

**CONTENTS**

Advanta India Limited & Anr.; Shivanna (B.N.) v. ....	1
Afjal Imam v. State of Bihar & Ors. ....	174
Ark Builders Pvt. Ltd. (M/s.); State of Maharashtra (The) and Ors. v. ....	432
Aruna Ramchandra Shanbaug v. Union of India and Ors. ....	1057
Ashok & Anr.; Ganesh (D) By Lrs. & Ors. v. ....	215
Ashok @ Dangra Jaiswal v. State of M.P. ....	253
Assistant Commercial Taxes Officer v. M/s Makkad Plastic Agencies ....	663
Badrinarayan and Ors.; Ravi v. ....	400
Bharat Sanchar Nigam Ltd. v. Ghanshyam Dass and Ors. ....	380
Bharat Singh and Ors.; State of U.P. and Ors. v. ....	525
Bharat Steel Tubes Ltd. Etc. (M/s.) v. IFCI Ltd. & Ors. ....	205
Bhawani Prasad Sonkar v. Union of India & Ors. ....	631
Bilkis and others v. State of Maharashtra and others ....	733
Binod Kumar v. State of Jharkhand and Ors. ....	646
Buttar (K.J.S.) v. Union of India and Anr. ....	136

(i)

(ii)

CBI v. Mustafa Ahmed Dossa ....	969
Centre for PIL & Anr. v. Union of India & Anr. ....	445
Chandra Bonia v. State of Assam ....	15
Commissioner of Central Excise Delhi-III; Siddachalam Exports Private Ltd. v. ....	695
Commissioner of Trade Tax, Lucknow, U.P.; Pepsico India Holdings Ltd. v. ....	723
Commissioner of Trade Tax, U.P. v. M/s. Kartos International Etc. ....	263
Commissioner of Trade Tax, U.P. v. Varun Beverages Limited ....	803
Commnr., Central Excise , Bangalore v. M/s. Meyer Health Care Pvt. Ltd. & Ors. ....	794
Deepak Agarwal & Anr. v. State of Uttar Pradesh & Ors ....	149
Devinder Singh v. Municipal Council, Sanaur ....	867
Director General, Indian Council for Agricultural Research & Others v. D. Sundara Raju ....	95
District Insurance Officer and Anr.; Somanathan (P. S.) and Ors. v. ....	367
Ganapathi (K.D.) and Anr.; Kokkanda B. Poondacha and Others v. ....	417
Ganesh (D) By Lrs. & Ors. v. Ashok & Anr. ....	215
Ghanshyam Dass and Ors.; Bharat Sanchar Nigam Ltd. v. ....	380

(iii)			(iv)		
Glaxo India Ltd. & Anr.; Union of India v.	.....	50	Mallikarjun and Ors.; Revanasiddappa and Anr. v.	.....	675
Godi Jaya Rami Reddy & Anr.; Siddamurthy Jayarami Reddy (D) by LRs. v.	.....	176	Meyer Health Care Pvt. Ltd. & Ors (M/s.); Commnr. Central Excise , Bangalore v.	.....	794
Gurmukh Singh v. Jaswant Kaur	.....	222	Mineral Area Development Authority etc. v. M/s. Steel Authority of India and Ors.	.....	19
Hemant Kumar; S.B.I. v.	.....	280	Municipal Corporation of Delhi and Anr.; Pradeep Oil Corporation v.	.....	764
IFCI Ltd. & Ors; Bharat Steel Tubes Ltd. Etc. (M/s.) v.	.....	205	Municipal Council, Sanaur; Devinder Singh v.	.....	867
Jaswant Kaur; Gurmukh Singh v.	.....	222	Mustafa Ahmed Dossa; CBI v.	.....	969
Kartos International (M/s.) Etc.; Commissioner of Trade Tax, U.P. v.	.....	263	Narayan Dutt and Ors. v. State of Punjab and Anr.	.....	983
Kokkanda B. Poondacha and Others v. K.D. Ganapathi and Anr.	.....	417	Naresh and Ors.; State of U.P. v.	.....	1176
Koninklijke Philips Electronics NV (M/s.); Kunj Aluminium Private Limited (M/s.) v.	.....	236	Palanisamy (N.); Velusamy (K.K.) v.	.....	31
Kulvinder Singh & Anr. v. State of Haryana	.....	817	Pepsico India Holdings Ltd. v. Commissioner of Trade Tax, Lucknow, U.P.	.....	723
Kumari Ranjana Mishra and Anr. v. The State of Bihar and Ors.	.....	570	Pradeep Oil Corporation v. Municipal Corporation of Delhi and Anr.	.....	764
Kunj Aluminium Private Limited (M/s.) v. M/s. Koninklijke Philips Electronics NV	.....	236	Preetam & Ors.; State of U.P. v.	.....	123
Local Administration Department & Anr. v. M. Selvanayagam @ Kumaravelu	.....	244	Radheyshyam Kejriwal v. State of West Bengal and Anr.	.....	889
Mahabir Vegetable Oils Pvt. Ltd. (M/s.); State of Haryana & Others v.	.....	944	Ramesh v. State of Rajasthan	.....	585
Makkad Plastic Agencies (M/s); Assistant Commercial Taxes Officer v.	.....	663	Ravi v. Badrinarayan and Ors.	.....	400
			Rekha v. State of T Nadu Tr.Sec.To Govt. & Anr.	.....	740

(v)			(vi)		
Revanasiddappa and Anr. v. Mallikarjun and Ors.	.....	675	State of Bihar & Ors.; Afjal Imam v.	.....	174
Rukia Begum v. State of Karnataka	.....	711	State of Haryana & Others v. M/s. Mahabir Vegetable Oils Pvt. Ltd.	.....	944
S.B.I. v. Hemant Kumar	.....	280	State of Haryana; Kulvinder Singh & Anr. v.	.....	817
S.H.O., Odiyansalai; Subramani @ Jeeva @ Kullajeeva v.	.....	25	State of Jharkhand & Anr.; Sheo Shankar Singh v.	.....	312
Sandeep Meta; Subhankar Biswas v.	.....	799	State of Jharkhand and Ors.; Binod Kumar v.	.....	646
Selvanayagam (M.) @ Kumaravelu; Local Administration Department & Anr. v.	.....	244	State of Karnataka; Rukia Begum v.	.....	711
Sheo Shankar Singh v. State of Jharkhand & Anr.	.....	312	State of Karnataka; Thimmappa (K. P.) Gowda v.	.....	200
Shindo alias Sawinder Kaur and Anr. v. State of Punjab	.....	117	State of M.P; Ashok @ Dangra Jaiswal v.	.....	253
Shivanna (B. N.) v. Advanta India Limited & Anr.	.....	1	State of Maharashtra (The) and Ors. v. M/s. Ark Builders Pvt. Ltd.	.....	432
Siddachalam Exports Private Ltd. v. Commissioner of Central Excise Delhi-III	.....	695	State of Maharashtra and Ors; Bilkis and Ors v.	.....	733
Siddamurthy Jayarami Reddy (D) by LRs. v. Godi Jaya Rami Reddy & Anr.	.....	176	State of Punjab and Anr.; Narayan Dutt and Ors. v.	.....	983
Somanathan (P. S.) and Ors. v. District Insurance Officer and Anr.	.....	367	State of Punjab; Shindo alias Sawinder Kaur and Anr. v.	.....	117
Sowri (U.) Reddy (D) by Lrs. v. B. Suseelamma and Ors.	.....	232	State of Rajasthan; Ramesh v.	.....	585
Sri Indra Das v. State of Assam	.....	289	State of T Nadu Tr. Sec. To Govt. & Anr.; Rekha v.	.....	740
State of Assam; Chandra Bonia v.	.....	15	State of U.P. and Ors. v. Bharat Singh and Ors.	.....	525
State of Assam; Sri Indra Das v.	.....	289	State of U.P. v. Naresh and Ors.	.....	1176

(vii)			(viii)		
State of U.P. v. Preetam & Ors.	.....	123	Union of India & Ors.; Bhawani Prasad Sonkar v.	.....	631
State of Uttar Pradesh & Anr.; Syed Maqbool Ali v.	.....	238	Union of India & Ors.; Thirumalai Chemicals Limited v.	.....	838
State of Uttar Pradesh & Ors; Deepak Agarwal & Anr. v.	.....	149	Union of India and Anr.; Suraz India Trust v.	.....	224
State of West Bengal and Anr.; Radheyshyam Kejriwal v.	.....	889	Union of India and Anr; Buttar (K.J.S.) v.	.....	136
Steel Authority of India (M/s.) and Ors.; Mineral Area Development Authority etc.v.	.....	19	Union of India and Ors. v. Vartak Labour Union	.....	509
Subhankar Biswas v. Sandeep Meta	.....	799	Union of India and Ors; Aruna Ramchandra Shanbaug v.	.....	1057
Subramani @ Jeeva @ Kullajeeva v. S.H.O., Odiyansalai	.....	25	Union of India v. Glaxo India Ltd. & Anr.	.....	50
Sundara (D.) Raju; Director General, Indian Council for Agricultural Research & Ors. v.	.....	95	Ushodaya Enterprises Ltd. and Anr.; Venugopal (T.V.) v.	.....	1000
Suraz India Trust v. Union of India and Anr.	.....	224	Vartak Labour Union; Union of India and Ors. v.	.....	509
Suseelamma (B.) and Ors.; Sowri (U.) Reddy (D) by Lrs. v.	.....	232	Varun Beverages Limited; Commissioner of Trade Tax, U.P. v.	.....	803
Syed Maqbool Ali v. State of Uttar Pradesh & Anr.	.....	238	Velusamy (K.K.) v. N. Palanisamy	.....	31
The State of Bihar and Ors.; Kumari Ranjana Mishra and Anr. v.	.....	570	Venugopal (T.V.) v. Ushodaya Enterprises Ltd. and Anr.	.....	1000
Thimmappa (K. P.) Gowda v. State of Karnataka	.....	200			
Thirumalai Chemicals Limited v. Union of India & Ors.	.....	838			
Union of India & Anr.; Centre for PIL & Anr. v.	.....	445			

## CASES-CITED

A.A. Catton <i>v.</i> Director of Education, (1983) 3 SCC 33, – held inapplicable	...	153
Abdul Hafeez (Mohd.) <i>v.</i> State of Andhra Pradesh 1983 (1) SCC 143	...	594
Abdul Latif Abdul Wahab Sheikh <i>v.</i> B.K. Jha and Anr. (1987) 2 SCC 22	...	743
Abdul Sayed <i>v.</i> State of Madhya Pradesh (2010) 10 SCC 259 – relied on.	...	1183
ABL International Ltd. <i>v.</i> Export Credit Guarantee Corporation of India Ltd 2004(3) SCC 553; – relied on.	...	239
Advocate on Record Association <i>v.</i> Union of India & Ors. (1993) 4 SCC 441	...	224
Aggarwal Bros. <i>v.</i> State of Haryana (1999) 9 SCC 182; – relied on	...	726
Ajay Hasia and Others <i>v.</i> Khalid Mujib Sehravardi and Others 1981 (2) SCR 79 – relied on	...	97
Ajit Singh Januja <i>v.</i> State of Punjab (1996) 2 SCC 715	...	384

Aman (Mohd.) and Anr. <i>v.</i> State of Rajasthan etc. etc., 1997 (10) SCC 44; – distinguished.	...	594
Amar Singh <i>v.</i> Balwinder Singh and Ors. (2003) 2 SCC 518 – relied on	...	326
Amicus Curiae <i>v.</i> Prashant Bhushan & Anr. (2010) 7 SCC 592	...	3
Anand Behari Lal (R.S.) <i>v.</i> Government of U.P. AIR 1955 NUC 2769 All	...	55
Anant Gopal Sheorey <i>v.</i> State of Bombay AIR 1958 SC 915	...	845
Anoop Sharma <i>v.</i> Executive Engineer, Public Health Divison, Haryana (2010) 5 SCC 497 – relied on.	...	871
ANZ Grindlays Bank Ltd. <i>v.</i> Directorate of Enforcement (2004) 6 SCC 531	...	896
Aqeel Ahmad <i>v.</i> State of Uttar Pradesh 2008 (16) SCC 372 – relied on.	...	325
Arati Ray Choudhury <i>v.</i> Union of India 1974 (1) SCC 87	...	536
Arjun Singh <i>v.</i> Mohindra Kumar AIR 1964 SC 993; – relied on	...	36
Arora (R.L.) <i>v.</i> State of U.P. AIR 1964 SC 1230; – relied on.	...	293

(xi)	(xii)
Arumugam v. State AIR 2009 SC 331; Mahendra Pratap Singh v. State of Uttar Pradesh (2009) 11 SCC 334 – relied on. ... 1185	Asstt. Commr. v. Velliappa Textiles Ltd. (2003) 11 SCC 405 ... 896
Arup Bhuyan v. State of Assam; decision dated 3-2-2011 of Supreme Court in Criminal Appeal No.889 of 2007 – held applicable ... 291	Azad (Mohd.) alias Samin v. State of West Bengal, 2008(15) SCR 468 ... 821
Ashok alias Somanna Gowda and Another v. State of Karnataka 1991 (1) Suppl. SCR 493 – relied on ... 98	Babu v. State of Kerala (2010) 9 SCC 189 – relied on. ... 1186
Ashok Kumar Yadav & Others v. State of Haryana & Others 1985 (1) Suppl. SCR 657 – relied on ... 97	Babu v. State of Kerala, 2010 (9) SCR 239 – relied on. ... 819
Ashok Kumar Yadav v. State of Haryana (1985) 4 SCC 417; – relied on. ... 461	Bachan Singh v. State of Bihar (2008) 12 SCC 23 – relied on. ... 256
Ashok Lanka v. Rishi Dixit (2005) 5 SCC 598; – relied on. ... 461	Bachan Singh v. State of Punjab (1980) 2 SCC 684; – relied on ... 329 & 597
Assistant Collector of Customs v. L.R. Malwani, 1969 (2) SCR 438; – relied on. ... 896	Bal Thackrey v. Harish Pimpalkhute & Anr. AIR 2005 SC 396 ... 3
Assistant Collector of Customs, Bombay and another v. L.R. Melwani and another AIR 1970 SC 962 – distinguished. ... 894	Balaji (M.R.) v. State of Mysore AIR 1963 SC 649 ... 536
Associated Hotels of India Ltd. v. R.N. Kapoor, [1960] 1 SCR 368; – relied on. ... 766	Balbir Kaur and another v. Steel Authority of India Ltd. and others, 2000 (3) SCR 1053 – relied on. ... 245
	Balbir Kaur and Anr. v. Uttar Pradesh Secondary Education Services Selection Board, Allahabad and Ors. (2008) 12 SCC 1 – relied on. ... 536
	Baliah (T.S.) v. T.S. Rangachari, ITO AIR 1969 SC 701 ... 846

(xiii)

Balmakund v. Ramendranath Ghosh A.I.R. 1927 Allahabad 497; – cited.	... 182
Balraje @ Trimbak v. State of Maharashtra (2010) 6 SCC 673 – relied on.	... 1183 & 1184
Bangalore Water Supply & Sewerage Board v. A Rajappa (1978) 2 SCC 213	... 224
Bata India Limited v. Pyare Lal & Company, Meerut City & Ors. AIR 1985 All 242	... 1004
Bengal Waterproof Limited (M/s.) v. M/s. Bombay Waterproof Manufacturing Company and Another (1997) 1 SCC 99	... 1004
Bhagwan (Shri) v. State of Rajasthan 2001 (6) SCC 296	... 595
Bhagwan Budha Prathmik Technical Training College Nirmali v. The State of Bihar & Ors. 2010 (12) SCALE 364 – held inapplicable	... 574
Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors. AIR 2010 SC 2685	... 678
Bhide Girls Education Society v. Education Officer, Zila Parishad Nagpur and Ors. 1993 Supp (3) SCC 527	... 536
Bhojraj v. Sita Ram and others A.I.R. 1936 Privy Council 60; – cited	... 182

(xiv)

Bhuri Nath v. State of J & K (1997) 2 SCC 745; – held inapplicable.	... 462
Bibhishan v. State of Maharashtra (2007) 12 SCC 390	... 699
Bikas Chatterjee v. Union of India & Ors. (2004) 7 SCC 634; – relied on	... 986
Bipin Kumar Mondal v. State of West Bengal, 2010(8) SCR 1036 – relied on.	... 819
Biram Chand v. State of Uttar Pradesh and Anr. (1974) 4 SCC 573	... 746
Birdhichand Sharma v. First Civil Judge, Nagpur 1961 (3) SCR 161; – relied on.	... 869
Bombay Union of Journalists v. State of Bombay 1964 SCR 22 – relied on	... 870
BR Enterprises v. State of U.P. AIR 1999 SC 1867; – relied on.	... 293
Builders' Association of India (M/s.) v. State of Karnataka and Ors. (1993) 1 SCC 409	... 697
CCE, Ahmedabad v. Vikshara Trading & Invest P. Ltd. & Anr. 2003(58) RLT 604(SC)	... 794

(xv)

Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra and Anr. (2005) 2 SCC 673	...	19
Central Bureau of Investigation v. State of Rajasthan and Ors. (1996) 9 SCC 735	...	649
Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and Ors. JT (2009) 4 SC 519 – relied on.	...	236
Chakradhar Paswan (Dr.) v. State of Bihar & Ors. (1988) 2 SCC 214	...	536
Chandmal and Anr. v. State of Rajasthan 1976 (1) SCC 621; – distinguished.	...	594
Charan Lal Sahu v. Union of India (1990) 1 SCC 613	...	1079
Chitralekha (R.) v. State of Mysore and Others 1964 AIR 1823	...	98
CIT v. Straw Board Mfg. Co. Ltd. 1989 Suppl. (2) SCC 523 – relied on.	...	805
Coelho (I.R.) (dead) By LRs. v. State of T.N. (2007) 2 SCC 1 – relied on.	...	742 293
Coir Board Ernakulam & Anr. v. Indira Devai P.S. & Ors. (2000) 1 SCC 224	...	224

(xvi)

Commissioner of Customs (Gen), Mumbai v. Abdulla Koyloth JT 2010 (12) SC 267 – relied on.	...	698
Commissioner of Income Tax, Bhopal v. Ralson Industries Ltd. (2007) 2 SCC 326; – relied on	...	665
Commissioner of Sales Tax v. Qureshi Crucible Centre 1993 Supp (3) SCC 495 – relied on	...	727
Commissioner of Trade Tax, U.P. v. Upper Doab Sugar Mills Ltd.(2000) 3 SCC 676 – relied on.	...	665
Concord of India Insurance Co. Ltd. v. Nirmala Devi (1979) 118 ITR 507(SC)	...	369
CST v. Industrial Coal Enterprises (1999) 2 SCC 607 – relied on.	...	804
D'Souza (B. V.) (Capt.) v. Antonio Fausto Fernandes, [1989] 3 SCR 626 – relied on	...	771
Daimler Benz Aktiengesellschaft and another v. Hybo Hindustan AIR 1994 Delhi 239	...	1004
Dandu Lakshmi Reddy v. State of A.P. (1999) 7 SCC 69; – relied on.	...	256
Darshan Singh and others v. Gujjar Singh (Dead) By LRs. and others (2002) 2 SCC 62; – cited	...	182

(xvii)

Devadasan (T.) v. Union of India AIR 1964 SC 179	...	536
Devin Katti (N.T.) & Ors. v. Karnataka Public Service Commission & Ors 1990 (2) SCR 239	...	153
– held inapplicable	...	153
Didwania (G.L.) and Another v. Income Tax Officer and Another 1995 Supp (2) SCC 724	...	894
– relied on.	...	894
– distinguished.	...	896
Dilip Premnarayan Tiwari v. State of Maharashtra 2010 (1) SCC 775	...	596
Dongre (N.R.) and others v. Whirlpool Corporation and another (1996) 5 SCC 714	...	1004
Duda (P.N.) v. P. Shiv Shanker & Ors. AIR 1988 SC 1208	...	3
Dwarka Nath v. ITO AIR 1966 SC 81	...	1080
Enforcement Directorate and Anr. v. M. Samba Siva Rao and Ors. (2000) 5 SCC 431	...	649
Epuru Sudhakar & Anr. v. Government of A.P. & Ors. 2006 (7) Suppl. SCR 81	...	986
– relied on.	...	986
Farooq alias Karattaa Farooq and Ors. v. State of Kerala (2002) 4 SCC 697;	...	329
– relied on.	...	329

(xviii)

Food Corporation of India v. Parashotam Das Bansal 2008 (2) SCR 412	...	153
– held inapplicable.	...	153
Ford Motor Company of Canada Limited and another v. Ford Service Centre 2009 (39) PTC 149	...	1005
Gajraj Singh and Ors. v. State Transport Appellate Tribunal and Ors. (1997) 1 SCC 650	...	846
Gammon India Ltd. v. Niranjn Dass 1984 (1) SCR 959	...	870
– relied on.	...	870
Gammon India Ltd. v. Special Chief Secretary and Ors. (2006) 3 SCC 354	...	846
Ganeshwar Rao (P.) v. State of Andhra Pradesh, 1988 Suppl. SCR 805	...	153
– held inapplicable	...	153
Garikapati Veeraya v. N. Subbiah Choudhry and Ors. AIR 1957 SC 540;	...	841
– relied on.	...	841
Geetha (A.) v. State of T.N. and Anr. (2006) 7 SCC 603	...	745
General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and Ors. AIR 1994 SC 1631	...	369
Ghaziabad Development Authority v. Ashok Kumar (2008) 4 SCC 261;	...	873
– cited.	...	873

(xix)

Gian Kaur v. State of Punjab 1996(2) SCC 648	...	1071
Githa Hariharan v. Reserve Bank of India AIR 1999 SC 1149; – relied on.	...	293
Godfrey Philips India Limited v. Girnar Food & Beverages (P) Limited (2004) 5 SCC 257	...	1004
Government of Andhra Pradesh v. P. Laxmi Devi 2008(4) SCC 720; – relied on	...	293
Govindammal v. R. Perumal Chettiar and others (2006) 11 SCC 600 – cited.	...	182
Govindaraja Pillai and others v. Mangalam Pillai and another A.I.R. 1933 Madras 80 – cited.	...	182
Govindlalji v. State of Rajasthan AIR 1963 SC 1638; – relied on.	...	293
Grewal (H.S.) v. Union of India & Ors. (1997) 11 SCC 758 – relied on	...	153
Gupta (B.L.) v. M.C.D. (1998) 9 SCC 223 – held inapplicable.	...	153
Gur Narain Das & Anr. v. Gur Tahal Das & Ors., AIR 1952 SC 225	...	678

(xx)

Gurmail Singh v. State of Punjab 1990 (2) Suppl. SCR 367 – relied on.	...	870
Hansraj Gordhandas v. H.H. Dave, Asst. Collector of Central Excise and Customs AIR 1970 SC 755 – relied on.	...	265
Haradhan Saha v. State of West Bengal (1975) 3 SCC 198	...	745 & 746
Harbanslal Sahnia and Anr. v. IOC Ltd. and Ors. (2003) 2 SCC 107	...	846
Hardwari Lal v. G.D. Tapase AIR 1982 P&H 439 – held inapplicable.	...	462
Hardyal Prem v. State of Rajasthan 1991 Supp. (1) SCC 148; – distinguished	...	594
Hari Bansh Lal v. Sahodar Prasad Mahto (2010) 9 SCC 655 – relied on	...	461
Hari Shanker v. State of U.P. (1996) 9 SCC 40 – relied on.	...	319
Harjinder Singh v. Punjab State Warehousing Corporation (2010) 3 SCC 192 – cited.	...	873

(xxi)

Heinz Italia and another v. Dabur India Limited (2007) 6 SCC 1	...	1005
Hemendra M. Kothari v. Shri W.S. Vaigankar, Asstt. Director, Enforcement Directorate (FERA), Govt. of India and State of Maharashtra [decided by Bombay High Court on 25-04-2007] and Sunil Gulati & Anr. V. R.K. Vohra 145 (2007) DLT 612 – approved.	...	894
Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors. (1994) 4 SCC 602; – relied on.	...	841
Honda Motors Company Limited v. Charanjit Singh & Others (101 (2002) DLT 359)	...	1004
HUDCO v. MCD; 2000 (5) Suppl. SCR 666 – distinguished.	...	773
Ibrahim Nazeer v. State of T.N. and Anr. (2006) 6 SCC 64	...	745
Ilyas (S.M.) (Dr.) and Others v. Indian Council of Agricultural Research and Others 1992 (2) Suppl. SCR 438 – cited	...	98
India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors. (1990) 1 SCC 12	...	19
Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408	...	512

(xxii)

Indian Oil Corporation v. Municipal Corporation AIR 1993 SC 844; – relied on.	...	293
Indra Sawhney and Ors. v. Union of India and Ors. 1992 Suppl.(3) SCC 217	...	536
Info Edge (India) Private Limited and another v. Shailesh Gupta and another 98 (2002) DLT 499	...	1004
Inspector of Police, Tamil Nadu v. Bala Prasanna 2008 (11) SCC 645; – distinguished.	...	594
Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another (2005) 4 SCC 370 – relied on.	...	896
– distinguished.	...	894
Jagannath (S.) v. Union of India an Ors. (1997) 2 SCC 87	...	649
Jagdish Lal and others v. State of Haryana and others (1997) 6 SCC 538 – relied on.	...	384
Jagmohan Singh v. The State of U.P (1973) 1 SCC 20; – relied on	...	329
Jai Singh Dalal v. State of Haryana 1992 (3) Suppl. SCR 816 – relied on	...	153
Jain (R.K.) v. Union of India (1993) 4 SCC 119; – relied on.	...	461

(xxiii)

Jaipur Mineral Development Syndicate v. Commissioner of Income Tax, New Delhi AIR 1977 SC 1348; – relied on	...	36
Jarnail Singh v. State of Punjab (2009) 9 SCC 719; – relied on.	...	1183 & 1184
Jasbir Singh Chhabra & Ors. v. State of Punjab & Ors. (2010) 4 SCC 192 – relied on.	...	512
Jinia Keotin & Ors. v. Kumar Sitaram Manjhi & Ors. (2003) 1 SCC 730	...	677
Jitendera and Anr. v. State of M.P. (2004) 10 SCC 562 – relied on.	...	255
Joseph (P.M.) v. State of T. N. (1993) Writ LR 604	...	574
K.C. Builders and Another v. Assistant Commissioner of Income Tax (2004) 2 SCC 731 – relied on. – distinguished.	...	894 896
Kalabharati Advertising v. Hemant Vimalnath Narichania and Others (2010) 9 SCC 437 – relied on.	...	666
Kale & Ors. v. Deputy Director of Consolidation 1976 (2) SCR 202 – cited	...	217

(xxiv)

Kamal Trading Co., Bombay and Others v. Gillette U.K. Limited [1988] IPLR 135	...	1004
Kamlabai Jageshwar Joshi (Smt.) and others v. State of Maharashtra and others AIR 1996 SC 981 – distinguished	...	734
Kamleshkumar Ishwardas Patel v. Union of India and Ors. (1995) 4 SCC 51	...	743
Kamulammal (deceased) represented by Kattari Nagaya Kamarajendra Ramasami Pandiya Naicker v. T.B.K. Visvanathaswami Naicker (deceased) & Ors., AIR 1923 PC 8	...	678
Kannadasan (N.) v. Ajoy Khose and Others (2009) 7 SCC 1 – relied on.	...	455
Karunakaran (K.) v. State of Kerala and Another 2000(2) SCR 735	...	460
Kashyap (B.N.) v. Emperor AIR (32) 1945 Lahore 23 Full Bench	...	894 & 897
Kedar Nath Singh v. State of Bihar AIR 1962 SC 955; – relied on.	...	293
Kehar Singh & Anr. v. Union of India and Anr. AIR 1989 SC 653; – relied on	...	986
Kenchegowda (Sri) v. K.B. Krishnappa & Ors., ILR 2008 Kar 3453	...	678

