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(ii) s.195(1)(b)(ii) - Applicability of - Held: s.195(1)(b)(ii) is attracted only when offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in any court and during the time the same was in custodia legis - Bar contained in s.195 against taking of cognizance not attracted to the case at hand, as the sale deeds relied upon for claiming title to the property in question had not been forged while

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#### CODE OF CRIMINAL PROCEDURE (MADHYA PRADESH AMENDMENT) ACT 2007:

First Schedule to Code of Criminal Procedure, 1973 - Amendment - Offences punishable u/ss 467, 468 and 471 made triable by Court of Session in State of Madhya Pradesh - Offence committed prior to amendment but charge-sheet filed after amendment came into force - Held: Magistrate on receipt of a charge-sheet which was tantamount to institution of a case against appellant was duty bound to commit the case to Court of

Session - Apart from the fact that as on the date the amendment came into force no case had been instituted against appellant nor Magistrate had taken cognizance, any amendment shifting the forum of trial had to be on principle retrospective in nature in the absence of any indication in Amendment Act to the contrary - Appellant could not claim a vested right of forum for his trial for no such right is recognised - Judgment of Full Bench of Madhya Pradesh High Court overruled - Prospective overruling of judgment - Retrospective operation of amendment shifting the forum - Code of Criminal Procedure, 1973 - First Schedule as amended in State of Madhya Pradesh.

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#### COMPENSATION:

(1) (See under: Labour Laws) .... 705

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#### CONSTITUTION OF INDIA, 1950:

(1) Art. 21 read with s. 319 CrPC - Right to speedy trial - SLP of newly added accused, referred to Constitution Bench - Court granting stay - Prayer by one of the accused seeking vacation of stay order/grant of bail - Held: Stay order modified to the effect that while stay of trial of newly added accused shall continue qua him only, trial court shall be free to proceed with trial qua other accused persons - Code of Criminal Procedure, 1973 - s.319.

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

*Babubhai Bhimabhai Bokhiria & Anr. v. State of Gujarat & Ors.* .... 665

(2) Art. 32 - Unlawful killings - Extra judicial executions - Writ petitions raising disquieting issues pertaining to State of Manipur - Statement made that, over the years, large number of Indian citizens, have been killed by the Manipur Police and other security forces while they were in custody or in stage-managed encounters or in ways broadly termed as 'extra-judicial executions' and that for a very long time, State of Manipur is declared as "disturbed area" and is put under Armed Forces (Special Powers) Act, 1958, subverting civil rights of citizens of the State and making it possible for security forces to kill innocent persons with impunity - Three member high powered commission appointed by Supreme Court to make thorough enquiry in the first six cases filed by petitioners and record a finding regarding past antecedents of victims and the circumstances in which they were killed - State Government and all other agencies concerned directed to hand over to the Commission, all records, materials and evidences relating to the cases, for holding enquiry - Commission to also make a report regarding the functioning of State Police and security forces in the State - Armed Forces (Special Powers) Act, 1958.

*Extra Judicial Execution Victim Families Association (Eevfam) and Another v. Union of India & Another* .... 140

(3) Art. 32 read with Art. 217 - Petition for a writ of quo warranto seeking to quash appointment of Judge of High Court - Consultation process leading to appointment alleged to have been vitiated for failure of consideration of a criminal

case pending against the incumbent - Held: 'Eligibility' of the incumbent is not in issue - As regards 'lack of effective consultation', a fact that is unknown to anyone cannot be said to be not taken into consideration and the consultative process cannot be faulted as incomplete for that reason - At the time the incumbent was being considered for appointment as a judge of High Court, he was unaware of any case pending in which he was named as an accused - It is not a case of suppression of any material fact by the incumbent or at his behest - None of the members of High Court or Supreme Court Collegia was aware of the fact - State Government and Central Government were equally unaware of the fact - No case is made out for issuing a writ of quo warranto quashing the appointment of respondent as the judge of High Court.

*M. Manohar Reddy & Anr. v. Union of India & Ors.* .... 711

(4) Arts.38 and 39 - Welfare state - Meaning, features and obligations of - Discussed - Maxims - "*Salus populi suprema lex*".

(Also see under: Fee)

*Lala Ram (D) by L.R. & Ors. v. Union of India & Anr.* .... 577

(5) Art. 136.

(See under: Code of Criminal Procedure, 1973) .... 1115

(6) Art. 137 - Review Petition - On the ground of difference of opinion in the judgment under review and a subsequent judgment - Held: In the light of distinctive features in Gujarat Act and in Karnataka

Act which have been clearly spelt out in the judgment under review and in the subsequent judgment and the grounds raised in the review petitions having been dealt with in detail in the judgment under review and concluded by adducing adequate reasons, no case for review is made out and there is no apparent error in the impugned judgment - The review petitions are dismissed - Gujarat Lokayukta Act, 1986 - s.3(1), proviso - Karnataka Lokayukta Act, 1984 - s. 3(2)(a).

*State of Gujarat & Anr. v. Hon'ble Mr. Justice (Retd) Ramesh Amritlal Mehta & Ors.* .... 72

(7) Art. 141.

(See under: Code of Criminal Procedure, 1973) .... 1097

(8) Arts. 163 and 166 - Manner in which Governor acts - Explained - Held: Where Governor acts as the Head of State, except in relation to areas which are earmarked under the Constitution as giving discretion to the Governor, exercise of power by him, must only be upon the aid and advice of Council of Ministers - Therefore, appointment of Lokayukta can be made by the Governor, as Head of State, only with aid and advice of Council of Ministers, and not independently as a Statutory Authority.

(Also see under: Gujarat Lokayukta Act, 1986)

*State of Gujarat & Anr. v. Hon'ble Mr. Justice R. A. Mehta (Retd) & Ors.* .... 1

(9) Art. 166 read with Rules of Executive Business, State of Bihar - Agreement/Understanding dated 18.7.2007 entered into between University and

College Employees Federation and the State Government declaring non-teaching staff of Universities and constituent Colleges equivalent to the Government staff, not implemented on the plea that the agreement was not in accordance with the Rules of Executive Business - Held: Merely because of change of elected Government and the decision of the previous government not expressed in the name of Governor in terms of Art. 166, valid decision cannot be ignored and it is not open to the State to contend that those decisions do not bind them - Further, the provisions of Art. 166 are only directory and not mandatory in character and if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by State Government - In the instant case, it cannot be said that the decision was not taken by or on behalf of the Government - High Court has not only directed the State Government to implement the Agreement dated 18.07.2007, but also directed the Federation to call off the strike immediately in the interest of the student community - State Government directed to implement the order of the High Court - Service law - Rules of Executive Business, State of Bihar - Public interest litigation - Letter petition.

*State of Bihar & Anr. v. Sunny Prakash & Ors.* .... 362

(10) Art. 226 - Writ jurisdiction - In the matter of recovery of dues to Bank under Recovery of Debts Act - Original application filed by Bank before Debt Recovery Tribunal - Defendants filing

applications before Tribunal for direction to the Bank to produce certain documents - Application dismissed - Writ Petition - Held: When specific remedy is available u/s. 20, interference in exercise of jurisdiction is not justified - Powers under Art. 226 cannot be invoked in the matter of recovery of dues under the Act, unless there is any statutory violation resulting in prejudice to party or where such proceedings are arbitrary, unreasonable and unfair - Intervention of the writ court has delayed the proceedings for four years defeating the very purpose and object of the Act - Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - s. 20 - Administration of Justice.

