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(18) Articles 226 and 32 – Public Interest Litigation (PIL) – Allotment of Government lands in Salt Lake City, Kolkata – PIL alleging that the allotment made by the Chief Minister from his discretionary quota was arbitrary, illegal and in violation of the Master Plan – Held: Different writ petitions and/or appeal were filed before the High Court as well as Supreme Court with regard to allotment of large number of plots in Salt Lake City – Though doubts were raised by the High Court as well as Supreme Court regarding the said allotments, the allotments in favour of the private parties were not set aside, for one reason or the other – However, as all these judgments have attained finality, they cannot be permitted to be agitated over and over again including in the instant writ petition – Principles of finality as well as fairness demand that there should be an end to the litigation – Recently, guidelines have been issued for allotment of both individual and co-operative residential plots in Salt Lake – Only 14 plots are left for allotment under the discretionary quota and the State Government has taken a conscious decision not to make further allotments – Questions raised have become merely academic as rights of the parties have

been finally settled and have attained finality, and the parties have acted thereupon to their respective prejudices – Thus, PIL dismissed – Urban Development – Judgment/Order – Maxims – *Interest rei publicae ut sit finis litium.*

Joydeep Mukharjee v. State of West Bengal & Ors. 493

(19) Articles 226 and 227.

(See under: Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) 602

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 147, 243, 246, 261, 478, 627 and 925

CRIMINAL JURISPRUDENCE:

Proof beyond reasonable doubt – Degree of proof required – Held: It is true that the prosecution is required to establish its case beyond reasonable doubt, but that does not mean that the degree of proof must be beyond shadow of doubt.

(Also see under: Narcotic Drugs and Psychotropic Substances Act, 1985)

Iqbal Moosa Patel v. State of Gujarat 121

CUSTOMS ACT, 1962:

(1) ss.2(34) and 28 r/w s. 111 (d) – “Proper officer” – Notice for payment of duty, interest etc. – Issued by Collector of Customs (Preventive) – Propriety of – Held: Only such a Customs Officer who has been assigned the specific functions of assessment and re-assessment of duty in jurisdictional area, where the import concerned

has been affected, by either the Board or the Commissioner of Customs in terms of s.2(34), is competent to issue notice u/s 28 – The Collector of Customs (Preventive), not being a “proper officer” within the meaning of s. 2(34) of the Act, was not competent to issue show cause notice for re-assessment u/s.28 of the Act – Notifications No. 250- Cus and 251-Cus dated 27.8.1983.

Commissioner of Customs. v. Sayed Ali & Anr. 1045

(2) ss.72(1)(b), 68 and 15(1)(b) – Imported goods improperly removed from warehouse – Rate of duty – Held: When the goods are cleared from the warehouse after the expiry of the permitted period or its permitted extension, the goods are deemed to have been improperly removed u/s. 72(1)(b) – Rate of duty has to be computed according to the rate applicable on the date of expiry of the permitted period u/s.61 – On facts, benefit of exemption from payment of duty in terms of the Export Promotion Capital Goods Scheme was not available to the importer because after the expiry of the warehousing period, the goods had been removed u/s. 72 and not u/s. 68 and, thus, s. 15(1)(b) had no application.

M/s SBEC Sugar Limited & Anr. v. Union of India & Ors. 585

(3) Refund claim – Importer’s claim for refund of customs duty – Rejection by the adjudicating authority on the ground that assessment not challenged – Adjudicating authority ignored the specific directions by the High Court to consider the refund claim on basis of the Essentiality

Certificates – Justification of – Held: Not Justified – Subordinate Tribunal cannot examine whether a direction issued by the High Court under its writ powers was correct, and refusal to carry it out, as such, amounts to denial of justice and destroys the principle of hierarchy of courts in the administration of justice – On facts, the revenue department did not question the order passed by the High Court, which order has reached finality – Thus, the adjudicating authority cannot be permitted to circumvent the order passed by the High Court – Customs authorities directed to consider the importer’s claim for refund of customs duty – Constitution of India 1950 – Article 226 – Administration of justice.

RBF Rig Corporation, Mumbai v. The Commissioner of Customs (Import), Mumabi 691

CUT OFF DATE:

(1) (See under: Constitution of India, 1950 and Allahabad Bank Officers Service Regulations, 1979 as also Constitution of India, 1950) 1119

(2) (See under: Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992) 269

DELAY/LACHES:

(1) Application for condonation of delay in filing appeal – Held: The averments in the application do constitute sufficient cause for not preferring the appeals within time –There is a strong arguable case on behalf of the appellants, therefore, Court would decide the matter or merits by giving the expression ‘sufficient cause’ a pragmatic justice

oriented approach – Delay condoned – Constitution of India, 1950 – Article 136.

(Also see under: Land Acquisition Act, 1894)

Union of India Etc. v. Giani 978

(2) Delay of 12 days in sending sample of contraband to chemical Examiner.

(See under: Narcotic Drugs and Psychotropic Substances Act, 1985) 888

(3) (See under: Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions)

Rules, 1974) 704

DENTISTS ACT, 1948:

s.10A – Renewal of permission for the BDS Course for the academic year – Ministry issuing order granting renewal of permission for the fourth academic year of the BDS Course with a condition that Dental College should seek approval of its order from Supreme Court, so as to ‘regularize’ its order – Propriety of – Held: Is improper and irregular – Executive power of the Central Government to grant permission or renewal of permission u/s.10A, is not subject to control/supervision or confirmation/approval by Supreme Court – Power of judicial review is not intended to be exercised to grant ‘advance rulings of administrative approvals’ to validate executive orders – Condition imposed by the Central Government quashed – However, renewal of permissions issued by Central Government to the petitioners for the academic year 2010-2011, are valid – Suggestion given for modification of time schedule for renewal of permission – Administrative law – Education/Educational

institutions.

Priya Darshni Dental College & Hospital v. Union of India & Ors. 945

DISPLACED PERSONS (COMPENSATION AND REHABILITATION) ACT, 1954:

s.20(1) (c) – Allotment of land to persons displaced as a result of partition of the country – Letter dated 21.6.1996 by State Government putting a stop to such allotments – Writ petition before High Court challenging the letter and for a direction for allotment of land in lieu of that left in Pakistan – Direction by the High Court to allot 20 acres of land and deliver possession thereof to writ petitioner – Held: High Court could not have ordered for allotment of land without even directing an inquiry into the claim – Besides, the plea was a pure question of fact which could not have been entertained straightway by the High Court – Order of High Court set aside – Constitution of India 1950 – Article 226.

State of Haryana & Ors. v. Praduman Singh (D) By Lrs 932

DOCTRINES/PRINCIPLES:

(1) (i) Doctrine of *stare decisis* – Held: A judgment, which has held the field for a long time, should not be unsettled only because another view is possible – The underlying logic of this doctrine is to maintain consistency and avoid uncertainty – Maxim “*stare decisis et non quieta movere*”.

(ii) Doctrine of binding precedent – Held: The doctrine of binding precedent has the merit of promoting certainty and consistency in judicial

decisions.

Shanker Raju v. Union of India 1

(2) Principles of *res judicata*.

(See under: Res Judicata) 435

(3) Rule of reading down.

(See under: Interpretation of Statutes and CENVAT Credit Rules, 2004) 1087

DOWRY PROHIBITION ACT, 1961:

s.2 – Enactment of – Purpose stated.

Bachni Devi and Anr. v. State of Haryana Through Secretary, Home Department 627

EDUCATION/EDUCATIONAL INSTITUTIONS:

(1) Applications for fresh permission and applications for renewal of permission for establishment of new dental colleges – Distinction between.

(Also see under: Dentists Act, 1948)

Priya Darshni Dental College & Hospital v. Union of India & Ors. 945

(2) Admission to MBBS Course for 2008-2009 of candidates belonging to the SC, ST and OBC, securing less than 40% marks in Physics, Chemistry and Biology in the common entrance test – Communication of Medical Council of India to discharge students from MBBS course since they were not eligible for admission in the MBBS course as per MCI Regulations – Held: MCI Regulations require the candidates belonging to the SC, ST and OBC to secure 40% marks

whereas the State Rules, 2008 had prescribed a qualification standard which was less than that of MCI – Qualification requirements prescribed by the State cannot be lower than those prescribed by the MCI – Admissions of the candidates took place due to the fault of the rule-making authority – Therefore, the admissions of the appellants to the MBBS course in the college for 2008-2009 not to be disturbed – Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Payment of Fees) Rules, 2008 – rr. 5 and 12 – Regulations on Graduate Medical Education, 1997 – Clause 5(ii).

Chowdhury Navin Hemabhai & Ors. v. The State of Gujarat & Ors. 1071

(3) Recognition and/or affiliation of institutions offering course in teacher training/education.

(See under: National Council For Teacher Education Act, 1993) 291 and 461

(4) Rules and Regulations of State and University prescribing minimum higher standards for admission to Engineering courses are valid and binding – University and State are always entitled to prescribe higher standards than what is suggested by the central body (AICTE) so as to maintain the excellence in higher education – The fact that there are unfilled seats in a particular year, would not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply – Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they

would continue to apply in spite of the fact that there are vacancies or unfilled seats in any year – Also, higher minimum marks prescribed by State Government cannot be said to be adverse to the standard fixed by AICTE.

Visveswaraya Technological University and Anr. v. Krishnendu Halder and Ors. 1007

(5) (See under: Constitution of India, 1950 and Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974) 704

ELECTION LAWS:

Election petition – Trial and adjudication of – Held: The procedure provided for trial of civil suits under CPC is not applicable in its entirety to the trial of election petition – The procedure prescribed in CPC applies to election trial with flexibility and only as guidelines.

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

Kalyan Singh Chouhan v. C.P. Joshi 216

EUTHANASIA/MERCY KILLING:

Plea for euthanasia – Writ petition u/Article 32 of the Constitution on behalf of the petitioner by a next friend – Allegation in the writ petition that the 60 years old petitioner was in a persistent vegetative state for last 36 years due to brain injury – Prayer that the hospital authorities be directed to stop feeding the petitioner and allow her to die peacefully – Affidavit by the Head of the hospital that the petitioner has been able to take food in normal course and has been responding

by facial expression – Variance between the allegations in the writ petition and the affidavit of the Head of the hospital – In the circumstances, a team of distinguished doctors appointed to examine the petitioner thoroughly and to submit a report about her physical and mental condition – Constitution of India, 1950 – Article 32.

Aruna Ramchandra Shanbaug v. Union of India and Ors. 869

EVIDENCE:

(1) Circumstantial Evidence.
(See under: Penal Code, 1860) 367

(2) Independent witness.
(See under: Evidence Act, 1872) 888

EVIDENCE ACT 1872:

(1) s. 25 – Confession before police official – Admissibility of – Held: Is inadmissible by virtue of s. 25 – However, it is admissible in TADA cases by virtue of s. 15 of the TADA – Confession is a very weak kind of evidence – In India, use of third degree methods by police for extracting confessions from the alleged accused is well known – Thus, where prosecution case mainly rests on the confessional statement made to the police by the alleged accused, in the absence of corroborative material, courts must be cautious in accepting extra-judicial confessional statements – Terrorist and Disruptive Activities (Prevention) Act, 1987 – s. 15.