(xxv)

Kesavananda Bharati Sripadagalvaru v. State of Kerala and another (1973) 4 SCC 225	...	681
Ketaki Ranjan Bhattacharyya and others v. Kali Prasanna Bhattacharyya and others A.I.R. 1956 Tripura 18;		
– cited.	...	182
Kiran Gupta and Others v. State of U.P. and Others (2000) 7 SCC 719		
– held inapplicable.	...	97
Kisan Sahkari Chini Mills Ltd. v. Vardan Linkers 2008(12) SCC 500		
– relied on.	...	239
Krishna Govind Patil v. State of Maharashtra 1964 (1) SCR 678	...	325
Lakshmi (P.) Reddy v. L. Lakshmi Reddy (1957) SCR 195; AL.		
– cited	...	182
Laxmikant V. Patel v. Chetanbhai Shah and Another 2002 (3) SCC 65	...	1004
Lila Dhar v. State of Rajasthan and Others 1982 (1) SCR 320		
– relied on	...	97
Lilawati H. Hiranandani v. Usha Tandon, AIR 1996 SC 44	...	770
M.P. Administration v. Tribhuban (2007) 9 SCC 748;		
– cited	...	873

(xxvi)

Machhi Singh and Ors. v. State of Punjab (1983) 3 SCC 470;		
– relied on	...	329
Madhubhan Holiday Inn v. Holiday Inn Inc. 100 (2002) DLT 306 (DB)	...	1004
Maganbhai Ishwarhai Patel Etc. v. Union of India and Anr. (1970) 3 SCC 400	...	649
Mahabir Sao alias Mahadeo Sao v. The State of Bihar 1972 (1) SCC 505;		
– distinguished.	...	594
Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar and Ors. (1999) 8 SCC 16;		
– relied on.	...	841
Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal (2010) 3 SCC 786;		
– relied on.	...	265
Mahboob Deepak v. Nagar Panchayat, Gajraula (2008) 1 SCC 575;		
– cited.	...	873
Mahendra & Mahendra Paper Mills Limited v. Mahindra & Mahindra Limited (2002) 2 SCC 147	...	1004
Malkani (R.M.) v. State of Maharashtra AIR 1973 SC 157		
– relied on.	...	33

(xxvii)

Malkhansingh and Ors. v. State of M.P. (2003) 5 SCC 746; – relied on.	...	324
Mange Ram v. Brij Mohan (1983) 4 SCC 36 – relied on.	...	422
Mangoo v. State of M.P. (2008) 8 SCC 283; – relied on.	...	256
Manish Dixit and Ors. v. State of Rajasthan etc. etc. 2001 (1) SCC 596; – distinguished.	...	594
Manoharlal Chopra v. Seth Hiralal AIR 1962 SC 527; – relied on	...	36
Maru Ram & Ors. v. Union of India and Ors. AIR 1980 SC 2147; – relied on	...	986
Meghraj Biscuits Industries Ltd. v. Commissioner of C. Ex., U.P. 2007 (210) ELT 161 (SC)	...	794
Mehmood Alam Tariq v. State of Rajasthan 1988 (1) Suppl. SCR 379	...	98
Midas Hygiene Industries (P) Ltd. and another v. Sudhir Bhatia and others (2004) 3 SCC 90	...	1004
Minor A. Peeriakaruppan v. Sobha Joseph 1971 (2) SCR 430 – relied on	...	97
Mohan Lal v. Bharat Electronics Ltd. 1981 (3) SCR 518 – relied on.	...	870

(xxviii)

Mohanan Pillai (P.) v. State of Kerala & Others 2007 (3) SCR 53 – relied on	...	98
Mohd. Inayatullah v. State of Maharashtra 1976 (1) SCC 828	...	594
Mohd. Rafi (A.S.) v. State of Tamilnadu AIR 2011 SC 308	...	742
Mohinder Sain Garg v. State of Punjab & Others 1990 (3) Suppl. SCR 108 – relied on	...	98
Motilal Padampat Sugar Mills Co. (P) Ltd. (M/s.) v. State of Uttar Pradesh and Ors., (1979) 2 SCC 409	...	947
Mulla v. State of U.P. 2010 (3) SCC 508	...	596
Municipal Corporation of Greater Bombay v. Indian Oil Corporation, AIR 1991 SC 686 – relied on	...	.772
Muthukumar (L.) & Anr. v. State of T. N. & Ors. (2000) 7 SCC 618; – distinguished	...	574
Nagamani (K.A.) v. Indian Airlines and Others 2009 (5) SCR 89 – held inapplicable	...	97
Nagaraj (M.) and Ors. v. Union of India and Ors. (2006) 8 SCC 212 – relied on.	...	742 293

(xxix)

Nageshwaramma (N. M.), etc. v. State of Andhra Pradesh & Anr., etc. 1986 (Supp.) SCC 166 – distinguished.	...	574
Nain Singh v. Koonwarjee (1970) 1 SCC 732; – relied on	...	36
Nand Kishore v. Emperor, AIR 1945 Oudh 214	...	55
Nanya Imports and Exports Enterprises v. Commissioner of Customs, Chennai (2006) 4 SCC 765	...	697
National Institute of Mental Health & Neuro Sciences v. C Parameshwara (2005) 2 SCC 256; – relied on	...	36
Neelamma & Ors. v. Sarojamma & Ors. (2006) 9 SCC 612	...	678
New India Assurance Co. Ltd. v. Charlie & Anr. (2005) 10 SCC 720	...	369
New India Insurance Company Limited v. Smt. Shanti Mishra (1975) 2 SCC 840; – relied on.	...	841
New India Sugar Mills v. Commissioner of Sales Tax AIR 1963 SC 1207; – relied on	...	293
Nishi Maghu & Others v. State of J&K & Others 1980 (3) SCR 1253 – relied on	...	98

(xxx)

Official Liquidator v. Dayanand & Ors. (2008) 10 SCC 1; – relied on	...	512
Om Parkash v. Dr. Ravinder Kumar Sharma, 1995 Supp.(4) SCC 115	...	769
Om Prakash Bhatia v. Commissioner of Customs, Delhi (2003) 6 SCC 161	...	699
Onkar Dutt Sharma and Ors. v. State of U.P. and Ors. (2001) 1 SAC 505	...	536
P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar 2000 (4) Suppl. SCR 350 – relied on.	...	871
Padam Sen v. State of UP AIR 1961 SC 218; – relied on	...	36
Pannayar v. State of Tamil Nadu by Inspector of Police, 2009 (13) SCR 367 – relied on.	...	819
Paramjeet Singh @ Pamma v. State of Uttarakhand, 2010 (11) SCR 1064 – relied on.	...	822
Parayankandiyal Eravath Kanapravan Kalliani Amma (Smt.) & Ors. v. K. Devi and Ors. (1996) 4 SCC 76	...	680
Periakaruppan Chettiar and others A.I.R. 1957 S.C. 815; – cited	...	182

(xxxi)

Phillips India Ltd. v. Labour Court, 1985 ( 3 ) SCR 491 – relied on	...	58
Pohalya Motya Valvi v. State of Maharashtra 1980 (1) SCC 530	...	594
Post-graduate Institute of Medical Education & Research, Chandigarh v. Faculty Association and Ors. (1998) 4 SCC 1 – followed	...	536 536
Pradeep Agarbatties (M/S) v. State of Punjab and Others 1997 8 SCC 511	...	267
Pradip Chandra Parija & Ors. v. Pramod Chandra Patnaik & Ors. AIR 2002 SC 296	...	224
Prakash Roadline Limited v. Prakash Parcel Service (P) Ltd. 48 (1992) Delhi Law Times 390	...	1005
Pramod Jha v. State of Bihar 2003 (2) SCR 512 – relied on	...	870
Pramod Mandal v. State of Bihar (2004) 13 SCC 150; – relied on.	...	325
Premshanker (K.G.) v. Inspector of Police (2002) 8 SCC 87 – relied on.	...	894 896
Pulukari Kottaiah v. King Emperor AIR 1947 PC 67	...	594

(xxxii)

Punjab Land Development And Reclamation Corporation Ltd., Chandigarh v. Presiding Officer Labour Court, Chandigarh 1990 (3) SCR 111	...	870
Qudrat Ullah v. Municipal Board, Bareilly, 1974 (2) SCR 530 – relied on.	...	766
Raghunath v. State of Haryana and Anr. etc. etc. 2003 (1) SCC 398; – distinguished.	...	594
Raja Jogendra Bhupati Hurri Chundun Mahapatra v. Nityanund Mansingh & Anr., 1889-90 Indian Appeals 128	...	678
Raja Ram and Ors. v. State of M.P. (1994) 2 SCC 568; – relied on.	...	256
Rajasthan Public Service Commission v. Chanan Ram & Anr. 1998 (1) SCR 1099 – relied on	...	152
Rajesh Gulati v. S. Govt. of NCT of Delhi and Anr. (2002) 7 SCC 129	...	745
Rajya (P.S.) v. State of Bihar (1996) 9 SCC 1; – distinguished.	...	896
Ram Bihari Yadav v. State of Bihar and Ors. (1998) 4 SCC 517; – relied on	...	326

(xxxiii)

Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhay Lal AIR 1966 SC1899		
– relied on	...	36
Ram Pal Pithwa Rahidas v. State of Maharashtra 1994 Suppl. (2) SCC 73	...	595
Ramavatar Budhaiprasad v. Asstt. STO AIR 1961 SC 1325;		
– relied on.	...	265
Ramdev Food Products (P) Limited v. Arvindbhai Rambhai Patel and Others 2006 (8) SCC 726	...	1004
Rameshwar Dayal v. Indian Railway Construction Company Limited & Ors. (2010) 11 SCC 733		
– relied on.	...	512
Rameshwar Kuer (Mt.) & Anr. v. Shiolal Upadhaya and Ors AIR 1935 Patna 401 .	...	180
Ramiah (Katreddi) and another v. Kadiyala Venkata Subbamma and others A.I.R. 1926 Madras 434;		
– cited	...	182
Ramulu (K.) (Dr.) & Anr. v. Dr. S. Suryaprakash Rao & Ors 1997 (1) SCR 287		
– relied on	...	152
Ranbir and Ors. v. State of Punjab (1973) 2 SCC 444;		
– relied on	...	328

(xxxiv)

Rangadurai (V. C.) v. D. Gopalan (1979) 1 SCC 308		
– relied on.	...	422
Rangaiah (Y.V.) & Ors. v. J.Sreenivasa Rao & Ors. (1983) 3 SCC 284;		
– held inapplicable.	...	153
Ranganathan (PR.) Chettiar and another v. Al. PR. AL.		
– cited	...	182
Ranjit Singh & Ors. v. State of Madhya Pradesh JT 2010 12 SC 167		
– relied on.	...	1185
Rao Shiv Bahadur Singh and Anr. v. State of Vindhya Pradesh AIR 1953 SC 394	...	845
Ratansi D. Morarji v. Administrator-General of Madras A.I.R. 1928 Madras 1279;		
– cited.	...	182
Rathinam (P.) v. Union of India 1994(3) SCC 394	...	1071
Rattan Singh v. State of Punjab (1981) 4 SCC 1981	...	743
Re: Bineet Kumar Singh (2001) 5 SCC 501		
– relied on.	...	4
Robert (L.) D'souza v. Executive Engineer (1982) 1 SCC 645,		
– relied on.	...	869

Robert (L.) D'Souza v. Southern Railway (1982) 1 SCC 645; – relied on.	...	870
Rohtash v. State of Rajasthan (2006) 12 SCC 64; – relied on.	...	1185
Roy (A.K.) v. Union of India (1982) 1 SCC 271 – followed.	...	742
Ruston & Hornsby Ltd. v. The Zamindara Engineering Co. 1969 (2) SCC 727	...	1004
Sabharwal (R.K.) v. State of Punjab (1995) 2 SCC 745	...	384
Samsher Singh v. State of Punjab (1974) 2 SCC 831	...	462
Santosh Gupts v. State Bank of Patiala 1980 (3) SCR 884 – relied on	...	870
Santosh Kumar Shantibhushan Beriyyar v. State of Maharashtra 2009 (6) SCC 498 – relied on	...	597 329, 597 & 598
Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121 – relied on.	...	369
Sarojamma (Smt.) & Ors. v. Smt. Neelamma & Ors., ILR 2005 Kar 3293	...	678

Satbir Singh and Ors. v. State of Uttar Pradesh (2009) 13 SCC 790 – relied on	...	328
Satpal and Anr. v. State of Haryana & Ors. 2000 (3) SCR 858; – relied on	...	986
Satya Prakash & Ors. v. State of Bihar & Ors. (2010) 4 SCC 179; – relied on.	...	512
Satyam Infoway Ltd. v. Sifynet Solutions (P) Limited 2004 (6) SCC 145	...	1004
Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (2006) 4 SCC 1; – relied on.	...	512
Secy., State of Karnataka v. Umadevi (2006) 1 SCC 1; – cited.	...	873
Sethi Auto Service Station & Anr. v. Delhi Development Authority & Ors. (2009) 1 SCC 180; – relied on.	...	512
Shalini Shyam Shetty v. Rajendra Shankar Patil (2010) 8 SCC 329 – relied on.	...	419
Shalini Shyam v. Rajendra Shankar Path 2010 (8) SCR – relied on.	...	871

(xxxvii)

Shanthi (A.) (Smt.) v. Govt. of T.N. and Ors. (2006) 9 SCC 711	...	745
Sharad Birdhichand Sarada v. State of Maharashtra, 1985 (1) SCR 88 – relied on.	...	822
Sheo Shankar Sahay (Dr.) v. Commissioner, Patna Division and Ors. 1965 BLJR 78 – approved.	...	434
Shephard (K.I.) and others v. Union of India and others (1987) 4 SCC 431 – held inapplicable.	...	384
Shivaji @ Dadya Shankar Alhat v. State of Maharashtra 2008 (15) SC 269 – relied on.	...	597
Shivaji Genu Mohite v. The State of Maharashtra, (1973) 3 SCC 219, – relied on.	...	319
Shri Anadi Mukta Sadguru v. V. R. Rudani AIR 1989 SC 1607	...	1080
Shyam Sundar and Ors. v. Ram Kumar and Anr. (2001) 8 SCC 24 – relied on.	...	841
Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments 1974 (1) SCR 747 – relied on.	...	869
Singhai Ajit Kumar & Anr. v. Ujayar Singh & Ors., AIR 1961 SC 1334	...	678

(xxxviii)

Singhal (B.P.) v. Union of India & Anr. (2010) 6 SCC 331	...	224
Sivamurthy (V.) v. State of Andhra and Ors. (2008) 13 SCC 730	...	632
Special Reference No.1 of 1998 (1998) 7 SCC 739	...	224
Sravanan (T.V.) alias S.A.R. Prasana Venkatachaariar Chaturvedi v. State through Secretary and Anr. (2006) 2 SCC 664	...	745
St. John's Teachers Training Institute (for Women), Madurai & Ors. v. State of Tamil Nadu & Ors. (1993) 3 SCC 595; – distinguished	...	574
Standard Chartered Bank and Others v. Directorate of Enforcement and Others (2006) 4 SCC 278; – relied on.	...	896
– distinguished.	...	894
Standard Chartered Bank v. Directorate of Enforcement (2005) 4 SCC 530	...	896
State Bank of India v. N. Sundara Money (supra), Santosh Gupta v. State Bank of Patiala 1980 (3) SCR 884 – relied on.	...	870
State Bank of India v. N. Sundara Money 1976 (3) SCR 160	...	870
State of Andhra Pradesh v. Nalla Raja Reddy (1967) 3 SCR 28, – relied on.	...	459

(xxxix)

State of Bihar and Others v. Steel City Beverage Limited and another (1999) 1 SCC 10	...	805
State of Bihar v. Bageshwari Prasad 1995 Supp (1) SCC 432	...	536
State of Bihar v. Steel City Beverages Ltd. (1999) 1 SCC 10 – distinguished.	...	806
State of Bombay v. Hospital Mazdoor Sabha 1960 SCR 866 – relied on	...	870
State of Haryana and Ors. v. Sumitra Devi and Ors. (2004) 12 SCC 322; – relied on.	...	256
State of Karnataka & Ors. v. Ganapathi Chaya Nayak & Ors. (2010) 3 SCC 115; – relied on.	...	512
State of Kerala v. M.S. Mani & Ors. (2001) 8 SCC 82	...	3
State of Kerala v. N.M. Thomas 1976(1) SCR 906	...	1079
State of Kerala v. Raneef, 2011 (1) SCALE 8	...	291
State of M.P. & Ors. v. Raghuvver Singh Yadav & Ors 1994 (2) Suppl. SCR 459 – relied on	...	153
State of M.P. v. Lalit Kumar Verma (2007) 1 SCC 575; – cited.	...	873

(xl)

State of M.P. v. Nisar 2007 (5) SCC 658	...	594
State of Maharashtra & Ors. v. Bhaurao Punjabrao Gawande (2008) 3 SCC 613	...	742 & 743
– relied on.	...	293
State of Maharashtra and others v. Digamber Bhimashankar Tandale and others 1996 (2) SCC 583 – distinguished	...	734
State of Maharashtra v. Prakash Sakha Vasave and Ors. (2009) 11 SCC 193 – relied on.	...	329
State of Maharashtra v. Vikas Sahebrao Roundale & Ors. (1992) 4 SCC 435 – distinguished	...	574
State of Orissa and another v. Asiatic Gases Ltd. (2007) 5 SCC 766; – relied on	...	726
State of Orissa v. Titaghur Paper Mills Company Ltd. AIR 1980 SC 1293 – relied on	...	54
State of Punjab v. Justice S.S. Dewan (1997) 4 SCC 569, – relied on	...	137
State of Punjab v. Mohar Singh S/o Pratap Singh AIR 1955 SC 84	...	846

(xli)	(xlii)
State of Rajasthan v. R. Dayal 1997 ( 2 ) SCR 108 – held inapplicable. ... 153	Suhil Murmu v. State of Jharkhand AIR 2004 SC 394 ... 595
State of Rajasthan v. Raja Ram 2003 (8) SCC 180; – distinguished. ... 594	Sukur Ali (Md.) v. State of Assam JT 2011 (2) SC 527 ... 742
State of Rajasthan v. Raja Ram, 2003(2) Suppl. SCR 445 – relied on. ... 820	Sundaramier (M.P.V.) and Co. v. State of Andhra Pradesh (1958) 1 SCR 1422 ... 19
State of U.P. v. Satish, 2005(2) SCR 1132 (2005) 3 SCC 114 ... 821	Sunil Batra v. Delhi Administration AIR 1978 SC 1675; – relied on. ... 293
State of Uttar Pradesh v. Kishanpal & Ors., 2008 (11) SCR 1048 – relied on. ... 819	Sunil Gulati & Anr. v. R. K. Vohra 145 (2007) DLT 612 – approved. ... 894
State of Uttar Pradesh v. Kishanpal and Ors. (2008) 16 SCC 73 – relied on. ... 319	Sunil Kumar Parimal & Anr. v. State of Bihar & Ors. (2007) 10 SCC 150 – held applicable. ... 574
State of West Bengal v. Kesoram Industries Ltd. and Ors. (2004) 10 SCC 201 ... 19	Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. v. State of Maharashtra, JT 2010 (12) SC 287 – relied on ... 1185 & 1186
State Represented by Inspector of Police v. Saravanan & Anr. AIR 2009 SC 152; – relied on. ... 1184	Supe Dei (Smt) & Ors. v. National Insurance Co. Ltd. & Anr. (2009) 4 SCC 513 ... 369
Steel Authority of India Limited v. Madhusudan Das and Ors. (2008) 15 SCC 560 ... 632	Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court 1981 (1) SCR 789 – relied on. ... 870
Subhash Chand v. State of Rajasthan 2002 (1) SCC 702 – distinguished. ... 594	Surendra Paswan v. State of Jharkhand (2003) 12 SCC 360; – relied on. ... 326

(xliii)

Surya Dev Rai v. Ram Chander Rai 2003 (2) Suppl. SCR 290 – relied on.	...	871
Surya Dev Rai v. Ram Chander Rai and others (2003) 6 SCC 675 – relied on.	...	419
Swaran Singh v. State of Punjab (1976) 2 SCC 868 – relied on.	...	871
Swaran Singh v. State of U.P. and Ors. AIR 1998 SC 2026 – relied on.	...	986
Swarn Singh v. Madan Singh, 1995 Supp.(1) SCC 306	...	770
Syed Yakoob v. K.S. Radhakrishnan 1964 SCR 64 – relied on.	...	871
Syeda Mustafa Mohamed Gouse v. State of Mysore (1963) 1 CrL.L.J. 372 (Mys)	...	55
Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya & Ors. AIR 2005 SC 2985	...	369
The Newabganj Sugar Mills Co.Ltd. v. Union of India AIR 1976 SC 1152; – relied on	...	36
U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. (1996) 4 SCC 362	...	369

(xliv)

Umesh Kumar Nagpal v. State of Haryana and Ors. (1994) 4 SCC 138	...	632
Union Bank of India v. Chandrakant Gordhandas Shah, 1994 (3) Suppl. SCR 542	...	769
Union of India & Anr. v. C.S. Sidhu 2010(4) SCC 563, – relied on	...	137
Union of India & Anr. v. Deoki Nandan Aggarwal 1992 Suppl.(1) SCC 323, – relied on	...	137
Union of India & Anr. v. Hansoli Devi (2002) 7 SCC 273	...	224
Union of India & Anr. v. Kartick Chandra Mondal & Anr.;; – relied on.	...	512
Union of India & Anr. v. S.P.S. Vains (Retd.) & Ors. 2008(9) SCC 125 – relied on	...	137
Union of India and Anr. v. Madhav s/o Gajanan Chaubal and Anr. (1997) 2 SCC 332	...	536
Union of India v. Brij Lal Thakur (1997) 4 SCC 278	...	536
Union of India v. Cyanamide India Ltd. 1987 ( 2 ) SCR 841 – relied on	...	57
Union of India v. K.V.Vijeesh 1992 (3) Suppl. SCR 816 – relied on	...	153

(xlv)

Union of India v. Paul Manickam and Anr. (2003) 8 SCC 342	...	745
Union of India v. Tecco Trichy Engineers & Contractors (2005) 4 SCC 239	...	433
– relied on.	...	433
Union of India v. Virpal Singh Chauhan (1995) 6 SCC 684	...	384
United India Insurance Co. Ltd. v. Bindu & Ors. (2009) 3 SCC 705	...	369
Uttam Chand and others v. Income Tax Officer, Central Circle, Amritsar (1982) 2 SCC 543;	...	894
– relied on.	...	894
– distinguished.	...	896
Uttranchal Forest Development Corporation v. M.C. Joshi (2007(2) SCC (L&S) 813;	...	873
– cited.	...	873
Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate (2009) 4 SCC 410	...	34
– relied on.	...	34
Varsha Plastics Private Limited and Anr. v. Union of India and Ors. (2009) 3 SCC 365	...	697
Vayallakath Muhammedkutty v. Illikkal Moosakutty JT 1996 (6) 665	...	769
Vellaiyappa Chetty (P.M.A.M.) & Ors. v. Natarajan & Anr., AIR 1931 PC 294	...	678
Verma (L.K.) v. HMT Ltd. and Anr. (2006) 2 SCC 269	...	846

(xlvi)

Vineet Narain v. Union of India (1998) 1 SCC 226	...	453
– relied on.	...	453
Vinod Seth v. Devinder Bajaj (2010) 8 SCC 1	...	36
– relied on	...	36
Vishnu & Ors. v. State of Rajasthan (2009) 10 SCC 477	...	1184
– relied on.	...	1184
Viswan (R.) & Ors. v. Union of India & Ors. (1983) 3 SCC 401	...	512
Yeshwant and Ors. v. The State of Maharashtra etc. etc. 1972 (3) SCC 639;	...	594
– distinguished.	...	594



**CONTENTS**

Amitava Banerjee @ Amit @ Bappa Banerjee v. State of West Bengal	.....	160
Coromandel Indag Products (P) Ltd. v. Garuda Chit & Trading Co. P. Ltd. & Anr.	.....	115
Delhi Airtech Services Pvt. Ltd. & Anr. v. State of U.P. & Anr.	.....	191
Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & others	.....	34
Jagdish Prasad v. State of Rajasthan & Ors.	.....	1
Narmada Bachao Andolan v. State of Madhya Pradesh	.....	84
State of Madhya Pradesh v. Union of India & Anr.	.....	140

## SUBJECT-INDEX

### ADMINISTRATIVE LAW:

(1) Policy and Procedure – Procedure for amendment of policy – Rules of business framed under Article 166 of the Constitution – r. 7 of the Business Rules, Part II – Cases to be brought before the State Council of Ministers – Issue as to whether the Council of Ministers was permitted to delegate the power to amend its decision to a Committee of Ministers consisting of the Ministers-in-charge of the Departments concerned and the Chief Minister, and whether such amendment needed to be consistent with the Rules of Business framed under Article 166 of the Constitution – Held: Rules of Business were directory in nature – Delegation of power was permissible – Constitution of India, 1950 – Article 166.  
(Also see under: Land Acquisition).

*Narmada Bachao Andolan v. State of Madhya Pradesh* ..... 84

(2) Rule of fairness – Held: Is an essential feature in Government action.  
(Also see under: Rajasthan Transport Service Rules, 1979)

*Jagdish Prasad v. State of Rajasthan & Ors.* ..... 1

### CODE OF CIVIL PROCEDURE, 1908:

O. 6, r.17 – Purpose and object of – Held: Is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just – Amendment cannot be claimed as a matter of right and under all circumstances, but, courts while deciding such prayers should not adopt a hyper-technical approach – Liberal approach should be  
(iii)

the general rule particularly, in cases where the other side can be compensated with costs – Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations – Pleadings.

(Also see under: Supreme Court Rules, 1966)

*State of Madhya Pradesh v. Union of India & Anr.* ..... 140

### CONSTITUTION OF INDIA, 1950:

(1) Article 32, 131 and 226.

(See under: Supreme Court Rules, 1966; Code of Civil Procedure, 1908; and Jurisdiction) ..... 140

(2) (i) Article 226 – Writ petition in public interest filed by the person engaged in the welfare of sewage workers, raising issues relating to safety and protection of sewage workers – Held: High Court, by entertaining the writ petition and issuing directions for protection of the persons employed to do the work relating to sewage operations, discharged its obligation to do justice to the disadvantaged and poor sections of the society – The superior courts will be failing in their constitutional duty if they decline to entertain petitions filed by genuine social groups, NGOs and social workers for espousing the cause of those who are deprived of the basic rights available to every human being – Courts are not only entitled but are under constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life.

(ii) Article 226 – Judicial interference – Plight of workers employed/engaged for doing work inherently hazardous and dangerous to life – Writ petition -- Directions issued by High Court relating

to safety and protection of sewage workers – Held: It cannot be said that by issuing directions, High Court assumed the legislative power of the State – What the High Court did was nothing except to ensure that those employed/engaged for doing the work which is inherently hazardous and dangerous to life are provided with life saving equipments and the employer takes care of their safety and health – The State and its agencies/ instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintaining and cleaning the sewage system – Argument of choice and contractual freedom not available to appellant-public authority and the like for contesting the issues raised in the writ petition.

