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Chapter X, r.192 - Notification no.75/84-CE dated 1.3.1984 - Claim for availing exemption under - Reduced Crude Oil (RCO) - Assessee-manufacturer of RCO - Supplying RCO to Electricity undertaking for generation of electricity - Held : As per proviso in the notification, for availing exemption one of the conditions was that where such use was elsewhere than in the factory of production, the procedure set out in Chapter X of the Rules was to be followed - r.192 of Chapter X provided that for availing concession from excise duty on excisable goods used in a specified industrial process, a person must obtain a registration certificate from the Collector and that "the concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate"- Registration certificate of Electricity undertaking had expired on 31.12.1995, therefore, exemption granted under the notification ceased on 31.12.1995 - Fresh registration certificate in favour of the Electricity undertaking was issued only on 26.06.1996 and such registration was not for any period prior to 26.06.1996 - As procedure laid down in r.192 was not complied with, the assessee was not entitled to avail the exemption of excise duty under the Notification during the

period from 01.01.1996 to 25.06.1996.

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CENTRAL EXCISE (REMOVAL OF GOODS AT
CONCESSIONAL RATE OF DUTY FOR
MANUFACTURE OF EXCISABLE GOODS)
RULES, 2001:

r.3 - Notification no.3/2001-CE dated 1.3.2001 - Eligibility conditions for availing exemption under - Supply of Naptha to manufacturer of fertilizer - Held : Exemption is available if it is proved that the goods were cleared for intended use - In addition, where intended use was elsewhere than the factory of production, exemption was to be allowed if the procedure set out in 2001 Rules was followed - As per r.3(1), has to make an application to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be - In the instant case, assessee supplied Naptha to manufacturer of fertilizer - No application was made by the purchaser to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise - As the procedure set out in the Rules was not followed, assessee not entitled to exemption on the Naptha cleared from its factory.

*M/s Indian Oil Corporation Ltd. v.
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CENTRAL EXCISE TARIFF ACT, 1985:

Chapter Sub-heading 27132000 and 27150090.
(See under: Central Excise Act, 1944) 1035

CIRCULARS/GOVERNMENT ORDERS/
NOTIFICATIONS:

(1) Notification No. 3/2001-CE dated 01.03.2001.
(See under: Central Excise (Removal of Goods at
Concessional Rate of Duty for Manufacture of
Excisable Goods) Rules, 2001) 965
(2) Notification No. 75/84-CE dated 01.03.1984.
(See under: Central Excise Rules, 1944) 965

COAL MINES PROVIDENT FUND AND
MISCELLANEOUS PROVISIONS ACT:
s.3.

(See under: Code of Civil Procedure, 1908) 887

CODE OF CIVIL PROCEDURE, 1908:

(1) ss.2(17) and 80 and O. 27 r. 5A - Suit by respondent, an employee in Coal Mines Provident Fund Organisation [CMPFO] challenging his removal from service -Decreed - First appellate court held that since the Coal Mines PF Commissioner was a public officer under Union of India so as to attract provisions of O. 27, r.5A and s.79, suit was bad for non-joinder of Union of India which was a necessary party - Second appeal of respondent allowed by High Court - Held : The decision of High Court did not require any interference, particularly when the issue raised was already decided by Supreme Court, wherein it was categorically held that Coal Mines PF Commissioner is a "public servant" within the meaning of s.2(17) - In view of the said finding, first appellate court erred in reversing the finding of trial court on that score - It was not open to first appellate court to re-open the question which had been decided by Supreme Court, at least on the

same submissions made earlier - Coal Mines Provident Fund and Miscellaneous Provisions Act - s.3.

Coal Mines P. F. Commr. Thr. Board of Trustee v. Ramesh Chandra Jha 887

(2) s. 9.
(See under: Co-operative Societies) 366

(3) s.47 and O. 21 - Execution of decree - Compromise decree - Objections rejected by executing court - High Court in revision holding that execution application having been filed before stipulated time, was premature and liable to be rejected - Other objections not dealt with - Held : Premature filing of execution application does not entail its rejection - Decree did not lose its potentiality of executability having been filed on a premature date - Matter remitted to High Court to deal with the objections which were not dealt with by High Court.

M/s. Pushpa Sahakari Avas Samiti Ltd. v. M/s. Gangotri Sahakari Avas S. Ltd. and Ors. 648

(4) s. 100 - Second appeal - Formulation of substantial question of law - Requirement of - Held : Formulation of substantial question of law at the initial stage before hearing the second appeal is mandatory - Decision of High Court is vitiated because no substantial question of law was formulated.

Hardeep Kaur v. Malkiat Kaur 478

(5) O. 6, r. 2.
(See under: Representation of the People Act, 1951) 258

CODE OF CRIMINAL PROCEDURE, 1973:

(1) (i) ss.190, 204 - Cognizance of offence and summoning order - Distinction between - Held : Cognizance is taken of cases and not of persons - It is the condition precedent to initiation of proceedings by Magistrate or Judge - A summon is a process issued by a court calling upon a person to appear before Magistrate -s.204 states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then summons may be issued.

(ii) s.204 - Requirement of assigning reasons for summoning a person - Held : Summoning order u/s.204 does not mandate the Magistrate to state reasons for issuance of summons since it is imperative that the Magistrate must have taken notice of accusations and applied his mind to allegations made in police report and materials filed therewith.

