

**SUBJECT-INDEX****ABATEMENT:**

Abatement of appeal – Vendors selling the property – Vendors not challenging the decree – Vendee alone filing appeal – Death of vendors during pendency of second appeal – Plea that appeal stood abated – Held: Since vendee was representing the estate of the deceased, in view of s. 2 (11) CPC second appeal cannot be treated as having abated – Moreover, the plea, cannot be allowed to be raised for the first time before Supreme Court – Plea – Code of Civil Procedure, 1908 – s. 2 (11) – Practice and Procedure.

*K. Naina Mohamed (Dead) through  
Lrs. v. A.M. Vasudevan Chettiar (D) By  
Lrs. & Ors.* .... 927

**ACCOUNTING STANDARDS:**

AS-13 Para 12 – Applicability of – Units bought at the ruling Net Asset Value with a right to receive dividend as and when declared in future – Held: AS-13 not applicable.

*C.I.T., Mumbai v. M/s. Walfort Share & Stock  
Brokers P. Ltd.* .... 748

**ADMINISTRATION OF JUSTICE:**

(1) Obligation of court to give reasoned order.  
(See under: Service Law) .... 239

(2) (See under: Judiciary) .... 1061

**ADMINISTRATIVE LAW:**

(1) Administrative action – Judicial review of –

Scope – Constitution of India, 1950 – Articles 226 and 14.

*Charanjit Lamba v. Commanding Officer,  
Southern Command and Ors.* .... 820

(2) Delegation – Powers of.  
(See under: Motor Vehicles Act, 1988) .... 535

(3) Judicial review.

(i) Judicial review – Order of administrative authority – Canceling typewriting test without assigning reasons – Held: Absence of reasons in the order passed by a public authority or in the contemporaneous record is suggestive of the order being arbitrary – High Court rightly set aside the order by which the typewriting test was cancelled – Constitution of India, 1950 – Articles 14 and 16 – Service Law.

(Also see under: Service Law)

*East Coast Railway & Anr. etc. v. Mahadev  
Appa Rao & Ors.* .... 908

(ii) (See under: Service Law) .... 189

(4) Principles of natural justice.

(See under: Service Law) .... 465

**AGRICULTURAL PRODUCE MARKET****COMMITTEES:**

Auctioneers in Market Committees – Working on commission basis – Age of retirement – Instructions issued by chief Administrator not to continue the services of auctioneers beyond the age of 60 – Held: It cannot be said that the step taken by the Chief Administrator was arbitrary or without any basis – In the absence of rules, it was

open to the Chief Administrator to fix the retirement age – Punjab Agricultural Produce Markets Act, 1961 – s.33(4)(ii) – Punjab Agricultural Produce Markets General Rules, 1962 – r.24(5).

*Avinash Chand & Ors. v. Chairman Market Committee & Ors.* .... 1173

#### AIR FORCE PENSION REGULATIONS:

Regulation 153 – Appendix II – Entitlement Rules.  
(See under: Service Law) .... 506

#### APPEAL:

(1) Abatement of second appeal.  
(See under: Abatement) .... 927

(2) Appeal from original decree.  
(See under: Code of Civil Procedure, 1908) .... 403

(3) Delay in filing appeal against order of executing court.  
(See under: Limitation Act, 1963) .... 376

(4) Second appeal – Scope of.  
(See under: Code of Civil Procedure, 1908) .... 154,  
222 and 280

#### ARBITRATION:

Jurisdiction of arbitrator to make award against the specific terms of the contract.  
(See under: Contract) .... 962

#### ARMS ACT, 1959:

s. 27.  
(See under: Penal Code, 1860) .... 79

#### ARMY ACT, 1950:

(1) ss.45 and 52(f).  
(See under: Service Law) .... 820

(2) 69.  
(See under: Penal Code, 1860) .... 1

#### ARMY PENSION REGULATIONS, 1961:

Regulations 48 and 50.  
(See under: Service law as also under: Constitution of India, 1950) .... 777

#### ASSAM CIVIL SERVICES (CLASS-I) RULES, 1960:

rr.4 and 19 – Selection/Seniority – Selection process started on the basis of the existing Service Rules – Held: Existing rules would continue to govern the selection process, notwithstanding any amendment to the said Rules in the meantime – Seniority would thus be governed by the existing rule – Service law – Seniority.

*Md. Raisul Islam and Ors. v. Gokul Mohan Hazarika and Ors.* .... 732

#### CENTRAL EXCISE ACT, 1944:

s. 4 – Levy of excise duty – Claim of deductions under eight heads – Disallowed under two heads and allowed under the remaining six heads – Appeal by assessee – Order disallowing deductions under two heads upheld by tribunal and Supreme Court – Appeal by Revenue challenging deductions under the six heads – Tribunal holding that order under challenge had merged in the earlier order passed by tribunal in company's appeal whereby disallowance of two of the eight deductions had been upheld – Held: Not correct – Doctrine of merger not applicable –

Appeal by assessee was limited to disallowance of two out of eight deductions claimed by assessee – Tribunal had no occasion to examine admissibility of deductions under the remaining six heads because assessee did not question the same – Doctrine of merger.

*Commissioner of Central Excise, Delhi v. M/s. Pearl Drinks Ltd.* .... 808

#### CIRCULARS/GOVERNMENT ORDERS

##### NOTIFICATIONS:

Circular CC No. 4 of 1997 dated 08.01.97.  
(See under: Electricity Supply Regulations) .... 1158

#### CODE OF CIVIL PROCEDURE, 1908:

(1) s. 2 (11).  
(See under: Abatement) .... 927

(2) ss.35, 35-A, 35-B, 151, O. 25 r.1.  
(See under: Transfer of Property Act, 1882 as also Costs) .... 424

(3) (i) s.96 – Appeal from original decree – Scope of – Held: A regular first appeal is a rehearing of the suit and appellate court is bound to appreciate the evidence on record and arrive at its own conclusion.

(ii) s.115 – Revisional jurisdiction of High Court – Held: High Court cannot re-appreciate the evidence and set aside concurrent findings of fact recorded by courts below, by taking a different view of the evidence – It is open to High Court to remit the matter if it finds that the courts below did not consider the material evidence on record –

Rent Control and Eviction.

*M/s. Bhanwarlal Dugar & Ors. v. Bridhichand Pannalal & Ors.* .... 403

(4) s.100.  
(See under: Service Law) .... 506

(5) s.100 – Second appeal – Held: Is maintainable on a substantial question of law and not on facts – However, if court comes to the conclusion that findings recorded by courts below are perverse, appeal can be entertained, and it is permissible for the court to re-appreciate the evidence.

(Also see under: Madhya Pradesh Accommodation Control Act, 1961)

*Dinesh Kumar v. Yusuf Ali* .... 222

(6) s.100 – Second appeal – Scope of – High Court setting aside the concurrent finding of fact recorded by both the courts below that in view of the fact that husband of the defendant was alive at the relevant time, marriage between her and the brother of plaintiff could not be presumed – Held: High Court re-appreciated the documentary evidence, and did not take into consideration the evidence of plaintiff's witnesses who were relied upon by courts below, but decided on the presumption of marriage only placing reliance on the evidence of DW-1 who was disbelieved by the courts below for cogent reasons – Such a course is not permissible while deciding a second appeal u/s. 100 – Judgment of High Court set aside.

(Also see under: Transfer of Property Act, 1882)

*Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors.* .... 154

(7) (i) s.100 r/w s.79, O.27 r.1, O.1, r.9, proviso and Article 300 of Constitution of India – Second appeal filed by District Collector and District Forest Officer – State not impleaded as a party – Held: State of Andhra Pradesh was a party before the trial court as well as before the first appellate court – The relief sought by the plaintiff was declaration of title of suit land which according to appellants was in favour of State of Andhra Pradesh and the suit land in physical possession of Forest Department – Thus, keeping in view the provisions of s.79, r.1 of O.27, proviso to r.9 of O.1 and Article 300 of the Constitution, *prima facie* the State was a necessary party – Second appeal filed by the officials was not maintainable – Case remanded to High Court to decide the second appeal afresh – Appellants permitted to file an application for impleadment of State of Andhra Pradesh as appellant, which would be considered by High Court in accordance with law – Constitution of India, 1950 – Article 300 – Party.

(ii) s.100 – Second appeal – Substantial question of law – High Court deciding the second appeal without framing any substantial question of law though making reference to the pleadings taken in the second appeal, it discussed and decided the question of law raised therein – Matter remanded to High Court to decide the second

appeal afresh after framing the substantial question of law.

*The District Collector, Srikakulam & Ors. v. Bagathi Krishna Rao & Anr.* .... 280

(8) Order 1, Rule 9, proviso.  
(See under: Service Law) .... 289

(9) O.1 r. 10(2) – Striking out or adding parties – Work of modernisation of Airport – Grant of lease of premises of airport by Airport authority to appellant – Part of airport land not included in lease deed in view of a pending suit for specific performance filed by first respondent against Airport Authority – Said land could become part of Airport premises subject to decision by court – Dismissal of application for impleadment by appellant as additional defendant by courts below – Interference with – Held: Not correct – Appellant is neither a necessary party nor a proper party – He is neither purchaser nor lessee of suit property – He has no right, title or interest therein nor is claiming any right or remedy against first respondent – First respondent is also not claiming any right or remedy against appellant in the suit against Airport authority.

*Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd. & Ors.* .... 790

(10) O.21, r.90.  
(See under: Limitation Act, 1963) .... 376

CODE OF CRIMINAL PROCEDURE, 1973:

(1) s.161 – Recording of statements afresh by new Investigating Officer on transfer of

investigation to CID – Held: Once the direction was given to conduct the investigation afresh, there is no error in the IO examining the witnesses afresh – Penal Code, 1860 – ss. 304-B and 498-A.

*Uday Chakraborty & Ors. v. State of West Bengal* .... 1048

(2) s.202(2), proviso – Interpretation of – Held: Examination of all the witnesses cited in the complaint is not *sine qua non* for taking cognizance by a Magistrate in a case exclusively triable by the Court of Session – Failure or inability of the complainant or omission on his part to examine one or some of the witnesses cited in the complaint or whose names are furnished in compliance of the direction issued by the Magistrate, would not preclude the latter from taking cognizance and issuing process or passing committal order if he is satisfied that there exists sufficient ground for doing so.

*Shivjee Singh v. Nagendra Tiwary and Ors.* .... 667

(3) ss. 245(2) and 482.

(See under: Negotiable Instruments Act, 1881) .... 694

(4) s. 313 – Object and scope of.

*Sanatan Naskar & Anr. v. State of West Bengal* .... 1023

(5) (i) s.313 – Recording of statement of accused – Held: The purpose of the mandatory requirement is to put every incriminating evidence to accused and to give him a fair chance to offer his explanation – However, if the accused makes a

false statement, court may draw adverse inference – Penal Code, 1860 – s.304 -B.

(ii) s.154 – FIR – Delay in registration – Dowry death – Fifteen hours delay in registration of FIR – Held: There is no inordinate or unexplained delay in lodging the FIR – Penal Code, 1860 – s.304-B.

*Ashok Kumar v. State of Haryana* .... 1119

(6) s.482 – Inherent powers of the High Court – Scope and ambit of.

(Also see under: Penal Code, 1860)

*Jeffrey J. Diermeier and Anr. v. State of West Bengal & Anr.* .... 128

(7) s.482 – Quashing of complaint – Complaint filed u/s.420 r/w. s.120-B IPC – Assertions made in the complaint regarding misrepresentation made by petitioner as regards the property in dispute – Summons issued against petitioner – Petition for quashing the complaint – High Court dismissing the same – Held: Justified as *prima facie* case was made out in the complaint for trial of petitioner – The complaint gave rise to triable issues which could only be determined by leading evidence at the trial – Penal Code, 1860 – ss.415, 120-B.

*S.P. Gupta v. Ashutosh Gupta* .... 38

COMPANIES ACT, 1956:

ss. 391 to 394.

(See under: Tamil Nadu Buildings (Lease and Rent Control) Act, 1960) .... 46

## CONSTITUTION OF INDIA, 1950:

(1) Articles 14 and 16.

(i) (See under: Nagaland Retirement From Public Employment Act, 1991) .... 630

(ii) (See under: Administrative Law as also Service Law) .... 908

(2) Articles 14 and 16 – Constitutional validity of Regulation 50 of Army Pension Regulations – Held: Officers who are invalided out of service on account of disability attributable to or aggravated by military service constitute a class in themselves and officers who retire voluntarily on medical ground constitute a different class – Article 14 frowns on discrimination, but permits reasonable classification – Thus, Regulation 50 prescribing that an officer retiring voluntarily shall not be eligible for disability pension is not discriminatory, nor *ultra vires* Article 14 – Army Pension Regulations – Regulation 50.

*Union of India & Ors. v. Ajay Wahi* .... 777

(3) Articles 14 and 136.

(See under: Punjab Urban Estate (Sale of Sites) Rules, 1965) .... 317

(4) (i) Articles 15(3) and 16(4) – Difference between horizontal (special) reservation and vertical (social) reservation re-iterated.