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

Arup Bhuyan v. State of Assam 506

(2) (i) s.25 – Offence under the NDPS Act – Accused apprehended by police party – Consent statement made by accused expressing his confidence to be searched in presence of Police Inspector – Whether inadmissible u/s.25 – Held: The consent statement signed by the accused was not used as a confession, therefore, the bar under s.25 was not applicable – No confession was made in this case through the consent given by the accused with regard to any of the ingredients of the offence with which he was subsequently charged.

(ii) Independent witness – Non-examination of – Effect – Held: Merely because the prosecution did not examine any independent witness, would not necessarily lead to the conclusion that the accused had been falsely implicated – On facts, the prosecution offered a plausible explanation with regard to the non-joining of independent witnesses.

Jarnail Singh v. State of Punjab 888

(3) s.113-A.
(See under: Penal Code, 1860) 478

(4) s.113-B.
(See under: Penal Code, 1860) 627

(5) (i) s.114, Illustration (f) – Presumption of service – Registered letter – Held: There is a presumption of service of registered letter – However, the presumption is rebuttable on a consideration of evidence of impeccable character – General Clauses Act, 1897 – s.27.

(ii) ss.101, 103 – Burden of proof of a fact – Held:

Rests on the party who substantially asserts it and not on the party who denies it – Burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person.
(Also see under: Code of Civil Procedure, 1908)

Parimal v. Veena @ Bharti 648

(6) s.114 – Presumption of service – In the instant case, notice sent under postal certificate from one house to another house on the same road – Inference can be drawn u/s.114 that such notice must have been duly served in the normal course of business within 5 days.

Samitri Devi and Anr. v. Sampuran Singh and Anr. 196

GENERAL CLAUSES ACT, 1897:

s.27.
(See under: Evidence Act, 1872) 648

GOVERNMENT CONTRACTS:

LPG dealership – Selection process – Propriety of – Grant of dealership to the first respondent by appellant-company – Second candidate in the list of eligible candidates filed complaint alleging illegalities and irregularities in awarding marks by the selection committee – Thereafter the complainant died – The investigation revealed irregularities in the selection process – Cancellation of entire process and decision to re-interview the candidates – Writ petition by first respondent – Allowed by High Court – Held: If the finding was that the marks were wrongly assigned

to the complainant and consequently, first respondent had benefited, it would not follow that on death of the complainant, the irregularity in assigning marks could be brushed aside or ignored – In such selection, any illegality or material irregularity in assigning marks in regard to any person with the intention of favouring some one or excluding some one, vitiates the entire selection process – High Court having recorded a finding that the appellant was satisfied about the illegality committed by the selection committee, ought to have rejected the writ petition, as the decision of the appellants to scrap the selection was reasonable and not arbitrary – Constitution of India, 1950 – Article 14.

Senior Law Manager, Indian Oil Corporation Ltd. and Anr. v. Guru Shakti Singh and Anr. 919

GUJARAT PROFESSIONAL MEDICAL EDUCATIONAL COLLEGES OR INSTITUTIONS (REGULATION OF ADMISSION AND PAYMENT OF FEES) RULES, 2008:
rr. 5 and 12 – Admission to medical course.
(See under: Education/Educational Institutions) 1071

HARYANA WAREHOUSING CORPORATION (OFFICERS AND STAFF) REGULATIONS, 1994: Regulations 6 and 8(2) – Appendix B – Clause 19.
(See under: Service Law) 1151

IDENTIFICATION OF PRISONERS ACT, 1920:
s.5.
(See under: Penal Code, 1860) 367

IDENTIFICATION/TEST IDENTIFICATION PARADE:
Test identification parade.
(See under: Penal Code, 1860) 367

INDIAN OVERSEAS BANK OFFICERS AND EMPLOYEES VOLUNTARY RETIREMENT SCHEME, 2000:
Object and purpose of – Explained.
(Also see under: Service Law)

Chairman and M.D. Indian Overseas Bank & Ors. v. Tribhuvan Nath Srivastava 556

INTEREST:
(1) Interest on compensation for surplus land.
(See under: Maharashtra Agriculture Lands (Ceiling on Holdings) Act, 1961) 180
(2) (See under: Central Excise Act, 1944) 1087
(3) (See under: Land Acquisition Act, 1894) 1142

INTERPRETATION OF STATUTES:
(1) Exemption notification – Held: Has to be construed strictly and there has to be strict interpretation of the same by reading the same literally.
(Also see under: Central Excise Act, 1944)

M/s. Uttam Industries v. Commnr. of Central Excise, Haryana 1113

(2) Harmonious construction.
(See under: Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992) 269

(3) (i) Legislative intention – Ascertainment of – Duty of the court – Held: In a court of law or equity,

what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact either in express words or by reasonable and necessary implication – Where the Legislature clearly declares its intent in the scheme of language of the Statute, it is the duty of the court to give full effect to the same without scanning its wisdom or policy and without engrafting, adding or implying anything which is not congenial to or consistent with such express intent of legislature.

(ii) Purposive interpretation – Held: A statute is designed to be workable, and the interpretation thereof by court should be to secure that object unless crucial omission or clear direction makes that end unattainable.

(Also see under: Administrative Tribunals Act, 1985)

Shanker Raju v. Union of India 1

(4) Tax statutes – Held: Must be interpreted in the light of what is clearly expressed – It is not permissible to import provisions in a tax statute so as to supply any assumed deficiency – Rule of reading down – Explained.

Union of India & Ors. v. M/s. Ind-Swift Laboratories Ltd. 1087

JUDGMENTS/ORDERS:

(1) (See under: Central Excise Act, 1944) 1087

(2) (See under: Constitution of India, 1950) 493

JUDICIAL RESTRAINT:

Disparaging remarks normally should not be made

against the members of the lower judiciary – Higher courts should observe restraint – In the instant case, application was filed u/s.156(3), Cr.P.C. by a woman alleging that her father-in-law had committed rape on her and the police had refused to register her FIR – Appellant-judicial officer passed an order registering her application u/s.156(3), Cr.P.C. as complaint and directing registry to present the file before her for recording the statement of the complainant u/s.200, Cr.P.C. – Single Judge of High Court held that the appellant had done the gravest injustice to the complainant and she being a lady magistrate ought to have thought about the nature of crime committed by the accused and the order was passed ignoring all judicial disciplines and without application of judicial mind – Appellant sought expunging of remarks – Held: Disparaging remarks made by the Single Judge of the High Court were not justified at all – The judicial discretion exercised by appellant was in consonance with the scheme postulated by the Code and was neither arbitrary nor perverse – Disparaging remarks made by the Single Judge of the High Court quashed – Code of Criminal Procedure, 1973 – ss.156(3), 200.

Smt. Mona Panwar v. The Hon'ble High Court of Judicature at Allahabad Thr its Registrar and Ors. 413

JUDICIAL REVIEW:

(See under: Dentists Act, 1948) 945

JURISDICTION:

(See under: Code of Civil Procedure, 1908) 907

KARNATAKA INDUSTRIAL AREAS DEVELOPMENT ACT, 1966:

(i) s. 28(4) and (5) – Acquisition of land belonging to the appellant – Challenge to – Acquisition proceedings approved by the High Court as also Supreme Court – Appellant on the identical issues filing a new writ petition – Rejection of, by the Single Judge and the Division Bench of the High Court – Held: Attempt by the appellant to re-agitate the same issues which were considered by Supreme Court and were rejected expressly in the previous judgment, is a clear instance of an abuse of process of Supreme Court – Such issues are barred by principles of res judicata or Constructive res judicata and principles analogous thereto – Appellant directed to pay Rs 10 lacs as costs to State High Court Legal Services Authority – Code of Civil Procedure, 1908 – s. 11 – Principles of res judicata and constructive res judicata – Land Acquisition Act, 1894 – s 11A – Costs.

(ii) ss. 28(4) and (5) and ss. 4 and 6 of the Land Acquisition Act – Comparison between – Held: There is a substantial difference – Land which is subject to acquisition proceeding under the 1894 Act gets vested with the Government only when the Collector makes an award u/s. 11 of the 1894 Act, and the Government takes possession – Under ss. 28(4) and 28(5) of the KIAD Act, vesting takes place by operation of law and it has nothing to do with the making of any award – Land Acquisition Act, 1894.

(Also see under: Doctrines/Principles)

M. Nagabhushana v. State of Karnataka & Ors.

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KARNATAKA POLICE MANUAL:

(See under: Penal Code, 1860) 367

KERALA STATE ELECTRICITY BOARD TENDER REGULATIONS:

Regulation 25 (C).

(See under: Penal Code, 1860) 762

LAND ACQUISITION ACT, 1894:

(1) ss.11 and 11A.

(See under: Karnataka Industrial Areas Development Act, 1966) 435

(2) s.23 (1-A) – Compensation under – Held: Sub-s.(1-A) was made applicable to proceedings pending on or after 30.04.1982 – In the instant case, land owners would not be entitled to get the benefit under sub-s. (1-A) as the proceedings had culminated in passing the award by the Collector on 09.07.1980 i.e. before 30.04.1982, the date from which the amendment was made applicable to pending and subsequent proceedings.

Union of India etc. v. Giani 978

(3) ss.23(1A), 23(2) – Additional amount u/s. 23(1A) whether awardable on solatium u/s.23(2) – Acquisition of land – Reference court awarding compensation alongwith statutory benefits u/ s.23(1A), 23(2) and 28 – Before executing court, claim for additional amount u/s. 23(1A) not only on the market value of the land but also on solatium amount – Executing court accepting claim – Revision thereagainst dismissed by High Court – Held: Additional amount u/s.23(1A) is awardable only on the market value determined under the first factor of s.23(1) and cannot be calculated on

the solatium payable u/s.23(2) – The orders of executing court and the High Court that additional amount u/s.23(1A) is payable on solatium are set aside.

State of Punjab v. Amarjit Singh and Anr. 617

(4) s.34 r/w ss.28 and 53 – Interest on compensation for land acquired – Amount not collected by land-owners and deposited in Revenue account of State and utilized – Held: The Act requires that the amount be deposited in court – Even if the amount is not collected by the claimants, State cannot keep it with itself and utilize the same – In such a case, after a reasonable period the amount should be deposited in court – Interest will be payable to parties as per order of District Judge – Code of Civil Procedure, 1908 – O. 21.r 1.