Bhushan Kumar & Anr. v. State (NCT of Delhi) & Anr. 696

(2) ss.311 and 391 - Summoning of approver for cross-examination in appeal pending before High Court - Prayer rejected by High Court - Held : High Court erred in refusing to summon the approver for his further examination as prayed for on behalf of appellants - Delay in filing the applications ought not have been sole ground for rejecting the same - High Court directed to

summon approver for his further examination by appellants - Penal Code, 1860 - ss.115, 307/120B - Explosive Substances Act, 1908 - s.4(b).

Sudevanand v. State through CBI 139

(3) s.313 - Examination of accused - Plea that FSL report was not put to accused in his examination u/s 313 - Held : The evidence of IO was recorded by court in presence of accused and FSL report was marked as exhibit and court had also put it to him during his examination that seized articles were sent to Forensic Science Laboratory, yet he has stated in his reply before court that he was not aware - Thus, although content of the report was not put to accused in his examination u/s 313, he was not in any way prejudiced - Penal Code, 1860 - s.302/34.

(Also see under: Penal Code, 1860)

Sayed Darain Ahsan @ Darain v. State of West Bengal & Anr. 546

(4) (i) s.438 - Anticipatory bail - Criminal proceedings against Chairman and Members of State Public Service Commission (PSC) and Examiners regarding large scale bungling and manipulation of marks - Application for anticipatory bail of Expert rejected by Special Judge and High Court - Held : Considering the limited allegation against Expert, and the fact that he is not a Member of State PSC and acted as Expert only for a short period, a case is made out for anticipatory bail - Expert in the event of arrest, directed to be released on bail, subject to conditions stipulated in the judgment.

(ii) s.438 - Anticipatory bail - Factors to be considered - Explained.

Shobhan Singh Khanka v. The State of Jharkhand 663

(5) (i) s.482 - Inherent jurisdiction of High Court - Allegation of irregularities against respondent - Vigilance Cell of Police department directed by State to conduct an inquiry regarding alleged criminal acts - High Court quashing the investigation proceedings - Held: Commencement and completion of an investigation is necessary to test the veracity of alleged commission of offence - High Court's interference with investigation was totally unwarranted - Investigation initiated against respondent restored and Vigilance Cell directed to proceed with and complete the investigation expeditiously.

(ii) s.482 - Scope of - Discussed.

State of Orissa & Ors. v. Ujjal Kumar Burdhan 512

COMPENSATION:

(See under: Motor Vehicles Act, 1988) 921

CONDUCT OF ELECTION RULES, 1961:

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(See under: Representation of the People Act, 1951) 258

CONSTITUTION OF INDIA, 1950:

(1) Arts. 14 and 19(1)(g).

(See under: Customs Act, 1962) 433

(2) Arts. 21A, 21, 45, 19(1)(g), 19(6), 14, 29 and 30(1).

(See under: Right of Children to Free and Compulsory Education Act, 2009) 715

(3) Art. 32 - Writ petition against respondents alleging that they insulted the National Flag and violated the norms of waiving of National Flag, as provided in Flag Code of India 2002 and seeking direction to Central Government to revise the Flag Code - Held : Whether on a particular event a particular person showed any kind of disrespect to National Flag being a factual controversy cannot be examined in a petition u/Art. 32 - Neither the Court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner - Petition dismissed - Flag Code of India, 2002.

V. K. Naswa v. Home Secretary, U.O.I. and Ors. 912

(4) Art.136 - Interference in criminal matters - Scope of - Benefit of acquittal to similarly placed non-appellant co-accused - Appellant and co-accused convicted by courts below on the same evidence and for the same reasons - Appellant acquitted by Supreme Court - Held : To do complete justice, co-accused also directed to be acquitted - Penal Code, 1860 - ss. 392 and 302 r/w s.34.

(Also see under: Penal Code, 1860)

Madhu v. State of Kerala 986

(5) Art. 300A - *Eminent domain* - Exercise of power - Held : State in exercise of power of

eminent domain, can acquire private property for public purpose - Compulsory acquisition of property belonging to a private individual has grave repercussions on his Constitutional right under Art. 300A and legal rights - Degree of care required to be taken by State is greater when the power of compulsory acquisition of private land is exercised by invoking s. 17 because that results in depriving the owner of his property without being afforded an opportunity of hearing.

Darshan Lal Nagpal (D) by L.Rs. v. Government of NCT of Delhi and Others 595

(6) Fundamental Rights and Directive Principles of State Policy.

(See under: Interpretation of Constitution) 715

(7) Tenth Schedule - Paragraph 2 - Held : The expression of finality in paragraph 2 of Tenth Schedule did not bar jurisdiction of superior Courts under Arts. 32, 226 and 136 to judicially review the order of Speaker - Under paragraph 2, Speaker discharges quasi-judicial functions, which makes an order passed by him in such capacity, subject to judicial review.

D. Sudhakar & Ors. v. D.N. Jeevaraju & Ors. 330

CONSUMER PROTECTION ACT, 1986:

(i) ss.2(d)(i) and 12 - 'Consumer' - Government company entering into an agreement with selected farmers for supplying seeds - Complaint by farmers alleging sale of defective seeds and praying for compensation - Held : Since farmers/growers purchased seeds by paying a price to

government company, they would certainly fall within the definition of consumer u/s.2(d)(i) - Complaints filed by them are maintainable - Seeds Act, 1966.

