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**SUBJECT-INDEX****ADMINISTRATION OF JUSTICE:**

(1) Role of Public Prosecutor and hearing to complainant/ informant/ aggrieved party - Held: Role of Public Prosecutor is to uphold the law and put forth a sound prosecution - Presence of a private lawyer would inexorably undermine fairness and impartiality which must be hallmark, attribute and distinction of every proper prosecution - No vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution - Constant or even frequent interference in prosecution should not be encouraged as it will have a deleterious impact on its impartiality - However, where Magistrate or Sessions Judge is of the opinion that prosecution is likely to fail, prudence would prompt that complainant or informant or aggrieved party be given an informal hearing.

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**ADMINISTRATIVE LAW:**

Doctrine of pleasure - Judicial review - Scope of - Termination of Armed Forces Personnel - Held: Order of termination passed against the Army personnel in exercise of pleasure doctrine of the President is subject to judicial review - But while exercising judicial review, the Supreme Court cannot substitute its own conclusion on the basis of material on record - It should be slow in interfering with such pleasure of President exercising constitutional power - On facts, power

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of pleasure exercised by the President in terminating the services of respondents did not suffer from any illegality, bias or malafide or based on any other extraneous ground, and the same cannot be challenged on the ground that it was a camouflage - Constitution of India, 1950 - Doctrine of pleasure.

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**ANDAMAN AND NICOBAR ISLANDS (LAND TENURE) REGULATION, 1926:**

(1) Grant of plot under 1926 Regulation - No fresh grant or renewal - Repeal of 1926 Regulation - Whether the 1966 Regulations conferred any right upon the grantee whose grant has lapsed by passage of time to stay in possession till such time one of the grounds enumerated under Regulation 151 becomes available to the Administration for their eviction - Held: If grantee of an expired grant had incurred the liability to surrender possession of the granted property, such liability would remain enforceable notwithstanding the repeal of the Regulations under which such liability arose - Regulation 144 of 1966 Regulations stipulates that a grantee under the old Regulations would continue to be under the same obligation/ liability or enjoy the same rights as are permissible under the 1966 Regulations - Thus, the essence of the Regulation in so far as right of a grantee to continue in possession is concerned, is the same under the 1926 Regulations and the subsequent Regulations of the year 1966 - In either of the cases, the grantee cannot stay in possession for more than 60 years - Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966 -

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ARMY ACT, 1950:

(i) ss.18 and 19 - Held: Army Act cannot in any way override or stand higher than constitutional provisions contained in Art.309 and consequently no provision of Army Act could cut down the pleasure doctrine as enshrined in Art.310 - Constitution of India, 1950 - Arts.309, 310 - Doctrine of pleasure.

(ii) s.18 - Where continuance of Army officers in service is not practicable for security purposes and there is loss of confidence and potential risk to the security issue then such officers can be removed under pleasure doctrine - s.18 is in consonance with constitutional power conferred on President empowering the President to terminate his services brought to his notices - In such cases, the Army officers are not entitled to claim an opportunity of

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hearing - Constitution of India, 1950 - Arts.309, 310 - Doctrine of pleasure - Doctrine of natural justice.

(Also see under: Administrative Law)

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BAIL:

Power of Court of Session and High Court to grant bail till committal of case to Court of Session.  
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CODE OF CRIMINAL PROCEDURE, 1973:

(1) s. 439 - Bail - Case triable by Court of Session - Power of Court of Session and High Court to grant bail till committal of case to Court of Session - Held: There is no provision in Cr. P. C. or elsewhere, curtailing the power of either of superior courts to entertain and decide pleas for bail - A substantial period may inevitably intervene between a Magistrate taking cognizance of an offence triable by Court of Session and its committal to such court - During this interregnum, s. 439 can be invoked for purpose of pleading for bail - Since severe restrictions have been placed on power of Magistrate to grant bail to a person accused of an offence punishable by death or imprisonment for life, a superior court such as Court of Session, should not be incapacitated from considering a bail application especially keeping in perspective that its powers are comparatively unfettered u/s 439 - Constitution of India, 1950 - Art. 21.

