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- Held: A person enrolled as an advocate only
can practice in courts - Natural person can appear
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on his behalf - s.32, however, vests discretion in
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as an advocate to appear before the court and
argue a particular case - In the instant case,
Supreme Court refused to exercise the discretion
u/s.32 and rejected the application filed by power
of attorney holder for permission to argue the case
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(ii) s. 32 - Right to appear/argue on behalf of an
entity - Held: As regards the artificial persons like
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or a registered co-operative society or a trust,
neither the Director of the company nor member
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that entity is distinct from its shareholders or office bearers or Directors - However, court has discretion u/s. 32 to permit such person to appear on behalf of that entity.

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(i) s.8 - Application filed by defendant u/s.8 in a pending civil suit praying that the parties to the suit be referred to arbitration - Parties to the suit were parties to an agreement which contained a provision for settlement of disputes by arbitration - Held: Even if there is an arbitration agreement between the parties, and even if the dispute is covered by the arbitration agreement, the court where the civil suit is pending, will refuse an application u/s.8, to refer the parties to arbitration, if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special court or Tribunal.

(ii) s.8 - First statement on substance of dispute - Defendant filed detailed affidavit opposing interim injunction application filed by plaintiff in a pending suit - Later the defendant filed application u/s.8 praying that the parties to the suit be referred to arbitration - Held: Not only filing of the written statement in a suit, but filing of any statement, application, affidavit by a defendant prior to the filing of the written statement will be construed as 'submission of a statement on the substance of the dispute', if by filing such statement/application/affidavit, the defendant shows his intention to submit himself to the jurisdiction of the court and waive his right to seek reference to arbitration - But filing of a reply by a defendant, to an application for temporary injunction/attachment before judgment/ appointment of Receiver, cannot

be considered as submission of a statement on the substance of the dispute, resulting in submitting oneself to the jurisdiction of the court, as that is done to avoid an interim order being made against him - In the instant case, the counter affidavit filed by the appellant in reply to the notice of motion (seeking appointment of a receiver and grant of a temporary injunction) clearly stated that the reply affidavit was being filed for the limited purpose of opposing the interim relief.

(iii) s.8 - Application for referring the dispute to arbitration - Limitation - Defendant filed detailed affidavit opposing interim injunction application filed by plaintiff in a pending suit - Held: Though s.8 of the Act does not prescribe any time limit for filing an application under that section, the scheme of the Act and the provisions of the section clearly indicate that the application thereunder should be made at the earliest - A party who willingly participates in the proceedings in a suit and subjects himself to the jurisdiction of the court, cannot subsequently seek for reference to arbitration in view of the existence of an arbitration agreement - However, in the instant case, at the relevant time, the un-amended r. 1 of O. 8, CPC was governing the filing of written statements and the said rule did not prescribe any time limit for filing written statement - The plaintiff in the suit had filed an application for temporary injunction and appointment of Receiver and that was pending for some time - Thereafter, talks were in progress for arriving at a settlement out of court - When such talks failed, the defendant filed an application u/s.8 before filing the written statement or filing any other statement which could be considered to be a submission of a statement on the substance

of the dispute - High Court was, therefore, not justified in rejecting the application u/s.8 on the ground of delay - Code of Civil Procedure, 1908 - O. 8, r. 1.

(iv) ss.8 and 11 - Nature and scope of issues arising for consideration in an application u/s.11 for appointment of arbitrator and those arising in an application u/s.8, seeking reference to arbitration - Distinction between - Held: Nature and scope of issues arising for consideration in an application u/s.11 are far narrower than those arising in an application u/s.8 - While considering an application u/s.11, the Chief Justice or his designate would not embark upon an examination of the issue of 'arbitrability' or appropriateness of adjudication by a private forum, once he finds that there was an arbitration agreement between or among the parties, and would leave the issue of arbitrability for the decision of the arbitral Tribunal - But where the issue of 'arbitrability' arises in the context of an application u/s.8 in a pending suit, all aspects of arbitrability have to be decided by the court seized of the suit, and cannot be left to the decision of the Arbitrator.

(v) ss.8, 34(2)(b) and 48(2) - Arbitrable disputes - Term 'arbitrability' - Meaning of - Jurisdiction of the arbitral tribunal - Held: A dispute, even if it is capable of being decided by arbitration and falling within the scope of arbitration agreement, will not be 'arbitrable' if it is not enumerated in the joint list of disputes referred to arbitration, or in the absence of such joint list of disputes, does not form part of the disputes raised in the pleadings before the arbitral tribunal - Every civil or commercial dispute, either contractual or non-

contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of arbitral tribunals is excluded either expressly or by necessary implication - However, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, u/s.8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes - Examples of non-arbitrable disputes stated.

(vi) s.8 - Arbitrability of dispute - Claim for specific performance - Agreement to sell/agreement to mortgage - Held: An agreement to sell or an agreement to mortgage does not involve any transfer of right in rem but creates only a personal obligation - Therefore, if specific performance is sought either in regard to an agreement to sell or an agreement to mortgage, the claim for specific performance will be arbitrable.

(vii) s.8 - Arbitrability of dispute - Mortgage suits - Held: A mortgage is a transfer of a right in rem - A suit for sale, foreclosure or redemption of a mortgaged property, should only be tried by a public forum, and not by an arbitral tribunal - Consequently, the court where the mortgage suit is pending, should not refer the parties to arbitration - The suit in question being one for enforcement of a mortgage by sale, it should be tried by the court and not by an arbitral tribunal - Code of Civil Procedure, 1908 - O. 34.

(viii) Rights - Right in rem and right in personam - Distinction between - Held: A right in rem is a right exercisable against the world at large, as

contrasted from a right in personam which is an interest protected solely against specific individuals - Correspondingly, judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and Judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself - Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration - This is not however a rigid or inflexible rule - Judgment - Judgment in rem and judgment in personam.

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Emergency Commissioned Officer under the 1973 Rules - He, therefore, cannot claim benefit under 1973 Rules - The 1980 Rules were to have a limited application viz. regularisation of appointment of Demobilised Officers - U.P. Non-technical (Class II) services (Reservation of Vacancies for Demobilised Officers) Rules, 1973 - r.3 - U.P. Non-technical (Class II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1980.

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the Rules with the relevant evidence - In case the cost of bottles and crates is amortized and included in the retail sale price of the aerated beverages, evidence can also be placed in that regard in order to claim refund - The authorities may consider the proposal of the manufacturer or on their part devise a more convenient and workable mechanism for levy and collection of octroi.

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(ii) s. 3A (2) - Re-determination of annual production - Held: Second proviso to sub-s.(2) of s.3A contemplates re-determination of annual production in a case when there is an alteration or modification in any factor relevant to production

of specified goods, but such re-determination has again to be as per the formula in r.3(3) of the 1997 Rules.

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(i) s.14(iv) - Restrictions on power of States to tax "declared goods" - Items mentioned in clause (iv) of s.14 - Categories falling under "iron and steel" - Tax on sale of "stainless steel wire" - Held: "Stainless steel wire" is not covered under the entry of "tools, alloys and special steels" in entry no. (ix) of clause (iv) and, therefore, does not fall under "Iron and Steel" as defined u/s.14(iv) - "Stainless steel wire" also cannot be read into item no. (xv) which reads as "wire rods and wires-rolled, drawn, galvanized, aluminized, tinned or coated such as by copper" - Expression "Wire rods and wires" which is mentioned in item no.(xv) would not and cannot cover the expression "tools, alloy and special steels" of entry no. (ix) nor would it refer to the expression "Iron and Steel" as each item used in entry nos. (ix) and (xv) are independent items not depending on each other at all - Therefore, "stainless steel wire" cannot be treated as a declared commodity u/s.14.

(ii) Transformation of commercial commodity - Effect of - Held: When one commercial commodity is, by manufacturing process etc., transformed into another, it becomes a separate commodity for sales tax purposes.

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CHILD WELFARE:

Visitation rights to parent - Held: An interim order of custody in favour of the parent should not insulate the minor from the parental touch and influence of the other parent which is so very important for the healthy growth of the minor and the development of his personality - In the instant case, father granted visitation rights to enable the two to stay in touch and share moments of joy, learning and happiness with each other - Trial court shall pass necessary orders in this regard without delay and without permitting any dilatory tactics in the matter.

(Also see under: Guardian and Wards Act, 1890)

Ruchi Majoo v. Sanjeev Majoo 674

CIRCULARS/GOVERNMENT ORDERS/
NOTIFICATIONS:

(1) Revenue Circulars - Binding effect of - Held: Circulars issued by the revenue are binding on the departmental authorities and they cannot be permitted to repudiate the same on the plea that it is inconsistent with the statutory provisions or it mitigates the rigour of the law.

State of Tamil Nadu and Anr. v. India Cements Ltd. and Anr. 395

(2) Notification 17/2001 - Cus dated 01.01.2001. (See under: Customs Act, 1962) 195

(3) G. O. Ms. No. 119 dated 13.04.1994 issued by Government of Tamil Nadu. (See under: Tamil Nadu General Sales Tax Act, 1959) 395

(4) Ministry of Personnel and Training O. M. dated 06.06.1985.

(See under: Service Law) 548

CODE OF CIVIL PROCEDURE, 1908:

(1) s. 13.

(See under: Doctrines/Principles) 674

(2) s.151 - Appellants filed partition suit against the respondents - Parties to the suit entered into compromise - Trial court passed decree in terms of the compromise - Subsequently, respondents filed miscellaneous petition through one of the attorneys for recalling the decree on the allegation that the signatures on the compromise were forged - Petition dismissed by trial court - Respondents' revision allowed by High Court - Held: The finding of fact recorded by the trial court that there was no forgery was based on material on record and could not have been validly interfered with in revision by High Court - Trial court rightly held that holder of power of attorney could not claim any independent capacity in the proceedings - The principal (respondents) signed the compromise for partition of the property, which in law amounts to implied revocation of power of attorney - Respondents cannot be allowed to say that their own act of signing the compromise petition was collusive and fraudulent - Judgment of High Court set aside and the order of trial court restored - Contract Act, 1872 - s.207, Illustration.

Deb Ratan Biswas and Ors. v. Most. Anand Moyi Devi and Ors. 303

(3) O. 8, r. 1.

(See under: Arbitration and Conciliation Act, 1996) 310

(4) O.12, r. 6 - Judgment on admission - Recovery suit - Respondent filed application praying for decree alleging that appellant had admitted liability for sum of Rs. 74.57 lakhs as per minutes of the meeting held between representatives of the respondent and the appellant - High Court holding that the minutes of the said meeting recorded an admission, and made a judgment on admission u/O. 12 r. 6 in regard to the said amount in favour of the respondent - Held: Not justified - A judgment can be given on an 'admission' contained in the minutes of a meeting - But the admission should be categorical - It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it - O.12 r. 6 being an enabling provision, it is neither mandatory nor pre-emptory but discretionary - Since a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits, the discretion should be used only when there is a clear 'admission' which can be acted upon - On facts, the minutes of the meeting (as relied on by the respondent) did not refer to any admission by appellant to pay any amount to respondent which could result in a judgment on admission u/O. 12 r. 6 - Orders of the High Court set aside.

Himani Alloys Ltd. v. Tata Steel Ltd. 60

(3) O. 33, r.1, Explanation I, and O.44, r.1 - Instituting suit or appeal as an indigent person - Expression 'sufficient means' - Connotation of - Held: The expression "sufficient means" in O. 33, r.1 contemplates the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay court fee - Financial

assistance received from the family members or close friends can be taken into account in order to determine whether a person is possessed of sufficient means or is indigent to pay requisite court fee - On facts, the judgment-debtor cannot be declared as an indigent person in order to prosecute the regular first appeals before High Court.

Mathai M. Paikeday v. C. K. Antony 230

CODE OF CRIMINAL PROCEDURE, 1973:

(1) (i) ss. 154 and 157 - Recording of FIR and sending of special report to Magistrate - Delay - Effect of - Held: Every delay is not fatal, unless prejudice to the accused is shown - On facts, there was no delay in lodging the FIR nor in sending the special report to Magistrate.

(ii) s.157 - Sending of report of commission of offence to jurisdictional Magistrate - Delay - Held: The expression 'forthwith' in the section does not mean that prosecution is required to explain delay of every hour in sending copy of FIR to Magistrate - In the given case, if number of dead and injured is high, delay in dispatching the report is natural - Purpose of s.157 - Explained.

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

Bhajan Singh @ Harbhajan Singh and Ors. v. State of Haryana 1

(2) s. 227 - Application for discharge - Mumbai riots - Suleman Bakery incident of 9.1.1993 - Miscreants from rooftop of Suleman Bakery firing shots and pelting stones, bottles and acid bulbs towards police picket set up opposite to it - Joint

Commissioner of Police reached the spot with Special Operations Squads and ordered to arrest the miscreants - In the process twelve persons got injured and eight died - FIR lodged against police personnel for offences punishable u/ss. 302/34 and 307/34, PC - Trial court ordered discharge of the nine respondents - High Court confirmed the order in revision - Held: The trial court relied on the statements of the inmates and held that the police did not enter the building with the intention to kill the inmates - The policemen were acting in discharge of their duty and, therefore, entitled to the protection u/s 161 of the Bombay Police Act - Trial court found that there was no justifiable case against the police officials who even in the volatile situation did not open fire at all - High Court also examined the truthfulness of the statements and the documents and rejected the revision against the order of discharge passed by trial court - In the circumstances, there is no reason to take a different view than the one which has been taken by High Court - Bombay Police Act - s.161.