(ii) s.3 - Failure of crops/financial loss to farmers/ growers of seeds on account of use of defective seeds sold/supplied by appellant-Government Company - Appropriate remedy for the aggrieved farmers/growers - Filing of complaint under the Act or to apply for arbitration for the alleged breach of the terms of agreement - Discussed - Arbitration - Alternate Remedy.

(iii) s. 13(1)(c) - Compliance of - Complaint by farmers alleging that crops failed on account of use of defective seeds supplied by appellant-Government Company -District Forums, on basis of the reports of experts, held that the seeds were defective and complainants were not called upon to provide samples of seeds for getting the same analysed/tested in laboratory - Held : Procedure adopted by the District Forum not contrary to s.13(1)(c) - Orders of District Forums upheld.

M/s. National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Another

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CONTEMPT OF COURTS ACT, 1971:

Criminal contempt - In a contempt petition, Division Bench of High Court held that there was a prima facie case against accused-respondents to proceed further and frame charge and try them for criminal contempt for abuse of process of law - However, by final impugned judgment another Co-ordinate Bench dismissed contempt petition

and acquitted the respondents - Held : The subsequent coordinate Bench without adverting to relevant materials relied on by earlier coordinate Bench passed a cryptic order by dismissing the contempt petition - Prima facie conclusion arrived by earlier Bench based on acceptable materials, could not be ignored by subsequent co-ordinate Bench at the time of passing the final order as if it was an appellate court - Impugned order set aside and matter remitted to High Court for disposal afresh - Judgments/Orders - Opinions of co-ordinate Benches.

C. Shakunthala & Ors. v. H.P. Udayakumar & Anr.

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CO-OPERATIVE SOCIETIES:

(See under: Maharashtra Co-operative Societies Act, 1960)

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CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860)

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CRIMINAL LAW:

(1) Existence of an arbitration agreement - Held : Cannot take the criminal acts out of the jurisdiction of courts of law.

State of Orissa & ors. v. Ujjal Kumar Burdhan

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(2) Motive.

(See under: Penal Code, 1860; and Evidence)

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CRIMINAL TRIAL:

(See under: Evidence)

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CUSTOMS ACT, 1962:

s. 129 (6) - Restriction under - Constitutional validity of - Held : Restriction imposed u/s. 129(6) is not unreasonable or ultra vires the Constitution- Every right is subject to reasonable restriction - Right to practice, being a statutory right as well as fundamental right under Art.19(1)(g) of the Constitution, can be subjected to restriction relating to professional and technical qualifications necessary for carrying out that profession - Restriction u/s. 129(6) is limited and not absolute and is intended to serve a larger public interest - The element of likelihood of legal bias which was sought to be prevented by the restrictions, was neither presumptuous nor without any basis or object - Constitution of India, 1950 - Arts. 14 and 19(1)(g).

N. K. Bajpai v. Union of India and Anr. 433

DECREE:

(1) Execution of decree.

(See under: Code of Civil Procedure, 1908) 648

(2) (i) Final decree and preliminary decree - Distinction between -Discussed.

(ii) Preliminary decree - Decree passed on the basis of compromise - Held : Parties were absolutely conscious and rightly so, that their rights had been fructified and their possession had been exclusively determined - They were well aware that the decree was final in nature as their shares were allotted and nothing remained to be done by metes and bounds - Their rights had attained finality and no further enquiry from any spectrum was required to be carried out - The whole thing

had been embodied in the decree passed on the foundation of compromise - Thus, the compromise decree was the final decree.

Bimal Kumar & Another v. Shakuntala Debi & Others 195

DOCTRINES/PRINCIPLES:

(1) (i) Doctrine of promissory estoppel - Inapplicability of - Discussed.

(ii) Doctrine of public policy - When invocable - Discussed.

Collector, Distt. Gwalior and Another v. Cine Exhibitors P. Ltd. and Another 932

(2) Doctrine of lis pendens.
(See under: Transfer of Property Act, 1887) 303

(3) Doctrine of restitution - Applicability of - Held : Concept of restitution is basically founded on the idea that when a decree is reversed, law imposes an obligation on the party who received an unjust benefit of erroneous decree to retribute the other party for what it lost during the period the erroneous decree was in operation - Court while granting restitution is required to restore the parties as far as possible to their same position as they were in at the time when the court by its erroneous action displaced them.

(Also see under: Sales Tax)

State of Gujarat & Others v. Essar Oil Limited and Another 1127

(4) Last seen together principle.
(See under: Penal Code, 1860) 225

- (5) Principle of severability.
(See under: Right of Children to Free and Compulsory Education Act, 2009) 715

EDUCATION/EDUCATIONAL INSTITUTIONS:

(1) Medical and Dental Colleges - Private unaided medical/dental colleges in State of Madhya Pradesh - Admission - Unfilled NRI seats - Held : It is open to unaided professional educational institutions to fill up unfilled NRI seats through entrance test conducted by them subject to the conditions laid down in Inamdar case - Policy of reservation should not be enforced by State nor any quota or percentage of admissions could be carved out to be appropriated by State in unaided educational institution - M.P. Admission Rules, 2008 - r.8 - Madhya Pradesh Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Evam Shulk ka Nirdharan) Adhinyam, 2007.

Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh & Ors. 685

(2) Recognised/Unrecognised institutions - Entitlement of students to appear in examination - Held : The students admitted by unrecognised institution and institutions which are not affiliated to any examining body are not entitled to appear in the examination conducted by examining body or any other authorised agency - Students admitted by recognised institutions otherwise than through entrance/eligibility test conducted in accordance with admission procedure contained in para 3.3 of Appendix-1 of Regulations are also not entitled to appear in the examination - National

Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005; and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 - Regulations 7, 8.