*T.P. Vishnu Kumar v. Canara Bank P.N. Road, Tiruppur & Ors.* .... 977

(11) Art. 226.  
(See under: Code of Criminal Procedure, 1973) .... 545

(12) Arts. 226 and 227 - Jurisdiction of High Court - Writ of certiorari - High Court setting aside the award of Labour Court and directing reinstatement of workman with 25% back wages - Held: It is settled law that when Labour Court arrived at a finding overlooking the materials on record, it would amount to perversity and writ Court would be fully justified in interfering with the said conclusion - If a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari - In the instant case, the issue whether resignation of workman was voluntary and the factum of

complaint sent by him immediately were not adverted to by Labour Court - High Court thoroughly analyzed all the aspects and arrived at the correct conclusion - Labour law.

*M/s. Atlas Cycle (Haryana) Ltd. v. Kitab Singh* .... 611

(13) Arts. 226 and 227.

(See under: FIR) .... 1053

(14) Art. 227 - Superintendence over DRTs and DRATs - Held: High Courts are empowered to exercise their jurisdiction of superintendence under Art. 227 in order to oversee the functioning of DRTs and DRATs - This power also extends to administrative functioning of courts/tribunals - Recovery of Debts Due to Banking and Financial Institutions Act, 1993 - s.18.

*Union of India & Ors. v. Debts Recovery Tribunal Bar Association & Anr.* .... 480

(15) (i) Art. 233(2) - Appointment to the post of Additional District Judge through direct recruitment from Bar - Eligibility - Held: One of the essential requirements articulated by the expression "if he has been for not less than seven years an advocate" in Art. 233(2) is that such person must with requisite period be continuing as an advocate on the date of application.

(ii) Art. 233(2) - Expression 'advocate or pleader' - Held: Refers to legal practitioner and, thus, it means a person who has a right to act and/or plead in court on behalf of his client - For the purposes of Art. 233(2) both a Public Prosecutor and an Assistant Public Prosecutor are covered

by the expression 'advocate'- Rendering of service as a Public Prosecutor or as Assistant Public Prosecutor is deemed to be practice as an advocate - Code of Civil Procedure, 1908 - ss. 2 (7) and 2(15) - 'Government pleader' - 'Pleader' - Code of Criminal Procedure, 1973 - s. 2(4) (as applicable in State of Haryana) ss.24 and 25 - Public Prosecutor - Assistant Public Prosecutor - Bar Council of India Rules - rr. 43 and 49.

(iii) Art. 233(2) - Appointment to the post of Additional District Judge through direct recruitment from Bar - Assistant District Attorney/Public Prosecutor/Deputy Advocate General - Eligibility - Held: Since private appellants did not cease to be advocate while working as Assistant District Attorney/Public Prosecutor/Deputy Advocate General, the period during which they have been working as such has to be considered as the period practicing law - Thus, all of them have been advocates for not less than seven years and were enrolled as advocates and were continuing as advocates on the date of the application - They fulfilled the eligibility under Art. 233 (2) of the Constitution and r. 11 of the HSJS Rules on the date of application - Haryana Superior Judicial Service Rules, 2007 - rr. 5(ii) and 11.

(iv) Art. 233 (2) - Expression "the service" occurring in Art. 233(2) means "judicial service" - Other members of the service of Union or State are excluded because Art. 233 contemplates only two sources from which District Judges can be appointed: (i) judicial service; and (ii) the advocate/

pleader or in other words from Bar.

*Deepak Aggarwal v. Keshav Kaushik and Others* .... 402

(16) Tenth Schedule - Para 2(1)(a), 6 and 8 - Provisions as to disqualification on ground of defection - 52nd Amendment - Intent and objects of - Explained.

(Also see under: Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987)

*Speaker, Orissa Legislative Assembly v. Utkal Keshari Parida* .... 348

#### CONTRACT:

Commercial contract - Inapplicability of the rule of contra proferentem - Held: Rule of contra proferentem does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon.

(Also see under: Insurance)

*Export Credit Guarantee Corpn. of India Ltd. v. M/s. Garg Sons International* .... 336

#### CRIMES AGAINST WOMEN:

(1) Phenomenal rise in crime - Observation made by Supreme Court that Judges have to be sensitive to women's problems - Protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitized towards women's problems.

(Also see under: Penal Code, 1860)

*Vajresh Venkatray Anvekar v. State of Karnataka* .... 80

(2) Punishment - Held: In the cases of bride burning, cruelty, suicide, sexual harassment, rape, etc. a complete overhaul of the system is a must in the form of deterrent punishment for offenders - Sentence/Sentencing - Punishment.

(Also see under: Penal Code, 1860)

*Ashabai & Anr. v. State of Maharashtra* .... 115

#### CRIMINAL LAW:

(1) Issue estoppel - Explained - Code of Criminal Procedure, 1898 - s.403(2).

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

*Ravinder Singh v. Sukhbir Singh & Ors.* .... 243

(2) Motive.

(See under: Penal Code, 1860) .... 1079

#### CUSTOM:

Defendant pleading a special family custom that a child from outside the family could not have been adopted - Held: One who relies upon custom varying general law, must plead and prove it - Special customs which prevail in a family, a particular community etc., require strict proof and defendants/respondents have failed to prove the same - Evidence Act, 1872 - s.57 - Judicial notice.

(Also see under: Hindu Adoptions and Maintenance Act, 1956)

*Laxmibai (Dead) thr. Lrs. & Anr. v. Bhagwantbuva (Dead) thr. Lrs. & Ors.* .... 632

#### DELAY/LACHES:

(1) (See under: Adjudication Rules under FERA) .... 1005

(2) (See under: FIR) .... 80,  
154 and 168

(3) (See under: Motor Vehicles Act, 1988) .... 966

#### DOCTRINES/PRINCIPLES:

(1) Doctrine of deemed confirmation.  
(See under: Service Law) .... 758

(2) Doctrine of equality.  
(See under: Service Law) .... 1029

(3) Doctrine of reading down.  
(See under: Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987) .... 348

(4) 'Mutuality principle' in the context of s.2(24)(vii) of Income Tax Act - Explained.  
*M/s Bangalore Club v. Commissioner of Income Tax & Anr.* .... 267

(5) Rule of contra proferentem.  
(See under: Contract) .... 336

#### EDUCATION/EDUCATIONAL INSTITUTIONS:

Admission - Requirement of 60% marks in qualifying examination - Candidate mentioned in enrolment form that he had secured 56% marks in qualifying examination - While in declaration appended to enrolment form, asserted that he had secured 60% marks - University did not permit him to appear in the exam - Writ petition by candidate - High Court did not permit him to appear in exam, but granted him compensation of Rs. 5 lakhs - Held: Candidate applied for admission knowing fully well that he had not secured minimum eligible marks - He cannot claim benefit for his own wrong - College cannot be held liable for the act of candidate - Direction



for compensation, not sustainable.