Noorul Huda Maqbool Ahmed v. Ram Deo Tyagi and Ors. 782

(3) s. 357.
(See under: Fatal Accidents Act, 1855) 217

(4) s. 378 - Appeal against acquittal - Scope of interference by Supreme Court - General principles - Explained - On facts, order of acquittal cannot be sustained since it is based on some contradiction in the statements of the witnesses while completely ignoring the entire case of the prosecution particularly when prosecution has

been able to prove its case beyond reasonable doubt.

State of Rajasthan Th. Secy.Home Dept. v. Abdul Mannan and Anr. 1099

(5) s.482 - Quashing of proceedings - Petition for quashing the FIR registered against husband and three others for offences punishable u/ss.498A, 406 r/w s.34 IPC - High Court quashing the FIR against in-laws on the ground that the appellant-complainant was a citizen of USA and had all along lived in USA with her son and husband, away from her in-laws - Held: No reason to interfere with the orders passed by High Court - Penal Code, 1860 - ss.498-A, 406 r/w s.34.

(Also see under: Guardian and Wards Act, 1890)

Ruchi Majoo v. Sanjeev Majoo 674

COMMISSION OF INQUIRY:

Report of Commission - Evidentiary value of - Held: The observations and findings in the report of the Commission are only meant for the information of the Government - The courts are not bound by the finding of the Commission of Inquiry and they have to arrive at their own decision on the evidence placed before them in accordance with law.

Noorul Huda Maqbool Ahmed v. Ram Deo Tyagi. 782

COMPENSATION:

(1) (See under: Fatal Accidents Act, 1855) 217

(2) (See under: Education/Educational Institutions) 611

(3) (See under: Motor Vehicles Act, 1988) 810

CONSTITUTION OF INDIA, 1950:

(1) Art. 14 - Differential treatment given to those who joined the Army during emergency cannot be termed as discriminatory and arbitrary.

(Also see under: Armed Forces; and Service Jurisprudence)

Rajendra Pratap Singh Yadav v. State of U.P. and Ors. 910

(2) Arts. 77 and 166 - Policy decision - Connotation of - Acquisition of land - Land Acquisition Officer awarding compensation to land-owners and beneficiaries of illegal transfers and ordering allotment of 1000-2000 sq. yd. plots to land-owners, their transferees and nominees/sub-nominess, out of the acquired land - Courts holding that Land Acquisition Officer did not have jurisdiction to direct such allotment - Recommendations made by Committee set up by Minister of Urban Development and Housing, suggesting the methodology for allotment of land in terms of directions given by Land Acquisition Officer - Letter dated 6.12.2001 issued purporting to contain the policy - Held: Unless an order is expressed in the name of the President or the Governor, as the case may be, and is authenticated in the manner prescribed by the rules, the same cannot be treated as an order made on behalf of the Government - Letter dated 6.12.2001 cannot be treated as a policy decision of the Government within the meaning of Art. 166 - Since the so-called policy decision contained in letter dated 6.12.2001 is contrary to the law declared by Supreme Court, the State Government and the appellant are restrained from taking any

action in future on the basis of the said letter - Administrative Law - Policy decision.

(Also see under: Rajasthan Land Acquisition Act, 1953)

Jaipur Development Authority and Ors. v. Vijay Kumar Data and Anr. 242

(3) Art. 136 - Special leave petition filed against the order passed in a writ petition modifying the status-quo order granted earlier - SLP filed against the order permitting withdrawal of the writ petition - Maintainability of - Held: Petitions filed under Art. 136 should not be rejected on the ground of alternative remedy nor should it be rejected on the ground that SLP is filed against order permitting withdrawal of writ petition.

(Also see under: Transfer of Property Act, 1882)

M/s. L.K. Trust v. EDC Ltd. and Ors. 569

(4) Art. 136 - Relief under - Appellant-Institutions made false statement of facts for seeking relief under Art. 136 and obtained interim orders on the basis of mis-statements made - Held: Appellants not entitled to relief under Art. 136 - Costs of Rs 2 lakhs imposed - Costs - Administration of justice - Abuse of process of court.

(Also see under: Education/Educational Institutions)

Abhyudya Sanstha v. Union of India and Ors. 611

(5) Art. 226 - Writ petitions involving disputed questions of fact in regard to forest/mining/environment matters - Duty of the court - Held: Courts should share the legislative concern to

conserve the forests and the mineral wealth of the country - Courts should be vigilant in issuing final or interim orders in forest/mining/Environment matters - Writ petitions involving mineral wealth, forest conservation or environmental protection should not be disposed of without giving due opportunity to the departments concerned to verify the facts and file their counters/objections in writing - On facts, writ petition was disposed of without giving due opportunity to the mining and forest departments of the State Governments and the MoEF, to file their counter-affidavits - Anxiety to render speedy justice should not result in sacrifice of the public interest - High Court committed a serious error in hurriedly deciding seriously disputed questions of fact without calling for a counter and without there being any proper verification of the claim of the first respondent by the authorities concerned - Order of High Court cannot be sustained - Costs of Rs.50,000/- imposed upon the first respondent payable to the State Government - Environment - Forest (Conservation) Act, 1980 - s.2 - Environment Protection Act, 1986.

State of Karnataka and Ors. v. Janthakal Enterprises and Anr. 287

(6) Art. 226 - Effect of delay in filing writ petition - Discussed - Held: Though no limitation has been prescribed for filing a petition under Art.226 of the Constitution, High Court ought not to entertain petitions filed after long lapse of time because that may adversely affect the settled/crystallized rights of the parties - If the writ petition is filed beyond the period of limitation prescribed for filing a civil suit for similar cause, High Court will treat

the delay unreasonable and decline to entertain the grievance of the petitioner on merits.

Banda Development Authority, Banda v. Moti Lal Agarwal and Ors. 435

(7) (i) Art. 226 - Belated writ petition challenging the Notification issued under the Evacuee Property Act, declaring certain properties as evacuee property - Maintainability of - Held: High Court ought not to have entertained the writ petition and granted relief to the writ petitioners since there was inordinate and unexplained delay in approaching the court/authorities at every stage for redressal of their grievance - They claimed wrong reliefs/incomplete reliefs before the Authorities - They questioned the correctness of the said Notification by way of filing an amendment application - Also in the earlier writ petition challenging the Notification, the finding regarding delay and failure to avail alternate remedy had attained finality - More so, during the period of delay, interest accrued in favour of the third party - Delay/Laches.

(ii) Art. 226 - Writ petition filed by original owner of land challenging the Notification issued u/s. 7 of the Evacuee Property Act declaring certain properties as evacuee properties dismissed by High Court - Subsequent writ petition entertained by Division Bench of High Court- Held: The judgment and order of High Court having attained finality was binding on the authorities under the Evacuee Property Act - Division Bench of High Court could not have permitted the writ petitioners to re-agitate the correctness or otherwise of the Notification issued u/s. 7 of the Evacuee Property Act in the subsequent writ petition, which was not

maintainable in respect of an issue concluded between the parties in the earlier writ petition - Administration of Evacuee Property Act, 1950.

(iii) Arts. 226 and 227 - High Court while entertaining writ petition filed under Arts. 226 and 227 wherein the proceedings u/s. 7 of the Evacuee Property Act were questioned, going into disputed questions of facts - Maintainability of - Held: Writ petition is maintainable - Under the Evacuee Property Act, there is specific bar for the civil court to adjudicate on the issue whether certain property is or is not evacuee property - This issue can be decided only by the custodian under the Act - Any person aggrieved by the findings of the custodian can avail the other remedies provided under the Act - Thus, the finding and the conclusion reached by the Authorities under the Act in an appropriate case can be questioned in a petition filed under Art. 226 - Administration of Evacuee Property Act, 1950.

Shankara Co-op Housing Society Ltd. v. M. Prabhakar and Ors. 468

(8) Art. 226 - Direction by Division Bench of High Court in writ appeals to authorities to fill up 5% vacancies of Primary School Teachers by physical trained candidates - Held: At no point of time the writ petitioners had challenged the amendment of Rules or the corrigendum issued by the Commission - Neither any statute nor rule nor the policy of the State of Jharkhand provide for filling up certain percentage of the posts of Primary School Teachers by candidates trained in physical education - Any direction to the State Government to make appointment of Physical Trained

candidates as Primary School Teachers would be tantamount to framing a policy and any such direction in matters of policy is uncalled for - Jharkhand Primary Teachers' Appointment Rules, 2002.

(Also see under: Service Law)

State of Jharkhand and Ors. v. Ashok Kumar Dangi and Ors. 748

(9) Art. 226.

(See under: Rajasthan Land Acquisition Act, 1953) 242

CONTRACT ACT, 1872:
s. 207, Illustration.
(See under: Code of Civil Procedure, 1908) 303

COSTS:
(1) (See under: Education/Educational Institutions; and Constitution of India, 1950) 611
(2) (See under: Rajasthan Land Acquisition Act, 1953) 242

CONTRIBUTORY PENSION FUND RULES, 1962:
r. 38.
(See under: Service Law) 548

CRIMES AGAINST WOMEN:
(See under: Penal Code, 1860) 1080

CRIMINAL JURISPRUDENCE:
Theory of 'substantial compliance' - Held: It is a settled canon of criminal jurisprudence that when a safeguard or a right is provided, favouring the accused, compliance thereto should be strictly construed - The theory of 'substantial compliance'

would not be applicable to situations where the punishment provided is very harsh and is likely to cause serious prejudices against the suspect - The safeguard cannot be treated as a formality, but it must be construed in its proper perspective, compliance thereof must be ensured - Narcotic Drugs and Psychotropic Substances Act, 1985 - Interpretation of statutes.

State of Delhi v. Ram Avtar @ Rama 1129

CRIMINAL LAW:

(1) Criminal trespass - Common intention - Common object - Mumbai riots - Suleman Bakery incident - Miscreants firing from the rooftop of the building at the police picket - Joint Commissioner of Police reached the spot with Special Operations Squads (SOS) - Ordered to arrest the miscreants - When despite the orders, door of building was not opened by inmates, door ordered to be broken open - In the process, twelve persons got injured and other eight succumbed to injuries - Held: It cannot be disputed that situation in Mumbai on the day of incident was extremely volatile - The police Officer was justified in directing to break open the door and enter the building - Therefore, entry could not amount to trespass or criminal trespass - The members of SOS had duty to quell the riots - Therefore, SOS cannot be said to be an unlawful assembly - Under such circumstances, if in that volatile situation some of the police personnel did not fire a single bullet, they cannot be made vicariously liable for the acts of some others which acts are not shown to be with a common intention or common object of killing the people - Trial court and the revisional court have rightly taken the view that there could be no

common intention shared on the part of those who did not fire a single bullet.

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(2) Motive.

(See under: Penal Code, 1860) 41

CUSTOMS ACT, 1962:

(1) s.130(3) - Reference - Scope of - Confiscation of seized silver - Silver weighing 194.250 kgs. which was locally purchased, confiscated u/s.120(2) and silver weighing 1713.807 kgs. imported illegally from abroad, confiscated u/s.111(d) - Tribunal directed confiscation of entire quantity of silver u/s.120(2) - Provision of s.120(2) was not invoked in the show cause notice for silver weighing 194.250 kgs. - Held: Tribunal was not justified in invoking the provisions of s.120(2) to order confiscation of silver when the said provision was not invoked in the show cause notice and when the appellant was not given any opportunity of being heard in the matter by the Tribunal - High Court was justified in refusing to expand the scope of the reference so as to include the silver weighing 1713.807 kgs. which was confiscated u/s. 111(d) of the Act while hearing the reference with regard to silver weighing 194.250 kgs. but confiscated under a different provision of law, namely, u/s.120(2) of the Act - High Court rightly held that since two different laws are applicable, there was no scope of expanding reference to include silver weighing 1713.807 Kgs also - Reference.

Rajmal Lakhichand and Anr. v. Commr. Cen. Exc. and Customs, Aurnagabad 850

(2) Notification No. 17/2001-Cus dated 1.1.2001 - Exemption from basic customs duty and additional customs duty in respect of specified machines - Appellant and another company entered into a joint venture agreement for award of a contract for construction of road on National Highway - Contract given to the said joint venture company - Import of machinery specified in the Notification by appellant - Claim by appellant for exemption under the Notification - Held: Not sustainable - Contract was granted to joint venture company and not to the appellant - Import of the specified machine by appellant could not be considered to be an import by joint venture company "a person who has been awarded a contract for construction of the roads in India", so as to fulfill Condition No.38, laid down in Exemption Notification No.17/2001/Cus - Therefore, neither appellant nor joint venture company fulfilled the requisite requirement stipulated in Condition No.38 of the Exemption Notification No. 17/2001. (Also see under: Interpretation of Statutes)

Gammon India Ltd. v. Commissioner of Customs, Mumbai 195

DEEDS AND DOCUMENTS:

Power of Attorney - Execution of - Effect - Held: Even after execution of a power of attorney the principal can act independently and does not have to take the consent of the attorney - The attorney is only an agent of the principal.