(iii) Article 142 and 136 – Enhancement of compensation – Exercise of power u/Article 142 – Death of sewage workers – Writ Petition – Interim directions of High Court directing payment of compensation of Rs.1.5 to 2.25 lakhs to families of deceased workers – Challenged by Jal Board – Held: Challenge not tenable – However, High Court should have awarded compensation which could be treated as reasonable – High Court could have taken note of the increase in the cost of living and done well to award compensation of at least Rs.5 lakhs to the families of those who died due to negligence of Jal Board which did not take effective measures for ensuring safety of the sewage workers – Public Interest Litigation – Human Rights – Plight of sewage workers.  
(Also see under: Public Interest Litigation).

*Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & others* .....

#### CRIMINAL LAW:

Motive – Significance of, and effect of its absence – Discussed.

(Also see under: Penal Code, 1860).

*Amitava Banerjee @ Amit @ Bappa Banerjee v. State of West Bengal* ..... 160

#### EVIDENCE:

Circumstantial evidence.

(See under: Penal Code, 1860). ..... 160

#### HUMAN RIGHTS:

Plight of sewage workers – Constitutional obligation of the State and its agencies/ instrumentalities or the contractors engaged by them.

(See under: Constitution of India, 1950). ..... 34

#### JURISDICTION:

Constitutionality of Central laws – Power of judicial review of the writ courts – On facts, plaintiff-State sought to challenge the validity of a Central law in a proceeding (suit) initiated under Article 131 of the Constitution – Held: Normally, for questions relating to validity of Central or other laws, the appropriate forum is extraordinary writ jurisdiction under Article 32 and 226 of the Constitution in a writ petition and not an original suit filed under Article 131 which vests exclusive jurisdiction on Supreme Court as regards the dispute enumerated therein – Constitution of India, 1950 – Article 32, 131 and 226.

(Also see under: Supreme Court Rules, 1966; and Code of Civil Procedure, 1908)

*State of Madhya Pradesh v. Union of India & Anr.* ..... 140

## LAND ACQUISITION:

Construction of dam in State of M.P. – Re-settlement and Rehabilitation policy for oustees – Entitlement of oustees to claim land or compensation in lieu of the land acquired – Order dated 7-6-1991 passed by Narmada Valley Development Department (NVDD) amending Clause 5.1 of the Re-settlement and Rehabilitation Policy, 1991 (R & R Policy) – Challenge to – Held: The amendment only facilitated those oustees who were not willing to take the land in lieu of the land acquired – This may be for the reason that an oustee may be willing to settle in another State or in urban area or want to adopt any other vocation/ profession or want to start any other business – However, it did not take away the right of any oustee to claim land in lieu of the land acquired.

(ii) Re-settlement and Rehabilitation policy for oustees – Entitlement of landless labourers to agricultural land – Held: R & R Policy made it clear that there was no provision for allotment of agricultural land to the landless labourers – Even otherwise, it does not appear to reason that a landless labourer could be entitled for allotment of agricultural land admeasuring two hectares – Neither it had ever been contemplated nor it is compatible with R & R Policy – Nor such land had ever been allotted to this class of persons.

(Also see under: Administrative Law)

*Narmada Bachao Andolan v. State of Madhya Pradesh* .....

84

## LAND ACQUISITION ACT, 1894:

ss. 17(3A), 17(1), 17(4), 11A, 6 and 5A : In view of divergence of opinion, matter referred to the larger bench for consideration of the issues: (i) when land

is acquired in exercise of emergency powers u/s. 17 and have since vested in the State, would the acquisition proceeding lapse and land be transferred to the owners/persons interested in case of non-compliance of s. 11A; (ii) whether the provisions of s. 17(3A) are mandatory or directory and in either event, would non-compliance of s. 17(3A) invalidate or vitiate the entire acquisition proceedings, even where the land has vested in the State; (iii) whether the emergency provisions are to be construed strictly and the safeguards inbuilt in s. 17(3A) are construed as conditions precedent and mandatory for a valid exercise of emergency provisions; and (iv) whether the provisions of the Act are to be construed as a pre-constitutional law in consonance with the fundamental tenets of Article 14.

*M/s. Delhi Airtech Services Pvt. Ltd. & Anr. v. State of U.P. & Anr.* .....

191

## MADHYA PRADESH RE-ORGANISATION ACT, 2000:

s.58(3) and s.58(4).

(See under: Supreme Court Rules, 1966; Code of Civil Procedure, 1908; and Jurisdiction) .....

140

## PENAL CODE, 1860:

s.302 – Allegation against the accused that he strangulated and killed the victim and buried his dead body – Circumstantial evidence -- Conviction upheld by High Court –Held: There were number of incriminating circumstances pointing towards the guilt of the accused – The circumstances were not only established, but they formed a complete chain, that left no manner of doubt, that the crime with which the accused stood charged was committed by him and no one else – Conviction upheld – Circumstantial evidence.

(Also see under: Criminal Law)

*Amitava Banerjee @ Amit @ Bappa  
Banerjee v. State of West Bengal*

..... 160

PLEADINGS:

(See under: Supreme Court Rules, 1966;  
and Code of Civil Procedure, 1908).

..... 140

PUBLIC INTEREST LITIGATION:

Human Rights – Issue relating to safety and protection of sewage workers and their entitlement to grant of compensation – Directions issued by High Court in its earlier order dated 20-8-2008 – Non-compliance with – Directions issued by Supreme Court to Jal Board to ensure compliance of clauses (a), (b), (d), (e), (f), (g), (i), (k), (m) and (n) of paragraph 9 of the said High Court order and also to ensure that the said directions are complied with by the contractors for execution of work relating to laying and maintenance of sewer system within the area of its jurisdiction – Jal Board further directed to ensure that directions given by the High Court are made part of all agreements which may be executed by it with contractors/private enterprises for doing work relating to sewage system – Constitution of India, 1950 – Article 136. (Also see under: Constitution of India, 1950).

*Delhi Jal Board v. National Campaign for  
Dignity and Rights of Sewerage and Allied  
Workers & Ors.*

..... 34

RAJASTHAN TRANSPORT SERVICE RULES, 1979:  
rr. 6,10 and 24 – Selection/promotion process – Validity of – Promotion to post of District Transport Officer (DTO) from the post of Motor Vehicle Inspectors – Selection/promotion order dated 8th July, 1994 – Action of the State government in

clubbing all the vacancies of more than 10 years (from 1983-84 fill 1993-94) and giving promotions, challenged – Held: The services of the Transport Department in all relevant posts are covered under the provisions of the 1979 Rules and their purpose is to make promotions on merit or merit-cum-seniority in the prescribed proportion of 50:50 – Right from 1983-84 till 1993-94 no examination was conducted by the appropriate authority – Even after 1993-94, the process of selection adopted by the State Government cannot be accepted – The preparation of seniority list, method of selection and clubbing of vacancies were apparently in violation of the statutory Rules – Selection/promotion order dated 8th July, 1994 accordingly set aside with further directions – Fresh process of selection to be held by the competent authority in accordance with Rules – Secretary (Transport), Government of Rajasthan directed to conduct an enquiry personally and fix responsibility on all the officers/officials responsible for not conducting qualifying examination in accordance with Rules from 1983 to 1994 and subsequent thereto in accordance with law.

(Also see under: Administrative Law)

*Jagdish Prasad v. State of Rajasthan & Ors.* ..... 1

REFERENCE TO LARGER BENCH:

(See under: Land Acquisition Act, 1894).. ..... 191

SERVICE LAW:

Selection by promotion.

(See under: Rajasthan Transport Service  
Rules, 1979)..

..... 1

SPECIFIC RELIEF ACT, 1963:

s.16(c) – Specific performance of contract–

(xi)

Respondent-vendor agreed to sell its property to the appellant – Appellant-purchaser requested the respondent to furnish solvency certificate and exemption certificate from urban land ceiling authorities which were not furnished by respondent – Suit for specific performance by appellant – Held: It is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract – Respondent explained the urgency and the need to sell the property and dire need of money for their commercial transactions – Both the parties wanted to complete the transaction as early as possible without further extension and the parties intended to treat the time as essence of the contract – The matter got delayed only due to the non-production of exemption certificate from urban land ceiling authorities – In the Agreement there was no specific reference to the production of an order from the competent authority under the Urban Land Ceiling Act with regard to exemption – The information sought for by the appellant was only to delay the transaction – Appellant failed to prove that it was always ready and willing to perform in terms of s.16(c) of the Act – Suit liable to be dismissed.

*Coromandel Indag Products (P) Ltd. v. Garuda Chit & Trading Co. P. Ltd. & Anr.* ..... 115

SUPREME COURT RULES, 1966:

O.26, r. 8 r/w O. 6, r. 17, CPC – Amendment of pleadings – Held: Inasmuch as the plaintiff-State approached Supreme Court invoking original jurisdiction u/Article 131 of the Constitution, the Supreme Court Rules have to be applied to the case in hand – O.26, r. 8 of the Rules (which is similar to O. 6, r. 17, CPC) prescribes that at any

(xii)

stage of the proceedings, the Court may allow either party to amend his pleadings – However, it must be established that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties – The original plaint proceeds on the basis that exercise of power by the Central Government by passing the impugned Notifications u/ss.58(3) and 58(4) of the MPR Act was arbitrary, unjust and unfair and had resulted in serious anomalies in the apportionment of assets and liabilities – After praying for such relief, if the amendment as sought for by the plaintiff is allowed and the plaintiff is permitted to challenge the vires of the said provisions, then the very basis on which the plaintiff is claiming its right to apportionment of assets, rights and liabilities of the undivided Board will cease to be in existence and the entire suit of the plaintiff will be rendered infructuous – Leave to amend ought to be refused if it introduces a totally different, new and inconsistent case or challenges the fundamental character of the suit – Also, the amendment application was filed at a belated stage without assigning any reason for the delay – However, plaintiff given opportunity to put forth its stand that the Central Government issued impugned Notifications/Orders without proper guidelines and without affording opportunity to the parties concerned – In the interest of justice, plaintiff-State permitted to raise such objections at the time of trial – Pleadings – Constitution of India, 1950 – Article 131 – Madhya Pradesh Re-organisation Act, 2000 – s.58(3) and s.58(4).

(Also see under: Code of Civil Procedure, 1908; and Jurisdiction)

*State of Madhya Pradesh v. Union of India & Anr.*

..... 140

## CONTENTS VOLUME 4 of 2011

<i>Advanta India Limited &amp; Anr.; Shivanna (B.N.) v. .</i>	
1	
<i>Afjal Imam v. State of Bihar &amp; Ors.</i>	..... 174
<i>Ark Builders Pvt. Ltd. (M/s.); State of Maharashtra (The) and Ors. v.</i>	..... 432
<i>Aruna Ramchandra Shanbaug v. Union of India and others</i>	..... 1057
<i>Ashok &amp; Anr.; Ganesh (D) By Lrs. &amp; Ors. v.</i>	..... 215
<i>Ashok @ Dangra Jaiswal v. State of M.P.</i>	..... 253
<i>Assistant Commercial Taxes Officer v. M/s Makkad Plastic Agencies</i>	..... 663
<i>Badrinarayan and Ors.; Ravi v.</i>	..... 400
<i>Bharat Sanchar Nigam Ltd. v. Ghanshyam Dass and Ors.</i>	..... 380
<i>Bharat Singh and Ors.; State of U.P. and Ors. v. .</i>	525
<i>Bharat Steel Tubes Ltd. Etc. (M/s.) v. IFCI Ltd. &amp; Ors.</i>	205
<i>Bhawani Prasad Sonkar v. Union of India &amp; Ors. .</i>	631
<i>Bilkis and others v. State of Maharashtra and others</i>	733
<i>Binod Kumar v. State of Jharkhand and Ors.</i>	..... 646
<i>Buttar (K.J.S.) v. Union of India and Anr.</i>	..... 136
<i>CBI v. Mustafa Ahmed Dossa</i>	..... 969
<i>Centre for PIL &amp; Anr. v. Union of India &amp; Anr.</i>	..... 445
<i>Chandra Bonia v. State of Assam</i>	..... 15

<i>Commissioner of Central Excise Delhi-III; Siddachalam Exports Private Ltd. v.</i>	..... 695
<i>Commissioner of Trade Tax, Lucknow, U.P.; Pepsico India Holdings Ltd. v.</i>	..... 723
<i>Commissioner of Trade Tax, U.P. v. M/s. Kartos International Etc.</i>	..... 263
<i>Commissioner of Trade Tax, U.P. v. Varun Beverages Limited</i>	..... 803
<i>Commnr., Central Excise , Bangalore v. M/s. Meyer Health Care Pvt. Ltd. &amp; Ors.</i>	..... 794
<i>Deepak Agarwal &amp; Anr. v. State of Uttar Pradesh &amp; Ors</i>	..... 149
<i>Devinder Singh v. Municipal Council, Sanaur</i>	..... 867
<i>Director General, Indian Council for Agricultural Research &amp; Others v. D. Sundara Raju</i>	..... 95
<i>District Insurance Officer and Anr.; Somanathan (P. S.) and Ors. v.</i>	..... 367
<i>Ganapathi (K.D.) and Anr.; Kokkanda B. Poondacha and Others v.</i>	..... 417
<i>Ganesh (D) By Lrs. &amp; Ors. v. Ashok &amp; Anr.</i>	..... 215
<i>Ghanshyam Dass and Ors.; Bharat Sanchar Nigam Ltd. v.</i>	..... 380
<i>Glaxo India Ltd. &amp; Anr.; Union of India v.</i>	..... 50
<i>Godi Jaya Rami Reddy &amp; Anr.; Siddamurthy Jayarami Reddy (D) by LRs. v.</i>	..... 176
<i>Gurmukh Singh v. Jaswant Kaur</i>	..... 222
<i>Hemant Kumar; S.B.I. v.</i>	..... 280
<i>IFCI Ltd. &amp; Ors; Bharat Steel Tubes Ltd. Etc. (M/s.) v.</i>	205

<i>Jaswant Kaur; Gurmukh Singh v.</i>	..... 222
<i>Kartos International (M/s.) Etc.; Commissioner of Trade Tax, U.P. v.</i>	..... 263
<i>Kokkanda B. Poondacha and Others v. K.D. Ganapathi and Anr.</i>	..... 417
<i>Koninklijke Philips Electronics NV (M/s.); Kunj Aluminium Private Limited (M/s.) v.</i>	..... 236
<i>Kulvinder Singh &amp; Anr. v. State of Haryana</i>	..... 817
<i>Kumari Ranjana Mishra and Anr. v. The State of Bihar and Ors.</i>	..... 570
<i>Kunj Aluminium Private Limited (M/s.) v. M/s. Koninklijke Philips Electronics NV</i>	..... 236
<i>Local Administration Department &amp; Anr. v. M. Selvanayagam @ Kumaravelu</i>	..... 244
<i>Mahabir Vegetable Oils Pvt. Ltd. (M/s.); State of Haryana &amp; Others v.</i>	..... 944
<i>Makkad Plastic Agencies (M/s); Assistant Commercial Taxes Officer v.</i>	..... 663
<i>Mallikarjun and Ors.; Revanasiddappa and Anr. v.</i>	675
<i>Meyer Health Care Pvt. Ltd. &amp; Ors (M/s.); Commnr. Central Excise , Bangalore v.</i>	..... 794
<i>Mineral Area Development Authority etc. v. M/s. Steel Authority of India and Ors.</i>	..... 19
<i>Municipal Corporation of Delhi and Anr.; Pradeep Oil Corporation v.</i>	..... 764
<i>Municipal Council, Sanaur; Devinder Singh v.</i>	..... 867
<i>Mustafa Ahmed Dossa; CBI v.</i>	..... 969

<i>Narayan Dutt and Ors. v. State of Punjab and Anr.</i>	983
<i>Naresh and Ors.; State of U.P. v.</i>	..... 1176
<i>Palanisamy (N.); Velusamy (K.K.) v.</i>	..... 31
<i>Pepsico India Holdings Ltd. v. Commissioner of Trade Tax, Lucknow, U.P.</i>	..... 723
<i>Pradeep Oil Corporation v. Municipal Corporation of Delhi and Anr.</i>	..... 764
<i>Preetam &amp; Ors.; State of U.P. v.</i>	..... 123
<i>Radheyshyam Kejriwal v. State of West Bengal and Anr.</i>	..... 889
<i>Ramesh v. State of Rajasthan</i>	..... 585
<i>Ravi v. Badrinarayan and Ors.</i>	..... 400
<i>Rekha v. State of T Nadu Tr.Sec.To Govt. &amp; Anr.</i>	740
<i>Revanasiddappa and Anr. v. Mallikarjun and Ors.</i>	675
<i>Rukia Begum v. State of Karnataka</i>	..... 711
<i>S.B.I. v. Hemant Kumar</i>	..... 280
<i>S.H.O., Odiyansalai; Subramani @ Jeeva @ Kullajeeva v.</i>	..... 25
<i>Sandeep Meta; Subhankar Biswas v.</i>	..... 799
<i>Selvanayagam (M.) @ Kumaravelu; Local Administration Department &amp; Anr. v.</i>	..... 244
<i>Sheo Shankar Singh v. State of Jharkhand &amp; Anr.</i>	312
<i>Shindo alias Sawinder Kaur and Anr. v. State of Punjab</i>	..... 117

<i>Shivanna (B. N.) v. Advanta India Limited &amp; Anr.</i> 1	
<i>Siddachalam Exports Private Ltd. v. Commissioner of Central Excise Delhi-III</i>	..... 695
<i>Siddamurthy Jayarami Reddy (D) by LRs. v. Godi Jaya Rami Reddy &amp; Anr.</i>	..... 176
<i>Somanathan (P. S.) and Ors. v. District Insurance Officer and Anr.</i>	..... 367
<i>Sowri (U.) Reddy (D) by Lrs. v. B. Suseelamma and Ors.</i>	..... 232
<i>Sri Indra Das v. State of Assam</i>	..... 289
<i>State of Assam; Chandra Bonia v.</i>	..... 15
<i>State of Assam; Sri Indra Das v.</i>	..... 289
<i>State of Bihar &amp; Ors.; Afjal Imam v.</i>	..... 174
<i>State of Haryana &amp; Others v. M/s. Mahabir Vegetable Oils Pvt. Ltd.</i>	..... 944
<i>State of Haryana; Kulvinder Singh &amp; Anr. v.</i>	..... 817
<i>State of Jharkhand &amp; Anr.; Sheo Shankar Singh v.</i> 312	
<i>State of Jharkhand and Ors.; Binod Kumar v.</i>	..... 646
<i>State of Karnataka; Rukia Begum v.</i>	..... 711
<i>State of Karnataka; Thimmappa (K. P.) Gowda v.</i> 200	
<i>State of M.P.; Ashok @ Dangra Jaiswal v.</i>	..... 253
<i>State of Maharashtra (The) and Ors. v. M/s. Ark Builders Pvt. Ltd.</i>	..... 432
<i>State of Maharashtra and Ors; Bilkis and Ors v....</i> 733	

<i>State of Punjab and Anr.; Narayan Dutt and Ors. v.</i>	983
<i>State of Punjab; Shindo alias Sawinder Kaur and Anr. v.</i>	..... 117
<i>State of Rajasthan; Ramesh v.</i>	..... 585
<i>State of T Nadu Tr.Sec.To Govt. &amp; Anr.; Rekha v.</i> 740	
<i>State of U.P. and Ors. v. Bharat Singh and Ors....</i> 525	
<i>State of U.P. v. Naresh and Ors.</i>	..... 1176
<i>State of U.P. v. Preetam &amp; Ors.</i>	..... 123
<i>State of Uttar Pradesh &amp; Anr.; Syed Maqbool Ali v.</i> 238	
<i>State of Uttar Pradesh &amp; Ors; Deepak Agarwal &amp; Anr. v.</i> ..... 149	
<i>State of West Bengal and Anr.; Radheyshyam Kejriwal v.</i>	..... 889
<i>Steel Authority of India (M/s.) and Ors.; Mineral Area Development Authority etc.v.</i> 19	
<i>Subhankar Biswas v. Sandeep Meta</i>	..... 799
<i>Subramani @ Jeeva @ Kullajeeva v. S.H.O., Odiyansalai</i>	..... 25
<i>Sundara (D.) Raju; Director General, Indian Council for Agricultural Research &amp; Others v.</i>	..... 95
<i>Suraz India Trust v. Union of India and Anr.</i>	..... 224
<i>Suseelamma (B.) and Ors.; Sowri (U.) Reddy (D) by Lrs. v.</i>	..... 232
<i>Syed Maqbool Ali v. State of Uttar Pradesh &amp; Anr.</i>	

<i>The State of Bihar and Ors.; Kumari Ranjana Mishra and Anr. v.</i>	..... 570
<i>Thimmappa (K. P.) Gowda v. State of Karnataka .</i>	200
<i>Thirumalai Chemicals Limited v. Union of India &amp; Ors.</i>	838
<i>Union of India &amp; Anr.; Centre for PIL &amp; Anr. v. ....</i>	445
<i>Union of India &amp; Ors.; Bhawani Prasad Sonkar v.</i>	631
<i>Union of India &amp; Ors.; Thirumalai Chemicals Limited v.</i>	.....838
<i>Union of India and Anr.; Suraz India Trust v. ....</i>	224
<i>Union of India and Anr; Buttar (K.J.S.) v. ....</i>	136
<i>Union of India and Ors. v. Vartak Labour Union ...</i>	509
<i>Union of India and Ors; Aruna Ramchandra Shanbaug v.</i>	..... 1057
<i>Union of India v. Glaxo India Ltd. &amp; Anr. ....</i>	50
<i>Ushodaya Enterprises Ltd. and Anr.; Venugopal (T.V.) v.</i>	..... 1000
<i>Vartak Labour Union; Union of India and Ors. v. ...</i>	509
<i>Varun Beverages Limited; Commissioner of Trade Tax, U.P. v.</i>	..... 803
<i>Velusamy (K.K.) v. N. Palanisamy</i>	..... 31
<i>Venugopal (T.V.) v. Ushodaya Enterprises Ltd. and Anr.</i>	..... 1000

## CITATIONS VOLUME 4 OF 2011

<i>A.A. Catton v. Director of Education, (1983) 3 SCC 33, held inapplicable</i>	..... 153
<i>Abdul Hafeez (Mohd.) v. State of Andhra Pradesh 1983 (1) SCC 143</i>	..... 594
<i>Abdul Latif Abdul Wahab Sheikh v. B.K. Jha and Anr. (1987) 2 SCC 22</i>	..... 743
<i>Abdul Sayed v. State of Madhya Pradesh (2010) 10 SCC 259 relied on.</i>	..... 1183
<i>ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd 2004(3) SCC 553; relied on.</i>	239
<i>Advocate on Record Association v. Union of India &amp; Ors. (1993) 4 SCC 441</i>	..... 224
<i>Aggarwal Bros. v. State of Haryana (1999) 9 SCC 182; relied on</i>	..... 726
<i>Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others 1981 (2) SCR 79 relied on</i>	..... 97
<i>Ajit Singh Januja v. State of Punjab (1996) 2 SCC 715</i>	..... 384
<i>Aman (Mohd.) and Anr. v. State of Rajasthan etc. etc., 1997 (10) SCC 44;distinguished.</i>	..... 594
<i>Amar Singh v. Balwinder Singh and Ors. (2003) 2 SCC 518 relied on</i>	..... 326
<i>Amicus Curiae v. Prashant Bhushan &amp; Anr. (2010) 7 SCC 592</i>	..... 3
<i>Anand Behari Lal (R.S.) v. Government of U.P. AIR 1955 NUC 2769 All</i>	..... 55

<i>Anant Gopal Sheorey v. State of Bombay</i> AIR 1958 SC 915	..... 845
<i>Anoop Sharma v. Executive Engineer, Public Health Divison, Haryana</i> (2010) 5 SCC 497	relied on. .... 871
<i>ANZ Grindlays Bank Ltd. v. Directorate of Enforcement</i> (2004) 6 SCC 531	..... 896
<i>Aqeel Ahmad v. State of Uttar Pradesh</i> 2008 (16) SCC 372	relied on. .... 325
<i>Arati Ray Choudhury v. Union of India</i> 1974 (1) SCC 87	..... 536
<i>Arjun Singh v. Mohindra Kumar</i> AIR 1964 SC 993;	relied on ..... 36
<i>Arora (R.L.) v. State of U.P.</i> AIR 1964 SC 1230;	relied on. .... 293
<i>Arumugam v. State</i> AIR 2009 SC 331; <i>Mahendra Pratap Singh v. State of Uttar Pradesh</i> (2009) 11 SCC 334	relied on. .... 1185
<i>Arup Bhuyan v. State of Assam</i> ; decision dated 3-2-2011 of Supreme Court in Criminal Appeal No.889 of 2007 held applicable	..... 291
<i>Ashok alias Somanna Gowda and Another v. State of Karnataka</i> 1991 (1) Suppl. SCR 493	relied on ..... 98
<i>Ashok Kumar Yadav &amp; Others v. State of Haryana &amp; Others</i> 1985 (1) Suppl. SCR 657	relied on ..... 97
<i>Ashok Kumar Yadav v. State of Haryana</i> (1985) 4 SCC 417;	relied on. .... 461
<i>Ashok Lanka v. Rishi Dixit</i> (2005) 5 SCC 598;	relied on. .... 461
<i>Assistant Collector of Customs v. L.R. Malwani</i> , 1969 (2)	

SCR 438; relied on.	..... 896
<i>Assistant Collector of Customs, Bombay and another v. L.R. Melwani and another</i> AIR 1970 SC 962	distinguished. .... 894
<i>Associated Hotels of India Ltd. v. R.N. Kapoor</i> , [1960] 1 SCR 368;	relied on. .... 766
<i>Asstt. Commr. v. Velliappa Textiles Ltd.</i> (2003) 11 SCC	

405	.....	896
<i>Azad (Mohd.) alias Samin v. State of West Bengal, 2008(15) SCR 468</i>	.....	821
<i>Babu v. State of Kerala (2010) 9 SCC 189 relied on.</i>		1186
<i>Babu v. State of Kerala, 2010 (9) SCR 239 relied on.</i>		819
<i>Bachan Singh v. State of Bihar (2008) 12 SCC 23 relied on.</i>	.....	256
<i>Bachan Singh v. State of Punjab (1980) 2 SCC 684; relied on &amp; 597</i>	.....	329
<i>Bal Thackrey v. Harish Pimpalkhute &amp; Anr. AIR 2005 SC 396</i>	.....	3
<i>Balaji (M.R.) v. State of Mysore AIR 1963 SC 649</i>		536
<i>Balbir Kaur and another v. Steel Authority of India Ltd. and others, 2000 (3) SCR 1053 relied on.</i>	.....	245
<i>Balbir Kaur and Anr. v. Uttar Pradesh Secondary Education Services Selection Board, Allahabad and Ors. (2008) 12 SCC 1 relied on.</i>	.....	536
<i>Baliah (T.S.) v. T.S. Rangachari, ITO AIR 1969 SC 701</i>	.....	846
<i>Balmakund v. Ramendranath Ghosh A.I.R. 1927 Allahabad 497; cited.</i>	.....	182
<i>Balraje @ Trimbak v. State of Maharashtra (2010) 6 SCC 673 relied on.</i>	.....	1183
<i>Balraje @ Trimbak v. State of Maharashtra (2010) 6 SCC &amp; 1184</i>		
<i>Bangalore Water Supply &amp; Sewerage Board v. A Rajappa (1978) 2 SCC 213</i>	.....	224

<i>Bata India Limited v. Pyare Lal &amp; Company, Meerut City &amp; Ors. AIR 1985 All 242</i>	.....	1004
<i>Bengal Waterproof Limited (M/s.) v. M/s. Bombay Waterproof Manufacturing Company and Another (1997) 1 SCC 99</i>	.....	1004
<i>Bhagwan (Shri) v. State of Rajasthan 2001 (6) SCC 296</i>	.....	595
<i>Bhagwan Budha Prathmik Technical Training College</i>		