(ii) Article 226 – Writ petition – Non-impleadment of necessary party. (See under: Service Law) .... 289

(5) Articles 19(1)(g), 19(6), 21 and 14 – Right to practice in medicine – Held: Is not absolute –

Restriction on practice without possessing the requisite qualification prescribed in Schedule II, III and IV of 1970 Act is not violative of Article 14 nor *ultra vires* to any of the provisions of the Act – Mere inclusion of name of a person in the State Register maintained under the State Act is not enough to make him eligible to practice – Indian Medicine Central Council Act, 1970.

(Also see under: Rajasthan Indian Medicine Act, 1953)

*Rajasthan Pradesh V.S. Sardarshahar and Anr. v. Union of India and Ors.* .... 252

(6) (i) Article 136 – Dismissal of SLP in limine – Held: Does not operate as *res judicata* – It does not mean that the judgment of High Court has been upheld – Also the impugned judgment cannot be said to have merged with such a dismissal order passed by Supreme Court – Order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law or a binding precedent – Punjab Urban Estate (Sale of Sites) Rules, 1965 – Doctrine of merger – Precedent.

(ii) Article 14 – Equality before law – Held: Cannot be claimed in illegality and, therefore, cannot be claimed by a citizen or enforced by a court in a negative manner – A wrong decision in favour of any particular party does not entitle any other party to claim its benefits – Punjab Urban Estate (Sale of Sites) Rules, 1965.

(Also see under: Punjab Urban Estate (Sale of Sites) Rules, 1965)

*Fuljit Kaur v. State of Punjab & Ors.* .... 317

(7) Articles 136 and 142 – Exercise of power to award appropriate sentence – Conviction and sentence of ten years RI awarded by courts below u/s 304-B IPC – Held: Cruelty and harassment to deceased was caused by her mother-in-law and brother-in-law, who were acquitted by High Court – Their acquittal was not challenged – In order to do complete justice, in exercise of power under Article 142, sentence of accused reduced to seven years RI – Penal Code, 1860 – s.304-B – Sentence/Sentencing.

*Ashok Kumar v. State of Haryana* .... 1119

(8) Article 226 – Writ petition – Restraint on the remedy by High Court – In a writ petition filed by a candidate who failed to secure qualifying marks and was not called for interview, High Court passing a general order restraining other aggrieved persons from approaching the Court by filing writ petition on any ground – Held: Such an order not justified, particularly, when the Court has competence to grant equitable relief to persons even if they are not before the Court, more so, when it has also power to mould the relief in a particular fact-situation – Service Law – Judicial Service – Remedy.

(Also see under: Service Law)

*H. P. Public Service Commission v. Mukesh Thakur & Anr.* .... 189

(9) Articles 226 and 14.  
(See under: Administrative Law) .... 820

(10) Article 226/227 – Extra-ordinary jurisdiction under – Held: When a person approaches a court of equity in exercise of its extra-ordinary jurisdiction

under Article 226/227, he should approach the court not only with clean hands but also with clean mind, clean heart and clean objective – Litigant did not approach the court with disclosure of true facts, thus his case stands vitiated – Equity.

*Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. & Ors.* .... 346

(11) Article 235 – Control over subordinate courts.  
(See under: Judiciary) .... 1061

(12) Article 300.  
(See under: Code of Civil Procedure, 1908) .... 280

(13) Seventh Schedule, list II, Entry 5.  
(See under: Uttar Pradesh  
Panchayat Laws (Amendment) Act, 2007) .... 585

#### CONTEMPT OF COURT:

Contempt petition before High Court – Arising out of directions by High Court, in a writ petition filed in public interest, to officials of State Electricity Board to provide uninterrupted supply of electricity to government Hospitals and street lights to be on during nights, throughout the State – High Court directing impleadment of senior officers of the Board and others as contemnors and ordering inquiry to be held by CBI – Held: Directions made by High Court are clearly beyond courts' jurisdiction in a public interest litigation – Order of High Court set aside and contempt proceedings discharged – Public Interest Litigation.

(Also see under: Public Interest Litigation)

*S. K. Dasgupta & Ors. v. Vijay Singh Sengar & Ors.* .... 881

## CONTRACT:

Work contract – Extension of – Contractor claiming enhanced amount on account of escalation by statutory increase in the wages of labourers during the extended period of contract – It also claimed an amount towards final payment due and payable – Held: Contractor was not entitled to the claim on account of escalation due to statutory increase in wages of labourers – Relevant clause of contract did not envisage such escalation – Arbitrators have no jurisdiction to make an award against the specific terms of the contract – However, contractor is entitled to claim towards final payment – Arbitration.

*M/s. Rashtriya Chemicals & Fertilizers Ltd. v. M/s. Chowgule Brothers & Ors.* .... 962

## COSTS:

Absence of effective provisions for costs – Need for reform – The provision for costs as envisaged in ss.35, 35A, 35-B, CPC have either become infructuous on account of inflation or are seldom invoked – Lack of appropriate provisions relating to costs result in increase in malicious, vexatious and frivolous suits – Urgent need for Legislature and Law Commission of India to re-visit the provisions relating to costs and compensatory costs contained in ss.35, 35A – Code of Civil Procedure, 1908 – ss.35, 35A, 35B – Legislation – Suggestion for.

*Vinod Seth v. Devinder Bajaj and Anr.* .... 424

## CRIME AGAINST WOMEN:

(1) Dowry death.  
(See under: Penal Code, 1860) .... 104  
and 1048

(2) (See under: Code of Criminal Procedure, 1973 as also under: Penal Code, 1860) .... 1119

## CRIMINAL LAW:

Motive.  
(See under: Penal Code, 1860) .... 113  
and 410

## DAMAGES:

(See under: Transfer of Property Act, 1882) .... 424

## DEEDS AND DOCUMENTS:

Two registered sale deeds – The sale deed anterior in point of time would be crucial.  
(Also see under: Transfer of Property) .... 624

## DELAY/LACHES:

(1) Condonation of delay – Application for.  
(See under: Limitation Act, 1963) .... 376  
(2) Delay in lodging FIR and starting investigation.  
(See under: Penal Code, 1860) .... 410  
(3) Delay in registration of FIR.  
(See under: Code of Criminal Procedure, 1973) .... 1119

## DEVELOPMENT CONTROL REGULATIONS FOR GREATER MUMBAI, 1991:

Regulation 33(7) read with Appendix III, regulation 35(2)(k) and regulation 38(22) – Reconstruction or redevelopment of property by developer under Urban Renewal Scheme – Area of tenements to be constructed and delivered to previous occupants – Tenements of minimum carpet area of 225 sq.ft. with a balcony in addition, of a minimum area of 22.5 sq. ft (10% tenement area)



	1193	
– Claim of – Held: Not justified.		
<i>Avinash Gaikwad &amp; Ors. v. State of Maharashtra &amp; Ors.</i>	....	519
DOCTRINES/PRINCIPLES:		
(1) Concept of reasonable time/period. (See under: Penal Code, 1860)	....	1048 and 1119
(2) Doctrine of <i>lis pendens</i> – Applicability of. <i>Vinod Seth v. Devinder Bajaj and Anr.</i>	....	424
(3) Doctrine of merger. (i) (See under: Constitution of India, 1950) (ii) (See under: Central Excise Act, 1944)	....	317 808
(4) Doctrine of proportionality. (See under: Service Law)	....	820
(5) ‘Doctrine of provocation’ – Meaning and applicability of. <i>Arun Raj v. Union of India and Ors.</i>	....	1
(6) Rule of audi alteram partem. (See under: Service Law)	....	465
(7) Rule of ejusdem generis. (See under: Penal Code, 1860)	....	1119
DOWRY PROHIBITION ACT, 1961:		
(1) s.2. (See under: Penal Code, 1860)	....	1119
(2) Dowry death. (See under: Penal Code, 1860)	....	104

	1194	
DYING DECLARATION: (See under: Penal Code, 1860)	....	384
EDUCATION/EDUCATIONAL INSTITUTIONS: Unrecognized institutions. (See under: Indian Medicine Central Council Act, 1970)	....	252
ELECTRICITY SUPPLY ACT, 1948: (See under: Electricity Supply Regulations)	....	1158
ELECTRICITY SUPPLY REGULATIONS: Clubbing of electricity connections in one premises – Inspection report with regard to complainant’s premises – Held: Reasons were not recorded as regards the correctness of inspection report – Ambiguity in the protest raised by consumers to inspection report – Documents produced by consumers were prior to date of inspection – Matter remanded to the Competent Authority – Electricity Supply Act, 1948 – Circular CC No. 4 of 1997 dated 08.01.97. <i>Punjab State Electricity Board &amp; Anr. v. Ashwani Kumar</i>	....	1158
EQUITY: (See under: Constitution of India, 1950)	....	346
EVIDENCE: (1) Circumstantial evidence. (See under: Penal Code, 1860)	....	113, 384 and 1023
(2) (i) Statements of witnesses – Held: Have to be read in their entirety – There may be certain variations in the statements, therefore, they should		

be appreciated and dealt with upon their cumulative reading – Penal Code, 1960 – s.304-B.

(ii) Defence witness – Held: Defence would be bound by the statement of the witness produced by it – Penal Code, 1860 – s.304-B.

(Also see under: Penal Code, 1860)

*Ashok Kumar v. State of Haryana* .... 1119

(3) Testimony of defence witness.

(See under: Penal Code, 1860) .... 1119

(4) Testimony of eye-witnesses.

(See under: Penal Code, 1860) .... 1001

(5) Testimony of related witnesses.

(See under: Penal Code, 1860) .... 410

#### EVIDENCE ACT, 1872:

(1) s.32 – Dying declaration – Principles governing dying declaration re-iterated.

*Puran Chand v. State of Haryana* .... 21

(2) s.112 – Birth during marriage, conclusive proof of legitimacy – Presumption of a child being legitimate can only be displaced by a strong preponderance of evidence and not merely by a balance of probabilities – Proof of non-access between the parties to marriage during the relevant period is the only way to rebut the presumption – In the instant case, the proof of non-access between the parties to the legally

subsisting marriage had never been even pleaded – Hindu Marriage Act, 1985 – ss. 5 and 16.

*Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors.* .... 154

(3) s.113-B.

(See under: Penal Code, 1860) .... 104

(4) s.114, Illustration (g) – Presumption under.

(See under: Representation of the People Act, 1951) .... 888

#### FIR:

(1) Delay in lodging FIR.

(See under: Penal Code, 1860) .... 410

(2) Delay in registration of FIR.

(See under: Code of Criminal Procedure, 1973) .... 1119

#### GENERAL CLAUSES ACT, 1897:

s. 21 – Invocation of – Held: Authority which has power to issue notification has undoubted power to rescind or modify the notification in the like manner.

(Also see under: Motor Vehicles Act, 1988)

*Rasid Javed & Ors. etc. etc. v. State of U.P. & Anr. etc. etc.* .... 535

#### HIMACHAL PRADESH JUDICIAL SERVICE RULES, 2004:

(See under: Service Law) .... 189

HIMACHAL PRADESH JUDICIAL SERVICE  
(SYLLABUS AND ALLOCATION OF MARKS)  
REGULATIONS, 2005:

Regulation 6.

(See under: Service Law) .... 189

HINDU MARRIAGE ACT, 1955:

(i) s.5 – Marriage – Presumption of – Held: If one of the parties of live-in relationship has a spouse living, merely live-in relationship between the said two parties would not lead to presumption of marriage between them.

(ii) s.16(2) – Legitimacy of children of void or voidable marriages – Held: In view of legal fiction contained in s.16, the illegitimate children for all practical purposes, including succession to properties of their parents, have to be treated as legitimate – But, they cannot succeed to the properties of any other relation.

(Also see under: Evidence Act, 1872 and under: Transfer of Property Act, 1882)

*Bharatha Matha & Anr. v. R. Vijaya  
Renganathan & Ors.* .... 154

INCOME TAX ACT, 1961:

(1) ss.5(2), 195, 201 – Receipt by Non-resident Company – Chargeability to tax – On facts, assessee obtained permit to carry fishing operations – A Non-resident Company (NRC) agreed to provide fishing trawlers to the assessee – Charter fee payable to the NRC by way of 85% of gross earning from sale of fish – Chartered vessels with entire catch brought to Indian port – Payment of charter fee to the NRC in India after valuation and payment of local tax – Held: Receipt

of charter fee by NRC was chargeable to tax – Assessee erred in not deducting the tax.

*Kanchanganga Sea Foods Ltd. v.  
Commissioner of Income Tax* .... 866

(2) (i) ss.10(33), 14A and 94(7) – Dividend stripping transaction – Cases prior to 1.4.2002 – Loss on sale of units – Exemption from income – Held: Losses pertaining to exempted income, cannot be disallowed – After, 01.04.2002, losses over and above the amount of dividend received would still be allowed – It will not be ignored u/s. 94(7) – Parliament has not treated the dividend stripping transaction as sham or bogus.

(ii) ss.14-A and 94(7) – Reconciliation of ss. 14-A with ss. 94 (7) – Held: ss. 14-A and 94 (7) operate in different fields – Section 14-A comes in when there is claim for deduction of expenditure whereas s. 94 (7) comes in when there is claim for allowance for the business loss.

