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– cited	1009
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– relied on	963
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– cited	15
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– relied on 740
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– cited 329
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– followed 58
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	Shri Ram Krishna Dalmiya v. Shri Justice S.R. Tendolkar and Ors. [1959] 1 SCR 279
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Special Reference No.1 of 1964 [1965] 1 S.C.R. 41("Keshav Singh"), 322	State of Karnataka (The) and Anr. v. Shri Ranganatha Reddy and Anr. 1978 (1) SCR 641 333
Special Reference No.1 of 1964 ("Keshav Singh") [1965] 1 S.C.R. 413 – relied on 319	State of M.P. and Ors. v. Nandlal Jaiswal and Ors. 1987 (1) SCR 1 – relied on 696
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State of AP & Ors. v. Goverdhanlal Pitti 2003 (2) SCR 908 698	State of Madras v. C.P. Agencies AIR 1960 SC 1309 167
State of Bihar v. Madan Mohan 1993 (3) Suppl. SCR 242 – cited 15	State of Maharashtra v. Gajanan and Anr. AIR 2004 SC 1188 – relied on 602
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– relied on	132
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– relied on	602
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– relied on	602
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State of Uttaranchal v. Balwant Singh Chaufal & Ors. 2010 (1) SCR 678	740
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State of West Bengal v. Orilal Jaiswal (1994) 1 SCC 73		
– relied on	1091
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– relied on	199
Subbu Singh v. State 2009 (7) SCR 383	1175
Subedar Tewari v. State of U.P. & Ors. 1989 (1) Suppl. SCC 91		
– relied on	198
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– relied on	1021
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– relied on	198
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Suraya Properties Private Ltd. v. Bimalendu Nath Sarkar AIR 1965 Cal 408	945
Suresh (K.) v. New India Assurance Co. Ltd. and Anr. 2012 (10) SCALE 516		
– relied on	963
Suresh Chandra Bahri v. State of Bihar 1994 (1) Suppl. SCR 483		
– relied on	198
Surinder Singh v. State of Punjab 1997 (3) Suppl. SCR 538		
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– relied on	1089
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Swaran Lata (Smt.) v. Union of India & Ors. (1979) 3 SCC 165		
– relied on	696
Syad Akbar v. State of Karnataka (1980) 1 SCC 30	1174
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– relied on	965
Tank (G.M.) v. State of Gujarat & Ors. 2006 (2) Suppl. SCR 253		
– distinguished	92
Tara Singh & Others v. State of Punjab 1991 Supp (1) SCC 536		
– relied on	1091
Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. 1969 (1) SCC 110	740
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Union of India & Ors. v. Naman Singh Shekhawat 2008 (5) SCR 137		
– distinguished	92
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– relied on	1145
Union of India v. Amrit Lal Manchanda & Anr. (2004) 3 SCC 75	324
Union of India v. Atar Singh and Anr. (2003) 12 SCC 434		
– relied on	602
Union of India v. H.C. Goel 1964 SCR 718	92
Union of India v. Rattan Mallik Alias Habul 2009 (1) SCR 533		
– relied on	876
Uniplas India Ltd. and Ors. v. State (Govt. of NCT Delhi) and Anr. 2001 (3) SCR 985	172
United India Insurance Co. Ltd., Shimla v. Tilak Singh 2006 (3) SCR 758	1008
University of Mysore etc. (The) v. C.D. Govinda Rao and Anr. 1964 SCR 575		
– followed	851
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– cited	15

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Vaikuntam Chandrappa v. State of Andhra Pradesh AIR 1960 SC 1340	1034
Venkatlal G. Pittie and Anr. v. Bright Bros. Pvt. Ltd. 1987 (1) SCR 516		
– relied on	945
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– relied on	664
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– relied on	57
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Waryam Singh v. Baldev Singh (2003) 1 SCC 59		
– distinguished	946
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– relied on	1008
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ADMINISTRATION OF JUSTICE:

- (1) Abuse of process of court - Principles enumerated in the judgment - Held: Court must ensure that its process is not abused.
(Also see under: Constitution of India, 1950)
Kishore Samrite v. State of U.P. & Ors. 733
- (2) (i) Criminal Justice.
(See under: Sentence/Sentencing) 1057
- (ii) Criminal Justice - Discretion in default sentence.
(See under: (Kerala) Abkari Act; and Sentence/Sentencing) 1061
- (iii) (See under: Evidence) 1046
- (iv) (See under: Penal Code, 1860) 1032
- (3) (See under: Constitution of India, 1950) 215

ADMINISTRATIVE LAW:

(1) (i) Malice in fact - Administrative action - Findings recorded by High Court as regards malafides - Held: The law casts a heavy burden on the person alleging mala fides to prove the same on the basis of facts that are either admitted or satisfactorily established and/or logical inferences deducible from the same - Further, as and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge - In the case at hand, there was no allegation of "malice in fact" against any individual, nor was any individual accused of bias, spite or ulterior motive, impleaded as a party to the writ petition - High Court named the officers concerned and

concluded that the integrity of the entire process was suspect, which was wholly unjustified in the circumstances of the case.

(ii) Malice in law - Held: If on an interpretation of a clause in the tender notice by the legal department, officers review their decision or reverse the recommendations made earlier, the same does not tantamount to malice in law so as to affect the purity of the entire process or render it suspect even assuming that the opinion is on a more thorough and seasoned consideration found to be wrong - Nothing in the instant case was done without a reasonable or probable cause which is the very essence of the doctrine of malice in law vitiating administrative actions.

(iii) Malice in law and malice in fact - Discussed.
(Also see under: Constitution of India, 1950).

Ratnagiri Gas & Power Pvt. Ltd. v. RDS Projects Ltd. & Ors. 690

(2) (i) Malice in law.

(ii) Colourable exercise of power.
(See under: Customs Excise and Service Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1987) 1141

(3) (See under: Constitution of India, 1950) 733

(4) (i) State Policy - Judicial review of - Held: Court cannot conduct a comparative study of various methods of distribution of natural resources and suggest the most efficacious mode - The methodology pertaining to disposal of natural resources is clearly an economic policy - It cannot,

and shall not, be the endeavour of court to evaluate efficacy of auction vis-à-vis other methods of disposal of natural resources - When questioned, courts are entitled to analyse legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of Constitution - If a policy or law is patently unfair to the extent that it falls foul of fairness requirement of Art. 14, court would not hesitate in striking it down - Constitution of India, 1950 - Art.14.

(ii) Legality and constitutionality of State Policy and implementation thereof - Discussed.

Re: Special Reference No.1 of 2012 311

ADVOCATES:

Duty of an advocate - Held: A lawyer owes an "unremitting loyalty" to the interests of the client - It is the lawyer's responsibility to act in a manner that would best advance the interest of client.

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

Central Bureau of Investigation, Hyderabad v. K. Narayana Rao 54

ALLAHABAD HIGH COURT RULES:

Roster of Judges and listing of cases - Division Bench of High Court transferring a writ petition on the Board of single Judge, to its own Board - Held: The roster and placing of cases before different Benches of High Court is unquestionably the prerogative of the Chief Justice of that High Court - In absence of the Chief Justice, the senior most Judge would pass directions in regard to the roster of Judges and listing of cases - In the instant case, no order was passed by the Chief

Justice of the High Court or even the senior-most Judge, administratively In-charge of the Bench, transferring the writ petition for hearing from a Single Judge to Division Bench - Transfer of writ petition by Division Bench, suo motu, to its own Board was an order lacking administrative judicial propriety - Further, it has not been specifically recorded nor is it implicitly clear that a notice was directed to petitioners and they were given opportunity of hearing - Natural justice - Maxim 'Audi alteram partem'.

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APPEAL:

Benefit of order extended to non-appellant accused also.

(See under: (Kerala) Abkari Act) 1061

ARBITRATION AND CONCILIATION ACT, 1996:

s.11(6) - Application for appointment of arbitrator - Designate Judge holding that the request for appointment of arbitrator was proper, and then referring the matter to the Delegate of Chief Justice for appointment of arbitrator - Held: The procedure that is being followed by High Court with regard to consideration of applications u/s 11 is legally impermissible - Piecemeal consideration of application u/s 11 by Designate Judge and another Designate Judge or Chief Justice, as the case may be, is not contemplated by s. 11 - The function of Chief Justice or Designate Judge in consideration of application u/s 11 is judicial and such application has to be dealt with in its entirety by either Chief Justice himself or Designate Judge and not by both by making it a two-tier procedure - The distinction drawn by High Court in Modi Korea Telecommunications Ltd. between the procedure for appointment of arbitrator and actual

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appointment of arbitrator is not at all well founded.	on duty paid Low Sulphur Heavy Stock (LSHS) utilized as an input in the manufacture of fertilizer exempt from duty - Question referred to larger Bench -Central Excise Act, 1944 - s.11A - Reference to larger Bench.
<i>Hindustan Copper Ltd. v. Monarch Gold Mining Co. Ltd.</i> 293	<i>Commissioner of Central Excise, Vadodara v. Gujarat Narmada Valley Fertilizers Company Ltd.</i> 1100
BAIL:	CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986:
Order granting bail, set aside.	(See under: Bonded Labour System (Abolition) Act, 1976) 579
(See under: Maharashtra Control of Organized Crime Act, 1999) 873	CIRCULARS / GOVERNMENT ORDERS / NOTIFICATIONS:
BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976:	(1) Circular dated 11.8.2004.
ss. 10, 11 and 12 - Rehabilitation of freed bonded labourers - Directions issued to States/Union Territories to conduct periodical surveys in accordance with provisions of the Act, to calculate firm requirement of funds for rehabilitation of freed bonded labourers and to take steps to enhance the rehabilitation package - States and UTs should continue to submit six monthly reports to NHRC and the latter would effectively supervise and take appropriate steps for carrying out provisions of the Act and directions issued by the Court - Right of Children to Free and Compulsory Education Act, 2009 - Minimum Wages Act, 1948 - Workmen's Compensation Act, 1923 - Inter State Migrant Workmen Act, 1979 - Child Labour (Prohibition and Regulation) Act, 1986 - Public interest litigation.	(See under: Service Law) 611
<i>Public Union for Civil Liberties v. State of Tamil Nadu & Ors.</i> 579	(2) Government of Bihar Notification dated 16.5.1980.
CENTRAL EXCISE ACT, 1944:	(See under: Code of Criminal Procedure, 1973) 125
s.11A.	CODE OF CRIMINAL PROCEDURE, 1973:
(See under: Cenvat Credit Rules, 2002) 1100	(1) s.161.
CENVAT CREDIT RULES, 2002:	(See under: FIR) 545
r.12 - Whether under the Cenvat Credit Rules, 2002 an assessee is entitled to claim cenvat credit	(2) s. 167 (2) - Prosecution of accused u/ss. 302, 427 and 120B IPC and ss. 16 and 18 of Unlawful Activities (Prevention) Act - Accused's application u/s. 167(2) seeking default bail as no charge-sheet was filed within 90 days - Magistrate extended the investigation period and custody of accused for 90 days with retrospective effect i.e. from the date the initial judicial custody for 90 days got over - Thereafter prosecution filed charge-sheet -

Accused further filed application for early hearing which was dismissed by High Court - Held: Order of Magistrate extending time of investigation and custody of accused for 90 days with retrospective effect and orders of High Court are set aside - Accused acquired the right for statutory bail when his custody was held to be illegal - Unlawful Activities (Prevention) Act, 1967 - Penal Code, 1860.

Sayed Mohd. Ahmed Kazmi v. State, GNCTD & Ors. 836

(3) s.313 - Examination of accused - Held: It is obligatory on the part of accused, while being examined u/s.313 to furnish some explanation with respect to the incriminating circumstances associated with him, and court must take note of such explanation, even in a case of circumstantial evidence, so to decide, whether or not, the chain of circumstances is complete.