<i>Nirmali v. The State of Bihar &amp; Ors.</i> 2010 (12) SCALE 364 held inapplicable	..... 574
<i>Bharatha Matha &amp; Anr. v. R. Vijaya Renganathan &amp; Ors.</i> AIR 2010 SC 2685	..... 678
<i>Bhide Girls Education Society v. Education Officer, Zila Parishad Nagpur and Ors.</i> 1993 Supp (3) SCC 527	536
<i>Bhojraj v. Sita Ram and others A.I.R.</i> 1936 Privy Council 60; cited	..... 182
<i>Bhuri Nath v. State of J &amp; K</i> (1997) 2 SCC 745; held inapplicable.	..... 462
<i>Bibhishan v. State of Maharashtra</i> (2007) 12 SCC 390	699
<i>Bikas Chatterjee v. Union of India &amp; Ors.</i> (2004) 7 SCC 634; relied on	..... 986
<i>Bipin Kumar Mondal v. State of West Bengal</i> , 2010(8) SCR 1036 relied on.	..... 819
<i>Biram Chand v. State of Uttar Pradesh and Anr.</i> (1974) 4 SCC 573	..... 746
<i>Birdhichand Sharma v. First Civil Judge, Nagpur</i> 1961 (3) SCR 161; relied on.	..... 869
<i>Bombay Union of Journalists v. State of Bombay</i> 1964 SCR 22 relied on	..... 870
<i>BR Enterprises v. State of U.P.</i> AIR 1999 SC 1867; relied on.	..... 293
<i>Builders' Association of India (M/s.) v. State of Karnataka and Ors.</i> (1993) 1 SCC 409	..... 697
<i>CCE, Ahmedabad v. Vikshara Trading &amp; Invest P. Ltd. &amp; Anr.</i> 2003(58) RLT 604(SC)	..... 794
<i>Central Board of Dawoodi Bohra Community and Anr. v.</i>	

<i>State of Maharashtra and Anr.</i> (2005) 2 SCC 673	19
<i>Central Bureau of Investigation v. State of Rajasthan and Ors.</i> (1996) 9 SCC 735	..... 649
<i>Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and Ors.</i> JT (2009) 4 SC 519 relied on.	..... 236
<i>Chakradhar Paswan (Dr.) v. State of Bihar &amp; Ors.</i> (1988) 2 SCC 214	..... 536
<i>Chandmal and Anr. v. State of Rajasthan</i> 1976 (1) SCC 621; distinguished.	..... 594
<i>Charan Lal Sahu v. Union of India</i> (1990) 1 SCC 613	1079
<i>Chitralkha (R.) v. State of Mysore and Others</i> 1964 AIR 1823	..... 98
<i>CIT v. Straw Board Mfg. Co. Ltd.</i> 1989 Suppl. (2) SCC 523 relied on.	..... 805
<i>Coelho (I.R.) (dead) By LRs. v. State of T.N.</i> (2007) 2 SCC 1	..... 742
relied on.	293
<i>Coir Board Ernakulam &amp; Anr. v. Indira Devai P.S. &amp; Ors.</i> (2000) 1 SCC 224	..... 224
<i>Commissioner of Customs (Gen), Mumbai v. Abdulla Koyloth</i> JT 2010 (12) SC 267 relied on.	..... 698
<i>Commissioner of Income Tax, Bhopal v. Ralson Industries Ltd.</i> (2007) 2 SCC 326; relied on	..... 665
<i>Commissioner of Sales Tax v. Qureshi Crucible Centre</i> 1993 Supp (3) SCC 495 relied on	..... 727
<i>Commissioner of Trade Tax, U.P. v. Upper Doab Sugar</i>	

<i>Mills Ltd.(2000) 3 SCC 676 relied on.</i>	.....	665	<i>Enforcement Directorate and Anr. v. M. Samba Siva Rao and Ors. (2000) 5 SCC 431</i>	.....	649
<i>Concord of India Insurance Co. Ltd. v. Nirmala Devi (1979) 118 ITR 507(SC)</i>	.....	369	<i>Epuru Sudhakar &amp; Anr. v. Government of A.P. &amp; Ors. 2006 (7) Suppl. SCR 81 relied on.</i>	.....	986
<i>CST v. Industrial Coal Enterprises (1999) 2 SCC 607 relied on.</i>	.....	804	<i>Farooq alias Karattaa Farooq and Ors. v. State of Kerala (2002) 4 SCC 697; relied on.</i>	.....	329
<i>D'Souza (B. V.) (Capt.) v. Antonio Fausto Fernandes, [1989] 3 SCR 626 relied on</i>	.....	771	<i>Food Corporation of India v. Parashotam Das Bansal 2008 (2) SCR 412 held inapplicable.</i>	.....	153
<i>Daimler Benz Aktiengesellschaft and another v. Hybo Hindustan AIR 1994 Delhi 239</i>	.....	1004	<i>Ford Motor Company of Canada Limited and another v. Ford Service Centre 2009 (39) PTC 149</i>	.....	1005
<i>Dandu Lakshmi Reddy v. State of A.P. (1999) 7 SCC 69; relied on.</i>	.....	256	<i>Gajraj Singh and Ors. v. State Transport Appellate Tribunal and Ors. (1997) 1 SCC 650</i>	.....	846
<i>Darshan Singh and others v. Gujjar Singh (Dead) By LRs. and others (2002) 2 SCC 62; cited</i>	.....	182	<i>Gammon India Ltd. v. Niranjana Dass 1984 (1) SCR 959 relied on.</i>	.....	870
<i>Devadasan (T.) v. Union of India AIR 1964 SC 179</i>		536	<i>Gammon India Ltd. v. Special Chief Secretary and Ors. (2006) 3 SCC 354</i>	.....	846
<i>Devin Katti (N.T.) &amp; Ors. v. Karnataka Public Service Commission &amp; Ors 1990 (2) SCR 239 held inapplicable</i>	.....	153	<i>Ganeshwar Rao (P.) v. State of Andhra Pradesh, 1988 Suppl. SCR 805 held inapplicable</i>	.....	153
<i>Didwania (G.L.) and Another v. Income Tax Officer and Another 1995 Supp (2) SCC 724 relied on.</i>	.....	894	<i>Garikapati Veeraya v. N. Subbiah Choudhry and Ors. AIR 1957 SC 540; relied on.</i>	.....	841
distinguished.		896	<i>Geetha (A.) v. State of T.N. and Anr. (2006) 7 SCC 603</i>	.....	745
<i>Dilip Premnarayan Tiwari v. State of Maharashtra 2010 (1) SCC 775</i>	.....	596	<i>General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and Ors. AIR 1994 SC 1631</i>	.....	369
<i>Dongre (N.R.) and others v. Whirlpool Corporation and another (1996) 5 SCC 714</i>	.....	1004	<i>Ghaziabad Development Authority v. Ashok Kumar (2008) 4 SCC 261; cited.</i>	.....	873
<i>Duda (P.N.) v. P. Shiv Shanker &amp; Ors. AIR 1988 SC 1208</i>	.....	3	<i>Gian Kaur v. State of Punjab 1996(2) SCC 648 ... 1071</i>		
<i>Dwarka Nath v. ITO AIR 1966 SC 81</i>	.....	1080	<i>Githa Hariharan v. Reserve Bank of India AIR 1999 SC</i>		

1149; relied on.	..... 293	148; distinguished	..... 594
<i>Godfrey Philips India Limited v. Girnar Food &amp; Beverages (P) Limited (2004) 5 SCC 257</i>	..... 1004	<i>Hari Bansh Lal v. Sahodar Prasad Mahto (2010) 9 SCC 655</i> relied on	..... 461
<i>Government of Andhra Pradesh v. P. Laxmi Devi 2008(4) SCC 720; relied on</i>	..... 293	<i>Hari Shanker v. State of U.P. (1996) 9 SCC 40</i> relied on.	..... 319
<i>Govindammal v. R. Perumal Chettiar and others (2006) 11 SCC 600 cited.</i>	..... 182	<i>Harjinder Singh v. Punjab State Warehousing Corporation (2010) 3 SCC 192</i> cited.	..... 873
<i>Govindaraja Pillai and others v. Mangalam Pillai and another A.I.R. 1933 Madras 80 cited.</i>	..... 182	<i>Heinz Italia and another v. Dabur India Limited (2007) 6 SCC 1</i>	..... 1005
<i>Govindlalji v. State of Rajasthan AIR 1963 SC 1638; relied on.</i>	..... 293	<i>Hemendra M. Kothari v. Shri W.S. Vaigankar, Asstt. Director, Enforcement Directorate (FERA), Govt. of India and State of Maharashtra [decided by Bombay High Court on 25-04-2007] and Sunil Gulati &amp; Anr. V. R.K. Vohra 145 (2007) DLT 612</i> approved.	..... 894
<i>Grewal (H.S.) v. Union of India &amp; Ors. (1997) 11 SCC 758</i> relied on	..... 153	<i>Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors. (1994) 4 SCC 602; relied on.</i>	..... 841
<i>Gupta (B.L.) v. M.C.D. (1998) 9 SCC 223</i> held inapplicable.	..... 153	<i>Honda Motors Company Limited v. Charanjit Singh &amp; Others (101 (2002) DLT 359)</i>	..... 1004
<i>Gur Narain Das &amp; Anr. v. Gur Tahal Das &amp; Ors., AIR 1952 SC 225</i>	..... 678	<i>HUDCO v. MCD; 2000 (5) Suppl. SCR 666</i> distinguished.	..... 773
<i>Gurmail Singh v. State of Punjab 1990 (2) Suppl. SCR 367</i> relied on.	..... 870	<i>Ibrahim Nazeer v. State of T.N. and Anr. (2006) 6 SCC 64</i>	..... 745
<i>Hansraj Gordhandas v. H.H. Dave, Asst. Collector of Central Excise and Customs AIR 1970 SC 755</i> relied on.	.....265	<i>Ilyas (S.M.) (Dr.) and Others v. Indian Council of Agricultural Research and Others 1992 (2) Suppl. SCR 438</i> cited	..... 98
<i>Haradhan Saha v. State of West Bengal (1975) 3 SCC 198</i>	..... 745	<i>India Cement Ltd. and Ors. v. State of Tamil Nadu and Ors. (1990) 1 SCC 12</i>	..... 19
& 746		<i>Indian Drugs &amp; Pharmaceuticals Ltd. v. Workmen, Indian Drugs &amp; Pharmaceuticals Ltd. (2007) 1 SCC 408</i>	
<i>Harbanslal Sahnia and Anr. v. IOC Ltd. and Ors. (2003) 2 SCC 107</i>	..... 846	512	
<i>Hardwari Lal v. G.D. Tapase AIR 1982 P&amp;H 439</i> held inapplicable.	..... 462		
<i>Hardyal Prem v. State of Rajasthan 1991 Supp. (1) SCC</i>			

<i>Indian Oil Corporation v. Municipal Corporation</i> AIR 1993 SC 844; relied on. ....	293	<i>Jinia Keotin &amp; Ors. v. Kumar Sitaram Manjhi &amp; Ors.</i> (2003) 1 SCC 730 ....	677
<i>Indra Sawhney and Ors. v. Union of India and Ors.</i> 1992 Supp.(3) SCC 217 ....	536	<i>Jitendera and Anr. v. State of M.P.</i> (2004) 10 SCC 562 relied on. ....	255
<i>Info Edge (India) Private Limited and another v. Shailesh Gupta and another</i> 98 (2002) DLT 499 ....	1004	<i>Joseph (P.M.) v. State of T. N.</i> (1993) Writ LR 604 574	
<i>Inspector of Police, Tamil Nadu v. Bala Prasanna</i> 2008 (11) SCC 645; distinguished. ....	594	<i>K.C. Builders and Another v. Assistant Commissioner of Income Tax</i> (2004) 2 SCC 731 relied on. ....	894
<i>Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another</i> (2005) 4 SCC 370 relied on. ....	896	distinguished. 896	
distinguished. 894		<i>Kalabharati Advertising v. Hemant Vimalnath Narichania and Others</i> (2010) 9 SCC 437 relied on. ....	666
<i>Jagannath (S.) v. Union of India an Ors.</i> (1997) 2 SCC 87 ....	649	<i>Kale &amp; Ors. v. Deputy Director of Consolidation</i> 1976 (2) SCR 202 cited ....	217
<i>Jagdish Lal and others v. State of Haryana and others</i> (1997) 6 SCC 538 relied on. ....	384	<i>Kamal Trading Co., Bombay and Others v. Gillette U.K. Limited</i> [1988] IPLR 135 ....	1004
<i>Jagmohan Singh v. The State of U.P</i> (1973) 1 SCC 20; relied on ....	329	<i>Kamlabai Jageshwar Joshi (Smt.) and others v. State of Maharashtra and others</i> AIR 1996 SC 981 distinguished ....	734
<i>Jai Singh Dalal v. State of Haryana</i> 1992 (3) Suppl. SCR 816 relied on ....	153	<i>Kamleshkumar Ishwardas Patel v. Union of India and Ors.</i> (1995) 4 SCC 51 ....	743
<i>Jain (R.K.) v. Union of India</i> (1993) 4 SCC 119; relied on. ....	461	<i>Kamulammal (deceased) represented by Kattari Nagaya Kamarajendra Ramasami Pandiya Naicker v. T.B.K. Visvanathaswami Naicker (deceased) &amp; Ors.,</i> AIR 1923 PC 8 ....	678
<i>Jaipur Mineral Development Syndicate v. Commissioner of Income Tax, New Delhi</i> AIR 1977 SC 1348; relied on ....	36	<i>Kannadasan (N.) v. Ajoy Khose and Others</i> (2009) 7 SCC 1 relied on. ....	455
<i>Jarnail Singh v. State of Punjab</i> (2009) 9 SCC 719; relied on. ....	1183	<i>Karunakaran (K.) v. State of Kerala and Another</i> 2000(2) SCR 735 ....	460
& 1184		<i>Kashyap (B.N.) v. Emperor</i> AIR (32) 1945 Lahore 23 Full	
<i>Jasbir Singh Chhabra &amp; Ors. v. State of Punjab &amp; Ors.</i> (2010) 4 SCC 192 relied on. ....	512		

<i>Bench &amp; 897</i>	..... 894	<i>470; relied on</i>	..... 329
<i>Kedar Nath Singh v. State of Bihar AIR 1962 SC 955; relied on.</i>	..... 293	<i>Madhubhan Holiday Inn v. Holiday Inn Inc. 100 (2002) DLT 306 (DB)</i>	..... 1004
<i>Kehar Singh &amp; Anr. v. Union of India and Anr. AIR 1989 SC 653; relied on</i>	..... 986	<i>Maganbhai Ishwarhai Patel Etc. v. Union of India and Anr. (1970) 3 SCC 400</i>	..... 649
<i>Kenchegowda (Sri) v. K.B. Krishnappa &amp; Ors., ILR 2008 Kar 3453</i>	..... 678	<i>Mahabir Sao alias Mahadeo Sao v. The State of Bihar 1972 (1) SCC 505; distinguished.</i>	..... 594
<i>Kesavananda Bharati Sripadagalvaru v. State of Kerala and another (1973) 4 SCC 225</i>	..... 681	<i>Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar and Ors. (1999) 8 SCC 16; relied on.</i>	..... 841
<i>Ketaki Ranjan Bhattacharyya and others v. Kali Prasanna Bhattacharyya and others A.I.R. 1956 Tripura 18; cited.</i>	..... 182	<i>Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal (2010) 3 SCC 786; relied on. ... 265</i>	
<i>Kiran Gupta and Others v. State of U.P. and Others (2000) 7 SCC 719 held inapplicable.</i>	..... 97	<i>Mahboob Deepak v. Nagar Panchayat, Gajraula (2008) 1 SCC 575; cited.</i>	..... 873
<i>Kisan Sahkari Chini Mills Ltd. v. Vardan Linkers 2008(12) SCC 500 relied on.</i>	..... 239	<i>Mahendra &amp; Mahendra Paper Mills Limited v. Mahindra &amp; Mahindra Limited (2002) 2 SCC 147</i>	..... 1004
<i>Krishna Govind Patil v. State of Maharashtra 1964 (1) SCR 678</i>	..... 325	<i>Malkani (R.M.) v. State of Maharashtra AIR 1973 SC 157 relied on.</i>	..... 33
<i>Lakshmi (P.) Reddy v. L. Lakshmi Reddy (1957) SCR 195; AL. cited</i>	..... 182	<i>Malkhansingh and Ors. v. State of M.P. (2003) 5 SCC 746; relied on.</i>	..... 324
<i>Laxmikant V. Patel v. Chetanbhai Shah and Another 2002 (3) SCC 65</i>	..... 1004	<i>Mange Ram v. Brij Mohan (1983) 4 SCC 36 relied on.</i>	422
<i>Lila Dhar v. State of Rajasthan and Others 1982 (1) SCR 320 relied on</i>	..... 97	<i>Mangoo v. State of M.P. (2008) 8 SCC 283; relied on.</i>	256
<i>Lilawati H. Hiranandani v. Usha Tandon, AIR 1996 SC 44</i>	..... 770	<i>Manish Dixit and Ors. v. State of Rajasthan etc. etc. 2001 (1) SCC 596; distinguished.</i>	..... 594
<i>M.P. Administration v. Tribhuban (2007) 9 SCC 748; cited</i>	..... 873	<i>Manoharlal Chopra v. Seth Hiralal AIR 1962 SC 527; relied on</i>	..... 36
<i>Machhi Singh and Ors. v. State of Punjab (1983) 3 SCC</i>		<i>Maru Ram &amp; Ors. v. Union of India and Ors. AIR 1980 SC 2147; relied on</i>	..... 986

<i>Meghraj Biscuits Industries Ltd. v. Commissioner of C. Ex., U.P.</i> 2007 (210) ELT 161 (SC) .....	794	relied on.	293
<i>Mehmood Alam Tariq v. State of Rajasthan</i> 1988 (1) Suppl. SCR 379 .....	98	<i>Nageshwaramma (N. M.), etc. v. State of Andhra Pradesh &amp; Anr., etc.</i> 1986 (Supp.) SCC 166 distinguished.	574
<i>Midas Hygiene Industries (P) Ltd. and another v. Sudhir Bhatia and others</i> (2004) 3 SCC 90 .....	1004	<i>Nain Singh v. Koonwarjee</i> (1970) 1 SCC 732; relied on .....	36
<i>Minor A. Peeriakaruppan v. Sobha Joseph</i> 1971 (2) SCR 430 relied on .....	97	<i>Nand Kishore v. Emperor</i> , AIR 1945 Oudh 214 ...	55
<i>Mohan Lal v. Bharat Electronics Ltd.</i> 1981 (3) SCR 518 relied on. ....	870	<i>Nanya Imports and Exports Enterprises v. Commissioner of Customs, Chennai</i> (2006) 4 SCC 765 .....	697
<i>Mohanan Pillai (P.) v. State of Kerala &amp; Others</i> 2007 (3) SCR 53 relied on .....	98	<i>National Institute of Mental Health &amp; Neuro Sciences v. C Parameshwara</i> (2005) 2 SCC 256; relied on ....	36
<i>Mohd. Inayatullah v. State of Maharashtra</i> 1976 (1) SCC 828 .....	594	<i>Neelamma &amp; Ors. v. Sarojamma &amp; Ors.</i> (2006) 9 SCC 612 .....	678
<i>Mohd. Rafi (A.S.) v. State of Tamilnadu</i> AIR 2011 SC 308 .....	742	<i>New India Assurance Co. Ltd. v. Charlie &amp; Anr.</i> (2005) 10 SCC 720 .....	369
<i>Mohinder Sain Garg v. State of Punjab &amp; Others</i> 1990 (3) Suppl. SCR 108 relied on .....	98	<i>New India Insurance Company Limited v. Smt. Shanti Mishra</i> (1975) 2 SCC 840; relied on. ....	841
<i>Motilal Padampat Sugar Mills Co. (P) Ltd. (M/s.) v. State of Uttar Pradesh and Ors.,</i> (1979) 2 SCC 409 .....	947	<i>New India Sugar Mills v. Commissioner of Sales Tax</i> AIR 1963 SC 1207; relied on .....	293
<i>Mulla v. State of U.P.</i> 2010 (3) SCC 508 .....	596	<i>Nishi Maghu &amp; Others v. State of J&amp;K &amp; Others</i> 1980 (3) SCR 1253 relied on .....	98
<i>Municipal Corporation of Greater Bombay v. Indian Oil Corporation</i> , AIR 1991 SC 686 relied on .....	772	<i>Official Liquidator v. Dayanand &amp; Ors.</i> 2008) 10 SCC 1; relied on .....	512
<i>Muthukumar (L.) &amp; Anr. v. State of T. N. &amp; Ors.</i> (2000) 7 SCC 618; distinguished .....	574	<i>Om Parkash v. Dr. Ravinder Kumar Sharma</i> , 1995 Supp.(4) SCC 115 .....	769
<i>Nagamani (K.A.) v. Indian Airlines and Others</i> 2009 (5) SCR 89 held inapplicable .....	97	<i>Om Prakash Bhatia v. Commissioner of Customs, Delhi</i> (2003) 6 SCC 161 .....	699
<i>Nagaraj (M.) and Ors. v. Union of India and Ors.</i> (2006) 8 SCC 212 .....	742		

<i>Onkar Dutt Sharma and Ors. v. State of U.P. and Ors.</i> (2001) 1 SAC 505	..... 536	<i>Prakash Roadline Limited v. Prakash Parcel Service (P) Ltd. 48 (1992) Delhi Law Times 390</i>	..... 1005
<i>P.G.I. of Medical Education &amp; Research, Chandigarh v. Raj Kumar 2000 (4) Suppl. SCR 350 relied on.</i>	871	<i>Pramod Jha v. State of Bihar 2003 (2) SCR 512 relied on</i>	..... 870
<i>Padam Sen v. State of UP AIR 1961 SC 218; relied on</i>	..... 36	<i>Pramod Mandal v. State of Bihar (2004) 13 SCC 150; relied on.</i>	..... 325
<i>Pannayar v. State of Tamil Nadu by Inspector of Police, 2009 (13) SCR 367 relied on.</i>	..... 819	<i>Premshanker (K.G.) v. Inspector of Police (2002) 8 SCC 87</i>	..... 894
<i>Paramjeet Singh @ Pamma v. State of Uttarakhand, 2010 (11) SCR 1064 relied on.</i>	..... 822	relied on.	896
<i>Parayankandiyal Eravath Kanapravan Kalliani Amma (Smt.) &amp; Ors. v. K. Devi and Ors. (1996) 4 SCC 76</i>	680	<i>Pulukari Kottaiah v. King Emperor AIR 1947 PC 67</i>	594
<i>Periakaruppan Chettiar and others A.I.R. 1957 S.C.</i>	815; cited	<i>Punjab Land Development And Reclamation Corporation Ltd., Chandigarh v. Presiding Officer Labour Court, Chandigarh 1990 (3) SCR 111</i>	..... 870
182		<i>Quadrat Ullah v. Municipal Board, Bareilly, 1974 (2) SCR 530 relied on.</i>	..... 766
<i>Phillips India Ltd. v. Labour Court, 1985 ( 3 ) SCR 491 relied on</i>	..... 58	<i>Raghunath v. State of Haryana and Anr. etc. etc. 2003 (1) SCC 398; distinguished.</i>	..... 594
<i>Pohalya Motya Valvi v. State of Maharashtra 1980 (1) SCC 530</i>	..... 594	<i>Raja Jogendra Bhupati Hurri Chundun Mahapatra v. Nityanund Mansingh &amp; Anr., 1889-90 Indian Appeals 128</i>	..... 678
<i>Post-graduate Institute of Medical Education &amp; Research, Chandigarh v. Faculty Association and Ors. (1998) 4 SCC 1</i>	..... 536	<i>Raja Ram and Ors. v. State of M.P. (1994) 2 SCC 568; relied on.</i>	..... 256
Followed	536	<i>Rajasthan Public Service Commission v. Chanan Ram &amp; Anr. 1998 (1) SCR 1099 relied on</i>	..... 152
<i>Pradeep Agarbatties (M/S) v. State of Punjab and Others 1997 8 SCC 511</i>	..... 267	<i>Rajesh Gulati v. S. Govt. of NCT of Delhi and Anr. (2002) 7 SCC 129</i>	..... 745
<i>Pradip Chandra Parija &amp; Ors. v. Pramod Chandra Patnaik &amp; Ors. AIR 2002 SC 296</i>	..... 224	<i>Rajya (P.S.) v. State of Bihar (1996) 9 SCC 1; distinguished.</i>	..... 896

*Ram Bihari Yadav v. State of Bihar and Ors.* (1998) 4 SCC 517; relied on ..... 326

*Ram Chand and Sons Sugar Mills (P) Ltd. v. Kanhay Lal* AIR 1966 SC1899 relied on ..... 36

*Ram Pal Pithwa Rahidas v. State of Maharashtra* 1994 Suppl. (2) SCC 73 ..... 595

*Ramavatar Budhaiprasad v. Asstt. STO* AIR 1961 SC 1325; relied on. .... 265

*Ramdev Food Products (P) Limited v. Arvindbhai Rambhai Patel and Others* 2006 (8) SCC 726..... 1004

*Rameshwar Dayal v. Indian Railway Construction Company Limited & Ors.* (2010) 11 SCC 733 relied on. ....512

*Rameshwar Kuer (Mt.) & Anr. v. Shiolal Upadhaya and Ors* AIR 1935 Patna 401 . .... 180

*Ramiah (Katreddi) and another v. Kadiyala Venkata Subbamma and others* A.I.R. 1926 Madras 434; cited 182

*Ramulu (K.) (Dr.) & Anr. v. Dr. S. Suryaprakash Rao & Ors* 1997 (1) SCR 287 relied on ..... 152

*Ranbir and Ors. v. State of Punjab* (1973) 2 SCC 444; relied on ..... 328

*Rangadurai (V. C.) v. D. Gopalan* (1979) 1 SCC 308 relied on. .... 422

*Rangaiah (Y.V.) & Ors. v. J.Sreenivasa Rao & Ors.* (1983) 3 SCC 284; held inapplicable. .... 153

*Ranganathan (PR.) Chettiar and another v. Al. PR. AL.* cited ..... 182

*Ranjit Singh & Ors. v. State of Madhya Pradesh* JT 2010

12 SC 167 relied on. .... 1185

*Rao Shiv Bahadur Singh and Anr. v. State of Vindhya Pradesh* AIR 1953 SC 394 ..... 845

*Ratansi D. Morarji v. Administrator-General of Madras* A.I.R. 1928 Madras 1279; cited. .... 182

*Rathinam (P.) v. Union of India* 1994(3) SCC 394 1071

*Rattan Singh v. State of Punjab* (1981) 4 SCC 1981 743

RE: BINEET KUMAR SINGH (2001) 5 SCC 501 RELIED ON. 4

*Robert (L.) D'souza v. Executive Engineer* (1982) 1 SCC 645, relied on. .... 869

*Robert (L.) D'Souza v. Southern Railway* (1982) 1 SCC 645; relied on. .... 870

*Rohtash v. State of Rajasthan* (2006) 12 SCC 64; relied on. .... 1185

*Roy (A.K.) v. Union of India* (1982) 1 SCC 271 followed. .... 742

*Ruston & Hornsby Ltd. v. The Zamindara Engineering Co.* 1969 (2) SCC 727 ..... 1004

*Sabharwal (R.K.) v. State of Punjab* (1995) 2 SCC 745 384

*Samsher Singh v. State of Punjab* (1974) 2 SCC 831 462

*Santosh Gupts v. State Bank of Patiala* 1980 (3) SCR 884 relied on ..... 870

*Santosh Kumar Shantibhushan Beriyyar v. State of Maharashtra* 2009 (6) SCC 498 ..... 597

relied on  
329, 597 & 598

*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr. (2009) 6 SCC 121* relied on. .... 369

*Sarojamma (Smt.) & Ors. v. Smt. Neelamma & Ors., ILR 2005 Kar 3293* ..... 678

*Satbir Singh and Ors. v. State of Uttar Pradesh (2009) 13 SCC 790* relied on ..... 328

*Satpal and Anr. v. State of Haryana & Ors. 2000 (3) SCR 858; relied on* ..... 986

*Satya Prakash & Ors. v. State of Bihar & Ors. (2010) 4 SCC 179; relied on.* ..... 512

*Satyam Infoway Ltd. v. Sifynet Solutions (P) Limited 2004 (6) SCC 145* ..... 1004

*Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (2006) 4 SCC 1; relied on.* ..... 512

*Secy., State of Karnataka v. Umadevi (2006) 1 SCC 1; cited.* ..... 873

*Sethi Auto Service Station & Anr. v. Delhi Development Authority & Ors. (2009) 1 SCC 180; relied on.* ..... 512

*Shalini Shyam Shetty v. Rajendra Shankar Patil (2010) 8 SCC 329* relied on. .... 419

*Shalini Shyam v. Rajendra Shankar Path 2010 (8 ) SCR* relied on. .... 871

*Shanthi (A.) (Smt.) v. Govt. of T.N. and Ors. (2006) 9 SCC 711* ..... 745

*Sharad Birdhichand Sarda v. State of Maharashtra, 1985 (1) SCR 88* relied on. .... 822

*Sheo Shankar Sahay (Dr.) v. Commissioner, Patna Division and Ors. 1965 BLJR 78* approved. .... 434

*Shephard (K.I.) and others v. Union of India and others (1987) 4 SCC 431* held inapplicable. .... 384

*Shivaji @ Dadya Shankar Alhat v. State of Maharashtra 2008 (15) SC 269* relied on. .... 597

*Shivaji Genu Mohite v. The State of Maharashtra, (1973) 3 SCC 219, relied on.* ..... 319

*Shri Anadi Mukta Sadguru v. V. R. Rudani AIR 1989 SC 1607* ..... 1080

*Shyam Sundar and Ors. v. Ram Kumar and Anr. (2001) 8 SCC 24* relied on. .... 841

*Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments 1974 (1) SCR 747* relied on. 869

*Singhai Ajit Kumar & Anr. v. Ujayar Singh & Ors., AIR 1961 SC 1334* ..... 678

*Singhal (B.P.) v. Union of India & Anr. (2010) 6 SCC 331* ..... 224

*Sivamurthy (V.) v. State of Andhra and Ors. (2008) 13 SCC 730* ..... 632

Special Reference No.1 of 1998 (1998) 7 SCC 739  
224

*Sravanan (T.V.) alias S.A.R. Prasana Venkatachaariar Chaturvedi v. State through Secretary and Anr. (2006) 2 SCC 664* ..... 745

*St. John's Teachers Training Institute (for Women), Madurai & Ors. v. State of Tamil Nadu & Ors. (1993) 3 SCC 595; distinguished* ..... 574

*Standard Chartered Bank and Others v. Directorate of Enforcement and Others (2006) 4 SCC 278; relied on.* 896

distinguished.

