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

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**ARBITRATION AND CONCILIATION ACT, 1996:**

s.11 - Application for appointment of arbitrator - Territorial jurisdiction - Held: Where the contract specifies the jurisdiction of courts at a particular place and such courts have jurisdiction to deal with the matter, an inference may be drawn that parties intended to exclude all other courts - A clause like this is not hit by s. 23 of the Contract Act - Such a clause is neither forbidden by law nor it is against public policy - It does not offend s. 28 of Contract Act - Absence of words like "alone", "only", "exclusive" or "exclusive jurisdiction" is neither decisive nor does it make any material difference in deciding the jurisdiction of a court - The very existence of a jurisdiction clause in an agreement makes the intention of parties clear and it is not advisable to read such a clause in the agreement like a statute - Contract Act, 1872 - ss.23 and 28 - Maxim, *expressio unius est exclusio alterius*.

*Swastik Gases P. Ltd. v. Indian Oil Corp. Ltd.* ..... 581

**BOMBAY POLICE ACT, 1951:**

ss. 33A and 33B - Prohibition on bar dancing in State of Maharashtra - s.33-A prohibiting to hold performance of dance of any kind or type in any eating house, permit room or bear bar, but exempting the establishments covered u/s 33-B from any such restriction - Held: A distinction, the foundation of which is the classes of establishments and the classes/kind of persons, who frequent the establishments and those who

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own the establishments, cannot be supported under the Constitutional philosophy - ss. 33A and 33B introduce an invidious discrimination which cannot be justified under Art. 14 of the Constitution - Yet at the same time, both kinds of establishments are to be granted licenses and regulated by the same restrictions, regulations and standing provisions - It would be more appropriate that the State Government re-examines the recommendations made by the Committee and the suggestions made in the judgment to bring about measures which should ensure safety and improve working conditions of bar girls - Constitution of India, 1950 - Arts. 14, 19(i)(a), 19(1)(g) and 21.

*State of Maharashtra (M/s) & Anr. v. Indian Hotel & Restaurants Assn. & Ors.* ..... 654

**CENTRAL EXCISE TARIFF ACT, 1985:**

Heading 52.03 - Cotton yarn of various counts - Demand raised against assessee for manufacturing cotton of higher counts than the declared ones - Held: If on inspection of a manufacturing premises on a particular day, it is detected that goods of a particular specification are being manufactured, Revenue is entitled in law to presume that (until the manufacturer proves the contra) goods of the same specification are continued to be manufactured - However, in the instant case, no samples were drawn for Revenue to draw an initial presumption - Further, having regard to the paltry amount involved in the matter and first appellate authority found substance in defence of assessee, judgment of first appellate authority as affirmed by Appellate Tribunal, not interfered with - Evidence Act, 1872 - s.114, III(d).

*Commissioner of Central Excise, Madurai v. Ayyappan Textiles Ltd.* ..... 771

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CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.306(5)(b) - Tender of pardon to accomplice and committal of case to Court of Session - Offences punishable u/ss 420, 468, 471 and 477-A r/w s.120-B IPC - Additional Chief Metropolitan Magistrate granting pardon to one of accused on his turning approver, and committing the case to Court of Session - Held: Charges leveled against appellants are all triable by Magistrate's Court, and cognizance is taken by Additional Chief Metropolitan Magistrate and not by Chief Metropolitan Magistrate - Further, it was also not an offence triable by Special Judge under Criminal Law Amendment Act, 1952 - It was, thus, a case falling in the category of 'any other case' under sub-s. (5)(b) of s.306 and had to be made over to Chief Metropolitan Magistrate for trial - Order of High Court directing the case to be tried by Court of Session is set aside - Proceedings will stand restored to file of Chief Metropolitan Magistrate who shall proceed with trial - As regards cancellation of order granting pardon, it would be for appellants to apply before Magistrate concerned.

*Dilip Sudhakar Pendse & Anr. v. Central Bureau of Investigation* ..... 646

(2) s.313.  
(See under: Penal Code, 860) ..... 780

(3) s.427.  
(See under: Negotiable Instrument Act, 1881) ..... 617

CONSTITUTION OF INDIA, 1950:

(1) Arts. 14, 19(i)(a), 19(1)(g) and 21.  
(See under: Bombay Police Act, 1951) ..... 654

(2) Arts. 14, 21 and 22(4).  
(See under: Uttar Pradesh Gangsters and

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Anti Social Activities (Prevention) Act, 1986) ..... 823

(3) Art. 19(1)(g) r/w Art. 14 - Prohibition on dance - s.33-A of Bombay Police Act prohibiting dance of any kind of type in any eating house, permit room or bear bar - Held: State has failed to establish that restriction is reasonable or that it is in the interest of general public - The impugned legislation has led to closure of a large number of establishments and unemployment of over seventy five thousand woman workers - It has proved to be totally counterproductive and being ultra vires Art.19(1)(g), cannot be sustained - Bombay Police Act, 1951 - ss. 33-A - Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) - Doctrine of severability - Doctrine of reading down.