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of NAFED - Charge-sheet against appellant and respondent no.3 alongwith other accused - Respondent no.3 filed writ petition u/s.482 CrPC r/w Art. 226/227 of the Constitution - Appellant not shown or impleaded in the petition as a party - High Court allowed the writ petition and quashed criminal proceedings pending against respondent no.3 before the Magistrate - Held: High Court erred in quashing the complaint against respondent no.3 without hearing the appellant who was co-accused in the case as their alleged roles were interconnected - Inasmuch as the appellant was not impleaded/shown as one of the parties before the High Court, the specific finding against his alleged role, based on the submissions of respondent no.3 without giving an opportunity of being heard, cannot be sustained - Matter remitted back - Penal Code, 1860 - s.120B r/w ss.409, 411,420, 467, 468 and 471.

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(3)(i) Test identification parade - Object of - Stated.

(ii) s.161 - Statements made to the police during investigation are not substantive piece of evidence and the statements recorded u/s.161 can be used only for the purpose of contradiction and not for corroboration - If the evidence tendered by witness in the witness box is creditworthy and reliable, that evidence cannot be rejected merely because a particular statement made by the witness before the Court does not find a place in the statement recorded u/s.161 of the Code.

(iii) s.313 - Object of - Stated.

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CONSTITUTION OF INDIA, 1950:

(1) Arts. 14, 15, 19, 21 r/w. Art.38; Art.51-A (a), (b), (c), (e), (f), (i), (j) - Hate speeches delivered by elected representatives, political and religious leaders mainly based on religion, caste, region or ethnicity - Writ petition seeking stringent pre-emptory action on the part of Central and State Governments on the ground that the hate speeches militate against the Constitutional idea of fraternity and violates Arts. 14, 15, 19, 21 read with Art. 38 and are in derogation of the fundamental duties under Article 51-A (a), (b), (c), (e), (f), (i), (j) - Held: Statutory provisions and particularly the penal laws provide sufficient remedy to curb the menace of "hate speeches" - Thus, person aggrieved must resort to the remedy provided under a particular statute - Root of the problem is lack of effective execution of laws - Therefore, the executive as well as civil society has to perform its role in enforcing the already existing legal regime - Petition calling for issuing certain directions which are incapable of enforcement/execution should not be entertained - Penal Code, 1860 - ss.124A, 153A, 153B, 295A, 298, 505(2) - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Representation of People Act, 1951 - ss.123(3), 125 - Maxim "salus reipublicae suprema lex".

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(8)(i) Art.311 - Applicability to Armed Forces Personnel - Held: Not applicable - Therefore, no enquiry as to whether the order was by way of punishment sine qua non for applicability of Art.311, was warranted.		
(ii) Art.310(1) - Scope of - Held: No provision in any statute can curtail the provision of Art.310. <i>Union of India and Others v. Major S.P. Sharma and Others</i>	.....	327
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## CRIMINAL LAW:

(1) Expressions, 'arrest', 'custody' and 'detention' - Explained - Held: Terms 'custody', 'detention' or 'arrest' have not been defined in Cr.P.C. - However, an analysis of case law indicates that these are sequentially cognate concepts- 'Custody' and 'arrest' are not synonyms even though in every arrest there is custody but not vice versa. <i>Sundeep Kumar Bafna v. State of Maharashtra &amp; Anr.</i>	.....	486
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(2) Reasonable doubt - Held: Accused has a profound right not to be convicted of an offence which is not established by evidential standard of proof "beyond reasonable doubt" - Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions - Criminal Courts, while examining whether any doubt is beyond reasonable doubt, may carry in their mind, some "residual doubt", even though the Courts are convinced of the accused persons' guilt beyond reasonable doubt. <i>Ashok Debbarma @ Achak Debbarma v. State of Tripura</i>	.....	287
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EVIDENCE ACT, 1872: s.138 - Scope of - Held: s.138 specifically states that witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined - Consequently, there is no scope u/s.138 to start with cross-examination of a witness, who has not been examined-in-chief, an error committed		

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by the trial court.

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HIGH COURTS:

(i) High Court Judges (Salaries & Conditions of Service) Act, 1954 - s.14; First schedule Part I, Clause 2 - Pension for the retired judges of High Court who are directly appointed from the Bar - Clause 2 of Part I says that no pension is payable to the judges having less than 7 years of service as a judge - Constitutional validity of - Held: Judges, who are appointed under Art. 217(2)(a) being members of the Judicial Service, even if they serve as a Judge of the High Court for only one or two years, get full pension benefits because of the applicability of Rule 26B or because of their earlier entry into judicial service - However, the Judges of the High Court, who are appointed from the Bar do not get similar benefit of full pension - This is arbitrary and discriminatory - s.14 of the HCJ Act and Clause 2 of Part I of the First Schedule which governs the pension payable to Judges gives rise to unequal consequences - The existing scheme treats unequally the equals, which is violative of Arts. 14 and 21 - Irrespective of the source from where the Judges are drawn, they must be paid the same pension just as they have been paid same salaries and allowances and perks as serving Judges - If the service of a judicial officer is counted for fixation of pension, there is no valid reason as to why the experience at Bar cannot be treated as equivalent for the same purpose - Thus, fixation of higher pension to the Judges drawn from the Subordinate Judiciary who have served for shorter period in contradistinction to Judges drawn from the Bar who have served for longer period with