*Priyadarshini College of Computer Science  
and Anr. v. Manish Kumar and Ors.* .... 622

ELECTRICITY ACT, 1910:

ss. 30 and 58 read with PSEB Circular No. CC23/90 and Clause 8-b of Tariff Schedule - Levy of load surcharge at additional rate - Held: Was only meant for a load which was unauthorized or not sanctioned and if a particular load of a consumer is sanctioned or authorized, load surcharge at additional rate could not be levied under Clause 8-b of the Schedule of Tariff - In the instant case, the load of TG Set detected was a sanctioned load and was not an unauthorized load - Therefore, appellant could not be held liable for load surcharge under Clause 8-b, even if by the aid of bus coupler, inter-transferability of load could be effected between TG Set of appellant and the energy supplied by respondent-Board - Demand raised against appellant quashed - Punjab State Electricity Board Circular No. CC 23/90.

*M/s. Oswal Agro Mills Ltd. v Punjab State  
Electricity Board and Others.* .... 526

EVIDENCE:

(1) Retracted statements - Evidentiary value of - Held: Adjudicating Authority and Appellate Tribunal have both correctly appreciated the legal position and applied the same to hold that the statements were voluntary and, therefore, binding upon appellants.

(Also see under: Foreign Exchange Regulation Act, 1973)

*M/s Telestar Travels Pvt. Ltd. & Ors. v.  
Special Director of Enforcement* .... 1005

(2) Testimony of related witnesses - Murder committed in a farm house - Brother and sister of deceased witnessed the incident - Held: When deceased was in one part of the house, while witnesses and other blood relatives were in some other portion, there would not have been any difficulty for them in rushing to deceased, who was making a frantic call for help on being attacked by accused - Their version was cogent, natural and convincing and there was no good ground to reject their version on sole ground that they were interested witnesses.

(Also see under: Penal Code, 1860)

*Raj Pal v. State of Haryana* .... 168

EVIDENCE ACT, 1872:

(1) s. 32(1) - Multiple dying declarations - Held: When there are multiple dying declarations, each one has to be assessed and evaluated independently on its own merit as to its evidentiary value and one cannot be rejected because of certain variation in the other - In the instant case, prosecution relied on four dying declarations of deceased - At the time of recording of these statements, medical officers on duty had certified that deceased was fully conscious and was in a fit state of mind to make the same - Though, in one of the statement, deceased implicated two more persons (who were acquitted by trial court) she was consistent about the role played by her mother-in-law and sisters-in-law (appellants) - The Court fully endorses the view expressed by trial court and affirmed by High Court about acceptability of four dying declarations implicating the appellants.

(Also see under: Penal Code, 1860)

*Ashabai & Anr. v. State of Maharashtra* .... 115

(2) s.105.

(See under: Penal Code, 1860) .... 385

(3) s.113-A - Presumption as to abetment of suicide - 'Cruelty' - Suicide by second wife of appellant - Conviction of appellant u/ss 306 and 498-A - Held: It is not the case of prosecution that appellant had subjected the deceased to cruelty of the nature described in clause (b) of Explanation to s.498A, IPC - As regards clause (a) of Explanation, prosecution has not been able to prove beyond reasonable doubt that appellant was guilty of any wilful conduct which was of such a nature as was likely to drive deceased to commit suicide - Therefore, presumption u/s 113A is not attracted and appellant cannot also be held guilty of abetting suicide of deceased - Judgment of courts below holding the appellant guilty of offences punishable u/ss 306 and 498-A IPC, set aside - Penal Code, 1860 - ss. 306 and 498-A.

*Atmaram s/o Raysingh Rathod v. State of Maharashtra* .... 867

(4) s.134 read with ss.138 and 146 - Number of witnesses and cross-examination - It is not the number of witnesses but quality of their evidence which is important - If a party wishes to raise any doubt as regards correctness of statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to - Without this, it is not possible to impeach his credibility.

(Also see under: Hindu Adoptions and Maintenance Act, 1956)

*Laxmibai (Dead) thr. Lrs. & Anr. v. Bhagwantbuva (Dead) thr. Lrs. & Ors.* .... 632

(5) s.139 - Cross-examination of person called to produce a document - Held: The documents relied upon by Adjudicating Authority produced by two officials of Indian High Commission in London, were permitted to be inspected - Therefore, refusal of Adjudicating Authority to permit cross examination of witnesses producing the documents cannot even on principles of Evidence Act be found fault with.

(Also see under: Foreign Exchange Regulation Act, 1973)

*M/s. Telestar Travels Pvt. Ltd. & Ors. v. Special Director of Enforcement* .... 1005

#### EXCISE:

Settlement of liquor shops.

(See under: Bihar Excise (Settlement of Licences for Retail Sale of Country/Spiced Country Liquor) Rules, 2004) .... 916

#### EXCISE DUTY:

Small scale exemption - Use of brand name "cookie man" on sale of cookies in plastic pouches/containers - Claim of assessee to benefit of small scale exemption in respect of cookies sold loosely from counter of retail outlet - Held: Not tenable - It is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods under SSI notification - A scrutiny of surrounding circumstances is not only permissible, but necessary to decipher the same - Cookies were

sold from a dedicated outlet of "Cookie Man" where no other products but those of assessee were sold - Invoices carried the name of the company - Cookies sold even without inscription of the brand name, indicated a clear connection with brand name, in the course of assessee's business of manufacture and sale of cookies under brand name "Cookie Man" - They continued to be branded cookies of "Cookie Man" and assessee could not claim exemption under SSI Notification - S.S.I. Notification No. 1/93-C.E., dated 28th February, 1993, as amended.

*Commissioner of Central Excise, Chennai-II Commissionerate, Chennai v. M/s. Australian Foods India (P) Ltd., Chennai* .... 932

EXPLOSIVE SUBSTANCES ACT, 1908:  
(See Under: Bail) .... 103

FEE:

Licence fee - Shops situated in a busy market of Old Delhi - Railway Authorities by order dated 25-5-1987, enhancing licence fee from Rs.21 per sq yards to Rs.270 per sq yards per annum - with retrospective effect from 1-11-1980 - Merely because appellants (shop licencees) have been occupying the shops for a long time, they cannot claim any special privilege - Enhanced license fee cannot be held to be unreasonable or arbitrary, and as warranting any interference by a court of equity - However, order dated 25-5-1987 should not be applied retrospectively - Enhanced license fee may be recovered from appellants from the said date in accordance with law.

*Lala Ram (D) by L.R. & Ors. v. Union of India & Anr.* .... 577

FIR:

(1) Delay - Suicide committed by married woman by consuming poison - FIR lodged by victim's father after six hours - Effect - Held: When a man loses his daughter due to cyanide poisoning, he is bound to break down - He would take time to recover from the shock - Six hours delay cannot make his case untrue.

(Also see under: Penal Code, 1860)

*Vajresh Venkatray Anvekar v. State of Karnataka* .... 80

(2) Delay in lodging FIR - Held: In the instant case, "ezahar" had been lodged at police station prior to registration of FIR - Trial court has analysed this aspect in an extremely careful and cautious manner which is found to be impeccable.