894

*Standard Chartered Bank v. Directorate of Enforcement* (2005) 4 SCC 530 ..... 896

*State Bank of India v. N. Sundara Money (supra), Santosh Gupta v. State Bank of Patiala* 1980 (3) SCR 884 relied on. .... 870

*State Bank of India v. N. Sundara Money* 1976 (3) SCR 160 ..... 870

*State of Andhra Pradesh v. Nalla Raja Reddy* (1967) 3 SCR 28, relied on. .... 459

*State of Bihar and Others v. Steel City Beverage Limited and another* (1999) 1 SCC 10 ..... 805

*State of Bihar v. Bageshwari Prasad* 1995 Supp (1) SCC 432 ..... 536

*State of Bihar v. Steel City Beverages Ltd.* (1999) 1 SCC 10 distinguished. .... 806

*State of Bombay v. Hospital Mazdoor Sabha* 1960 SCR 866 relied on ..... 870

*State of Haryana and Ors. v. Sumitra Devi and Ors.* (2004) 12 SCC 322; relied on. .... 256

*State of Karnataka & Ors. v. Ganapathi Chaya Nayak & Ors.* (2010) 3 SCC 115; relied on. .... 512

*State of Kerala v. M.S. Mani & Ors.* (2001) 8 SCC 82  
3

*State of Kerala v. N.M. Thomas* 1976(1) SCR 906  
1079

*State of Kerala v. Raneef*, 2011 (1) SCALE 8 ..... 291

*State of M.P. & Ors. v. Raghuvveer Singh Yadav & Ors* 1994 (2) Suppl. SCR 459 relied on ..... 153

*State of M.P. v. Lalit Kumar Verma* (2007) 1 SCC 575; cited. .... 873

*State of M.P. v. Nisar* 2007 (5) SCC 658 ..... 594

*State of Maharashtra & Ors. v. Bhaurao Punjabrao Gawande* (2008) 3 SCC 613 & 743

relied on.

293

*State of Maharashtra and others v. Digamber Bhimashankar Tandale and others* 1996 (2) SCC 583 distinguished ..... 734

*State of Maharashtra v. Prakash Sakha Vasave and Ors.* (2009) 11 SCC 193 relied on. .... 329

*State of Maharashtra v. Vikas Sahebrao Roundale & Ors.* (1992) 4 SCC 435 distinguished ..... 574

*State of Orissa and another v. Asiatic Gases Ltd.* (2007) 5 SCC 766; relied on ..... 726

*State of Orissa v. Titaghur Paper Mills Company Ltd.* AIR 1980 SC 1293 relied on ..... 54

*State of Punjab v. Justice S.S. Dewan* (1997) 4 SCC 569, relied on ..... 137

*State of Punjab v. Mohar Singh S/o Pratap Singh* AIR 1955 SC 84 ..... 846

*State of Rajasthan v. R. Dayal* 1997 ( 2 ) SCR 108 held inapplicable. .... 153

*State of Rajasthan v. Raja Ram* 2003 (8) SCC 180; distinguished. .... 594

*State of Rajasthan v. Raja Ram*, 2003(2) Suppl. SCR 445 relied on. .... 820

*State of U.P. v. Satish*, 2005(2) SCR 1132=(2005) 3 SCC

114	.....	821	<i>Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court 1981 (1) SCR 789 relied on.</i>	.....	870
<i>State of Uttar Pradesh v. Kishanpal &amp; Ors., 2008 (11) SCR 1048 relied on.</i>	.....	819	<i>Surendra Paswan v. State of Jharkhand (2003) 12 SCC 360; relied on.</i>	.....	326
<i>State of Uttar Pradesh v. Kishanpal and Ors. (2008) 16 SCC 73 relied on.</i>	.....	319	<i>Surya Dev Rai v. Ram Chander Rai 2003 (2) Suppl. SCR 290 relied on.</i>	.....	871
<i>State of West Bengal v. Kesoram Industries Ltd. and Ors. (2004) 10 SCC 201</i>	.....	19	<i>Surya Dev Rai v. Ram Chander Rai and others (2003) 6 SCC 675 relied on.</i>	.....	419
<i>State Represented by Inspector of Police v. Saravanan &amp; Anr. AIR 2009 SC 152; relied on.</i>	.....	1184	<i>Swaran Singh v. State of Punjab (1976) 2 SCC 868 relied on.</i>	.....	871
<i>Steel Authority of India Limited v. Madhusudan Das and Ors. (2008) 15 SCC 560</i>	.....	632	<i>Swaran Singh v. State of U.P. and Ors. AIR 1998 SC 2026 relied on.</i>	.....	986
<i>Subhash Chand v. State of Rajasthan 2002 (1) SCC 702 distinguished.</i>	.....	594	<i>Swarn Singh v. Madan Singh, 1995 Supp.(1) SCC 306</i>	.....	770
<i>Suhil Murmu v. State of Jharkhand AIR 2004 SC 394</i>		595	<i>Syed Yakoob v. K.S. Radhakrishnan 1964 SCR 64 relied on.</i>	.....	871
<i>Sukur Ali (Md.) v. State of Assam JT 2011 (2) SC 527</i>		742	<i>Syeda Mustafa Mohamed Gouse v. State of Mysore (1963) 1 Cr.L.J. 372 (Mys)</i>	.....	55
<i>Sundararamier (M.P.V.) and Co. v. State of Andhra Pradesh (1958) 1 SCR 1422</i>	.....	19	<i>Tamil Nadu State Transport Corporation Ltd. v. S. Rajapriya &amp; Ors. AIR 2005 SC 2985</i>	.....	369
<i>Sunil Batra v. Delhi Administration AIR 1978 SC 1675; relied on</i>	.....	293	<i>The Newabganj Sugar Mills Co.Ltd. v. Union of India AIR 1976 SC 1152; relied on</i>	.....	36
<i>Sunil Gulati &amp; Anr. v. R. K. Vohra 145 (2007) DLT 612 approved</i>	.....	894	<i>U.P. State Road Transport Corporation and Ors. v. Trilok Chandra and Ors. (1996) 4 SCC 362</i>	.....	369
<i>Sunil Kumar Parimal &amp; Anr. v. State of Bihar &amp; Ors. (2007) 10 SCC 150 held applicable</i>	.....	574	<i>Umesh Kumar Nagpal v. State of Haryana and Ors. (1994) 4 SCC 138</i>	.....	632
<i>Sunil Kumar Sambhudayal Gupta (Dr.) &amp; Ors. v. State of Maharashtra, JT 2010 (12) SC 287 relied on...</i>		1185 & 1186	<i>Union Bank of India v. Chandrakant Gordhandas Shah, 1994 (3) Suppl. SCR 542</i>	.....	769
<i>Supe Dei (Smt) &amp; Ors. v. National Insurance Co. Ltd. &amp; Anr. (2009) 4 SCC 513</i>	.....	369	<i>Union of India &amp; Anr. v. C.S. Sidhu 2010(4) SCC 563,</i>		

*relied on* ..... 137  
*Union of India & Anr. v. Deoki Nandan Aggarwal 1992 Suppl.(1) SCC 323, relied on* ..... 137  
*Union of India & Anr. v. Hansoli Devi (2002) 7 SCC 273* .....224  
*Union of India & Anr. v. Kartick Chandra Mondal & Anr.; relied on.* ..... 512  
*Union of India & Anr. v. S.P.S. Vains (Retd.) & Ors. 2008(9) SCC 125 relied on* ..... 137  
*Union of India and Anr. v. Madhav s/o Gajanan Chaubal and Anr. (1997) 2 SCC 332* ..... 536  
*Union of India v. Brij Lal Thakur (1997) 4 SCC 278* ..... 536  
*Union of India v. Cyanamide India Ltd. 1987 ( 2 ) SCR 841 relied on* ..... 57  
*Union of India v. K.V.Vijeesh 1992 (3) Suppl. SCR 816 relied on* ..... 153  
*Union of India v. Paul Manickam and Anr. (2003) 8 SCC 342* ..... 745  
*Union of India v. Tecco Trichy Engineers & Contractors (2005) 4 SCC 239 relied on.* ..... 433  
*Union of India v. Virpal Singh Chauhan (1995) 6 SCC 684* ..... 384  
*United India Insurance Co. Ltd. v. Bindu & Ors. (2009) 3 SCC 705* ..... 369  
*Uttam Chand and others v. Income Tax Officer, Central Circle, Amritsar (1982) 2 SCC 543; relied on.* ..... 894  
*distinguished.*  
 896  
 Uttranchal Forest Development Corporation v M.C.

Joshi (2007(2) SCC (L&S) 813; cited. 873  
*Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate (2009) 4 SCC 410 relied on.* ..... 34  
*Varsha Plastics Private Limited and Anr. v. Union of India and Ors. (2009) 3 SCC 365* ..... 697  
*Vayallakath Muhammedkutty v. Illikkal Moosakutty JT 1996 (6) 665* ..... 769  
*Vellaiyappa Chetty (P.M.A.M.) & Ors. v. Natarajan & Anr., AIR 1931 PC 294* ..... 678  
*Verma (L.K.) v. HMT Ltd. and Anr. (2006) 2 SCC 269* ..... 846  
*Vineet Narain v. Union of India (1998) 1 SCC 226 relied on.* ..... 453  
*Vinod Seth v. Devinder Bajaj (2010) 8 SCC 1 relied on* ..... 36  
*Vishnu & Ors. v. State of Rajasthan (2009) 10 SCC 477 relied on.* ..... 1184  
*Viswan (R.) & Ors. v. Union of India & Ors. (1983) 3 SCC 401* ..... 512  
*Yeshwant and Ors. v. The State of Maharashtra etc. etc. 1972 (3) SCC 639;distinguished.* ..... 594

2011-VOLUME-4-PART-1

ADMINISTRATION OF JUSTICE:

(1) Conduct of Advocate.  
(See under: Contempt of Courts Act, 1971) ..... 1

(2) Non-appealing accused given the benefit of acquittal of appealing co-accused.  
(See under: Narcotic Drugs and Psychotropic Substances Act, 1985) ..... 253

ADMINISTRATIVE LAW:

Subordinate Legislation.  
(See under: Drug (Price Control) Order, 1979) ..... 50

ADVOCATES:

Duty of Advocate – Held: An Advocate is duty-bound to protect the dignity of the court and to behave towards his clients in an appropriate manner.

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

*B.N. Shivanna v. Advanta India Limited & Anr.* ....  
1

APPEAL:

(1) Appeal against acquittal.  
(See under: Penal Code, 1860) ..... 25

(2) Appeal – Second appeal.

(See under: Partition) ..... 215

(3) Non-appealing accused – Given the benefit of acquittal of appealing accused.  
(See under: Narcotic Drugs and Psychotropic Substances Act, 1985) ..... 253

(4) (See under: Contempt of Courts Act, 1971) ..... 1

ARMED FORCES:

Army – Disability pension.  
(See under: Service Law) ..... 136

BIHAR MUNICIPAL ACT, 2007:

ss. 27, 25(4), 23(3), 21(3) and 21(4) – Election of appellant as Mayor of Municipal Corporation – Appellant nominated seven Municipal Councillors to the Empowered Standing Committee – Entitlement of the appellant as well as the members of the Empowered Standing Committee to exercise all the powers as the Mayor and the members of the Empowered Standing Committee as provided in the Act – Held: Judgment containing the reasons to follow separately – s. 27 is to be read down harmoniously with ss. 25(4), 23(3), 21(3) and 21(4) – Direction issued to authority concerned to administer the oath of secrecy u/s. 24 to the seven Municipal Councillors – Interpretation of Statutes – Principle of reading down – Legislation – Reading down a statutory provision.

*Afjal Imam v. State of Bihar & Ors.* ..... 174

CAREER ADVANCEMENT SCHEME (FORMULATED BY INDIAN COUNCIL FOR AGRICULTURAL RESEARCH):

Para 2.4.

(See under: Service Law) ..... 95

CIRCULARS / GOVERNMENT ORDERS / NOTIFICATIONS:

(1) Ministry of Defence, Government of India Letter dated 31.01.2001.

(See under: Service Law) ..... 136

(2) U. P. Trade Tax – Exemption from payment – Notification no. 1166 dated 10.04.2000.

(See under: Uttar Pradesh Trade Tax Act, 1948) ... 263

CODE OF CIVIL PROCEDURE, 1908:

(1) s.100 – Second appeal – Scope of.

(See under: Partition) ..... 215

(2) s.115 – Revision – Suit for recovery of principal amount and interest due on pronote executed by the appellant – Decreed ex-parte – Respondent-plaintiff filed execution petition – Sale held in favour of the respondents – Appellant filed application to set aside the sale of the property – Application dismissed – Multiple rounds of litigation – Matter remanded to trial court for fresh disposal – Sale set aside with direction to appellant to deposit a sum of Rs.18,000/- – Order set aside by High Court in revision – Held: High Court ignored the deposit of

Rs.18,000/- in pursuance of the court order, and also failed to take into account earlier orders in the matter – High Court not justified in interfering in a revision petition u/s.115 CPC, when the amount of Rs.18,000/- was already deposited.

*U. Sowri Reddy (D) by Lrs. v. B. Suseelamma and Ors.*  
.....232

(3) (i) s.151 and O.18, r.17 – Applications by defendant seeking to reopen evidence and to recall PWs for further cross-examination – Suit for specific performance of agreement of sale – Applications filed after closure of evidence on the ground of admissions made by witnesses subsequently in conversation recorded on a Compact Disc – Rejected by trial court – Order upheld by High Court in revision petitions – Held: Neither the trial court nor the High court considered the question whether it was a fit case for exercise of discretion u/s. 151 or O.18, r.17 – They have not considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication – It was a fit case for exercising discretion u/s.151 – Orders of High Court and trial court dismissing the application u/s. 151 set aside – Trial court would consider the said application afresh in accordance with law – However, orders of High Court and trial court dismissing the application under O.18 r.17 affirmed.

(ii) s. 151 – Inherent power of the court – Principles enunciated in various decisions of Supreme Court, summarised in the instant judgment – Evidence Act, 1872 – ss.3 and 8 – Information Technology Act,

2000 – s.2 (t).		
(iii) O.18, r.17 – Application to recall a witness who has been examined – Exercise of power under O.18 r. 17 – Explained. (Also see under: Evidence Act, 1872)		
<i>K.K. Velusamy v. N. Palanisamy</i>	.....	31
<b>CODE OF CRIMINAL PROCEDURE, 1973:</b>		
s.391. (See under: Contempt of Courts Act, 1971)	.....	1
<b>COMPANIES ACT, 1956:</b>		
ss. 4A(1)(ii) and 4A(2) Proviso (i) – Public Financial Institution – Industrial Financial Corporation of India Limited (IFCIL) – Held: Provisions of sub-s.(1) of s.4A stand independent of sub-s.(2) of s.4A and recognize the financial institutions mentioned therein to be public financial institutions which are not covered by embargo enforced by proviso to sub-s.(2) – Further, IFCIL was covered by proviso (i) to sub-s.(2) of s.4A since it was constituted under the Companies Act which is a Central Act – High Court rightly held IFCIL entitled to take recourse to provisions of SARFAESI Act to enforce a “security interest” which had accrued in its favour – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Industrial Finance Corporation (Transfer of Undertaking and Repeal) Act, 1993 – s. 5.		
<i>M/s. Bharat Steel Tubes Ltd. Etc. v. IFCI Ltd. &amp; Ors.</i>		
		205
<b>COMPROMISE / SETTLEMENT:</b>		
(See under: Partition)	.....	215
<b>CONSTITUTION OF INDIA, 1950:</b>		
(1) Article 14. (See under: Service Law)	.....	136
(2) Articles 14 and 16. (See under: Service Law)	.....	244
(3) Article 124(2) – Appointment of Supreme Court and High Court Judges – Writ petition – The petitioner sought review of a judgment by nine Judge Bench of Supreme Court whereby the Court declared the primacy of the collegium in the matter of appointment of the Judges of the Supreme Court and the High Courts – Held: Even at the stage of preliminary hearing for admission of the petition, the matter is required to be heard by a larger Bench as this matter was earlier dealt with by a three Judge Bench and involved very complicated legal issues.		
<i>Suraz India Trust v. Union of India and Anr.</i>	.....	224
(4) Article 226. (See under: Land Acquisition Act, 1894)	.....	238
(5) Seventh schedule, List I, Entry 54; List II, Entries 49 and 50. (See under: Reference to Larger Bench)	.....	19

## CONTEMPT OF COURTS ACT, 1971:

(i) Criminal contempt – Lawyer betraying faith of his client – Appellant-Advocate committed fraud upon his client (respondent-company) and embezzled Rs. 72 lakh by misusing orders of Court which he knew to be incorrect – Contempt proceedings – High Court convicted appellant under the Act and sentenced him to six months imprisonment – Held: Justified – Appellant was beneficiary of the fraud and guilty of committing contempt of court – Conduct of the appellant was reprehensible and amounted to interference in administration of justice – No lenient view permissible considering the gravity of the charges – Conviction and sentence upheld.

(ii) s.19 – Appeal – New plea in criminal appeal before Supreme Court – Maintainability of – Contempt proceedings against appellant – Conviction by High Court – Challenged before Supreme Court on procedural grounds – Objection raised by appellant that the contempt proceedings had been conducted in utter disregard of the statutory rules framed for the purpose – Held: The appellant did not agitate the issue before the High Court – Moreso, such an issue could not be agitated in absence of any application u/s.391 CrPC for taking additional evidence on record – No document was filed even before the Supreme Court to establish that the statutory provisions had not been complied with – Objection raised by appellant was mere hyper-technical and did not warrant further consideration – High Court of Karnataka (Contempt of Court Proceedings) Rules, 1981 – r. 7 – CrPC – s.391.

(Also see under: Advocates)

*B.N. Shivanna v. Advanta India Limited & Anr. ....*

1

## CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) ..... 117  
and 200

## CRIMINAL LAW:

(1) Benefit of doubt.

(i) (See under: Penal Code, 1860) ..... 123  
and 200

(ii) (See under: Narcotic Drugs and Psychotropic Substances Act, 1985) ..... 253

(2) Non-appealing accused given benefit of acquittal of appealing co-accused.

(See under: Narcotic Drugs and Psychotropic Substances Act, 1985) ..... 253

## CUT OFF DATE:

(See under: Service Law) ..... 136

## DEEDS AND DOCUMENTS:

Will – Interpretation of.

(See under: Will) ..... 176

## DELAY / LACHES:

(See under: Land Acquisition Act, 1894) ..... 238

## DOCTRINES / PRINCIPLES:

(1) Nositur a sociis – Meaning of.  
(Also see under: Uttar Pradesh Trade Tax Act, 1948)

*Commissioner of Trade Tax, U.P. v. M/s. Kartos International etc.* ..... 263

(2) Principles of natural justice.  
(See under: Service Law) ..... 280

#### DRUG (PRICE CONTROL) ORDER, 1979:

(i) Paragraphs 3, 12, 13 and 27 – Price Fixation of bulk drugs – Central Government fixing the price of scheduled bulk drugs by Notification dated 2.1.1989 superseding the earlier Notification dated 12.5.1981 – Demand raised towards the difference between the formulation prices fixed in the price fixation orders and the actual prices charged by company for the period 12.5.1981 to 25.8.1987 to be deposited in Drug Prices Equalization Account – Held: The Central Government is well within its rights to raise demands for making deposit into DPEA on the basis of prices shown in Notification dated 20.11.1986 – The demand raised by the Central Government is confirmed.

(ii) Para 27 – Review – Concept of – Explained – Held: Once a review petition filed by the manufacturer of a bulk drug is considered and a fresh notification is issued, the same would be prospective and it does not relate back to the notification fixing the price of bulk drugs issued earlier – Administrative Law – Subordinate Legislation.

(Also see under: Drug Prices Equalisation Account)

*Union of India v. Glaxo India Ltd. & Anr.* ..... 50

#### DRUG PRICES EQUALISATION ACCOUNT:

Drug manufacturing company required to deposit in DPEA the excess of the common selling price over retention price – Held: The provision is a beneficial one – This provision applies equally both to indigenously manufactured drugs as well as the drugs imported so as to maintain uniformity in the price of bulk drug.

(Also see under: Drug (Price Control) Order 1979)

*Union of India v. Glaxo India Ltd. & Anr.* ..... 50

#### ETHICS:

(See under: Advocates) ..... 1

#### EVIDENCE:

(1) Pronote, not duly stamped – Evidentiary value of.  
(See under: Suit) ..... 222

(2) Extra-judicial confession.  
(See under: Penal Code, 1860) ..... 15

#### EVIDENCE ACT, 1872:

(1) ss. 3 and 8 – “Evidence” read with “electronic record” defined in s.2(t) of Information Technology Act – Connotation of – Conversation recorded in a Compact Disc – Admissibility of – Explained – Information Technology Act, 2000 – s.2(t).  
(Also see under: Code of Civil Procedure, 1908)

*K.K. Velusamy v. N. Palanisamy* ..... 31

(2) s.113B. (See under: Penal Code, 1860)	.....	117
FINANCIAL CORPORATION: (See under: Companies Act, 1956)	.....	205
HIGH COURT OF KARNATAKA (CONTEMPT OF COURT PROCEEDINGS) RULES, 1981: r. 7. (See under: Contempt of Courts Act, 1971)	.....	1
HINDU WILLS ACT, 1870: s.2. (See under: Will)	.....	176
INDUSTRIAL FINANCE CORPORATION (TRANSFER OF UNDERTAKING AND REPEAL) ACT, 1993: s. 5. (See under: Companies Act, 1956)	.....	205
INFORMATION TECHNOLOGY ACT, 2000: s.2 (t). (See under: Evidence Act, 1872 and Code of Civil Procedure, 1908)	.....	31
INHERENT POWER OF COURT: (See under: Code of Civil Procedure, 1908)	.....	31

#### INTERPRETATION OF STATUTES:

(1) Harmonious Construction – Principle of reading down. (See under: Bihar Municipal Act, 2007)	.....	174
(2) Principle of nositur a sociis. (See under: Uttar Pradesh Trade Tax Act, 1948) ...		263

#### JUDGMENTS / ORDERS:

Non-reasoned order – Letters Patent appeal – Division Bench of High Court did not give any reason for dismissing appeal against the order of the Single Judge – Justification – Held: Not justified – The order of Division Bench was too cryptive – There should have been at least a brief discussion of facts and some reasons – Even an order of affirmation must give some reasons, even if brief – Matter remanded to Division Bench of High Court for consideration afresh.  <i>M/s. Kunj Aluminium Private Limited v. M/s. Koninklijke Philips Electronics NV</i>	.....	236
--	-------	-----

#### LABOUR LAWS:

Dismissal consequent upon disciplinary proceedings. (See under: Service Law)	.....	280
--	-------	-----

#### LAND ACQUISITION ACT, 1894:

s. 18 – Acquisition of lands for construction of road – Payment of compensation to certain land owners		
---	--	--

– Appellant’s case that his land was taken over without acquisition – Writ petition by the appellant almost two decades after the dispossession, seeking direction for acquisition and payment of compensation – Dismissed by the High Court holding that the remedy lies u/s. 18 – Held: Not justified – Application seeking reference to court u/s. 18 would lie only where the land-holder is aggrieved by the award made by the Land Acquisition Collector in regard to land acquired under the Act – Application u/s. 18 cannot be filed in regard to a land which was not acquired at all – Remedy of a land holder whose land is taken without acquisition is either to file a civil suit for recovery of possession and/or for compensation, or approach the High Court by filing a writ petition, if the action can be shown to be arbitrary, irrational, unreasonable, biased, malafide or without the authority of law, and seek a direction that the land should be acquired in a manner known to law – High Court did not examine any of the relevant questions – Writ petition was dismissed after its pendency for seven years by a short order on a baseless assumption about the existence of a non-existent alternative remedy – Matter remitted to the High Court for consideration afresh – Delay/laches – Constitution of India, 1950 – Article 226.