Ivo Agnelo Santimano Fernandes & Ors. v. Government of Goa & Anr. 1142

LAND LAWS AND AGRICULTURAL TENANCY:

(1) Gram Sabha lands – Encroachment on.
(See under: Punjab Village Common Lands (Regulation) Act, 1961) 250

(2) Land Ceiling.
(See under: Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961) 180

LIMITATION:

Cut off date.
(See under: Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992) 269

MAHARASHTRA AGRICULTURAL LANDS (CEILING ON HOLDINGS) ACT, 1961:

s.26 – Award of interest @ 3% per annum on the compensation for surplus land – Held: s.26 contemplates payment of compensation with interest at 3% per annum in annual instalments spread over a period of 20 years or at the end of 20 years – Rate of interest can be only at 3% per annum for a period of 20 years from the date of taking possession – s.26 is silent about the rate of interest payable, if the compensation is not paid within 20 years – For the period beyond 20 years, the said provision regarding interest will cease to apply and the general equitable principles relating to interest will apply; and interest can be awarded at any reasonable rate, in the discretion of the court – In the instant case, interest @ 6% per annum, beyond 20 years found to be appropriate.

Godavari Sugar Mills Ltd. v. The State of Maharashtra & Ors. 180

MAHARASHTRA MUNICIPALITIES (TRANSFER OF IMMOVABLE PROPERTY) RULES, 1983:

r.21.
(See under: Municipalities) 985

MAXIMS:

(1) *Interest rei publicae ut sit finis litium.*
(See under: Constitution of India, 1950) 493

(2) (i) *'interest rei publicae ut sit finis litium'.*
(ii) *'nemo debet bis vexari, si constat curiae quod sit pro un et eadem causa'.*
(See under: Res Judicat) 435

(3) “*stare decisis et non quieta movere*”.

(See under: Doctrines/Principles) 1

MOTOR VEHICLES ACT, 1988:

(1) ss.147 and 149 – Motor accident – Compensation – Liability of insurer – Insurance policy taken by the owner of the vehicle covering six passengers including the driver – Passengers in excess of the number covered by the insurance policy, travelling in the vehicle at the time of accident – Death/injury to the passengers – Claim petitions – Liability of the insurer – Held: Is confined to the number of persons covered by the insurance policy only and liability to pay the other passengers is that of the owner of the vehicle – Persons travelling in the vehicle in excess of the permitted number of six passengers, though entitled to be compensated by the owner of the vehicle, would still be entitled to receive the compensation amount from the insurer, who could recover it from the insured owner of the vehicle by putting the decree into execution.

United India Insurance Co. Ltd. v. K.M. Poonam & Ors. 1026

(2) s.166 – Fatal accident – Deceased aged 53 years and working as a Senior Assistant in the State Electricity Board – Claim petition by his three sons and paternal grand-mother – Tribunal applied a multiplier of 11 and awarded total compensation of Rs.14,27,496/- with interest @ 9% p.a. – High Court, however, reduced the compensation by adopting a split multiplier of 6 – Held: High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefor – It also

did not consider the clear and corroborative evidence about the prospect of future increment of the deceased – Judgment of High Court set aside for it was perverse and clearly contrary to the evidence on record – Respondents directed to pay compensation of Rs.18,00,000/- with the rate of interest as granted by the Tribunal.

Sri K.R. Madhusudhan & Ors. v. The Administrative Officer & Anr. 1061

(3) Fatal motor accident – Claim petition – Compensation – Computation of income of deceased – Deductions – Multiplier – Compensation towards revision in pay, loss of love and affection and consortium – Held : Deduction from the income of deceased towards HRA, CCA, EPF, GIS, medical allowance should not have been made by Tribunal – As deceased was married, 1/3rd should be deducted from her income towards personal expenses – Annual income of deceased, thus, calculated to Rs. 1,89,640/- – Addition of 30% by way of future prospects allowed – Deceased being 41 years of age, multiplier 14 to be applied – Accordingly, compensation calculated to Rs. 22,34,960/- – Further, a sum of Rs. 25,000/- awarded towards loss of love and affection and consortium – Total compensation payable to claimants with 6% interest from date of filing of claim petition – Respondents jointly and severally liable to make the payment.

Sunil Sharma & Ors. v. Bachitar Singh & Ors. 576

MUNICIPALITIES:

Allotment of land for public and semi public purpose – Appellant-charitable trust allotted a plot of land on 60 years lease for starting a school for providing education especially to girls – However, for want of money and financial crunch, the school could not be started and the appellant started hostel for girls and working women – Writ petition in the nature of pro bono publico challenging the allotment of land to the appellant – High Court set aside the allotment of land – Held: Construction as hostels for girls and working women, is definitely a public or semi public purpose and it cannot be said that there is any deviation from the purposes for which the said plot was earmarked and allotted to the appellant – Appellant was running the hostel on no profit-no loss basis and had taken the initiative of introducing progressive elements (through the establishment of counseling centres), in its efforts to alleviate some primary concerns of working women – Thus, order passed by the High Court was not sustainable – Maharashtra Municipalities (Transfer of Immovable property) Rules, 1983 – r.21.

(Also see under: Public Interest Litigation)

Pragati Mahila Mandal, Nanded v. Municipal Council, Nanded and Ors. 985

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985:

(1) s.8(c) r/w ss.21 and 29 – Smuggling and interstate trafficking of narcotic substances – A-3 allegedly carrying out operations at the instance of A-2 – Large quantity of heroin seized from truck driven by A-4 in which A-3 was also traveling – A-

3 and A-4 made statements revealing that buyer of the consignment was A-1 – Raid carried out which led to seizure of heroin and cash from residence of A-1 – Trial court convicted all the accused – High Court upheld the conviction – Appeals by A-1, A-3 and A-4 – Held: The prosecution had established that raid was conducted, the truck driven by A-4 intercepted and searched and heroin was recovered from a bag kept under the seat on which A-3 was sitting – Seizure of contraband from the residence of A-1 in raid is also established – Both, the trial court as also the High Court minutely examined all aspects of the matter – No reason to interfere, all the more so, when an appeal filed by A-2 against the judgment of High Court has been already dismissed by Supreme Court – Constitution of India, 1950 – Article 136.

(Also see under: Criminal Jurisprudence)

Iqbal Moosa Patel v. State of Gujarat 121

(2) ss.25 and 35 – Applicability of – Contraband goods recovered from the truck co-owned by the appellant – While purchasing the truck, the appellant had given his residential address in Rajasthan whereas he was a resident of Haryana – High Court drew presumption against the appellant u/s.35 to hold that by giving a fake address, his culpability was writ large on the facts of the case – Conviction of appellant u/ss.25 and 35 – Held: s.25 would not be applicable as there was no evidence to indicate that the appellant had knowingly permitted the use of the vehicle for any improper purpose – Burden to prove that the appellant had knowledge that the vehicle he owned was being used for transporting narcotics lay on

the prosecution, and it is only after the evidence proved beyond reasonable doubt, that he had knowledge, would presumption u/s.35 arise – In the absence of any evidence with regard to the mental state of the appellant, no presumption u/ s.35 can be drawn – The only evidence which the prosecution sought to rely on was the appellant's conduct in giving his residential address in Rajasthan although he was a resident of Haryana while registering the offending truck, which cannot fasten him with the knowledge of its misuse by the driver and others – Judgments of the courts below set aside and acquittal ordered.

Bhola Singh v. State of Punjab 642

(3) (i) s.50 – Scope, ambit and applicability of – Held: s.50 can be invoked only in cases where the drug/narcotic is recovered as a consequence of body search of the accused – In case, the recovery of the narcotic is made from a container being carried by an individual, the provisions of s.50 would not be attracted.

(ii) Delay in sending samples to Chemical Examiner – Opium seized from accused – Gap of 12 days between the seizure and the sending of opium sample to the Chemical examiner – Held: On facts, the delay in sending the samples was not fatal to the prosecution case – There was no infirmity in the link evidence – Mere delay in sending the sample to the Chemical Examiner not sufficient to conclude that the sample was tampered with – Report of the Chemical Examiner indicated that the seals were intact when the sample was received and tallied with the sample impression of the seal – Code of Criminal

Procedure, 1973 – s.293.

Jarnail Singh v. State of Punjab 888

NATIONAL COUNCIL FOR TEACHER EDUCATION ACT, 1993:

(1) (i) s.14 – Recognition of Institutions offering course or training in teacher education – Teacher Training Institute run by appellant society – Recognition of Institute by National Council for Teacher Education (NCTE) for conducting two year Junior Basic Training (JBT) from the academic session 2000 - 2001 – Grant of affiliation to the Institute for the JBT course (2001-2003) by State Board of School Education – Admission of 160 students to the two year JBT course in year 1999 – Grant of one-time relaxation in respect of students admitted by the Institute for the academic session 1999 – 2001 and direction to the Board to conduct examination – 68 students found eligible out of 160 and permitted to take examination and their result was announced – Remaining 92 students were found ineligible but were permitted to take the first year examination – However, their results were not announced nor were they permitted to take second year examination – Writ Petition by the 92 students seeking direction to the Board to declare their first year results and conduct the second year examination – Dismissed by the High Court – Held: Practice of admitting students by unrecognized institutions and then seeking permission for the students to appear for the examinations cannot be accepted – Order of the High Court does not call for interference.

(ii) s.14(6) – Grant of affiliation to the Institution,

where recognition has been granted – Recognition of Institute for conducting two years Junior Basic Training (JBT) course in the year 2000 – Grant of affiliation to the Institute for the JBT course (2001-2003), however, affiliation for subsequent JBT course not granted – Admission of student to the JBT course in the years 2002 and 2003 – Writ petitions seeking a direction to the Board to conduct the examinations for the academic session 2002-2004, and to grant affiliation to the Institute and permit students of 2003-2005 batch to appear for examination respectively – Disposed of, by the High Court – Direction issued to refund the fees paid by the students and pay Rs 50,000/- as damages – Held: An institution requires the recognition of NCTE as well as affiliation with the examining body, before it can offer a course or training in teacher education or admit students to such course or training – The students admitted in 2002 and 2003 have already completed the course and have also been permitted by the Board – In the interest of justice, the admissions of students to the Institute in the years 2002 and 2003 should be regularized subject to fulfilling the eligibility criteria prescribed by the Board and their results should be declared – Direction of the High Court to pay damages of Rs 50,000/- to students admitted in 2002 and 2003, set aside.

(iii) 'Recognition' and 'affiliation' – Purpose of – Held: Are different – 'Affiliation' enables and permits an institution to send its students to participate in the public examinations conducted by the Examining Body and secure qualification in the nature of degrees, diplomas, certificates – 'Recognition' is licence to the institution to offer a course or training in teacher education.

(iv) s. 14(6) – Grant of affiliation to the institution, where recognition has been granted – Recognition of institute for conducting two years Junior Basic Training (JBT) course in the year 2000 – Affiliation to the institute for two years JBT course (2001-2003), however, affiliation for subsequent JBT course not granted – Affiliation to the Institute granted only for the year 2009 – Writ petition seeking affiliation to the Institute for academic session 2004-2006 and 2005-2007 and direction to the Government to sponsor students for admission for the said academic session – Dismissed by the High Court – Held: No candidates were allotted by the State Government to the Institute, nor did the Institute independently admit any candidate for the academic sessions 2004-2006 and 2005-2007 – The prayer seeking a direction to the Board to allot candidates for 2004-2006 and 2005-2007 does not survive – The question of granting affiliation for those years is academic and does not arise for consideration – Notifications related to constitution of a committee to examine whether the Institute had committed any irregularities in making admissions in the past before the recognition by NCTE, not erroneous – After recognition by NCTE and affiliation with the Board in 2009, the issue is academic.