(Also see under: Penal Code, 1860)

Munish Mubar v. State of Haryana 193

(4) s. 389(1) - Suspension of conviction - Conviction of public servant u/s. 13(2) r/w s. 13(1)(e) of Prevention of Corruption Act - Pursuant thereto show-cause notice from employer for removal from service - Application for suspension of conviction - Allowed by High court - Held: Power to suspend the conviction can be exercised only in exceptional case - High Court was not justified in suspending the conviction in a case involving corruption - Such order could not be passed to save the job of appellant - It was not such a case

where damage, if done, could not be undone - Prevention of Corruption Act, 1988 - s. 13(2) r/w s.13(1)(e).

State of Maharashtra Through CBI, Anti Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar 601

(5) s.397 r/w s.401 - Revisional jurisdiction - Reversal of acquittal into conviction - Held: While revisional power vests in High Court the jurisdiction to set aside an order of acquittal, the same would not extend to permit conviction of accused - Further, the revision petition was inordinately delayed and no sufficient cause was made out within the meaning of s.5 of Limitation Act - On merits also, prosecution had failed to prove that the gold ornaments exhibited were the very same articles pledged by appellants - Appellants entitled to acquittal - Penal Code, 1860 - ss.406 and 420 r/w s.34 - Limitation Act, 1963 - s.5.

Kumar Etc. Etc. v. Karnataka Industrial Coop. Bank Ltd. & Anr 1117

(6) (i) s.439 - Bail - Court of Session and High Court declining bail to appellant - Order of High Court entrusting the matter to CBI for further investigation - Held: High Court has expressed its dissatisfaction with regard to investigation conducted by investigating agency - At this stage, as there is a direction for fresh investigation, it would be inapposite to enlarge appellant on bail - Penal Code, 1860 - ss. 120-B and 302.

(ii) s.439 - Granting of bail - Parameters - Explained.

Pratapbhai Hamirbhai Solanki v. State of Gujarat and Anr. 561

(7) ss. 439, 167(2), 173(2) and (8) - FIR - Charge-sheet submitted - Direction by court for further investigation by CBI - Application for bail on default ground - Held: Since the prayer for default bail was made in connection with the initial F.I.R. in which charge-sheet had been filed within the stipulated period of 90 days, plea with regard to default bail was not available to petitioner - Mere undertaking of a further investigation by Investigating Officer does not mean that the report submitted u/s 173(2) is abandoned or rejected - Notwithstanding the practice of CBI to register a "fresh FIR", investigation undertaken by it is in the nature of further investigation u/s 173 (8).

Vipul Shital Prasad Agarwal v. State of Gujarat & Anr. 987

(8) ss.439 and 482.

(See under: Practice and Procedure) 826

(9) (i) s.482 - Complaint by wife - Prayer for quashing of criminal proceedings against unmarried sister-in-law and elder brother-in-law i.e. the appellants on grounds of malafide intention on the part of complainant-wife and also lack of territorial jurisdiction - High Court observing that the question of territorial jurisdiction could not be properly decided by it for want of adequate facts, and permitting the appellants to move the trial court for dropping the proceedings on ground of lack of

territorial jurisdiction - Held: Plea of territorial jurisdiction was just one of the grounds raised to quash the proceedings initiated against the appellants u/s.482 - High Court, therefore, ought to have considered that even if trial court had jurisdiction to hold trial, the question still remained as to whether trial against appellants was fit to be continued and whether that would amount to abuse of the process of court - It is apparent that the High Court had not applied its mind on that question - It further overlooked the fact that during the pendency of this case, the complainant-wife had obtained an ex-parte decree of divorce against her husband.

(ii) s. 482 - Quashing of criminal proceedings - Duty of court - Matrimonial dispute -Complaint by wife against husband and in-laws for offences punishable u/ss. 498A/323/504/506 IPC and ss.3/4 of Dowry Prohibition Act, 1961- Prayer for quashing of criminal proceedings against unmarried sister-in-law and elder brother-in-law i.e. the appellants - Held: Courts are expected to adopt a cautious approach specially in cases of matrimonial dispute - Mere casual reference of names of family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them - On facts, FIR did not disclose specific allegation against appellants except casual reference of their names - In view thereof, criminal proceedings quashed insofar as appellants were concerned - Penal Code, 1860 - ss. 498-A/323/504/506 - Dowry Prohibition Act, 1961 - ss. 3/4.

(iii) Remand - Practice and Procedure - Matrimonial dispute - Criminal proceedings initiated by wife against husband and in-laws - Petition by sister-in-law and brother-in-law i.e. the appellants for quashing of proceedings - Disposed of, by High Court - Question as to whether the matter merited fresh consideration by High Court - Held: Respondent wife had lodged the complaint after seven years of delay, and yet the complaint lacked ingredients constituting the alleged offences against the appellants and their involvement in the whole incident appears only by way of a casual inclusion of their names - On facts, it would be total abuse of the process of law if the matter is remanded to High Court - Matter adjudicated by Supreme Court itself - Criminal proceedings quashed insofar as appellants were concerned - Penal Code, 1860 - ss. 498A/323/504/506 - Dowry Prohibition Act, 1961 - ss.3/4.

Geeta Mehrotra & Anr. v. State of U. P. & Anr.

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(10) (i) s.482 - Quashing of criminal prosecution - Scope - Allegation that respondent, an advocate on the panel of a Bank, submitted false legal opinion to the Bank in respect of housing loans, and along with other conspirators defrauded Bank's money - High Court quashed charge sheet against respondent - Held: There is no evidence to prove that respondent was abetting or aiding the original conspirators - Merely because his legal opinion may not be acceptable, he cannot be mulcted with criminal prosecution, particularly, in absence of tangible evidence that he associated with other conspirators - No prima

facie case against him - High Court rightly quashed criminal proceedings against respondent - Penal Code, 1860 - s.120B r/w ss. 419, 420, 467, 468, 471 and 109 - Prevention of Corruption Act, 1988 - s.13(2) r/w s.13(1)(d).

(ii) ss.227 and 228 - Framing of charges - Discharge of accused - When warranted - Held: While exercising jurisdiction u/s.227, Magistrate should not make a roving enquiry into pros and cons of matter and weigh the evidence as if he was conducting a trial - If Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once.

Central Bureau of Investigation, Hyderabad v. K. Narayana Rao

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(11) (i) ss. 482 and 197 - Complaint against police officials - Alleging killing in fake encounter - Held: Facts of the case show that it is not a case of false encounter - Police officials were entitled to protection u/s. 197 because the acts complained of are integrally connected with discharge of their official duty - Notification dated 16.5.1980 issued by State of Bihar extends the protection from prosecution to police personnel other than officers also - Criminal proceedings initiated against police personnel quashed - Government of Bihar Notification dated 16.5.1980.

(ii) s. 482 - Power under - Exercise of - Held: Power to be exercised to prevent abuse of process of court, and not to stifle legitimate prosecution.

(iii) s. 197 - Protection against prosecution - Held: Is available only when alleged act done by public servant is reasonably connected with discharge of his official duty - Acting in excess of his duty will not be a sufficient ground to deprive public servant of protection, unless unimpeachable evidence is on record to establish that the action of public servant is indefensible, mala fide and vindictive.

(iv) s. 197 - Protection against prosecution - Ascertainment as to whether sanction u/s. 197 is necessary - Held: Such a question can be ascertained at any stage of proceeding depending on nature of case - Ascertainment of the question at the very inception of the case on the basis of documents produced before court is not barred.

Om Prakash & Ors. v. State of Jharkhand Through the Secretary, Department of Home, Ranchi-1 & Anr. 125

COMPENSATION:

(See under: Motor Vehicles Act, 1988) 962
and 1007

CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974:

s. 3(1) - Arrest of detenu under Customs Act - Bail granted but not availed - While in jail, detention order under COFEPOSA Act - Writ petition challenging detention order - Dismissed by High Court - Held: Detention order was necessary in view of facts of the case - Detenu was having bail order and thus there was possibility of his coming out and indulging in prejudicial activities - It is

subjective satisfaction of detaining authority to invoke order of detention - Customs Act, 1962.

Baby Devassy Chully @ Bobby v. Union of India & Ors. 515

CONSTITUTION OF INDIA, 1950:

(1) (i) Art. 14.

(ii) Colourable exercise of power.

(See under: Customs Excise and Service Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1987 1141

(2) Arts. 15(3), 39(e), (f), 45 and 47.

(See Under: Juvenile Justice (Care and Protection of Children) Act, 2000) 244

(3) Art. 32 r/w Art. 21 - Bomb blast cases - Investigations - Prayer that in order to unearth the truth, Supreme Court should direct first respondent to constitute a Committee headed by a retired Judge of Supreme Court and assisted by a team of officers having competent investigation skills along with other experts - Held: Not tenable - Writ petition dismissed.

Gulzar Ahmed Azmi & Anr. v. Union of India & Ors. 287

(4) Art.141.

(See under: Sexual Harassment) 895

(5) Art. 142.

(See under: Judiciary) 6

(6) (i) Art 143(1) - Power of President to consult Supreme Court - Scope of - It is not necessary that the question on which opinion of Supreme Court is sought must have actually arisen - The

President can make a reference even at an anterior stage, namely, at the stage when the President is satisfied that the question is likely to arise - The satisfaction whether the question meets pre-requisites of Art. 143(1) is essentially a matter for the President to decide - Upon receipt of a Reference under Art. 143(1), the only discretion Supreme Court has is either to answer the Reference or respectfully decline to send a report to the President - Reference involves interpretation of a constitutional principle inherent under Art. 14 and it is of great public importance as it deals with allocation/alienation/disposal/distribution of natural resources.

(ii) Arts. 137 and 143(1) - Review and Reference - Difference between - Explained - Held: Merely because a review of judgment of Supreme Court in a case had been filed and withdrawn and in recital of Reference, narration pertains to said case, the same would not be an embargo or impediment for exercise of discretion to answer the Reference.

(iii) Art.143 (1) - Presidential Reference - Notice - Practice and procedure.

(iv) Art. 143(1) - Presidential Reference subsequent to decision of Supreme Court in "2G Case" - Maintainability of - Held: Reference is maintainable, notwithstanding its effect on the ratio of 2G Case, as long as the decision in that case qua lis inter partes is left unaffected - By the Reference, Court's opinion is sought on the limited point of permissibility of methods other than auction for alienation of natural resources, other than

spectrum - It has been stated on behalf of Government of India that it is not questioning the correctness of directions in 2G Case, in so far as allocation of spectrum is concerned and, in fact, Government is in the process of implementing the same, in letter and spirit - As long as decision with respect to allocation of spectrum licenses is untouched, Court is within its jurisdiction to evaluate and clarify ratio of judgment in 2G Case.

(v) Art. 141 - Law declared by Supreme Court - Explained - Held: In "2G case", Court was not considering auction in general, but was specifically evaluating validity of methods adopted in distribution of spectrum during relevant period - Observations in 2G Case could not apply beyond the specific case of spectrum, which according to law declared in 2G Case, is to be alienated only by auction and no other method - Precedent.

(vi) Art. 14 - Disposal of natural resources by State - Auctions - Held: Auctions are not the only permissible method for disposal of all natural resources across all sectors and in all circumstances - Auction, as a method of disposal of natural resources cannot be declared a constitutional mandate under Art.14 - Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives - However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated to private entrepreneurs for commercial pursuits of profit maximizing, adoption of means other than those that are

competitive and maximize revenue may be arbitrary and face the wrath of Art.14.