*Syed Maqbool Ali v. State of Uttar Pradesh & Anr.*  
238

#### LEGISLATION:

Reading down of a statutory provision.  
(See under: Bihar Municipal Act, 2007) ..... 149

LETTERS PATENT APPEAL:  
(See under: Judgments / Orders) ..... 236

MINES AND MINERALS:  
Royalty – Tax on mineral rights.  
(See under: Reference to Larger Bench) ..... 19

MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1950:  
ss.2, 9 and 15(3).  
(See under: Reference to Larger Bench) ..... 19

MUNICIPALITIES:  
Power of Mayor and members of Empowered Standing Committee.  
(See under: Bihar Municipal Act, 2007) ..... 174

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:  
ss. 8/21(b) – Personal search of employer and his two employees – Alleged recovery of smack powder – Conviction and sentence u/ss. 8/21(b) – Appeal by employer and one of his employee dismissed by High Court – Appeal before Supreme Court by employer – Held: Independent witness of seizure were declared hostile by the prosecution – Alleged narcotic substance that was seized from the accused was deposited in the Malkhana about two months later – No explanation as to where the seized substance was kept in the meanwhile – Also non-production of the alleged narcotic powder as also the appellant before the

trial court – Thus, no evidence to connect the forensic report with the substance that was seized from the possession of the appellant or the other accused – Appellant entitled to the benefit of doubt and acquitted of the charges – Benefit of the order of acquittal extended to the non-appealing accused as well.

*Ashok @ Dangra Jaiswal v. State of M.P.* ..... 253

#### NATURAL JUSTICE:

(See under: Service Law) ..... 280

#### PARTITION:

Family settlement – Land gifted to sons of pre-deceased son of the tenure-holder – Later, by way of a family settlement other agricultural lands settled amongst other heirs – Decree in a civil suit passed in terms of the settlement – Subsequent suit by sons of the deceased son for declaration of decree in earlier suit as null and void – Held: Lands with the tenure-holder were not ancestral property – A family settlement is not a transfer of property – The first appellate court rightly held that the family settlement was bona fide to avoid dispute in the family – High Court, in second appeal, was not justified in setting aside the finding of fact recorded by the first appellate court, which was the last court of facts – Judgment of High Court set aside and that of first appellate court restored – Code of Civil Procedure, 1908 – s.100 – Second appeal – Scope of – Transfer of property – Family settlement, not transfer of property – Compromise / Settlement.

*Ganesh (D) By Lrs. & Ors. v. Ashok & Anr.* ..... 215

#### PENAL CODE, 1860:

(1) s. 302 – Double murder – Conviction and sentence by the courts below – On the basis of the extra-judicial confession made by accused before prosecution witness and recovery of the murder weapon at the instance of the accused before Investigating Officer – Held: Extra-judicial confession is a very weak piece of evidence and ordinarily a conviction solely on the basis of such evidence cannot be maintained – However, in the instant case, the extra-judicial confession made to the prosecution witness shows that the confession is reliable – Also, the alleged murder weapon, had been recovered at the instance of the accused – Thus, prosecution case proved beyond reasonable doubt – Evidence – Extra-judicial confession.

*Chandra Bonia v. State of Assam* ..... 15

(2) s. 302/149, s. 307/149 and s. 323/149 – Accused chased two persons and beat them to death – Conviction by trial court – Acquittal by High Court – Interference with – Held: Not called for – The cumulative effect of the infirmities in the prosecution case and the probabilities of the plea of self-defence renders the prosecution case doubtful – Conclusions reached by High Court cannot be said to be either perverse or based on no evidence – Accused entitled to benefit of doubt.

*State of U.P. v. Preetam & Ors.* ..... 123

(3) s.304 (Part-II) – Conviction – Appellant accompanied with other accused, stabbed the

victim on his neck resulting in his death – PW-1 intervened and suffered injuries – Acquittal by trial court – High Court confirmed acquittal of 6 accused, however, convicted appellant u/s.304 (Part-II) and imposed sentence of 3 years R.I. keeping in view that appellant had a mentally challenged brother to look after – Held: The fact that PW-1 was present at the place of incident was fortified by the injuries found on his person – In the facts of the case, High Court’s interference in the appeal in so far as the appellant was concerned, was fully justified – Keeping in view the fact that the incident had happened 15 years back and the appellant had a mentally challenged brother, High Court had rightly chosen to keep the sentence at only three years – Sentence / sentencing – Appeal against acquittal.

*Subramani @ Jeeva @ Kullajeeva v. S.H.O., Odiyansalai* ..... 25

(4) ss.304B and 498A – Dowry death – Allegation that sister-in-law and mother-in-law of the victim-deceased poured kerosene on her and lit fire as she could not satisfy their demand for dowry – Dying declarations recorded by the police officer and the Magistrate – Not found reliable by trial court – Order of acquittal – Conviction by High Court – Held: In statement made u/s.161, CrPC, the father of the deceased admitted that allegation of dowry demand was not made by him – Improvement made in his evidence in court clearly spelt out a case of doubt with regard to the veracity of his evidence – The doctor who gave fitness certificate to the deceased for making statement was not cited as a prosecution witness – No doubt, death was unnatural and had taken place within seven

years of the marriage but the third ingredient of dowry demand soon before the death was not proved – In this view of the matter, the presumption u/s.113B of the Evidence Act could not be raised – Conviction set aside – Evidence Act, 1872 – s.113B.

*Shindo alias Sawinder Kaur and Anr. v. State of Punjab* ..... 117

(5) S.376 – SEXUAL INTERCOURSE WITH A GIRL OF ABOUT 18 YEARS OF AGE ON THE FALSE PROMISE TO MARRY HER – PROSECUTRIX GIVING BIRTH TO A CHILD AFTER FEW DAYS OF THE FIR – ACQUITTAL BY TRIAL COURT – CONVICTION BY HIGH COURT – HELD : IN CRIMINAL CASES THE RULE IS THAT THE ACCUSED IS ENTITLED TO BENEFIT OF DOUBT – IF THE COURT IS OF OPINION THAT ON THE EVIDENCE ADDUCED TWO VIEWS ARE POSSIBLE, BENEFIT OF DOUBT GOES TO ACCUSED – IN THE INSTANT MATTER, PROSECUTION HAS NOT BEEN ABLE TO PROVE ITS CASE BEYOND REASONABLE DOUBT – ACCUSED DESERVES BENEFIT OF DOUBT – JUDGMENT OF HIGH COURT SET ASIDE – CRIMINAL LAW – BENEFIT OF DOUBT.

*K. P. Thimmappa Gowda v. State of Karnataka* .... 200

PLEA:

(See under: Contempt of Courts Act, 1971) ..... 1

REFERENCE TO LARGER BENCH:

(1) Appointment of Judges of Supreme Court and High Courts.  
(See under: Constitution of India, 1950) ..... 224

(2) Mines and minerals – Royalty – Nature of – Tax on lands and buildings and on mineral rights – Conflict between decision rendered by five judge Benches of Supreme Court and decision delivered by seven Judge Bench of Supreme Court – Questions of law framed which need consideration by the larger bench – Request for reference to the Bench of nine Judges – Mines and Minerals (Regulation and Development) Act, 1950 – ss.2, 9, 15(3) – Constitution of India, 1950 – Seventh schedule, List I, Entry 54; List II, Entries 49 and 50.  
*Mineral Area Development Authority etc. v. M/s. Steel Authority of India and Ors.* ..... 19

#### REMEDY:

Writ petition alleging possession of land without acquisition.  
(See under: Land Acquisition Act, 1894) ..... 238

#### REVIEW:

(See under: Drug (Price Control) Order, 1979) ..... 50

#### REVISION:

(See under: Code of Civil Procedure, 1908) ..... 232

#### SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002:

(See under: Companies Act, 1956) ..... 205

#### SENTENCE / SENTENCING:

(See under: Penal Code, 1860) ..... 25

#### SERVICE LAW:

(1) Appointment – Compassionate appointment – Son of deceased employee applying for appointment after 7½ years of the death of his father after he attained majority – Wife of deceased never applied for appointment – Held: In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme – In the facts of the case, the claim of the appellant did not come under the scheme of compassionate appointments – Constitution of India, 1950 – Articles 14 and 16.

*Local Administration Department & Anr. v. M. Selvanayagam @ Kumaravelu* ..... 244

(2) Career advancement scheme – Agricultural Research Services – Senior Scientist – Promotion as Principal Scientist – Selection Committee prescribing 50 marks for viva voce out of total 100 marks – Officer securing total 49 marks not found fit – Held: Norms, Rules and Guidelines which are employed while granting benefit of Career Advancement Scheme ought to be applied in the instant case – Allocation of 50% marks for interview was unjustified – The procedure adopted by Selection Committee for evaluating the officer was totally arbitrary and contrary to the settled legal position – Career Advancement Scheme

(formulated by Indian Council for Agricultural Research) – Para 2.4.

*The Director General, Indian Council for Agricultural Research & Others v. D. Sundara Raju* ..... 95

(4) Disciplinary proceedings – Misappropriation of funds – Enquiry – Delinquent employee remaining absent during the enquiry – Enquiry officer recording evidence on behalf of management and finding the employee guilty – Order of dismissal – In appeal, employee admitting guilt – Dismissal of appeal – Industrial dispute – Tribunal holding that the domestic enquiry suffered from violation of principles of natural justice – Held: Principles of natural justice cannot be stretched to a point where they would render the in-house proceedings unworkable – Admittedly, the employee had not appeared for the enquiry on two earlier dates – On the third date too he was absent and there was no intimation from him before the Enquiry Officer – Employee had already tendered two admissions of guilt and there was hardly anything that could be said on his behalf to repel the charges – The order passed by the High Court and the award made by the Tribunal set aside – Natural justice.

*S.B.I. v. Hemant Kumar* ..... 280

(3) Pension – Disability Pension and other consequential claims – Army – Ex-Captain – Invalided for injury attributable to military service – Disability assessed at 50% in Low Medical Category – Disability Pension granted w.e.f. 26.7.1979 – Claims for War Injury Pension w.e.f. 1.1.1996 in terms of Ministry of Defence letter

dated 31.1.2001 – Disability to be raised to 75% from 50% – Grant of service element of 10 years of service instead of 2 years – Revision of rates of disability pension w.e.f. 1.1.1996 – Held: The restriction of the benefits only to officers who were invalided out of service after 1.1.1996 is violative of Article 14 of the Constitution – Letter dated 31.1.2001 is only liberalization of the existing Scheme – Claims allowed with 8% interest on arrears – Constitution of India, 1950 – Article 14 – Armed Forces.

*K.J.S. Buttar v. Union of India and Anr.* ..... 136

(5) Promotion – Need to open avenues for – Technical Officers and Statistical Officers excluded from the feeder stream for promotion to Deputy Excise Commissioner in the State of U.P. – But posts upgraded – Held: Mere upgradation may not be sufficient compensation for loss of opportunity of promotion – State Government advised to re-look at the promotion policy to provide some opportunity of further promotion to officers concerned – Uttar Pradesh Excise Group ‘A’ Service Rules, 1983.  
(Also see under: Uttar Pradesh Excise Group ‘A’ Service Rules, 1983)

*Deepak Agarwal & Anr. v. State of Uttar Pradesh & Ors* ..... 149

STAMPS ACT, 1899:  
(See under: Suit) ..... 222

SUCCESSION ACT, 1865:

(See under: Will) ..... 176

#### SUCCESSION ACT, 1925:

ss. 57(a), (b), 147 and 74 to 111.  
(See under: Will) ..... 176

#### SUIT:

Suit for recovery of money – Execution of pronote and receipt by the respondent in favour of the appellant – Failure of the respondent to repay the amount – Suit filed by the appellant for recovery of the amount – Rejected by all the three courts below on the finding that the documents were not duly stamped and that the stamps affixed on the pronote were removed from another document – Interference with – Held: Findings of the courts below are findings of fact and cannot be interfered with – The pronote in question cannot be taken into consideration – Stamps Act, 1899 – Evidence.

*Gurmukh Singh v. Jaswant Kaur* ..... 222

#### TAX / TAXATION:

Classification of goods – Basis of – Held: The classification of any commodity cannot be made on its scientific and technical meaning – It is only the common parlance meaning of the term which should be taken into consideration for the purpose of determining the tax liability – Uttar Pradesh Trade Tax Act, 1948.

(Also see under: Uttar Pradesh Trade Tax Act, 1948)

*Commissioner of Trade Tax, U.P. v. M/s. Kartos International etc.* ..... 263

#### TRANSFER OF PROPERTY:

Family settlement, not transfer of property.  
(See under: Partition) ..... 215

#### UTTAR PRADESH EXCISE GROUP 'A' SERVICE RULES, 1983:

rr. 5(3) (as amended w.e.f.16.5.1999), 7 and 8 – Promotion to Deputy Excise Commissioner – Exclusion of Technical Officer and Statistical Officer from the feeder streams w.e.f. 16.5.1999 – Vacancies occurring prior to amendment filled up after the amendment, according to substituted Rule 5(3) – Held: There is no statutory duty cast upon the State to complete the selection process within a prescribed period – In the instant case, consideration for promotion took place after the amendment came into operation – Therefore, it cannot be held that any accrued right of the two officers was taken away by the amendment – Moreover, a conscious decision was taken to abolish the feeder cadre consisting of Technical Officers and Statistical Officers for promotion to the post of Deputy Excise Commissioner – Service Law – Uttar Pradesh Government Criterion for Recruitment by Promotion Rules, 1994 – r.4.  
(Also see under: Service Law)

*Deepak Agarwal & Anr. v. State of Uttar Pradesh & Ors* ..... 149

#### UTTAR PRADESH GOVERNMENT CRITERION FOR RECRUITMENT BY PROMOTION RULES, 1994:

r.4.

(See under: Uttar Pradesh Excise Group 'A' Service Rules, 1983) ..... 149

#### UTTAR PRADESH TRADE TAX ACT, 1948:

Notification dated 10.4.2000 – Exemption under – Scientific and biological equipments/instruments used mainly by biological scientists for research purpose – The said articles manufactured and sold to hospitals, medical colleges, advance research institutions and laboratories – Held: The equipments would not be entitled to benefit of exemption under the said Notification – These equipments fall in the category of “Biological Instruments” and are outside the purview of “Biology instruments” which are to be used by students in schools and colleges – All the goods mentioned in the entry of notification relate to articles used for study of life science in schools and colleges, such as, maps, educational charts, scientific mathematical survey, mechanical drawing and biology instruments and apparatus – All of them belong to one class as they are the tools for learning biology and other life science – Applying the doctrine of nositur a sociis and also on considering the intention of the Government for issuing the notification granting exemption for learning life science, it is established that no exemption was desired for the articles manufactured and sold by the assessee but it was meant exclusively for use by the students of schools and colleges – Doctrines/Principles.

*Commissioner of Trade Tax, U.P. v. M/s. Kartos International Etc.* ..... 263

#### WILL:

(i) Construction of will – Defeasance clause in the will – Effect of – Testator bequeathing all his properties to his grand-daughter by a will – Further clause in the will that if his daughter did not take a son in adoption and if that son did not marry his grand-daughter, then he intended to give 1/3 share in the property to his daughter and son-in-law together – Held: The will must be read and construed as a whole to gather the intention of the testator and the endeavor of the court must be to give effect to each and every disposition – The legacy vested in the grand-daughter, albeit, defeasibly to the extent of 1/3 share upon happening of any of the events mentioned in the will – The clause in the will is not a repugnant condition that invalidates the will, but a defeasance provision – Hindu Wills Act, 1870 – s.2 – Succession Act, 1865 – Succession Act, 1925 – ss. 57(a), (b), 147 and 74 to 111.

(ii) Will in favour of minor – Obligation cast upon the guardian/executor – Failure to perform the obligation – Effect of – Explained.

*Siddamurthy Jayarami Reddy (D) by LRs. v. Godi Jaya Rami Reddy & Anr.* ..... 176

#### WORDS AND PHRASES:

Expression 'supersession' – Connotation of, in the context of drugs price fixation.

*Union of India v. Glaxo India Ltd. & Anr.* ..... 50

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## 2011-VOLUME-4-PART-2

### ADMINISTRATIVE LAW:

(1) (i) Administrative policy – Inter-departmental communications and notings in departmental files – Held: Do not have the sanction of law and do not create a legally enforceable right.

(ii) Subordinate legislation.  
(Also see under: Labour Laws)

*Union of India and Ors. v. Vartak Labour Union ...*  
509

(2) Judicial review and merit review – Difference between – Held: Government is not accountable to the courts for the choice made but Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction.

(Also see under: Central Vigilance Commission Act, 2003 and Writs)

*Centre for PIL & Anr. v. Union of India & Anr. ....* 445

### ADVOCATES:

Relationship between lawyer and his client – Duty imposed upon an Advocate – Discussed – Held: An Advocate cannot ordinarily withdraw from engagement without sufficient cause and without giving reasonable and sufficient notice to the client – If an Advocate has reason to believe that he will be a witness in the case, he should not accept a brief or appear in the case – Principles of ‘uberrima

fides’ – Bar Council of India Rules, 1975 – rr. 12, 13, 14 and 15 of Section II, Chapter II of Part IV.  
(Also see under: Code of Civil Procedure, 1908 and Constitution of India, 1950)

*Kokkanda B. Poondacha and Others v. K.D. Ganapathi and Anr. ....* 417

### ARBITRATION AND CONCILIATION ACT, 1996:

s.34 – Period of limitation for making an application u/s.34 for setting aside an arbitral award – Held: Is to be reckoned from the date a signed copy of the award is delivered to the objector by the arbitrator and not from the date a copy of the award is received by him by any means and from any source – Limitation.

(Also see under: Interpretation of Statutes)

*The State of Maharashtra and Ors. v. M/s. Ark Builders Pvt. Ltd. ....* 432

### BAR COUNCIL OF INDIA RULES, 1975:

rr. 12, 13, 14 and 15 of Section II, Chapter II of Part IV.

(See under: Advocates and Code of Civil Procedure, 1908) ..... 417

### BIHAR SCHOOL EXAMINATION BOARD RULES, 1963:

r. 7.  
(See under: Education / Educational Institutions) ...  
570

## CENTRAL VIGILANCE COMMISSION ACT, 2003:

- (i) Object of the enactment – Discussed.
- (ii) s.4(1), proviso – Appointment of respondent no.2 as Central Vigilance Commissioner on recommendation of the High Powered Committee – Held: Is non est in law and is quashed.
- (iii) s.4(1), proviso – Recommendation under – Primary consideration for making the recommendation – Duty of the High Powered Committee (HPC) – Held: If the institutional competency would be adversely affected by pending criminal proceedings against the candidate and by that touchstone the candidate stands disqualified then it is the duty of the HPC not to recommend such a candidate – In the instant case, the entire emphasis was placed by the CVC, the DoPT and the HPC only on the bio-data of the empanelled candidates – None of these authorities looked at the matter from the larger perspective of institutional integrity including institutional competence and functioning of CVC – All the notings of DoPT observed that penalty proceedings may be initiated against the candidate concerned – However, such notings were not considered in juxtaposition with the clearance of CVC – Therefore, even on personal integrity, the HPC did not consider the relevant material and, therefore, the recommendation of name of the candidate was non est in law – Penal Code, 1860 – s.120-B – Prevention of Corruption Act – s.13(1)(d).
- (iv) s.4(1) – Advice tendered to the President by the Prime Minister regarding appointment of the Central Vigilance Commissioner – Binding effect of – Held: Central Vigilance Commissioner is

appointed u/s.4(1) by the President by warrant under his / her hand and seal after obtaining the recommendation of the HPC, consisting of the Prime Minister as the Chairperson and two other Members – Although under the Act, the Central Vigilance Commissioner is appointed after obtaining the recommendation of the HPC, such recommendation has got to be accepted by the Prime Minister, who is the authority concerned u/ Article 77(3), and if such recommendation is forwarded to the President u/Article 74, then the President is bound to act in accordance with the advice tendered – Further, under the Rules of Business the concerned authority is the Prime Minister – Therefore, the advice tendered to the President by the Prime Minister regarding appointment of the Central Vigilance Commissioner will be binding on the President – Constitution of India, 1950 – Articles 74 and 77.

(v) s.4(1), proviso, s.4(2) – Unanimity or consensus u/s.4(2) – Held: There is no prescription of unanimity or consensus u/s.4(2) – Therefore, if one Member of the Committee dissents, that Member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent – This would bring about fairness-in-action laid down – If veto power is given to one of the three Members, the process would become unworkable – Moreover, s.4(2) stipulates that the vacancy in the Committee shall not invalidate the appointment – Doctrine of reasonableness or equality.

(vi) Chapter III – Central Vigilance Commission – Functions and powers of – Discussed.

(vii) s.3(3)(a) – Appointment of Central Vigilance

Commissioner, Vigilance Commissioner – Eligibility criteria – Discussed.

(viii) Setting up of CVC – Historical background and purpose behind the setting up of CVC – Discussed.

(ix) Concept of integrity institution – Explained – Held: CVC is an integrity institution – It is an institution statutorily created under the Act – It is to supervise vigilance administration – The Act provides for a mechanism by which the CVC retains control over CBI – It is given autonomy and insulation from external influences under the Act.

(x) s.4(2) – Appointment of Central Vigilance Commissioner, Vigilance Commissioner – Guidelines – In future, the zone of consideration should be in terms of s.3(3) – It shall not be restricted to civil servants – All the civil servants and other persons empanelled shall be outstanding civil servants or persons of impeccable integrity – The empanelment shall be carried out by a person not below the rank of Secretary to the Government of India in the Ministry concerned – The empanelling authority, while forwarding the names of the empanelled officers/persons, shall enclose complete information, material and data of the officer/person concerned – The Selection Committee may adopt a fair and transparent process of consideration of the empanelled officers – Guidelines.

(Also see under: Administrative Law and Writs)

*Centre for PIL & Anr. v. Union of India & Anr. .... 445*

CODE OF CIVIL PROCEDURE, 1908:

O. 16, rr. 1 and 2 r/w s.151 – Partition suit – Defendants filed application for permission to file a list of witnesses, which included the name of the plaintiff's Advocate – Trial court granted the defendants the leave to file the list of witnesses but rejected their prayer for permission to cite the plaintiff's advocate as a witness on ground that no reason therefor was assigned in the application – Justification of – Held: Justified – It would be a prudent exercise of discretion by the court to insist that the party filing the list of witnesses should briefly indicate the purpose of summoning the particular person as a witness – In the instant case, the advocate concerned was engaged by the plaintiffs almost 11 years prior to the filing of application by the defendants and the latter never objected to his appearance of the plaintiff's advocate by pointing out that he was interested in the subject matter of the suit – The prayer made by the defendants to cite the plaintiff's advocate as a witness was not only misconceived but also mischievous ex-facie with an oblique motive of boarding him out of the case. (Also see under: Constitution of India, 1950 and Advocates)

*Kokkanda B. Poondacha and Others v. K.D. Ganapathi and Anr. .... 417*

COMMITTEES:

High Powered Committee.

(See under: Central Vigilance Commission Act, 2003)

445

CONSTITUTION OF INDIA, 1950:

(1) Articles 19 and 21.  
(See under: Terrorist and Disruptive Activities (Prevention) Act, 1987) ..... 289

(2) Articles 74 and 77.  
(See under: Central Vigilance Commission Act, 2003) 445

(3) Article 226.  
(See under: Education / Educational Institutions) ... 570

(4) Articles 226 and 227 – Interlocutory order passed by subordinate court – Challenge to – Exercise of powers under Arts. 226 and 227 – Scope – Held: In the instant case, the High Court totally ignored the principles and parameters laid down by Supreme Court for exercise of power u/ Articles 226 and 227 of the Constitution qua an interlocutory order passed by the subordinate court and set aside the order of the trial court without assigning any tangible reason.  
(Also see under: Code of Civil Procedure, 1908 and Advocates)

*Kokkanda B. Poondacha and Others v. K.D. Ganapathi and Anr.* ..... 417

#### COMPENSATION:

Adequate and proper compensation.  
(See under: Motor Vehicles Act, 1988) ..... 400

#### CRIMINAL LAW:

Motive – Importance of proof of motive – Distinction between cases where prosecution relies upon circumstantial evidence and where it relies upon the testimony of eye witnesses as regards motive – Explained – Held: The instant case rests upon the deposition of the eyewitnesses, therefore, absence of motive would not by itself make any material difference, but if a motive is proved it would lend support to the prosecution version – The prosecution established the motive to fortify its charge against the accused-appellants.  
(Also see under: Penal Code, 1860, Identification, Witnesses and Sentence / Sentencing)

*Sheo Shankar Singh v. State of Jharkhand & Anr.* 312

#### DELAY / LACHES:

(1) Delay in lodging FIR in a motor accident case.  
(See under: Motor Vehicles Act, 1988) ..... 400

(2) Delay in examining a witness.  
(See under: Witnesses) ..... 312

#### DOCTRINES / PRINCIPLES:

(1) Doctrine of reading down.  
(See under: Interpretation of Statutes and Terrorists and Disruptive Activities (Prevention) Act, 1987) ..... 289

(2) Doctrine of reasonableness or equality.  
(See under: Central Vigilance Commission Act, 2003)

445

(3) Principles of 'uberrima fides'.  
(See under: Advocates) ..... 417

*Kumari Ranjana Mishra and Anr. v. The State of Bihar  
and Ors.* ..... 570

#### EDUCATION / EDUCATIONAL INSTITUTIONS:

De-recognition – Entitlement of students to appear in examination after de-recognition of educational institution – Physical Training College in question was recognized by the State Government during the years when the appellants undertook Certificate of Physical Education (C.P.Ed.) course from the said College – Subsequently, NCTE Act came into force and the State Government revoked the recognition of the said College – Writ petition for direction to the Examination Board to allow the students to appear in C.P.Ed. examination – Dismissed by High Court – Held: The Examination Board was under a duty to hold C.P.Ed. examination for students of the college and this duty could be enforced by an appropriate writ or direction by the High Court u/Article 226 of the Constitution – The College in question was duly recognized by the State Government during the year when the students concerned were admitted to the C.P.Ed. course and when the NCTE Act had not been enacted – Also, recognition of all non-Government Physical Training Colleges including the College in question was revoked presumably because the State Government no longer had the power to grant recognition and recognition was required to be obtained from the Regional Committee of the NCTE – Examination Board directed to conduct C.P.Ed. examination for the students concerned – National Council for Teacher Education Act, 1993 – s.14 – Constitution of India, 1950 – Article 226 – Bihar School Examination Board Rules, 1963 – r. 7.

#### ETHICS:

(See under: Advocates) ..... 417

#### EVIDENCE:

(1) Confession – Nature of – Held: It is a very weak type of evidence, particularly, when made to the police, and it is not safe to convict on its basis unless there is adequate corroborative material.  
(Also see under: Terrorist and Disruptive Activities (Prevention) Act, 1987 and Interpretation of Statutes)

*Sri Indra Das v. State of Assam* ..... 289

(2) Seizure evidence – Medical evidence.  
(See under: Penal Code, 1860) ..... 312

#### FIR:

Delay in lodging FIR in a motor accident case.  
(See under: Motor Vehicles Act, 1988) ..... 400

#### GUIDELINES / DIRECTIONS / SUGGESTIONS:

(1) (See under: Central Vigilance Commission Act, 2003)  
..... 445

(2) Need for scheme for regularization of casual workers.  
(See under: Labour Laws) ..... 509

## IDENTIFICATION:

Test identification parade (TIP) – Purpose of – Explained – Omission to hold TIP – Held: The failure of the investigating agency to hold TIP does not, in that view, have the effect of weakening the evidence of identification in the court – On facts, the omission did not affect the credibility of the identification of the accused concerned by the witness in court – That is because the manner in which the incident had taken place and the opportunity which the witness had, to see and observe the actions of accused concerned were sufficient for the witness to identify him in the court – Absence of TIP and the failure of the Investigating Officer to associate the witness with the same did not, therefore, make any material difference. (Also see under: Penal Code, 1860, Criminal Law, Investigation and Sentence / Sentencing)

*Sheo Shankar Singh v. State of Jharkhand & Anr.*  
312

## INTERLOCUTORY APPLICATIONS / INTERIM ORDERS:

(See under: Constitution of India, 1950 and Code of Civil Procedure, 1908) ..... 417

## INTERPRETATION OF STATUTES:

(1) Communication of order/award – Held: If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and sets a period of limitation for challenging the order/award in question by the

aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law – Arbitration and Conciliation Act, 1996 – s.34. (Also see under: Arbitration and Conciliation Act, 1996)

*The State of Maharashtra and Ors. v. M/s. Ark Builders Pvt. Ltd.* ..... 432

(2) (i) Reading down of a statute – Held: The Constitution is the highest law of the land and no statute can violate it – If there is a statute which appears to violate it, one can either declare it unconstitutional or read it down to make it constitutional – The first attempt of the court should be to sustain the validity of the statute by reading it down.