*C.I.T., Mumbai v. M/s. Walfort Share &  
Stock Brokers P. Ltd.* .... 748

INDIAN MEDICINE CENTRAL COUNCIL ACT, 1970:

(i) ss.17(3) – Medical education – Degree/Diploma/Certificate holder of Vaidya Visharad or Ayurved Ratna from Hindi Sahitya Sammelan Prayag/Allahabad – Held: Is not entitled to medical practice – Rajasthan Indian Medicine Act, 1953 – Education/Educational institution.

(ii) Second Schedule – Entry 105; ss.14, 17 – Cut off date of 1967 in the said Entry, whether arbitrary – Held: The cut off date cannot be termed as arbitrary – The certificates issued by Hindi

Sahitya Sammelan Prayag/Allahabad were recognised only upto 1967 – The Society never made an attempt to get recognition after 1967 – In fact, it was not the cut off date fixed by the statutory authorities, rather it indicated that such courses or certificates were not recognised after 1967.

(iii) Un-recognised institution – Students of un-recognised institution are not legally entitled to appear in any examination conducted by any government, university or board.

(Also see under: Rajasthan Indian Medicine Act, 1953 and under: Constitution of India, 1950)

*Rajasthan Pradesh V.S. Sardarshahar and Anr. v. Union of India and Ors.* .... 252

#### INDUSTRIAL DISPUTES ACT, 1947:

(i) s.33C(2) – Subsistence allowance – Application for suspension/subsistence allowance filed u/ s.33C(2) before the Labour Court, Dibrugarh constituted u/s.7 of the Act – Employer situated within the local limits of its jurisdiction – Jurisdiction of Labour Court, Dibrugarh to decide the dispute – Held: Labour Court, Dibrugarh is not specified by the appropriate government i.e. Central Government for adjudication of the disputes u/ s.33C(2) – However, the dispute can be entertained in view of s.10A(2) of 1946 Act – Industrial Employment (Standing Orders) Act, 1946 – s.10A(2).

(ii) s.33C(2) – Expression ‘labour court’ – Includes court constituted under any law relating to investigation and settlement of industrial disputes

in force in any State.

*Vijaya Bank v. Shyamal Kumar Lodh* .... 569

#### INDUSTRIAL EMPLOYMENT (STANDING ORDERS)

ACT, 1946:

s.10A(2).

(See under: Industrial Disputes Act, 1947) .... 569

#### INTEREST:

Interest on solatium.

(See under: Land Acquisition Act, 1894) .... 833

#### INTERIM ORDERS:

Order passed or action taken by statutory authority in contravention of interim order – Enforceability of – Held: Is a nullity.

*Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. & Ors.* .... 346

#### INTERPRETATION OF STATUTES:

(1) Contextual interpretation – Held: In order to decide whether a provision is directory or mandatory, the court, in addition to the language of the provision, should examine the context in which it is used, the purpose it seeks to achieve, and the legislative intent – In order to declare a provision mandatory the test is whether non-compliance thereof could render the entire proceedings invalid or not.

*May George v. Special Tahsildar & Ors.* .... 204

(2) (i) Explanation appended to a section – Object of – Held: Is to explain the meaning of the words

contained in the section – Industrial Disputes Act, 1947 – s.33C(2).

(ii) Meaningful construction – Legislature never wastes its words or says anything in vain – Construction rejecting the words of a statute not to be resorted to, except for compelling reasons. (Also see under: Industrial Disputes Act, 1947)

*Vijaya Bank v. Shyamal Kumar Lodh* .... 569

(3) (i) Rule of *ejusdem generis*.

(ii) Deeming fiction.

(See under: Penal Code, 1860) .... 1119

#### INVESTIGATION:

(1) Delay in starting investigation.

(See under: Penal Code, 1860) .... 410

(2) Lacunae in investigation – Duty of Investigating Officer while investigating a murder case – Held: Investigating Officer is expected to perform his duties with greater caution, sincerity and by taking recourse to appropriate scientific methods for investigating heinous crimes.

*Maqbool @ Zubir @ Shahnawaz and Anr. v. State of A.P.* .... 1001

(3) (See under: Code of Criminal Procedure, 1973) .... 1048

#### JUDGMENTS/ORDERS:

(1) Non-reasoned order – Effect of.

(See under: Administrative Law) .... 908

(2) Obligation of court to record reasons for the order made.

(See under: Service Law) .... 239

(3) Order in *terrorem*.

(See under: Transfer of Property Act, 1882) .... 424

(4) Order – Merger of.

(i) (See under: Central Excise Act, 1944) .... 808

(ii) (See under: Constitution of India, 1950) .... 317

(5) Order rejecting Special Leave Petition without detailed reasons.

(See under: Constitution of India, 1950) .... 317

#### JUDICIAL RESTRAINT:

(See under: Public Interest Litigation) .... 881

#### JUDICIAL REVIEW:

(1) Judicial review of administrative action – Scope.

(See under: Administrative Law) .... 820

(2) Scope of.

(See under: Service Law) .... 189

(3) (See under: Service Law) .... 777  
and 908

#### JUDICIARY:

(1) Judicial service – Appointment.

(See under: Service Law as also under Constitution of India, 1950) .... 189  
and 289

(2) Judicial officer – Misconduct – Punishment.

(See under: Service Law) .... 465

(3) Superior judiciary – Non-recording of confidential report of judicial officer by High Court–

Held: Adversely affects the administration of justice and dilutes the constitutional power and functions of superintendence of High Court – It is constitutional obligation on the High Court to ensure that the members of judicial service of the State are treated appropriately with dignity, and their service matters are taken up without undue delay – Administration of justice – Constitution of India, 1950 – Article 235 – Service law.

(Also see under : Service law)

*Khazia Mohammed Muzammil v.  
The State of Karnataka and Anr.* .... 1061

#### JURISDICTION:

(1) Extra-ordinary jurisdiction under Article 226/227.  
(See under: Constitution of India, 1950) .... 346

(2) Jurisdiction of arbitrator to make an award against the specific terms of the contract.  
(See under: Contract) .... 962

(3) Jurisdiction in public interest litigation.  
(See under: Public Interest Litigation) .... 881

(4) Incorrect label of the application and mentioning wrong provision neither confers jurisdiction nor denudes the court of its jurisdiction.

*Vijaya Bank v. Shyamal Kumar Lodh* .... 569

(5) Revisional jurisdiction of High Court.  
(See under: Code of Civil Procedure, 1908) .... 403

KARNATAKA CIVIL SERVICE (PROBATION) RULES, 1977:

(i) r. 5(2) – Deemed confirmation – Held: Rule 5(2) provides that competent authority has to examine the suitability of the probationer and upon recording satisfaction, to issue an order of confirmation – In the absence of specific order, there is no deemed/automatic confirmation – Delay in issuance of order would not entitle the probationer to be deemed to have satisfactorily completed his probation – Karnataka Judicial Services (Recruitment) Rules, 1983 – Rule 2, item no.2.

(ii) r. 5(2) – Discharge order of probationer showed that it was not stigmatic – Held: Since the discharge was simpliciter without causing stigma upon the probationer, holding of formal proceedings under the 1957 Rules was not necessary – Service law – Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957.

(Also see under : Service law)

*Khazia Mohammed Muzammil v.  
The State of Karnataka and Anr.* .... 1061

KARNATAKA CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES 1957:

(See under: Karnataka Civil Service (Probation) Rules, 1977) .... 1061

KARNATAKA JUDICIAL SERVICES (RECRUITMENT) RULES, 1983:

r 2, item no.2.  
(See under: Karnataka Civil Service (Probation) Rules, 1977) .... 1061

## KERALA GENERAL SALES TAX ACT, 1963:

s.5(3) – Printing of newspaper – Ink purchased for use in the manufacture/printing of newspaper – Declaration Notice imposing penalty on the ground that printing of newspaper did not amount to manufacture and therefore declaration under Form 18 was not correct – Held: Material amendment were carried out in s.5(3) – Despite the amendments, the format of Form 18 was not amended – High Court did not deal with these legal issues – Matter remitted to High Court for consideration afresh.

*Malayala Manorama Co. Ltd. v. Asstt.*

*Commissioner, Commercial Taxes & Anr. ....* 993

## LAND ACQUISITION ACT, 1894:

(1) (i) ss. 4, 6, 11 and 18 – Acquisition for planned development of industrial town – Award made – Possession taken – Thereafter, one of the landowners filing writ petition challenging the award on the ground that notice u/s. 9(3) not served – Held: Once award made and possession taken, land vested in the State and cannot be diverted even if some irregularity found in the acquisition proceedings.

(ii) s. 9 – Notice under – Whether mandatory – Held: The provision is not mandatory – In view of the scheme of the Act, failure of notice u/s. 9(3) would not adversely affect the subsequent proceedings including the Award and title of the Government in the acquired land.

*May George v. Special Tahsildar & Ors. ....* 204

(2) Interest on solatium – Liability to pay – Decision in Gurpreet Singh case, that interest on solatium

could be claimed only in pending executions and not in closed executions and the executing court would be entitled to permit its recovery from the date of judgment in Sunder case (19.9.2001) and not prior to that date – Interpretation of words ‘closed execution’ in Paragraph 54 of Gurpreet Singh case and relevance of the date of decision in Sunder case – Held: If main proceedings arising from landowner’s claim for enhanced compensation remain pending before civil court or at the appellate stage, it is not deemed to be closed even if the award/decreed passed by Collector/civil court was put to execution and payment received by landowners in terms of award/decreed – The stipulation that any interest on solatium can only be granted for period subsequent to the decision in Sunder i.e. 19.9.2001, does not circumscribe the power of the court dealing with the main proceedings relating to enhancement of compensation and it is a limitation on the power of executing court.

*Land Acqn. Officer & Asstt. Commnr. & Anr. v. Shivappa Mallappa Jigalur & Ors. ....* 833

(3) (See under: Uttar Pradesh Urban Planning and Development Act, 1973) .... 346

## LEGISLATION:

Suggestion for.  
(See under: Costs) .... 424

## LIMITATION ACT, 1963:

s. 5 – Delay in filing objections under O. 21 r. 90 CPC and, on rejection of objections, two and half months’ delay in filing appeal against order of executing court – Appeal dismissed as barred by

time – Held: Unless malafides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned – Delay in filing first appeal before District Judge, for setting aside the sale has not been so huge as to warrant its dismissal on such hypertechnical ground – Appellant had taken all possible steps to prosecute the matter within time – Matter remitted to executing court – Code of Civil Procedure, 1908 – O.21, r.90.

*Improvement Trust, Ludhiana etc. v. Ujagar Singh & Ors. Etc.* .... 376

LOCUS STANDI:  
(See under: Service Law) .... 908

MADHYA PRADESH ACCOMMODATION CONTROL ACT, 1961:

s.12(1)(f) – Bonafide requirement for non-residential purpose – Eviction decree – Set aside by first appellate court – In second appeal, order of eviction upheld by High Court holding the findings recorded by first appellate court as perverse – Held: Landlord is the best judge of his need, however, it should be real, genuine and may not be a pretext to evict tenant only for increasing the rent – High Court can entertain second appeal and re-appreciate evidence, if finding of fact recorded by court below is found to be perverse – On facts, order of High Court justified but it did not consider as to what would be the magnitude of business – In the interest of justice, landlord to recover possession of half of the area of the premises – Code of Civil Procedure, 1908 – s. 100.

*Dinesh Kumar v. Yusuf Ali* .... 222

MAXIMS:

*Omnia praesumuntur contra spoliatores* – Applicability of.

*Pradip Buragohain v. Pranati Phukan* .... 888

MOTOR VEHICLES ACT, 1939:

ss. 68-C and 68-D – Publication of a scheme of road transport service by State Transport Undertakings – Effect of – Held: No person other than STU may operate on the notified area or notified route except as provided in the scheme itself.

*Rasid Javed & Ors. etc. etc. v. State of U.P. & Anr. etc. etc.* .... 535

MOTOR VEHICLES ACT, 1988:

(1) s.72(1) – Interpretation of – Grant of stage carriage permit – Power of State Transport Authority to grant stage carriage permits with modification by curtailing a part of the routes applied for – Held: State Transport Authority is not prohibited from curtailment in regard to portion of route applied for, for any valid reason – So long as the reason for modification is not found to be arbitrary or unreasonable, order of Authority cannot be interfered with.

*State of West Bengal and Ors. v. S.K. Nurul Amin* .... 496

(2) (i) s.102(1) – Cancellation or modification of scheme – Inter-state route – Saharanpur-Delhi route and other routes – Issuance of Notification dated 16.04.1999 u/s. 102(1) modifying the 1993 scheme – Objections invited and heard – State Government issued Notification dated 15.04.2000



u/s. 102(1) r/w s. 21 of the 1897 Act, to rescind Notification dated 16.04.1999 – Validity of – Held: Notification dated 15.04.2000 is valid and does not suffer from any legal flaw – General Clauses Act, 1897 – s. 21.