(vii) Art. 14 read with Art.299 - Government contracts - Held: A State action has to be tested on the touchstone of Art.14 - It should conform to the norms which are rational, informed with reasons and guided by public interest, etc.

(viii) Arts. 14 and. 39(b) - Equality in allocation of natural resources and "common good" factor - Explained - Public interest litigation - Judicial notice.

(ix) Arts. 298 and 299 read with Art.14 - Power of State to trade and execute contracts - Discussed. (Also see under: Administrative Law)

Re: Special Reference No.1 of 2012 311

(7) Art. 226.

(i) (See under: Public Distribution) 1125

(ii) (See under: Judgments) 1158

(8) (i) Art.226 - Petitions for a writ of habeas corpus - Allegation that a political leader had illegally detained a girl and her parents - Held: From the specific averments made in both the writ petitions filed in 2011, it is clear that the so-called next friends in both the writ petitions have approached the court with falsehood, unclean hands and have misled the courts by showing urgency and exigencies in relation to an incident of 3.12.2006, which according to all the three petitioners and the police was false, and have thus abused the process of court and misused the judicial process - Exemplary costs of Rs. 5

lacs each is imposed upon the next friends in both the writ petitions - Costs to be paid to the affected persons - Order of High Court imposing cost of Rs. 50 lacs set aside - CBI shall continue the investigation in furtherance to the direction of High Court against the next friend and all other persons responsible for abuse of the process of court, making false statement in pleadings, filing false affidavits and committing such other offences as the investigating agency may find during investigation - Administration of justice - Abuse of process of court - Administrative law - Natural justice.

(ii) Art. 226 - Petition for a writ of habeas corpus - Locus standi - 'Person aggrieved' - Explained.

Kishore Samrite v. State of U.P. & Ors. 733

(9) Art.226 - Second writ petition - Maintainability - Breakwater contract - Successful bidder (respondent) subsequently found ineligible as it did not meet the basic qualifying conditions of offshore breakwater - Fresh tenders invited - Writ petition by respondent challenging annulment of tender process and rejection of its bid - Dismissed as not pressed - Second writ petition involving the same issues as in earlier writ petition, as also challenging the fresh tender notice - Allowed by High Court - Held: Order passed by High Court did not permit the respondent to re-open and re-agitate issues regarding rejection of its bid pursuant to earlier tender notice and annulment of entire tender process, even if the second tender notice sought to disqualify it from competition by altering the conditions of eligibility to its

disadvantage - To that extent, the subsequent writ petition was not maintainable - Matter remanded to High Court for decision afresh in accordance with the directions given in the judgment - Contract - Administrative Law - Malice in law and malice in fact.

Ratnagiri Gas & Power Pvt. Ltd. v. RDS Projects Ltd. & Ors. 690

(10) Art. 226 - Writ Petition - Challenging selection for LPG distributorship and genuineness of experience certificates produced by selected candidate - High Court, doubting the correctness of certificates, quashed the distributorship - Held: In a matter of selection by Expert Committee consisting of qualified persons in a particular field, normally, courts should be slow to interfere with opinions expressed by experts, unless there is allegation of mala fide against experts - On facts, High Court ought not to have sat as an appellate court on recommendations of the expert committee - Public Distribution - Equity.

Sajeesh Babu K. v. N. K. Santhosh & Ors. 849

(11) Art. 226 - Writ petition - Disposal of, without adjudication on the issues involved - Held: A slipshod consideration or cryptic order or decision without due reflection on issues raised in a matter may render such decision unsustainable - Each and every matter that comes to court must be examined with the seriousness it deserves - In the instant case, writ petition was disposed of by High Court without calling for any counter-affidavit from respondents - Appellants have raised some serious issues - Writ petition restored to the file

of High Court for consideration and disposal afresh - Judgments/Orders - Administration of justice.

Board of Trustees of Martyrs Memorial Trust and Another v. Union of India and Others 215

(12) Art. 226 - Writ petition - Maintainability of - Held: In the instant case, essence of dispute between parties denuded the lis of a public law character - Issues raised by writ petitioner before High Court really pertained to claim of better title of writ petitioner to property in question on the basis of sale deed which was executed in favour of writ petitioner by his vendors during subsistence of mortgage in favour of Corporation; and rights of appellant to said property on the basis of sale made in his favour by Corporation - Writ petition did not involve any issue arising out of public law functions of State or its authorities - In such a situation resort to public law remedy should not have been entertained by High Court - Order of High Court set aside.

(Also see under: State Financial Corporation Act, 1951)

Pradeep Kumar Sharma v. U.P.F.C. Rajpur Road, Dehradun & Ors 863

(13) Arts. 226 and 32.

(See under: Res Judicata) 515

(14) Arts. 226 and 227.

(See under: Practice and Procedure) 826

CONTRACT:

(1) Agreement to sell - Payment of earnest money - Failure on the part of purchaser in payment of

sale amount as per agreement - Forfeiture of earnest money - Held: Part payment of purchase price cannot be forfeited unless it is guarantee for due performance of contract - Forfeiture of entire amount of earnest money depends on terms of agreement - On facts, earnest money was a security for due performance of contract and forfeiture thereof in its entirety was justified.

Satish Batra v. Sudhir Rawal 662

(2) (See under: Constitution of India, 1950) 690

COSTS:

False and frivolous writ petitions - Imposition of costs and disbursement of - Explained. Maxim '*jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem*' - Explained.

Kishore Samrite v. State of U.P. & Ors. 733

CRIMES AGAINST WOMEN:

(1) Devastating increase in rape cases and cases relating to crime against women - Primary concern both at national and international level - Although statutory provisions provide strict penal action against such offenders, it is for courts to ultimately decide whether such incident has occurred or not - Courts should be more cautious in appreciating the evidence and accused should not be left scot-free merely on flimsy grounds.

(Also see under: Penal Code, 1860)

State of U.P. v. Munesh 545

(2) Dowry death.

(See under: Penal Code, 1860) 792

(3) (See under: Penal Code, 1860) 919,
1019 and
1110

CRIMINAL LAW:

(1) Motive.

(See under: Penal Code, 1860) 193

(2) Motive: Held: Would be irrelevant when there is un-impeachable oral evidence.

(Also see under: Penal Code, 1860)

Kukapalli Mohan Rao v. State of A.P. 1086

(3) (See under: Identification/Test Identification Parade) 1032

CRIMINAL TRIAL:

Non-examination of Investigating Officer - Effect.

(Also see under: Penal Code, 1860)

Lahu Kamlakar Patil and Anr. v. State of Maharashtra 1173

CUSTOMS ACT, 1962:

(1) s. 129A(5) - Condonation of delay in filing an application u/s. 129D(4) - Permissibility - Held: Customs, Excise and Service Tax Appellate Tribunal is competent to invoke s.129A (5) for condoning the delay - Provisions of s. 129A(1) to (7) have been mutatis mutandis made applicable to the applications u/s. 129D(4) - Legislative intent was to make entire s. 129A supplemental to s. 129D(4) - s. 129A(5) stands incorporated in s. 129D(4) by way of legal fiction - Interpretation of Statutes - Legislative intent - Legal fiction.

M/s Thakker Shipping P. Ltd. v. Commissioner of Customs (General) 930

(2) (See under: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974) 515

CUSTOMS EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL MEMBERS
(RECRUITMENT AND CONDITIONS OF
SERVICE) RULES, 1987:

r. 9(2) - Termination of service of Judicial Member appointed directly from Bar - Challenged - Held: In the instant case, r. 9(2) is relevant - Respondent had completed the mandatory period of probation - Order of discharge was based on the report of President, CESTAT pursuant to a complaint made by advocates and, therefore, it was stigmatic, punitive in nature and, as such, vitiated by legal malice - Besides, order has been passed in order to avoid the procedure of giving one month's notice as required under r.9(2) and, thus, is vitiated by colourable exercise of power - Order of discharge set aside - Respondent entitled to be reinstated with all consequential benefits - Administrative Law - Malice in law - Constitution of India, 1950 - Art. 14 - Colourable exercise of power.

Pradip Kumar v. Union of India and Ors. 1141

DELAY / LACHES:

Delay of 52 days in lodging FIR - Held: Conduct of appellant in misdirecting wife and minor son of deceased, cumulatively influenced their minds which resulted in reporting the fact of missing of deceased to police belatedly - Having regard to facts of case, it cannot be said that delay in registration of FIR makes prosecution case unbelievable.

(Also see under: Penal Code, 1860)

Shanti Devi v. State of Rajasthan 226

DOWRY PROHIBITION ACT, 1961:
ss.3/4.

(See under: Code of Criminal Procedure, 1973) 641

EQUITY:

(See under: Constitution of India, 1950) 849

EVIDENCE:

(1) Circumstantial evidence - Appreciation of - Held: No doubt, proof cannot be substituted by robust suspicion - But if all facts and circumstances point to only one conclusion, it is difficult to ignore them and even in a case of circumstantial evidence, it is possible to secure conviction.

(Also see under: Penal Code, 1860)

Gudu Ram v. State of Himachal Pradesh 1069

(2) Circumstantial Evidence:

(See under: Penal Code, 1860) 226; and 919

(3) Circumstantial evidence:

(i) Significance and importance of motive in a case of circumstantial evidence - Discussed.

(ii) Appreciation of evidence - Held: In a case of circumstantial evidence, all the circumstances must be fully established and all facts so established, must be consistent with the hypothesis regarding guilt of accused - Circumstances so established, should exclude every other possible hypothesis except the one sought to be proved - Circumstances must be conclusive in nature.

(Also see under: Penal Code, 1860)

Munish Mubar v. State of Haryana 193

(4) Number of witnesses - Clash between rival groups - Large number of offenders and large

number of victims - Testimony of witnesses - Appreciation of - Duty of criminal courts - Held: In such a case, the normal test is that conviction can be sustained only if it is supported by two or more witnesses who give a consistent account of incident - Administration of Criminal Justice.

(Also see under: Penal Code, 1860)

Busi Kotes wara Rao & Ors. v. State of A.P. ... 1046

(5) Evidence of hostile witness - Held: Not to be rejected in toto.

(Also see under: Penal Code, 1860)

Lahu Kamlakar Patil and Anr. v. State of Maharashtra 1173

(6) Evidence of hostile witness - Held: Need not be completely rejected only because he has turned hostile - Court must, however, be circumspect in accepting the testimony of such a witness and, to the extent possible, look for its corroboration.

(Also see under: Penal Code, 1860)

Gudu Ram v. State of Himachal Pradesh 1069

(7) Testimony of a child witness - Held: Evidence of the witness, who was of 11 years at the time of incident, was recorded after a lapse of six years, and, by then, she was no longer a 'child witness' - That apart, her evidence is clear and unambiguous and nothing adverse could be elicited during her cross-examination.

(Also see under: Penal Code, 1860)

Kunjumon @ Unni v. State of Kerala 1032

EVIDENCE ACT, 1872:

(1) ss. 3, 4, 32 and 113-B.

(See under: Penal Code, 1860) 792

(2) s.32 - Dying declaration - Appreciation and admissibility of - Discussed.

(Also see under: Penal Code, 1860)

Surinder Kumar v. State of Punjab 1019

(3) s.32.

(See under: Penal Code, 1860) 1110

(4) ss.145 and 161.

(See under: FIR) 1086

FIR:

(1) (i) Delay in lodging of FIR - Rape and murder of minor girl - Held: Considering the entire incident as a whole, it cannot be said that there was any unreasonable and unexplained delay which went to root of prosecution case - Delay was properly explained - Code of Criminal Procedure, 1973 - s.161.

(ii) Nature of FIR - Held: FIR is just an intimation of occurrence of incident and it need not contain all facts related to incident in question.