Deb Ratan Biswas and Ors. v. Most. Anand Moyi Devi and Ors. 303

DELAY/LACHES:

(1) Delay in filing writ petition.

(See under: Constitution of India, 1950) 435 and 468

(2) Delay in lodging FIR.
(See under: FIR) 1080

(3) Delay in lodging FIR and sending special report to jurisdictional Magistrate.
(See under: Code of Criminal Procedure, 1973) 1

(4) (See under: Arbitration and Conciliation Act, 1996) 310

DELHI POLICE ACT, 1978:

s. 21.
(See under: Service Law) 558

DELHI POLICE (F & A) RULES, 1980:

r. 16 (iii).
(See under: Service Law) 558

DISPLACED PERSONS (COMPENSATION AND REHABILITATION) ACT, 1954:

(i) s.12 - Property notified u/s. 7 of the Evacuee Property Act - Subsequently issuance of Notification u/s. 12 - Acquisition of evacuee property for rehabilitation of displaced persons - Effect of - Held: Notification issued u/s. 7 of the Evacuee Property Act declaring the property to be evacuee property was valid in law - In view of the Notification issued by the Central Government u/s. 12, the property vested in the Central Government - Thus, the property lost the status of evacuee property - Administration of Evacuee Property Act, 1950 - s. 7.

(ii) s. 24 - Power of revision of Chief Settlement Commissioner - Scope of - Held: Chief Settlement

Commissioner can revise the order if in his opinion the orders passed by the officers named in the Section are either illegal or improper - On facts, the Chief Settlement Commissioner invoked his revisional powers at the request of the allottees/ displaced persons to revise the proceedings and the order passed by the Collector-cum-Deputy Custodian under the provisions of the Evacuee Property Act - Therefore, the orders passed by the Chief Settlement Commissioner is without jurisdiction and non-est in law - Administration of Evacuee Property Act, 1950.

Shankara Co-op Housing Society Ltd. v. M. Prabhakar and Ors. 468

DOCTRINES/PRINCIPLES:

(1) (i) Doctrine of proportionality.
 (ii) Doctrine of margin of appreciation.
 (iii) Intergenerational equity.
 (iv) Polluter pays principal.
 (See under: Environmental Law) 954

(2) Principle of comity of courts - Held: The principle of 'comity of courts' ensures that foreign judgments and orders are unconditionally conclusive of the matter in controversy - This is all the more so where the court in India is dealing with matters concerning the interest and welfare of minors including their custody - Interest and welfare of the minor being paramount, a competent court in India is entitled and duty bound to examine the matter independently, taking the foreign judgment, if any, only as an input for its final adjudication - In the instant case, the father's case that the minor was removed from the jurisdiction of the American

courts in contravention of the orders passed by them, was not factually correct - There were no proceedings between the parties in any court in America before they came to India with the minor - Dismissal of the application for custody in disregard of the attendant circumstances was not a proper exercise of discretion by High Court - Interest of the minor shall be better served if he continued in the custody of his mother - High Court was not right in declining exercise of jurisdiction on the principle of comity of courts - Code of Civil Procedure 1908 - s.13.

(Also see under: Guardians and Wards Act, 1890)

Ruchi Majoo v. Sanjeev Majoo 674

(3) Principle of natural justice.
 (See under: Environmental Law) 558
 (4) Principle of res-judicata.
 (See under: Res judicata) 468

EASEMENTS ACT, 1882

(See under: Madhya Pradesh Land Revenue Code, 1959) 817

EDUCATION/EDUCATIONAL INSTITUTIONS:

Illegal admissions - Appellant-Educational Institutions filed SLP and by making misleading statements before the Court that they were granted recognition by the Regional Committee of the National Council for Teacher Education (NCTE), obtained interim orders directing the State Government to allot students to the appellant institutions for the D.Ed course - During pendency of SLP, the Regional Committee of the NCTE refused recognition to the appellant institutions -

Held: Appellants are not entitled to the relief under Art. 136 - They deserve to be non-suited because they did not approach the Court with clean hands - Their students are not eligible for the award of degree by the affiliating body - Appellants directed to pay Rs. 1 lakh to each of the students by way of compensation - Also cost of Rs. 2 lakh imposed on each of the appellants - Costs - Compensation - National Council for Teacher Education Act, 1993 - s. 14 - National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2007 - Regulations 7 and 8 - Constitution of India, 1950 - Art. 136.

(Also see under: Constitution of India, 1950)

Abhyudya Sanstha v. Union of India and Ors. 611

ENVIRONMENT (PROTECTION) ACT, 1986:

(1) Constitution of India, 1950) 287

(2) (See under: Environmental Law) 954

ENVIRONMENT PROTECTION RULES, 1986:

r. 5 (3) (d).
(See under: Environmental Law) 954

ENVIRONMENTAL LAW:

(i) Environment and development - Limestone mining in tribal area - Role of tribals and rural public - Held: Public participation provides a valuable input in the process of identification of forest - The natives and indigenous people are fully aware and they have knowledge as to what constitutes conservation of forests and development - They equally know the concept of forest degradation - They are equally aware of

systematic scientific exploitation of limestone mining without causing of "environment degradation" - However, they do not have the requisite wherewithal to exploit limestone mining in a scientific manner - The word "development" is a relative term - One cannot assume that the tribals are not aware of principles of conservation of forest - In the instant case, limestone mining has been going on for centuries in the area and it is an activity which is intertwined with the culture and the unique land holding and tenure system of the area - On the facts of the case, the MoEF exercised due diligence in the matter of forest diversion.

(ii) Environment and utilization of natural resources - Balancing of equities - Held: Time has come to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review - Utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices - In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review - The court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint - Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play - Judicial Review - Doctrine of proportionality - Doctrine of margin of appreciation - Polluter pays

principle - Intergenerational equity.

(iii) Environment and sustainable development - Utilization of natural resources - Guidelines to be followed in future cases - It is declared that the National Forest Policy, 1988 which lays down far-reaching principles must necessarily govern the grant of permissions u/s 2 of the Forest (Conservation) Act, 1980 as the same provides the road map to ecological protection and improvement under the Environment (Protection) Act, 1986 - The principles/ guidelines mentioned in the National Forest Policy, 1988 should be read as part of the provisions of the Environment (Protection) Act, 1986 read together with the Forest (Conservation) Act, 1980 - This direction is required to be given because as on date there is no machinery for implementation of the National Forest Policy, 1988 read with the Forest (Conservation) Act, 1980 - Further guidelines enumerated - National Forest Policy, 1988 - Environment (Protection) Act, 1986 - Forest (Conservation) Act, 1980 - Environment (Protection) Rules, 1986 - r.5(3)(d).

Lafarge Umiam Mining Pvt. Ltd.

T.N. Godavarman Thirumulpad v. Union of India and Ors. 954

EQUITY:

Intergenerational equity.

(See under: Environmental Law) 954

EVIDENCE:

(1) Circumstantial evidence - Appreciation of - Held: Each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so

proved must form a chain of events from which the only irresistible conclusion that could be drawn is the guilt of the accused and that no other hypothesis against the guilt is possible - In a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof - The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused - There is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions.

Inspector of Police, Tamil Nadu v.

John David 354

(2) (i) Circumstantial evidence.

(ii) Extra-judicial confession.

(iii) Recovery of blood-stained Arts. - Proving of. (See under: Penal Code, 1860) 41

(3) Contradictions in the statements of prosecution witnesses - Held: Every small discrepancy or minor contradiction which may erupt in the statements of a witness because of lapse of time, keeping in view the educational and other background of the witness, cannot be treated as fatal to the case of the prosecution - The court must examine the statement in its entirety, correct perspective and in light of the attendant circumstances brought on record by the prosecution.

Om Prakash v. State of Haryana 1080

(4) Evidence of interested witnesses.
(See under: Penal Code, 1860; and
Witnesses) 1037

(5) Evidentiary value of Report of Commission.
(See under: Commission of Enquiry) 782

(6) Testimony of eye-witness and injured witness
vis-à-vis medical evidence - Legal position -
Explained - Held: In the instant case, two persons
died on the spot and other received grievous
injuries - In such a fact situation the witness is not
supposed to give exact account of the incident,
and minor discrepancies on trivial matters, which
do not affect the core of prosecution case, may
not prompt the court to reject the evidence in its
entirety - Penal Code, 1860 - ss. 302/149 and
307/149.

(Also see under: Penal Code, 1860)

*Bhajan Singh @ Harbhajan Singh and
Ors. v. State of Haryana* 1

EVIDENCE ACT, 1872:

ss.3, 35 - Applicability of provisions of the Act to
the Representation of the People Act, 1951 -
Discussed - Representation of the People Act,
1951 - s.87.

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

*Kodikunnil Suresh @ J. Monian v.
N.S. Saji Kumar, Etc. Etc.* 640

FEE/CESS:

Non agricultural cess.

(See under: Maharashtra Land Revenue
Code, 1966) 863

FIR:

(1) Rape - Delay in lodging FIR - Effect on
prosecution case - Held: A young girl who
underwent the trauma of rape is likely to be
reluctant in describing the incident to anybody
including her family members - In the instant case,
the moment the victim told her parents, the report
was lodged with the police without any delay -
Since reasonable explanation was rendered by
the prosecution, delay would not prove fatal to the
case of prosecution.

Om Prakash v. State of Haryana 1080

(2) (See under: Code of Criminal
Procedure, 1973) 1

FATAL ACCIDENTS ACT, 1855:

Suit for damages - Accused persons convicted
under the provisions of Penal Code for committing
murder - Suit filed under the Act, by dependents
of the deceased, claiming damages for his death
- Civil Judge awarded compensation of Rs. 3 lakhs
with interest @ 12% p.a. - First appellate court
reduced the compensation to Rs. 2 lakhs - Order
upheld by High Court - Held: Fatal Accidents Act
is an Act to provide compensation to the families
for loss occasioned by the death of a person
caused by actionable wrong - In sub-s. (1)(c) of s.
357, there is clear indication that apart from the
punishment of fine, the person convicted of any
offence of having caused the death of another
person or of having abetted the commission of
such an offence may also be liable to face a civil
action for damages under the Fatal Accidents Act
in a suit for damages - Rule of double jeopardy is
not applicable to the instant case - On facts, there
is no scope for any interference with the amount

of compensation awarded by the first appellate court - However, rate of interest modified to 6% p.a. - Code of Criminal Procedure, 1973 - s. 357.

Suba Singh and Anr. v. Davinder Kaur and Anr. 217

FOREST (CONSERVATION) ACT, 1980:

(1) (See under: Constitution of India, 1950) 287

(2) (See under: Environmental Law; and Mines and Minerals) 954

GUARDIANS AND WARDS ACT, 1890:

s.9 - Jurisdiction of the court to entertain claim for grant of custody of a minor - Held: Any challenge to the jurisdiction of the court as regards the custody of the minor has to be seen in the context of the averments made in the pleadings of the parties and the requirement of s.9 whereunder the solitary test for determining the jurisdiction of the court is the 'ordinary residence' of the minor - The expression used is "where the minor ordinarily resides" - In the instant case, the correspondence exchanged between the parents of the minor clearly showed that the minor was ordinarily residing with the mother (appellant) in Delhi and was admitted to a school and studying for the past three years - High Court failed to notice these aspects and fell in error in dismissing the application filed by the appellant for custody of the minor on the ground that the court at Delhi had no jurisdiction - Jurisdiction.

(Also see under: Jurisdiction)

Ruchi Majoo v. Sanjeev Majoo 674

HOT REROLLING STEEL MILLS ANNUAL CAPACITY DETERMINATION RULES, 1997:

r. 5 read with rr. 4(2), 3(2), 3(3) - Re-determination

of annual capacity of production of specified goods - Applicability of r.5 - Held: r. 5 will be attracted for determination of annual capacity of production of the factory when any change in the installed machinery or part thereof is intimated to Commissioner of Central Excise in terms of r. 4(2) - Central Excise Act, 1944 - s.3(A) (2).

Commissioner of Central Excise v. M/s. Doaba Steel Rolling Mills. 934

INTERNATIONAL LAW:

Principle of comity of courts.

(See under: Guardians and Wards Act, 1890; Jurisdiction; and Doctrines/ Principles) 674

INTERPRETATION OF STATUTES:

(1) (i) Plain interpretation - Held: When the language of the statute is plain and unambiguous, the court must give effect to the words used in the statute.

(ii) Taxing statute - Held: In a taxing Act one has to look merely at what is clearly said and there is no room for any intendment - In a taxing statute nothing is to be read in, nothing is to be implied, one can only look fairly at the language used.