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less pension is highly discriminatory and breach of Art. 14 - The classification itself is unreasonable without any legally acceptable nexus with the object sought to be achieved - Constitution of India, 1950 - Arts. 14 and 21.

(ii) Scheme for post-retiral benefits to the retired Chief Justices and retired Judges of the respective High Courts - Held: Government of Andhra Pradesh sanctioned an amount of Rs.14,000/- per month to the retired Chief Justices of the High Court of Andhra Pradesh and an amount of Rs.12,000/- per month to the retired Judges of the High Court of Andhra Pradesh for defraying the services of an orderly, driver, security guard etc. and for meeting expenses incurred towards secretarial assistance on contract basis and a residential telephone free of cost with number of free calls to the extent of 1500 per month over and above the number of free calls per month allowed by the telephone authorities to both the retired Chief Justices and Judges of the High Court of Andhra Pradesh w.e.f. 01.04.2012 - Steps taken by the Government of Andhra Pradesh and other States who have already formulated such scheme appreciated - Other States who have so far not framed such scheme to also formulate the same, depending on the local conditions, for the benefit of the retired Chief Justices and retired Judges of the respective High Courts as early as possible.

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s.14; First schedule Part I, Clause 2.

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## HUMAN RIGHTS:

(i) Hate speeches - Steps taken by Government to prohibit and eliminate - Explained - Penal Code, 1860 - ss.124A, 153A, 153B, 295A, 298, 505(2) - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Representation of People Act, 1951 - ss.123(3), 125.

(ii) Hate speech - Duty of courts - Held: Courts must apply the hate speech prohibition objectively -The question courts must ask is whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred - The key is to determine the likely effect of the expression on its audience, keeping in mind the legislative objectives to reduce or eliminate discrimination.

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## INTERNATIONAL CONVENANT ON CIVIL AND POLITICAL RIGHTS, 1966:

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## INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, 1965:

Arts. 4 and 6.  
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## INVESTIGATION:

(See under: Code of Criminal Procedure, 1973) ..... 287

## JUDICIAL ACTIVISM:

(See under: Judicial Intervention) ..... 446

## JUDICIAL INTERVENTION:

Constitution clearly provides for separation of powers and the court merely applies the law that it gets from the legislature - If there is a law, judges can certainly enforce it, but judges cannot create a law and seek to enforce it - The court cannot re-write, re-cast or reframe the legislation for the very good reason that it has no power to legislate - However, of lately, judicial activism of the superior courts in India has raised public eyebrow time and again - The directions are issued by the Court only when there has been a total vacuum in law, i.e. complete absence of active law to provide for the effective enforcement of a basic human right - Judicial activism - Judicial review.

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## JUDICIAL PROPRIETY:

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## JUDICIAL REVIEW:

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(2) (See under: Service Law) ..... 541

(3) Termination of Armed Forces Personnel - In exercise of pleasure doctrine - Scope of, judicial review.

(See under: Administrative Law) ..... 327

## JUDICIARY:

(1)(i) Judiciary - Superior judiciary - Entitlement to continuation/ extension of service beyond the age of 58 years - Manner of determination - Bihar Superior Judicial Service - Denial of extension to respondent-Judicial Officer beyond the age of 58 years - Justification of - Held: Entitlement to continuation/ extension of service of beyond the age of 58 has to be de

basis of the service record of the particular officer under consideration and not on a comparative assessment with the record of other officers - Even if the ACRs of another officer were decidedly inferior to those of the respondent, the same, at best, may have relevance to the grant of extension to such officer without conferring any right or entitlement to the respondent for a similar extension - On facts, though there were adverse remarks/comments against the respondent, but the same were not acted upon and moreover, the subsequent ACRs of respondent were sufficiently positive and depicted him as an efficient Judicial Officer with good reputation for honesty and impartiality - Also, promotion to the highest level in the District judiciary as well as selection grade in the said cadre was granted to the respondent - The said promotions had the effect of wiping out the adverse remark - High Court, on the administrative side not justified in refusing to continue with the service of the respondent beyond the age of 58 years.