(ii) s.102 – Cancellation or modification of scheme – Extent of authority to Hearing Authority – Held: Delegatee must confine his activity within four corners of powers invested in him and if he acts beyond that, his action cannot have any legal sanction unless ratified by delegator – Distinction must be maintained where Hearing Authority is empowered by State Government to hear objections and approve proposed modification or modify the approved scheme and a case where it is authorized to hear objections relating to proposed modification to the approved scheme – Administrative Law – Powers of delegatee.

(iii) Permit granted to private operator relating to a part of Saharanpur-Delhi route – Status of the permit – Held: Said permits related to routes which overlapped Delhi-Saharanpur notified route – By the 1959 Scheme and 1993 Scheme, entire Saharanpur-Delhi route became fully nationalized for exclusive operation by State Transport Undertaking and no private operator could operate on the said route – Private operators' permits stood cancelled.

(Also see under: General Clauses Act, 1897)

*Rasid Javed & Ors. etc. etc. v. State of U.P. & Anr. etc. etc.* .... 535

#### NAGALAND RETIREMENT FROM PUBLIC EMPLOYMENT ACT, 1991:

s.3 (as amended by Amendment Act, 2009) – Providing for retirement of a person on completing 35 years of service from the date of joining or on attaining the age of 60 years, whichever is earlier – Held: Is valid and does not suffer from the vice of arbitrariness/ irrationality nor is it violative of Articles 14 and 16 of the Constitution – Fixation of maximum length of service as an alternative criterion for retirement from public service, can not be held to be violative of any recognized norms of employment planning – Constitution of India, 1950 – Article 14 and 16.

*Nagaland Senior Govt. Employees Welfare Association & ors. v. The State of Nagaland & Ors.* .... 630

#### NATURAL JUSTICE:

Rule of audi alteram partem – Violation of.  
(See under: Service Law) .... 465

#### NEGOTIABLE INSTRUMENTS ACT, 1881:

ss. 138, 139 and 141 – Prosecution of companies and their directors – Vicarious liability of directors – Held: Merely being a director would not make a person vicariously liable – There has to be a specific allegation in the complaint as to the role played by him in the transaction in question – In the instant case, High Court rightly held that in the absence of any specific charge against the accused, the complaint was liable to be quashed and they were entitled to be discharged – Code of Criminal Procedure, 1973 – ss.245(2) and 482.

*Central Bank of India v. M/s. Asian Global Ltd. & Ors.* .... 694

## NOTICE:

Non-issuance of – Effect.

(See under: Land Acquisition Act, 1894) .... 204

ORISSA MINISTERIAL SERVICE (METHOD OF RECRUITMENT TO POSTS OF JUNIOR CLERKS IN THE DISTRICT OFFICES) RULES, 1985:

rr. 6, 11 (1) and 12.

(See under: Service Law) .... 301

## PANCHAYATS:

Incorporation of no-confidence motion against chairperson of Panchayat.

(See under: Uttar Pradesh Panchayat Laws (Amendment) Act, 2007) .... 585

## PARTY:

(1) Impleadment of.

(See under: Code of Civil Procedure, 1908) .... 790

(2) Non-impleadment of.

(See under: Code of Civil Procedure, 1908) .... 280

(3) Non-impleadment of necessary party – Effect of.

(See under: Service Law) .... 289

(4) Public interest litigation - Impleadment of officials of State Electricity Board as contemnors.

(See under: Contempt of Court) .... 881

## PENAL CODE, 1860:

(1) ss. 147, 148, 302, 302 r/w s. 34, 109 and 149 – Murder – Enmity between the parties as regards ownership and possession of mango orchard – Quarrel over plucking of mangoes – Eleven accused persons formed unlawful assembly and

attacked complainant and his two sons – Gun shots fired at sons, brutally attacked by spears and body dragged to a certain distance resulting in instant death – Conviction of 9 accused persons upheld by High Court – Held: Prosecution failed to prove that three of the accused had common intention to commit the murder – They are acquitted on benefit of doubt – Others were members of unlawful assembly – There was active participation by them – Eye-witnesses, though were partisan, their evidence is to be accepted – Plea of alibi rightly rejected by courts below – Thus, conviction of remaining six accused upheld – Arms Act, 1959 – s. 27.

*Adalat Pandit & Anr. v. State of Bihar* .... 79

(2) s.302 – Accused firing at his uncle resulting in his death – Conviction by courts below – Pleas of absence of motive, evidence of interested witnesses only, and delay in filing FIR and starting investigation – Held: Are not tenable – Accused was rightly convicted and sentenced to imprisonment for life u/s 302 – Criminal law – Evidence.

*Chunni Lal v. State of U.P.* .... 410

(3) s.302 – Conviction by courts below based on evidence of eyewitnesses – Interference with – Held: Not called for.

*Maqbool @ Zubir @ Shahnawaz and Anr. v. State of A.P.* .... 1001

(4) s.302 – Death due to assault on head with a crow bar – Conviction u/s.302 – Held: Justified – Accused used crow bar as the weapon of offence

– He further chose a vital part of the body for causing the injury which had caused multiple fractures of skull – This clearly showed the force with which appellant used the weapon – The cumulative effect of all these factors establishes that the accused intended to cause the death.

*Singapagu Anjaiah v. State of Andhra Pradesh* .... 703

(5) s. 302 – Murder – Circumstantial evidence – Conviction by courts below relying on circumstances of the case including discovery of the weapon of offence and applying the theory of ‘last seen together’ – Held: Conviction not justified – The circumstances relied on for passing conviction order were inconsequential – Discovery of weapon of offence cannot be relied upon as the same was not produced before the court – Motive which is an important circumstance, not proved – Conviction cannot be based on theory of ‘last seen together’ as the prosecution failed to establish the time of death.

*Niranjan Panja v. State of West Bengal* .... 113

(6) s.302/34 – Death of married woman due to burn injuries – Conviction of appellant alongwith other accused based on dying declaration – Held: Dying declaration was duly recorded by the Judicial Magistrate – It was not only voluntary but truthful also – Conviction of appellant maintained.

*Puran Chand v. State of Haryana* .... 21

(7) ss.302/34, 392 and 411 – Murder and robbery – Unknown miscreants ransacking house of complainant and causing death of his wife –

Circumstantial evidence – Conviction and sentence u/ss. 302/34, 392 and 411 by courts below – Held: Justified.

*Sanatan Naskar & Anr. v. State of West Bengal* .... 1023

(8) (i) s.302 and 69 of Army Act – Murder – Court Martial proceedings – Accused found guilty – Sentenced to life imprisonment and dismissed from service – Conviction and sentence confirmed by Confirming Authority, Chief of Army Staff and in writ petition by High Court – On appeal, plea that offence falls under Exception to s. 300 IPC and since the accused caused single stab injury, he was liable to be punished u/s. 304 (Part II) – Held: Conviction u/s. 302 justified – Evidence of the case makes it clear that s. 304 (Part II) not attracted – The case did not fall under Exception I to s.300 – Once intention to cause death is proved, infliction of single or multiple blows becomes irrelevant – Army Act, 1950 – s.69.

(ii) s. 300 Exception I – Applicability of.

(iii) s. 304 (Part-II) – Applicability of.

*Arun Raj v. Union of India and Ors.* .... 1

(9) ss. 302/149 – Conviction – On the basis of circumstantial evidence and purported dying declaration recovered from pocket of deceased which stated that he was administered poison mixed in a drink by accused – Held: Prosecution could not establish that the chain of circumstances was complete – The said note did not inspire confidence and was not admissible – Order of

conviction not sustainable – Evidence – Dying declaration.

*Nanhar and Ors. v. State of Haryana* .... 384

(10) (i) s. 304-B r/w s.2 of Dowry Prohibition Act, 1961 – Dowry death – Conviction – Plea that every demand could not be termed as dowry demand – Held: Expressions ‘or any time after the marriage’ and ‘in connection with the marriage’ cover all demands made at the time, before or after the marriage so far they were in connection with the marriage – Expression ‘demand for dowry’ has to be construed *eiusdem generis* to the word immediately preceding the expression – Expression ‘in connection with the marriage’ has to be given a wider connotation – In the instant case, the evidence of prosecution witnesses as also the defence witness satisfied the ingredients of s.304-B – Conviction sustained – Dowry Prohibition Act, 1961 – s.2 – Evidence – Interpretation of Statutes – Rule of *eiusdem generis*.

(ii) s.304-B – Expression ‘soon before her death’ – Held: Cannot be given a narrower meaning – Further, interpretation given should be one which would further the object and cause of the law enacted and avoid absurd result – For want of any specific period, concept of reasonable period would be applicable.

(iii) s.304-B – Dowry death – Presumption – Held: Legislature has applied the concept of deeming fiction to provisions of s.304-B – Once prosecution proves its case with regard to basic ingredients of s.304-B, court will presume by deemed fiction that the accused have caused the death of the

bride – Interpretation of Statutes – Deeming fiction.

(Also see under: Evidence; Witness; Constitution of India, 1950 as also Code of Criminal Procedure, 1973)

*Ashok Kumar v. State of Haryana* .... 1119

(11) (i) ss. 304-B and 498-A – Dowry death – Conviction of husband and his relatives – Plea that FIR not containing any allegation of demand of dowry and ingredients of offences charged were not satisfied – Held: Cumulative effect of the documentary and oral evidence clearly shows that the accused have been rightly found guilty of the offence by High Court – Sentence/Sentencing.

(ii) s.304-B – Expression ‘soon before her death’ – Held: Has to be given its due meaning, as the Legislature has not specified any time in the provision – Concept of reasonable time would be applicable – Marriage having not survived even for a period of two years, entire period would be a relevant factor in determining the issue – Doctrines – Concept of reasonable time.

(Also see under: Code of Criminal Procedure, 1973 as also Sentence/Sentencing)

*Uday Chakraborty & Ors. v. State of West Bengal* .... 1048

(12) ss. 304-B and 498-A – Necessary ingredients to prove dowry death – No evidence led to prove that deceased was subjected to cruelty and harassment by appellants on account of dowry demand soon before her death – Case not made out for conviction u/s.304-B and u/s.498-A – Appellants entitled to benefit of doubt, hence acquitted – Evidence Act, 1872 – s.113-B –

Crime against women – Dowry Prohibition Act, 1961.

*Durga Prasad and Anr. v. State of M.P.* .... 104

(13) ss.415 and 120-B.

(See under: Code of Criminal Procedure, 1973) .... 38

(14) ss.498-A and 406 – FIR lodged against appellant u/s.498-A and 406 – Quashing of FIR sought on the ground that appellant was not related to the family of complainant or her husband – Held: Appellant should not be tried for offence u/s.498-A – Reference to the word ‘relative’ in s.498A is limited only to the blood relations or the relations by marriage – However, FIR in respect of s.406 is not quashed in view of the allegations made – Protection given to the appellant that no coercive steps be taken against her.

*Vijeta Gajra v. State of NCT of Delhi* .... 1150

(15) s. 499 and tenth exception, and s. 500 r/w s.34 – Defamation – ICFAI, issued advertisement inviting applications for fresh enrolments for award of “CFA” certification – CFA Institute issued public notice under the caption “Word of Caution” – ICFAI found the notice defamatory – Filed private complaint alleging that the notice lowered the reputation of ICFAI in the estimation of public in general and its present and past students in particular; and portrayed the designation given by CFA institute of US as the only valid designation and the CFA certificate given by ICFAI as not valid – Petition by appellant u/s.482 CrPC for quashing the complaint – Dismissed by High Court – Held: since the stage for recording of evidence had not

reached, in absence of any evidence, it is difficult to return a finding whether or not the appellants satisfied the requirements of “good faith” and “public good” so as to fall within the ambit of Tenth Exception to s.499 IPC as pleaded by them – Reading the complaint as a whole, it is clear that a case for quashing of the complaint u/s.482 CrPC has not been made out – Code of Criminal Procedure, 1973 – s.482.

(ii) s.499 – Defamation – Meaning and Ingredients of.

*Jeffrey J. Diermeier and Anr. v. State of West Bengal & Anr.* .... 128

#### PENSION:

Disability pension.

(See under: Service Law as also under: Constitution of India, 1950) .... 777

#### PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION, RIGHTS AND FULL PARTICIPATION) ACT, 1995:

ss. 32 and 33 – Interpretation of – Held: Reservation u/s. 33 is not dependent on identification u/s. 32, though duty is cast upon the Government to make appointments in the number of posts reserved for the categories mentioned in s. 33 in respect of persons suffering from the disabilities – On facts, denial of appointment to visually impaired candidate who cleared Civil Services Examination, on the ground that there was only one post meant for such persons, not correct – High Court rightly rejected the submission that only after identification of posts suitable for such appointment u/s.32, the

provisions of s.33 could be implemented – Order of High Court that a clear vacancy was available to which candidate could be accommodated on basis of his position in the merit list, does not call for interference.

*Govt. of India Thr Secretary & Anr. v. Ravi Prakash Gupta & Anr.* .... 851

#### PLEA:

New plea – Raised of before Supreme Court – Effect of.  
(See under: Abatement) .... 927

#### PLEADINGS:

(1) Incomplete pleadings – Held: Court is under no obligation to entertain the pleas.