(Also see under: Bombay Police Act, 1951)

*State of Maharashtra & Anr. v. Indian Hotel & Restaurants Assn. & Ors.* ..... 654

CONTRACT ACT, 1872:

ss.23 and 28.  
(See under: Arbitration and Conciliation Act, 1996) ..... 581

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) ..... 760

DOCTRINES/PRINCIPLES:

(i) Doctrine of severability.  
(ii) Doctrine of reading down.  
(See under: Constitution of India, 1950) ..... 654

EVIDENCE:

Documentary evidence - Held: The documents that have not been relied upon before the court by defendant cannot be referred to or treated as evidence without proper proof of contents thereof.

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(Also see under: Land Acquisition Act, 1894)

*Ramanlal Deochand Shah v. The State of Maharashtra & Anr.* ..... 631

EVIDENCE ACT, 1872:

(1) ss. 63 and 65(c) - 'Secondary evidence' - Witnesses deposing that original dying declaration was not traceable - Trial court granting permission to lead secondary evidence and permitting carbon copy to be adduced in evidence - Held: In view of provisions of ss.63 and 65, such a course is permissible.

(Also see under: Penal Code, 1860)

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(2) ss. 63 and 65.

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(3) s.114, III(d).

(See under: Central Excise Tariff Act, 1985) ..... 771

INCOME TAX ACT, 1961:

ss.2(24), 15, 16 and 17 - "Income", "salary", "perquisite" - Connotation of - Deduction of 40% of incentive bonus paid to Development Field Officer of LIC prior to 1.4.1989 claimed as expenditure incurred for canvassing business - Held: Incentive bonus has to be treated as salary, subject to permissible deductions u/s 16 - Expenses incurred in performance of duty as Development Officer for generating the business so as to make him eligible for incentive bonus is not permissible deduction and, therefore, the same is exigible to tax.

*T.K. Ginarajan v. Commissioner of Income Tax, Cochin, Kerala* ..... 813

INTERNATIONAL CONVENTIONS/TREATIES:

Convention on the Elimination of All Forms of

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Discrimination Against Women (CEDAW).

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JUDGMENTS/ORDERS:

(See under: Sentence/Sentencing) ..... 802

LAND ACQUISITION ACT, 1894:

s.18 - Reference to civil court - Scope of - Held: A reference to civil court is not in the nature of an appeal where appellate forum takes a view based on the evidence before the forum below - In a reference, on the question of adequacy of compensation determined by Collector, burden to prove that his award does not correctly determine the amount of compensation and that it needs enhancement is upon landowner - To that extent claimant is in the position of a plaintiff - In the absence of any evidence to prove that the amount awarded by Collector does not represent true market value of property as on the date of preliminary notification, reference court will not be justified in granting any enhancement - Order of reference court set aside and matter remitted to it for disposal afresh after giving opportunity to landowners to lead evidence in support of their claim - Evidence.

*Ramanlal Deochand Shah v. The State of Maharashtra & Anr.* ..... 631

NEGOTIABLE INSTRUMENTS ACT, 1881:

s.138 - Dishonour of cheques - Conviction and sentence - Plea for concurrent running of sentences - Held: Applying the principle of single transaction, substantive sentences awarded to appellant in each case relevant to the transactions with each company ought to run concurrently - However, there is no reason to extend that concession to transactions in which borrowing company is

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different, no matter appellant before the court is the promoter/Director of the said other companies also - But, provisions of s. 427, Cr.P.C. do not permit a direction for concurrent running of substantive sentences with sentences awarded in default of payment of fine/compensation - Code of Criminal Procedure, 1973 - s.427.

*V.K. Bansal v. State of Haryana and Ors.*  
*Etc. Etc.* .....

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PENAL CODE, 1860:

(1) s. 302 - Married woman burnt alive by her mother-in-law (appellant) - Conviction and sentence of life imprisonment - Held: Deceased in her dying declaration recorded by doctor, stated that her mother-in-law poured kerosene on her and set her on fire - Carbon copy of dying declaration rightly admitted by trial court as secondary evidence - No objection was raised at that time - As incident occurred in the house of appellant, and she was present at the relevant time, she could have furnished explanation as to how and under what circumstances victim died - Matter was within her special knowledge - Courts below rightly held that appellant was responsible for causing the death - Evidence Act, 1872 - ss. 63 and 65.