(Also see under: Penal Code, 1860)

*Parbin Ali and Another v. State of Assam* .... 154

(3) Delay in registration of FIR - Murder committed in late night - Victim brought to hospital injured and unconscious - Held: Trial court has held that there was in fact, no delay in carrying out various formalities with regard to receipt of 'ruka', holding of inquest, recording of statement of witnesses, registration of FIR and forwarding of special report to magistrate and concluded that the same was carried out within a reasonable time - Further, keeping in view the distance of hospital and Police Station from the place of occurrence, no exception can be taken with regard to alleged delay in registration of complaint - Delay/Laches.

(Also see under: Penal Code, 1860)

*Raj Pal v. State of Haryana* .... 168

(4) Lodgment of two FIRs - In respect of same incident - Held - Not permissible - However, concept of sameness does not encompass filing of counter FIR - Prohibition is for further complaint by same complainant and others against the same accused - In the instant case, allegations in second FIR are distinct and separate and the same may be regarded as counter complaint - Principle of sameness does not get attracted - Therefore, second FIR not liable to be quashed on account of existence of first FIR - Constitution of India, 1950 - Arts. 226 and 227.

*Surender Kaushik and Others v. State of Uttar Pradesh and Others* .... 1053

#### FOREIGN EXCHANGE REGULATION ACT, 1973:

ss. 8 and 14 - Dealing in foreign exchange without previous permission of Reserve Bank - An Indian company dealing with a foreign company based in U.K. and money transactions made through another company based outside India and alleged to be a paper company - Held: There is no reason to interfere with concurrent findings of fact that company concerned was a paper company controlled by appellants from India - There is sufficient evidence on record for Adjudicating Authority and Appellate Tribunal to hold that appellants were guilty of violating the provisions of FERA that called for imposition of suitable penalty against them - Appellate Tribunal has already given relief by reducing the penalty by 50% - No further leniency warranted.

*M/s Telestar Travels Pvt. Ltd. & Ors. v. Special Director of Enforcement* .... 1005

#### GIFT TAX ACT, 1958:

(1) s. 4(1) (c) - Gift to include certain transfers - Revocable gift of equity shares made by assessee in February 1982, finally held to be a valid gift - Bonus shares received by transferee as holder of equity shares - Gift revoked in 1988 within the window period - Re-assessment order seeking to tax the assessee treating bonus shares as gift by assessee - Upheld by High Court - Held: Since High Court has not noticed the provisions of s. 4 (1) (c), matter remanded to it for consideration afresh, keeping in view the provisions of s. 4 (1) (c) as also the assessment order for Assessment year 1982-83.

*Satya Nand Munjal v. Commissioner of Gift Tax* .... 492

(2) ss. 16B and 16B (3) - Applicability of - High Court had allowed the appeals relying on its judgment passed in two other appeals whereby it was held that assessee was liable to pay interest on the gift tax levied - Held: Matter is remitted back to High Court, in view of the fact that the judgment on which High Court based its decision has been set aside by Supreme Court and that matter was remanded to High Court for de novo consideration.

*Satya Nand Munjal v. Commissioner of Gift Tax, (Central), Ludhiana* .... 502

#### GUARDIANS AND WARDS ACT, 1890:

ss.. 7 and 26 - Applications by appellant, a female American citizen, for an order appointing her as guardian of a minor female orphan and for permission to take the child out of country for purpose of adoption - Held: Claim of appellant

will have to be necessarily considered on the basis of law as in force on date, namely, provisions of JJ Act and Rules framed thereunder and Guidelines of 2011 which have been conferred a statutory sanction - Appellant appointed as legal guardian of the child and granted permission to take the child to USA - CARA will issue necessary conformity certificate as contemplated under clause 34(4) of Guidelines of 2011 - Juvenile Justice (Care and Protection of Children) Act, 2000 - s. 41 - Juvenile Justice (Care and Protection of Children) Rules, 2007, r. 33 - Guidelines for Adoption from India, 2006 - Guidelines Governing the Adoption of Children, 2011 - Adoption - Inter country adoption.

*Stephanie Joan Becker v. State and Ors.* .... 951

GUIDELINES FOR ADOPTION FROM INDIA, 2006:  
(See under: Guardians and Wards Act, 1890) .... 951

GUIDELINES GOVERNING THE ADOPTION OF CHILDREN, 2011:  
(See under: Guardians and Wards Act, 1890) .... 951

GUJARAT LOKAYUKTA ACT, 1986:  
(1)(i) s.3 - Appointment of Lokayukta - 'Consultation' - Connotation of - Primacy of opinion of Chief Justice of State - Held: s. 3 must be construed in the light of meaning given by courts to the word 'consultation' so as to give effect to the provisions of the statute to make it operative and workable - Statutory construction of provisions of the Act itself mandates primacy of opinion of the Chief Justice - In a situation where one of the consultees has primacy of opinion under the

statute, either specifically contained in a statutory provision, or by way of implication, consultation may mean concurrence - Interpretation of statutes - Purposive construction.

(ii) s.3 - Appointment of Lokayukta - Process of consultation - Chief Justice of State recommending the name of a retired Judge of High Court to Governor and Chief Minister - Leader of opposition in the House intimating that he had been consulted by Governor and he had agreed to the appointment - Held: Process of consultation stood complete as 3 out of 4 statutory authorities had approved the name of respondent and Chief Justice replied to Chief Minister regarding his objections with respect to appointment of respondent as Lokayukta.

(iii) s.3 - Appointment of Lokayukta - Held: Chief Justice recommending only one name, instead of a panel of names, is in consonance with the law laid down by Supreme Court, and there is no cogent reason not to give effect to the said recommendation.

(iv) s.3 - Delay in appointment of Lokayukta - Held: Statutory provisions make it mandatory on the part of the State to ensure that the office of Lokayukta is filled up without any delay.

(Also see under: Constitution of India, 1950)

*State of Gujarat & Anr. v. Hon'ble Mr. Justice R. A. Mehta (Retd) & Ors.* .... 1

(2) s. 3 (1), proviso.

(See under: Constitution of India, 1950) .... 72

HARYANA SUPERIOR JUDICIAL SERVICE RULES,  
2007:

rr. 5(ii) and 11.

(See under: Constitution of India, 1950) .... 402

HINDU ADOPTIONS AND MAINTENANCE ACT, 1956:

(i) s.16 read with ss.10 and 11 - Adoption of male child by a female - Adoption deed got registered - Presumption of a valid adoption - Held: If there is a registered adoption deed, there is a presumption u/s 16 to the effect that adoption has been made in compliance with provisions of the Act until and unless such presumption is disproved - Burden to rebut the presumption lies on the person who challenges such adoption - In the instant case, defendants/respondents never made any attempt whatsoever, to rebut the presumption.

(ii) ss. 10 and 11 r/w s. 16 - Adoption - Held: In the instant case, there is ample evidence on record to prove giving and taking ceremony - Adoptive mother put her thumb impression on the deed, and it was also signed by natural parents of child - The deed was signed by witnesses - Appellate courts could not have drawn any adverse inference against appellants/plaintiffs on the basis of a mere technicality, to the effect that natural parents of adoptive child had acted as witnesses, and not as executors of the document - The document was valid.