(Also see under: National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005)

Adarsh Shiksha Mahavidyalaya and others v. Subhash Rahangdale and others 1

ELECTION LAWS:

- (i) Cause of action.
(ii) Material facts.
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ELECTRICITY ACT, 2003:

s. 10(2).
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ELECTRICITY (SUPPLY) ACT, 1948:

ss. 26A (1) and 43A.
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ESTOPPEL:

(See under: Town Planning) 932

EVIDENCE:

(1) Circumstantial Evidence - Appreciation of - Held : In a case resting on circumstantial evidence, prosecution must establish a complete unbroken chain of events leading to determination that inference being drawn from evidence is the only inescapable conclusion - In absence of convincing circumstantial evidence, accused would be entitled

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	to benefit of doubt. (Also see under: Penal Code, 1860)	
	<i>Madhu v. State of Kerala</i> 986
	(2) Circumstantial evidence, and 'last seen together' principle. (See under: Penal code, 1860) 225
	(3) (i) Circumstantial evidence - Motive - Evidentiary value - Held : Motive by itself cannot be basis for conviction.	
	(ii) Discrepancies and contradictions in evidence - Distinction between. (Also see under: Penal Code, 1860).	
	<i>Sampath Kumar v. Inspector of Police, Krishnagiri</i> 289
	(4) (i) Expert evidence - Oral testimony of firing at the victim from revolvers - From the dead body, 303 rifle bullet recovered - Held : FSL report is clear that fire arms used by appellant and his associates were improvised firearms capable of firing .303 rifle cartridges - There is no doubt that deceased has not been shot by a rifle from a long distance but by improvised or country-made handguns capable of firing .303 rifle cartridges from a short distance.	
	(ii) Test Identification parade. (Also see under: Penal Code, 1860)	
	<i>Sayed Darain Ahsan @ Darain v. State of West Bengal & Anr.</i> 546
	(5) Testimony of related witness - Evidentiary value of.	

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	(See under: Witnesses) 1164
	EVIDENCE ACT, 1872:	
	ss. 25, 26 and 27 - Confessional statements before police - Relevance of - Held : Relevance of confessional statements would depend on discovery of facts based on information supplied by accused - If any fresh facts have been discovered on the basis of confessional statement made by accused, the same would be relevant - If not, the confessional statement cannot be proved against the accused, to his detriment.	
	<i>Madhu v. State of Kerala</i> 986
	EXCISE LAWS:	
	Manufacture - Test to determine - Held : Mere improvement in quality of a product does not amount to manufacture - It is only when the change or a series of changes take the commodity to a point where commercially it can no longer be regarded as the original commodity but is instead recognized as a new and distinct article that manufacture can be said to have taken place. (Also see under: Central Excise Act, 1944)	
	<i>Commissioner of Central Excise, Bangalore-II v. M/s. Osnar Chemical P. Ltd.</i> 1035
	EXPLOSIVE SUBSTANCES ACT, 1908:	
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HINDU LAW:

Bequest in favour of a female Hindu creating a limited estate.

(See under: Hindu Succession Act, 1956) 303

HINDU SUCCESSION ACT, 1956:

s. 14(2) - Gift to a female Hindu with restriction - Bhumidhar bequeathing his land by way of will u/s. 169(1) of the 1951 Act in favour of female hindu (his wife) and creating a restricted estate - Held : Bequest made u/s. 169 (1) in favour of a female Hindu, if it is a restricted one, shall remain a restricted one under sub-s. (2) of s. 14, since the same would be governed by the terms of the will - Judgment passed by courts below set aside - Declaration passed that the female hindu had no right to sell the disputed parcel of land - Suit decreed to the said extent - U. P. Zamindari Abolition and Land Reforms Act, 1951 - s. 169.

Jagan Singh (Dead) Through Lrs. v. Dhanwanti & Anr. 303

IDENTIFICATION:

Test identification Parade - Failure to conduct TIP - Held : Accused and eyewitnesses belonged to the same locality and the eyewitnesses knew the accused from before the incident and were able to immediately identify him at the time of incident - Therefore, test identification parade was not necessary.

Sayed Darain Ahsan @ Darain v. State of West Bengal & Anr. 546

INCOME TAX ACT, 1961:

s.80HHC, Explanation (baa) - Deduction under - Held : Ninety per cent of the net interest, which has been included in the profits of the business of the assessee as computed under the head 'Profits and Gains of Business or Profession' is to be deducted under clause (1) of Explanation (baa) to s.80HHC for determining the profits of the business.

M/s ACG Associated Capsules Pvt. Ltd. (Formerly M/s Associated Capsules Pvt. Ltd.) v. The Commissioner of Income Tax, Central-IV, Mumbai 401

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INTERPRETATION OF CONSTITUTION:

Interpretation of Fundamental Rights - Fundamental Rights need to be interpreted in the light of Directive Principles -While determining constitutional validity of a law, it is to be kept in mind that what is enjoined by Directive Principles, must be upheld as a reasonable restriction under Arts. 19(2) to 19(6) - Constitution of India, 1950 - Fundamental Rights and Directive Principles of State Policy.