Chairman, Bhartia Education Society & Anr. v. State of Himachal Pradesh & Ors. 461

(2) s.14 – Role of State Government in granting recognition to the institution offering course in teacher training – Requirement of recommendation/suggestion by State Government/ UT Administration – Held: Provisions contained

in s.14 and the Regulations framed for grant of recognition including the requirement of recommendation of the State Government/Union Territory Administration are mandatory – Consultation with the State Government/UT Administration and consideration of the recommendations/ suggestions made by them are of considerable importance – State Government/UT Administration sanctions the posts keeping in view the requirement of trained teachers and budgetary provisions made for that purpose – The Council is directed to ensure that in future no institution is granted recognition unless it fulfils the conditions laid down in the Act and the Regulations and the time schedule fixed for processing the application by the Regional Committees and communication of the decision on the issue of recognition is strictly adhered to – National Council for Teacher Education (Recognition, Norms and Procedure) Regulations, 2007.

(Also see under: National Council For Teacher Education (Recognition, Norms and Procedure) Regulations, 2007)

National Council for Teacher Education and Ors. v. Shri Shyam Shiksha Prashikshan Sansthan and others etc. etc. 291

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

Regulation 5, clauses (4) and (5) – Cut off dates for submission of application to Regional Committee, processing thereof and communication of the final decision on the issue

of recognition – Validity of – Held: The cut off dates are neither arbitrary/irrational nor violative of Article 14 of the Constitution – Constitution of India, 1950 – Article 14 – Notification F.No.48-3/(1)/2008/NCTE/N&S dated 1.7.2008.

(Also see under: National Council for Teacher Education Act, 1993)

National Council for Teacher Education and Ors. v. Shri Shyam Shiksha Prashikshan Sansthan and others etc. etc. 291

NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) s.138.

(See under: Code of Criminal Procedure, 1973) 364

(2) ss.138 and 141(1) –Vicarious liability of Director of a company – Complaints against a company for dishonour of cheques – Metropolitan Magistrate directing summons to issue to accused – Revision petitions by one of the Directors contending that he had resigned as Director of the company before issuance of the cheques by it – Held: The words “every person who, at the time of the offence was committed”, occurring in s.141 indicate that criminal liability of a Director must be determined on the date the offence is alleged to have been committed – A Director whose resignation has been accepted and notified to Registrar of Companies, cannot be made accountable for the acts of the company committed after his resignation – Complaints against Director concerned quashed – Companies Act, 1956 – s.303 – Code of Criminal Procedure, 1973 – ss.397, 401 r/w s. 402.

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

Harshendra Kumar D. v. Rebatilata Koley Etc.

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ORISSA EDUCATION (RECRUITMENT AND CONDITIONS OF SERVICE OF TEACHERS AND MEMBERS OF THE STAFF OF AIDED EDUCATIONAL INSTITUTIONS) RULES, 1974: rr. 2(1), 4 to 7 – Lecturers receiving grant-in-aid – Claiming UGC pay scale w.e.f. 1.1.1986, as per Notification dated 6.10.1989 – Writ petitions allowed by High Court placing reliance on earlier decisions – Held: Questions raised in instant appeals had never been considered by courts earlier – A teacher who had been appointed without possessing the requisite qualification at initial stage, cannot get the benefit of grant-in-aid scheme unless he/she acquires the additional qualification and, therefore, question of grant of UGC pay scale would not arise unless such teacher acquires the additional qualification for benefit of grant-in-aid scheme – However, terminating the services of those who had been appointed illegally and/or had been withdrawing the benefit of grant-in-aid scheme would not be desirable as a long period has elapsed – But, UGC pay scale cannot be granted prior to the date of acquisition of higher qualification – Delay/laches – Constitution of India, 1950 – Articles 14, 16 and 21 – Stare decisis – Rule of per incurium. (Also see under: Constitution of India, 1950)

State of Orissa & Anr. v. Mamata Mohanty 704

PENAL CODE, 1860:

(1) ss.120-B and 409, and ss. 5(1)(c) and 5(2) of Prevention of Corruption Act read with s.120-B IPC – Contract awarded by State Electricity Board to accused-contractor on exorbitant rates – Prosecution of accused – Conviction by trial court of the Member of the Board, Member of its Consultative Council and the Minister – Acquittal by High Court – Held: The Board is empowered with the authority to award contracts, but being a Public Undertaking it is not expected to accept tenders at exorbitant rates causing loss to the Board – The evidence clearly shows that the Minister concerned used to interfere in awarding contracts of the Board and the accused-contractor had been chosen in advance by him – Special Court has rightly concluded that a criminal conspiracy was hatched out at the instance of the Minister concerned and the Member of the Consultative Council – Prosecution has established against the three accused-appellants that the contract was awarded to the accused-contractor at exorbitant rates – Special Court accepting the prosecution case, rightly convicted the accused – High Court committed grave error in acquitting the accused without adverting to reliable and acceptable evidence adduced by prosecution – Judgment of High Court set aside and conviction of all the three accused as recorded by Special Court upheld – However, keeping in view the facts and circumstances of the case, and the fact that the accused have undergone agony of the proceedings for nearly two decades, accused sentenced to rigorous imprisonment for one year with fine of Rs. 10,000/- each – Kerala State Electricity Board Tender

Regulations – Regulation 25 (C).

V.S. Achuthanandan v. R. Balakrishna Pillai & Ors. 762

(2) s. 302 – Brutal murder of a sex worker – Conviction and sentence u/s. 302, by the courts below – Justification of – Held: Justified – Injuries show brutality of the crime – Head of the deceased was battered again and again in a hideous and barbaric manner – Testimony of the eye-witnesses corroborates the medical evidence – Accused having committed murder in a brutal manner of a helpless woman, deserves no sympathy – Thus, order of conviction upheld – Crime against women.

Budhadev Karmaskar v. State of West Bengal 925

(3) s.302 – Gruesome murders in Nithari village – Accused charged for murdering young girls and several children – Allegation that accused used to lure young children inside the house where he would strangulate them and cut off their body parts and eat them – Conviction by courts below u/s. 302 and award of death sentence – Held: The accused had made a voluntary confession before the Magistrate u/s.164 CrPC – On his pointing out, 15 skulls and bones were recovered and also a knife was recovered from a water tank – The entire chain of circumstances connected the accused with the crime which was established by the prosecution beyond reasonable doubt – The killings by the accused were horrifying and barbaric – Case fell within the category of rarest of rare

case – Conviction and death sentence upheld.

Surendra Koli v. State of U.P. And Ors. 939

(4) s.302 r/w s.34 – Accused persons allegedly formed themselves into an unlawful assembly and assaulted PW-1 and his brother with sword, axe and knife due to political animosity – PW-1 was injured while his brother died at the hospital – Trial court acquitted all the seven accused – Conviction by High Court of four accused (the appellants) u/s. 302/34 – Held: Justified – The findings of the High Court as to the spontaneity of the FIR are fully endorsed – PW-1 is an injured witness and his presence, therefore, cannot be disputed – The prosecution story was entirely correct and was fully supported by the evidence of independent witnesses.

(Also see under: Appeal)

Kilakkatha Parambath Sasi & Ors. v. State of Kerala 540

(5) ss. 302 and 304.

(See under: Code of Criminal Procedure, 1973) 338

(6) s.302 and s.325 – Three accused – Two victims – Gunshot injury to first victim which hit him on the leg – Second victim taken away by the accused – 20 minutes later, the sound of 3 or 4 gun shots heard – Dead body of the second victim found next morning – Conviction by trial court u/s.307 – High Court, however, convicting them u/s.302 – Held: As per the post mortem report, there were only lacerated wounds on the dead body of the second victim – There was no gun shot wound on his body – Accused entitled to benefit of doubt

and consequently acquitted of charge u/s.302, however, they were guilty u/s. 325 r/w s.34 as admittedly a gun shot was fired at first victim which hit him on the leg.

Jagga singh and Anr. v. State of Punjab 483

(7) ss. 302, 376 and 392 – Conviction and sentence of death awarded by trial court finding the chain of circumstantial evidence complete – Conviction upheld and death sentence confirmed by High Court – Held: On the basis of oral evidence, the post mortem report, the evidence of the doctor who conducted the autopsy, the medical examination of injuries on the person of the accused, his extra judicial confession made to the doctor who examined him, the forensic report, the report of the Finger-Print Expert and the recoveries made from the house in occupation of the accused, the courts below rightly held that the accused, and non else, committed the offences – His conviction, therefore, upheld – Keeping in view the antecedents of the accused, his remorseless attitude and two days after the incident attempting similar offences, the manner in which the offences were committed by him, it has rightly been held by the courts below that the accused is a menace to society and incapable of rehabilitation – The sentence of death is, therefore, confirmed – Sentence/sentencing – Evidence – Circumstantial Evidence – Test Identification Parade – Extra-judicial confession – Identification of Prisoners Act, 1920 – s.5 – Karnataka Police Manual.

B. A. Umesh v. Regr.Gen.High Court of Karnataka 367

(8) ss.304 (part-II) and 328, and s.54-A of Rajasthan Excise Act – Conviction by trial court and High Court, of accused on the statement that the person who died of consuming illicit liquor was seen drinking in the soda-lemon shop of the accused – Held: The statement of the witness which led to conviction of the accused does not indicate that the deceased had purchased the illicit liquor from the shop of the accused – Moreover, the liquor consumed by deceased from shop of accused was not sent for chemical examination – Consequently, accused cannot be connected with the crime on the basis of such evidence – Judgments of trial court and High Court set aside – Accused acquitted – Rajasthan Excise Act.

Dayal Das v. State of Rajasthan 1136

(9) (i) s.304B – Offence of Dowry death – Ingredients required to be proved by the prosecution – Stated.

(ii) Dowry – Meaning of – Held: For purposes of s.304B, 'dowry' has the same meaning as in s.2 of the Dowry Prohibition Act – Mere demand for 'dowry' before marriage, at the time of marriage or any time after the marriage is an offence – Dowry Prohibition Act, 1961 – s.2.

(iii) Dowry death – Wife of appellant no.2 died within 3 months of her marriage – She was found dead by hanging from a ceiling fan in the appellants' house – Conviction of the husband and the mother-in-law of deceased u/s.304-B – Held: That the deceased was subjected to harassment and ill-treatment by the appellants after father of the deceased refused to accede to their demand

for purchase of motorcycle is established – All the essential ingredients to bring home the guilt u/s.304B were established against the appellants by the prosecution evidence – Presumption u/s.113B of the Evidence Act was fully attracted – The appellants failed to rebut such presumption – Evidence Act, 1872 – s.113B.