*Laxmibai (Dead) thr. Lrs. & Anr. v. Bhagwantbuva (Dead) thr. Lrs. & Ors.* .... 632

INCOME TAX ACT, 1961:

(1) s. 2 (24) (vii) - Interest earned by assessee-Club on surplus funds invested in fixed deposits

with corporate member-Banks - Exemption from income tax claimed on the basis of doctrine of mutuality - Held: The amount of interest earned by assessee from member banks will not fall within the ambit of mutuality principle and will, therefore, be exigible to Income-Tax in the hands of assessee-Club.

*M/s Bangalore Club v. Commissioner of Income Tax & Anr.* .... 267

(2) (i) Chapter XIV-B - Scope of - Explained - ss. 158 BB, 158 BC and 158 BD read with ss. 132 and 139 -Detection of undisclosed income of assessee during search of another concern - Plea of assessee that since it had paid Advance Tax, its income could not be said to be undisclosed - Held: Payment of Advance Tax, which is based upon estimated income, cannot tantamount to disclosure of total income, which must be declared in the return - Disclosure of total income by filing of return u/s 139 is mandatory even after payment of Advance Tax by an assessee - In view of the fact that assessee had not filed its return of income by the due date, Assessing Officer was correct in assuming that assessee would not have disclosed its total income.

(ii) s.158 - "Undisclosed income" - Held: Undisclosed income is defined by s. 158B as that income "which has not been or would not have been disclosed for the purposes of the Act" - The only way of disclosing income, on the part of an assessee, is through filing of a return, as stipulated in the Act and, therefore, an "undisclosed income" signifies income not stated in the return filed -

Income to be deemed as undisclosed - Explained.

(iii) s.158 - "Undisclosed income" and tax deducted at source - Held: Since the tax to be deducted at source is also computed on estimated income of an assessee for relevant financial year, mere deduction of tax at source, also, does not amount to disclosure of income, nor does it indicate the intention to disclose income most definitely when the same is not disclosed in the returns filed for assessment year concerned.

*The Assistant Commissioner of Income Tax, Chennai v. M/s A.R. Enterprises* .... 295

#### INDUSTRIAL DISPUTES ACT, 1947:

25-F - Termination of workman - Who worked only for eight months as a daily wager - Courts below holding the termination to be in contravention of s. 25-F and directing reinstatement with continuity of service with 25% back wages - Held: In a case of wrongful termination of a daily wager, who had worked for a short period, award of reinstatement is not proper - Award of compensation would be in consonance with the demand of justice - Compensation of Rs. 50,000/- awarded - Labour Laws.

*Asst. Engineer, Rajasthan Dev. Corp. & Anr. v. Gitam Singh* .... 679

#### INSURANCE:

(i) Contract of Insurance - Interpretation of - Held: While construing the terms of a contract of insurance, the words used therein must be given paramount importance, and it is not open for the court to add, delete or substitute any words - Since upon issuance of an insurance policy, insurer

undertakes to indemnify the loss suffered by insured on account of risks covered by the policy, its terms have to be strictly construed in order to determine the extent of liability of insurer - It is not permissible for court to substitute the terms of contract itself, under the garb of construing the terms incorporated in the agreement of insurance - No exceptions can be made on the ground of equity.

(ii) Insurance - Policy terms - Non-compliance - Effect - Appellant, a government company, in the business of insuring exporters - Respondent purchased insurance policy for purpose of insuring shipment to a foreign buyer/importer - Foreign buyer committed default in making payments - Claims presented by respondent-insured rejected by appellant-insurer - Validity - Held: Respondent-insured failed to comply with the requirement under clause 8(b) of the insurance agreement, of informing the appellant-insurer about non-payment of outstanding dues by foreign importer within the stipulated time except in two cases - Liability of appellant-insurer exonerated to that extent - Thus, only two claims deserve to be allowed - Other claims dis-allowed.

*Export Credit Guarantee Corpn. of India Ltd. v. M/s. Garg Sons International* .... 336

#### INTERPRETATION OF STATUTES:

Reading down a provision.

(See under: Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987) .... 348

JAMMU AND KASHMIR CIVIL SERVICES  
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Articles 226(2) and 226(3).

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JAMMU AND KASHMIR STATE EVACUEES'  
(ADMINISTRATION OF PROPERTY) ACT, 2006:

(i) s. 6 - Notification published declaring lands under possession of appellants to be vested in Custodian of Evacuee Property - Whether vitiated - Held: Yes, since appellants had been denied an opportunity of explaining that they were not mere occupants of property in question, but tenants thereof, in which case, neither r.9 nor r.13-C of the 2008 Rules had any application - Jammu and Kashmir State Evacuees' (Administration of Property) Rules, 2008 - rr.9 and 13C.

(ii) s. 16 - Protection under - When available - Held: It is available only in respect of evacuee property after a determination to such effect is made - A unilateral declaration is clearly opposed to principles of natural justice and administrative fair play and cannot be supported.

(iii) s. 6 - Notification declaring the land to be evacuee property - State authorities later took the stand that Settlement stood vitiated on account of non-compliance with r.13C - Held: Settlement was lawful and within the scope of r. 3 of O.23 CPC - The special facts of the case set the Agreement / Settlement apart from the cases of grant of lease of vacant lands in terms of r.13C - Since lands were not vacant, the very first criterion of r.13C, was not satisfied and lease of lands was to be granted as part of settlement packet - r.13C had

no application to Settlement arrived at between parties and the same was not, therefore, vitiated and could not be withdrawn unilaterally - Jammu and Kashmir State Evacuees' (Administration of Property) Rules, 2008 - r.13C - Code of Civil Procedure, 1908 - O.23, r.3.

*Ghulam Nabi Dar & Ors. v. State of J&K & Ors.* .... 881

JAMMU AND KASHMIR STATE EVACUEES'  
(ADMINISTRATION OF PROPERTY) RULES,  
2008:

rr.9 and 13C:

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JUDGMENTS:

(1) Complaint against doctors - Before District Consumer Forum - Alleging medical negligence - Notice issued - Challenged by the doctors on the ground that complaint could not have been registered without seeking opinion of an expert in terms of decision in *Martin F. D'Souza's* case - National Commission, by impugned judgment rejected the challenge relying on *V. Kishan Rao's* case wherein *Martin F. D'Souza's* case was held per incuriam - Held: The judgment in *Martin F. D'Souza* has been correctly declared per incuriam by the judgment in *V. Krishna Rao's* case as the law laid down in *Martin F. D'Souza's* case was contrary to the law laid down in *Jacob Mathew's* case - Impugned judgment does not call for any interference - Medical Negligence.

*A. Srimannarayana v. Dasari Santakumari & Anr.* .... 230



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(2) Finality of judgment. (See under: Res judicata)	....	814
(3) Judgment of High Court - Use of harsh language against authorities - Held: Judges must not use strong and carping language, rather they must act with sobriety, moderation and restraint - In the instant case, the Judge ought to have maintained a calm disposition and should not have used harsh language against a Constitutional authority, i.e. the Chief Minister - Judicial restraint. (Also see under: Constitution of India, 1950; and Gujarat Lokayukta Act, 1986) <i>State of Gujarat &amp; Anr. v. Hon'ble Mr. Justice R. A. Mehta (Retd) &amp; Ors.</i>	....	1
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- Writ Petition - Direction by High Court to Management to pay Rs. 10,000/- to each of the workmen - Held: Workmen who approached the Commissioner after 8-10 years entitled to Rs. 50,000/- each and who approached after 2-3 years entitled to Rs. 1,00,000/-.

