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

Criminal justice - Held: Court needs to strike balance between fundamental rights of accused and power of police to investigate a cognizable offence - Sweeping power of investigation does not warrant subjecting a citizen each time, to fresh investigation in respect of the same incident, giving rise to one or more cognizable offences - Code of Criminal Procedure, 1973 - s.154 - Constitution of India, 1950 - Fundamental Rights.

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**AIR (PREVENTION AND CONTROL OF POLLUTION)**

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**CODE OF CRIMINAL PROCEDURE, 1973:**

ss.154, 155, 156, 157, 162, 169, 170 and 173(8) - Second FIR - Registration of - Permissibility - Held: - There can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of same cognizable offence or the same occurrence, giving rise to one or more cognizable offences - Sub-s. (8) of s.173 empowers the police to make further investigation, in such cases - In the facts and circumstances of the case, second FIR and fresh charge-sheet is unwarranted and violative of fundamental right u/Arts. 14, 20 and 21 of the Constitution and, as such, is quashed and charge-sheet filed in pursuance of second FIR, directed to be regarded as a supplementary charge-sheet in the first FIR - Constitution of India, 1950 - Arts. 14, 20 and 21.

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**CONSTITUTION OF INDIA, 1950:**

(1) Arts. 14, 20 and 21.

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(2) Art.21 - Right to life - Scope of - Conservation and protection of environment is an inseparable part of right to life - Environmental Law.

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- (3) Art. 21.  
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- (4) (i) Arts. 32 and 142 - Illegal mining - Causing large scale damage to forest wealth - Remedy u/ Arts. 32 and 142 - Resort to - In view of availability of remedies under provisions of relevant statutes - Held: Court can resort to constitutional jurisdiction to remedy the enormous wrong - The relevant statutes would not be effective and efficacious to deal with extraordinary situations arisen on account of large scale illegalities in mining operations - Recommendations of CEC, accepted by Court do not come in conflict with statutory provisions - Mines and Minerals Act, 1957 - Forest (Conservation) Act, 1980 - Environment (Protection) Act, 1986.
- (ii) Art.14 - Classification - Test of arbitrariness - Held: Arbitrariness in the adoption of a criteria for classification has to be tested on the anvil of Art.14 and not on the subjective notions of availability of a better basis of classification.
- (iii) Art. 21 - Right to life - Enforcement of - Held: In enforcing such rights affecting large number of citizens, Supreme Court cannot be constrained by restraints of procedure.
- Samaj Parivartana Samudaya & Ors. v. State of Karnataka & Ors.* ..... 810
- (5) Arts. 48A and 51A(g).  
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(6) (i) Arts. 72 and 161 - Petition under - For grant of pardon - Delay in disposal of - Whether sufficient ground for commuting the death sentence to life imprisonment by judicial forum - Held: Court cannot exercise power of judicial review only on ground of undue delay - The rule that long delay may be the ground for commutation of death sentence, cannot be invoked in the case where conviction is under TADA - In the instant case, petitioner having been convicted under TADA, decision taken by President not to grant pardon, cannot be quashed by taking resort to judicial review - Terrorist and Disruptive Activities (Prevention) Act, 1987.

(ii) Arts. 72 and 161 - Power under - Nature of - Held: The power is neither a matter of grace nor a matter of privilege - It is an important constitutional responsibility to be discharged by the highest executive, keeping in consideration larger public interest and welfare of the people - The power has to be exercised by taking into cognizance, relevant facts after taking aid and advice of Council of Minister.

(iii) Arts. 72 and 161 - Decision under - Judicial review of - Scope of - Held: Scope of judicial review of decision made u/Arts. 72/161 is very limited - Court in such cases can neither sit in appeal nor exercise the power of review - It can interfere only where it finds that decision is taken without application of mind to relevant factors, or it is founded on extraneous or irrelevant considerations, or is vitiated due to malafides or patent

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arbitrariness - On facts, there is no valid ground to interfere with decision of the President not to grant pardon u/Art. 72 - Judicial Review.

(iv) Art. 72 - Petition under - Delay in disposal - About 18 petitions filed between the years 1999 and 2011 remained pending for a period ranging from 1 year to 13 years - Courts showed its concern with the hope that such petitions would be disposed of in future without undue delay.

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(1) s. 3(2)(v).  
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ENVIRONMENT (PROTECTION) RULES, 1986:

(i) r.5 - Environmental clearance granted to appellant-company for setting up copper smelter plant - Interference with, by High Court on ground of procedural impropriety - Held: On facts, not justified - There was no breach of any mandatory requirement in the procedure - Environmental clearance was granted in accordance with the procedure laid down in the Environment Impact Assessment (EIA) notification dated 27.01.1994 well before issuance of the notification dated 10.04.1997 providing for mandatory public hearing

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- So long as the statutory process is followed and the EIA made by the authorities concerned is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review - Environment (Protection) Act, 1986 - s.3(2)(v).