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(2) s. 302/34 - Death of victim by gunshot injury - 14 accused - Conviction of appellant and sentence of life imprisonment - Held: Out of the two brothers of deceased, evidence of one was disbelieved by High Court as he made inconsistent statements u/s 161 Cr.P.C. and before court - The other brother introduced names of other accused persons whom he did not name in FIR - There was no recovery of gun used in the crime or of any pellet - Courts

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below, having disbelieved the entire case of prosecution as regards 13 out of 14 accused, on the basis of the same evidence should not have convicted the appellant when there was no clinching evidence or incriminating circumstance against him - Further, appellant did not abscond, which fact proves his defence that he has nothing to do with the crime - Prosecution has failed to establish its case beyond reasonable doubt - Conviction and sentence imposed on appellant, set aside.

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(3) s.307 r/w s.319 - Attempt to murder - Ingredients of - Explained - Held: A gun shot may miss vital part of body and may result in a lacerated wound, that itself is sufficient to attract s.307 - High Court is, therefore, in error in reducing the sentence, holding that the injury was not on vital part of body - Sentence/Sentencing.

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(4) s.376(1) - Rape of a girl aged about 15 years - Suicide committed by her - Conviction by courts below u/s 376(1) with sentence of 10 years RI - Held: Keeping in view the evidence of eye-witness, supported by other witnesses, medical report and forensic laboratory report, conclusion of guilt found proved against appellant by trial court as well as High Court cannot be faulted - Code of Criminal Procedure, 1973 - s.313.

*Kailash v. State of M.P.* .....

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SENTENCE/SENTENCING:

Trial court sentencing the accused to 3 years RI u/s 307 IPC for causing gun shot injuries to victims - High Court reducing the sentence to period already undergone - Held: In spite of various judicial pronouncements of Supreme Court, High Courts

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are reducing the sentence without application of mind and stating any reasons - In a case where accused persons have found guilty u/s 307 IPC, the sentence already undergone, of about 20 to 50 days or 211 days, would not be an adequate sentence and not commensurate with the guilt established - If High Court considers it fit to reduce the sentence, it must state reasons, for the reduction - Administration of justice - Judgments/Orders.

(Also see under: Penal Code, 1860)

*State of M.P. v. Mohan & Others* ..... 802

#### SERVICE LAW:

(i) Compassionate appointment of respondent as Constable - Claim for appointment on compassionate ground as Sub-Inspector, without appearing in physical test - Held: It is for the appointing authority to see that minimum standard of working and efficiency expected of the post is maintained - The rule has merely dispensed with written test or interview by a selection committee, but not the maintenance of minimum standard of efficiency required for the post - Respondent after being disqualified in physical test could not have claimed as a matter of right appointment in respect of a particular post - Circular issued by Inspector General of Police is in consonance with r.8(2) - Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 - rr. 5 and 8(2).

(ii) Compassionate appointment - Object of - Explained - Held: The posts in Classes III and IV are the lowest posts in non-manual and manual categories and, therefore, they alone can be offered on compassionate grounds to relieve the family of financial destitution and to help it get over

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the emergency - Favourable treatment given to such dependant of deceased employee in such posts has a rational nexus with object sought to be achieved viz. relief against destitution.

*State of U.P. & Ors. v. Pankaj Kumar Vishnoi* ..... 787

#### UTTAR PRADESH GANGSTERS AND ANTI SOCIAL ACTIVITIES (PREVENTION) ACT, 1986:

(i) s. 12 - Trial by Special Courts to have precedence - Constitutional validity of - Held: Legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case before Special Court does not linger owing to clash of dates in trial - Emphasis is on speedy trial and not denial of it - As the trial under the Act would be in progress, accused would have opportunity to defend himself and there cannot be denial of fair trial - Thus, the provision does not frustrate the concept of fair and speedy trial which are imperative facets of Art. 21 of the Constitution - The concept of preventive detention is not even remotely attracted to arrest and detention for an offence under the Act - There is a distinction between an accused who faces trial in other courts and the accused in Special Courts under the Act, because such accused is a gangster as defined u/s. 2(c) of the Act - Differentiation between the two is a rational one and cannot be said to be arbitrary - It does not defeat the concept of permissible classification in the realm of Art. 14 of the Constitution - Constitutional validity of s.12 of the Act, upheld - Constitution of India, 1950 - Arts. 14, 21 and 22(4).

(ii) s.19 - Scope of bail - Explained.

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