*Rajkumar S/o Rohitlal Mishra v. Jalagaon Municipal Corporation* .... 705

#### LAND ACQUISITION ACT, 1894:

ss.4 and 6 - Successive Notifications u/s.4/ declarations u/s.6 - Effect - Held: The effect would be that earlier notification/declaration stands obliterated/ superseded and in such a fact-situation, it would not be permissible for either of the parties to make any reference to said notifications/ declarations which stood superseded - However, no proceedings were taken in pursuance of subsequent notification/ declaration issued in 1983 and after commencement of Amendment Act 1987, said notification / declaration stood elapsed - Thus, there can be no sanctity to any of the acquisition proceedings initiated by respondents so far as the suit land is concerned, though appellants stood dispossessed from the land in pursuance of Notification u/s.4 dated 5.3.1963 - Appellants had been dispossessed without resorting to any valid law providing for acquisition of land, thus, entitled for restoration of possession of land in dispute - However, considering the fact that possession of land was taken over about half a century ago and a full-fledged residential colony has been constructed thereon, it would be difficult for respondents to restore the possession - Respondents are, therefore, directed to make the

award treating s.4 notification as, on date, i.e. 12.2.2013 - Appellants shall be entitled to all statutory remedies and benefits.

*Bhimandas Ambwani (D) Thr. Lrs. v. Delhi Power Company Limited* .... 996

#### LEASE:

Termination of lease - Vesting of title in lessor - Lease of subject land terminated and possession thereof taken over as per Panchnama - Suit by transferee of lessee for declaration and injunction - Held: With termination of lease, title to suit property vested in lessor, ipso jure - That being so, possession of a vacant property would follow title and also vest in lessor - Panchnama drawn up at site recorded the factum of actual takeover of possession from lessee, whereafter possession too legally vested in lessor - Therefore, dispossession of lessee had taken place pursuant to termination of lease in terms of Panchnama.

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#### LEGISLATION:

Need for deterrent punishment in crimes against women.

(See under: Crimes against Women) .... 115

#### LETTER PETITION:

(See under: Constitution of India, 1950) .... 362

#### LIMITATION ACT, 1963:

Suit for declaration - Limitation - Held: A suit for declaration not covered by Article 57 of Schedule to the Act must be filed within 3 years from the

date when right to sue first arises - A suit for declaration that termination of lease was invalid and, therefore, ineffective could have been instituted by lessee as and when right first accrued and for that purpose, dispossession of lessee was not necessary as dispossession is different from termination of lease - However, dispossession having taken place, lessee ought to have filed suit within three years of date of dispossession - Suit having been instituted after nearly eighteen years later was clearly barred by limitation - Courts below fell in error in holding the suit as within time.

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#### LOCUS STANDI:

(See under: Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987) .... 348

#### MAXIMS:

(1) "*Ignorantia juris non excusat*".  
(See under: Narcotic Drugs And Psychotropic Substances Act, 1985) .... 236

(2) "*Salus populi suprema lex*".  
(See under: Constitution of India, 1950) .... 577

#### MINERAL CONCESSION RULES, 1960:

r.25-A - Held: Is prospective in operation.  
(Also see under: Administrative Law)

*M/s. Kalinga Mining Corporation v. Union of India & Ors.* .... 814

#### MOTOR VEHICLES ACT, 1988:

(1) s. 167 r/w s.166 of the Act and s.8 of 1923 Act - Death of an employee in a motor accident

while in employment - Motor Accident Claims Tribunal awarding compensation and directing deduction of the amount already paid to claimant under 1923 Act - Held: Dependents having opted to file claim petition u/s 166 of the Act first, and being disbursed the amount under 1923 Act subsequently, order of Tribunal directing deduction of amount paid under 1923 Act from the compensation determined under Motor Vehicles Act, gives full effect to s.167 of the said Act, and claimants are, thus, not allowed dual benefit under the two enactments - Workmen's Compensation Act, 1923 - ss. 8 and 10.

*Oriental Insurance Co. Ltd. v. Dyamavva & Ors.* .... 739

(2) Motor accident - Compensation for permanent disability, loss of amenities etc. - Held: Appellant at the age of eight years suffered an accident resulting into a severe injury in his right leg and creating a deformity and disability for the rest of his life - Age of appellant is, therefore, a very relevant factor while determining compensation - Accordingly, compensation enhanced to Rs. 4 lakhs with 6% interest on enhanced amount from date of petition till realization - Delay/laches.

*Kum. Michael v. Regional Manager Oriental Insurance Co. Ltd. & Anr.* .... 966

#### MUNICIPALITIES:

(See under: Rajasthan Municipalities Act, 1959) .... 220

#### NARCOTIC DRUGS AND PSYCHOTROPIC

##### SUBSTANCES ACT, 1985:

s.50 - Search of person of suspect / accused - Procedure - Nature of - Conviction of accused u/

ss.8 and 21 - Held: It is mandatory on the part of authorized officer to make the accused aware of his right to be searched before a Gazetted Officer or a Magistrate, if so required by him and this mandatory provision requires strict compliance - In the instant case, accused had been only informed that he could be searched before a Magistrate or a Gazetted Officer, if he so wished - Thus, there being non-compliance of the mandatory provision, conviction and sentence awarded by courts below, set aside - Maxim "*ignorantia juris non excusat*".

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#### NEGLIGENCE:

Medical negligence.  
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#### ORISSA LEGISLATIVE ASSEMBLY

(DISQUALIFICATION ON GROUND OF DEFECTION) RULES, 1987:

(i) rr. 6(1) and (2) - Petition for disqualification of Members of Legislative Assembly on ground of defection, filed by a person, who was President of State Unit of political party but was not a Member of Legislative Assembly - Held: Is maintainable - Although, sub-r.(2) of r. 6 provides that a petition in relation to a Member for the purposes of sub-r. (1) may be made in writing to the Speaker by any other Member, such a provision is neither contemplated nor provided for in the Tenth Schedule itself - In a case where all the four Members elected to the Assembly from the political party concerned, changed their allegiance from the said party to the ruling party, there would be no one to bring such fact to the

notice of the Speaker and ask for disqualification of the said Members - Therefore, provisions of sub-rr. (1) and (2) of r. 6 have to be read down to make it clear that not only a Member of the House, but any person interested, would also be entitled to bring to the notice of the Speaker the fact that a Member of the House had incurred disqualification under the Tenth Schedule - Constitution of India, 1950 - Tenth Schedule - Para 2(1)(a), 6 and 8 - Interpretation of Statutes - Reading down a provision - Locus standi.

(ii) rr. 6(1) and (2) - Doctrine of reading down.

*Speaker, Orissa Legislative Assembly v. Utkal Keshari Parida* .... 348

#### PENAL CODE, 1860:

(1) s.292 read with s. 34 IPC and s.7 of Cinematograph Act - Display of obscene films to young viewers - Conviction - Plea of accused for release u/s 4 of Probation of Offenders Act - Held: In view of the dichotomy of punishments introduced by Legislature in s.292 IPC for first offenders and subsequent offenders, sentence of one month's simple imprisonment with fine, needs no interference - Probation of Offenders Act, 1958 - s.4 - Cinematograph Act, 1952 - s.7.