*Rajasthan Pradesh V.S. Sardarshahar and Anr. v. Union of India and Ors.* .... 252

(2) Pleadings – Defective verification of.  
(See under: Representation of the People Act, 1951) .... 712

(3) Relief not specifically prayed by parties – Held: Cannot be granted.

*Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. & Ors.* .... 346

(4) Pleadings, when to be raised – Held: Specific pleadings are to be raised before the first forum for adjudication of dispute – They are the basis of the case of respective parties even before appellate/higher courts – Parties would be bound

by such pleadings, subject to the right of amendment.

*Union of India & Ors. v. Jagdish Pandey & Ors.* .... 979

PRACTICE AND PROCEDURE:  
(See under: Abatement) .... 927

PRECEDENT:  
(See under: Constitution of India, 1950) .... 317

PRE-EMPTION:  
Restriction clause in Will – In the nature of right of pre-emption.  
(See under: Succession Act, 1925) .... 927

PUBLIC INTEREST LITIGATION:  
Jurisdiction in public interest litigation – Held: Is to be invoked sparingly and with rectitude and any order made therein must be reasonable and must not reflect the pique of the court. – Judicial restraint.

*S.K. Dasgupta & Ors. v. Vijay Singh Sengar & Ors.* .... 881

PUNJAB AGRICULTURAL PRODUCE MARKETS ACT, 1961: S.33(4)(II).  
(See under Agricultural Produce Market Committees) .... 1173

PUNJAB AGRICULTURAL PRODUCE MARKETS GENERAL RULES, 1962:  
r.24(5).  
(See under Agricultural Produce Market Committees) .... 1173

## PUNJAB CIVIL SERVICE RULES:

Volume I, Chapter II, Annexure-A, Para I (as it stood prior to the 1994 amendment) – Correction of date of birth – Held: In view of the statutory provision, there being a complete bar to the making of such an application by a government servant after two years from the date of his entry into service, High Court or State Government did not have the power, jurisdiction or authority to entertain the representation made by the judicial officer concerned after more than twelve years of his entering into the service – Therefore, neither of them committed any illegality by refusing to accept the prayer made by the judicial officer on the basis of the change effected by the University in the date of birth recorded in the matriculation certificate – Service Law.

*Punjab & Haryana High Court at Chandigarh v. Megh Raj Garg and Anr.* .... 172

## PUNJAB URBAN ESTATE (SALE OF SITES) RULES, 1965:

(1) rr. 2(aa), (e), 4 and 5-A – ‘Additional price’, ‘tentative price’, ‘sale price’ and ‘liability to pay additional price’ – ‘Provisional price’ and ‘tentative price’ – Connotation of – Allotment of plot in haste – Allottee asked to deposit ‘provisional price’ – Subsequently, demand raised for additional price – Held: There is nothing in the scheme of the Act or the Rules indicating that a person to whom the plot has been allotted cannot be asked to pay the ‘tentative price’ – High Court rightly upheld the demand notice.

*Fuljit Kaur v. State of Punjab & Ors.* .... 317

(2) Allotment of plot – Liability of allottee to pay additional price – Demand notice upheld – Authorities entitled to make recovery in accordance with law.

(i) *State of Punjab & Ors. v. G.S. Randhawa* .... 342

(ii) *State of Punjab & Ors. v. Col. Kuldeep Singh* .... 344

## PUNJAB URBAN ESTATES (DEVELOPMENT AND REGULATION) ACT, 1964:

Urban Development – Housing – Constitution of India, 1950 – Articles 14 and 136.

*Fuljit Kaur v. State of Punjab & Ors.* .... 317

## RAJASTHAN INDIAN MEDICINE ACT, 1953:

s.32 – Restriction on practice, unless names entered in Central Register, not violative of equality clause enshrined in Article 14 of the Constitution – Constitution of India, 1950 – Articles 19(6) and 14 – Indian Medicine Central Council Act, 1970. (Also see under: Indian Medicine Central Council Act, 1970)

*Rajasthan Pradesh V.S. Sardarshahar and Anr. v. Union of India and Ors.* .... 252

## REMEDY:

(See under: Constitution of India, 1950) .... 189

## RENT CONTROL AND EVICTION:

(1) Eviction – Benefit of order of eviction to transferee Company after amalgamation of

erstwhile landlord company with transferee Company. (See under: Tamil Nadu Buildings (Lease and Rent Control) Act, 1960)	....	46
(2) Eviction on the ground of <i>bonafide</i> need. (See under: Madhya Pradesh Accommodation Control Act, 1961)	....	222
(3) (See under: Code of Civil Procedure, 1908)	....	403

#### REPRESENTATION OF THE PEOPLE ACT, 1951:

(1) ss. 80, 100(1)(b) and 123(1) – State Assembly elections – Election petition, challenging election of returned candidate on grounds of corrupt practices of bribery – Dismissed by High Court – Held: Justified – Standard of proof required for establishing a charge of corrupt practices is the same as is applicable to a criminal charge – In an election dispute it is unsafe to accept oral evidence at its face value unless it is backed by unimpeachable and incontrovertible documentary evidence – For non-production of documentary evidence by election petitioner, presumption would be drawn against him as per s.114, Illustration (g) of Evidence Act – Evidence Act, 1872 – s.114, Illustration (g).		
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<i>Pradip Buragohain v. Pranati Phukan</i>	....	888
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(2) (i) ss.83, 86, 123(4), 123(5) and 123(6) – Election petition challenging election of returned candidate on the ground of corrupt practices – High Court dismissed the petition – Held: Averments made in election petition that returned candidate was responsible for printing, publication and distribution of statements in newspaper which		
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materially affected the result of election – Averments sufficiently disclosed cause of action – High Court committed error in holding otherwise – Matter remitted to High Court for consideration afresh.

(ii) s.86 – Verification of the pleadings – Defect in – Held: Is curable – Code of Civil Procedure, 1908.

<i>K.K. Ramachandran Master v. M.V. Sreyamakumar &amp; Ors.</i>	....	712
---	------	-----

#### RES JUDICATA:

(See under: Constitution of India, 1950)	....	317
--	------	-----

#### ROAD TRANSPORT:

Inter-State Route. (See under: Motor Vehicles Act, 1988)	....	535
---	------	-----

#### SALES TAX:

(See under: Kerala Sales Tax Act, 1963)	....	993
---	------	-----

#### SENTENCE/SENTENCING:

(1) Quantum of punishment – Seven years RI awarded by High Court to accused u/s 304-B IPC – Held: Sentence being the minimum under the provision, plea for reduction of sentence has no merit – Penal Code, 1860 – s.304-B.

<i>Uday Chakraborty &amp; Ors. v. State of West Bengal</i>	....	1048
--	------	------

(2) (See under: Constitution of India, 1950)	....	1119
--	------	------

#### SERVICE LAW:

(1) Appointment/Recruitment/Selection:

(i) Appointment – Cancellation of typewriting test



– Challenged by successful candidate – Held: Candidates who had appeared in the test and were otherwise eligible for appointment were entitled to ensure that selection process was not allowed to be scuttled for mala fide reasons or in an arbitrary manner – Validity of such decision is not beyond judicial review – Judicial review – Constitution of India, 1950 – Articles 14 and 16 – Locus standi.

*East Coast Railway & Anr. etc. v. Mahadev Appa Rao & Ors.* .... 908

(ii) Judicial Service – Written examination – Re-evaluation of answer-sheets of writ petitioner – Directed by High Court – After receipt of marks on re-evaluation, High Court directing appointment letter to be issued to writ petitioner – Held: Courts can not take upon themselves the task of statutory authorities – Admittedly, the candidate could not secure qualifying marks in the paper concerned – It was not permissible for High Court to itself examine the answer sheets – Further, in absence of any statutory provision, court should not generally direct re-evaluation – Judgment of High Court set aside – Himachal Pradesh Judicial Service (Syllabus and Allocation of Marks) Regulations, 2005 – Regulation 6 – Himachal Pradesh Judicial Service Rules, 2004 – Constitution of India, 1950 – Article 226.

*H.P. Public Service Commission v. Mukesh Thakur & Anr.* .... 189

(iii) Recruitment – Appointment made on the notified vacancies – Candidates, who were not appointed, but whose names appeared in Select

List, approaching tribunal and seeking direction for appointment – Held: Filling up vacancies, over and above the notified vacancies is not permissible as it amounts to filling up future vacancies – Such rule can be deviated only in exceptional circumstances and in emergent situation only after adopting policy decision based on some rational – A person whose name appears in the Select List does not acquire any indefeasible right of appointment – Orissa Ministerial Service (Method of Recruitment to Posts of Junior Clerks in the District Offices) Rules, 1985 – rr. 6, 11 (1) and 12.

*State of Orissa & Anr. v. Rajkishore Nanda & Ors. Etc. Etc.* .... 301

(iv) (a) Selection of Civil Judge (Junior Division) in State of Uttaranchal – Reservation policy adopted by State – Vertical reservation (Social reservations) in favour of SC, ST and OBC under Article 16(4) – Horizontal reservation (Special reservations) in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) – Application of horizontal reservation in favour of women – Discussed – Extent of difference between horizontal (special) reservation and vertical (social) reservation re-iterated – Constitution of India, 1950 – Articles 15(3) and 16(4).

(b) Selection – Select list challenged by unsuccessful candidate – Held: Writ petition could not have been entertained by High Court since the last selected candidate, a necessary party, was not impleaded – Constitution of India, 1950

– Article 226 – Code of Civil Procedure, 1908 – Order 1, Rule 9, proviso.

*Public Service Commission, Uttaranchal v. Mamta Bisht and Ors.* .... 289

(2) (i) Confidential report – Necessity of recording – Discussed.

(ii) Judicial service – Appointment – Police verification report – High Courts directed to ensure that the police verification report conducted in accordance with law should be received by the authority concerned, before the order of appointment in the State Judicial Service is issued by the said authority – Name of judicial officer concerned on rowdy list prior to his appointment – Normally a person with such antecedents would not be permitted to join service of the government and particularly the post of a judicial officer – High Court on administrative side dealt with the matter in a very causal manner and issued the appointment order.

(iii) Probation – Purpose of.  
(Also see under: Judiciary)

*Khazia Mohammed Muzammil v. The State of Karnataka and Anr.* .... 1061

(3) Date of birth – Correction of.  
(See under: Punjab Civil Service Rules) .... 172

(4) Disparity in pay scale – Tower Wagon Drivers in Railways – Claim of running allowance as paid to goods train drivers – Granted by High Court – Competent Authority withdrawing the higher pay scales granted to TWDs in comparison to goods train drivers since higher pay scales granted

inadvertently – Challenge to – Order by Competent Authority set aside by tribunal as also High Court – Held: Pay scale is a legitimate right of employee and except for valid and proper reasons cannot be varied.

*Union of India & Ors. v. Jagdish Pandey & Ors.* .... 979

(5) (i) Misconduct – Misappropriation of public money – Appropriate punishment – Conductor in State Road Transport Corporation recovering travelling fare from passengers but not issuing tickets to them – Terminated from service – Termination challenged as being disproportionate on the ground that the amount misappropriated was petty – Held: The challenge is not tenable – Amount misappropriated may be small or large; it is the *mens rea* to misappropriate the public money that is relevant – In cases of corruption/misappropriation, the only punishment is dismissal – Any sympathy in such cases would be opposed to public interests.

(ii) Termination – On ground of misconduct – Labour Court declined any relief to the employee – Writ petition – High Court directed reinstatement – Held: Not justified – High Court dealt with the matter in a most cryptic manner – Did not give cogent reasons while reversing the order of Labour Court – Judgment/Order – Obligation of the court to record reasons for the order made – Administration of Justice.

*U.P. State Road Transport Corporation v. Suresh Chand Sharma* .... 239

## (6) Pension: -

(i) Disability pension – Army Officer – Obtained voluntary retirement on medical ground – Claim for disability pension – Held: An Officer is entitled to disability pension only when he is invalided out of service on account of disability attributable to military service or aggravated thereby and not when his prayer for voluntary retirement is granted – However, the decision denying invalidation from service despite disability to military service would be subject to judicial review – Army Pension Regulations – Regulations 48 and 50.

*Union of India & Ors. v. Ajay Wahi* .... 777

(ii) Disability pension – Armed Forces – Air Force Service – Employee released from service on the opinion of Release Medical Board that he suffered from 90% disabilities which were neither attributable to nor aggravated by Air Force Service – Held: Keeping in view the Pension Regulations and the Entitlement Rules it was not justified for Single Judge of High Court to set aside the concurrent opinions of Appellate Board and Release Medical Board – In view of s.100 CPC, High Court should not have set aside the concurrent findings of trial court and first appellate court, merely on the presumption that plaintiff was undergoing arduous nature of job as he was in Air Force Service – Air Force Pension Regulations – Regulation 153 – Appendix II – Entitlement Rules – Code of Civil Procedure, 1908 – s.100.