(ii) Statute violating fundamental rights – Held: Statutory provisions cannot be read in isolation, but should be read in consonance with fundamental rights guaranteed by Constitution. (Also see under: Evidence and Terrorist and Disruptive Activities (Prevention) Act, 1987)

*Sri Indra Das v. State of Assam* ..... 289

## INVESTIGATION:

Deficiencies in investigation by way of omissions and lapses on the part of investigating agency – Held: Cannot by themselves justify a total rejection of the prosecution case – On facts, the failure on the part of the investigating officer in sending the blood stained clothes to FSL and the empty cartridges to the ballistic expert was not sufficient

to reject the version given by the eye witnesses – Especially so, when the weapon from which the bullets were fired had not been recovered from the accused and was not, therefore, available for comparison by the expert.

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

*Sheo Shankar Singh v. State of Jharkhand & Anr.*  
312

#### JUDICIAL REVIEW:

(See under: Administrative Law) ..... 445

#### JURISDICTION:

(See under: Administrative Law) ..... 445

#### LABOUR LAWS:

(i) Regularization – Border Roads Organization (BRO) – Writ petition seeking regularization of casual labourers employed by BRO – High Court directing regularization of such casual workers on basis of an Office Memo, purportedly issued by the employers – Direction challenged – Held: The High Court erroneously construed the said Office memo as an approved scheme for absorption and regularization of casual workers – The said Office Memo was merely in the nature of an inter-department communication between the Border Roads Development Board headquarters and its officials – Casual employment terminates when the same is discontinued, and merely because a temporary or casual worker was engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made

permanent, if the original appointment was not in terms of the process envisaged by the relevant rules.

(ii) Regularization – Casual workers engaged by Border Roads Organization (BRO) for 30-40 years, with short breaks – Need for appropriate regulation/scheme – Union of India to consider enacting an appropriate regulation/scheme for absorption and regularization of the services of the casual workers engaged by BRO.

(Also see under: Administrative Law)

*Union of India and Ors. v. Vartak Labour Union ...*  
509

#### LIMITATION:

(See under: Arbitration and Conciliation Act, 1996)  
432

#### MOTOR VEHICLES ACT, 1988:

(1) (i) ss.140 and 166 – Motor accident – Compensation claim – Whether delay in lodging FIR of the accident can prove fatal so as to result into dismissal of the claim petition filed by the claimant – Held: No – In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so, the contents of the FIR should also be scrutinized more carefully – If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground – In the instant case, it was amply proved that the truck in question was involved in the accident, which had caused injuries to the claimant – No doubt, there was delay

in lodging the FIR but the same was explained by the claimant's father – Under the circumstances, it cannot be said that delay in lodging the FIR was fatal to the claim case filed by the appellant – FIR – Delay in lodging of – Delay / Laches.

(ii) Motor accident – Adequate and proper compensation – Claimant a minor boy aged 8 years, hit by a truck – He sustained permanent disability to the extent of 50% and even after several surgeries was not able to control his urination – Claimant has attained the age of 16 years but still prosecuting his studies in class V only – Held: Apparently, on account of nature of injuries sustained by the claimant, he was unable to prosecute his studies in right earnest and lagged behind – The claimant has to suffer throughout his life; thus, the compensation should not only be adequate but proper also – Accordingly, claimant granted compensation of Rs.2.5 lakhs, payable by the respondents, jointly and severally with interest @ 6% p.a. from the date of filing of claim petition till the payment.

*Ravi v. Badrinarayan and Ors.* ..... 400

(2) ss.166 and 163A – Motor accident – Deceased aged 33 years – Claim by mother, sister and brother of deceased – Quantum of compensation – Fixation of – Appropriate multiplier – The deceased was looking after the entire family – Tribunal calculated compensation by applying multiplier of 16 – High Court, however, held that the

deceased's mother was the real legal representative and others could not claim to be the legal representatives of the deceased, and reduced compensation by applying a multiplier of 5 – Held: High Court took a very technical view in the matter of applying the multiplier – It could not have kept out of its consideration the claim of the daughter of the first claimant – Reasoning of the High Court not correct in view of the ratio in Sarla Verma's case – Following the same, the High Court should have proceeded to compute the compensation on the age of the deceased – Judgment of High Court set aside and the award of the Tribunal restored.

*P. S. Somanathan and Ors. v. District Insurance Officer and Anr.* ..... 367

NATIONAL COUNCIL FOR TEACHER EDUCATION  
ACT, 1993:

s.14.

(See under: Education / Educational Institutions) ...

570

#### PENAL CODE, 1860:

(1) s.120-B.

(See under: Central Vigilance Commission Act, 2003)

445

(2) s.302 r/w s.34 – Murder – Person shot down, while he was riding pillion seat of motorcycle driven by the witness – Allegation that accused were part of the coal mafia and deceased, a sitting MLA, incurred their wrath as he opposed their activities – Eye-witness account – Conviction and life imprisonment awarded by trial court – High Court confirmed the conviction and enhanced the sentence to death penalty – Held: The deceased was perceived by the accused as a hurdle in their activities – The depositions of all the witnesses satisfactorily prove that the accused were seen together riding a motorcycle proximate in point of time when the deceased was gunned down – Seizure evidence corroborated the prosecution version – Further corroboration from medical evidence – The prosecution proved beyond reasonable doubt, the sequence of events underlying the charge of murder leveled against the accused – Conviction upheld but sentence commuted to life imprisonment.

(Also see under: Criminal Law, Identification and Witnesses)

*Sheo Shankar Singh v. State of Jharkhand & Anr.*

312

#### PREVENTION OF CORRUPTION ACT, 1988:

s.13(1)(d).

(See under: Central Vigilance Commission Act, 2003)

445

#### SENTENCE / SENTENCING:

Death sentence – Commutation to life, if warranted – ‘Rarest of rare’ test – Murder of sitting MLA – Accused were part of the coal mafia and deceased being opposed to such activities incurred their wrath and got killed – Trial court convicted the accused but did not find it to be a rarest of rare case and awarded them life sentence – High Court enhanced the sentence to penalty of death – Held: For the reasons stated, the case was not one of those rare of rarest cases where High Court was justified in imposing extreme penalty of death – Considering all the circumstances, death sentence commuted to life imprisonment.

(Also see under: Penal Code, 1860)

*Sheo Shankar Singh v. State of Jharkhand & Anr.*

312

#### SERVICE LAW:

(1) Appointment / Recruitment / Selection.

(See under: Uttar Pradesh Higher Education Services Commission Act, 1980) ..... 525

(2) Promotion – Department of Telecommunications – Four grades of employees viz. Basic Grade, Grade II, Grade III and Grade IV – Biennial Cadre

Review (BCR Scheme) – Order dated 07.07.1992 passed by Tribunal in O.A. No.1455 of 1991 filed by some Grade III officers, whereby the Government was directed to consider the applicants in the O.A. for promotion to Grade-IV on the basis of seniority in the basic grade as per the BCR Scheme – Order dated 07.07.1992 attained finality – Other employees claiming promotion to Grade-IV in terms of the order dated 07.07.1992 – Held: Not entitled – They were not the applicants in O.A. No.1455 of 1991 and there was no direction to the Government to consider them for promotion to Grade-IV scale on the basis of seniority in the basic grade as per the BCR Scheme – Circular dated 13.12.1995 by which the Government took a decision in supersession of earlier instructions that promotion to Grade-IV may be given from amongst officials in Grade-III on the basis of their seniority in the basic grade could take effect only from 13.12.1995 and not from a prior date.

*Bharat Sanchar Nigam Ltd. v. Ghanshyam Dass and Ors.*  
..... 380

#### TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987:

s.3(5) – Membership of banned organisation – Conviction of appellant u/s.3(5) – Sustainability – Held: Mere membership of a banned organization cannot incriminate a person unless he is proved to have resorted to acts of violence or incited people to imminent violence, or did an act intended to create disorder or disturbance of public peace by resort to imminent violence – In the instant case, even if the accused was a member of ULFA, it was

not proved that he was an active member – Further, the provisions in various statutes i.e. 3(5) of TADA or s.10 of the Unlawful Activities (Prevention) Act which on their plain language make mere membership of a banned organization criminal, have to be read down and one has to depart from the literal rule of interpretation in such cases, otherwise these provisions will become unconstitutional as violative of Articles 19 and 21 of the Constitution – Conviction of appellant accordingly set aside – Constitution of India, 1950 – Articles 19 and 21 – Unlawful Activities (Prevention) Act, 1967.  
(Also see under: Evidence and Interpretation of Statutes)

*Sri Indra Das v. State of Assam* ..... 289

UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967:  
(See under: Terrorist and disruptive Activities (Prevention) Act, 1987) ..... 289

#### UTTAR PRADESH HIGHER EDUCATION SERVICES COMMISSION ACT, 1980:

- (i) Purpose of the Act – Discussed.
- (ii) Post of Principal in affiliated/aided Degree and Post-Graduate institutions – Whether amenable to reservation – Held: The post of principal in aided/affiliated institution being a single post in the cadre is not amenable to any reservation – Reservation of such a post is clearly impermissible not only because the Reservation Act of 1994 provides for reservation based on the 'cadre strength' in aided institutions but also because such strength being limited to only one post in the cadre is legally not

amenable to reservation – Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 – Service law – Reservation – Education/Educational institutions.

(iii) Selection process – Complaints alleging large scale irregularities and malpractices of serious nature in selections – State Government ordered appointment of Divisional Commissioner as an inquiry officer and withholding of appointment orders in favour of selected candidates – Challenged by selected candidates before High Court by way of writ petitions – High court quashing the appointment of the enquiry officer and issuing a mandamus to the Selection Commission to make placements in favour of selected candidates – Held: High Court was justified in quashing the appointment of the enquiry officer – Question whether there were any malpractices and if so whether the selection process could be nullified by the State Government in exercise of its power u/s.6 of the 1980 Act or Article 154 of the Constitution left open in the light of the fact that the question regarding legality of the selection process is pending adjudication before the High Court – Candidates who were appointed on the basis of the selection process and who had filed undertakings before Supreme Court shall be impleaded as parties to the pending writ petitions – In such circumstances, a parallel enquiry at the Government level into those questions would be unnecessary – Directions passed – Constitution of India, 1950 – Article 154.

*State of U.P. and Ors. v. Bharat Singh and Ors. ...*  
525

UTTAR PRADESH PUBLIC SERVICE (RESERVATION FOR SCHEDULE CASTES, SCHEDULES TRIBES AND OTHER BACKWARD CLASSES) ACT, 1994:

(See under: Uttar Pradesh Higher Education Services Commission Act, 1980) ..... 525

VIGILANCE:

Vigilance administration.  
(See under: Central Vigilance Commission Act, 2003)  
445

WITNESSES:

(1) Examination of – Delay in examination – Effect – Held: Mere delay in examination of a particular witness does not, as a rule of universal application, render the prosecution case suspect – In the instant case, the trial court and the High Court had accepted the explanation offered by the investigating officer for delay – No reason to take a different view or to reject the testimony of the witness only because his statement was recorded a month and half after the occurrence.  
(Also see under: Penal Code, 1860, Criminal Law and Identification)

*Sheo Shankar Singh v. State of Jharkhand & Anr.*  
312

(2) Defendant seeking to cite plaintiff's advocate as a witness.  
(See under: Code of Civil Procedure, 1908) ..... 417

## WORDS AND PHRASES:

Word 'recommendation' – Connotation of, in the context of Central Vigilance Commission Act, 2003.

*Centre for PIL & Anr. v. Union of India & Anr. .... 445*

## WRITS:

Writ of quo warranto – Appointment of Central Vigilance Commissioner on recommendation of the High Powered Committee – Writ of quo warranto challenging the appointment – Held: The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions – A writ of quo warranto is issued to prevent a continued exercise of unlawful authority – In the instant petition, a declaratory relief was sought besides seeking a writ of quo warranto – Thus, nothing prevented the Court from issuing a writ of declaration – Further, recommendation of the HPC and, consequently, the appointment was in contravention of the provisions of the 2003 Act – If public duties are to be enforced and rights and interests are to be protected, then the court may, in furtherance of public interest, consider it necessary to inquire into the state of affairs of the subject matter of litigation in the interest of justice – Central Vigilance Commission Act, 2003.

*Centre for PIL & Anr. v. Union of India & Anr. .... 445*

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## APPEAL:

(1) Appeal against acquittal – Acquittal by trial court – Interference by High Court – Scope of – Held: Where two views on the evidence are reasonably possible and trial court has taken a view favouring acquittal, High Court should not disturb the same merely on the ground that if it was trying the case, it would have taken an alternative view and convicted the accused – Presumption of innocence is further reinforced by acquittal of the accused by the trial court – The view of trial judge as to the credibility of the witness must be given proper weight and consideration – There must be compelling and weighty reason for the High Court to come to a conclusion different than that of trial court.

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

*Rukia Begum v. State of Karnataka .... 711*

(2) Limitation for filing appeal.

(See under: Foreign Exchange Manage Act, 1999)  
838

## CAUSE OF ACTION:

(See under: Foreign Exchange Manage Act, 1999)  
838

## COMPENSATION:

(See under: Land Acquisition act, 1894) ..... 733

## CONSTITUTION OF INDIA, 1950:

(1) Article 22(3)(b) – Preventive detention – Power of – Held: Must be confined to very narrow limits, otherwise the right to liberty would become nugatory – Article 22(3)(b) cannot be read in isolation, but must be read along with Articles 19 and 21.

(Also see under: Tamil Nadu Prevention Of Dangerous Activities Of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, And Slum Grabbers And Video Pirates Act, 1982)

*Rekha v. State of T Nadu Tr.Sec.To Govt. & Anr.*  
740

(2) Article 285.

(See under: Delhi Municipal Corporation Act, 1957)  
764

(3) Articles 300A and 39(f) – Held: Right to property is no longer a fundamental right but it is a Constitutional right and Article 300A contains a guarantee against deprivation of property right save by authority of law.

(Also see under: Hindu Marriage Act, 1955)

*Revanasiddappa and Anr. v. Mallikarjun and Ors.*  
675

## CRIMINAL LAW:

Motive.

(See under: Penal Code, 1860) ..... 817

## CUSTOMS ACT, 1962:

s.130E(b) – Scope of.

*Siddachalam Exports Private Ltd. v. Commissioner of Central Excise Delhi-III* ..... 695

## CUSTOMS VALUATION (DETERMINATION OF PRICE OF IMPORTED GOODS) RULES, 1988:

rr.4 to 8 – Valuation of goods – Allegation that value of goods entered for exportation was wrongly declared and thereby undue drawback amounts claimed by exporter – Department sought for market opinion regarding the value of goods – Held: The initial burden to establish that the value mentioned by the exporter in the bill of export or the shipping bill, as the case may be, is incorrect, lies on the Department – Therefore, once the transaction value u/r.4 is rejected, the value must be determined by sequentially proceeding through rr.5 to 8 – In the instant case, neither the adjudicating authority nor the CESTAT dealt with the matter as per the procedure prescribed under the Act – Matter remitted to adjudicating authority for consideration afresh – Customs Act, 1962 – ss.14(1), 14(2) and 114.

*Siddachalam Exports Private Ltd. v. Commissioner of Central Excise Delhi-III* ..... 695

## DEEDS AND DOCUMENTS:

A deed must be read in its entirety – A document if to be construed a “lease” or “licence” – Determinative factors, summarized.

(Also see under: Delhi Municipal Corporation Act, 1957)

*Pradeep Oil Corporation v. Municipal Corporation of*

*Delhi and Anr.* ..... 764

#### DELAY / LACHES:

(See under: Industrial Disputes Act, 1947) ..... 867

#### DELHI MUNICIPAL CORPORATION ACT, 1957:

ss. 2(3), 114 and 120(2) – “Buildings” – Oil tanks – Property tax – Under the Government Grant Act, grantee in terms of the agreement, given possession of certain land and the grantee erected ‘petroleum installation buildings’ consisting of petroleum tanks, buildings, etc. for receiving and storing therein petroleum in bulk – The constructions were subjected to property tax by MCD – Plea of grantee that it was a licensee and not a tenant and, therefore, not liable to the tax – Held: The grantee being in exclusive possession of the buildings since 1958, there is a strong presumption in favour of tenancy – Oil tanks are buildings for the purposes of tax – Grantee liable to pay tax, which becomes payable from the date of accrual of the liability – Constitution of India, 1950 – Article 285 – Government Grant Act, 1895 – s.2.

(Also see under: Tamil Nadu Prevention Of Dangerous Activities Of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, And Slum Grabbers And Video Pirates Act, 1982 and Deeds and Documents)

*Pradeep Oil Corporation v. Municipal Corporation of Delhi and Anr.* ..... 764

#### DOCTRINES:

(i) Principle of deemed equivalence.

(ii) Principle of deeming fiction.  
(See under: Excise Laws)

..... 794

#### EASEMENTS ACT, 1882:

s.52 – “License” – Connotation – Explained.

(Also see under: Delhi Municipal Corporation Act, 1957)

*Pradeep Oil Corporation v. Municipal Corporation of Delhi and Anr.* ..... 764

#### ECONOMIC OFFENCES:

(See under: Foreign Exchange Management Act, 1999)  
838

#### EVIDENCE:

##### CIRCUMSTANTIAL EVIDENCE:

(i) (See under: Penal Code, 1860 and Sentence/Sentencing) ..... 585

(ii) Circumstantial evidence, Confession – Extra-judicial confession.

(See under: Penal Code, 1860) ..... 817

(iii) Circumstantial evidence – Held: For bringing home the guilt on the basis of the circumstantial evidence, the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused – In order to sustain conviction, circumstantial evidence must be complete and incapable of any explanation than the guilt of the accused.

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

EXCISE LAWS:

Exemption – Assignment Deed – Case registered under the Excise law against assessee – Assignment of trade mark in favour of assessee subsequent to registration of the case – Assessee claiming benefit under Exemption Notification on the basis of Assignment Deed – Held: The effect of making the registration certificate applicable from retrospective date is based on the principle of deemed equivalence to public user of trade mark – This deeming fiction is applicable to provisions of Trade Marks Act and cannot be extended to the excise laws – As to whether or not the said Assignment Deed would relate back prior to a date of 19.9.1998 and consequence thereof was a matter which was not decided by the Tribunal – Matter remitted to the Tribunal for consideration of the said issue by recording an effective and reasoned decision – Trade Marks Act, 1999.

*Commnr., Central Excise , Bangalore v. M/s. Meyer Health Care Pvt. Ltd. & Ors.* ..... 794

FOREIGN EXCHANGE MANAGEMENT ACT, 1999:

ss. 19(2) and 49 – Cause of action arose when FERA was in force, but show cause notices and impugned orders issued when FEMA was in force – Appeal filed u/s.19 of FEMA – Rejection of, by Appellate Tribunal constituted under FEMA, applying the first proviso to sub-s.(2) of s. 52 of FERA instead of following the proviso to sub s.(2) to s. 19 of FEMA – Held: Limitation for filing appeal

has to be considered u/s. 19(2) of FEMA – Provision relating to limitation is procedural – In absence of any provision to contrary, the law in force on date of initiation of appeal irrespective of the date of accrual of the cause of action for the original order, would govern the period of limitation – Section 52(2) can apply only to an appeal to the Appellate Board and not to any appellate tribunal – Tribunal and High Court misdirected themselves in assuming that the period of limitation was governed by s. 52(2) of FERA – Appellate Tribunal can entertain the appeal after the prescribed period of 45 days if it is satisfied, that there was sufficient cause for not filing the appeal within the said period – Matter is remitted back to the Tribunal for consideration afresh – Foreign Exchange Regulation Act, 1973 – ss. 52(2), 8(3) and 8(4) – General Clauses Act – s. 6 – Economic offences. (Also see under: Jurisprudence)

*Thirumalai Chemicals Limited v. Union of India & Ors.*  
838

FOREIGN EXCHANGE REGULATION ACT, 1973:

ss. 52(2), 8(3) and 8(4).

(See under: Foreign Exchange Management Act, 1999)  
838

GENERAL CLAUSES ACT, 1897:

s.6.

(See under: Foreign Exchange Management Act, 1999)  
838

GOVERNMENT GRANT ACT, 1895:

s.2.  
(See under: Delhi Municipal Corporation Act, 1957)  
764

GUIDELINES / DIRECTIONS / SUGGESTIONS:  
(See under: Service Law) ..... 631

HINDU LAW:  
(See under: Hindu Marriage Act, 1955) ..... 675

#### HINDU MARRIAGE ACT, 1955:

(i) s.16(3) – Right of illegitimate children in the coparcenary property of their parents – Held: s.16(3) makes it clear that a child of a void or voidable marriage can only claim rights to the property of his parents, and no one else – The legislature has advisedly used the word “property” and has not qualified it with either self-acquired property or ancestral property – It has been kept broad and general – Article 39 (f) must be kept in mind by the court while interpreting the provision of s.16(3) of the Act – Apart from Article 39(f), Article 300A also comes into play while interpreting the concept of property rights – Supreme Court in the case of *Jinia Keotin and Bharatha Matha* took narrow view of s.16(3) of the Act – Therefore, matter needs reconsideration and is referred to larger bench – Reference to larger bench – Hindu Law – Constitution of India, 1950 – Articles 300A, 39(f).

(ii) s.16 – Status of illegitimate children and their right in property of their parents – Effect of amendment of s.16 – Held: With the amendment of s.16(3), the common law view that the offsprings of

marriage which is void and voidable are illegitimate ‘ipso-jure’ has changed completely – The status of such children which has been legislatively declared legitimate must be recognised and simultaneously law recognises the rights of such children in the property of their parents – This is a law to advance the socially beneficial purpose of removing the stigma of illegitimacy on such children who are as innocent as any other children – Social Justice.  
(Also see under: Interpretation of Statutes)

*Revanasiddappa and Anr. v. Mallikarjun and Ors.*  
675

#### INDUSTRIAL DISPUTES ACT, 1947:

(i) ss. 2.(s), 2(o) and 25-F – ‘Workman’ engaged on contract basis – Termination of services without complying with the provisions of s. 25-F – Labour Court ordering reinstatement without back wages – High Court setting aside reinstatement holding that the appointment was made without following recruitment rules and that it would not be in public interest to approve award of reinstatement after long lapse of time – Held: The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of s. 2(s) of the Act – Further, the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis – Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee will fall within the definition of ‘workman’

– Delay in adjudication of dispute by Labour Court or the writ petition filed by employer cannot be made a ground to justify the gross illegalities committed by the employer in terminating the services of the workman – Delay/Laches.

(ii) s.25-F read with ss.2(s) and 2(oo) – Held: Provisions contained in s. 25-F (a) and (b) are mandatory and termination of service of a workman which amounts to retrenchment u/s. 2(oo) without complying with the mandates of s.25-F would be null and void – Judgment of High Court set aside – Award of reinstatement passed by Labour Court restored with wages for the period between the date of award and date of reinstatement.

*Devinder Singh v. Municipal Council, Sanaur* ..... 867

#### INTERPRETATION OF STATUTES:

(1) Purposive interpretation – Held: Courts cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone – Such legislation must be given a purposive interpretation to further and not to frustrate the eminently desirable social purpose – Hindu Marriage Act, 1955 – s.16(3).

(Also see under: Hindu Marriage Act, 1955 and Constitution of India, 1950)

*Revanasiddappa and Anr. v. Mallikarjun and Ors.*  
675

(2) (See under: Excise Laws) ..... 794

#### INVESTIGATION:

(See under: Penal Code, 1860) ..... 646

#### JURISPRUDENCE:

Substantive Law And Procedural Law – Distinction between – Held: Substantive law refers to body of rules that creates, defines and regulates rights and liabilities – Procedural law establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them – Procedural law is retrospective meaning thereby that it would apply even to acts or transactions under the repealed Act – Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right – Aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation – Right of appeal conferred u/s. 19(1) of FEMA is a substantive right – Procedure for filing an appeal under sub-s.(2) of s. 19 as also the proviso to sub-s.(2) of s. 19 conferring power on the Tribunal to condone delay in filing the appeal if sufficient cause is shown, are procedural rights.

(Also see under: Foreign Exchange Management Act, 1999)

*Thirumalai Chemicals Limited v. Union of India & Ors.*  
838

#### LABOUR LAWS:

(See under: Industrial Disputes Act, 1947) ..... 867

#### LAND ACQUISITION ACT, 1894:

Acquisition of land – Compensation – Land

acquired for development of tourism – Reference court enhancing compensation from Rs.300/- to Rs.650/- per ‘Aar’ holding that the land was permitted to be converted to non-agricultural use – High Court reducing the compensation to Rs.500/- per Aar – Held: The potential to which the land is reasonably capable of being used in future by the owner should be taken into account in assessing the compensation – Judgment of High Court set aside and the award of the reference court restored.

*Bilkis and others v. State of Maharashtra and Ors*  
733

LEAVE AND LICENCE:

(See under: Easements Act, 1882) ..... 764

LIMITATION:

Limitation for filing appeal.

(See under: Foreign Exchange Management Act, 1999)  
838

MONEY LAUNDERING:

(See under: Penal Code, 1860) ..... 646

MUNICIPALITIES:

Property tax.

(See under: Delhi Municipal Corporation Act, 1957)  
764

PENAL CODE, 1860:

(1) ss. 120-B, 457, 302, 379, 404, 201, 414 and s. 34 – Double murder – Circumstantial evidence – Robbery committed at the house-cum-shop of a couple engaged in the business of money lending by pledging gold and silver ornaments – Couple found dead in the pool of blood – Four accused arrested – Trial court convicted A 1 to A 3 u/ss. 120-B, 457, 302, 379, 404 and 201 – A 1 awarded death sentence whereas A2 and A3 sentenced to life imprisonment – A 4 convicted u/ss. 201, 404 and 414 – Conviction and sentence upheld by High Court – On appeal by A 1 to A 3, Held: Recovery of clothes and shoes of accused stained with human blood – Recovery of blood stained murder weapon at the instance of A 3 – Weapon was stained with human blood of blood group A which was the blood group of deceased – Clothes of deceased found stained with his own blood of blood group A – No explanation offered by accused of this highly incriminating circumstance – Theft of the articles, ornaments was engraved fully established – Identification of the property also established – Investigation not tainted – A4 was receiver of stolen property and had helped in melting of some of the gold items with the machines removed from the house of deceased – Conviction of A1 to A3 upheld, however, there being no evidence as to who was the actual author of the injuries on the deceased though all the three were participants of the crime – Death sentence awarded to A 3 commuted to life imprisonment – Circumstantial evidence – Sentence/Sentencing. (Also see under: Sentence/Sentencing)

*Ramesh v. State of Rajasthan* ..... 585

(2) ss.302, 201 r/w s.34 – Murder and causing disappearance of evidence – Circumstantial evidence – Out of six accused, trial court convicted two holding that the circumstantial evidence i.e. motive, presence of blood, recoveries and abscondence immediately after the occurrence pointed towards their guilt – High Court further convicted two more accused – Held: The circumstantial evidence against the said two accused were not such which would lead towards their guilt – The view taken by trial court was justified in the facts and circumstances of the case and a possible view – As regards the trial court as also the High Court on the basis of the circumstantial evidence rightly came to the conclusion that the prosecution was able to prove its case beyond all reasonable doubt so far as these two accused were concerned – Evidence – Circumstantial evidence.