(Also see under: Penal Code, 1860)

State of U.P. v. Munesh 545

(2) Evidentiary value of FIR - Held: FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker u/s.161 of Evidence Act or to contradict him u/s.145 there of - It is not the requirement of law that minutest details be recorded in FIR lodged immediately after the occurrence - Evidence Act, 1872 - ss.145 and 161.

(Also see under: Penal Code, 1860)

Kukapalli Mohan Rao v. State of A.P. 1086

HIGH COURT:

(See under: Practice and Procedure) 826

IDENTIFICATION / TEST IDENTIFICATION PARADE:

Identification in court of an accused of robbery, by victim - No TIP conducted - Held: Witness was the victim of robbery - She came face to face with threat and intimidation by accused - Evidence of such a victim of a crime must be placed on somewhat higher pedestal, in terms of credibility attached to it, than that of any other witness - "Proper administration of justice" should include not only the "life and liberty of an accused" but also issues of victimology and treatment of victims - Therefore, absence of TIP makes no difference - Criminal law.

Kunjumon @ Unni v. State of Kerala 1032

INTER STATE MIGRANT WORKMEN ACT, 1979:

(See under: Bonded Labour System (Abolition) Act, 1976) 579

INTERNATIONAL CONVENTIONS / TREATIES:

(i) Convention on the Rights of the Child.

(ii) United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).

(iii) United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985.

(See Under: Juvenile Justice (Care and Protection of Children) Act, 2000) 244

INTERPRETATION OF STATUTES:

(1) Legal fiction.

(See under: Customs Act, 1962) 930

(2) Purposive interpretation - Court should adopt an interpretation which promotes and advances

the object sought to be achieved by legislation, in preference to an interpretation which defeats such object.

(Also see under: Negotiable Instruments Act, 1881)

MSR Leathers v. S. Palaniappan & Anr. 165

JHARKHAND SUPERIOR JUDICIAL SERVICE (RECRUITMENT, APPOINTMENT AND CONDITIONS OF SERVICE) RULES, 2001: Locus standi.

(See under: Judiciary) 6

JUDGMENTS:

Writ petition before High Court - Arising out of orders of revenue authorities with regard to settlement of land with landless persons for agricultural purposes - Held: All courts whose orders are appealable and not final, should decide the lis before it on all issues - Such a course of action is necessary to the appellate court to bring the proceeding before it to a full and complete conclusion instead of causing a remand of matter for a decision on issue(s) that may have been left undetermined - In the instant case, order of High Court discloses mere acceptance of version of State as given in counter affidavit without any attempt to enter into the core questions that conflicting claims of parties had thrown up - Order of High Court set aside and matter remanded to it for a de novo decision expeditiously - Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 - Constitution of India, 1950 - Art.226.

Chandradhoja Sahoo v. State of Orissa and Ors. 1158

JUDICIAL NOTICE:

(See under: Constitution of India, 1950) 311

JUDICIARY:

(i) FAST TRACK COURTS (FTC) - Appointments of ADJ, FTC by direct recruitment from Bar - Held: Appointments made are held as irregular, made in ignorance of settled principles underlying service law, in an anxiety to comply with the desire expressed by Law Ministry and to set up FTCs to deal with the problem of pendency of cases - Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Rules, 2001 - Locus Standi.

(ii) FAST TRACK COURTS (FTC) - Appointment of FTC Judges - Held: FTC posts were temporary, ad hoc and ex-cadre posts and appointees to such posts cannot be said to have any legal right to the posts - Rules of 2001 meant for Jharkhand Superior Judicial Service do not apply to ad hoc ADJs appointed under a scheme of temporary duration like Fast Tract Court Scheme.

(iii) FAST TRACK COURTS (FTC) - FTC Judges - Regularisation - Held: Case of appellants FTC Judges is covered by decision in Brij Mohan Lal-II - State Government and High Court will comply with the directions issued in Brij Mohan Lal-II to appoint appellants in regular cadre in Higher Judicial Service strictly in the manner laid down in Brij Mohan-II - Constitution of India, 1950 - Art. 142.

Mahesh Chandra Verma & Ors. v. State of Jharkhand & Ors.

6

JUVENILE JUSTICE ACT, 1986:

(See Under: Juvenile Justice (Care and Protection of Children) Act, 2000) 244

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

s.7-A r/w r.12 of 2007 Rules - Claim of juvenility - Held: Can be raised at any stage, even after final disposal of the case - Delay cannot be a ground for rejection of claim - Legal position with regard to s.7-A and r.12 summarized - Procedure for making a claim with regard to juvenility, and guidelines for inquiring into such a claim, laid down - Procedure, where accused setting up plea of juvenility is unable to produce any of the documents enumerated in r. 12(a)(i) to (iii) - Explained - Juvenile Justice (Care and Protection of Children) Rules, 2007 - r.12 - Juvenile Justice Act, 1986 - Constitution of India, 1950 - Arts. 15(3), 39(e),(f), 45 and 47 - Convention on the Rights of the Child - United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 - United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).

Abuzar Hossain @ Gulam Hossain v. State of West Bengal 244

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007: R.12.

(See Under: Juvenile Justice (Care and Protection of Children) Act, 2000) 244

(KERALA) ABKARI ACT:

(i) s.8(1) r/w s.8(2) - Illicit trade in arrack - Three accused - Seizure of arrack from their possession - Conviction and sentence of RI for 18 months and a fine of Rs.1,00,000/- with default sentence of RI for six months - Held: Conviction of appellants

was justified - However, from the quantity seized and the manner in which it was being carried, it is evident that accused were only small time operators in illicit trade of arrack - Sentence reduced to one year RI and default sentence to 15 days - Relief granted to appellants extended to the non-appellant accused as well.

(ii) s.8(1) r/w 8(2) - Illicit trade in arrack - Minimum fine prescribed at Rs.1,00,000/- in terms of s.8(2) - Default sentence/imprisonment for failure to pay the fine - Effect of - Observation made by Supreme Court that in a way, fixing the minimum fine at such a high amount (i.e. Rs.1,00,000/-), leads to: (a) discrimination in favour of convicts who have sufficient means to pay the fine and, thus, avoid any default imprisonment and (b) additional sentence of imprisonment for poor convicts as they are hardly in a position to pay such high amount of fine - It is desirable to leave the court free in exercise of judicial discretion in the matter of imposition of fine - Legislation.

Sasikumar & Anr. v. State of Kerala 1061

LAND LAWS AND AGRICULTURAL TENANCY:

(See under: Madhya Pradesh Land Revenue Code, 1959) 974

LEGISLATION:

(1) Secure environment for women - Held: Even after 15 years of judgment in Vishaka, statutory law is not in place - Existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and State Legislatures to protect women from any form of indecency and all forms of violence and to provide new initiatives for

education and advancement of women and girls in all spheres of life.

(Also see under: Sexual Harassment)

Medha Kotwal Lele and Others v. Union of India and Others 895

(2) Imposition of fine to be left to judicial discretion.

(See under: (Kerala) Abkari Act) 1061

LEGISLATIVE INTENT:

(See under: Customs Act, 1962) 930

LIMITATION ACT, 1963:

s.5.

(See under: Code of Criminal Procedure, 1973) 1117

MADHYA BHARAT LAND REVENUE AND TENANCY ACT (SAMVAT, 2007):

s.54(vii).

(See under: Madhya Pradesh Land Revenue Code, 1959) 974

MADHYA PRADESH CEILING ON AGRICULTURAL HOLDING ACT, 1960:

(See under: Madhya Pradesh Land Revenue Code, 1959) 974

MADHYA PRADESH LAND REVENUE CODE, 1959:

s. 165(1) - Transfer of land by 'Bhumiswami' - Company owning a sugar factory was granted pattas of subject land - Transfer of a part of the subject land challenged in a writ petition under public interest litigation - Held: The company having acquired the status of a "pucca tenant", with coming into force of Land Revenue Code, became 'Bhumiswami' of the land with a right to transfer - Provisions of Urban Ceiling Act and Ceiling on Agricultural Holding Act, ex-facie, do not apply to

the case - Urban Ceiling Act, 1976 - Madhya Pradesh Ceiling on Agricultural Holding Act, 1960 - Madhya Pradesh Zamindari Abolition Act, 1951 - Madhya Bharat Land Revenue and Tenancy Act (Samvat, 2007) - s.54(vii) - Public Interest Litigation.

Gwalior Sugar Co. Ltd. & Anr. v. Anil Gupta and Anr. 974

MADHYA PRADESH ZAMINDARI ABOLITION ACT, 1951:
(See under: Madhya Pradesh Land Revenue Code, 1959) 974

MAHARASHTRA CONTROL OF ORGANIZED CRIME ACT, 1999:

ss. 21(4) and 10 of MCOCA r/w s.439 CrPC - Bail - Prosecution of respondent along with other accused persons for offences punishable u/s 3 of MCOCA and ss. 302, 452 r/w s.34 and s.120-B, IPC - Bail declined by Special Judge, but granted by High Court - Held: Section 21(4) of MCOCA, interdicts grant of bail to the accused against whom there are reasonable grounds for believing him to be guilty of offence under MCOCA - A person accused of having committed offence under MCOCA is not only subject to limitations imposed u/s 439 CrPC but also subject to restrictions placed by clauses (a) and (b) of sub-s. (4) of s. 21 of MCOCA - Impugned order of High Court granting bail to respondent having been passed ignoring the mandatory requirements of s. 21(4) of MCOCA, is set aside and order of Special Judge restored.

The State of Maharashtra v. Vishwanath Maranna Shetty 873

MAXIMS:

(1) '*Audi alteram partem*'.
(See under: Allahabad High Court Rules) 733

(2) Maxim '*jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletioem*'.
(See under: Costs) 733

MEDICAL JURISPRUDENCE:

Cause of death - Dead body recovered in a decomposed state - Post-mortem report to the effect that the death could be as a result of murder as well as naturally - Held: It is not, as if based on the postmortem certificate and the version of post-mortem doctor, the offence of murder can be ruled out - Since the dead body was recovered in a decomposed state, it was quite natural that the doctor could not specifically state as to the nature of injury on the body.

(Also see under: Penal Code, 1860)

Shanti Devi v. State of Rajasthan 226

MINIMUM WAGES ACT, 1948:

(See under: Bonded Labour System (Abolition) Act, 1976) 579

MOTOR VEHICLES ACT, 1988:

(1) s. 166 - Motor accident - Amputation of left leg and right foot of victim - Claim for compensation - Tribunal granting compensation with 9% interest - Held: Denial of compensation under the head permanent disability by High Court is impermissible - High Court also erred in not granting interest on enhanced amount - Compensation amount enhanced with 9% interest on the enhanced amount.

Subulaxmi v. M.D., Tamil Nadu State Transport Corporation & Another 962

(2) s.166 - Motor accident - Claimant traveling in offending vehicle lost both of his eyes - Compensation - Liability of insurer - Held: Whether insurer would be liable or not would depend upon nature of policy (whether it is "Act Policy" or "Comprehensive/Package Policy") - In the case at hand, the policy has not been brought on record - Matter remitted to Tribunal to enable the insurance company to produce the policy with liberty to parties to lead further evidence - However, quantum of compensation determined by High Court needs no interference.

Oriental Insurance Company Ltd. v. Surendra Nath Loomba and Others 1007

NATURAL JUSTICE:

(See under: Constitution of India, 1950; and Allahabad High Court Rules) 733

NEGLIGENCE:

Professionals - Liability for negligence - Held: A professional may be held liable for negligence on one of the two findings, viz., either he was not possessed of requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in given case, the skill which he did possess.