*Union of India & Ors. v. Ram Prakash* .... 506

## (7) Retirement.

(See under: Nagaland Retirement

From Public Employment Act, 1991) .... 630

## (8) Seniority.

(See under: Assam Civil Services (Class-I) Rules, 1960) .... 732

## (9) Termination/Dismissal/Removal from service/ Discharge:

(i) Dismissal – Misconduct – Appellant, a Major in the Indian Army – Dismissed from service on the ground of misconduct – Dismissal challenged by appellant as being disproportionate to the default – Held: The challenge was not tenable – Making a false claim for payment of transport charges of household luggage and car was a serious matter bordering on moral turpitude – Breach of the rule requiring him to clear his electricity dues upon his transfer from the place of his posting was also not credit worthy for an officer – Army Act – ss.45 and 52(f).

*Charanjit Lamba v. Commanding Officer, Southern Command and Ors.* .... 820

(ii) Dismissal – Misconduct – Charges of insubordination and indiscipline against Judicial Magistrate – Proved in disciplinary inquiry – High Court recommended dismissal of officer, after taking into consideration his past adverse record – Held: Since the un-communicated adverse remarks contained in Annual Confidential Reports of officer became foundation of the decision taken by High Court to recommend his dismissal from service and he was not given notice about the proposed consideration of those remarks, the officer was seriously prejudiced – Charges proved were not that serious which warranted imposition of extreme penalty of dismissal from service –

High Court directed to consider the issue of quantum of punishment afresh – Natural justice.

*Indu Bhushan Dwivedi v. State of Jharkhand and Anr.* .... 465

SPECIFIC RELIEF ACT, 1963:

s.14(1)(b) and (d).  
(See under: Transfer of Property Act, 1882) .... 424

SUBSEQUENT EVENTS:

(See under: Tamil Nadu Buildings (Lease and Rent Control) Act, 1960) .... 46

SUCCESSION ACT, 1925:

s. 114 – Rule against perpetuity – Execution of Will – Life interest given to two sisters and after their death absolute rights given to their male heirs – Restriction in the Will that alienation of the property was permitted only among the male heirs of the two sisters and not to strangers – Vendors and vendee challenging the restriction clause of the Will – Held: Restriction in the Will is valid and does not violate rule against perpetuity – It was in the nature of right of pre-emption – Purchaser having purchased the property in violation of the restriction, cannot challenge the validity of the Will – Will – Succession – Pre-emption.

*K. Naina Mohamed (Dead) through Lrs. v. A.M. Vasudevan Chettiar (D) By Lrs. & Ors.* .... 927

SUIT:

(1) Suit for declaration of title.  
(See under: Transfer of Property) .... 624

(2) Suit for specific performance.  
(See under: Transfer of Property Act, 1882) .... 424

TAMIL NADU BUILDINGS (LEASE AND RENT CONTROL) ACT, 1960:

s.10(3)(a)(i), (iii) – Eviction decree obtained on the ground of own use and occupation – Amalgamation of erstwhile landlord with transferee company during pendency of revision petition – Scheme of amalgamation sanctioned by High Court – Whether benefit of order of eviction available to the transferee company – Held: Transferee company entitled to the benefit of order of eviction – When a company stands dissolved due to amalgamation, its rights devolve on amalgamated company – Decree constitutes an asset – Asset of erstwhile company devolved on amalgamated company – Business will be continued to be carried by amalgamated company – Purpose of amalgamation would be frustrated, if the amalgamated company is deprived of its asset – Companies Act, 1956 – ss. 391 to 394 – Subsequent events.

*M/s. Speedline Agencies v. M/s. T. Stanes & Co. Ltd.* .... 46

TRANSFER OF PROPERTY:

Suit for declaration of title – Suit property sold by DW-4 by registered sale deed in 1968 – Petitioner claiming title over property on the basis of registered sale deed executed by DW-4 in 1974 – Held: DW-4 was not competent to execute the subsequent sale deed in 1974 in respect of same property – Petitioner therefore did not acquire any

title to the suit property – Deeds and documents.

*Atla Sidda Reddy v. Busi Subba Reddy and Ors.* .... 624

#### TRANSFER OF PROPERTY ACT, 1882:

(1) s.52 – Suit for specific performance of oral collaboration agreement – No application by plaintiff for interim relief – High Court directing plaintiff to furnish an undertaking to pay Rs.25 lakhs to defendants in the event of losing case observing that *prima facie* case not in favour of plaintiff and due to heavy dockets in courts early disposal of suit was not possible – Held: There is no provision in the Code nor any substantive law to enable the court to issue such a direction – Such power cannot be traced even in s.151 – It is an order in *terrorem* – Order punishing a litigant on the ground that the court is not able to decide the case expeditiously is unwarranted, and beyond its power – Suit property exempted from the operation of s.52 and defendants granted liberty to deal with it in any manner they may deem fit, in spite of the pendency of the suit, subject to their furnishing security of Rs.3 lakhs – Doctrine of *lis pendens* – Specific Relief Act, 1963 – s.14(1)(b) and (d) – Code of Civil Procedure, 1908 – ss.35, 35A, 35B, 151, O.25 r.1 – Damages – Undertaking – Judgment/Order.

*Vinod Seth v. Devinder Bajaj and Anr.* .... 424

(2) s.52 – Transfer *lis pendens* – Held: Owners still being in possession of suit property and their suit for declaration of title having been decreed, purchaser may resort to legal proceedings for recovery of sale consideration from his vendors – Hindu Marriage Act, 1955 – ss. 5 and 16 – Code

of Civil Procedure, 1908 – s.100.

*Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors.* .... 154

#### UNDERTAKING:

(See under: Transfer of Property Act, 1882) .... 424

#### URBAN DEVELOPMENT:

(1) Housing.  
(See under: Punjab Urban Estate (Sale of Sites) Rules, 1965) .... 317

(2) Reconstruction or re-development of property by developer under Urban Renewal Scheme.

*Avinash Gaikwad & Ors. v. State of Maharashtra & Ors.* .... 519

(3) (See under: Uttar Pradesh Urban Planning and Development Act, 1973). .... 346

#### UTTAR PRADESH KSHETRA PANCHAYATS AND ZILA PANCHAYATS ADHINIYAM, 1961:

(See under: Uttar Pradesh Panchayat Laws (Amendment) Act, 2007) .... 585

#### UTTAR PRADESH PANCHAYAT LAWS (AMENDMENT) ACT, 2007:

ss. 15 and 28 – The provision of no-confidence motion as regards the office of Chairperson of Panchayat incorporated in the statute – Held: Constitutionally valid – The provision is not inconsistent with Part IX of the Constitution – If no-confidence motion is passed against Chairperson of Panchayat, he/she ceases to be Chairperson, but continues to be a member of the Panchayat which continues with a newly

elected Chairperson – Thus, there is no impediment to the continuity or stability of Panchayati Raj Institution – Entry 5 of list II of 7th Schedule is wide enough to authorize legislation of no-confidence against Chairperson of Panchayat – Uttar Pradesh Kshetra Panchayats and Zila Panchayats Adhiniyam, 1961 – Constitution of India, 1950 – Part IX, 7th Schedule Entry 5, list II.

*Bhanumati etc. etc. v. State of Uttar Pradesh Through Its Principal Secretary and Ors.* .... 585

#### UTTAR PRADESH URBAN PLANNING AND DEVELOPMENT ACT, 1973:

s. 41 – Control by State Government – State Government (revisional Authority under the Statute) if could take upon itself the task of lower statutory authority – Held: Higher authority in hierarchy or appellate or revisional authority cannot exercise the power of statutory authority nor can it direct statutory authority to act in a particular manner – Such order would be unenforceable – Order passed by State Government directing allotment of land stood vitiated since it took the task of the Development Authority upon itself – Chief Minister had no competence to deal with the subject – Land Acquisition Act, 1894.

*Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. & Ors.* .... 346

#### WILL:

Execution of Will.  
(See under: Succession Act, 1925) .... 927

#### WITNESS:

(1) Eyewitnesses – Testimony of.

(See under: Penal Code, 1860) .... 1001

(2) (See under: Code of Criminal Procedure, 1973) .... 1048

(3) Testimony of defence witness.  
(See under: Penal Code, 1860) .... 1119

(4) Testimony of related witnesses.  
(See under: Penal Code, 1860) .... 410

#### WORDS AND PHRASES:

(1) Expressions 'or any time after the marriage', 'in connection with the marriage' occurring in s.2 of Dowry Prohibition Act, 1961 and 'demand for dowry' used in s.304-B IPC – Connotation of.

*Ashok Kumar v. State of Haryana* .... 1119

(2) Expression 'soon before her death' occurring in s.304-B IPC – Connotation of.

*Uday Chakraborty & Ors. v. State of West Bengal* .... 1048

(3) Recognition – Meaning of.

*Rajasthan Pradesh V.S. Sardarshahar and Anr. v. Union of India and Ors.* .... 252

(4) "Shall" – Meaning of – In the context to proviso to s.202(2) CrPC.

*Shivjee Singh v. Nagendra Tiwary and Ors.* .... 667





















**CONTENTS**

Adalat Pandit & Anr. v. State of Bihar	.....	79
Ajay Wahi; Union of India & Ors. v.	.....	777
Arun Raj v. Union of India and Ors.	.....	1
Ashok Kumar v. State of Haryana	.....	1119
Ashutosh Gupta; Gupta (S.P.) v.	.....	38
Ashwani Kumar; Punjab State Electricity Board & Anr. v.	.....	1158
Asian Global Ltd. & Ors. (M/s.); Central Bank of India v.	.....	694
Asstt. Commissioner, Commercial Taxes & Anr.; Malayala Manorama Co. Ltd. v.	.....	993
Atla Sidda Reddy v. Busi Subba Reddy and Ors.	.....	624
Avinash Chand & Ors. v. Chairman Market Committee & Ors.	.....	1173
Avinash Gaikwad & Ors. v. State of Maharashtra & Ors.	.....	519
Bagathi Krishna Rao & Anr.; District Collector, (The) Srikakulam & Ors. v.	.....	280
Bhanumati etc. v. State of Uttar Pradesh through Its Principal Secretary and Ors.	.....	585
Bhanwarlal Dugar (M/s) & Ors. v. Bridhichand Pannalal & Ors.	.....	403
Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors.	.....	154
Bridhichand Pannalal & Ors.; Bhanwarlal Dugar (M/s) & Ors. v.	.....	403

(i)

(ii)

Busi Subba Reddy and Ors.; Atla Sidda Reddy v.	.....	624
C.I.T., Mumbai v. M/s. Walfort Share & Stock Brokers P. Ltd.	.....	748
Central Bank of India v. M/s. Asian Global Ltd. & Ors.	.....	694
Chairman Market Committee & Ors. Avinash Chand & Ors. v.	.....	1173
Charanjit Lamba v. Commanding Officer, Southern Command and Ors.	.....	820
Chowgule Brothers (M/s.) & Ors.; Rashtriya Chemicals & Fertilizers Ltd. (M/s.) v.	.....	962
Chunni Lal v. State of U.P.	.....	410
Commanding Officer, Southern Command and Ors.; Charanjit Lamba v.	.....	820
Commissioner of Central Excise, Delhi v. M/s. Pearl Drinks Ltd.	.....	808
Commissioner of Income Tax; Kanchanganga Sea Foods Ltd. v.	.....	866
Dasgupta (S.K.) & Ors. v. Vijay Singh Sengar & Ors.	.....	881
Devinder Bajaj and Anr.; Vinod Seth v.	.....	424
Dinesh Kumar v. Yusuf Ali	.....	222
District Collector, (The) Srikakulam & Ors. v. Bagathi Krishna Rao & Anr.	.....	280
Durga Prasad and Anr. v. State of M.P.	.....	104
East Coast Railway & Anr. etc. v. Mahadev Appa Rao & Ors.	.....	908



(iii)			(iv)		
Fuljit Kaur v. State of Punjab & Ors.	.....	317	Mamta Bisht and Ors.; Public Service Commission, Uttaranchal v.	.....	289
Gokul Mohan Hazarika and Ors.; Raisul Islam (Md.) and Ors. v.	.....	732	Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. & Ors.	.....	346
Govt. of India Thr Secretary & Anr. v. Ravi Prakash Gupta & Anr.	.....	851	Maqbool @ Zubir @ Shahnawaz and Anr. v. State of A.P.	.....	1001
Gupta (S.P.) v. Ashutosh Gupta	.....	38	May George v. Special Tahsildar & Ors.	.....	204
H.P. Public Service Commission v. Mukesh Thakur & Anr.	.....	189	Megh Raj Garg and Anr.; Punjab & Haryana High Court at Chandigarh v.	...	172
Improvement Trust, Ludhiana etc. v. Ujagar Singh & Ors. Etc.	.....	376	Mukesh Thakur & Anr.; H.P. Public Service Commission v.	.....	189
Indu Bhushan Dwivedi v. State of Jharkhand and Anr.	.....	465	Mumbai International Airport Pvt. Ltd. v. Regency Convention Centre & Hotels Pvt. Ltd. & Ors. ...		790
Jagdish Pandey & Ors.; Union of India & Ors. v.	.....	979	Nagaland Senior Govt. Employees Welfare Association & Ors. v. The State of Nagaland & Ors.	.....	630
Jeffrey J. Diermeier and Anr. v. State of West Bengal & Anr.	.....	128	Nagendra Tiwary and Ors.; Shivjee Singh v.	.....	667
Kanchanganga Sea Foods Ltd. v. Commissioner of Income Tax	.....	866	Naina (K.) Mohamed (D) through Lrs. v. A.M. Vasudevan Chettiar (D) By Lrs. & Ors.	.....	927
Khazia Mohammed Muzammil v. The State of Karnataka and Anr.	.....	1061	Nanhar and Ors. v. State of Haryana	.....	384
Kuldeep Singh (Col.); State of Punjab & Ors. v.	.....	344	Niranjan Panja v. State of West Bengal	.....	113
Land Acqn. Officer & Asstt. Commnr. & Anr. v. Shivappa Mallappa Jigalur & Ors.	.....	833	Nurul Amin (S. K.); State of West Bengal and Ors. v.	.....	496
Mahadev Appa Rao & Ors.; East Coast Railway & Anr. etc. v.	.....	908	Pearl Drinks Ltd. (M/s.); Commissioner of Central Excise, Delhi v.	.....	808
Malayala Manorama Co. Ltd. v. Asstt. Commissioner, Commercial Taxes & Anr.	.....	993	Pradip Buragohain v. Pranati Phukan	.....	888
			Pranati Phukan; Pradip Buragohain v.	.....	888