M/s. Bansal Wire Industries Ltd. and Anr. v. State of U.P. and Ors. 416

(2) Once a statute expires by efflux of time, the question of giving effect to a right arising thereunder may not arise.

Rajendra Pratap Singh Yadav v. State of U.P. and Ors. 910

(3) Taxing statute - Interpretation of - Held: A taxing statute should be strictly construed - Intention of legislature is primarily to be gathered from the words used in the statute.

Commissioner of Central Excise v. M/s. Doaba Steel Rolling Mills. 934

(4) Taxing statutes - Strict construction - Held: A provision providing for an exemption has to be construed strictly.

(Also see under: Customs Act, 1962)

Gammon India Ltd. v. Commissioner of Customs, Mumbai 195

(5) (See under: Tamil Nadu General Sales Tax Act, 1959) 395

INVESTIGATION/INQUIRY:

(1) Deficiencies investigation - Held: Minor loopholes and irregularities in the investigation process cannot form the crux of the case on which an accused can rely upon to prove his innocence when there are strong circumstantial evidences deduced from the investigation which logically and rationally point towards the guilt of the accused.

Inspector of Police, Tamil Nadu v. John David 354

(2) Interrogation - Presence of lawyer. (See under: Narcotic Drugs and Psychotropic Substances Act, 1985). 889

JAIPUR DEVELOPMENT AUTHORITY ACT, 1982: s.83.

(See under: Rajasthan Land Acquisition Act, 1953) 242

JHARKHAND PRIMARY TEACHERS' APPOINTMENT RULES, 2002:
rr. 2 (b) and 16.

(See under: Service Law; and Constitution of India, 1950) 748

JUDICIAL DISCIPLINE:

(1) Precedent - Binding effect - Held: If a Bench of a Tribunal, in identical fact-situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the Tribunal on earlier occasion, that would be destructive of the institutional integrity itself - If a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, the propriety demands that it should place the matter before the President of the Tribunal so that the case is referred to a larger Bench, for which provision exists in the Act itself.

Gammon Indian Ltd. v. Commissioner of Customs, Mumbai 195

(2) Judicial discipline:
(See under: Rajasthan Land Acquisition Act, 1953) 242

JUDICIAL REVIEW:

(1) (See under: Environmental Law) 954

(2) (See under: Service Law) 188

JURISDICTION:

(1) *Parens Patriae* jurisdiction - Jurisdiction of the court to entertain the claim for grant of custody of a minor - Recognition of decrees and orders passed by foreign courts - Held: Courts in India are bound to determine the validity of foreign decrees and orders keeping in view the provisions

of s.13, CPC as amended by the Amendment Acts of 1999 and 2002 - The duty of court exercising its Parens Patraie jurisdiction as in cases involving custody of minor children is onerous - Welfare of the minor being the paramount consideration, the court has to approach the issue regarding the validity and enforcement of a foreign decree or order carefully - Simply because a foreign court has taken a particular view on any aspect concerning the welfare of the minor is not enough for the Indian courts to shut out an independent consideration of the matter - Objectivity and not abject surrender is the mantra in such cases - Code of Civil Procedure 1908 - s.13.

(Also see under: Guardians and Wards Act, 1890)

<i>Ruchi Majoo v. Sanjeev Majoo</i>	....	674
(2) (See under: Madhya Pradesh Land Revenue Code, 1959)	....	817
(3) (See under: Public Interest Litigation)	722

LAND ACQUISITION:

(See under: Rajasthan Land Acquisition Act, 1953)	242
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LAND ACQUISITION ACT, 1894:

(1) (i) ss.4(1), 6(1), 11A, 17(1) and 17(4) - Writ petition filed belatedly challenging acquisition of land - Allowed by High Court - Held: In matters involving challenge to the acquisition of land for public purpose, delay in filing the writ petition should be viewed seriously and relief denied to the petitioner if he fails to offer plausible explanation for the delay - Delay of even few years would be fatal to the cause of the petitioner, if the

acquired land has been partly or wholly utilised for the public purpose - On facts, High Court was duty bound to take cognizance of the long time gap of 9 years between the issue of declaration u/s.6(1) and filing of the writ petition and decline relief on the ground of laches because the acquired land had been utilized for implementing a residential scheme and third party rights had been created - The unexplained delay of about six years between the passing of award and filing of writ petition was also sufficient for refusing to entertain the prayer made in the writ petition - Also once it is held that possession of the acquired land was handed over to the BDA, the view taken by High Court that the acquisition proceedings had lapsed due to non-compliance of s.11A cannot be sustained.

(ii) Mode of taking possession of the acquired land - Principles culled out from earlier judgments - Held: No hard and fast rule can be laid down as to what act would constitute taking of possession of the acquired land - If the acquired land is vacant, the act of the authority concerned of going to the spot and preparing a panchnama will ordinarily be treated as sufficient to constitute taking of possession - If crop is standing on the acquired land or building/structure exists, ordinarily, in such cases, the authority concerned will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama - Other guiding factors, delineated.

<i>Banda Development Authority, Banda v. Moti Lal Agarwal and Ors.</i>	435
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(2) (See under: Resettlement Act, 1965)	1070
LAND LAWS AND AGRICULTURAL TENANCY: (See under: Maharashtra Land Revenue Code, 1860)	863
LEGISLATION: Need for legislation - Matters like payment of compensation and damages for death resulting from a wrongful or negligent act are governed by Fatal Accidents Act, 1855 enacted more than one and a half century ago - Urgent need to bring a contemporaneous and comprehensive legislation on the said subject. (Also see under: Fatal Accidents Act, 1855) <i>Suba Singh and Anr. v. Davinder Kaur and Anr.</i>	....	217
LIMITATION: (See under: Arbitration and Conciliation Act, 1996)	....	310
MADHYA PRADESH LAND REVENUE CODE, 1959: (i) ss. 131, 242, and 257 - Jurisdiction of civil court/revenue court - Easementary rights determined u/s. 131 by revenue court (Tahsildar) - Subsequent civil suit for declaration that the order of Tahsildar u/s. 131 recognizing such right, is illegal and erroneous - Held: The Code does not bar the jurisdiction of civil courts nor does it create any new category of private easementary rights not covered by the provisions of the Easements Act - Decision of Tahsildar after a summary enquiry with reference to the 'previous custom' and with due regard to the conveniences of all parties, u/s. 131(1), is open to challenge in a civil suit and		

	1212	
subject to the decision of the civil courts - s. 257 providing for exclusion of jurisdiction of civil court in regard to certain matters, does not apply to any suit involving or relating to easementary rights. (ii) s. 242 - Customary easements - <i>Wajib-ul-arz</i> - Held: It is the record of customs in a village in regard to easements (including the right to irrigation and right of way); and the right to fishing in privately owned/held lands and water bodies. <i>Smt. Ramkanya Bai and Anr. v. Jagdish and Ors.</i>	....	817
MADHYA PRADESH NAGAR TATHA GRAM NIVESH ADHINIYAM, 1973: ss. 17, 18, 19 and 23(A) - Publication of draft development plan which included some portion of appellant's land - Appellant filed objections - Resolution passed by the Committee in favour of the appellant - However, State Government included certain lands belonging to the appellant in the modified development plan - Held: Resolutions passed by the Committee cannot be said to be absolute, final and binding - State Government possesses the final authority in the matter of giving approval to the development plan - On facts, development plan was approved by the State Government without any modification and, therefore, there was no question of inviting any further suggestions or giving any hearing to the appellant - There was no violation of the principles of natural justice - State Government issued a final plan and also invited objections but the appellant did not submit any objection - High Court was justified in holding that there could be no review to the order passed since no power of		

review is provided for under the provisions of the Act - Review.

Binabai Bhate v. State of Madhya Pradesh and Ors.

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MAHARASHTRA LAND REVENUE CODE, 1860:

ss. 39 - Development Authority - Demand on the appellant for payment of non-agricultural cess - Challenged by appellant on the ground that it was a government lessee and, therefore, not liable to pay the amount demanded and in the alternate, appellant took plea that it was tenant of the Development Authority and demand for non-agricultural cess could be made only on the Development Authority and not against the tenant - Held: s.2(11) r/w s.38 defines a 'government lessee' as a lessee under a lease granted by a Collector in regard to unalienated unoccupied land belonging to the government - In the instant case, the land was not leased by the Collector to the appellant - The leased lands were not government lands and the lessor was not the government - However, by virtue of Regulations of 1973 r/w the lease deed, statutory liability was imposed on the appellant-lessee to pay the non-agricultural cess to the state government - Having regard to the statutory liability created under the 1973 Regulations, the position of the lessee would be similar to a tenant referred to in sub-s. (1) (c) of s.168 which provides that in case of land in possession of a tenant, such tenant if he is liable to pay land revenue therefor under the relevant tenancy laws, shall be primarily liable to the state government for the payment of land revenue, including all arrears - The liability of the appellant as tenant, to pay the land revenue, though not

under a 'tenancy law' in its strict sense, but is nevertheless under a statutory regulation governing the tenancy and, therefore, the demand by the state government directly against the appellant, can be justified by the principle underlying s.168(1)(c) - Maharashtra Regional and Town Planning Act - ss.113, 114 and 118 - Pimpri-Chanchwad New Town Development authority (Disposal of Land) Regulations, 1973 - Regs. 10(iv), (v).

Tata Motors Ltd. v. Talathi of Village Chikhali and Ors.

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MAHARASHTRA REGIONAL AND TOWN PLANNING ACT:

ss. 113, 114 and 118.

(See under: Maharashtra Land Revenue Code, 1860)

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MAHARASHTRA UNIVERSITIES ACT, 1994:

s. 115 (2) (xii).

(See under: Service Law)

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MINES AND MINERALS:

Limestone mining project in East Khasi Hills District, Meghalaya - Ex post facto environmental clearance and forest clearance - Held: The word "environment" has different facets - That the land in question falls under Karst topography is borne out by the certificate dated 27.8.1999 issued by KHADC - According to the NEHU Report, the site is located in the area on the outskirts of forest - While granting environmental clearance dated 9.8.2001, there was an express finding that "no diversion of forest land was involved" - Since the area of mining lease did not fall in forest, State

Government did not submit any proposal to Central Government u/s 2 of the 1980 Act - It is in view of the existence of 1958 Act that the native people as also the DFO understood the area in the light of the said Act - On facts of the case, it cannot be held that the decision to grant ex post facto clearances stood vitiated on account of non-application of mind or on account of suppression of material facts by the applicant - Similarly, it cannot be held that ex post facto clearances have been granted by MoEF in ignorance of the existence of forests due to mis-declaration - The ex post facto clearance is based on the revised EIA - In the circumstances, EIA Notification of 2006 would not apply - The order of the Court is confined to the instant case only - United Khasi-Jaintia Hills Autonomous District (Management and Control of Forests) Act, 1958 - s.2(6) - Forest (Conservation) Act, 1980 - s.2 - Mines and Minerals (Regulation and Development) Act, 1957 - s.5(1).

Lafarge Umiam Mining Pvt. Ltd. T.N. Godavarman Thirumulpad v. Union of India and Ors. 954

MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957:

s. 5 (1).

(See under: Mines and Minerals) 954

MORTGAGE:

(See under: Transfer of Property Act, 1882) 569

MOTOR VEHICLES ACT, 1988:

s.163A, Second Schedule - Motor accident - Death of 19 year old unmarried young man -

Compensation claim by his parents - Determination of multiplier - Held: Choice of multiplier is determined by the age of the deceased or claimants whichever is higher - In the instant case, a young unmarried man died in an accident leaving behind aged parents - Multiplier applied keeping in view the average age of the deceased's parents.

National Insurance Co. Ltd. v. Shyam Singh and Ors. 810

MUNICIPALITIES:

Octroi.

(See under: Bombay Provincial Municipal Corporation Act, 1949) 766

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985: (1) (i) s.50 - Search and seizure - Safeguards provided u/s.50 -

Obligation of the searching officer to inform the person to be searched about his right to be taken to the nearest Gazetted Officer or a Magistrate - Held: The accused has right to be informed of the choice available to him as regards his search - The duty is cast upon the searching officer to make the accused aware of existence of such a right - Failure to provide such option in accordance with the provisions of the Act, render the recovery of contraband /illicit substance illegal - After amendment of s.50 and insertion of sub-s. (5), the mandate of s.50(2) has not been nullified, and the obligation upon the searching officer to inform the person to be searched of his rights still remained - Obviously, the legislative intent is that compliance with these provisions is imperative and not merely substantial compliance - Notice to the accused that a Gazetted Officer or a Magistrate

could be arranged for taking his search, if he so required could not be treated as communicating to him about rights available to him under law.

(ii) s.21 - Conviction under - Essential ingredients - Held: For conviction u/s.21, the possession of the illicit Art. is a sine qua non - Contraband Art. should be recovered in accordance with the provisions of s.50 of the Act, otherwise, the recovery itself shall stand vitiated in law - Illegal recovery cannot be the foundation of conviction u/ s.21 of the Act.