(Also see under: Evidence and Appeal)

*Rukia Begum v. State of Karnataka* ..... 711

(3) s.302/34 – Murder – Circumstantial evidence – Conviction and sentence of imprisonment for life awarded by trial court – Affirmed by High Court – Held: In the facts and circumstances of the case, motive proved distinctly – Further, recovery of weapon at the instance of the accused, the medical report, both the accused seen at the place of incident immediately before the incident, extra-judicial confession by the accused, all complete the chain of circumstances pointing out to the guilt of the accused – There is no cogent reason to interfere with the finding recorded by the two courts below – Criminal law – Motive – Evidence –

Circumstantial evidence – Extra-judicial confession.

*Kulvinder Singh & Anr. v. State of Haryana* ..... 817

(4) ss.409, 420, 423, 424, 465 and 120-B – Multi-crore scam – Corruption in the matter of grant of iron ore mining lease – Various former minister including a former Chief Minister of the State involved – Allegation against the appellant also – Investment alleged to have been made in the property, shares etc. not only in India, but, also abroad – High Court referred the matter to the Central Bureau of Investigation (CBI) and also observed that the Central Government should exercise the powers u/s.45(1A) of the PMP Act for transferring investigation from the Enforcement Directorate (ED) to the CBI and if such an order is not passed by the Central Government, any material found by the CBI during investigation, which would lead to an inference of money laundering within the PML Act would be shared by the CBI with the ED from time to time to enable the ED to take such action as may be necessary – Held: In facts and circumstances, no interference with the orders of the High Court called for – Prevention of Money Laundering Act, 2002 – s.45 (1A).

*Binod Kumar v. State of Jharkhand and Ors.* ..... 646

PREVENTION OF CORRUPTION ACT, 1988:

ss.7, 10, 11, 13(2) r/w s.13(1)(e).

(See under: Penal Code, 1860) ..... 646

PREVENTION OF MONEY LAUNDERING ACT, 2002:

s.45 (1A).  
(See under: Penal Code, 1860) ..... 646

#### PREVENTIVE DETENTION:

Order of detention – Legality of – Held: When ordinary law of the land such as Penal Code and other penal statutes, can deal with the situation, recourse to preventive detention law would be illegal.

(Also see under: Tamil Nadu Prevention Of Dangerous Activities Of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, And Slum Grabbers And Video Pirates Act, 1982 and Constitution of India, 1950)

*Rekha v. State of T Nadu Tr.Sec.To Govt. & Anr.*  
740

#### PROPERTY:

Right to property of parents – Claim by illegitimate children.  
(See under: Hindu Marriage Act, 1955) ..... 675

#### RAJASTHAN SALES TAX ACT, 1994:

s.37 – Rectification of error apparent on the face of the record – Exercise of power vested u/s.37 – Scope and ambit – Held: Such a power is neither a power of review nor is akin to the power of revision but is only a power to rectify a mistake apparent on the face of the record and for which re-appreciation of the entire records is neither possible nor called for – In the instant case, the Taxation Board passed an order against assessee

whereby it upheld the demand of differential tax and imposition of penalty as done by assessing authority – On assessee's application u/s.37 the Board modified its earlier order to the extent that as the assessee had declared all his sales in the books of accounts, imposition of penalty was not justified – The Board exceeded its jurisdiction by re-appreciating the evidence on record and holding that there was no mala fide intention on the part of assessee-respondent for tax evasion – Such re-appreciation of the evidence to come to a contrary finding was not available u/s.37 while exercising the power of rectification of error apparent on the face of the record – Review.

(Also see under: Review)

*Assistant Commercial Taxes Officer v. M/s Makkad Plastic Agencies* ..... 663

#### REFERENCE TO LARGER BENCH:

(See under: Hindu Marriage Act, 1955) ..... 675

#### REVIEW:

Maintainability of – Held: Review is a creature of the statute – An order of review could be passed only when an express power of review is provided in the statute – In the absence of any statutory provision for review, exercise of power of review under the garb of clarification/modification/correction is not permissible.

(Also see under: Rajasthan Sales Tax Act, 1994)

*Assistant Commercial Taxes Officer v. M/s Makkad Plastic Agencies* ..... 663

## SALES TAX:

(See under: U. P. Trade Tax Act, 1948) ..... 723

## SENTENCE / SENTENCING:

Double murder – Award of death sentence to one of the three accused by courts below – Held: Though it was a double murder, but it could not be said to be brutal, grotesque and diabolical – Crime could not be said to be of enormous proportion – Accused was not in a dominating position – It was a murder of gains – Case was purely based on circumstantial evidence – No definite evidence about the acts on the part of each of the accused – Accused was young and this was his first proved offence – It could not be said that there was no possibility of reformation of the accused – It was not established that alternative punishment of life imprisonment would be futile and would serve no purpose – Accused languishing in death cell for more than 6 years – Death sentence commuted to life imprisonment.

(Also see under: Penal Code, 1860)

*Ramesh v. State of Rajasthan* ..... 585

## SERVICE LAW:

### APPOINTMENT:

(i) Compassionate appointment – Object of – Held: Compassionate employment is given solely on humanitarian grounds and cannot be claimed as a matter of right – The scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

(ii) Compassionate appointment – Claim for – Held:

On facts, claimant's father was declared as de-categorized employee, not offered alternative employment and was made to retire from services on 30.08.1999 on recommendation by the Standing Committee – In terms of Circular dated 22.09.1995 which contemplates compassionate employment for the wards of those employees who have been medically de-categorized, and have retired, without being offered an alternative suitable job, the claimant would be entitled to employment on compassionate ground – Guidelines to govern compassionate appointment – Indicated.

*Bhawani Prasad Sonkar v. Union of India & Ors.* .  
631

## SOCIAL JUSTICE:

(See under: Hindu Marriage Act, 1955) ..... 675

## STANDARDS OF WEIGHTS AND MEASURES ACT, 1976:

s.19 – Complaint under, against Chairman of the Company and appellant, then Deputy General Manager, alleging violation of rr. 2, 4, 6, 8, 9 and 23 of the Rules – However, the averments in the complaint not identifying as to who was the person responsible and incharge of the affairs of the Company – Application u/s. 482 CrPC filed by the Chairman of the Company and the appellant – High Court quashing the proceedings qua the Chairman – Held: There is no distinction between the case of the Chairman and the appellant – In prosecutions in such like cases no roving enquiry is permissible and an obligation rests on the prosecution to give

details so that the trial can be proceeded against the persons responsible – Direction issued to quash the proceedings against the appellant in all cases – Standards of Weights and Measures (Packaged Commodities) Rules, 1977 – rr. 2, 4, 6, 8, 9 and 23.

*Subhankar Biswas v. Sandeep Meta* ..... 799

#### STANDARDS OF WEIGHTS AND MEASURES (PACKAGED COMMODITIES) RULES, 1977:

rr. 2, 4, 6, 8, 9 and 23.

(See under: Standards of Weights and Measures Act, 1976) ..... 799

#### TAMIL NADU PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DRUG- OFFENDERS, FOREST OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS, SAND OFFENDERS, AND SLUM GRABBERS AND VIDEO PIRATES ACT, 1982:

Order of detention – Charge against appellant’s husband that he was selling expired drugs after changing their labels – Writ petition dismissed by High Court – Held: In the grounds of the detention it was only stated that in similar cases bails were granted by the courts, but no details were given about the alleged bail orders – Detention order only contained ipse dixit regarding the alleged imminent possibility of the accused coming out on bail and there was no reliable material to this effect – Also, the relevant provisions in the Penal Code and the Drugs and Cosmetics Act were sufficient to deal with the said situation – Detention order being

illegal, is quashed.

(Also see under: Constitution of India, 1950)

*Rekha v. State of T Nadu Tr.Sec.To Govt. & Anr.*  
740

#### TAX / TAXATION:

(1) Property tax.

(See under: Delhi Municipal Corporation Act, 1957)  
764

(2) Trade tax.

(See under: Uttar Pradesh Trade tax Act, 1948) ....  
723 and 803

#### TRADE MARKS ACT, 1999:

(See under: Excise Laws) ..... 794

#### TRANSFER OF PROPERTY ACT, 1882:

s.105 –“Lease” – Connotation of – Explained.

(Also see under: Delhi Municipal Corporation Act, 1957)

*Pradeep Oil Corporation v. Municipal Corporation of  
Delhi and Anr.* ..... 764

#### UTTAR PRADESH TRADE TAX ACT, 1948:

(1) s.4-A(4) – Fixed capital investment – Bottles and crates used by the respondent in its factory for the manufacture of soft drinks and beverages – Inclusion of value of bottles and crates in the fixed capital investment – Held: Bottles are essential part of components and equipments necessary for the running of the factory of the respondent and,

therefore, its value would form part of the fixed capital investment and would be entitled to exemption – Crates having no user so far as running of the factory of the respondent is concerned, therefore, value of crates cannot be deemed to be investment for the purpose of including it within the meaning of expression “Fixed Capital Investment” as per sub-s.(4) of s. 4-A.

*Commissioner of Trade Tax, U.P. v. Varun Beverages Limited* ..... 803

(2) (i) s.8(1) and its Explanation, s.8(1B) – Interest on delayed payment of tax – Whether payable as per s.8(1) or as per s.8(1B) – Held: Once it is confirmed by the court that the tax is payable under the Act, it would be covered within the definition of the term “the tax admittedly payable” as defined in the explanation to s.8(1) and, in case, the tax had not been paid then the same becomes payable along with interest as mentioned in s.8(1) – Provisions of sub-section (1B) of s.8 would come into operation only if the case is not covered under sub-s.(1) of s.8 – In the instant case, interest is payable in terms of sub-s.(1) of s.8 and not in terms of sub-s.(1B) of s.8.

(ii) s.8(1) – Interest on delayed payment of tax – Whether payable from the date when the tax became due and payable or from the date of the assessment order – Held: Where a dealer fails to pay tax at the correct rate because he claimed not to know the revision in the rate, the dealer remains liable to pay interest at a penal rate u/s.8 (1) from the date when the tax became due and payable.

(iii) s.3-F – Rent charged in respect of glass bottles

and crates used for beverages sold by assessee – Liability to pay sales tax on – Held: Glass bottles and crates constitute an integral part of the beverages and they together with the contents therein are a “composite personality” and constitute “goods” liable to sales tax – Sales tax.

*Pepsico India Holdings Ltd. v. Commissioner of Trade Tax, Lucknow, U.P.* ..... 723

#### WEIGHTS AND MEASURES:

(See under: Standards of Weights and Measures Act, 1976) ..... 799

#### WORDS AND PHRASES:

(1) Expression “the tax admittedly payable” – Meaning of, in the context of s.8(1) of the U.P. Trade Tax Act.

*Pepsico India Holdings Ltd. v. Commissioner of Trade Tax, Lucknow, U.P.* ..... 723

(2) “Lease” and “License” – Connotation of.

*Pradeep Oil Corporation v. Municipal Corporation of Delhi and Anr.* ..... 764

(3) Rectification – Meaning of.

*Assistant Commercial Taxes Officer v. M/s Makkad Plastic Agencies* ..... 663

\*\*\*\*\*

## ADMINISTRATION OF JUSTICE:

Abuse of process of court.

(See under: Foreign Exchange Regulation Act, 1973)

889

## ADMINISTRATIVE LAW:

(i) Promissory estoppel.

(ii) Fiscal policy – Judicial review of.

(See under: Haryana General Sales Tax Act, 1973)

944

## APPEAL:

Appeal against acquittal – Held: In an appeal against an order of acquittal, the court has to scrutinize the facts of the case cautiously – Every accused is presumed to be innocent unless his guilt is proved – While dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable – Criminal jurisprudence.

(Also see under: Penal Code, 1860)

*State of U.P. v. Naresh and Ors.*

..... 1176

## CONSTITUTION OF INDIA, 1950:

(1) Article 21 – Held: The right to life guaranteed by Article 21 does not include the right to die.

*Aruna Ramchandra Shanbaug v. Union of India and Ors*

(2) Article 161 – Grant of pardon by Governor – Nature and scope of the power of pardon – Extent of judicial review over such power – Trial court convicted accused-appellants u/s.302 IPC r/w other provisions of IPC and sentenced them to life imprisonment – All the appellants appealed before the High Court – During the pendency of the appeals, the appellants also filed petitions under Article 161 before the Governor of the State – The Governor granted pardon to them and they were directed to be released – Writ petition was filed thereagainst – High Court set aside the order of pardon of the Governor – Held: There is limited scope of judicial review on exercise of power by the Governor under Article 161 – In the instant case, before the Governor could pass the order of pardon, the accused-appellants filed appeals against the order of conviction and sentence and the same were pending before the High Court – This was a relevant fact for the Governor to take into consideration before granting of pardon – But, in the order of the Governor there was no reference to this fact – Therefore, all relevant facts were possibly not placed before the Governor – Apart from this, in the order of the Governor, there were some observations about the guilt or innocence of the accused-appellants – The powers of a Court of law in a criminal trial and subsequent appeal, right upto Supreme Court and that of the President/Governor under Article 72/161 of the Constitution operate in totally different arenas and the nature of these two powers are also totally different from each other – One should not trench upon the other – The

order of the Governor, by pronouncing upon the innocence of the accused, therefore, exceeded the permissible constitutional limits under Article 161 of the Constitution and, as such, cannot be approved – Matter remanded to the Governor for re-consideration in accordance with law – Separation of powers – Penal Code, 1860 – ss. 148, 302/149, 323, 149, 324, 325 and 326.

*Narayan Dutt and Ors. v. State of Punjab and Anr.*  
983

(3) Article 226.  
(See under: Human Rights) ..... 1057

#### CONSTITUTIONAL LAW:

Separation of powers.  
(See under: Constitution of India, 1950) ..... 983

#### COPY RIGHT:

(See under: Intellectual Property) ..... 1000

#### CRIMINAL JURISPRUDENCE:

(See under: Appeal) ..... 1176

#### CRIMINAL TRIAL:

Bombay Blast case – Trial of two accused arising out of the same incident – Held: Cannot proceed under different procedures – On question of admissibility of evidence, direction made in the case of respondent-accused in terms of an earlier order as regards co-accused – Terrorist and

Disruptive Activities (Prevention) Act, 1987.

*CBI v. Mustafa Ahmed Dossa* ..... 969

#### DOCTRINES / PRINCIPLES:

(1) Doctrine of Parens Patriae – Explained – Held: In the case of an incompetent person who is unable to take a decision whether to withdraw life support or not, it is the court alone, as parens patriae, which ultimately must take this decision, though, no doubt, the views of the near relatives, next friend and doctors must be given due weight.

(Also see under: Human Rights and Constitution of India, 1950)

*Aruna Ramchandra Shanbaug v. Union of India and Ors*  
..... 1057

(2) Doctrine of promissory estoppel – Applicability of – Held: The doctrine of promissory estoppel is an equitable remedy and has to be moulded depending on the facts of each case – No hard and fast rule for applying the doctrine of promissory estoppel but the doctrine has to do justice and ensure equity between the parties i.e. both the promisor and the promise.

(Also see under: Haryana General Sales Tax Act, 1973 and Interpretation of Statutes)

*State of Haryana & Ors v. M/s. Mahabir Vegetable Oils Pvt. Ltd.* ..... 944

(3) Doctrine of separation of powers.  
(See under: Constitution of India, 1950) ..... 983

## EVIDENCE:

(i) Evidence of related witness – Appreciation of – Held: A mere relationship cannot be a factor to affect credibility of a witness – Evidence of a witness cannot be discarded solely on the ground of his relationship with the victim of the offence.

(ii) Evidence of injured witness – Appreciation of – Held: The testimony of an injured witness is accorded a special status in law – The evidence of the injured witness should be relied upon unless there are grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.

(iii) Discrepancies in depositions of witnesses – Effect of – Held: In all criminal cases, normal discrepancies are bound to occur in depositions of witnesses due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence – Minor contradictions / inconsistencies on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety – Mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier – The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution case, render the testimony of the witness liable to be discredited. (Also see under: Penal Code, 1860 and Appeal)

*State of U.P. v. Naresh and Ors.* ..... 1176

## FOREIGN EXCHANGE REGULATION ACT, 1973:

ss. 50, 51 and 56 – Scope and applicability of – Charges against the appellant for contravening the provisions of ss.9(1)(f)(i) and 8(2) r/w s.64(2) – Enforcement Directorate (ED) sought to prosecute appellant in a proceeding u/s.56 though on the self-same facts and cause of action, respondent-adjudicating authority had dropped charges framed against the appellant u/s.50 – Held: In the adjudication proceeding on merits, the adjudicating authority had categorically held that the charges against the appellant for contravening the provisions of ss.9(1)(f)(i) and 8(2) r/w s.64(2) were not sustainable – In the face of the finding in adjudication proceeding that there was no contravention of any of the provisions of the Act, it would be unjust and an abuse of the process of the court to permit the ED to continue with the criminal prosecution – Resultantly, the appellant's prosecution is quashed – Administration of justice – Abuse of process of court.

*Radheyshyam Kejriwal v. State of West Bengal and Anr.*  
..... 889

## GUIDELINES:

Procedure to be adopted in an application for withdrawal of life support of a patient in persistent vegetative state, laid down.

(See under: Human Rights) ..... 1057

## HARYANA GENERAL SALES TAX ACT, 1973:

Exemption on investment made for setting up Solvent Extraction plant – Withdrawal of, by putting the Solvent Extraction Plant in the negative list –

Challenged – Promissory estoppel – Applicability of – Held: The principles of promissory estoppel were not applicable as the decision to put the Solvent Extraction Plant in the negative list was taken in public interest since the industry is in the category of polluting industry – In cases where the Government on the basis of material available before it, bona fide, is satisfied that public interest would be served by granting, withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so – The courts should not normally interfere with fiscal policy of the government more so when such decisions are taken in public interest and where no fraud nor lack of bona fide is alleged much less established – The right to exemption or concession is a right that can be taken away under the very power in exercise of which the exemption was granted – Administrative Law – Judicial review – Promissory estoppel.  
(Also see under: Doctrines / Principles and Interpretation of Statutes)

*State of Haryana & Others v. M/s. Mahabir Vegetable Oils Pvt. Ltd.* ..... 944

#### HARYANA GENERAL SALES TAX RULES, 1975:

r.28A.

(See under: Haryana General Sales Tax Act, 1973)  
944

#### HUMAN RIGHTS:

(i) Euthanasia – Withdrawal of life support – Writ petition filed in Supreme Court seeking euthanasia for the petitioner, a 60 year old woman – Petitioner,

who was a Staff Nurse in a Hospital, lay bed-ridden in the said Hospital, since 1973 allegedly in a Persistent Vegetative State (PVS) – Held: The Petitioner cannot be said to be dead – Even from the report of Committee of Doctors it appears that she has some brain activity, though very little – The petitioner recognizes her surrounding and expresses her like or dislike by certain movements – She breathes normally and does not require a heart lung machine or intravenous tube for feeding – The hospital staff have been caring for her day and night for so many long years, who really are her next friends – Hence it is for the hospital staff to take a decision on withdrawal of life support to the petitioner – They have clearly expressed their wish that the petitioner should be allowed to live – However, assuming that the hospital staff at some future time changes its mind, in such a situation the hospital would have to apply to the High Court for approval of the decision to withdraw life support.

(ii) Euthanasia – Withdrawal of life support of a patient in persistent Vegetative State (PVS) – No statutory provision in India as to the legal procedure for withdrawing life support to a person in PVS or who is otherwise incompetent to take a decision in this connection – Held: Passive euthanasia should be permitted in India in certain situations.

(iii) Euthanasia – Withdrawal of life support of a patient in persistent Vegetative State (PVS) – Law laid down by Supreme Court in this connection until Parliament makes a law on the subject – Guidelines enumerated – Doctrine of *parens patriae*.

(iv) Euthanasia – Withdrawal of life support to an incompetent person – Application for, by near

relatives or next friend or the doctors/hospital staff – Power of High Court u/Article 226 – Held: Article 226 gives abundant power to the High Court to pass suitable orders on such an application – Procedure to be adopted by the High Court when such an application is filed – Laid down – The procedure should be followed all over India until Parliament makes legislation on this subject – Constitution of India, 1950 – Article 226.

(v) Euthanasia – Active euthanasia and passive euthanasia – Explained – Voluntary euthanasia and non-voluntary euthanasia – Explained.

(vi) Euthanasia – Legal position all over the world – Discussed.

(vii) Euthanasia – Active euthanasia and Physician assisted suicide – Legal position in India – Held: In India active euthanasia is illegal and a crime u/s. 302 or at least s. 304 IPC – Physician assisted suicide is a crime u/s. 306 IPC (abetment to suicide).

(viii) Euthanasia – Distinction between euthanasia and physician assisted suicide – Explained.

(Also see under: Constitution of India, 1950, Precedent, Penal Code, 1860, Medical Jurisprudence and Doctrines)

*Aruna Ramchandra Shanbaug v. Union of India and Ors*  
..... 1057

#### INTELLECTUAL PROPERTY:

Passing-off in trade mark – Infringement of copyright – Appellant, a sole proprietor of a Karnataka based firm carrying on manufacture of incense sticks (agarbathis), adopted the trade mark ‘Eenadu’ and started selling its product in the State

of Andhra Pradesh – Respondent company, engaged in the business of publishing a newspaper in Telugu entitled as ‘Eenadu’ and other businesses in the State of Andhra Pradesh, filed a suit for infringement of copyrights and passing-off trade mark – Held: The respondent company’s mark ‘Eenadu’ has acquired extraordinary reputation and goodwill in the State of Andhra Pradesh – Adoption of the word ‘Eenadu’ is ex facie fraudulent and mala fide from the very inception – Permitting the appellant to sell his product with the mark ‘Eenadu’ in the State of Andhra Pradesh would definitely create confusion in the minds of the consumers because the appellant is selling agarbathis marked ‘Eenadu’ designed or calculated to lead purchasers to believe that its product agarbathis are in fact the products of the respondent company – No one can be permitted to encroach upon the reputation and goodwill of other parties – This approach is in consonance with protecting the proprietary rights of the respondent company – Copy right – Trade marks.

*T. V. Venugopal v. Ushodaya Enterprises Ltd. and Anr.*  
..... 1000

#### INTERPRETATION OF STATUTES:

Fiscal statute – Exemption from paying tax / duty – Nature of – Held: It is a concession granted by the State so that the beneficiaries of such concession are not required to pay the tax or the duty they are otherwise liable to pay under such statute – The beneficiary of a concession has no legally enforceable right against the government to grant a concession except to enjoy the benefits of the

concession during the period of its grant –  
Promissory estoppel.  
(Also see under: Haryana General Sales Tax Act, 1973  
and Doctrines / Principles)

*State of Haryana & Ors v. M/s. Mahabir Vegetable Oils  
Pvt. Ltd.* ..... 944

#### JUDICIAL REVIEW:

(See under: Haryana General Sales Tax Act, 1973)  
944

#### LEGISLATION:

- (i) Legislation on euthanasia, suggested.
- (ii) Deletion of s.309 IPC, suggested.  
(See under: Penal Code, 1860) ..... 1057

#### MEDICAL JURISPRUDENCE:

- (i) When can a person be said to be dead – Held:  
If the brain is dead, a person is said to be dead.
- (ii) Brain death – Meaning of – Discussed.  
(Also see under: Human Rights and Constitution of India,  
1950)

*Aruna Ramchandra Shanbaug v. Union of India and Ors*  
..... 1057

#### PENAL CODE, 1860:

- (1) ss. 148, 302/149, 323, 149, 324, 325 and 326.  
(See under: Constitution of India, 1950) ..... 983

- (2) ss.302/34, 307/34 and 379/34 – Murder of one

person and serious gunshot injuries to another –  
Conviction of accused-respondents by trial court –  
Order reversed by High Court – Justification of –  
Held: Not Justified – The High Court gravely erred  
in discarding the evidence of PWs merely because  
they were relatives of the deceased – It further fell  
into error in not giving due weightage to deposition  
of a stamped witness, who had suffered gun shot  
injuries – The High Court made too much of  
insignificant discrepancies, which were made the  
basis for acquittal – Judgment of trial court  
convicting the respondents restored – Evidence.  
(Also see under: Evidence and Appeal)

*State of U.P. v. Naresh and Ors.* ..... 1176

- (3) s.309 – Held: s.309 should be deleted by  
Parliament as it has become anachronistic – A  
person attempts suicide in a depression, and hence  
he needs help, rather than punishment.  
(Also see under: Human Rights and Constitution of India,  
1950)

*Aruna Ramchandra Shanbaug v. Union of India and Ors*  
..... 1057

#### PRECEDENT:

Foreign decisions – Value of – Held: Foreign  
decisions have only persuasive value in our country,  
and are not binding authorities on our courts –  
Hence one can even prefer to follow the minority  
view, rather than the majority view, of a foreign  
decision, or follow an overruled foreign decision.  
(Also see under: Human Rights and Constitution of India,  
1950)

*Aruna Ramchandra Shanbaug v. Union of India and Ors*  
..... 1057

PROMISSORY ESTOPPEL:

(See under: Haryana General Sales Tax Act, 1973 and  
Interpretation of Statutes) ..... 944

1

SALES TAX:

(See under: Haryana General Sales Tax Act, 1973)  
944

TAX / TAXATION:

Sales tax.  
(See under: Haryana General Sales Tax Act, 1973)  
944

1

TERRORIST AND DISRUPTIVE ACTIVITIES

(PREVENTION) ACT, 1987:  
(See under: Criminal Trial) ..... 969

TRADE MARKS:

(See under: Intellectual Property) ..... 1000







































































































































































































































































































































































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## **JUDGES OF THE SUPREME COURT OF INDIA**

(From 14.03.2011 to 11.04.2011)

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4. Hon'ble Mr. Justice Dalveer Bhandari
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14. Hon'ble Dr. Justice Mukundakam Sharma
15. Hon'ble Mr. Justice Cyriac Joseph
16. Hon'ble Mr. Justice Asok Kumar Ganguly
17. Hon'ble Mr. Justice R.M. Lodha
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25. Hon'ble Mr. Justice Swatanter Kumar
26. Hon'ble Mr. Justice Chandramauli Kr. Prasad
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28. Hon'ble Mrs. Justice Gyan Sudha Misra
29. Hon'ble Mr. Justice Anil R. Dave

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OF  
JUDGES OF THE SUPREME COURT OF INDIA**  
(From 14.03.2011 to 11.04.2011)

Hon'ble Mr. Justice B. Sudershan Reddy, Judge, Supreme Court of India was on leave for two days on 04.04.2011 and 05.04.2011 on full allowances.

Hon'ble Mr. Justice S.S. Nijjar, Judge, Supreme Court of India was on leave for one day on 11.04.2011 on full allowances.

**ERRATA  
VOLUME INDEX 4 (2011)**

<i>Page No.</i>	<i>Line No.</i>	<i>Read for</i>	<i>Read as</i>
805	13 (From bottom)	<u>receiveds</u> supports	<u>receives</u> supports