(v)

Public Service Commission, Uttaranchal v. Mamta Bisht and Ors. ....	289
Punjab & Haryana High Court at Chandigarh v. Megh Raj Garg and Anr. ....	172
Punjab State Electricity Board & Anr. v. Ashwani Kumar ....	1158
Puran Chand v. State of Haryana ....	21
Raisul Islam (Md.) and Ors. v. Gokul Mohan Hazarika and Ors. ....	732
Rajasthan Pradesh V.S. Sardarshahar and Anr. v. Union of India and Ors. ....	252
Rajkishore Nanda & Ors. Etc. Etc.; State of Orissa & Anr. v. ....	301
Ram Prakash; Union of India & Ors. v. ....	506
Ramachandran Master (K.K.) v. M.V. Sreyamakumar & Ors. ....	712
Randhawa (G.S.); State of Punjab & Ors. v. ....	342
Rashtriya Chemicals & Fertilizers Ltd. (M/s.) v. M/s. Chowgule Brothers & Ors. ....	962
Rasid Javed & Ors. etc. etc. v. State of U.P. & Anr. etc. etc. ....	535
Ravi Prakash Gupta & Anr.; Govt. of India Thr Secretary & Anr. v. ....	851
Regency Convention Centre & Hotels Pvt. Ltd & Ors.; Mumbai International Airport Pvt. Ltd. v. ...	790
Sanatan Naskar & Anr. v. State of West Bengal ....	1023

(vi)

Shivappa Mallappa Jigalur & Ors.; Land Acqn. Officer & Asstt. Commnr. & Anr. v. ....	833
Shivjee Singh v. Nagendra Tiwary and Ors. ....	667
Shyamal Kumar Lodh; Vijaya Bank v. ....	569
Singapagu Anjaiah v. State of Andhra Pradesh ....	703
Special Tahsildar & Ors.; May George v. ....	204
Speedline Agencies (M/s.) v. M/s. T. Stanes & Co. Ltd. ....	46
Sreyamakumar (M.V.) & Ors.; Ramachandran Master (K.K.) v. ....	712
State of A.P.; Maqbool @ Zubir @ Shahnawaz and Anr. v. ....	1001
State of Andhra Pradesh; Singapagu Anjaiah v. ....	703
State of Bihar; Adalat Pandit & Anr. v. ....	79
State of Haryana; Ashok Kumar v. ....	1119
State of Haryana; Nanhar and Ors. v. ....	384
State of Haryana; Puran Chand v. ....	21
State of Jharkhand and Anr.; Indu Bhushan Dwivedi v. ....	465
State of Karnataka (The) and Anr.; Khazia Mohammed Muzammil v. ....	1061
State of M.P.; Durga Prasad and Anr. v. ....	104
State of Maharashtra & Ors.; Avinash Gaikwad & Ors. v. ....	519

(vii)			(viii)		
State of Nagaland & Ors. (The); Nagaland Senior Govt. Employees Welfare Association & Ors. v.	.....	630	U.P. State Road Transport Corporation v. Suresh Chand Sharma	.....	239
State of NCT of Delhi; Vijeta Gajra v.	.....	1150	Uday Chakraborty & Ors. v. State of West Bengal	.....	1048
State of Orissa & Anr. v. Rajkishore Nanda & Ors. Etc. Etc.	.....	301	Ugrasen (D) by Lrs. & Ors.; Manohar Lal (D) by Lrs. v.	.....	346
State of Punjab & Ors. v. Col. Kuldeep Singh	.....	344	Ujagar Singh & Ors. Etc.; Improvement Trust, Ludhiana etc. v.	.....	376
State of Punjab & Ors. v. G.S. Randhawa	.....	342	Union of India & Ors. v. Ajay Wahi	.....	777
State of Punjab & Ors.; Fuljit Kaur v.	.....	317	Union of India & Ors. v. Jagdish Pandey & Ors.	.....	979
State of U.P. & Anr. etc. etc.; Rasid Javed & Ors. etc. etc. v.	.....	535	Union of India & Ors. v. Ram Prakash	.....	506
State of U.P.; Chunni Lal v.	.....	410	Union of India and Ors.; Arun Raj v.	.....	1
State of Uttar Pradesh through Its Principal Secretary and Ors.; Bhanumati etc. v.	.....	585	Union of India and Ors.; Rajasthan Pradesh V.S. Sardarshahar and Anr. v.	.....	252
State of West Bengal & Anr.; Jeffrey J. Diermeier and Anr. v.	.....	128	Vasudevan Chettiar (A.M.) (D) By Lrs & Ors; Naina (K.) Mohamed (D) Thr Lrs v. .	.....	927
State of West Bengal and Ors. v. S.K. Nurul Amin	.....	496	Vijay Singh Sengar & Ors; Dasgupta (S.K.) & Ors. v.	.....	881
State of West Bengal; Niranjana Panja v.	.....	113	Vijaya Bank v. Shyamal Kumar Lodh	.....	569
State of West Bengal; Sanatan Naskar & Anr. v.	.....	1023	Vijaya Renganathan (R.) & Ors.; Bharatha Matha & Anr. v.	.....	154
State of West Bengal; Uday Chakraborty & Ors. v.	.....	1048	Vijeta Gajra v. State of NCT of Delhi	.....	1150
Suresh Chand Sharma; U.P. State Road Transport Corporation v.	.....	239	Vinod Seth v. Devinder Bajaj and Anr.	.....	424
T. Stanes & Co. Ltd. (M/s.); Speedline Agencies (M/s.) v.	.....	46	Walfort Share & Stock Brokers P. Ltd. (M/s.); C.I.T., Mumbai v.	.....	748
			Yusuf Ali; Dinesh Kumar v.	.....	222

**CASES-CITED**

Abdul Gafur v. State of Uttarakhand 2008 (10) SCC 97,	...	428
Abdul Rahman v. Prasony Bai & Anr. AIR 2003 SC 718; – relied on.	...	354
Abdul Wahab Ansari v. State of Bihar (2000) 8 SCC 500,	...	673
Achuthanandan (V.S.) v. P.J. Francis (1999) 3 SCC 737; – relied on.	...	713
Adarsh Travels Bus Service and Anr. v. State of U.P. and Ors. (1985) 4 SCC 557; – relied on.	...	539
Afsar Jahan Begum (Smt) and Ors. v. State Of M.P. and Ors. (1996) 8 SCC 38;	...	545
Aggarwal (A.C.), Sub-Divisional Magistrate, Delhi & Anr. v. Mst. Ram Kali etc. 1968 SCR 205	...	633
Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. The Workmen & Anr. 1981 ( 3 ) SCR 213 – relied on.	...	321
Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc. (1981) 2 SCR 79; – relied on.	...	192

Akhtar & Ors. v. State of Uttaranchal 2009 (13) SCC 722;	...	85
Amar Singh v. Lal Singh (1997) 11 SCC 570, – distinguished.	...	930
Amarjit Kaur v. Harbhajan Singh and Anr. (2003) 10 SCC 228; – relied on.	...	158
Amba Bai v. Gopal (2001) 5 SCC 570; – distinguished	...	930
Anand Button Ltd. (M/s) v. State of Haryana & Ors., AIR 2005 SC 565; – relied on.	...	323
Anand Kumar v. State of M.P. (2009) 3 SCC 799, – held inapplicable.	...	105
Anant Lagu v. State of Bombay AIR 1960 SC 500;	...	1029
Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs & Ors. AIR 2008 SC 2033; – relied on.	...	224
Anil Kumar Singh v. Shivnath Mishra 1995 (3) SCC 147,	...	792
Anil v. State of Haryana (2007) 10 SCC 274, – relied on.	...	4
Anirudhsinhji Karansinghji Jadeja & Anr. v. State of Gujarat AIR 1995 SC 2390; – relied on.	...	349

(xi)		
Anter Singh v. State of Rajasthan (2004) 10 SCC 657;	...	1025
Appasaheb v. State of Maharashtra 2007 (1) SCR 164	...	1122
Arulvelu v. State 2009 (14) SCR 1081 – held inapplicable.	...	1050
Asha Kaul and Anr. v. State of J & K and Ors. (1993) 2 SCC 573; – relied on.	...	303
Ashok Kumar (J.) v. State of Andhra Pradesh and Ors. (1996) 3 SCC 225; – relied on.	...	303
Ashok Kumar and Ors. v. Chairman, Banking Service Recruitment Board and Ors. AIR 1996 SC 976; – relied on.	...	302
Ashok Pai (T.) v. CIT (2007) 7 SCC 162; – relied on.	...	1151
Aspinwall & Co. Ltd. v. Commissioner of Income Tax, Ernakulam (2001) 7 SCC 525;	...	995
Associated Engineering Co. v. Government of Andhra Pradesh and Anr. AIR 1992 SC 232; – relied on.	...	965
Atul Castings Ltd. (M/s.) v. Bawa Gurvachan Singh AIR 2001 SC 1684; – relied on.	...	254

(xii)		
Authorized Officer, Thanjavur and another v. S. Naganatha Ayyar and Ors. (1979) 3 SCC 466;	...	591
Ayurvedic Enlisted Doctor's Assn. Mumbai v. State of Maharashtra & Anr. (2009) 3 SCR 840, – relied on.	...	256
Babubhai Muljibhai Patel v. Nandlal, Khodidas Barat & Ors. AIR 1974 SC 2105; – relied on.	...	291
Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia & Ors. 2003 (6 ) Suppl. SCR 1023 – relied on.	...	321
Bal Niketan Nursery School Vs. Kesari Prasad (1987) 3 SCR 510 – relied on.	...	281
Balasubramanyam (S.P.S.) v. Suruttayan @ Andali Padayachi & Ors; AIR 1992 SC 756; ...	...	158
Balu (S.S.) and Anr. v. State of Kerala and Ors. (2009) 2 SCC 479, – relied on.	...	303
Balwant Singh and Ors. v. Anand Kumar Sharma and Ors. (2003) 3 SCC 433; – relied on.	...	207
Banarsi Dass (Shri) v. Mrs. Teeku Dutta and Anr. (2005) 3 SCR 923 – relied on.	...	158

(xiii)

Bangalore Development Authority and Ors. v. R. Hanumaiah and Ors. (2005) 12 SCC 508;		
– relied on.	...	349
Bangalore Development Authority v. Syndicate Bank (2007) 6 SCC 711;		
– relied on.	...	320
Bangalore Medical Trust v. B.S. Muddappa & Ors. AIR 1991 SC 1902;		
– relied on.	...	349
Bhagat Ram v. State of Himachal Pradesh (1983) 2 SCC 442;	...	822
Bhalla (K.K.) v. State of M.P. & Ors. AIR 2006 SC 898;		
– relied on.	...	349
Bhalla (K.K.) v. State of M.P. & Ors., 2006 SCR 342		
– relied on.	...	323
Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi & Ors. AIR 2010 SC 475;		
– relied on.	...	351
Bharat Coking Coal Ltd. v. Annapurna Construction (2003) 8 SCC 154;		
– relied on.	...	965
Bharat Singh & Ors. v. State of Haryana & Ors. AIR 1988 SC 2181;		
– relied on.	...	254

(xiv)

Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. and Ors. AIR 2003 SC 511;		
– relied on.	...	207
Bhera v. State of Rajasthan (2000) 10 SCC 225;		
– distinguished	...	5
Bihar Public Service Commission v. State of Bihar AIR 1997 SC 2280;		
– relied on.	...	303
Birendra K. Singh v. State of Bihar (2000) 8 SCC 498,		
– held inapplicable.	...	673
Bishan Singh v. Khazan Singh AIR 1958 SC 838;		
– relied on.	...	931
Biswajit Halder @ Babu Halder & Ors. v. State of W.B. (2008) 1 SCC 202,		
– relied on.	...	105
Board of Secondary Education v. Pravas Ranjan Panda & Anr. (2004) 13 SCC 383;		
– relied on.	...	191
C.P.C. Motor Service, Mysore v. State of Mysore and Anr. AIR 1966 SC 1661;	...	545
Capital Multi-purpose Co-operative Society Bhopal and Ors. v. State of M.P. and Ors. (1967) 3 SCR 329;	...	545
Chand Dhawan (Smt) v. Jawahar Lal & Ors. (1992) 3 SCC 317;	...	134