Bachni Devi and Anr. v. State of Haryana Through Secretary, Home Department

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(10) s.306 – Abetment of suicide – Unnatural death of married woman – Allegation of maltreatment of victim by husband and parents-in-law on account of dowry demand – Victim found dead – Medical opinion that death was caused by poisoning – Trial court convicted accused u/s.304B – High Court held that case u/s. 304B was not made out but accused were liable to conviction u/s. 306 for having abetted the suicide of the victim – SLPs filed by husband and parents-in-law – SLP of husband dismissed – In respect of appeal filed by parents-in-law, Held: There was no evidence to show that suicide was a dowry death as evidence with respect to the demand for dowry was vague and stale – In the background of the findings recorded while acquitting the accused of the charge u/s.304B, no inferences or presumptions can be drawn – Difference of opinion within a family on everyday mundane matters would not fall within the category of wilful conduct – Merely because the parents-in-law wanted her to look after them in old age could not be abetment of suicide – Presumption against them u/s.113A of the Evidence Act, 1872 cannot thus be drawn – High Court's judgment suffers

from serious contradictions – Conviction set aside – Evidence Act, 1872 – s.113A.

Nachhattar Singh & Ors. v. State of Punjab 478

(11) (i) ss.366 and 376 r/w s.109 – PW-2 was allegedly abducted and thereafter subjected to forcible marriage and rape – Eight accused – Conviction of, by courts below – Held: Not justified – The entire story about the abduction by car and the forced marriage was seemingly concocted – No reliable evidence to vouchsafe the correctness of the date of birth as recorded in the school transfer certificate of PW-2 – Expert evidence did not rule out the possibility of PW-2 being a major – Even after the alleged marriage with A-1, PW-2 continued to be a willing partner in the entire episode – She did not protest nor did she make any complaint though she had the opportunity to do so on many occasions – The findings recorded by both the courts below were perverse and unsupportable by the evidence on record – Accused-appellants clearly entitled to benefit of doubt, thus, acquitted.

(ii) Rape victim – Date of birth of the victim – Entry in her school transfer certificate – Evidentiary value of – Held: The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined – On facts, the father of the victim said nothing about the transfer certificate in his evidence – The Headmaster of the school was also not examined – There was no reliable evidence to vouchsafe for the truth of the facts stated in the transfer certificate – The burden of proof having not been discharged by

the prosecution, the entry in the transfer certificate could not be relied upon to definitely fix the age of the victim – Evidence Act, 1872 – s.35.

(iii) Rape victim – Determination of victim's age – Radiological examination – Margin of error in age as ascertained in radiological examination.

(iv) Rape victim – Conviction based on sole evidence of the victim – Permissibility of – Held: The testimony of a victim of sexual assault stands at par with testimony of an injured witness, and is entitled to great weight – Corroboration is not the sine qua non for conviction in a rape case – Conviction can be recorded on the sole, uncorroborated testimony of a victim provided it does not suffer from any basic infirmities or improbabilities which render it unworthy of credence.

(Also see under: Constitution of India, 1950)

Alamelu & Anr. v. State represented by Inspector of Police

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(12) s.376 – Rape – Accused-teacher committing rape on a 15 year old girl – Conviction u/s.376 – Challenged on the ground that the FIR was filed three days after the alleged incident and the medical evidence did not support the commission of rape – Held: In a case of rape, the fact that the FIR has been lodged after a little delay is of very little significance – The evidence showed that after the incident the father of the prosecutrix had first gone to the Head Master of the school who had advised him to wait for a few days and it was only after having failed to get any reply from the Head Master that the FIR was lodged – This also would explain the fact that the doctor had found nothing

to suggest that rape had been committed as the medical examination was conducted after three days – The doctor nevertheless found that there was a minor injury on the finger which was about four days old and that the hymen was also missing – In the light of categorical statements of the prosecutrix, her father and her brother and in the light of the fact that no case for false implication was pointed out by accused – Conviction upheld.

Ashok Surajlal Ulke v. State of Maharashtra

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(13) s.376 – Rape – Allegation of rape on prosecutrix in her house – Prosecutrix was 26 years of age and mother of seven children – Rape allegedly committed in the presence of her children and other family members – Trial court convicted the accused u/s.376 and sentenced him to rigorous imprisonment for seven years – High Court reduced the sentence from seven to five years observing that the facts indicated that the prosecutrix was a consenting party – Held: The possibility of commission of rape in the presence of so many members in a small house is not convincing – Conviction set aside.

Amar Bahadur Singh v. State of U. P.

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(14) s.420.

(See under: Code of Criminal Procedure, 1973)

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PLEADINGS:

(1) Amendment of pleadings.

(See under: Code of Civil Procedure, 1908)

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(2) Jurisdiction of the court to grant relief – Held:

Decision of a case cannot be based on grounds outside the pleadings of the parties.

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

Kalyan Singh Chouhan v. C.P. Joshi 216

PRACTICE AND PROCEDURE:

Technicalities of the law should not prevent the court from doing substantial justice and doing away with the illegality perpetuated on the basis of the judgment impugned before it – Code of Civil Procedure, 1908.

Parimal v. Veena @ Bharti 648

PRECEDENT:

Stare Decisis – Rule of per incurium – Held: Courts have developed this principle in relaxation of the rule of stare decisis – Thus, the “quotable in law” is avoided and ignored if it is rendered in ignoratum of a statute or other binding authority – The judgments passed without noticing the judgments in *Damodar Nayak and Bhanu Prasad Panda* are held to be not of binding nature.

(Also see under: Constitution of India, 1950 and Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974)

State of Orissa & Anr. v. Mamata Mohanty 704

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

s.2(q), proviso – Expression “respondent” in s.2(q) – Interpretation of – Complaint against female

relative of the husband – Held: Although s.2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso to s.2(q) widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage – Though the expression “female” has not been used in the proviso to s.2(q) also, but, no restrictive meaning has been given to the expression “relative”, nor has the said expression been specifically defined in the Act, to make it specific to males only – Thus, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Act.

Sou. Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade & Ors. 261

PUBLIC INTEREST LITIGATION:

(i) Death of sole petitioner – Effect on continuance of PIL – Held: Although a matter cannot be allowed to be prosecuted for and on behalf of a dead person or against a dead party but a Public Interest Litigation, which generally raises an issue of general public importance, should not be allowed to be withdrawn or dismissed on technical grounds, if cognizance thereof has already been taken by the court.

(ii) Concept and importance of PIL – Explained – Constitution of India, 1950 – Articles 226 and 32.

(iii) Procedure to be adopted while entertaining

PIL – Explained.

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

Pragati Mahila Mandal, Nanded v. Municipal Council, Nanded and Ors. 985

PUNJAB FINANCIAL VOLUME I (HARYANA FIRST AMENDMENT) RULES, 2001:
(See under: Service Law) 535

PUNJAB FINANCIAL VOLUME-I RULES, 2001:
(See under: Service Law) 535

PUNJAB VILLAGE COMMON LANDS (REGULATION) ACT, 1961:

s.7 – Gram Sabha land, gram panchayat land, shamlat deh, mandeveli/ poramboke land – Illegal/unauthorized occupation – Land recorded as a village pond – Unauthorized occupation by appellants and construction of houses therein – Application u/s.7 to evict the appellants – Collector regularizing the possession of unauthorized occupants – Commissioner as also the High Court setting aside the same – Held: Appellants were trespassers who illegally encroached on the Gram Panchayat land in collusion with the officials and the Gram Panchayat – Letter of the State Government permitting regularization of possession of these unauthorized occupants not valid – Regularizing such illegalities must not be permitted – Gram Sabha land must be kept for the common use of villagers – Common interest of the villagers cannot be allowed to suffer merely because the unauthorized occupation subsisted for many years – Appellants directed to vacate the land – Direction also issued to all State

Governments to prepare Scheme for eviction of illegal/unauthorized occupants of such land.

Jagpal Singh & Ors. v. State of Punjab & Ors. 250

RAILWAY MEDICAL MANUAL:

Para 510, Annexure IV – Categorisation of posts for the purpose of vision test – Post of Ticket Collector categorized as Class B-2 – Held: There seems to be no rational basis in relation to the object set out in para 510 of categorizing post of Ticket Collector under Class B-2 – Having regard to the objective of division of groups/classes for the purpose of vision test, the post of Ticket Collectors cannot be held to be covered by Class B-2, but rather will be covered by Class C-2 – Employers would consider employee's claim for promotion to the post of Ticket Collector on the basis of medical fitness in Class C-2 – Constitution of India, 1950 – Articles 14 and 16 – Service Law.

S.K.M. Haider v. Union of India & Ors. 909

RAJASTHAN EXCISE ACT:

(See under: Penal Code, 1860) 1136

REGULATIONS ON GRADUATE MEDICAL EDUCATION, 1997:

Clause 5(ii).
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REHABILITATION:

Rehabilitation of sex workers and sexually abused women.

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RELIEF:	
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REPRESENTATION OF THE PEOPLE ACT, 1951:	
ss. 80, 81, 100(1)(d)(iii) and s.97 – Election petition – Right of a party to lead evidence – Elections to State Legislative Assembly – Allegation that 10 votes were cast by imposters and thus, 10 tendered votes cast under the Rules – Appellant declared elected – Election petition filed by respondent before High Court – Appellant filed written statement – Later filed application to summon list of all tendered votes – High Court rejected the application – Held: The pleadings in the election petition related only to 6 tendered votes – There was no reference in respect of the remaining 4 tendered votes either in the election petition or in the written statement filed by the appellant – In absence of any recrimination petition, the appellant could not be permitted to lead evidence on a fact not in issue – Also, in the application, no reason nor justification was given by the appellant for summoning of the other 4 tendered votes – Therefore, the High Court rightly did not allow the appellant to lead evidence which was not in the line of the pleadings – Conduct of Election Rules, 1961 – r. 42.	
(Also see under: Code of Civil Procedure, 1908)	
<i>Kalyan Singh Chouhan v. C.P. Joshi</i>	216

RES JUDICATA:

(1) Principles of res judicata – Application of – Held: Principle of res judicata is of universal application since it is based on principle of '*interest reipublicae ut sit finis litium*' which means that it is in the interest of the State that there should be an end to litigation and the principle '*nemo debet bis vexari, si constat curiae quod sit pro un et eadem causa*' which means that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause – Plea of res judicata is not a technical doctrine but is a fundamental principle which sustains the Rule of Law in ensuring finality in litigation – Its application should not be hampered by any technical rules of interpretation – Thus, any proceeding which has been initiated in breach of the principle of res judicata is prima-facie a proceeding which has been initiated in abuse of the process of the court.

(Also see under: Karnataka Industrial Areas Development Act, 1966)

M. Nagabhushana v. State of Karnataka & Others 435

(2) (See under: Arbitration and Conciliation Act, 1996) 512

SALE OF GOODS ACT, 1930:

s.46A (1)(b) – Enhancement of excise duty prior to delivery of the vehicle – Liability to pay extra price – Customer booked a car with the manufacturer – Customer was asked to complete the modalities for delivery of the car – Indication in the proforma invoice that the price prevailing at the time of billing would be applicable – Billing of

the car done a year later – Meanwhile, increase in excise duty resulting in price hike – Deposit of the excess amount by customer under protest – Plea of the customer that since he was not responsible for the delay in the delivery of the vehicle, he was not liable to bear the increase in the price – Held: In terms of s. 46A (1)(b), it is the liability of the customer to pay the extra price when the excise duty had been enhanced prior to the delivery of the vehicle – On facts, no evidence to show that there was any deliberate intention on the part of the manufacturer and the dealer to delay the delivery of the vehicle – Thus, the order passed by the National Commission that the increase in price by way of additional taxes is to be borne by the customer and not by the manufacturer, upheld.