(Also see under: Penal Code, 1860)

Central Bureau of Investigation, Hyderabad v. K. Narayana Rao 54

NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) s. 138 - Dishonour of cheque - Prosecution based upon second or successive dishonour - Held: In view of s. 138 and the object underlying therein, prosecution based on second or successive default in payment of cheque is

permissible even when no prosecution was initiated pursuant to first default - So long as the cheque remains unpaid within its validity period and condition precedent for prosecution in terms of proviso to s. 138 are satisfied, cheque holder's right to prosecute the drawer remains valid and exercisable - Benefit of further opportunity to drawer by reason of a fresh presentation of cheque, cannot help the defaulter to get a complete absolution from prosecution - Interpretation of Statues.

MSR Leathers v. S. Palaniappan & Anr. 165

(2) ss.138, 139 and 142 - Dishonour of cheque - Presumption - Standard of proof - Preponderance of probabilities - Acquittal of accused-appellant by trial court - Reversed by High Court - Held: Elaborate consideration was made by trial court for acquitting the appellant - Conclusions of trial court were drawn on cogent and convincing reasoning - Appellant sufficiently rebutted initial presumption as regards issuance of cheque u/ss. 138 and 139 - Preponderance of probabilities also fully supported the stand of appellant - Judgment of High Court set aside.

Rev. Mother Marykutty v. Reni C. Kottaram & Anr. 530

ORRISA COMMUNAL FOREST AND PRIVATE LANDS (PROHIBITION OF ALIENATION) ACT, 1948:
(See under: Judgments) 1158

PENAL CODE, 1860:

(1)(i) s.120-A - Criminal conspiracy - Essence of - Explained.

(ii) ss. 120-B and 302.

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

Pratapbhai Hamirbhai Solanki v. State of Gujarat and Anr. 561

(2) ss.120A and 120B - Criminal conspiracy - Essence of - Held: Is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both - An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.

Central Bureau of Investigation, Hyderabad v. K. Narayana Rao 54

(3) s.120B r/w ss. 419, 420, 467, 468, 471 and 109.

(See under: Code of Criminal Procedure, 1973) 54

(4) ss.120-B, 420, 467, 468, 471 and 201.

(See under: Service Law) 86

(5) s.148 and s.436 r/w s.149 - Arson and violence between two rival groups of the same village - Conviction of accused-appellants - Held: Justified - At least two PWs spoke about the involvement and the role played by appellants - It is clear from the statements made by PWs that appellants came in a mob and set ablaze around 50 dwelling houses and reduced them into ashes and they were identified - Involvement of appellants was established beyond reasonable doubt.

(Also see under: Sentence/Sentencing)

Busi Koteswara Rao & Ors. v. State of A.P..... 1046

(6) s.302 - Death of married woman due to burn injuries - Prosecution case that the victim's husband (appellant) had poured kerosene on her and set her on fire - In the dying declaration recorded by Naib Tahsildar, victim named the appellant for the overt act - Conviction with RI for life - Held: The dying declaration satisfied all the prescribed conditions and procedure and was proved beyond doubt - Prosecution was fully justified in relying on the dying declaration - Appellant was the only person inside the room at the time of incident along with the victim - Conviction upheld - Evidence Act, 1872 - s.32.

Ram Viswas v. State of Madhya Pradesh 1110

(7) s.302 - Murder - Circumstantial evidence - Accused causing murder of his wife by forcibly administering poison to her and by smothering - Conviction and sentence of life imprisonment by courts below - Held: There is ample evidence of prosecution witnesses that deceased was subjected to physical violence - There was motive for offence - Clinching evidence establishing that death was caused in the matrimonial house - There is no exceptional circumstance or reason to disturb the concurrent finding of fact recorded by courts below and to interfere with the conviction and sentence - Circumstantial evidence.

Ramachandran v. State of Kerala 919

(8) s.302 - Murder - Eyewitness account - Allegation that appellant hacked the deceased with an axe as he suspected that the latter was having illicit relationship with his wife - Conviction - Held: Wife and brother of deceased were crucial

witnesses to establish that it was appellant who had committed the crime - Evidence of wife was trustworthy and it cannot be said that she was implicating the appellant -Direct evidence of illicit intimacy cannot always be expected, but, taking into consideration the evidence, prosecution could establish that appellant had a grudge or ill-feeling towards deceased that led him to commit the murder - Prosecution also proved that blood stained axe was seized from the scene of occurrence - Prosecution had succeeded in establishing the guilt of appellant beyond all reasonable doubt.

Kukapalli Mohan Rao v. State of A.P. 1086

(9) ss.302 and 201 - Appellant causing murder, and with the help of three others, burying the dead body in a place adjacent to her house - Principles as to circumstantial evidence, culled out - Held: In the instant case, circumstances which have been found proved, formed a chain closely linked together without giving any scope for any other conclusion than a definite tendency unerringly pointing towards guilt of accused-appellant - Circumstantial evidence.

Shanti Devi v. State of Rajasthan 226

(10) ss. 302 and 376 - Rape and murder of minor girl - Conviction by trial court - Set aside by High Court - Held: Acquittal not justified - Two independent witnesses, actually witnessed the occurrence - High Court committed error in rejecting their evidence - Statement of father of victim corroborated the statements made by eye-witnesses - Delay in lodging FIR was properly

explained - Prosecution case fully corroborated by medical evidence - Conviction restored - RI for life imposed.

State of U.P. v. Munesh 545

(11) ss.302/34, 201, 120-B and 404 - Homicidal death - Circumstantial evidence - Three accused - Conviction of accused-appellant - Held: Justified - Telephone call records reveal presence of appellant in the vicinity of place of occurrence at the time of incident - Recoveries were made upon the disclosure statement of appellant - Appellant failed to furnish any explanation whatsoever when examined u/s.313 CrPC - Conviction sustained.

Munish Mubar v. State of Haryana 193

(12) ss. 302, 147, 148, 149 and 452 - Death of victim - Due to alleged assault with deadly weapons - Conviction of accused-appellants on basis of sole testimony of alleged eye-witness - Held: Not sustainable - Conduct of the witness after alleged incident was very unnatural and not in accord with acceptable human behaviour allowing of variations - Veracity of his version doubtful - Absence of clinching evidence to connect appellants with crime - Conviction set aside - Evidence - Witness - Unnatural conduct.

Lahu Kamlakar Patil and Anr. v. State of Maharashtra 1173

(13) (i)ss. 304 (Part-I) read with s.34 - Injuries on the head of victim by blunt side of 'aruval' and stick - Death of victim in hospital after 9 days - Held: The fact that blunt side of 'aruval' and a stick were used in assault on deceased indicates

that accused did not have any intention to cause his death - Nonetheless, accused had intention of causing bodily injury as was likely to cause death and were liable to punishment u/s 304 (Part-I) - Conviction and sentence of appellants u/s 302 is modified and instead they are convicted u/s 304 (Part-I) read with s. 34 and sentenced to rigorous imprisonment for seven years.

(ii) ss. 33 and 34 - Explained.

Selvam v. The State of Tamil Nadu rep. by Inspector of Police 628

(14) s.304 (Part-II) - Assault with 'thapi'- a wooden object - Death of victim due to head injuries and injury to witness - Conviction u/s.302 - Held: It is true that appellant caused multiple injuries to deceased, but it is difficult to infer therefrom that he intended to kill him - His intention seems to have been to severely injure the deceased - However, appellant had knowledge that his act was likely to cause death of the victim - He would, therefore, be guilty of culpable homicide not amounting to murder and liable to be sentenced u/s.304 (Part-II).

Gudu Ram v. State of Himachal Pradesh 1069

(15) ss.304-B and 498-A - Death of married woman due to burn injuries - Victim gave declaration/statement blaming her husband - Conviction by courts below - Held: Dying declaration was voluntary and truthful - Victim truthfully stated that since she was fed up with persistent demand of dowry made by her husband, she poured kerosene oil on herself and set herself

on fire - Conviction upheld - Evidence Act, 1872 - s.32.

Surinder Kumar v. State of Punjab 1019

(16) ss. 307 and 324 r/w 34 - Attempt to murder - Causing hurt by dangerous weapon or means - Common intention - Dispute over spending of donation amount - Quarrel between complainant party and accused persons headed by appellant leading to armed assault by accused party - Held: Appellant was enraged by questioning of his authority about collection made and the balance amount available with him, which ended in the fateful occurrence - No fault in the action of injured witnesses in throwing brickbats which caused some minor injuries to appellant and other accused - On overall consideration of the evidence available on record, ocular as well as documentary, it is clear that conviction of appellant under ss.307, 324 r/w 34 was justified.

Satbir @ Lakha v. State of Haryana 675

(17) (i) ss.397 and 302 - Accused while committing robbery, causing injuries on head of a lady of 90 years, which resulted in her death - Held: Courts below rightly convicted and sentenced the accused u/ss 397 and 302.

(ii) s.449 - House trespass in order to commit offence punishable with death - Held: Admittedly, accused had gone to targeted house to commit robbery and not to kill any body - He is, therefore, acquitted of the offence punishable u/s 449.

Kunjumon @ Unni v. State of Kerala 1032

- (18) ss.406 and 420 r/w s.34.
(See under: Code of Criminal Procedure, 1973) 1117
- (19) s.420.
(See under: Sentence/Sentencing) 1057
- (20) (i) s.498-A - Married woman - Subjected to cruelty by her husband and his relatives by demanding dowry - Death of victim by burn injuries received in matrimonial house - Held: Evidence of prosecution witnesses fully supports the prosecution case that the victim, from a few days after marriage till her death, was subjected to harassment by all the three appellants in connection with demands of dowry - Courts below rightly held appellants guilty of offence punishable u/s 498-A.
- (ii) s.304-B - Dowry death - Held; Section 304-B IPC and s.113B of Evidence Act only provide what the court shall presume if ingredients of provisions are satisfied, but if evidence in any case is such that the presumption stands rebutted, court cannot hold that the accused was guilty and was punishable for dowry death - In the instant case, from the evidence of Medical Officer and hospital records, it is proved that he was told by the patient herself that she sustained burn injuries while cooking meals on stove - Evidence of doctor with medical records supports the explanation of appellant u/s 313 CrPC - Thus, the presumption in s.304-B IPC and 113B of Evidence Act, that the appellants caused dowry death, stood rebutted - Therefore, conviction and sentence of appellants

- u/s 304-B IPC set aside - Evidence Act, 1872 - ss. 3, 4, 32 and 113-B.
- Devinder @ Kala Ram & Ors. v. The State of Haryana* 792
- (21) ss. 498A/323/504/506.
(See under: Code of Criminal Procedure, 1973) 641
- (22) (See under: Code of Criminal Procedure, 1973) 836
- PETROLEUM/PETROLEUM PRODUCTS:**
- (1) LPG.
(See under: Constitution of India, 1950) 849
- (2) Allotment of petrol/diesel dealership.
(See under: Public Distribution) 1125
- PRACTICE AND PROCEDURE:**
- (1) (i) Miscellaneous application - Filed in a disposed of criminal writ petition - Entertained by High Court - Propriety of - Held: High Court committed error in entertaining the application - Once writ petition is disposed of, High Court becomes functus officio and cannot entertain review petitions or miscellaneous applications except for carrying out typographical or clerical errors.
- (ii) High Court - Power of - Under Arts. 226 and 227 and s. 482 Cr.P.C. - To interfere with orders granting or rejecting bail - Held: Jurisdiction of High Court under Arts. 226 and 227 and u/s. 482 are exceptional in nature and to be used in most exceptional cases - Powers u/s. 439 is also discretionary and required to be exercised with great care and caution - Powers to grant or reject bail is within powers of regular criminal court and

High Court would not be justified in usurping their powers in its inherent jurisdiction - Code of Criminal Procedure, 1973 - s. 439 and 482 - Constitution of India, 1950 - Arts.226 and 227.