Society for Un-Aided P. School of Rajasthan v. U.O.I. & Anr. 715

INTERPRETATION OF STATUTES:

(1) (i) Each word used in an enactment, howsoever significant or insignificant, must be allowed to play its role in achieving legislative

intent and promoting legislative object.

(ii) Every clause of a statute should be construed with respect to the context and other clauses of the Act.

Union of India and Ors. v. Brigadier P.S. Gill 571

(2) Tax statutes - Exception/Exempting provision - Interpretation of.

(See under: Tax/Taxation) 1127

INVESTIGATION:

Inquest report - Held : Genesis of crime should ordinarily emerge from inquest report, specially when it is in respect of a patent fact.

(Also see under: Penal Code, 1860)

Madhu v. State of Kerala 986

JUDICIAL BIAS:

The element of bias itself may not always necessarily vitiate an action - It depends on the facts of each case.

N. K. Bajpai v. Union of India and Anr. 433

JUDICIAL DISCIPLINE:

Subsequent co-ordinate bench overlooking relevant materials relied on by earlier co-ordinate bench - Propriety of.

(See under: Contempt of Courts Act, 1971) 1056

KARNATAKA LEGISLATIVE ASSEMBLY

(DISQUALIFICATION OF MEMBERS ON GROUND OF DEFECTION) RULES, 1986:

(i) rr.6 and 7 - Extension of support by appellants-Independents to BJP led Government and joining

Government as Cabinet Ministers - Withdrawal of support by appellants - Speaker disqualifying them - Held : Extension of support by Independents to or joining the government as Minister by independents would not by itself mean that they have joined the political party which formed the government - In view of finding that appellants had not joined any political party, order of disqualification was against Constitutional mandate in paragraph 2(2) of Tenth Schedule to the Constitution - Constitution of India, 1950 - Tenth Schedule.

(ii) rr.6 and 7 - Disqualification application against appellants on the ground that having joined BJP led government after their elections as independent candidates they violated para 2(2) of Tenth Schedule to the Constitution - Show-Cause Notices issued by Speaker - Validity of - Held : Show-Cause Notices were not in conformity with provisions of rr.6 and 7 as appellants were not given 7 days' time to reply as contemplated u/ r.7(3) - Speaker wrongly relied upon affidavit filed by State President of BJP - Failure of Speaker to cause service of copies of the said affidavit amounted to denial of natural justice to appellants, besides revealing a partisan attitude in Speaker's approach in disposing of disqualification application - Speaker's order being in violation of rr.6 and 7 and rules of natural justice, resulted in prejudice to appellants and, as such, liable to be set aside.

D. Sudhakar & Ors. v. D.N. Jeevaraju & Ors.

KERALA FOREST ACT, 1961:

s.52 r/w. s.2(f) (as amended by Amendment Act 23 of 1974), s.61 A(as inserted by Amendment Act 28 of 1975) and s.69 - Confiscation of vehicle used in committing a forest offence - Vehicle confiscated on allegation that it was used by offenders to kill an elephant and to transport the tusks therein - Held : Definition of "forest produce" in the Act u/s 2(f) doesn't take ivory in its purview - Presumption u/s. 69 applies only to the "forest produce" so even if s.61A takes in its fold 'ivory' as one of the items liable to be confiscated, presumption u/s 69 will not be available to Government as it is not a "forest produce".

State of Kerala & Anr. v. P.V. Mathew (Dead) by L.Rs.

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LAND ACQUISITION ACT, 1894:

(1) s.11A - Limitation period - For passing award u/s.11 - Computation of - Held : Period prescribed u/s. 11A is mandatory - Period of two years commences from the date of publication of declaration and where declaration is published before Amendment Act, it is from the date of commencement of Amendment Act - The only period excludable is the period during which proceedings remained stayed under order of a court and no other - s.11A being a special provision, provisions of Limitation Act and particularly s.12 thereof cannot be read into it - Time taken in obtaining certified copy of judgment and bringing it to notice of authority before passing of award u/s.11, will not be excluded - On facts, award having not been made within period prescribed u/s. 11A, entire acquisition

proceedings lapsed - Limitation Act, 1963 - s.12.

Mulchand Khanumal Khatri v. State of Gujarat & Ors.

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(2) (i) ss.17(1), 17(4), 5A - Invocation of power of urgency and elimination of enquiry u/s.5-A - Held : If government seeks to invoke its power of urgency, it has to first form the opinion that land for stated public purpose is urgently needed - Use of power of urgency u/s.17(1) and (4) ipso facto does not result in elimination of enquiry u/s.5A - In the instant case, competent authority miserably failed to show that the stated purpose could not have brooked delay of few months and conclusion of enquiry u/s.5A of Act would have frustrated the said public purpose - In view of that s.4 and s.6 Notifications quashed - Competent authority to invite objections u/s.5A.

(ii) ss.17(1), 17(4), 5A - Burden to prove that use of power of urgency was justified - Held : Lies on government - Where government invokes urgency power u/s.17(1) and (4) for public purpose like 'planned development of city' or 'development of residential area' or 'Residential Scheme', initial presumption in favour of government does not arise and burden lies on government to prove that the use of power was justified and dispensation of enquiry was necessary.

Ram Dhari Jindal Memorial Trust v. Union of India and Others

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(3) (i) s. 17(1), (4) and s. 5A (2) - Proposal for establishment of electric sub-station - Issuance of notification invoking s. 17(1) and (4) and

dispensing with rule of hearing in s. 5A(2) for the purpose of acquiring land for public purpose - Held : There was long time gap of more than five years between initiation of proposal for establishment of sub-station and issue of notification u/s. 4(1) r/w. s. 17(1) and (4) - Government did not produce any material to justify its decision to dispense with application of s. 5A - Acquisition of land of the appellant quashed.