State of Delhi v. Ram Avtar @ Rama 1129

(2) Interrogation - Presence of lawyer - Held: Respondent is not entitled as of right to the presence of his lawyer at the time of his interrogation in connection with the case - However, having regard to the facts and circumstances of the case, the interrogation of the respondent may be held within the sight of his advocate or any other person duly authorized by him and it will not be open to the respondent to have consultations with him in course of the interrogation.

Senior Intelligence Officer v. Jugal Kishore Samra 889

NATIONAL COUNCIL FOR TEACHER EDUCATION ACT, 1993:

Object of enactment - Explained.

(Also see under: Education/Educational Institutions and Constitution of India, 1950)

Abhyudya Sanstha v. Union of India and Ors. 611

NATIONAL COUNCIL FOR TEACHER EDUCATION (RECOGNITION, NORMS AND PROCEDURE) REGULATIONS, 2007:

Regs. 7 and 8.

(See under: Education/Educational Institutions) 611

NATIONAL FOREST POLICY, 1988

(See under: Environmental Law) 954

NATURAL JUSTICE:

(1) Opportunity of hearing.

(i) (See under: Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973) 31

(ii) (See under: Uttar Pradesh Urban Planning and Development Act, 1973) 66

(2) Principle of natural justice.

(See under: Service Law) 558

NOIDA (PREPARATION AND FINALISATION OF PLAN) REGULATIONS, 1991:

Policy dated 22.5.2006 of government of Uttar Pradesh:

(See under: Administrative Law) 66

NOIDA POLICIES AND PROCEDURES FOR COMMERCIAL PROPERTY MANAGEMENT, 2004:

(See under: Urban Development) 66

PENAL CODE, 1860:

(1) s.302/34 - Murder - Circumstantial evidence - Extra-judicial confession - Conviction of three accused by trial court - Affirmed by High Court - Held: Conviction of accused persons is based on completely insufficient evidence and, as such, is set aside - Evidence - Circumstantial evidence -

Extra-judicial confession - Recovery of blood stained Arts. - Proving of - Criminal Law - Motive.

Sunil Rai @ Paua and Ors. v. Union Territory, Chandigarh

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(2) (i) s. 302/34 - Conviction under - Quarrel between parties over recovery of dues by victim from co-accused - Co-accused caught hold of victim and main accused stabbed him whereas appellant-accused pelted stones at victim resulting in his death - Conviction of three accused u/s. 302/34 and sentence of life imprisonment by courts below - Appeal before Supreme Court dismissed as regards the main accused and co-accused - Conviction of appellant - Held: As regards the appellant, there is definite documentary, ocular and medical evidence, and statement of defence witness to repel the plea of the appellant that he had been falsely implicated - Knife was recovered in furtherance to the disclosure statement made by main accused and injuries on the body of the victim were inflicted by the knife - Discrepancies between the statements of the alleged eye-witnesses as well as the medical evidence do not affect the prosecution case - All the three accused had a common intention in the commission of brutal crime - Thus, prosecution has been able to establish the charge beyond reasonable doubt - Conviction of appellant u/s. 302/34 upheld.

(ii) s. 34 - Common intention - Application of s. 34 - General principles - Explained.

Nand Kishore v. State of Madhya Pradesh 1152

(3) ss. 302/149 and 307/149 - Double murder and attempt to murder - Six accused armed with

deadly weapons went to the house of complainant and attacked his family members resulting in death of two of his sons and serious injuries to his grandson - Conviction by trial court of three accused u/ss 302/34 and 307/34 and acquittal of the other three - High Court convicting all the six u/ss 302/149 and 307/149 - Held: High Court has rightly held that the judgment of trial court in acquitting three of the accused was perverse, as it was a clear case of common object which all the six accused shared and by application of s.149 all the six were liable for inflicting injuries on the two victims which resulted in their death and serious injuries to the other - Judgment of High Court affirmed - Appeal against acquittal - Scope of interference by appellate court - Reiterated.

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

Bhajan Singh @ Harbhajan Singh and Ors. v. State of Haryana

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(4) s.302 r/w s.149 and s.148 - Fire shots resulting in death of three persons - Conviction of A-2 u/s.302 and s.27 of Arms Act, 1959 and acquittal of the other accused (appellants) by trial court - High Court convicted appellants u/s.148 and s.302 r/w s.149 -Held: Prosecution witnesses were closely related to the three deceased - Their evidence showed their long standing rivalry with accused party - Thus, prosecution witnesses were not only much interested in the prosecution case but they were inimically disposed towards the accused party as well - The evidence of prosecution witnesses was to the effect that there was indiscriminate firing by the accused party at the complainant party - However, at the scene of

occurrence, there were no marks of indiscriminate firing - The ballistic report recorded that the crime bullets and the cartridge cases were fired by the pistol recovered from A-2 only - The testimony of prosecution witnesses about the role of appellants, thus, was not corroborated by medical and ballistic evidence - The deposition of prosecution witnesses suffered from significant improvements and omissions as well - Serious infirmities in the evidence of the eye-witnesses indicated that their evidence was not wholly true and it was unsafe to act on their evidence insofar as complicity of appellants was concerned - Appellants were entitled to benefit of doubt - The order of acquittal passed by trial court in favour of appellants is restored.

Jalpat Rai and Ors. v. State of Haryana 1037

(5) (i) ss. 302/149, 148, 324/149 and 449 - Communal violence - Prosecution case that out of the mob of 50 to 60 persons, 8 to 10 persons armed with weapons forcibly entered the house of complainant and inflicted injuries to him and two other victims, who succumbed to their injuries in the hospital - Three eye-witnesses to the incident - Trial court convicted and sentenced three accused u/ss 302/149, 148, 324/149 and 449 - However, acquittal by High Court - Held: There was establishment of a complete chain of events and clear identification of the persons assailing the deceased - Medical evidence corroborates the ocular evidence - Cumulative effect of the ocular evidence and documentary evidence shows that the prosecution has been able to establish its case beyond reasonable doubt - Some discrepancies or some variation in minor detail of

the incident are immaterial - It is established that more than five person constituted an unlawful assembly and in furtherance to their common object and intent, assaulted and caused injuries to vital parts of the bodies of the deceased, ultimately resulting in their death - High Court did not appropriately appreciate the material witness - Thus, the order of acquittal passed by the High Court is perverse and is set aside, and that of the trial court restored.

(ii) s. 149 - Common Object - Inference of - When - Explained.

State of Rajasthan Th. Secy. Home Dept. v. Abdul Mannan & Anr. 1099

(6) ss. 302, 201, 364 and 342 - Gruesome murder - Victim, a medical student and staying in the college hostel killed by a senior student in the same college - Body cut into pieces and thrown at separate places - Conviction by trial court and sentence of life imprisonment - Acquittal by High Court - Held: Not justified - All the witnesses were independent and respectable eye-witnesses - From the evidence of the witnesses, it was clear that the accused nurtured ill feeling against the deceased; that the deceased was last seen with the accused and that the conduct of latter was very weird and strange and his bags/suitcases also produced stinking smell - Strong and cogent circumstantial evidences deduced from the investigation logically and rationally point towards the guilt of the accused - No other possible or plausible view favouring him - Conviction restored.

Inspector of Police, Tamil Nadu v. John David 354

(7) (i) s.376(2)(g) - Gang rape - Allegation that the main accused kidnapped prosecutrix at knife point and brought her to the house of the appellant - Main accused raped prosecutrix - Conviction of main accused and appellant u/s.376(2)(g) - Challenged by appellant - Held: There was no doubt that the main accused raped the prosecutrix - In the entire episode, no role was attributed to the appellant - There was no prior plan or meeting of minds between the two to either kidnap or to rape the prosecutrix - Collective reading of the evidence showed that the role of the appellant was limited to wrongfully confining the prosecutrix and not rendering help when asked for - The prosecution did not produce any evidence either directly or at least by circumstantial evidence to show that the factum of kidnapping as well as intent to commit a rape was known to the appellant - Conviction of appellant u/s.376(2)(g) set aside - However, his conviction u/s.368 maintained.

(ii) s.376(2)(g) - Essential ingredients - Held: Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of s.376(2)(g) - Act of gang rape has to be in furtherance of their common intention before the deeming fiction of law can be enforced against the accused - It may not be necessary for the prosecution to adduce evidence of a completed act of rape by each one of the accused - The provision embodies a principle of joint liability and the essence of that liability is existence of common intention - Common intention pre-supposes prior concert as there must be meeting of minds, which may be determined from the conduct of the

offenders which is revealed during the course of action.

Om Prakash v. State of Haryana 1080

(8) ss. 498-A, 406 r/w s. 34
(See under: Code of Criminal Procedure, 1973) 674

PLEA:

New plea.
(See under: Rajasthan Land Acquisition Act, 1953) 242

PIMPRI CHANCHWAD NEW TOWN DEVELOPMENT AUTHORITY (DISPOSAL OF LAND) REGULATIONS, 1973:

(See under: Maharashtra Land Revenue Code, 1860) 863

POWER OF ATTORNEY:

Right of power of attorney holder to appear or argue - Held: Power of attorney holder cannot, unless he is an enrolled lawyer, appear in court on behalf of anyone, unless permitted by the court u/s. 32 of Advocates Act, though of course he may sign sale deeds, agreements etc. and do other acts on behalf of someone else, unless prohibited by law - Advocates Act, 1961 - ss.29, 32, 33.

Goa Antibiotics and Pharmaceuticals Ltd. v. R.K. Chawla and Anr. 846

PRECEDENT:

(1) (See under: Judicial Discipline) 195

(2) (See under: Rajasthan Land Acquisition Act, 1953) 242

PREVENTION OF CORRUPTION ACT, 1947:

s. 19 - Previous sanction for prosecution - FIR lodged against a public servant for possessing assets disproportionate to known sources of income - Refusal by State Government to grant sanction - Superannuation of the public servant - Subsequently, charge sheet filed u/s. 5(2) r/w s. 5(1)(e) of the Act - Special Judge taking cognizance of the offence and issued process - Challenge to - Held: In a case in which sanction sought is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of Public Servant - Any other view will render the protection illusory - Thus, impugned order is set aside and the prosecution of the public servant pending in the court of Special Judge quashed.

Chittaranjan Das v. State of Orissa 836

PUBLIC INTEREST LITIGATION:

Writ petition before High Court - Challenging the lease deed granted in respect of the premises of a Stadium in favour of a recreation club for non-sports commercial activities - Dismissed by High Court holding that no public interest was involved in the writ petition - Held: There have been several irregularities by the District Administration (District Sports Council) in granting arbitrarily a largesse to a Club in the form of a long term lease at an annual rent of Rs.1/- for use of a Sports Stadium, for non-sports commercial activities - The matter required consideration - High Court failed to exercise its jurisdiction - Whenever nepotism,

favouritism and unwarranted government largesse to private interests, threaten to frustrate schemes for public benefit, it is the duty of High Courts to strike at such action - The questions enumerated in the judgment are required to be addressed by High Court - PIL remanded to High Court to dispose of the matter in accordance with law (Also see under: Sports)

Krishan Lal Gera v. State of Haryana and Ors. 722

PUBLIC LAW:

Breach of statutory provisions or procedural irregularities - Allotment of plots for hotels on 90 years lease - Cancellation of - Remedial action - Explained.

ITC Ltd. v. State of Uttar Pradesh and Ors. 66

RAJASTHAN IMPROVEMENT TRUST (DISPOSAL OF URBAN LAND) RULES, 1974:

(See under: Rajasthan Land Acquisition Act, 1953) 242

RAJASTHAN LAND ACQUISITION ACT, 1953:

ss. 4 and 6 - Acquisition of land - For planned development of Jaipur city - Scheme popularly known as 'Lal Kothi Scheme' - Transfers of portions of the acquired land effected after publication of notification u/s 4 and declaration u/s 6 - Land Acquisition Officer awarding compensation to landowners and beneficiaries of illegal transfers and also ordering allotment of plots of 1000-2000 sq. yd. to landowners, their transferees and nominees/sub-nominees out of the acquired land - Held: Division Bench of High Court committed serious error by entertaining an

altogether new case set up on behalf of the respondents (writ petitioners), who had not even prayed for amendment of the pleadings, and granting relief to them by declaring that they are entitled to get benefit of the policy of regularization contained in the letter dated 6.12.2001 - The Division Bench could not rely upon the so-called policy decision stated to have been taken by the Government in flagrant violation of the judgments of the Supreme Court wherein it was categorically held that the transactions involving transfer of land after the issue of notification u/s 4 were nullity and the Land Acquisition Officer did not have the jurisdiction to direct allotment of land to the awardees/sub awardees, their nominees/sub-nominees -Order of High Court set aside with cost of Rs. 5 lac to be paid by the respondents for pursuing unwarranted litigation for the last 15 years - Jaipur Development Authority Act, 1982 - s.83 - Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974 - Judicial discipline - Precedent - Constitution of India, 1950 - Art. 226 - Writ petition - New plea - Costs - Administration of Justice - Party pursuing unwarranted litigation - Imposition of cost.