Nazma v. Javed @ Anjum 826

(2) Preventive detention for one year - Challenged - High Court reserving the order and pronouncing the same after 5 months - Held: In a matter affecting personal liberty of a citizen, it is duty of courts to take all endeavours and efforts for an early decision - Courts to give priority to disposal of matters relating to personal liberty.

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

Baby Devassy Chully @ Bobby v. Union of India & Ors. 515

(3) (See under: Constitution of India, 1950) 311

(4) (See under: Code of Criminal Procedure, 1973) 641

PRECEDENT:

(See under: Constitution of India, 1950) 311

PREVENTION OF CORRUPTION ACT, 1988:

(1) s.13(2) r/w s.13(1)(d).
(See under: Code of Criminal Procedure, 1973) 54

(2) s. 13(2) r/w s.13(1)(e).
(See under: Code of Criminal Procedure, 1973) 601

PREVENTIVE DETENTION:

(See under: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974) 515

PUBLIC DISTRIBUTION:

(1) Allotment of petrol/diesel dealership - Writ petition by respondent challenging rejection of his candidature - High Court, directing the company to issue Letter of Intent in favour of respondent - Held: Decision to cancel the selection was taken by competent authority - High Court ought not to have interfered with such decision in exercise of its jurisdiction under Art. 226 of Constitution - Constitution of India, 1950 - Art. 226.

Sr. Divisional Retail Sales Manager, Indian Oil Corporation Ltd. Through POA Holder & Ors. v. Ashok Shankarlal Gwalani 1125

(2) (See under: Constitution of India, 1950) 849

PUBLIC INTEREST LITIGATION:

(1)(i) (See under: Bonded Labour System (Abolition) Act, 1976) 579

(ii) (See under: Constitution of India, 1950) 311

(2) (See under: Madhya Pradesh Land Revenue Code,1959) 974

(3) (See under: Sexual Harassment) 895

RAILWAY CLAIMS TRIBUNAL ACT, 1987:

(i) ss. 13(1) and 16 - Claim petition - Impleadment of parties - Consignment booked under "Self" basis - Delivered to a third party without authority - Claim petition by consigner against Railways claiming value of goods for non-delivery - Applications for impleadment - Held: In the claim petition what the Tribunal has to inquire into and determine is the claim against Railway Administration for its fault in discharging its responsibilities under Railways Act, Rules and Regulations and not the inter se disputes between claimants and third parties - There is no error in

the order of Tribunal rejecting the application for impleadment and High Court rightly affirmed the order - Railways Act, 1989 - ss. 65 and 74 - Railways (Manner of Delivery of Consignments and Sale Proceeds in the Absence of Railway Receipt), Rules, 1990 - Railway Claims Tribunal (Procedure) Rules, 1989.

(ii) ss. 16 and 18.

Shree Shyam Agency v. Union of India & Others 805

RAILWAY CLAIMS TRIBUNAL (PROCEDURE) RULES, 1989:
(See under: Railway Claims Tribunal Act, 1987) 805

RAILWAYS ACT, 1989:
ss. 65 and 74.
(See under: Railway Claims Tribunal Act, 1987) 805

RAILWAYS (MANNER OF DELIVERY OF CONSIGNMENTS AND SALE PROCEEDS IN THE ABSENCE OF RAILWAY RECEIPT), RULES, 1990:
(See under: Railway Claims Tribunal Act, 1987) 805

REFERENCE TO LARGER BENCH:
(See under: Cenvat Credit Rules, 2002) 1100

REMAND:
(See under: Code of Criminal Procedure, 1973) 641

RENT CONTROL AND EVICTION:
(See under: West Bengal Premises Tenancy Act, 1956) 944

RES JUDICATA:

Petition u/Art. 226 of the Constitution challenging detention order - Earlier petition u/Art. 32 challenging the same detention dismissed - Held: Doctrine of *res judicata* would be inapplicable to cases where two forums have separate and independent jurisdictions - *Res Judicata* also not applicable in the instant case because in the petition u/Art. 226, additional grounds were raised.

Baby Devassy Chully @ Bobby v. Union of India & Ors. 515

RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009:
(See under: Bonded Labour System (Abolition) Act, 1976) 579

SENTENCE / SENTENCING:
(1) Discretion in default sentence.
(See under: (Kerala) Abkari Act) 1061

(2) Offence of cheating - Appellant and her husband found guilty of cheating u/s.420 IPC and both given the same punishment, i.e. imprisonment for two years - Held: Though, both were convicted for the same offence, it does not necessarily follow that they should be punished in the same way - Courts below overlooked their relative role in commission of offence - Primary role was of appellant's husband, and she had only a subsidiary role - Appellant deserves a lesser punishment than, her husband - Sentence of one year imprisonment to appellant would meet the ends of justice - Penal Code, 1860 - s.420 - Administration of criminal justice.

Jasvir Kaur v. State of Punjab 1057

(3) Reduction of sentence - Conviction u/s.436 of IPC and sentence of 7 years by trial court - High Court reducing sentence to 3 years - Held: Reduction of sentence by High Court was not warranted, however, in absence of appeal by State, sentence not disturbed.

(Also see under: Penal Code, 1860)

Busi Koteswara Rao & Ors. v. State of A. P. .. 1046

SERVICE LAW:

(1)(i) Dismissal - On grounds of misconduct - Appellant, Bank Manager, alleged to have been involved in fraudulent transactions - Prosecuted u/ ss.120B, 420, 467, 468, 471 and 201 IPC alongwith three account holders - Acquittal by criminal court - Held: Departmental proceedings and criminal trial can go on simultaneously, except where both proceedings are based on same set of facts and evidence in both proceedings is common - The instant case did not fall within the said exception as departmental proceedings and criminal case were not grounded upon same set of facts and evidence - Failure of prosecution in producing necessary evidence before criminal court cannot have any adverse impact on evidentiary value of the material produced by Bank before Inquiry Officer in departmental proceedings which clearly establish that appellant had exceeded his discretionary powers in purchasing cheques and issuing demand drafts to show undue favour to three construction companies - There was no breach of rule of natural justice - Order of dismissal not interfered with - State Bank of India Officers Service Rules, 1992 - rr.50(4), 67(j) and 68(2)(iii) - Penal Code, 1860 - ss.120B, 420, 467, 468, 471 and 201.

(ii) Departmental proceedings - If can be conducted simultaneously to criminal trial - Legal position discussed.

(iii) Bank officials - Standard of integrity required of them - Held: Bank officials act as trustees of funds deposited by public with Bank - They have an obligation to earn trust and confidence of not only the account holders but also the general public - High standards of integrity is required of Bank officials, particularly the cashiers, accountants, auditors and Management at all levels - They must be above suspicion.

Avinash Sadashiv Bhosale (D) Thr. LRs. v. Union of India & Ors.

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(2) Disciplinary proceedings - Disciplinary authority - Bank Officer, transferred to Head Office stated to have committed various irregularities during his earlier posting - Disciplinary authority of erstwhile place of posting nominated to conduct disciplinary proceedings - Held: Disciplinary authority was duly empowered to institute disciplinary proceedings - Court is not expected to sit in judgment over wisdom of Bank in taking such a decision which is to expedite disciplinary proceedings - Division Bench of High Court erred in quashing the proceedings and punishment of dismissal - Impugned order set aside - UCO Bank (Discipline and Appeal) Regulations 1976 - Regulation 5 - Note dated 3.8.2004 - Circular dated 11.8.2004.

UCO Bank & Ors. v. Sushil Kumar Saha 611

(3) Terminal benefits - Army - Havildar discharged / terminated from service prior to date of his superannuation on ground that he had earned 4

"Red Ink Entries" - High Court directing reinstatement, with no benefit of salary for interviewing period - Held: High Court was justified in disallowing salary for intervening period - However, having found discharge / termination legally unsustainable, High Court ought to have issued direction for counting the intervening period for purpose of terminal benefits - Ordered accordingly.

Ex-Hav. Satbir Singh v. The Chief of the Army Staff, New Delhi & Anr. 1001

SEXUAL HARASSMENT:

Sexual harassment of women at work places - 'Vishaka' guidelines - Implementation of - Further directions given by Court to make amendments in service Rules and Industrial Employment (Standing Orders) Rules and to form adequate number of Complaints Committees at different levels - Report of complaints Committee to be treated as report in disciplinary proceedings by Inquiry Officer and such report to be acted upon accordingly - State functionaries, private and public sector organizations, and all statutory institutions directed to ensure that Vishaka guidelines and directions issued by Court subsequently are followed - Constitution of India, 1950 - Art.141 - Public interest litigation.

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STATE BANK OF INDIA OFFICERS SERVICE RULES, 1992:

rr.50(4), 67(j) and 68(2)(iii).
(See under: Service Law) 86

STATE FINANCIAL CORPORATION ACT, 1951:

s.29 - Default in repayment of loan - Property mortgaged by borrower, sold by State Financial Corporation - Held: By virtue of sub-s. (2) of s. 29, such transfer of property by Corporation will vest in transferee all rights in property as if the transfer had been made by owner thereof.

(Also see under: Constitution of India, 1950)

Pradeep Kumar Sharma v. U.P.F.C. Rajpur Road, Dehradun & Ors 863

TRANSFER OF PROPERTY ACT, 1882:

s. 108(p) - Permanent structure - Determination of - Held: A structure that lasts till the end of tenancy can be treated as permanent structure - Removability of structure without causing damage to building, durability of structure, material used for erection and purpose for which the structure is intended, are other considerations for deciding the nature of structure.

(Also see under: West Bengal Premises Tenancy Act, 1956)

Purushottam Das Bangur & Ors. v. Dayanand Gupta 944

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WEST BENGAL PREMISES TENANCY ACT, 1956:

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(3) Witness - Statement before Investigating Officer and before court - Contradictions - Held: Witnesses

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(2) 'Perhaps' - Connotation of.

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**REFERENCE MADE BY
ATTORNEY GENERAL FOR INDIA
SHRI GOOLAM E VAHANVATI
IN THE MEMORY OF
LATE SHRI RANGANATH MISRA,
FORMER CHIEF JUSTICE OF INDIA
ON 13TH SEPTEMBER, 2012**

My Lord Justice Kabir, Chief Justice of India, Hon'ble Judges, Mr. Rohinton F. Nariman, Solicitor General, Mr. PH Parekh, President of the Supreme Court Bar Association, office bearers of the Bar Association, Law Officers, Members of the Bar, friends, ladies and gentlemen.

We have assembled here today to mourn the death of the late Justice Ranganath Misra, a former Chief Justice of this Court who having retired on 24th November, 1991, passed away on 13th September, 2012 in Bhubaneswar after a prolonged illness.

Chief Justice Ranganath Misra was born on 25th November, 1926 in Banpur, Orissa to the legendary Oriya poet and politician Godavaris Mishra. He studied in Banpur High School, P.M. Academy and later, in Ravenshaw College and Allahabad University.

On 18th September, 1950 he got enrolled as an advocate of the Orissa High Court, Cuttack where he practiced law until 1969, when he was appointed as a Permanent Judge of the Orissa High Court. He was appointed acting Chief Justice of Orissa High Court on 6th November, 1980 and on 16th January, 1981 he was appointed permanent Chief Justice of the Orissa High Court. Chief Justice Misra was appointed as a Judge of this Hon'ble Court in 1983. On 25th September 1990, he became Chief Justice of India, and retired on 24th November, 1991.