(ii) s. 17(1) and (4) - Invocation of urgency provisions - Held : Can be justified only if even small delay of few weeks or months may frustrate public purpose for which land is sought to be acquired.

Darshan Lal Nagpal (D) by L.Rs. v. Government of NCT of Delhi and Others 595

LAWRENCE SCHOOL LOVEDALE (NILGIRIS) RULES:

r. 4.9.
(See under: Service Law) 492

LEGISLATURE:

Independent legislators extending support to Chief Minister in formation of Bharatiya Janata Party led Government and also joining his Council of Ministers - Status of such independent legislators - Held : It cannot be said that such independent legislators had sacrificed their independent identity.

(Also see under: Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986)

D. Sudhakar & Ors. v. D.N. Jeevaraju & Ors. 327

LIMITATION ACT, 1963:

(1) s.12.
(See under: Land Acquisition, 1894) 586

(2) Article 136 - Execution application filed after limitation period - Held : There was no stay of the earlier judgment or any proceedings emanating therefrom - There was no impediment or disability in the way of decree holder to execute the decree but the same was not done - Therefore, initiation of execution proceedings was indubitably barred by limitation.

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MAHARASHTRA CO-OPERATIVE SOCIETIES ACT,
1960:
(1) s.91 - Trial court passing interim order of status
quo during the pendency of the suits - Supreme
Court held that the suits are maintainable and
directed the parties to maintain status quo - Order
modified to the effect that High Court may decide
whether the interim order granted by trial judge is
sustainable.

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(2) ss. 91 and 163 - Maintainability of suits -
Dispute arising out of a decision of the society to
alienate the property of society - Suits filed by
appellants and others before High Court - High
Court holding the suits not maintainable on the
ground that the dispute was amenable to the
exclusive jurisdiction u/s. 91 to Co-operative Court
- Held : Not sustainable - If any party such as the
appellants disputes the validity of the title
conveyed, necessarily such a dispute would have
to be adjudicated by a competent court u/s. 9
CPC wherein, necessarily, the question whether
a valid title was conveyed in favour of 3rd party by
the society would arise for determination - Order
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exercise of its original jurisdiction - Code of Civil

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ss.2(b-1) and 3(1) - Detention order - Legality of
- Challenged on ground of non-placing and non-
consideration of bail order in favour of detenu -
Held : In a case where detenu is released on bail
and is enjoying his freedom under order of court
at the time of passing the order of detention, then
such order of bail must be placed before detaining
authority to enable him to reach at the proper
satisfaction - In the instant case, since bail order
granted in favour of dentenu was neither placed
before detaining authority at the time of passing
the order of detention nor detaining authority was
aware of such order, detention order was rendered
invalid - Subjective decision of detaining authority
was vitiated - Order of detention set aside.

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MAXIMS:

"Actus curiae neminem gravabit" - Concept and
applicability of.

*State of Gujarat & Others v. Essar Oil
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MOTOR VEHICLES ACT, 1988:

s.166 - Compensation - Loss of earning capacity - Accident - Victim, a cart puller - One of his legs amputated - Courts below with reference to Schedule 1 of the Workmen's Compensation Act, 1923 assessed disability at 50% - Held : For determining loss of future earning, any physical disability resulting from an accident has to be judged with reference to the nature of work being performed by person suffering disability - At the time of accident, victim was aged 55 years - At that age it would be impossible for him to find any job - Loss of earning capacity of victim may be as high as 100% but in no case it would be less than 90% - Compensation for loss of appellant's future earnings computed on that basis.

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NATIONAL COUNCIL FOR TEACHER EDUCATION ACT, 1993:

(1) ss. 13 and 17 - Action u/s. 17 - Whether can be taken directly or by following the route of inspection u/s. 13 - Held : If satisfaction u/s. 17 can be arrived at without inspection, route of inspection u/s. 13 is not required to be followed - But where the competent authority forms opinion that inspection is necessary, then inspection and follow-up action u/s. 13 is required - National Council for Teacher Education Rules, 1997 - r. 8.

National Council For Tech. Edu. & Anr. v. Vaishnav Inst. of Tech. & Mgt. 856

(2) (i) Object of the enactment - Discussed.

(ii) Teachers - Role of, in Education system - Necessity of adequate teacher training -

Discussed.

(iii) ss.14(3), 15(3) - Conditions prescribed u/ ss.14(3), 15(3) - Grant of recognition - Held : Regional Committees established u/s.20 are duty bound to ensure that no private institution offering or intending to offer a course or training in teacher education is granted recognition unless it satisfies the conditions specified in s.14(3)(a) and Regulations 7 and 8 - Likewise, no recognised institution intending to start any new course or training in teacher education shall be granted permission unless it satisfies the conditions specified in s.15(3)(a) and the relevant Regulations.

(iv) ss.14(3), 15(3) - Recognition - Date of effect - Held : Recognition granted by Regional Committees u/s.14(3)(a) read with Regulations 7 and 8 and permission granted u/s.15(3)(a) read with the relevant Regulations shall operate prospectively, i.e., from date of communication of order of recognition or permission, as the case may be - Neither NCTE nor University can make it retrospective in nature.

