that the principle of natural Justice could not be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performance.

Successive Governments repeatedly drew on Justice Eradi's talents. Whilst he was a Judge of the Kerala High Court, he was appointed as a Single Member Commission of Inquiry by the Government of Kerala in January 1976 to enquire into charges of mis-conduct against the then Minister of Finance and Forests of the Kerala Government. Again, while functioning as a Judge of the Supreme Court, he was appointed by the

Government of India as the Chairman of the Ravi and Beas Waters Tribunal for abjudication of the dispute regarding sharing of the Punjab River waters between States of Punjab, Haryana and Rajasthan, a position which he continued holding even after he retired from the Supreme Court on 19th June 1987 for decades thereafter and upto his death. This must, by itself, be quite a remarkable achievement.

He was appointed President of the National Consumer Disputes Redressal Commission on 17th August, 1988. He wrote a book on Consumer Protection Jurisprudence which has contributed to the law relating to consumer protection.

Justice Eradi was actively associated with various spiritual, cultural and social service organizations. He was the President of the International Centre for Kathakali in Delhi and also the President of "Swaralaya", a well known music society of India. He was a Member of the Council of management of Sri Sathya Sai Central Trust ever since it was constituted in 1972. He headed several committee including the High Level Committtee with regard to the working of Companies Act and the Core Group with regard to Insolvency of Companies. Even after his retirement, he continued to live in New Delhi with his wife Saraswathy Eradi, and alternated between Delhi and Calicut.

After a long, eventful and distinguished life, Justice Eradi died on 30th December, 2010 at a private hospital in Calicut.

On behalf of the entire Bar I pray that God gives the family the strength to bear the loss and may his soul rest in peace.

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THE

SUPREME COURT REPORTS

Containing Cases Determined by the Supreme Court of India

VOLUME INDEX
[2011] 1 S.C.R.

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PUBLISHED UNDER THE AUTHORITY OF THE SUPREME COURT OF INDIA
BY THE CONTROLLER OF PUBLICATIONS, DELHI
(Also available on www.supremecourtofindia.nic.in)

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(From 03.01.2011 to 28.01.2011)

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MEMORANDA
OF
JUDGES OF THE SUPREME COURT OF INDIA
(From 03.01.2011 to 28.01.2011)

Hon'ble Mr. Justice B. Sudershan Reddy, Judge, Supreme Court of India was on leave for two days on 03.01.2011 and 04.01.2011 on full allowances.

Hon'ble Mr. Justice A. K. Patnaik, Judge, Supreme Court of India was on leave for four days from 25.01.2011 to 28.01.2011 on full allowances.

Hon'ble Mr. Justice R. V. Raveendran, Judge, Supreme Court of India was on leave for one day on 28.01.2011.

ERRATA

Page No.	***Line No.***	***Read for***	***Read as***
1092	5 (From bottom)	Psychotropic Substances **Rule**, 1985 – r.13	Psychotropic Substances **Rules**, 1985 – r.13