Destiny has various and hugely unexpected ways of working. Some times it brings about drastic changes which alter

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the fates of people and the shape of institutions. When Justice Sabyasachi Mukharji was appointed Chief Justice of India on 18 December 1989 he would have had two and a half years as Chief Justice and would have retired on 31 May 1992. This meant that two Senior Judges of this Hon'ble Court would retire as Puisne Judges and would not assume office as Chief Justice of India, and another Senior Judge would have had a rather short tenure as Chief Justice. However, things changed when Justice Sabyasachi Mukharji suddenly died on 25 September 1990. As a result two Learned Judges of this Hon'ble Court got the opportunity of becoming Chief Justice of India. One of them was Justice Ranganath Misra.

Justice Ranganath Misra came from what the English would describe as an aristocratic background. This was reflected in his demeanor and his disposition particularly when he sat on the Bench. He had an imposing personality and this was coupled with what I would appreciatively describe as a "lofty" demeanour. I had the privilege of appearing before Benches of which Justice Ranganath Misra was a part of on several occasions. I still vividly remember the dignity with which he conducted himself and the proceedings in court.

During his tenure as a Judge of this Hon'ble Court, Chief Justice Misra wrote numerous judgments on varied issues of law. Amongst all his judgments, one landmark judgment would be the one delivered in **Vincent Panikurlangara v. Union of India, (1987) 2 SCC 165**. The issue in that case was a petition under Article 32 of the Constitution seeking a ban on the import, manufacture, sale and distribution of such drugs which have been recommended for banning by the Drugs Consultative Committee and the cancellation of all licences authorising import, manufacture, sale and distribution in respect of such drugs. The issue was crucial, in that it related to the maintenance of approved standards of drugs in general.

Justice Misra went on to opine that it was the obligation of the State, in a welfare State, to ensure the creation and

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sustaining of conditions congenial to good health. He held that maintenance and improvement of public health must necessarily rank high, being indispensable to the physical existence of the community.

The judgment made it imperative that every indigenous drug manufacturer must have an obligation by law to disclose the formula of preparation and other statutory information in the national language and at least one or two other languages, keeping in view the place of manufacture of the drug and the area of its circulation. Any statutory warning to be administered should also follow the same course.

Chief Justice Misra was known for speaking his mind. This was evident from the style of his judgments. In **McDowell & Co. Ltd. v. CTO, (1985) 3 SCC 230**, speaking for the majority, he observed that “

“Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.”

In May 1985, while he was a sitting judge of this Hon'ble Court, the Ranganath Misra Commission was appointed, to inquire into the 1984 anti-Sikh riots.

Following his retirement as Chief Justice of this Hon'ble Court, Justice Misra was appointed as the first Chairman of the National Human Rights Commission in 1993. He held that post till 1996. In this capacity, he was a key figure in the establishment of the Asia Pacific Forum.

Thereafter, Chief Justice Misra was nominated to the Rajya Sabha in 1998.

The National Commission for Religious and Linguistic Minorities, also known as the Ranganath Misra Commission,

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was constituted by the Government of India on 29th October, 2004 to look into issues related to linguistic and religious minorities in India. It was chaired by Justice Misra. The terms of reference of the Commission included - suggesting criteria for identification of socially and economically backward sections among religious and linguistic minorities; suggesting necessary constitutional, legal, and administrative modalities required for the implementation of its recommendations; and recommending measures for welfare of socially and economically backward sections. In its report, the Commission recommended the inclusion of Dalit Christians and Muslims in the scheduled caste list, and reserving 15% of the jobs in government services and seats in educational institutions for minorities.

Chief Justice Misra was regarded with great respect. He was recognized as a legal luminary and an eminent jurist. On his part, he believed that Judges and lawyers were both part of the judiciary, and were 'two sides of the coin'. His interest in social justice was well-known. He espoused the cause of the downtrodden and deprived sections of society. His friends and peers described him as a multi-faceted personality, closely associated with writing and cultural activities.

By his own admission, he had visited about 92% of the districts in India, and had observed the functioning of courts at all levels. He was of the firm belief that delay defeated justice, and had a bag full of anecdotes of frustrated litigations with genuine grievances, suffering on account of a delay in justice. He often expressed his firm view that Judges are trustees – social servants appointed under the Constitution.

He leaves behind his wife, Sumitra Misra, to whom all his well wishers and admirers have reached out in grief, offering their heartfelt condolences.

On behalf of the Bar of India, I add and send my sincere condolences to the family.

May his soul rest in peace.

**REFERENCE MADE BY
SHRI PRAVIN H. PAREKH, PRESIDENT
SUPREME COURT BAR ASSOCIATION
IN THE MEMORY OF
LATE SHRI RANGANATH MISRA,
FORMER CHIEF JUSTICE OF INDIA
ON 13TH SEPTEMBER, 2012**

1. Hon'ble Mr. Justice Altamas Kabir, the Chief Justice of India, My Lords Hon'ble Judges of the Supreme Court, Mr. Goolam E. Vahanvati, Learned Attorney General for India, Mr. Rohinton F. Nariman, the learned Solicitor General of India, the learned Additional Solicitor Generals, Mr. Sushil Kumar Jain, President A.O.R. Association, Office Bearers and Members of the Executive Committee of SCBA, my colleagues at the Bar, Ladies & Gentlemen.

2. Members of the bar join your Lordships in paying homage and tribute to Hon'ble Mr. Justice Ranganath Misra who endeared himself to the bar and the bench, who contributed substantially in what this great institution has achieved, especially for reducing arrears in all courts and helping the underprivileged litigants in providing legal aid and giving effective reliefs in PIL etc. etc. A multi-faced person, Justice Misra was a distinguished jurist, a thinker and a great administrator. I endorse all that My Lord the Chief Justice of India has said from my personal knowledge.

3. He left us on 13th September at the age of 86 years at 9.05 pm at the Apollo Hospital, Bhubaneswar. His body was taken to Cuttack and kept at his Tulasipur residence to enable his friends and admirers to pay their last respects. Large number of dignitaries, members of the bar, bench and citizens from all walks of life paid homage to Justice Misra. His Excellency Governor of Odisha Mr. M.C. Bhandare, Hon'ble Chief Minister Mr. Naveen Patnaik, Hon'ble Mr. Justice V

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Gopala Gowda, Hon'ble Chief justice of Orissa High Court and members of the Bar, Bench and citizens from all strata paid their respectful homage.

4. I was very lucky that Justice Ranganath showered on me lot of love and affection from the day we knew each other. In the year 1986 as Chairman of CERC I had organised All India Seminar which was inaugurated by Justice Ranganath Misra. I met my Lord Justice Dipak Misra for the first time in that seminar. Even after retirement Justice Misra's love and blessings continued for me.

5. Justice Ranganath Misra born on 25th November, 1926 was a son of legendary Odia poet, eminent journalist, author, novelist, critique and a great social reformer Pundit Godavarish Misra. His sufferings and struggle in the initial days of his life prevailed till the end of his life and his quest for knowledge became history. He was amongst one of the founders of "Satyavadi Vana Vidyalaya" in Puri, the gurukul which produced most of the leaders of Odisha.

6. Hon'ble Mr. Justice Ranganath Misra was a great son of a great father. Justice Misra did his schooling from Banpur High School as well as PM Academy in Cuttack before he joined Ravenshaw College and then Allahabad University. He enrolled as Advocate of the Orissa High Court on September 18, 1950 and also practiced before the High Court at Cuttack, where he practised on all branches of law. In fact his brother and other family members were also eminent in public life.

7. He did keen analysis of literature even though he was a student of law and political science.

8. Hon'ble Mr. Justice Ranganath Misra was appointed permanent Judge of the Orissa High Court on July 4, 1969. Later he became acting Chief Justice, Orissa High Court on November 6, 1980 and Chief Justice from January 16, 1981.

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9. Justice Misra stood for welfare of the downtrodden and deprived sections of the society. He was a considerate man and an eminent parliamentarian who rendered yeoman service in furthering the cause of justice and human rights. Justice Ranaganath Misra was a great humanist. He helped large number of people throughout his life without making it public and without even making the persons he helped conscious about it. He was a considerate human being. Justice Misra was particularly close to Justice V. Balakrishna Eradi.

10(a). Legal Services Authority Act, 1987 was enacted in the year 1987. It was amended by the Amendment Act of 1994 and thereafter it was brought into force from 9th November, 1995. This happened because Justice Ranaganath Misra gave conscious directions to see that this Act achieves effectively what it had intended to achieve.

10(b). The NALSA website today rightly recognizes the contribution of Justice Ranganath Misra in the enforcement of The Legal Services Authorities Act, 1987. It says and I quote:

“Hon. Mr. Justice R. N. Misra the then Chief Justice of India played a key role in the enforcement of the Act.”

In context of this act, Justice Misra in his Law day speech delivered on 24th November, 1990 said:

“With the enforcement of the statute and more of powers provided to the system, it is expected that the volume of conciliatory activities would expand and more of pending cases would be handled by the Lok Adalats and by increase of pre-litigation conciliation the inflow of fresh litigation may also be reduced.”

10(c). Justice Misra believed in disposal of cases in wholesale and not in retail. He used to encourage Lok Adalat which used to take place in the Supreme Court lawns. He used to include in Lok Adalat as many insurance companies as he

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could in motor vehicle cases and other cases. He himself used to call meetings of chairman of various insurance companies etc. and made them agree to go to Lok Adalat and large number of cases were disposed off likewise.

10(d). The amendment in Legal services Authorities Act 1987 by the 1994 amendment was organization of Lok Adalat making awards of Lok Adalat, decree of court. It also constituted national legal service authority, state legal authority, district and taluka and he gave responsibility to the highest judicial authority concerned. Members of the Lok Adalat were declared as public servants. The persons who were eligible to free legal aid was also liberalised.

11. On the day of Judgment by the Bar, Justice Ranganath Misra was given love and affection both at the farewell function organised by SCBA as well as at the farewell dinner organised by AOR Association. I had the privilege of paying complements to Justice Misra as President of AOR Association on his retirement as the Chief Justice of India at the dinner hosted by AOR Association at India Habitat Centre where I mentioned his contributions to this great institution and his love and affection for the members of bar. Practically all Judges of this Hon'ble Court with their spouses attended that function.

12. Justice Misra knew how to enlist the support and cooperation of the bar. He was always eager to know the views of members of the bar on whatever he did. In any decision making he welcomed the suggestions from members of the bar and gave due regards to those suggestions. He always wanted problems of the bar to be settled amicably and satisfactorily.

13. Justice Ranganath Misra treated a postcard written by one Vineet Kumar Mathur about the pollution in Gomti River as a PIL and appointed me as Amicus Curiae and asked me to draft the writ petition. He waived the rules of vakalatnama, affidavit etc., Justice Krishna Iyer, Justice P.N. Bhagwati and

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Justice Ranganath Misra used to take up appropriate cases on the basis of newspaper reports or receipt of a letter etc etc. Justice Misra asked me also to impleaded such Respondents as I thought proper. I impleaded Union of India, State of U.P., Central Pollution Control Board, U.P. Pollution Control Board, large number of municipalities, alcohol industries and sugar industries. He knew how to make Central Government and even pollution control boards work. He used to give short adjournments, directing them to file affidavits. The Central Government filed affidavit saying that it was the job of U.P. Government since the river flows only in U.P. U.P. Government relied on some arrangements made by which the Central Government to make substantial contributions. Municipalities said they had no option but to throw the untreated effluents because they were not given any money by the State Government. Private Respondents said they were doing a wonderful job relying on the periodical good certificate which they were getting from the pollution control board. At the end of the day I admired the way in which Justice Misra handled the case. Long after Justice Misra retired, there was an order that all those who did not comply with the standards laid down by the Act, will close down their factories etc. One liquor manufacturer got a brilliant idea to change the standards under the order of a bureaucrat and ultimately, they were found guilty of contempt both in the year 1995 and 1996 by Hon'ble Mr. Justice Jeevan Reddy and Hon'ble Mr. Justice G.T. Nanavati.