(Also see under: Constitution of India, 1950)

Jaipur Development Authority and Ors. v. Vijay Kumar Data and Anr. 242

REFERENCE:

(See under: Customs Act, 1962) 850

REPRESENTATION OF THE PEOPLE ACT, 1951:

s.100(1)(a) r/w s.4(a) - Election of appellant to the House of People from the Constituency reserved for the Scheduled Castes - Challenged on the ground that the appellant was a Christian and not

a Scheduled Caste and, therefore, not qualified u/s.4(a) - High Court declared his election void u/s.100(1)(a) of the Act - Held: The father of the appellant originally was a member of the Cheramar caste which was admittedly a Scheduled Caste in the State of Kerala - On conversion to Christianity, the father of the appellant ceased to be a member of the Cheramar caste - However in 1978, appellant underwent an expiatory ceremony and reconverted himself to Hinduism and was thereafter accepted as a member of Cheramar caste - In four earlier elections, appellant got elected from the Parliamentary Constituency reserved for Scheduled Caste - Circumstances establish that the appellant after his reconversion to Hinduism in 1978 was accepted by the members of the Cheramar caste - Accordingly, his election was not void u/ss.100 (1)(a) and 100 (1)(d)(i) of the Act.

(Also see under: Evidence Act, 1872)

Kodikunnil Suresh @ J. Monian v. N.S. Saji Kumar, Etc. Etc. 640

RES JUDICATA:

Principles of constructive res judicata - Applicability of - Ground open to be raised not raised in the earlier writ petition - Permitted to be raised in a subsequent writ petition - Held: Not justified - The same is hit by the principles analogous to constructive res judicata - Doctrines/Principles.

Shankara Co-op Housing Society Ltd. v. M. Prabhakar and Ors. 468

RESETTLEMENT ACT, 1965:

Allotment of agricultural land to landowner whose

land had been acquired under Land Acquisition Act - Mistake in marking boundaries of land, and possession of wrong agricultural land handed over to allottee - Order of revenue authorities to allot alternative land - Held: The right of the allottee was to seek agricultural land under the provisions of the Re-Settlement Act and in so far as the right was protected, the allottee could not ask for a particular land - The land which was not subject matter of the acquisition could not be treated as the land having been offered to the allottee validly and in accordance with law - High Court has passed multifold directions in relation to granting of alternate land and conducting of an enquiry by the competent authority as well - Thus, the directions sufficiently take care of the interest of the allottee - As far as the claim of compensation by the allottee with regard to improvement made on the land is concerned, again it is for the Government to decide as per its policy-Land Acquisition Act, 1897.

Noor SK. Bhaikan v. State of Maharashtra and Ors. 1070

REVIEW:

(See under: Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973) 31

REVISION:

(See under: Displaced Persons (Compensation and Rehabilitation) Act, 1954) 468

SALES TAX:

(1) (See under: Central Sales Tax Act, 1956) 416

(2) (See under: Tamil Nadu General Sales Tax Act, 1959). 395

SERVICE JURISPRUDENCE:

Seniority list - Sanctity of - Held: In service jurisprudence there is immense sanctity of a final seniority list - The seniority list once published cannot be disturbed at the behest of person who chose not to challenge it for four years - The sanctity of the seniority list must be maintained unless there are very compelling reasons to do so in order to do substantial justice - This is imperative to avoid unnecessary litigation and unrest and chaos in the services.

Rajendra Pratap Singh Yadav v. State of U.P. and Ors. 910

SERVICE LAW:

(1) Appointment/Recruitment/Selection:

(i) Recruitment - Selection of Assistant Public Prosecutors - Minimum qualifying mark for viva voce, though prescribed in the Rules, not specified in the advertisement - State Public Service Commission fixing cut off mark for viva voce after the result of written examination, and notifying the candidates called for interview about it - Held: The course followed by the Commission was in compliance with the rules and it did not cause any prejudice to any candidate either - Thus, there is no illegality at all in the selection process much less any bias or malice of any kind - Assistant Public Prosecutor, Gujarat General State Service Class II Recruitment (Examination) Rules, 2008 - r. 12(3).

Barot Vijaykumar Balakrishna and Ors. v. Modh Vinaykumar Dasrathlal and Ors. 154

(ii) Recruitment to the posts of Primary School Teachers in State of Jharkhand - Eligibility - Claim of candidates holding C.P.Ed./Dip. P.Ed. - Division Bench of High Court directing to fill up 5% of total vacancies by Physical Trained candidates taking into account the policy of State of Bihar - Held: How many posts of Primary School Teachers would be filled up by Physical Trained candidates, is essentially a question of policy for the State to decide - High Court erred in relying on the policy of the State of Bihar and directing for filling up 5% posts of the Primary School Teachers by Physical Trained candidates - The Act and the Rules governing appointment in the State of Bihar do not govern appointment in the State of Jharkhand and those have specifically been repealed by r. 16 of the Rules - However it is deemed expedient that in case the authorities have not framed any policy, they should frame a policy before it initiates its next process of appointment - Jharkhand Primary Teachers' Appointment Rules, 2002 - rr. 2(b) and r.16 - Constitution of India, 1950.

State of Jharkhand and Ors. v. Ashok Kumar Dangi and Ors.

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(2) Earned leave and encashment of unutilized earned leave on retirement - Claimed by Lecturers/ Demonstrators working in Vacation Department of a private College - Held: The lecturers/ demonstrators were entitled to earned leave and encashment of earned leave as per the provisions of Statutes 424(3) and 424(C) - University of Pune Statutes - Statutes 424(3) and 424(C) -

Maharashtra Universities Act, 1994 - s. 115(2) (xii).

Khandesh College Education Society, Jalgaon and Anr. v. Arjun Hari Narkhede and Ors.

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(3) Demotion - Employee in officer grade found guilty of misappropriation of funds - Order of removal from service modified to demotion to cadre of clerk with a further bar against promotion for a period of seven years - After expiry of seven years, writ petition by employee challenging the punishment awarded to him - Allowed by High Court - Held: Punishment is primarily a function of the Management and the courts rarely interfere with the quantum of punishment - On facts, there was no scope for interference with the punishment - Order of High Court set aside and writ petition dismissed - Judicial review.

State Bank of Mysore and Ors. etc. v. M.C. Krishnappa

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(4) Pension scheme - Claim for - Switchover from CPF scheme to pension scheme - Permissibility of - Employee while in service of NCERT had opted for the CPF Scheme in 1977 and on his retirement, had availed the benefits of the CPF Scheme - Claim to switch over from CPF scheme to Pension Scheme - Allowed by Tribunal, the Single Judge and the Division Bench of the High Court - Held: Once an employee has opted for the CPF Scheme, his exercise of option is final and he is not entitled to change over to the Pension Scheme because the two schemes are entirely different - However, Ministry of Personnel and Training by O.M. dated 06.06.1985, which

was adopted by NCERT in its Circular dated 18.07.1985, gave an opportunity to Central Government employees who had earlier opted for the CPF Scheme to opt for the Pension Scheme - The option to switch over from the CPF Scheme to the Pension Scheme was open to only those employees who were in service on 31.03.1985 and who were retiring on or after 31.03.1985 - By 31.03.1985, the claimant had retired, his date of retirement being 31.07.1984 - He was, therefore, not entitled to fresh option to switch over from the CPF Scheme to the Pension Scheme - Contributory Provident Fund Rules, 1962 - r. 38 - Central Civil Services (Pension) Rules, 1972.

Union of India Thr The Secretary, National Council of Educational Research and Training v. Shyam Babu Maheshwari 548

(5) Termination/removal/dismissal:

(i) Dismissal - Gross misconduct - Charges of demand and receipt of illegal gratification, against police constable - High Court directing reinstatement of the constable, but without any back wages - Held: No direct and reliable evidence was produced by the department to prove and establish that the constable demanded and received illegal gratification - Also, the complainant was not examined as witness in the departmental enquiry and, therefore, there was no opportunity to cross-examine her and, therefore, there was a violation of r. 16(iii) of the Rules - The case of the department was a case of no evidence at all - Order passed by High Court upheld - Further direction that the constable be kept under watch and not be given any sensitive posting - Delhi

Police Act, 1978 - s.21 - Delhi Police (F and A) Rules, 1980 - r. 16 (iii) - Violation of - Doctrines/Principles - Principle of natural justice.

Commissioner of Police, Delhi and Ors. v. Jai Bhagwan 558

SPORTS:

(i) Sports complex/Sports stadium - Use of premises - Held: No part of the stadia or sports grounds can be carved out for non-sport or commercial activities to be run by recreational clubs or by private entrepreneurs - Creating a sports ground and encouraging sports is a part of human resource development which is the function of the State.

(ii) Sports Stadia - Maintenance and optimum use of - Held: The country requires world class infrastructure to train potential athletes and sportspersons - It is not sufficient if infrastructure is created, but such infrastructure and facilities should be properly maintained and optimum utilization of the infrastructure should be ensured - Persons experienced in sports administration and sportspersons should manage the stadia and not the Managing Committees of recreational clubs - There should be a comprehensive plan for optimum use of the facilities already available so that they are accessible to sportspersons.

Krishan Lal Gera v. State of Haryana and Ors. 722

TAMIL NADU GENERAL SALES TAX ACT, 1959:
ss.17A and 28A - Interest free sales tax deferral scheme introduced by the State of Tamil Nadu under G.O.Ms.No.119 dated 13-4-1994 for

manufacturing units undertaking expansion/diversification - Scheme providing for deferral of sales tax based on increased volume of production/sales - Interpretation of the scheme - Held: The benchmark for availing the benefit of the sales tax deferral scheme having been fixed both with reference to the production as also to the sales, it was immaterial whether the unit concerned reached base production volume (BPV) or the base sales volume (BSV) earlier - Benefit of sales tax deferral scheme would be available to a dealer from the date of reaching of BPV or BSV, whichever is earlier - Interpretation of Statutes.

State of Tamil Nadu and Anr. v. India Cements Ltd. and Anr.

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TENDERS:

(See under: Urban Development)

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TOURISM:

Running a hotel/boarding house/restaurant - Held: Is a commercial activity - By no stretch of imagination, use of a plot for a hotel can be considered as use of such land for an industrial purpose - It was not necessary for NOIDA to change the land use of plots to be allotted to hotels, from commercial to industrial use.

(Also see under: Urban Development)

ITC Ltd. v. State of Uttar Pradesh and Ors.

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TRANSFER OF PROPERTY ACT, 1882:

ss. 60 and 54 - Right of redemption - Nature and scope of - Held: Right of redemption is a statutory right and subsists so long as the mortgage itself subsists - It stands extinguished on execution of

conveyance and the registration of transfer of mortgagor's interest by registered instrument or by decree of a court - Dismissal of an earlier suit for redemption whether as abated or as withdrawn or in default would not debar the mortgagor from filing a second suit for redemption so long as the mortgage subsists - On facts, no sale/transfer worth the name of the mortgaged property had taken place in favour of the contender of the mortgaged property - The statutory right of redemption available to the mortgagor was never lost - Mortgage.

(Also see under: Constitution of India, 1950)

M/s. L.K. Trust v. EDC Ltd. and Ors.

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UNITED KHASI-JAIANTIA HILLS AUTONOMOUS DISTRICT (MANAGEMENT AND CONTROL OF FORESTS) ACT, 1958:

s. 2 (6)

(See under: Mines and Minerals)

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UNIVERSITY OF PUNE STATUTES:

Statutes 424 (3) and 424 (C).

(See under: Service Law)

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URBAN DEVELOPMENT:

Allotment of commercial plots for 5 star, 4 star and 3 star hotels - Requirement of inviting tenders - Commercial plots in commercial area allotted at fixed industrial rate without inviting tenders - Held: Allotment of commercial plots is governed by the NOIDA Policies and Procedures for Commercial Property Management, 2004, whereunder commercial properties of NOIDA can be allotted only on sealed tender basis or by way of public auction - The allotment of commercial plots at fixed

rate was, therefore, clearly contrary to the Regulations of NOIDA - Therefore, the state government can interfere under its revisional jurisdiction - As the allotment is of commercial plots, allotment at Rs.7,400 per sq.m. caused loss and violated the Regulations and policy of NOIDA - However, the violation occurred on account of a mistake on the part of the officers of NOIDA in misinterpreting the government policy - The allottees are given the option to continue their respective leases by paying the premium (allotment rate) at Rs.70,000/- per sq.m. - NOIDA Policies and Procedures for Commercial Property Management, 2004 - Uttar Pradesh Urban Planning and Development Act, 1973 - s.41 - NOIDA (Preparation and Finalization of Plan) Regulations, 1991.

ITC Ltd. v. State of Uttar Pradesh and Ors. 66

UTTAR PRADESH NON-TECHNICAL (CLASS II) SERVICES (RESERVATION OF VACANCIES FOR DEMOBILISED OFFICERS) RULES, 1973: r. 3.

(See under: Armed Forces) 910

UTTAR PRADESH NON-TECHNICAL (CLASS II) SERVICES (RESERVATION OF VACANCIES FOR DEMOBILISED OFFICERS) RULES, 1980: r. 3.