(ii) r.5 - Environmental clearance granted to appellant-company for setting up copper smelter plant - Consent order granted by the State Pollution Control Board (TNPCB) under the Water Act - High Court directed closure of the plant of appellants on the ground that it was located within 25 kms. of an ecologically sensitive area and thus the appellants violated the consent order - Held: Not justified - Since, the consent order was granted to appellant-company to establish its plant in the SIPCOT Industrial Complex and the plant was in fact established therein, High Court could not have come to the conclusion that the appellant-company had violated the Consent Order - However, as and when Central Government issues order u/r.5 prohibiting or restricting the location of industries within and around Gulf of Munnar, then appropriate steps may have to be taken by all concerned for shifting the industry of appellants - Water (Prevention and Control of Pollution) Act, 1974 - s.25.

(iii) r.5 - Environmental clearance granted to appellant-company for setting up copper smelter plant - Consent order granted by the State Pollution

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Control Board (TNPCB) under the Air Act - Condition imposed by TNPCB in regard to development of green belt around the battery limit of industry - Held: If TNPCB after considering the representation of appellants reduced width of green belt from a minimum of 250 meters to a minimum of 25 meters around battery limit of industry of appellants and it is not shown that exercise of this power was vitiated by procedural breach or irrationality, High Court in exercise of its powers of judicial review could not have interfered with exercise of such power by State Pollution Control Board - Air (Prevention and Control of Pollution) Act, 1981 - s.21.

(iv) r.5 - Setting up of industrial plant - Liability to pay compensation for damage caused by plant to environment - Held: It is for administrative and statutory authorities to consider and grant environmental clearance and consent for setting up plant - Such decisions cannot be interfered with, by court on ground of possibilities - If, however, industry continues to pollute environment so as to effect fundamental right to life under Art. 21 of the Constitution, direction can be given for closure of industry if there are no other remedial measures to ensure that the industry maintains standards of emission and effluent - In the instant case, the plant of appellant-company did not maintain the standards of emission and effluent as laid down by the TNPCB - But deficiencies in the plant of the appellants which affected the environment stand

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removed - Thus, impugned order of High Court set aside - However, appellant-company liable to pay compensation of Rs. 100 crores for causing damages to environment from 1997 to 2012 and for operating its plant without valid renewal for fairly long period - Air (Prevention and Control of Pollution) Act, 1981 - s.21 - Water (Prevention and Control of Pollution) Act, 1974 - s.25 - Constitution of India, 1950 - Art. 21.

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#### ENVIRONMENTAL LAW:

(1) Forest - Illegal mining in forest area of Karnataka and Andhra Pradesh - PIL - Court appointed Central Powered Committee (CEC) in its report indicating illegal mining - Joint Team constituted by Court, determined boundaries of concerned 166 mining leases - CEC in its final report recommended categorization of mines into 3 categories viz. A, B and C on the basis of extent of encroachment of mining pits and overburden dumps - CEC recommended resumption of A and B category mines subject to certain conditions and closure of category C mines - Held: Credibility of CEC cannot be questioned - The body is performing its tasks as per directions of Court - Credibility of the survey conducted by Joint Team under orders of Court, also cannot be questioned - The categorization of leases done by CEC, is reasonable and acceptable - Embargo placed by

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Court on grant of fresh mining licences is lifted - Operation of leases, located on or near inter-State boundary of Karnataka and Andhra Pradesh, is suspended until boundary issue is resolved - Investigations in respect of alleged criminal offences by lessees to be brought to its logical conclusion - Mines and Minerals (Development and Regulation) Act, 1957 - Forest Conservation Act, 1980 - Environment (Protection) Act, 1986.	
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(2) Preservation and protection of endangered species - Need for parliamentary legislation - Direction to Government of India and Ministry of Environment and Forests to take urgent steps for preservation of endangered species identified by National Wildlife Action Plan 2002-2016 and to initiate recovery programmes - Direction also to identify all endangered species of flora and fauna, study their needs, their environs and habitats to assess current level of security and nature of threats.	
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(i) Ex-situ conservation - Translocation of Asiatic Lion ( <i>Panthera Leo Persica</i> ) - To Kuno wildlife Sanctuary in State of Madhya Pradesh - From Gir forest in State of Gujarat - Held: For long term conservation of Asiatic Lion, an endangered specie, it is necessary to provide it a second home - Kuno, is historical habitat of Asiatic Lions, and all steps have been taken for making Kuno Wildlife	

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Sanctuary fit for re-introduction of Asiatic Lion with approval of National Board for Wildlife (NBWL) - Animals in the wilds are the properties of the nation - No State, can claim ownership or possession over them - NBWL having been constituted by Central Government, its views shall prevail over the views of State Board for wildlife, Gujarat constituted by State Government - Direction to Ministry of Environment and Forest to take urgent steps for re-introduction of Asiatic Lion from Gir forest to Kuno Wildlife Sanctuary, in accordance with guidelines issued by IUCN and with active participation of experts in the field - Bio-diversity Act, 2002 - Forest Conservation Act, 1980 - Constitution of India, 1950 - Arts. 48A and 51A(g).

(ii) Decision of Ministry of Environment and Forests to import African Cheetahs from Namibia to India - To be introduced at Kuno Wildlife Sanctuary before reintroduction of Asiatic lions from Gir forest - Interlocutory application objecting to the decision - Held: The decision is arbitrary, illegal and in violation of the statutory requirements provided under the wildlife Protection Act.

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#### WORDS AND PHRASES:

(1) 'Mining operations' - Meaning of - In the context of Mines and Minerals Act.

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(2) 'Wild Life' - Meaning of, in the context of Wild Life Protection Act, 1972.

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