14. His Lordship believed that a judgment of the court should not result in the miscarriage of justice. In the case of *A.R. Antulay v. RS Nayak* reported in 1988(2) SCC 602 Justice Misra rightly observed:

"To err is human, is the oft-quoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority...."

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He further quoted the maxim *actus curia neminem gravabit* (an act of the Court shall prejudice no one) that the act of court should not prejudice anyone. He said that the court could rectify its own judgments by exercising its inherent powers if it felt that there had been an error in the judgment given by the court.

15. His contribution in reducing arrears by a novel method is praise worthy. On 11.9.1991 in the case of *ONGC & ors. V Collector of Central Excise reported in 1992 Supp (2) SCC 432* popularly known as ONGC- I, mentioned that this court has on more than one occasion pointed out that public sector undertakings of central government and Union of India should not fight their litigations in court by spending money and wasting public time. He used to say why waste courts time on whether money from right pocket of government be transferred to left pocket. The judgment required the cabinet secretary to handle the matter personally and report to the court within 4 weeks and the report should be supported by an affidavit of a responsible officer and the matter was placed before the court on 11.10.1991. On 11.10.1991 Justice Ranganath Misra, Justice P.B. Sawant and Justice S. Mohan in ONGC- II expressed their happiness about the Cabinet Secretary's taking appropriate initiative. The Hon'ble Court directed the Government of India to set up a committee consisting of representatives from the Ministry of Industry, Bureau of Public Enterprises and Ministry of Law, to monitor disputes between (i) Ministry and Ministry of Government of India; (ii) Ministry and Public Sector Undertakings and Government of India and (iii) Public Sector undertakings between themselves to ensure that no litigation comes to court or to a tribunal without the matter having been examined by the committee and its clearance for litigation. The directions in the judgment were directed to be communicated to High Courts and Subordinate Courts all over India and the judgment directed quarterly reports to be submitted to the Supreme Court registry beginning from 1.1.1992.

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16. Doubts about implementing this system were clarified by judgment of ONGC-III on 7.1.1994 by the bench consisting of Chief Justice M.N. Venkatachaliah, Justice P.B. Sawant and Justice S. Mohan. This Hon'ble Court again in ONGC- IV case by judgment dated 20.7.2007 recommended that there was a strong case and a need was felt for State Governments for setting up similar committees to resolve controversy arising between departments of the State.

17. However, in the Electronic Corporation of India Ltd case it was found that state has outlived its utility and recalled the directions made in the judgments of ONGC. The effect of recall on matters which are in pipeline will have to be decided.

18. Hon'ble Mr. Justice Misra held a strong belief that right to health was an inherent part of the right to life and needed to be protected at all costs, if right to life had to be guaranteed to the citizens in the true sense of the term. In *Pt. Parmanand Katara v. Union of India & others* reported in (1989) 4 SCC 286, Justice Misra held that whether the patient is innocent or a criminal liable to punishment under the law, it is obligation of a doctor at the governmental hospital positioned to meet the constitutional obligation directed on the state by virtue of Article 21 to preserve life. He gave the opinion in the following words:

“.....No law or state action can intervene to avoid/ delay the discharge of the paramount obligation cast upon members of medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore give way.....”

19. Justice Misra was amongst the green minded Judges who always decided in favour of environmental protection. Justice Ranganath Misra decided environmental cases following

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principles of sustainable development. He was of the view that law alone cannot help in restoring the balance in biospheric disturbance which he held in the Judgment in the case of *M.C. Mehta v. Union of India* reported in (1991) 2 SCC 353.

20. Justice Misra was a practical judge and knew how to enforce his orders. During Justice Misra's tenure as Chief Justice of India once I met him as elected representative with other office bearers informing him that obtaining certified copy of the orders was taking long time and even bail orders were issued after 3 to 4 days. He immediately called the then Registrar General in our presence and inquired as to why such thing was happening. The Registrar General informed him that there were only two photocopying machines and at times one machine was out of order. On hearing this Justice Misra immediately directed the Registrar General to purchase more photocopying machines and also ordered that urgent certified copies must be made available within 24 hours and ordinary copies within four days. He further told the Registrar General that if there was any delay in carrying out this direction he would be held responsible. On his instructions after that day, the urgent certified copies were available on the same day and non-urgent were made available by the next day. He was a man of discipline and knew how to enforce it as well. His administrative ability was excellent.

21. Justice Misra headed the commission of inquiry that probed the anti-Sikh riot following the assassination of former Prime Minister Indira Gandhi in 1984. The commission criticised the “widespread lapses” on the part of the police which led to the large scale genocide of the Sikhs in the northern part of the country. The Commission also found that the police was either indifferent or negligent in performance of its duties while those incidents were taking place and at times it also connived at or participated with them.

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22. Justice Misra was the first Chief Justice of India to become the Chairman of the National Human Rights Commission. He had occupied this important post for three years between 1993 and 1996. He was a champion of Human Rights and this was seen in the amount and quality of work which was undertaken by NHRC. The Commission under the leadership of Justice Ranganath Misra entertained thousands of complaints in the initial three years of its birth. The commission also promoted many Non Governmental Organisations which were working against human right abuse. Justice Ranganath Misra himself played a very vital role in promotion of Human Right Literacy, he recommended the establishment of an inter departmental Task Force with the purpose of monitoring departmental programmes to ensure that they are in consonance with human rights requirements. Many steps were also taken to improve the jail conditions and the commission also tried to expedite the hearing of under trial foreign nationals. In the year 1995-1996 the commission made concerted effort to come to grips with the major social problems affecting adversely the rights of the child. Efforts were taken by the commission to remove the menace of child labour, female infanticide and child prostitution. Justice Ranganath Mishra himself had strong opposition against such activities.

23. As Chairman of NHRC, he used to serve good tea to all the visitors. Justice M.N. Venkatachaliah succeeded Justice Ranganath Misra as chairperson of the National Human Rights Commission. Justice Venkatachaliah on inquiry found that there was no head for expenses of tea and that Justice Ranganath Misra used to pay for tea to all visitors from his own salary.

24. Justice Misra held our Constitution, the rights it guarantees and the obligations imposed by it, in great regard. This is evident from the fact that he wrote a letter to the then CJI, Hon'ble Mr. Justice M.M. Punchhi on 3rd March, 1998 expressing his concern about the low levels of awareness

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among citizens about fundamental rights. He said in his memorable letter to the Chief Justice of India that : -

“As a nation-building measure, teaching Fundamental Duties in every educational institution and as a measure of in service training everywhere”, was necessary as these “cannot be inculcated in our citizens unless these are brought into their minds and living process through teaching and education”. “It is the obligation of the State to educate the citizens in the matter of Fundamental Duties so that a right balance between Rights and Duties may emerge.”

This letter was treated as a writ petition and the issue was finally decided in the case of *Ranganath Misra v Union of India* reported in 2003(7) SCC 137.

25. Justice Misra was nominated to the Rajya Sabha in 1998. Thereafter in 2004, he headed the National Commission for Religious and Linguistic Minorities, which was popularly known as the Ranganath Misra Commission, to look into various issues related to linguistic and religious minorities in India. As a chairperson of this Commission Justice Misra looked into the status of the minorities and recommended certain changes in the general scheme of laws. The commission recommended welfare measures for the Religious and Linguistic Minorities in the field of education and other basic human requirements. The commission recommended certain economic measures to uplift the religious and linguistic minorities.

26. Justice Ranganath was very religious. Though he looked ritualistic but there was fundamental spiritualism in him. In one of his speeches he described Bhagavad Gita as a pure philosophy but Vishnu Sahasranama in Mahabharata as a resourceful invocation of prayers. The subtle distinction was rarely noticed but he spoke so in public meetings. I am sure

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Justice Misra from heaven must be happy that this full court reference is being held on Aasoj sudi vidya during Navratri and that too during shubh- chogadia.

27. Justice Misra was health conscious and used to go for morning walk and do yoga and kept himself completely fit.

28. Last year on 11th December I visited Cuttack to participate in the Silver Jubilee function of CAT organised by CAT, Cuttack Bench. My Lord Justice A. K. Patnaik and Justice Dipak Misra were there. In this visit to I inquired from my friend Mr. Jayant Dass, the President of the Odisha Bar Association and former Advocate General of Odisha as to whether I could go and see Justice Ranganath Misra. Mr. Dass told me that perhaps Justice Misra would not be able to recognize me and he is suffering and therefore discouraged me from meeting him.

29. A few weeks before Justice Misra passed away, I again visited Odisha on 11th and 12th August 2012 to participate in the "National Tax Conference 2012" organized by the All India Federation of Tax Practitioners (Eastern Zone) jointly with Bhubaneswar Tax Bar Association and Members all the Tax Bar Associations of Odisha. The Conference was inaugurated by my Lord, Hon'ble Mr. Justice A.K. Patnaik. This time also I enquired about the health of Justice Misra but again got discouraged from visiting him. I feel guilty. I should have atleast seen him for few minutes. He lost both his sons Devanand and Shivanand during his life time. This shattered him completely. As it is said:

"The most distressing and long-lasting of all grief...is that for the loss of a grown child."

30. I feel greatly privileged that when Justice Misra retired as CJI in November 1991, I could bid him farewell on behalf of the Bar at India Habitat Centre and 21 years later I am able to pay my homage voicing the feelings and gratitude of the bar in

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this great court room. On behalf of the members of SCBA and on my own behalf, I extend our heartfelt condolences to Sumitrajee wife of Justice Ranganath Misra, My lord Justice Dipak Misra, Mr. Anand Grandson, Mr. Pinaki Misra, Sr. Advocate, nephew of Justice Misra, Mr. Anil Parashar a close friend and all members of the family of Mr. Justice Ranganath Misra. On behalf of the legal fraternity I pray to the Almighty that may his soul rest in eternal peace.

MEMORANDA
OF
JUDGES OF THE SUPREME COURT OF INDIA
(From 03.09.2012 to 14.12.2012)

1. Hon'ble Mr. Justice G.S. Singhvi, Judge, Supreme Court of India was on leave for 2 (two) days on 19.10.2012 and 29.10.2012, on full allowances.
2. Hon'ble Mr. Justice S.J. Mukhopadhaya, Judge, Supreme Court of India was on leave for 1 (one) day on 30.11.2012, on full allowances.

JUDGES OF THE SUPREME COURT OF INDIA
(From 3.09.2012 to 14.12.2012)

1. Hon'ble Shri S.H. Kapadia, Chief Justice of India
2. Hon'ble Mr. Justice Altamas Kabir
3. Hon'ble Mr. Justice D.K. Jain
4. Hon'ble Mr. Justice P. Sathasivam
5. Hon'ble Mr. Justice G.S. Singhvi
6. Hon'ble Mr. Justice Aftab Alam
7. Hon'ble Mr. Justice R.M. Lodha
8. Hon'ble Mr. Justice H.L. Dattu
9. Hon'ble Dr. Justice B.S. Chauhan
10. Hon'ble Mr. Justice A.K. Patnaik
11. Hon'ble Mr. Justice T.S. Thakur
12. Hon'ble Mr. Justice K.S. Radhakrishnan
13. Hon'ble Mr. Justice Surinder Singh Nijjar
14. Hon'ble Mr. Justice Swatanter Kumar
15. Hon'ble Mr. Justice Chandramauli Kr. Prasad
16. Hon'ble Mr. Justice H.L. Gokhale
17. Hon'ble Mrs. Justice Gyan Sudha Misra
18. Hon'ble Mr. Justice Anil R. Dave
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