(Also see under: Constitution of India: Interpretation of Statutes: and Services Jurisprudence) 910

UTTAR PRADESH URBAN PLANNING AND DEVELOPMENT ACT, 1973:

(i) s.41(3) r/w ss.12 and 14 - Allotment of

commercial plots in commercial area for construction of 5 star, 4 star and 3 star hotels on 90 years lease - Plots allotted at industrial rates - Later on, allotments cancelled as the same were made without following the procedure of auction, and the allotment on fixed industrial rates caused loss to government exchequer - Held: Where the grant of lease is governed by a statute or statutory regulations, and if such statute expressly reserves the power of cancellation or revocation to the lessor, it will be permissible for an Authority, as the lessor, to cancel a duly executed and registered lease deed, even if possession has been delivered, on the specific grounds of cancellation provided in the statute - In the instant case, NOIDA is a statutory authority and it has not alleged or made out any default in payment or breach of conditions of the lease or breach of rules and regulations - Nor is it the case of suppression or misrepresentation or fraud - Therefore, the allotment of commercial plots by NOIDA to the allottees for setting up hotels is valid and cancellation of allotment is unsustainable.

(ii) ss. 41(3) - Allotment of plots - Cancellation of - Held: When valuable rights had vested in the allottees, by reason of the allotments and grant of leases, such rights could not be interfered with or adversely affected, without a hearing to the affected parties - Natural justice - Opportunity of hearing.

(Also see under: Administrative Law; and Urban Development)

ITC Ltd. v. State of Uttar Pradesh and Ors. 66

WITNESSES:

(1) Injured witness and related witness - Testimony of - Evidentiary value of - Explained.

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

Bhajan Singh @ Harbhajan Singh and Ors. v. State of Haryana 1

(2) Interested witness - Testimony of - Evidentiary value of - Held: The evidence of eye-witnesses, irrespective of their interestedness, kinship, standing or enmity with the accused, if found credible and of such a caliber as to be regarded as wholly reliable, can be sufficient and enough to bring home the guilt of the accused.

Jalpat Rai and Ors. v. State of Haryana 1037

WORDS AND PHRASES:

(1) Expression 'industry' used in the context of tourism/hotel - Connotation of.

ITC Ltd. v. State of Uttar Pradesh and Ors. 66

(2) 'Joint Venture' - Connotation of - Discussed. (Also see under: Customs Act, 1962)

Gammon India Ltd. v. Commissioner of Customs, Mumbai 195

(3) Expression "that is to say" as in s.14(iv) of the Central Sales Tax Act - Meaning of.

Bansal Wire Industries Ltd. and Anr. v. State of U.P. and Ors. 416

(4) Word 'occupant' - Meaning of, in the context of

Maharashtra Land Revenue Code, 1966.

Tata Motors Ltd. v. Talathi of Village Chikhali and Ors. 863

(5) Words 'ordinary', 'resides', 'ordinarily resides' - Meaning of.

(Also see under: Guardian and Wards Act, 1890)

Ruchi Majoo v. Sanjeev Majoo 674

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**REFERENCE MADE BY
HON'BLE THE CHIEF JUSTICE OF INDIA
SHRI S.H. KAPADIA
IN THE MEMORY OF
LATE SHRI R.K. ABICHANDANI,
SENIOR ADVOCATE
ON 12TH JULY 2011**

Mr. Attorney General, Law Officers, Shri Pravin H. Parekh, President of the Supreme Court Bar Association, Shri D.K. Garg, President of AOR Association, Members of the Bar, Ladies and Gentlemen.

We have assembled here this morning to pay our homage to the memory of Mr. Justice R.K. Abichandani, a former Judge of the Gujarat High Court and a Senior Advocate of this Court who passed away from our midst on 22nd May, 2011.

After the eloquent and admirable remarks of Attorney General and the President of the SC Bar Association, there is little room for me to add but I trust I must, while sharing your sentiments, add my voice to pay, on behalf of my Brethren and myself, our humble tribute to Justice R.K. Abichandani.

Born on Human Rights Day, i.e., 10th December, 1942, Justice Abichandani was a natural supporter of Human Rights. He believed in human dignity which is the essence of Article 21 of our Constitution. In one of his writings, he has said and I quote:- **“If a person commits any wrong , undoubtedly he should be punished or penalized, but it is never necessary to humiliate him and maul his dignity as a human being”**.

Justice Abichandani was an erudite scholar, a reputed author and editor, a connoisseur of arts, keenly and equally interested in literature, a painter, a sculptor, fond of astronomy, bird watching, a lecturer of constitutional law and a humanist to

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the core as could be seen from his writings. In one of his noted articles on “Judicial Mechanism for the Under-privileged to Detect and undo injustice”, he has referred to an incident that occurred more than two decades ago in the following words :

“By the side of a busy city road was sitting a middle aged person unclad both in clothes and senses obviously in need of social as well as economic help. It was a pathetic scene of an immobilized and insensitive social order that left that person by the road side gesticulating without intelligence, in the company of flies and stray animals, days after days with no help from any social organization nor from a nearby police station. A few days of passing by the same site created a sense of guilt of comfortable existence and verbal attempts were started by requesting the good Samaritans, the press, and those who ought to have mattered, to take care, to help, to do something for saving the society and the system from further disgrace. It took several months for a sitting City Judge to unofficially activate the authorities in to action and get the person shifted to a home for the mentally sick. The reports were that he was a victim of a vehicular accident and his children remained abroad. After the treatment, he perhaps recovered. Time has faded the details, but one thing comes prominent and that is, should not the Courts have a more active role to play to help the underprivileged who are social discards and have no economic strength. One has just to move around to see how many mentally sick persons lie oblivious of their own existence on the roads, with tattered or no clothes. By a very little effort it would be easy to detect abject poverty in the children searching for left-overs in public places aimlessly wandering under the banners proclaiming child protection programmes, and the rag pickers unaware of the health hazards of searching through the garbages with bare hands and feet. There, indeed, are laws to manage

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all such situations, there are authorities who are entrusted functions to safeguard the interests of the vulnerable sections of the society, there too are policies and programmes that aim high and of course the NGO's, financial resources and so on. The Courts, however, will know about injustice only when alerted by the meek approach of the sufferer, if at all he succeeds in knocking at the door for justice, or, through a good Samaritan who out of empathy brings the misery to the Courts' notice,"

The above writing which I have quoted reminds me of the words of **Bertrand Russel** "**Be a humanist and forget the rest**".

Justice Abichandani edited Pollock & Mulla's Partnership Act, Pollock & Mulla's the Sale of Goods Act, Pollock & Mulla's Indian Contract and Specific Relief Acts as Well as Savaksha's Trade Marks Act, 1958.

Justice Abichandani was not only well-versed in the black letter learning of constitutional law, but he had an architectural view of the entire edifice of constitutional law. But, quite apart from constitutional law, he was good in other branches of law as well, including taxation. Besides being a sound lawyer possessing high degree of scholarship and learning, he was a competent advocate. He has appeared before this Court in several matters for Union of India. He spurned what other lawyers lauded as court craft and he never misled the court. He argued in measured tone, with deliberateness, weighing every word that he spoke. He was highly persuasive and pleasant. He was gentle and courteous to the court. He was never ruffled by any questions posed to him by the court and to every question he tried to give an effective answer. His advocacy was clear and lucid like his judgments. In structuring his judgments, he was thorough to a fault. I had the privilege of working with him in the Select Committee. He was the President of CEGAT/CESTAT. The Select Committee had to interview candidates to be

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appointed as Members of the Tribunal. It is in this context that I had occasion to interact with him. He was an asset. He distinguished himself not only as a Judge of the Gujarat High Court but also as a President of CEGAT/CESTAT in the Select Committee. He used to put in a fantastic amount of labour. Whatever he touched he adorned. He was really *Ajat Shatru*. He belonged to a generation which had a high sense of morality and ethics, which believed in basic human values, which regarded the legal profession as a noble pursuit, which had immense love for the country and which carried out every task entrusted to it with the sense of purpose and dedication. All these attributes find place in many of his judgments. The judgment of the Gujarat High Court authored by Justice Abichandani in the case of *Pradip J. Mehta v. Commissioner of Income-Tax* reported in 256 ITR 647 reflects the true understanding of the Income Tax Act, 1961, as it then stood. In that matter, the court had to define the expression "not ordinarily resident in India" in Section 6(6) of the Income Tax Act, 1961. It was held that when an individual has been a resident in India for nine out of ten preceding years, then, in order to escape tax on his foreign income he must not have been in India for seven hundred and thirty days or more in the aggregate during the preceding seven years. The test is one of presence and not absence from India and the length of presence determines when an individual is "not ordinarily resident" in India. In order that an individual is not an ordinarily resident, he should satisfy one of the two conditions laid down in Section 6(6) of the Act, the first condition being that he should not be resident in India in all the nine out of ten years preceding the accounting year and the second condition is that he should not have, during the seven years preceding that year, been in India for a total period of seven hundred and thirty or more days. Similarly, in his judgment as the President of CESTAT, Justice Abichandani held that even though a service provider is a non-resident, he would be liable to pay service tax for rendition of services to an Indian company as under Section 68 of the Finance Act there was no

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distinction between a foreigner and an Indian as regards liability to pay service tax, when the taxable service is provided in India. **This principle is now embodied in General Agreement on Trade in Services by WTO. It is called “National Treatment” principle.** There is no question of any extra-territorial operation of the statute involved in such cases, particularly, when the taxable service is provided by a person to a recipient of service in India (see *Calvin Wooding Consulting Ltd. V. CCE 2007 (7) STR 411*). The above judgments indicate Justice Abichandani's skill, acumen and sharp intelligence in structuring lucid judgments. **His learning matched with his wisdom.**

In his memory, I would like to quote a line from **macbeth**:

“After life's fitful fever he sleeps well”

My brothers and sister Judges join me in sharing your deep sorrow and grief on the said demise of Justice R.K Abichandani. We join in sincerely conveying our heartfelt condolences to the bereaved family.

May the departed soul rest in peace!

**REFERENCE MADE BY
ATTORNEY GENERAL FOR INDIA
SHRI G.E. VAHANVATI
IN THE MEMORY OF
LATE SHRI R.K. ABICHANDANI,
SENIOR ADVOCATE
ON 12TH JULY 2011**

My Lord Justice Kapadia, Chief Justice of India, Hon'ble judges, Mr. Parekh, the President of the Supreme Court Bar Association, Office Bearers of the Bar Association, (the Learned Solicitor General, Mr. Gopal Subramaniam) Law Officers, Members of the Bar, Members of the family of Justice Abichandani, Ladies and Gentlemen.

We are gathered here today, in Full Court, to remember and pay homage to the Hon'ble Justice Abichandani, a former judge of the Gujarat High Court, who was practising in this Court and who is no longer in our midst. The news that Justice Abichandani had died suddenly came as a rude shock.

I came into close contact with Justice Abichandani in 2008, shortly after he demitted office as the President of what was earlier called CEGAT (now CESTAT) and he decided to practise in the Supreme Court. He was put on the Central Government Senior Lawyers Panel. He was very keen on doing indirect tax work and I was equally enthusiastic in promoting him in that direction because I considered that he would be a very valuable asset to the Central Government Panel. Unfortunately, for a reason I do not want to go into, the Department and Justice Abichandani had a misunderstanding and despite my best efforts I could not rectify the breach. However, personally we continued to be close and he regularly kept in touch with me.

He always had a smile and was fully alert intellectually. He expressed his learned views on a range of legal issues in the

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form of various articles. He used to make it a point to send some of them to me and I benefited from reading them.

Justice Abichandani was born on December 10, 1942 in Gujarat. His entering the legal field was predestined since he was born into the law. His father, K.L. Abichandani, was a well-known District and Sessions Judge in Gujarat.

Before taking up the study of Law, Justice Abichandani graduated with honours in Economics and Politics from Gujarat University in 1959. He then went on to pursue law at the same Institution, where he graduated with a Gold Medal in 1961. This was followed by not one, but two LL.M's in different subjects—his first LL.M was obtained in 1966 in Mercantile Law and Criminal Law Group (branch IV) where he stood first in his University, and this was followed by an LL.M in Constitutional Law and Public International Law Group (Branch I) in 1969, where also, not surprisingly, he secured a first class.

It is this solid grounding on the first principles of law, study of Commercial law coupled with Constitutional law that enabled Justice Abichandani to not only to be an outstanding judge but to leave a solid impact and achieve glory in the legal word in the form of editorship of so many commentaries on law which I will refer to later.

Justice Abichandani began practising as an Advocate in the High Court of Gujarat in 1963, where his practise covered both the constitutional, as well as civil side. He practiced till 1978, during which time he was also an Assistant Government Pleader and Public Prosecutor for three years.

In March 1978, Justice Abichandani was appointed as a Judge of the City Civil and Sessions Court in Ahmedabad. In 1985, he was appointed Registrar of the High Court of Gujarat, and five years later, in 1990, he was elevated to Judge of the High Court of Gujarat. During his fourteen year tenure in the Gujarat High Court, he made a name for himself through various

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important judgements. I remember that in Mumbai, Members of the Bar used to speak about Justice Abichandani as one of the prominent judges of the Gujarat High Court.