Ravinder Raj v. M/s. Competent Motors Co. Pvt. Ltd. & Anr. 756

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

s.17 – Default in repayment of secured debt – Notice issued u/s.13(2) to borrower to discharge liability – Application u/s.14 by secured creditor before Magistrate for taking possession of mortgaged properties, allowed – Writ petition by borrower/ guarantors before High Court, dismissed on the ground that an alternative remedy was available to them u/s.17 – Held: The Act itself contemplates an efficacious remedy for the borrower or any person affected by an action u/ s.13(4) by providing for an appeal before the DRT – Ordinarily relief under Articles 226/227 of the Constitution is not available if an efficacious

alternative remedy is available to any aggrieved person – Therefore, High Court was fully justified in declining to exercise its jurisdiction under Articles 226 and 227 of the Constitution – Constitution of India, 1950 – Articles 226 and 227.

Kanaiyalal Lalchand Sachdev and Ors. v. State of Maharashtra and Ors. 602

SENTENCE/SENTENCING:

(See under: Penal Code, 1860) 367

SERVICE LAW:

(1) Appointment/Recruitment/Selection:

(i) (I) Appointments – Relaxation in eligibility.

(II) Pay-scale.

(See under: Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 and Constitution of India, 1950) 704

(ii) Appointment of employee for a fixed tenure of three years – Termination within two years on the ground of unauthorized absence – Challenge to – Re-instatement with continuity of service and back wages by courts below – Held: Appointment itself was for a fixed period of three years and no relief beyond that period could have been given to the employee – Orders modified to the extent that the employee would be deemed to be in service up to the expiry of three years from the date of his joining and not thereafter – As regards the grant of back wages, it is a matter of discretion vested in the court – Conduct of the employee and the financial status of the employer, a defunct

organization, does not justify the payment of any back wages.

U. P. State Textile Corpn. Ltd. v. Suresh Kumar 410

(2) Date of birth – Change in service record – Application by appellant-Civil Judge within two years from date of her entry into Government service to correct date of birth from 26.01.1971 to 09.01.1972 – Rejected by the High Court – Writ petition also dismissed – Held: No material was produced on record to show that the appellant took undue advantage of the recorded date of birth – After receipt of the application for changing date of birth, no inquiry undertaken by the High Court – Director, Health & Family Welfare-cum-Chief Registrar, Births and Deaths filed affidavit to the effect that the correct date of birth of the appellant as per births and deaths record was 09.01.1972 – Presumptive value is attached to birth and death records – Application of appellant allowed – Punjab Financial Volume I Rules, 2001 – Punjab Financial Volume I (Haryana First Amendment) Rules, 2001.

Narinder Kaur v. Punjab & Haryana High Court & Ors. 535

(3) Promotion:

(i) (I) Promotion – Concepts of ‘seniority-cum-merit’ and merit-cum-seniority’ – Connotation of.
(II) Promotion to the post of Assistant Manager (Administration) – Criterion being seniority-cum-merit – Promotion made on the basis of comparative assessment of two officers and the officer with better service record, though junior to

the other, promoted – Concept of “seniority-cum-merit” – Held: Explained – In the instant case, there is nothing on record to indicate that the respondent was not capable of discharging his functions in the promotional post of Assistant Manager (Administration) – Since both fulfilled the requirement of minimum merit and were found suitable for promotion and since the respondent was senior to the petitioner, former was entitled to be promoted on the basis of seniority-cum-merit – Consequently, the promotion of the petitioner was rightly set aside by the Division Bench of the High Court – Haryana Warehousing Corporation (Officers And Staff) Regulations, 1994.

Haryana State Warehousing Corporation v. Jagat Ram & Anr. 1151

(ii) Promotion – Lien – Audit/Accounts Officers – Appellant, Assistant Accounts Officer in the Office of Accountant General, deputed in Central Administrative Tribunal (CAT) and absorbed as Accounts Officer in CAT – Pursuant to recommendations of 4th Pay Commission, Government of India issued Office Memorandum giving promotional grade for Audit/Accounts Officers of ‘Organized Accounts Cadres’ – Appellant filed application claiming entitlement to be considered for promotion as Sr. Accounts Officer in CAT based on the said Official Memorandum – Held: Appellant could not claim the benefit of the said Office Memorandum, as by the relevant time, he had lost his lien in the parent department and was borne on the cadre of Accounts Department of CAT – Administrative Tribunals Act, 1985 – s.13(2) – Central

Administrative Tribunal (Accounts Personnel Posts)
Recruitment Rules, 1990 – r. 3 and Sch. 2.

Unni Menon v. Union of India & Ors. 33

(iii) Promotion.

(See under: Railway Medical Manual) 909

(4) Pension.

(See under: Allahabad Bank Officers
Service Regulations, 1979 as also
Constitution of India, 1950) 1119

(5) Retirement – Voluntary retirement scheme – Application for voluntary retirement – Acceptance and rejection of – Administrative decision – Judicial review – Scope of – Held: The object of the scheme in question was to adopt measures to have optimum human resources at various levels in keeping with the business strategies, skill profile to achieve balanced age and requirement of the bank – In the process of shedding surplus manpower, no organization would like to lose its best people – It is a matter of personnel management, and not to be a ground for the court to interfere with the decision of the competent authority – However, the discretion vested in the competent authority is not absolute in the sense of being completely uncontrolled, whimsical or capricious – In the instant case, the bank had properly appraised the respondent's request for voluntary retirement under the scheme and its decision not to accept the request was within the legitimate exercise of discretion that did not

warrant any interference by the High Court – Indian Overseas Bank Officers and Employees Voluntary Retirement Scheme, 2000.

Chairman and M.D. Indian Overseas Bank & Ors. v. Tribhuwan Nath Srivastava 556

(6) Seniority – Legal position with regard to determination of seniority in service – Discussed. (Also see under: Uttar Pradesh Government Servants Seniority Rules, 1991)

Pawan Pratap Singh & Ors. v. Reevean Singh & Ors. 831

SIKH GURDWARAS ACT, 1925:

ss. 7(1), 8 and 16(2)(iii) – Declaration of an institution-Gurdwara Sri Guru Granth Sahib as a Sikh Gurdwara – Held: In the absence of any evidence to show that the institution was established for use by Sikhs for the purpose of public worship, the Tribunal did not have the jurisdiction to declare it to be a Sikh Gurdwara – More so, fifty-three persons who filed petition u/s. 7(1) for declaring the institution as a Sikh Gurdwara did not support their plea – There was assertion by some of the petitioners who filed petition u/s. 8 seeking declaration that Dera was not a Sikh Gurdwara and that their signatures were obtained by fraud – Thus, order passed by the Tribunal as upheld by the High Court declaring the institution as a Sikh Gurdwara, set aside.

(ii) ss. 16(2)(iii) and 7(1) – Declaration of an institution as a Sikh Gurdwara – Conditions to be fulfilled – Held: A person seeking such declaration must satisfy the Tribunal that the institution was

established for use by Sikhs for the purpose of public worship and that the same was used as such before and at the time of presentation of the petition u/s. 7(1) – These two conditions are required to be fulfilled separately and conjointly and unless that is done, the Tribunal cannot declare an institution to be a Sikh Gurdwara – Onus to prove that an institution is a Sikh Gurdwara lies on the person who asserts the same.

Mahant Jawala Singh Chela of Mahant Bishan Singh (D) Through Legal Representative v. The Shiromani Gurdwara Prabhandhak Committee, Amritsar

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SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992:

(i) Certification of tainted shares by Custodian and its release and payment of accruals – Application for – Filed by investor before Special Court – Dismissed on the ground of filing of the application after the cut off date – Held: Not Justified – Custodian is justified in filing an application before the Special Court requesting to fix a cut off date for certification of the tainted shares – However, the cut off date fixed by the Special Court cannot be construed so as to have a binding effect of statutory nature under the provisions of the Transaction of Sale of Securities Act, 1956, wherein there is no fixed time limit for encashment of shares nor is there any prescribed procedure for certification – Custodian cannot shirk away from his function and the duty cast upon him – Special Court is duty bound to guard the interest of the bonafide investors through the Custodian –

On facts, investor had no role or involvement in treatment of the alleged equity shares as tainted which required certification before payment of dividend on the same – Investor cannot be denied his due on the ground of delay in filing the application for certification specially when he sought certification of his shares only after two months of the cut off date which had no statutory force – Transaction of Sale of Securities Act, 1956.

(ii) Application and interpretation of the provisions of the Act – Held: Salutary object and reasons of the Act are to be taken into consideration – Different provisions are required to be construed so that each provision will have its play – In case of conflict, a harmonious construction should be adopted so that an honest and bonafide investor is not duped of his hard earned money which he invests by purchasing the equity shares – Interpretation of statutes.

(iii) Object and reasons of the Act – Explained. Varghese

K. Joseph v. The Custodian & Ors. 269

SPECIFIC RELIEF ACT, 1963:

s. 34 – Suit for declaration – Decreed by trial court and first appellate court – However, decree set aside by High Court – Held: Finding of the High Court that suit simpliciter for declaration is not maintainable u/s. 34, is not sustainable – In the suit, apart from a prayer for declaration there was a consequential prayer for a decree for permanent injunction as also an alternative prayer for decree for possession – Also, the issue relating

to the maintainability of the suit was raised before the trial court and was not proved by the defendant – Said issue was not raised before the first appellate court – The suit is not hit by s. 34 – Order of the High Court set aside and that of the first appellate court, restored.

Gian Kaur v. Raghubir Singh 486

TAX/TAXATION:

Liability to pay additional taxes.

(See under: Sale of Goods Act, 1930) 756

TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987:

ss. 3(5) and 15 – Appellant, allegedly a member of ULFA, a banned organization – Conviction u/s. 3(5) on basis of his alleged confessional statement made before the Superintendent of Police (SP) – Sustainability of – Held: It would not be safe to convict the appellant on the basis of the alleged confessional statement which is an extra-judicial confession and there is absence of corroborative material – Though s.3(5) makes mere membership of a banned organization criminal, s. 3(5) cannot be read literally, otherwise it would violate Articles 19 and 21 – Mere membership of a banned organization will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence – Even assuming that the appellant was a member of ULFA, it has not been proved that he was an active member and not a mere passive member – Thus, conviction u/s. 3(5) not sustainable – Constitution of India, 1950 – Articles 19 and 21.

(Also see under: Evidence Act, 1972)

Arup Bhuyan v. State of Assam 506

TEXTILE UNDERTAKING NATIONALIZATION ACT, 1995: s.8.