*Gita Ram & Anr. v. State of H.P.* .... 698

(2) s. 302 - Murder - Circumstantial evidence - Courts below on the basis of motive and circumstances of the case convicted the accused - Held: Motive not proved - But absence of motive would not affect prosecution case where chain of other circumstances establish beyond reasonable doubt that accused committed the offence - Circumstances of the instant case prove

prosecution case beyond reasonable doubt - As per medical evidence, majority of injuries were stated to have been caused by the weapon of crime and were sufficient in ordinary course to cause death - General good behaviour of accused has no nexus with offence alleged - Conviction upheld.

*Vivek Kalra v. State of Rajasthan* .... 1070

(3) s.302/34 - Murder - Conviction and sentence of life imprisonment - Held: The fatal injuries sustained by deceased could not have been self-inflicted - Once death was found to be homicidal, evidence of eye-witnesses becomes relevant and the same being consistent in narrating the manner in which deceased was attacked by accused and co-accused, with specific reference made to weapons used and further supported by medical evidence, there is no infirmity in the verdict of courts below - Evidence - FIR.

*Raj Pal v. State of Haryana* .... 168

(4) s. 302/34 - Murder - Oral dying declaration made to witnesses naming the accused - Conviction and sentence of life imprisonment affirmed by High Court - Held: Conviction can be founded solely on the basis of dying declaration if the same inspires full confidence - In the instant case, witnesses have deposed in a categorical manner that deceased was in a fit state of health to speak and make a statement and, in fact, he did make a statement as to who assaulted him - Absence of any real discrepancy or material contradiction or omission and additionally non cross-examination of doctor in this regard makes

the dying declaration absolutely credible and conviction based thereon cannot be faulted - Evidence - Dying Declaration.

*Parbin Ali and Another v. State of Assam* .... 154

(5) ss. 302/34 and 498-A/34 - Death of a married woman caused by burn injuries - Conviction of mother-in-law and two sisters-in-law of deceased and sentence of life imprisonment - Held: There is no infirmity in the order of conviction and sentence recorded by trial court and affirmed by High Court - Evidence Act, 1872 - s.32 - Sentence/Sentencing.

*Ashabai & Anr. v. State of Maharashtra* .... 115

(6) s.302 r/w s. 34 - Fight between two rival groups - Death of two persons due to lathi blows inflicted by appellants - Conviction - Appellants taking plea of right of private defence - Held: Complainant party had gone to the field of the appellants and there was a fight between both the groups - Appellants fought to repel the attack and in course of the incident, both sides sustained injuries - In the circumstances, appellants exceeded their limit of private defence when they chased the victim at some distance, pushed him down and inflicted several blows with lathis due to which he died - Conviction of appellants u/s.302 r/w s.34 IPC and life sentence awarded to them justified - Evidence Act, 1872 - s.105.

*Gopal & Anr. v. State of Rajasthan* .... 385

(7) (i) s. 302 r/w s. 34 - Murder caused by two brothers - Conviction by trial court of both the accused - High Court affirming conviction of

appellant and acquitting his brother - Held: Evidence discloses that both accused brothers had an old enmity with deceased over a well - On date of incident, deceased was attacked by both accused inasmuch as appellant assaulted the deceased by stones while his brother facilitated execution of common design by sitting on his chest - Judgment of High Court acquitting one of the accused set aside and that of trial court convicting both restored.

(ii) s. 34 - Common intention - Explained.

*State of Rajasthan v. Shobha Ram* .... 327

(8) s. 302/34.

(See under: Sentence/Sentencing) .... 783

(9) ss. 302 and 201 - Triple murder - Circumstantial evidence - Conviction and sentence of death awarded by trial court confirmed by High Court - Held: Chain of circumstances proved by prosecution establishes beyond reasonable doubt that it was the appellant who had eliminated three persons - Therefore, conviction of appellant u/s 302 for each of the three offences of murder is upheld - However, as regards sentence, motive for crime was not established - Further, though deceased persons appear to have been brutally killed, what exactly happened leading to their murder by appellant is not known - There is no evidence to establish the gravest case of extreme culpability of appellant and there is also no evidence to establish his circumstances - Therefore, imprisonment for life for each of the three offences of murder and the sentences to run

consecutively would meet the ends of justice - Code of Criminal Procedure, 1973 - s.31 - Sentence/Sentencing - Criminal law - Motive.

*Sanaullah Khan v. State of Bihar* .... 1079

(10) ss.328, 354 and 376.

(See under: Code of Criminal Procedure, 1973) .... 504

(11) ss.468 and 471.

(See under: Code of Criminal Procedure, 1973) .... 545

(12) s.477A.

(See under: Prevention of Corruption Act, 1988) .... 398

(13) ss. 498A and 306 - Married woman committed suicide by consuming poison within seven years of marriage - Acquittal of accused-husband by trial court - Reversal of acquittal by High Court - Held: Justified - Medical evidence and evidence of PWs revealed that victim was beaten up prior to death - Victim committed suicide within seven years from the date of her marriage in her matrimonial home - Impact of this circumstance was clearly missed by trial court - Evidence on record established that victim was subjected to mental and physical cruelty by appellant in their matrimonial home which drove her to commit suicide - Explanation offered by appellant in his statement u/s.313 CrPC confirms that appellant is not innocent - Circumstances on record clearly establish that the victim received eye injury in the matrimonial home and the appellant was responsible for it - Appellant unable

to rebut presumption u/s.113A of Evidence Act - Evidence Act, 1872 - s.113A.

*Vajresh Venkatray Anvekar v. State of Karnataka* .... 80

#### PREVENTION OF CORRUPTION ACT, 1988:

Offences under the Act - Applicability of Probation of Offenders Act - Appellant, a retired employee of Post Office - Convicted by trial court u/s.477A IPC r/w s.13(1)(c) and 13(2) of Prevention of Corruption Act - However, instead of awarding sentence, trial court released the appellant under Probation of Offenders Act - High Court sentenced appellant to one year u/ss.477A IPC and u/ s.13(1)(c) r/w s.13(2) of Prevention of Corruption Act for one year - Held: Since s.7 as well as s.13 of Prevention of Corruption Act provide for a minimum sentence of six months and one year respectively in addition to the maximum sentences as well as imposition of fine, claim for grant of relief under Probation of Offenders Act is not permissible - In cases where a specific provision prescribes a minimum sentence, provisions of Probation Act cannot be invoked - No valid ground to interfere with the impugned order of High Court - Probation of Offenders Act, 1958 - Penal Code, 1860 - s.477A.

