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SUBJECT-INDEX**CONSTITUTION OF INDIA, 1950:**

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(2) Art. 19(1) - Right to Information - Nature of - Held: Right to freedom of Speech and Expression under Article 19(1)(a) encompasses the right to import and receive information - This right is not an unlimited or unrestricted right - It is subject to statutory and constitutional limitations. <i>Namit Sharma v. Union of India</i>	1
(3) Art. 137 - Review under - Held: Is confined to only errors apparent on the face of the record - On an application for review, the Supreme Court can reverse or modify its decision on the ground of mistake of law or fact - In the instant case, as the judgment under review suffered from mistake of law, directions and declarations in the judgment under review recalled - Supreme Court Rules, 1966 - Order XL. <i>Union of India v. Namit Sharma</i>	96

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JUDICIAL REVIEW:

(i) Determination of constitutionality of a statute - Principles to be followed - While determining the constitutional validity of a statute, court has to see the legislative competence and the provisions of the statute to be examined in the light of the provisions of the Constitution - No prejudice needs to be proved in cases of breach of fundamental rights - Even if two views are possible, one making the statute constitutional, the court to make efforts to uphold its constitutional validity - There is presumption of constitutionality in favour of legislation - The burden to prove that the enacted law offends fundamental rights is on the one who questions the constitutionality and shows that despite the presumption of constitutionality, the statute is unfair, unjust and unreasonable - Declaring the Law unconstitutional is one of the last resorts taken by courts - The courts should prefer to put into service principles of 'reading down' or 'reading into'.

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(ii) Judicial review of the orders of Information Commission - Nothing in the Right to Information Act can take away powers vested in u/Arts.226 and 32 of the Constitution - The finality indicated u/ ss. 19(6) and (7) cannot be construed to oust the jurisdiction of higher courts despite the bar created u/s. 23 - Right to Information Act, 2005.

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PATENTS ACT, 1970:

(i) ss. 2(1)(j), 2(1)(ja) and 3(d) - Grant of patent - To Imatinib Mesylate in Beta Crystalline form - Twin test of "Invention" and "patentability" - Held: The patent product fails in both the tests of 'invention' and 'patentability' - It is a known substance of Zimmermann patent - It is not a new product - Not only is Imatinib Mesylate known as substance of Zimmermann but its pharmacological properties are known in the Zimmermann patent - It does not qualify the test of invention as laid down in s.2(1)(j) and 2(1)(ja) - Imatinib Mesylate is known substance with known efficacy - Thus BETA Crystalline form of Imatinib Mesylate is a new form of known substance - It fully attracts s.3(d).

(ii) s.2(1)(j), (ac), (ja) - Invention - Held: In order to qualify as 'invention' a product must satisfy the test i.e. it must be new, it must be capable of being made or used in the industry and it must come into being as a result of an invention which has a feature that entails technical advance over existing knowledge or has an economic significance and

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makes the invention not obvious to a person skilled in the art.

(iii) s.2(1)(j) - Invention - Chemicals and pharmaceuticals - Held: A new product in chemicals and especially pharmaceutical may not necessarily mean something altogether new or completely unfamiliar or not existing before.

(iv) s.3(d) - Test of Efficacy - Held: Depends upon the function, utility or the purpose of product under consideration - Test of enhanced efficacy in case of chemical substance, especially medicine, should receive narrow and strict interpretation.

(v) s.3(d) - Mere change of form with properties inherent to that form, would not qualify as "enhancement of efficacy" of a known substance.

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RIGHT TO INFORMATION ACT, 2005:

(1)(i)ss. 12(5), (6) and 15(5), (6) - Appointment to the post of Chief Information Commissioners and Information Commissioners at Central as well as State Level - Eligibility criteria - Constitutional validity of - Held: Provisions of ss. 12(5) and 15(5) are constitutionally valid with a rider that the court will have to read into the provisions that the expression 'knowledge and experience' would mean and include a basic degree in the field and the experience gained thereafter - Provisions u/

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ss.12(6) and 15(6) are vague, have no nexus with the object of the Act and there is no intelligible differentia to support such classification - The court would, rather than declaring ss.12(6) and 15(6) unconstitutional, would read down these provisions as having effect post-appointment rather than pre-appointment - Direction to legislature to suitably amend the provisions and direction to competent authority to frame rules - Constitution of India, 1950 - Art. 14.