(ii) Judicial Service - Potential for continued useful service of Judicial Officer beyond the age of 58 years - Evaluation and assessment - Judicial Review - Scope - Held: Evaluation of service record of a judicial officer for the purpose of formation of an opinion as to his/her potential for continued useful service is required to be made by the High Court which means the Full Court on the administrative side - The ultimate decision is always preceded by an elaborate consideration of the matter by Hon'ble Judges of the High Court who are familiar with the qualities and attributes of the judicial officer under consideration - The very process by which the decision is eventually arrived at, should permit a limited judicial review - It is only in a rare case where the decision taken is

unsupported by any material or the same reflects a conclusion which, on the face of it, cannot be sustained that judicial review would be permissible.

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#### LAW REPORTING:

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#### MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999:

ss.2(1)(e), 2(1)(d) and 3 - "Organised crime" - "Continuing unlawful activity" - Entrance examinations to Postgraduate and undergraduate courses in Medical Science and undergraduate courses in Veterinary Science - Rigging of results - Invocation of s.3 of MCOCA - Permissibility - Held: For punishment for offence of organised crime u/s.3 of MCOCA, the accused is required to be involved in continuing unlawful activity which inter alia provides that more than one charge-sheet have been filed before a competent court within the preceding period of ten years and the court had taken cognizance of such offence - Submission of charge-sheets in more than one case and taking cognizance in such number of cases are ingredients of the offence and have to be satisfied on the date the crime was committed or came to be known - An act which is not an offence on the date of its commission or the date on which it came to be known, cannot be treated as an offence because of certain events taking place later on - Procedural requirement for prosecution of a

offence can later on be satisfied but ingredients constituting the offence must exist on the date the crime is committed or detected - On facts, the date of commission of the offence, all the ingredients to bring the act within s.3 of MCOCA were not satisfied - Therefore, the accused could not be prosecuted for the offence u/s.3 of MCOCA - Constitution of India, 1950 - Art. 20(1) - Penal Code, 1860 - s.120B r/w ss.420, 467, 471 and 511.

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#### MAXIMS:

"salus reipublicae suprema lex" - Safety of the State is the supreme law.

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#### NATURAL JUSTICE:

(1) Natural justice - Opportunity of hearing - Entitlement, to Army Officer terminated in exercise of pleasure doctrine.

(See under: Army Act, 1959) ..... 327

#### PENAL CODE, 1860:

(1) s.120B r/w ss.409, 411,420, 467, 468 and 471.

(See under: Code of Criminal Procedure, 1973) ..... 475

(2) s.120B r/w ss.420, 467, 471 and 511.

(See under: Maharashtra Control of Organised Crime Act, 1999) ..... 529

(3) ss.124A, 153A, 153B, 295A, 298, 505(2).

(See under: Constitution of India, 1950 and Human Rights) ..... 446

(4) ss.326, 436 and 302 r/w s.34 - Murder - 30-35 members in a group set on fire number of houses in a village - Shot dead 15 persons and seriously injured 4 persons - 11 persons charge sheeted for

the offences u/ss.326, 436 and 302 r/w s.34 - But charges framed only against 5 persons - Out of them, 3 accused acquitted for want of evidence and two accused including appellant held guilty of charged offences - Conviction and death sentence of appellant - Held: On basis of the evidence, the offences levelled against the appellant stood proved and the courts below rightly found him guilty - Regarding sentence, considering the gravity of the crime and the factors like extreme social indignation, death sentence altered to that of imprisonment for life and the term of imprisonment as 20 years is fixed without remission, over and above the period of sentence already undergone.

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#### PRECEDENT:

(1) Binding effect of - Held: Law declared by Supreme Court, being the law of the land, is binding on all courts/tribunals and authorities in India in view of Art.141 of the Constitution - The doctrine of stare decisis promotes a certainty and consistency in judicial decisions and promotes confidence of the people in the system of the judicial administration - Judicial propriety and decorum demand that the law laid down by the highest Court of the land must be given effect to - Violation of Fundamental Rights guaranteed under the Constitution have to be protected, but at the same time, it is the duty of the court to ensure that the decisions rendered by the court are not overturned frequently - Constitution of India, 1950 - Art.141.