(v) ss.14(3), 15(3) - Discontinuance of course or training when recognition is refused/withdrawn - Held : If recognition is refused u/s.14(3)(b) after affording reasonable opportunity to applicant to make a written representation, institution concerned is required to discontinue the course or training from end of academic session next following the date of receipt of order - Similarly, withdrawal of recognition becomes effective from end of academic session next following the date of communication of order of withdrawal.

(vi) s.18 - Right of appeal - Held : Any institution aggrieved by decision of Regional Committee rejecting application for recognition or for permission to start a new course or training or withdrawal of recognition u/s.17 shall be free to avail remedy of appeal u/s.18.

(Also see under: National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007; and Public Interest Litigation)

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NATIONAL COUNCIL FOR TEACHER EDUCATION (RECOGNITION NORMS AND PROCEDURE) REGULATIONS, 2005: Regulations 7 and 8.

(See under: National Council for Teacher Education (Recognition Norms And Procedure) Regulations, 2007; National Council for Teacher Education Act, 1993; and Public Interest Litigation) 1

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

(i) Regulations 7(2) and (3) and 8 - Role of State Government in the matter of grant of recognition to private institutions - Held : Regulations 7(2) and (3) lay down that a copy of application form submitted by institution(s) shall be sent by office of Regional Committee to State Government/ Union Territory Administration concerned and latter shall furnish its recommendations within 60 days from receipt of copy of application - If State

Government/Union Territory Administration does not make favourable recommendations, then it is required to provide detailed reasons/grounds with necessary statistics - While deciding application made for recognition, Regional Committee is duty bound to consider recommendations of State Government/UT Administration.

(ii) Admission procedure - Held : Private institutions cannot admit students de hors the entrance examination conducted by State Government.

(Also see under: National Council for Teacher Education Act, 1993; and Public Interest Litigation)

Adarsh Shiksha Mahavidyalaya and others v. Subhash Rahangdale and others 1

NATIONAL COUNCIL FOR TEACHER EDUCATION RULES, 1997: r. 8.

(See under: National Council for Teacher Education Act, 1993) 856

NATURAL JUSTICE:

Writ petition praying for issue of direction to NCTE for ensuring proper maintenance of norms and standards in teacher education system - Directions given by High Court - Plea of appellants that directions given by High Court were vitiated due to violation of rules of natural justice since none of them were impleaded as party to writ petition - Held : Conclusions recorded by High Court and directions contained in impugned order were of general application and did not target any

particular college or institution - Therefore, appellants cannot be heard to make such a grievance.

(Also see under: National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007; and Public Interest Litigation)

Adarsh Shiksha Mahavidyalaya and others v. Subhash Rahangdale and others 1

PENAL CODE, 1860:

(1) ss. 148, 302/149, 323, 324/149 and 325 - Conviction by trial court - High Court acquitting the accused u/s. 302/149 and convicting them under rest of the provisions - Held : High Court was justified in holding that injuries were simple in nature on non-vital parts of body and were not sufficient to cause death - Prosecution failed to establish the charge of murder beyond reasonable doubt - Sentence of the period already undergone also justified.

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(2) s. 302 r/w s. 34 - Murder - No eye-witness - Conviction by courts below - Based on ocular testimony of a witness and motive - Held : Conviction not justified - Evidence of the witness being in contrast with his police statement and not having independent corroboration, not reliable - Motive by itself cannot be a ground for conviction - However, in the facts of the case, even motive did not survive.

Sampath Kumar v. Inspector of Police, Krishnagiri 289

(3) s.302/34 - Victim stated to have been shot dead by 8-10 persons - Two accused prosecuted and convicted and sentenced to life - One of accused filing appeal - Held : High Court has rightly sustained conviction of appellant on the evidence of four eyewitnesses as corroborated by medical evidence.

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

Sayed Darain Ahsan @ Darain v. State of West Bengal & Anr. 546

(4) ss.302/149, 307/149 and 452 - Common object - Conviction by courts below - Held : Collective reading of entire evidence leading to clear inference that appellants had an object to commit murder of persons on victims' side and they participated in the crime - Graveness of charges against appellants that they in concert with other accused to achieve a common object entered the house of complainant stood proved - Conviction of appellants upheld.

Onkar & Anr. v. State of U.P. 1164

(5) ss. 302, 376(2)(f), and 377 - Rape and murder of a 3 year old girl - Circumstantial evidence - Conviction and sentence of death awarded by trial court, upheld by High Court - Held : The chain of events proved by prosecution is fully established and circumstances which were required to be proven by prosecution, have been proved successfully - Cumulative effect of the entire prosecution evidence is that it points unmistakably towards the guilt of accused - It is not only a case of circumstantial evidence simpliciter but also the

'last seen together' principle - There is no justifiable reason to interfere with impugned judgment - Circumstantial evidence - 'Last seen together' principle - Sentence/ Sentencing.

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(6) ss.115, 307/120B.
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(7) ss. 392 and 302 r/w s.34 - Robbery and murder - Circumstantial evidence -Conviction by courts below - Held : Evidence produced by prosecution did not, in any way, establish guilt of accused - Confessional statements made by appellant and co-accused were not proved against them, or to their detriment - This, by itself removed most vital link in the chain of events sought to be established by prosecution against accused - Evidence produced to establish presence of accused near the place of occurrence, at or about the time of commission of crime was also irrelevant, because, accused were neighbors of deceased - Theft of gold ornaments worn by deceased was doubtful - Also serious contradictions in deposition of prosecution witnesses - Prosecution was not able to connect the accused with alleged crime in any manner whatsoever - Accused acquitted.