*Shyam Lal Verma v. Central Bureau of Investigation* .... 398

#### PROBATION OF OFFENDERS ACT, 1958:

(1) s.4.  
(See under: Penal Code, 1860) .... 698

(2) (See under: Prevention of Corruption Act, 1988) .... 398

#### PROSPECTIVE OVERRULING:

(See under: Code of Criminal Procedure (Madhya Pradesh Amendment) Act 2007) .... 1129

#### PUBLIC INTEREST LITIGATION:

(1) Writ petition filed in 2012 seeking to quash appointment of a Judge of High Court made in 2000 - Held: Writ petition is based on incorrect facts - It is not a sincere and honest endeavour to correct something which the petitioners truly perceive to be wrong but the real intent is to malign the incumbent - Writ petition is not only without merit but also wanting in bona fides.

(Also see under: Constitution of India, 1950)

*M. Manohar Reddy & Anr. v. Union of India & Ors.* .... 711

(2) (See under: Constitution of India, 1950) .... 362

#### RAJASTHAN MUNICIPALITIES ACT, 1959:

s.173-A (As amended by Act 19 of 1999) - Interpretation of - Power of State Government to allow change in use of land on payment of conversion charges - Held: Legislature, with a view to ensure planned and regulated development of urban area, felt it necessary to charge for change of use in certain circumstances of those lands which were not sold or allotted by municipality or by State Government - Further it also felt that such a change of user be permitted only "in public interest" - Amendment was necessitated since State Legislature thought that the provision of s.173-A (un-amended) stood as an impediment for proper planning of urban areas - With a view to ensure planned and regulated development of urban areas, it was felt that some restrictions have

to be imposed and it was for that purpose that s.173-A was amended - In the case at hand, demand was legal and valid and in accordance with provisions of s.173-A - Rajasthan Municipalities (Change of Land Use) Rules, 2000 - r. 4(1).

*Municipal Corporation Rajasthan v. Sanjeev Sachdeva and Others* .... 220

RAJASTHAN MUNICIPALITIES (CHANGE OF LAND USE) RULES, 2000:

r. 4(1)  
(See under: Rajasthan Municipalities Act, 1959) .... 220

RAJASTHAN UNIVERSITIES' TEACHERS AND OFFICERS (SELECTION FOR APPOINTMENT) ACT, 1974:

ss.3(2) and 3(3).  
(See under: Service Law) .... 758

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993:

(1) Debt Recovery Tribunal (DRTS) and Debt Recovery Appellate Tribunals (DRATs) - Suggestions made for adequate space and infrastructure, smooth functioning, Information Technology, Computerization, increase in number of DRTs and DRATs, eligibility criteria and appointment of Recovery Officers, vacancies and status of senior officers - Suggestions approved - Directions given to implement the suggestions expeditiously - High Courts shall keep a close watch on the functioning of DRTs and DRATs which fell in their respective jurisdiction and ensure a smooth, efficient and transparent working of the

said Tribunals - Constitution of India, 1950 - Art.227.

*Union of India & Ors. v. Debts Recovery Tribunal Bar Association & Anr.* .... 480

(2) s. 20.  
(See under: Constitution of India, 1950) .... 977

RES JUDICATA:

Writ petition - Substitution of legal heirs of applicant for grant of mining lease - Allowed by High Court - SLP dismissed in limine - Issue again raised by appellant in writ petition challenging the order of granting mining lease - Held: It cannot be said that High Court has erroneously accepted the plea raised by LR of respondent that the claim of appellant is barred by res judicata - On the plea of a decision in a subsequent judgment, the issue cannot be permitted to be reopened since it has become final inter partes - Judgments - Finality of judgment.

(Also see under: Administrative Law)

*M/s Kalinga Mining Corporation v. Union of India & Ors.* .... 814

RETROSPECTIVE OPERATION:

(See under: Code of Criminal Procedure, 1973) .... 1129

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RULES OF EXECUTIVE BUSINESS, STATE OF BIHAR:

(See under: Constitution of India, 1950) .... 362

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

s.3(1)(viii) - Prosecution for filing of false,



malicious or vexatious or criminal or other legal proceedings - Expressions, 'false', 'malafides' and 'vexatious - Connotation of - Held: Merely because the victim/complainant belongs to a Scheduled Caste or Scheduled Tribe, the same cannot be the sole ground for prosecution, for the reason that the offence mentioned under the Act should be committed against him on the basis of the fact that such a person belongs to a Scheduled Caste or a Scheduled Tribe - An unsuccessful application for the purpose of quashing FIR lodged by complainant does not mean that a false case was filed against him.

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

*Ravinder Singh v. Sukhbir Singh & Ors.* .... 243

#### SENTENCE/SENTENCING:

(1) (i) Death sentence - Propriety of - Conviction u/s. 302/34 IPC of 3 accused - Death sentence to two - Confirmed by High Court - Held: Death sentence is not warranted - But in view of the fact that accused caused death of 4 persons and nature of injuries inflicted, death sentence modified to life imprisonment for a minimum period of thirty years without remission - Penal Code, 1860 - s. 302/34.

(ii) Death Sentence - Award of - Principles to be followed - Held: To award death sentence, aggravating circumstances (crime test) have to be fully satisfied and there should be no mitigating circumstance (criminal test) favouring the accused - Even thereafter test of rarest of rare case has to be applied.

(iii) Death sentence - Rarest of rare case test - Criteria - Held: Test of rarest of rare case depends on the perception of the society and is not 'judge-centric'.

*Gurvail Singh @ Gala & Another v. State of Punjab* .... 783

(2) (See under: Penal Code, 1860) .... 115  
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#### SERVICE LAW:

(1) Agreements/Settlements.

Agreement/Understanding dated 18.07.2007 (Bihar).

(See under: Constitution of India, 1950) .... 362

(2) Appointment / Recruitment - Recruitment - Rank List and Supplementary list - Life of.

(See under: Kerala Public Service Commission Rules of Procedure) .... 182

(3) Disciplinary proceedings - Equality in punishment - Held: Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences - Therefore, punishment of dismissal from service imposed on appellant is set aside and it is ordered that he be reinstated in service forthwith from the date on which the co-delinquent was re-instated, and with the same consequent benefits - Doctrine of equality.

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(4) Pension - Ad hoc Professors/Lecturers - Continued in service - Claim for pensionary benefits - Allowed by High Court - Held: The initial

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(5) Retirement - Premature retirement - Appellant, an Executive Engineer in the Rural Engineering Wing ('REW') - Allegation that he possessed assets disproportionate to his known sources of income - Based upon recommendations of High Powered Review Committee, order passed by State Government prematurely retiring the appellant from service - Held: Recommendation made by the High Powered Review Committee was indubitably arbitrary - There was no material before the Committee to conclude that appellant possessed assets beyond his known source of income - Order passed by State Government suffered from vice of arbitrariness - Impugned order of premature retirement of appellant quashed - Since appellant still not reached the

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**MEMORANDA  
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1. Hon'ble Mr. Justice H.L. Gokhale, Judge, Supreme Court of India was on leave for 3 (three) days w.e.f. 09.01.2013, to 11.01.2013, on full allowances.
  
2. Hon'ble Mr. Justice Gyan Sudha Misra, Judge, Supreme Court of India was on leave for 4 (four) days from 14.01.2013 to 17.01.2013, on full allowances.



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12. Hon'ble Mr. Justice Surinder Singh Nijjar
13. Hon'ble Mr. Justice Swatanter Kumar (**Resigned on  
19.12.2012**)
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15. Hon'ble Mr. Justice H.L. Gokhale
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