(ii) Central/State Information Commissions - Character and structure of - The Information Commissions are quasi-judicial authorities or tribunals performing judicial functions - Commission is vested with civil as well as penal powers - It is required to determine the disputes by striking a balance between right to privacy and right to information - The nature of functions of the Commission involves an adjudicatory process - It possesses the essential attributes and trappings of a court - Once Information Commission is held to be essentially a quasi-judicial forum, the Chief Information Commissioner and members of the Commission should be the persons possessing requisite qualification and experience in the field of Law and/or other specified fields - The Commission to work in a bench of two i.e. a 'judicial member' and an expert member' - Appointment to the post of judicial member should be made in consultation' with the Chief Justice of India in case of Central Information Commission and with the

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Chief Justices of the High Courts of the respective States in case of State Information Commissions - The term experience in law and other specified field as enumerated u/ss. 12(5) and 15(5) of the Act would take within its ambit both-requisite qualification as well as experience in that field - A Law Officer or a lawyer having twenty years of law practice and having experience of social work is also eligible for appointment as judicial member - For appointment as Information Commissioners, the authority should prefer a person who is or has been a judge of High Court - Chief Information Commissioner shall only be a person who is or has been Chief Justice of High Court or a Judge of Supreme Court - A panel of prospective members should be created by the Department of Personnel and Training or the concerned State level ministry and be placed before the High Powered Committee to make selections in accordance with s. 12(3) of the Act.

(iii) First Appellate Authority - Qualification - Recommendation of Court that the qualification for the post should be degree in law and adequate knowledge and experience in the field of law.

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(2)(i) ss.12(5) and 15(5) - Appointment of Central Information Commissioner / Information Commissioner - Eligibility criteria - ss.12(5) and 15(5) providing that Chief Information Commissioner and Information Commissioners

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shall be persons with eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance - Constitutional validity of ss.12(5) and 15(5) - Upheld in the judgment under review, but with the rider that the expression 'knowledge and experience' appearing in the provisions would mean and include a basic degree in the respective field and the experience gained thereafter; and that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Information Commission - Held: ss.12(5) and 15(5) not ultra vires the Constitution - Interpretation of Statute.

(ii) ss.12(5) and 15(5) - Matter involving intricate questions of law - Duty of the Chief Information Commissioner - Held: Wherever, the Chief Information Commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming up before the Information Commission, he will ensure that the matter is heard by an Information Commissioner who has wide knowledge and experience in the field of law.

(iii) ss.12(6) and 15(6) - Appointment of Chief Information Commissioner/Information Commissioner - Disqualification provision u/ss.12(6) and 15(6) - Interpretation and effect of - Held: ss.12(6) and 15(6) do not debar a Member of Parliament or

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Member of the Legislature of any State or Union Territory, as the case may be, or a person holding any other office of profit or connected with any political party or carrying on any business or pursuing any profession from being considered for appointment as Chief Information Commissioner/ Information Commissioner - But after such person is appointed as Chief Information Commissioner or Information Commissioner, he has to discontinue as Member of Parliament or Member of the Legislature of any State or Union Territory, or discontinue to hold any other office of profit or remain connected with any political party or carry on any business or pursue any profession during the period he functions as Chief Information Commissioner/ Information Commissioner.

(iv) ss.12(3) and 15(3) - Committee u/ss. 12(3) and 15(3) for appointment of Chief Information Commissioner/Information Commissioners - Role and duty of - Held: The Committee while making recommendations for such appointment must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made.

(v) ss. 18, 19 and 20 - Functions of the Information Commission - Nature of - Held: The Information Commission discharges administrative functions,

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not judicial functions - While performing the administrative functions, however, the Information Commissions are required to act in a fair and just manner following the procedure laid down in ss.18, 19 and 20 - But this does not mean that the Information Commissioners are like Judges or Justices who must have judicial experience, training and acumen.

(vi) ss. 27 and 28 - Direction given in the judgment under review, to the Central Government and/or the competent authority to frame practice and procedure related rules within a period of six months - Challenge to - Held: The direction is patently erroneous since the use of word "may" in ss.27 and 28 make it clear that the Parliament has left it to the discretion of the rule making authority to make rules to carry out the provisions of the Act - Hence, no mandamus can be issued to the rule making authority to make the rules either within a specific time or in a particular manner - The Court cannot direct the rule making authority to make the rules where the Legislature confers discretion on the rule making authority to make rules.

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SUPREME COURT RULES, 1966:

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WORDS AND PHRASES:

(1) 'Efficacy' - Meaning of, in the context of Patents Act, 1970.

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(2) 'Quasi-judicial' - Meaning of.

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