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(ii) Writ petition praying for issue of direction to NCTE for ensuring proper maintenance of norms and standards in teacher education system - Held : Writ petitioner was seeking to highlight grave irregularities committed by Regional Committee of NCTE in granting recognition to private institutions who did not fulfill mandatory conditions relating to financial resources, accommodation, library, laboratory and other physical infrastructure and qualified staff and admitted students who had either not passed entrance test or had not

appeared for centralised counseling conducted under directions issued by State Government - Therefore, it cannot be said that High Court committed any error in entertaining the writ petition and in ordering the enquiry - Directions issued. (Also see under: National Council for Teacher Education Act, 1993; and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007)

Adarsh Shiksha Mahavidyalaya and others v. Subhash Rahangdale and others

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(ii) s.83(1)(a) - Election petition to contain concise statement of 'material facts' -Held : It is imperative for an election petition to contain a concise statement of material facts on which election petitioner relies - High Court has already struck out 5 paragraphs of election petition - Remaining two paragraphs do not disclose any cause of

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(See under: Administrative Law) 875

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Head Master, Lawrence School Lovedale v. Jayanthi Raghu & Anr. 492

(4) Recruitment - Police Drivers - Eligibility - Advertisement inviting applications for posts of Police Drivers in State of Jharkhand - Held : Criteria for eligibility in the advertisement indicates that candidate had to hold a licence for driving heavy motor vehicles or light motor vehicles along with heavy motor vehicles - It is not as if the advertisement indicated that a candidate possessing a licence for driving only light motor vehicles would be eligible - Thus, those having a combined licence for driving both light motor vehicles and heavy motor vehicles, would be considered for appointment, along with those holding a licence to drive heavy motor vehicles exclusively.

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is conclusive or irrebuttable and it is open to the child to lead evidence to show that he/she was brought up by mother who belonged to Scheduled Caste/Scheduled Tribe - In the case in hand tribal certificate of appellant was cancelled without advertng to any evidences and on the sole ground that he was son of a Kshatriya father - Orders passed by High Court and Scrutiny Committee, cannot be sustained - Matter remitted to Scrutiny Committee to take decision afresh - Evidence - Presumption.

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JUDGES OF THE SUPREME COURT OF INDIA

(From 03.01.2012 to 13.04.2012)

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5. Hon'ble Mr. Justice P. Sathasivam
6. Hon'ble Mr. Justice G. S. Singhvi
7. Hon'ble Mr. Justice Aftab Alam
8. Hon'ble Mr. Justice Cyriac Joseph **(Retired on 27.01.2012)**
9. Hon'ble Mr. Justice Asok Kumar Ganguly
(Retired on 02.02.2012)
10. Hon'ble Mr. Justice R.M. Lodha
11. Hon'ble Mr. Justice H. L. Dattu
12. Hon'ble Mr. Justice Deepak Verma
13. Hon'ble Dr. Justice B. S. Chauhan
14. Hon'ble Mr. Justice A. K. Patnaik
15. Hon'ble Mr. Justice T. S. Thakur
16. Hon'ble Mr. Justice K.S. Radhakrishnan
17. Hon'ble Mr. Justice Surinder Singh Nijjar
18. Hon'ble Mr. Justice Swatanter Kumar
19. Hon'ble Mr. Justice Chandramauli Kr. Prasad
20. Hon'ble Mr. Justice H. L. Gokhale
21. Hon'ble Mrs. Justice Gyan Sudha Misra
22. Hon'ble Mr. Justice Anil R. Dave
23. Hon'ble Mr. Justice S.J. Mukhopadhaya
24. Hon'ble Mrs. Justice Ranjana Prakash Desai
25. Hon'ble Mr. Justice J.S. Khehar
26. Hon'ble Mr. Justice Dipak Misra
27. Hon'ble Mr. Justice J. Chelameswar
28. Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla

**MEMORANDA
OF
JUDGES OF THE SUPREME COURT OF INDIA**

(From 03.01.2012 to 13.04.2012)

1. Hon'ble Mr. Justice G.S. Singhvi, Judge, Supreme Court of India was on leave for five days w.e.f. 09.01.2012 to 13.01.2012, one day on 25.01.2012 and one day on 01.02.2012, on full allowances.
2. Hon'ble Mr. Justice Cyriac Joseph, Judge, Supreme Court of India was on leave for three days w.e.f. 18.01.2012 to 20.01.2012, on full allowances.
3. Hon'ble Mr. Justice S.S. Nijjar, Judge, Supreme Court of India was on leave for two days on 27.01.2012 and 30.01.2012, on full allowances.
4. Hon'ble Mr. Justice A.K. Patnaik, Judge, Supreme Court of India was on leave for one day on 02.03.2012 on full allowances.
5. Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India was on leave for two days on 09.04.2012 and 13.04.2012, on full allowances.

**CORRIGENDA
VOLUME INDEX 2 (2012)**

<i>Page No.</i>	<i>Line No.</i>	<i>Read for</i>	<i>Read as</i>
166	5 from bottom	Para 4.	Para 3.
201	20	Ranchin	Ranchi in
251	16	disadvantage those	disadvantage of those
397	4	1175-1777	1175-1177
571	17	Interpretion	Interpretation
685	7 from bottom	Gari	Gardi
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