Justice Abichandani delivered judgements that were well thought out, well structured, well written, precise, and scholarly in approach. Justice Abichandani was born on Human Rights Day, and he was a humanist to the core. He believed in the dignity of man. In one of his judgments he said **“If a person commits any wrong, undoubtedly he should be penalized or punished, but it is never necessary to humiliate him and maul his dignity as a human being.”**

His knowledge of Central Excise laws and tariff classification is reflected in his judgment in *Ahmedabad Electricity Co. Ltd. Vs Union of India*, which was sustained by the Supreme Court.

In another landmark judgment, he ruled that a trial court, while acquitting an accused, cannot ask him or her to furnish bail.

In 2004-2005 there was a long period during which Government was finding it difficult to fill up a position in CEGAT. A Learned Judge of the Madras High Court had agreed to take up the position, his name was cleared but he declined to accept the order when it was issued. As a result, there was a vacancy which needed to be filled. A vacuum continued for some time. In one Anti-Dumping matter before Justice Ruma Pal, the issue was about constitution of Benches and whether the Acting President could do so. The Court gave me notice to appear as Solicitor General and, being the practical person that she was, Justice Pal observed that instead of arguing an academic point it would be better if Government moved quickly to fill up the vacancy. I spoke to the Finance Minister who pressed the accelerator and I was hugely relieved when I was informed that Justice Abichandani had been persuaded to take up the position.

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Justice Abichandani distinguished himself with an outstanding tenure in the Tribunal. In his position as President of the CESTAT to which he was appointed 2005 he will always be remembered for bringing about several changes to the CESTAT. It was under his Presidency that the system for weekly Cause Lists was started. A dress code introduced for all Tribunal Judges as well as Departmental representatives.

This is a brief background on Justice Abichandani's career graph within the Courts. However, his legal expertise extended much beyond the courtroom. Justice Abichandani worked as a part-time Honorary Professor of Law for close to 12 years in various Law Colleges, and was recognised as a Post-Graduate Teacher for the LL.M programme at the University School of Law. He was also on the advisory Panel of Gujarat National Law University.

Numerous books edited by Justice Abichandani grace many a library and adorn the walls of law practitioners' bookshelves. Being selected to edit books written by the great Dinshaw Mulla is by itself an honour. Justice Abichandani edited several of Mulla's Treatises including Pollock and Mulla's Indian Contract and Specific Relief Act (11th edition, 1994), Pollock and Mulla's Transfer of Property Act (8th edition, 1995), Sale of Goods Act, Partnership Act and Savaksha's Trade and Merchandise Marks Act, 1958 (3rd edition, 1999).

His vast repertoire in the law and his keenness for knowledge for learning was reflected in the long list of seminars and colloquia he participated in ranging from those in intellectual property, human rights, access to justice, DNA, finger printing and ethical legal and social implications thereof.

By reason of his genial personality Justice Abichandani was a familiar and popular figure in the corridors of the Supreme Court. His sudden and shocking passing away leaves a void not only in the legal profession but also in our hearts.

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Justice Abichandani has left behind a large circle of friends, relatives and admirers. His wife had a distinguished career in her own right. His sons have made their own mark. It is with great sadness that I extend my condolences to all of them and wish that they find courage to bear this loss. I pray that God grants his soul Eternal Rest.

**REFERENCE MADE BY
PRESIDENT, SUPREME COURT BAR ASSOCIATION
SHRI PRAVIN H. PAREKH
IN THE MEMORY OF
LATE SHRI R.K. ABICHANDANI,
SENIOR ADVOCATE
ON 12TH JULY 2011**

1. Hon'ble Mr. Justice S. H. Kapadia, the Chief Justice of India, My Lords Hon'ble Judges of the Supreme Court, Mr. Goolam Essaji Vahanvati, Learned Attorney General for India, Learned Solicitor General of India, Additional Solicitor Generals, Smt. Laxmi Abichandani, office bearers and members of the Executive Committee of Supreme Court Bar Association, my friends at the Bar, Ladies & Gentlemen.
2. We have assembled to mourn the sad demise, of Mr. Ramesh Kundanlal Abichandani, a Senior Advocate and member of Supreme Court Bar Association (SCBA). The news came as a shock since he was hale and hearty and was enjoying appearing in this Court and was very happy spending time with the members of the Bar. Little did we know, that on 13th May 2011, the last working day before summer vacation, when he wished goodbye to our members, it was the final goodbye as he left for his heavenly abode within 9 days on 22nd May, 2011.
3. A Full Court Reference was given by Gujarat High Court on 13th June 2011. The Bar and the Bench paid moving tributes to him.
4. Mr. Abichandani was born on, 10th December 1942, four months after the Quit India Resolution was passed by the Indian National Congress. On 15th August 1947,

he achieved the freedom but at a price of involuntary migration from Karachi to Ahmedabad.

5. Mr. Abichandani took his early education in Ahmedabad, and thereafter took admission in a school in Anand as his family shifted there. The certificate issued by his school at Ahmedabad was capable of two interpretations. By mistake he was admitted in the seventh standard instead of the third. However he performed extremely well in the seventh standard. On realizing its mistake, the school conducted a special test for the higher class which he passed with flying colours and he continued to do extremely well throughout. He passed SSC at the age of 12, graduated at the age of 16 and passed LL.B from Gujarat University, at the age of 19. However, on account of being under-age, he had to wait for a year to get Sanad. He worked in the chamber of Mr. S. B. Vakil, a leading Senior Advocate practising in Gujarat High Court. Two weeks back, while I was in Gujarat High Court, Mr. Vakil mentioned how proud he was of his protege.
6. Mr. Abichandani gradually picked up good practice in different branches of law. He obtained LL.M degree twice once, in 1966 in Mercantile Law and Criminal Law, standing First in the University, and in 1969 in Constitutional Law and Public International Law, securing First Class.
7. Mr. Abichandani also used to be a part time Professor in Nav Gujarat Law College, Ahmedabad.
8. In March 1978, at the age of 34, he was appointed Judge of City Civil Court, Ahmedabad, where he discharged his functions for about 8 years and as a Judge of C.B.I Court for about 3 years.
9. In 1990 he was elevated to Gujarat High Court. Justice

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Abichandani had the privilege of being in the Gujarat High Court with three of your lordships: Hon'ble Mr. Justice J.M. Panchal, Hon'ble Mr. Justice H.L. Gokhale and Hon'ble Mr. Justice A.R. Dave.

10. Despite his busy schedule as a Judge, one who did not take a single day's sick leave, he had enough time to edit the following classic law books:

- I. Pollock & Mulla's Indian Partnership Act (5th Edition, 1987), published by N.M. Tripathi Ltd
- II. Pollock and Mulla's 'The Sale of Goods Act' (5th Edition, 1987) published by N.M Tripathi Ltd
- III. Pollock and Mulla's 'Indian Contract and Specific Relief Act (11th edition, 1994) published by N.M Tripathi Ltd
- IV. Mulla's 'Transfer of Property Act' (8th Edition, 1995) Published by N.M Tripathi Ltd
- V. Savaksha's Trade and Merchandise Marks Act (3rd edition, 1999) published by Butterworths India

11. He has authored a large number of articles on various subjects ranging from 'Management of Court Cases at the Trial and the Appellate Court level' to 'New Biology and Criminal Investigation'. His last article was on 'Independent Judiciary'.

a. In his article on 'How To Groom Better Lawyers And Better Judges' he said:

"There should be no place for mistrust or suspicion in the judicial functioning. The judges and lawyers belong to the same fraternity."

b. In his article on 'Judicial Independence of Dependant Judiciary', he stated:

"Judges, unfortunately, make wrong decisions all over the world, but questioning the judge's integrity without valid reasons will undermine the entire judicial process and deprive Judges from

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making conscientious decisions."

12. He maintained high standard as a Judge of Gujarat High Court and retired on 9th December 2004. He was then appointed as the President of Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in March 2005 and brought in several welcome changes there.

13. The SCBA is enriched by the presence of the former Judges of High Courts from all over India, who after retirement, practise in this Court. The members of the Bar, especially the juniors, learn a lot from them. They convey their experiences and "insiders' stories".

a. In our Executive Committee six posts are reserved for desiganted Senior Advocates to which some of the retired Judges are elected. The Executive Committee of SCBA utilises the experience and expertise of the retired Judges.

b. The Executive Committee appoints an Election Committee to conduct election of the Executive Committee every year. Generally, the Chairman of this Committee is a member of the SCBA who was a Judge.

c. From 1950 till today two former Judges became Presidents of SCBA. They both lived and fought for independence, integrity and purity of Administration of justice. They are Justice M.C. Chagla for three terms, 1968-69, 1970-71 and 1971-72, and Justice V.M. Tarkunde for 1977-78.

d. I can't resist saying few words about the legend called Chagla. After retiring as the Chief Justice of Bombay High Court, he served the nation in different capacities as Ambassador to U.S A., High Commissioner to U.K., Union Minister for Education, and later for External Affairs. He then started his practise in this Court. All members

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were thrilled and welcomed him to SCBA. All juniors everywhere have been his fans as he was extremely good to them. One thing we all learnt from Mr. Chagla was the mutual respect that the Bar and the Bench should give to each other and to the institution of which they are part and parcel. I would like to give an example. Mr. Chagla to protect independence of judiciary was very critical of a Chief Justice of India. He used to give speeches in different forums and used to write articles criticising that Chief Justice. However whenever he entered this court room, he used to bow very nicely and respectfully, both while entering the Court near the door as well as before sitting down on his chair and likewise, while going back rising from his chair as well as while leaving the Court room. One day I enquired from Mr. Chagla despite him being critical of the Chief Justice, why he used to bow so nicely and respectfully. He replied that the day a practising advocate stops respecting the chair of a Judge he has no business to practise. I have a personal reason to fondly remember Mr. Chagla since I was admitted as a member of the SCBA in 1969 when he was the President. We used to talk to each other in Gujarati and Bori Gujarati is very sweet because it breaks all rules of grammar.

e. Mr. V.M. Tarkunde, another eminent person, also believed and practised high moral principles and was independent, fearless and young at heart, to lead the members of the Bar in a procession to Parliament, to protect the independence of judiciary. He himself was a petitioner in a Writ Petition in the group of S.P. Gupta matters and I had the privilege of drafting and filing that Writ petition.

14. Mr. Abichandani was a vegetarian and used to eat simple food and never smoked nor had any alcohol. There was no entry in his house to alcohol.

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15. He was computer savvy. He always used to look up case laws on his laptop, as a Judge as well as a Senior Advocate, which kept him well informed about the latest developments in law.
16. I will now like to mention some of the most fascinating aspects of his life beyond law. He was very fond of collecting sea shells. His collection comprised of about 700 sea shells, collected from different shores, including that of Andaman and Nicobar and Jagannath Puri. He was also a sculptor and painter. In his house, there is a statue of Gautama Buddha in Pavers stone which he sculpted himself. There is also a very beautiful painting made by him of four African lions with greenery, which is hanging in his drawing room. He was a nature lover and was a keen observer of birds. He was also fond of astronomy, spending hours trying to study the stars with his telescope, which is permanently fixed on the terrace of his house.
17. Smt. Laxmi Abichandani was a District Judge in Gujarat. After Mr. Abichandani took over as the President of CESTAT, she took voluntary retirement from judicial service to join her husband in Delhi. They both became members of SCBA in 2007 and started practising in this Court. She is senior to him, as member of SCBA, by a couple of months. Laxmiji became a trained mediator in a course encouraged by this Court at the Indian Law Institute and has been giving effective and regular service to the Supreme Court Mediation Centre. After the demise of Mrs. Justice K. Amareshwari, who practised in this Court till the end, the Ladies Bar Room looks up to Laxmiji as its guardian.
18. On behalf of the Bar I pray to Almighty that may Mr. R.K. Abichandani's soul rest in eternal peace.



THE

SUPREME COURT REPORTS

Containing Cases Determined by the Supreme Court of India

**VOLUME INDEX
[2011] 7 S.C.R.**

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PUBLISHED UNDER THE AUTHORITY OF THE SUPREME COURT OF INDIA
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29. Hon'ble Mr. Justice Anil R. Dave

**ERRATA
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<i>Page No.</i>	<i>Line No.</i>	<i>Read for</i>	<i>Read as</i>
3	19	acquittal of three accused.	acquittal of <u>the</u> three accused.
9	8 from bottom	by accused	by <u>the</u> accused
234	2	The <u>Judgment</u> of the Court	The <u>Order</u> of the Court
569	8 from bottom	<u>that</u> the mortgagor	the mortgagor
1083	Last line from bottom	thereto <u>showes</u>	thereto <u>shows</u>
1096	13	the appellant and <u>the</u>	the appellant and

**CORRIGENDA
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855	23	order dated <u>29.06.1996</u>	order dated <u>26.06.1996</u>
858	14-15 from bottom	order dated <u>29.06.1996</u>	order dated <u>26.06.1996</u>