(See under: Textiles Undertakings (Taking Over of Management) Act, 1983) 134

TEXTILES UNDERTAKINGS (TAKING OVER OF MANAGEMENT) ACT, 1983:

Respondent-company had premises at Calcutta and textile undertaking in Bombay – Besides textile business, the company also ran the business of letting out various portions of the Calcutta premises to different business organizations – Textile undertaking was taken over by the Government – Whether the Calcutta premises also could be said to be taken over by the Government – Held, No, since the Calcutta premises was by no means related to the textile business – The premises in Calcutta did not form part of the textile undertaking nor was it appurtenant thereto – It was not shown that for the purpose of determining total compensation (on nationalization of the textile undertaking), the premises at Calcutta was also included – Textile Undertaking Nationalization Act, 1995 – s.8.

Custodian of Textiles Undertaking, Bombay v. Hall & Anderson Ltd. & Ors. 134

TRANSACTION OF SALE OF SECURITIES ACT, 1956:

(See under: Special Court (Trial of Offences Relating to Transactions In Securities) Act, 1992) 269

TRANSFER PETITION:

(See under: Code of Civil Procedure, 1908) 907

URBAN DEVELOPMENT:

(See under: Constitution of India, 1950) 493

UTTAR PRADESH GOVERNMENT SERVANTS SENIORITY RULES, 1991:

rr. 5 and 8 – Determination of seniority between two groups of direct recruits to the posts of Deputy Jailor, one appointed in 1991 through the selection made by Selection Commission and the other in 1994 by UPPSC – Selection process for the appointments made in 1994 had commenced in 1987 while selection process for the appointments made in 1991 had commenced in 1990 – High Court holding that 1994 appointee would rank senior to the 1991 appointee, observing that the candidates who were selected in the selection process that commenced in 1987 should rank senior to those selected in the selection process commencing much later in 1990 – Correctness of – Held: Not correct – 1991 appointees would rank senior to the 1994 appointee – Uttar Pradesh Subordinate Service Selection (Commission) Act, 1988 – Service law – Seniority.

Pawan Pratap Singh & Ors. v. Reevan Singh & Ors. 831

UTTAR PRADESH SUBORDINATE SERVICE SELECTION (COMMISSION) ACT, 1988:

(See under: Uttar Pradesh Government Servants Seniority Rules, 1991) 831

WORDS AND PHRASES:

(1) Expression 'per incurium' – Connotation of.

State of Orissa & Anr. v. Mamata Mohanty 704

(2) "Sufficient", "Sufficient cause" – Meaning of.

Parimal v. Veena @ Bharti 648

(3) "Term of Office" – Expressions 'term' and 'tenure' – Meaning of – Held: The expression 'term' signifies a fixed period or a determined or prescribed duration – The word 'term' when used in reference to the tenure of office, means ordinarily a fixed and definite time – There is distinction between the words 'term' and 'tenure' as applied to a public officer or employee – The 'term', as applied to an office, refers to a fixed and definite period of time – The word 'tenure' has more extended meaning than the word 'term' and 'tenure' of an office means the manner in which the office is held especially with regard to time.

(Also see under: Administrative Tribunals Act, 1985)

Shanker Raju v. Union of India 1

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**REFERENCE MADE BY
HON'BLE THE CHIEF JUSTICE OF INDIA
SHRI S. H. KAPADIA
IN THE MEMORY OF
LATE SHRI S. SAGHIR AHMAD,
FORMER JUDGE, SUPREME COURT OF INDIA
ON 2ND MARCH 2011**

Mr. Attorney General, Mr. Solicitor General, Law Officers, Shri Pradeep Kumar Jain, Vice-President of the Supreme Court Bar Association, Shri D.K. Garg, President of AOR Association, Members of the Bar, Ladies and Gentlemen.

We assemble here today to mourn the death of Justice S. Saghir Ahmad, one of the esteemed Judges of this Court on 31st January, 2011. He died at the age of 75 at Medical University Hospital in Lucknow.

Late Justice Saghir Ahmad was born on 1st July, 1935 in the family of late Syed Mohammad Hussain, a practising Advocate in Oudh Chief Court, Lucknow which later became the Bench of the Allahabad High Court in 1948. He was enrolled as an Advocate of the Allahabad High Court on 6th December, 1961. He practised at Lucknow mainly on the Civil Side. He acted as a Standing Counsel for the Northern Railway from 1971 and for the U.P. Government from 1976. He was appointed as Additional Judge of Allahabad High Court on 2nd November, 1981. He became permanent Judge on 30th December, 1982. He was transferred to J&K High Court on 1st November, 1993. On 18th March, 1994, he was appointed as Chief Justice of J&K High Court. Thereafter, he took oath as Chief Justice of Andhra Pradesh High Court on 23rd September, 1994.

As a Chief Justice of the AP High Court during 1994-95, he earned the reputation of an ideal Judge and administrator

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with highly objective and humane approach. He had a flair for good language. He was known for his simple life and hard work. He used to make intensive study. He bestowed a lot of care before delivering the judgments. He was known to have special interest in the subjects of environment, election and human rights. He was a large hearted person. He was able to control aggressive judges or lawyers by his apt repartees and hearty laugh. No one could point a little finger against him either in judicial or administrative matters. He was known to be a good host. He had special culinary interest. He used to personally supervise cooking and give his own recipes for delectable food. His PPS used to stay till late night at his bungalow. While Justice Saghir Ahmad was having supper, his PPS used to read out the petitions and representations addressed to him as Chief Justice of AP High Court.

He was a pious person known to have his daily prayers punctually wherever he was. He used to read lots of religious books and condemn the trends of religious fundamentalism very strongly.

Justice Saghir Ahmad was appointed as Judge of the Supreme Court on 6th March, 1995. He retired on 30th June, 2000. Later he was appointed as a Chairperson of the Fifth Working Group on Centre-State Relations in which capacity he made important recommendations relating to abrogation of Article 370 of the Constitution along with the question of autonomy in the light of Kashmir Accord and the term of the Legislative Assembly of that State.

Justice S. Saghir Ahmad entertained Writ Petition No. 7542 (M/B) of 1989 *Satish Chandra Mishra v. State of U.P. & Ors.*, a public interest litigation, ventilating the grievance of blind persons. It so happened that prior to the commencement of the U.P. Public Servants (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Serviceman) Act, 1993; and Disabilities (Equal Opportunities Protection of Rights

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and Full Participation) Act, 1995, that Justice Saghir Ahmad as an interim measure directed the State Government (through Director, Harizan & Social Welfare, U.P.), to create certain posts for blind persons in State Services. In addition, as part of this interim measure he directed the U.P. State Road Transport Corporation to provide free travelling facilities in its buses and further directed the State Government to provide the aforementioned persons with winter clothes. Further through monitoring, the aforesaid directions were enforced.

In *Bodhisattva Gautam v. Subhra Chakraborty (Ms)*, (1996) 1 SCC 490, Justice Saghir Ahmad held that the court has jurisdiction to award interim compensation to a rape victim. He emphasized that the dignity of the woman has to be maintained. Further he held that in such a case the Court can exercise its jurisdiction suo motu. The same was held with regard to Public Interest Litigation as it is not necessary that the victim should approach the court personally. Similar view was reiterated by Justice Saghir Ahmad in *Chairman Railway Board v. Chandrima Das (Mrs.)*, (2000) 2 SCC 465.

In *Mr. 'X' v. Hospital 'Z'*, (1998) 8 SCC 296, the question arose in respect of the right of a person to know about the disease, if any, of the other person as they were likely to get married soon. After considering all aspects of various religions, he held that in such a situation, public disclosure of even true private facts may amount to an invasion of the right of privacy which may sometimes lead to the clash of one person's "right to be let alone" with another person's right to be informed. But right to healthy life being inherent in Article 21 of the Constitution, the Doctor is bound to disclose such facts as it is in public interest to protect others from "Venereal Disease" (V.D.) or HIV (+).

In *State of Andhra Pradesh v. Challa Ramkrishna Reddy*, (2000) 5 SCC 712, Justice Saghir Ahmad dealt with a case wherein a bomb was hurled in the prison and a prisoner died in

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that incident. In the inquiry, it surfaced that some police officer was also involved in the conspiracy. Justice Saghir Ahmad rejected the plea of limitation and Doctrine of Sovereign Immunity available under Article 300 of the Constitution observing that "right to life" is available even to the prisoners. The dependants of such deceased were entitled for compensation against the State and principle of sovereign immunity was not applicable. Compensation could not be limited to public law domain as the State failed to provide adequate security to the prisoners as required under prisons Rules.

After elevation of Justice Saghir Ahmad to the Lucknow Bench, he started residing in his official bungalow. However, every day he would visit his father. He used to comfort the feet of his father and remain in attendance till his father fell asleep each day. He donated 10% of his income towards charitable purposes. He regularly visited orphanages. When acting as an Advocate on behalf of the poor, he never charged fees. He was a good disciplinarian.

Justice Saghir Ahmad had passion for justice and the justice he meted out was always tempered with mercy. We are in mourning what is a common soul.

The true reflection of his personality and his perception of what he expected of a Judge is reflected in the decision of the Supreme Court in *S.P. Gupta's* case (1981) Supp SCC 87 at page 917 in which it is stated as follows:

"Were I not to follow the straight road for its straightness, I should follow it for having found by experience that in the end the straight road is commonly the happiest and the most useful track".

(Michel De Montaigne)

Justice Saghir Ahmad left behind his wife Mrs. Haseena Ahmad, three married daughters, two sons, grand daughters

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and grand sons.

On behalf of my brethren, sister and on behalf of myself, we place on record our deep sense of sorrow and grief on the sad demise of Justice Saghir Ahmad and we hereby convey to his family members our profound sense of sorrow and our deepest condolences and sympathies.

May the departed soul rest in peace!

I request you all to observe two minutes' silence as a mark of respect to the departed sould, after the reference is over.

**REFERENCE MADE BY
ATTORNEY GENERAL FOR INDIA
SHRI G.E. VAHANVATI
IN THE MEMORY OF
LATE SHRI S. SAGHIR AHMAD,
FORMER JUDGE, SUPREME COURT OF INDIA
ON 2ND MARCH 2011**

My lord Justice Kapadia, Chief Justice of India, Hon'ble Judges, Mr. P.K. Jain, the Vice President of the Supreme Court Bar Association and Office Bearers of the Bar Association, the Learned Solicitor General, Mr. Gopal Subramaniam, other Law Officers, Members of the Bar, Ladies and Gentlemen.

On 24 January this year, Justice Saiyed Saghir Ahmad was asmitted in the Trauma Centre of the Medical University, Lucknow with a respiratory problem. For a few days he was placed on the ventilator. He recovered considerably. So the ventilator was removed. His family and friends and well wishers were relieved. He was normal and conscious, talking freely to visitors. Persons who admired him and who were close to him were constantly in touch with the family and were relieved to hear that he was on his way to recovery.