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(2) Expression, 'per incuriam' - Exp

is necessary to give a salutary clarion caution to all courts, including High Courts, to be extremely careful and circumspect in concluding a judgment of Supreme Court to be per incuriam - An earlier judgment cannot be seen as per incuriam in a later judgment as the latter if numerically stronger only then it would overrule the former.

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PREVENTION OF CORRUPTION ACT, 1988:

ss.7 and 13(1)(d)(i)(ii) r/w s.13(2) and 20 - Complainant had a fair price shop - He alleged that appellant, Mandal Revenue officer, demanded bribe from him for release of PDS items - Conviction of appellant u/ss. 7 and 13(1)(d)(i)(ii) r/w s.13(2) by the Courts below - Justification - Held: Not justified.

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REMEDY:

(See under: Constitution of India, 1950) ..... 446

REPRESENTATION OF THE PEOPLE ACT, 1951:

(1) ss.123(3), 125.

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RES JUDICATA:

(1)(i) Constructive res judicata - Applicability to writ proceedings - Stated.

(ii) Constructive res judicata - Grant of plot of land under 1926 Rules - Request of appellant for fresh grant declined by the Lieutenant Governor - Writ petition - High Court took the view that the occupants need not be evicted from the land only so long as the same was not needed for any public purpose - Before the High Court, appellant did not

raise contention that regardless whether a fresh grant was made in their favour or not and regardless whether or not a second renewal was permissible under the 1926 Regulations, they had acquired a vested right under the 1966 Regulation to continue in occupation of the land till such time one of the contingencies enumerated under Regulation 151 of the said Regulations arose disentitling them from continuing in occupation of the land - Said contention was available to the occupants which could and indeed ought to have been raised by them at that stage - Inasmuch as the occupants did not urge such contention in the previous round of litigation they are debarred from doing so in the instant proceedings on the principles of constructive res judicata - Andaman and Nicobar Islands (Land Tenure) Regulation, 1926.

(Also see under: Andaman and Nicobar Islands (Land Tenure) Regulation, 1926)

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(2) Reopening of issues through fresh round of litigation on discovery of a fact - Held: Discovery of a reinvestigated fact could be a ground of review in the same proceedings, but the same cannot be made basis for re-opening the issue through a fresh round of litigation - Fresh writ petition or Letters Patent Appeal which is in continuation of a writ petition cannot be filed collaterally to set aside the judgment of the same High Court rendered in earlier round of litigation - Principle of finality of litigation is based on a sound firm principle of public policy - It is not permissible for the parties to reopen the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far re

affect on the administration of justice - It would also nullify the doctrine of stare decisis which cannot be departed from unless there are compelling circumstances to do so - Doctrines of public policy - Doctrine of stare decisis.

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#### REVIEW:

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

(See under: Constitution of India, 1950 and Human Rights) ..... 446

#### SENTENCE/SENTENCING:

(i) Death sentence - Mitigating circumstances - Counsel's ineffectiveness - Held: Right to get proper and competent assistance is the facet of fair trial - It is a constitutional guarantee conferred on the accused persons under Article 22(1) of the Constitution - When accused challenges a death sentence on the ground of prejudicially ineffective representation of the counsel, the question is whether there is a reasonable probability that, absent the errors, the Court independently reweighs the evidence, would have concluded that the balance of aggravating and mitigating circumstances did not warrant the death sentence.

(ii) Death sentence - Proportionality of sentence - Three tests laid down are crime test, criminal test and RR test, not the "balancing test", while deciding the proportionality of the sentence - To award death sentence, crime test has to be fully satisfied and there should be no mitigating circumstance favouring the accused, over and above the RR test.

(Also see under: Penal code, 1860)

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#### SERVICE LAW:

(1) Selection - Appointment of Computer Instructor - Filling up of post on the basis of the employment exchange seniority - One time measure - Held: High Court's direction in clarificatory order to fill up 175 existing vacancies of Computer Instructors on the basis of the employment exchange seniority was a conscious decision taken in departure from the settled position in law that recruitment to public service, normally, ought to be by open advertisement and requisitions through the employment exchange can at best be supplemental - Such departure was felt necessary due to the compulsive needs in the peculiar facts of the case - To all other vacancies, existing or future, as may be, the State may follow such policy as may be in force or considered appropriate.

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(2) Termination of Armed Forces Personnel in exercise of pleasure doctrine - Scope of judicial review.

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#### WORDS AND PHRASES:

(1) Expressions, 'custody', 'detention' and 'arrest' - Connotation of.

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(2) Hate speech - Meaning and its effect - Explained.

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