Then suddenly, on 31 January, he once again developed breathing problems. The end came in the evening. It was all so sudden. People were stunned and the reactions were simultaneous. There was shock and distress all around. Tributes started pouring in from all over including from international quarters, from people who had come into contact with him, who knew him and admired him. All these tributes had one common theme they mourned the loss of a loveable and affectionate human being. This perhaps is the best tribute a person can get hope for. The fragrance that you leave behind is distilled from your actions and your deeds. This is your most enduring legacy.

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Justice Saghir Ahmad was born on 1st July 1935, in the family of Syed Mohammad Hussain, a Senior Advocate of the Allahabad High Court. He worked in the Chamber of the late Naseerudin Shah, a prominent Civil lawyer of the State of U.P. Prior to his elevation as Judge of the Allahabad High Court in 1981, Justice Ahmad was Standing Counsel of the Uttar Pradesh Government continuously since 1976. He was Judge of the Allahabad High Court for twelve long years. Between 9.1.1993 to 31.10.1993 he was the Senior Judge of the Lucknow Bench of that Court. Thereafter, on 1.11.1993 he became Chief Justice of the Jammu & Kashmir High Court, and later, in 1994 he moved as Chief Justice of the Andhra Pradesh High Court. He was appointed Judge of this Hon'ble Court on 6 March 1995.

As Judge of this Hon'ble Court he was a party to 721 judgments and wrote 271 judgments himself. He was also a part of the Nine Judge Bench which gave an advisory opinion in the matter of the appointment of judges in 1999. Justice Saghir Ahmad was also a party to the leading judgment on the right to privacy in the PUCL case in 1996.

One of the judgments which Justice Ahmad, wrote was in relation to a Judicial Officer in the case of *Yoginath D. Dagde v. State of Maharashtra*. He observed that the High Court has a duty to protect Judicial officers of subordinate courts from unscrupulous litigants and lawyers and that it was imperative for High Courts to protect its Judicial Officers from ill conceived or motivated complaints made by unscrupulous lawyers and litigants. For persons who knew Justice Saghir Ahmad, this judgment would come as no surprise since it was well known that though he left Uttar Pradesh in 1991 he maintained contact with members of the subordinate judiciary. It is said that to younger Judicial Officers with a reputation for integrity, he was some kind of a patron saint.

The wide range of the topics he dealt with in his judgments shows his versatility. Justice Ahmad spoke out for tribals in

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Samatha's case, for women workers employed on casual basis. He asserted the right of female workers in the *Muster Roll* case, for the victim of rape on railways in *Chandrima Das's* case and for HIV affected patients in *Mr. 'X' v. Hospital 'Z'* where he upheld the rights of HIV patients to Government service.

All the people who knew Justice Saghir Ahmad intimately mentioned his many splendoured personality, and above all, his innate simplicity and humility. He was as comfortable praying in a small mosque by the roadside as he was eating jalebis in a nearby dhaba.

The present Vice Chancellor of the National Law University, Orissa, who has written a tribute to justice Saghir Ahmad relates a remarkable incident. Justice Saghir Ahmad was his Ph.D examiner. At that time justice Ahmad was a Sitting Judge of the Supreme Court. He wanted to conduct the viva in Delhi. The University said 'No.' So Justice Ahmad found time to go down to Aligarh and conducted the viva. He had read the thesis meticulously. He told the proponent of the thesis that he checked all the references to case law but he could not find twelve citations. Faizan Mustafa explained that these were Italian cases from European works. This incident speaks volumes for the approach of justice Saghir Ahmad, and his sincere thoroughness.

Justice Saghir Ahmad was always known for his courtesy and gentility, his soft-heartedness and emotional nature. Perhaps it would be appropriate to say that he truly imbibed the noble culture of Lucknow.

After he retired from this Court, justice Saghir Ahmad was appointed as Chairman of the Human Rights Commission of Rajasthan. He was also appointed as Chairman of the Fifth Working Group on Centre-State Relations. Given his commitment to education, he was associated in various capacities with numerous educational institutions in Lucknow,

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Delhi and Aligarh.

Justice Saghir Ahmad is survived by his wife and two sons, of whom Mohd. Mansoor Ahmad is a practicing Advocate of the Allahabad High Court and Syed Mohd. Asif who is a Software Engineer. His three daughters are all married.

I would like to end not only by praying to God that his family has the strength to withstand this loss, also by quoting four lines of a tribute paid to him on his death which sums up the man:-

“Faith in Allah was your living force,

Honesty was your inborn virtue;

Humanism was embedded in you,

Simplicity was rooted in your blood.”

Justice Ahmad, I pray to God that he grants you the peace and repose which you so richly deserve.

**REFERENCE MADE BY
VICE PRESIDENT, SUPREME COURT BAR
ASSOCIATION SRI P.K. JAIN,
IN THE MEMORY OF
LATE SHRI S. SAGHIR AHMAD,
FORMER JUDGE, SUPREME COURT OF INDIA
ON 2ND MARCH 2011**

Reference made by Sri P.K. Jain, Vice President of Supreme Court Bar Association in the memory of Hon'ble Justice late S. Sagir Ahamed former Judge of the Supreme Court of India on 2.3.2011.

Hon'ble Mr. Justice S.H. Kapadia, the chief Justice of India, My Lords Hon'ble judges of the Supreme Court of India, Mr. Goolam Vahanavati, the learned Attorney General of India, Mr. Gopal Subramaniam, the learned Solicitor General of India, other law offices, members of the Bar.

We have assembled here this morning to pay our tribute to Hon'ble Justice late S. Sagir Ahmed former judge of Supreme Court of India who left for his heavenly abode on 31st January, 2011.

Mr. Justice S. Sagir Ahamed was born on 1st July 1935. After having completed his Bachelor of law, he got himself enrolled as an Advocate in Allahabad High Court in December, 1961 and mainly practised on the civil side. Within 10 years of his practice he became standing counsel of the Northern Railway in 1971 and later was appointed Standing counsel of the Government of Uttar Pradesh in 1975. Considering his expertise and knowledge at the Bar, he was elevated as Additional Judge, Allahabad High Court on 2nd Nov, 1981 and made its permanent Judge on 30th Dec, 1982.

After serving the Allahabad High Court as its most popular

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Judge, he was transferred to Jammu & Kashmir High Court on 1.11.93 and within a period of about 4 months he was elevated as its Chief Justice on 18.3.94. He later adorned the office of Chief Justice of Andhra Pradesh High Court from 23.9.94 until his appointment as judge of the Supreme Court of India on 6.3.1995. He left the portals of Supreme Court of India on 30.6.2000 when he laid office as judge of this court on retirement by leaving behind an indelible mark of his personality.

Justice S. Saghir Ahmed was admired by every member of this Bar. He always gave patient hearing to the members. He always encouraged the junior members of the Bar. He hardly ever lost his cool.

After his retirement as Judge, Supreme Court of India, he was appointed as Chairman of Rajasthan State Human Right Commission on 16th Feb, 2001.

He was appointed as Chairman of Sarai Banjara Rail Accident Judicial Enquiry Commission. He submitted his report on 10th March, 2010.

His was also appointed as Chairman of the Prime Minister's Working Group on Centre-State relations for Jammu & Kashmir. He never left behind any unfinished task. Even as Chairman of Prime Minister's working group, he submitted his report to the State Government in 2009-2010.

Justice Sagir Ahmed was a true Nationalist and Nation's interest were close to his heart therefore, it was small wonders that his report on Centre-State relations was not to the liking of separatist groups. In his report, he recommended that slogan of "self rule" of certain party could not be considered in its entity. Regarding "self-rule" his report stated that "self-rule" appears to relates to "autonomy" in a wider context, which can be considered by the Central Government if and when approached with documents containing specific proposals of the "self rule" regarding abrogation of Article 370 of the Constitution of India,

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which provides special status to the State of Jammu and Kashmir, Justice Ahmed recommended that it is for the people of the State to decide that how long they want to continue with its present form.

After his retirement he settled down in Lucknow. He is survived by his wife, 3 daughters and 2 sons.

In his death, the legal fraternity has lost a great legal luminary.

On behalf of the members of the Supreme Court Bar Association and on my own behalf I express my heartfelt condolence to the bereaved family.

May his soul rest in peace.

JUDGES OF THE SUPREME COURT OF INDIA

(From 04.01.2011 to 23.02.2011)

1. Hon'ble Shri. Justice S. H. Kapadia, Chief Justice of India
2. Hon'ble Mr. Justice Altamas Kabir
3. Hon'ble Mr. Justice R. V. Raveendran
4. Hon'ble Mr. Justice Dalveer Bhandari
5. Hon'ble Mr. Justice D. K. Jain
6. Hon'ble Mr. Justice Markandey Katju
7. Hon'ble Mr. Justice H. S. Bedi
8. Hon'ble Mr. Justice V. S. Sirpurkar
9. Hon'ble Mr. Justice B. Sudershan Reddy
10. Hon'ble Mr. Justice P. Sathasivam
11. Hon'ble Mr. Justice G. S. Singhvi
12. Hon'ble Mr. Justice Aftab Alam
13. Hon'ble Mr. Justice J. M. Panchal
14. Hon'ble Dr. Justice Mukundakam Sharma
15. Hon'ble Mr. Justice Cyriac Joseph
16. Hon'ble Mr. Justice Asok Kumar Ganguly
17. Hon'ble Mr. Justice R.M. Lodha
18. Hon'ble Mr. Justice H. L. Dattu
19. Hon'ble Mr. Justice Deepak Verma
20. Hon'ble Dr. Justice B. S. Chauhan
21. Hon'ble Mr. Justice A. K. Patnaik
22. Hon'ble Mr. Justice T. S. Thakur
23. Hon'ble Mr. Justice K.S. Radhakrishnan
24. Hon'ble Mr. Justice Surinder Singh Nijjar
25. Hon'ble Mr. Justice Swatanter Kumar
26. Hon'ble Mr. Justice Chandramauli Kr. Prasad
27. Hon'ble Mr. Justice H. L. Gokhale
28. Hon'ble Mrs. Justice Gyan Sudha Misra
29. Hon'ble Mr. Justice Anil R. Dave

**MEMORANDA
OF
JUDGES OF THE SUPREME COURT OF INDIA**
(From 04.01.2011 to 23.02.2011)

Hon'ble Mr. Justice R.V. Raveendran, Judge, Supreme Court of India was on leave for one day on 04.02.2011 on full allowances.

Hon'ble Mr. Justice B. Sudershan Reddy, Judge, Supreme Court of India was on leave for one day on 08.02.2011 on full allowances.

Hon'ble Mr. Justice G.S. Singhvi, Judge, Supreme Court of India was on leave for one day on 08.02.2011 on full allowances.

Hon'ble Mr. Justice S.S. Nijjar, Judge, Supreme Court of India was on leave for one day on 03.02.2011 on full allowances.

Hon'ble Mr. Justice H.L. Gokhale, Judge, Supreme Court of India was on leave for two days on 17.02.2011 and 18.2.2011 on full allowances.

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723	1-2	<u>STATE OF RAJASTHAN & ORS. v. DAYA LAL & ORS.</u>	<u>STATE OF ORISSA & ANR. v. MAMATA MOHANTY</u>