(xv)

Chandigarh Administration & Anr v. Jagjit Singh & Anr. 1995 ( 1 ) SCR 126	
– relied on.	... 323
Chandra Deo Singh v. Prokash Chandra Bose (1964) 1 SCR 639;	
– relied on.	... 673
Chandraprakash Madhavrao Dadwa v. Union of India (1998) 8 SCC 154;	... 983
Chandrika Jha v. State of Bihar and Ors. AIR 1984 SC 322;	
– relied on.	... 349
Chandrika Prasad Yadav v. State of Bihar and Ors. AIR 2004 SC 2036;	
– relied on.	... 207
Charan Singh & Ors. v. State of U.P. & Ors. AIR 2004 All. 373,	
– approved.	... 256
Chief Conservator of Forests, Government of A.P. Vs. Collector & Ors (2003) 2 SCR 180	
– relied on.	... 281
Chief Enforcement Officer v. Videocon International Ltd. (2008) 2 SCC 492,	
– relied on	... .673
Chilukuri Venkateswarlu v. Chilukuri Venkatanarayana (1954) SCR 424	
– relied on.	... 158

(xvi)

Chitra Kumari (Smt) etc. v. Union of India & Ors. AIR 2001 SC 1237;	
– relied on.	... 254
Coimbatore District Central Coop. Bank v. Employees Assn. (2007) 4 SCC 669	
– relied on.	... 822
Collector of Central Excise v. Ballarpur Industries Ltd. (1989) 4 SCC 566;	... 995
Commissioner of Income Tax, Bombay v. Amritlal Bhogilal and Co. AIR 1958 SC 868;	
– relied on.	... 810
Commissioner of Income-Tax, A.P. v. Toshoku Ltd. 125 I.T.R. 1980 525;	
– distinguished	... 868
Commissioner of Income-Tax, Madras v. Indian Bank Limited 56 ITR 77,	... 754
Commissioner of Police, Bombay v. Gordhandas Bhanji 1952 SCR 135	
– relied on.	... 910
Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain 2000 (5) SCC 511,	
– distinguished.	... 591
Controller of Defence Accounts (Pension) and Other v. S. Balachandran Nair 2005 (4) Suppl. SCR 431	
– relied on.	... 508

(xvii)

Coromandel Fertilizers Ltd. v. Union of India & Ors. 1985 SCR 523		
– relied on.	...	323
Council of Civil Service Union v. Minister for Civil Service (1985) AC 374	...	822
Dadasaheb Dattatraya Pawar & Ors. v. Pandurang Raoji Jagtap & Ors. 1978 (2) SCR 524		
– relied on.	...	890
Damani (M.N.) v. S.K. Sinha & Ors. (2001) 5 SCC 156;	...	134
Dattatraya Moreshwar Pangarkar v. The State of Bombay and Ors, (1952) 1 SCR 612,		
– relied on.	...	544
Dattatraya Moreshwar v. The State of Bombay and Ors. AIR 1952 SC 181;		
– relied on.	...	207
Dayanidhi Bisoi v. State of Orissa AIR 2003 SC 3915	...	1029
Dayaram Dayal v. State of M.P. (1997) 7 SCC 443;	...	1069
Deepa Keyes v. Kerala State Electricity Board and Anr. (2007) 6 SCC 194;		
– relied on.	...	304
Delhi Pradesh Registered Medical Practitioners v. Delhi Admn. Director of Health Services & Ors. AIR 1998 SC 67;		
– relied on.	...	256

(xviii)

Deokuer and Anr. v. Sheoprasad Singh and Ors. AIR 1966 SC 359,	...	930
Devasahayam (Dead) by L.Rs. v. P. Savithramma & Ors. (2005) 7 SCC 653;		
– relied on.	...	254
Devi Lal v. State of Rajasthan 2007 (11) SCR 219		
– relied on.	...	1124
Devin Katti (N.T.) v. Karnataka Public Service Commission (1990) 3 SCC 157,	...	734
Dharam Dutt and Ors. v. Union of India and Ors (2004) 1 SCC 712;	...	591
Diamond Sugar Mills Limited and Anr. v. The State of Uttar Pradesh and Anr. AIR 1961 SC 652;		
– distinguished	...	591
Dinesh Dutt Joshi v. State of Rajasthan (2001) 8 SCC 570		
– relied on.	...	131
Divisional Controller N.E.K.R.T.C. v. H. Amaresh AIR 2006 SC 2730	...	242
Divisional Forest Officers and Ors. v. M. Ramalinga Reddy AIR 2007 SC 2226;		
– relied on.	...	303
Ex-Naik Sardar Singh v. Union of India & Ors. (1991) 3 SCC 213;	...	822
Fertilisers and Chemicals Travancore Ltd. v. Kerala State Electricity Board and Anr. 1988 (3) SCR 925	...	633



(xix)

Fertilizer Corporation of India Ltd. & Anr. v. Sarat Chandra Rath & Ors. AIR 1996 SC 2744, – relied on. ...	351
Food Corporation of India v. Surendra, Devendra and Mahendra Transport Co. (2003) 4 SCC 80, – relied on. ...	965
Francis Coralie Mullin v. Administrator, Union Territory of Delhi & Ors (1981) 1 SCC 608; ...	854
Fuljit Kaur (Smt.) v. state of Punjab & Ors. [2010] 7 SCR 317, – relied on. ...	342 & 344
Gadakh Yashwantrao Kankarrao v. E.V. alias Balasaheb Vikhe Patil & ors. AIR 1994 SC 678; – relied on. ...	224
Gajraj Singh and Ors. v. State of U.P. and Ors. (2001) 5 SCC 762, ...	540
Gandhi (H.B.), Excise & Taxation Officer-cum-Assessing Authority, Karnal & Ors. v. M/s. Gopi Nath & Sons & Ors. 1992 Supp.(2) SCC 312; – relied on. ...	156
Gangadharan (M.P.) & Anr. v. State of Kerala & Ors. (2006) 6 SCC 162 – relied on. ...	822
Gangotri Singh v. State of U.P. (1993) Supp (1) SCC 327; – relied on. ...	26

(xx)

Gaya Din (dead) thr. Lrs. & Ors. v. Hanuman Prasad (dead) thr. Lrs. & Ors. AIR 2001 SC 386; – relied on. ...	156
Gaya Prasad v. Pradeep Srivastava (2001) 2 SCC 604, ...	48
General Radio and Appliances Co. Ltd. and Ors. v. M.A. Khader (dead) by LRs. (1986) 2 SCC 656; ...	51
Ghafoor Ahmad Khan v. Bashir Ahmed Khan AIR 1983 SC 123, – relied on. ...	930
Gojer Bros. (Pvt.) Ltd. v. Ratan Lal Singh (1974) 2 SCC 453; – relied on. ...	810
Gopal (Shri) & Anr. v. Subhash & Ors. (2004) 13 SCC 174, ...	105
Goverdhan Raoji Ghyare v. State of Maharashtra (1993) Supp (4) SCC 316; – relied on. ...	26
Government of Orissa & Anr. v. Hanichal Roy & Anr. (1998) 6 SCC 626; – relied on. ...	190
Govindaraja Pillai (M.) v. Thangavelu Pillai 1983 Cri LJ 917 ...	673
Grant (G.H.) (Dr.) v. State of Bihar AIR 1966 SC 237, – relied on. ...	208

(xxi)

Gulabchand Chhotalal Parikh v. State of Gujarat AIR 1965 SC 1153;		
– relied on.	...	291
Guljar Hussain v. State of U.P. 1993 Supp (1) SCC 554;		
– distinguished	...	5
Gullapalli Nageswara Rao and Ors. v. Andhra Pradesh State Road Transport Corporation and Anr. AIR 1959 SC 308	...	542
Gullipilli Sowria Raj v. Bandaru Pavani @ Gullipili Pavani (2009) 1 SCC 714,	...	208
Gurmail Singh & others v. State of Punjab (1982) 3 SCC 185;		
– distinguished	...	704
Gurmukh Singh v. State of Haryana (2009) 15 SCC 635,		
– distinguished.	...	704
Gurpreet Singh v. Union of India, (2006) 8 SCC 457		
– held inapplicable.	...	835, 836
Hanif Quareshi (Mohd.) & Ors. v. State of Bihar, this Court 1959 SCR 629	...	633
Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and Ors. AIR 1955 SC 367;		
– relied on.	...	591
Haradhone v. Panchanan AIR 1943 Calcutta 570;	...	930

(xxii)

Harkirat Singh v. Amrinder Singh (2005) 13 SCC 511;		
– relied on.	...	713
Hasmat Rai and Anr. v. Raghunath Prasad (1981) 3 SCC 103;		
– held inapplicable	...	51
Hazarilal v. State of Madhya Pradesh 2007 (7) SCR 1081		
– held inapplicable	...	1050
High Court of Madhya Pradesh v. Satya Narayan Jhavar (2001) 7 SCC 161;	...	1069
Hind Construction & Engineering Co. Ltd. v. Workmen AIR 1965 SC 917;	...	822
Hindustan Lever and Anr. v. State of Maharashtra and Anr. (2004) 9 SCC 438,		
– held inapplicable.	...	51
Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai & Ors. 2005 Suppl. (3) SCR 388		
– relied on.	...	910
Hindustan Shipyard Ltd. & Ors. v. Dr P. Sambasiva Rao & Ors. (1996) 7 SCC 499		
– relied on.	...	191
Hombe Gowda Educational Trust v. State of Karnataka (2006) 1 SCC 430,	...	471
Indian Oil Corporation Ltd. v. State of Bihar & Ors. 1986 (3) SCR 553		
– relied on.	...	322

(xxiii)

Indore Municipality v. Niyamatulla (Dead through L.Rs.) AIR 1971 SC 97;		
– relied on.	...	349
Indra Sawhney v. Union of India AIR 1993 SC 477,	...	293
Ishikawajima-Harima Heavy Industries Ltd. v. Director of Income-Tax, Mumbai (2007) 288 I.T.R. 408 (SC)		
– distinguished.	...	868
Jagdish Singh v. Nathu Singh AIR 1992 SC 1604;		
– relied on.	...	224
Jagir Kaur & Anr. v. Jaswant Singh [1964] 2 S.C.R. 73;	...	134
Jagtar Singh v. State of Punjab (1983) 2 SCC 342		
– distinguished	...	704
Jai Singh v. Shakuntala AIR 2002 SC 1428;		
– relied on.	...	224
Jalandhar Improvement Trust v. Sampuran Singh, AIR 1999 SC 1347;		
– relied on.	...	323
Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) & Ors. v. Secretary, Sahakari Noukarara Sangha & Ors. (2000) 7 SCC 517;		
– relied on.	...	242

(xxiv)

Jayabalan v. U.T. of Pondicherry (2009) 15 SCR 736		
– relied on.	...	412
Jeewan Nath Wahal v. State Transport Appellate Tribunal (C.A. No.1616 of 1968) decided by S.C. on 03.04.1968;	...	540
Jilubhai Nanbhai Khachar etc. etc. v. State of Gujarat and Anr. AIR 1995 SC 142,		
– relied on.	...	591
Jinia Keotin & Ors. v. Kumar Sitaram Manjhi & Ors. (2002) 5 Suppl. SCR 689	...	159
Jivarajbhai Ujamshi Sheth and Ors. v. Chintamanrao Balaji and Ors. AIR 1965 SC 214;		
– relied on.	...	965
Joginder Pal v. Naval Kishore Behal (2002) 5 SCC 397;	...	49
Kake Singh v. State of M.P. [(1981) supp. SCC 25;		
– relied on.	...	25
Kali Prasad Agarwala (Dead by L.Rs.) & Ors. v. M/s. Bharat Coking Coal Limited & Ors. (1989) 2 SCR 283		
– relied on.	...	280
Kaliyaperumal v. State of Tamil Nadu 2003 (3) Suppl. SCR 1		
– relied on.	...	1125
Kalliani Amma (P.E.K.) (Smt) & Ors. v. K. Devi & Ors. (1996) 2 Suppl. SCR 1	...	158

(xxv)

Kamla Prasad Khetan and Anr. v. Union of India AIR 1957 SC 676,	...	542
Kapoor (S.P.) (Dr.) v. State of Himachal Pradesh & Ors. 1982 (1) SCR 1043	...	321
– relied on.	...	321
Kapur (R.P.) v. State of Punjab AIR 1960 SC 866;	...	131
– relied on.	...	131
Karnataka State Road Transport Corporation v. Ashrafulla Khan and Ors. (2002) 2 SCC 560	...	545
Karnataka State Road Transport Corporation v. B.S. Hullikatti AIR 2001 SC 930	...	242
– relied on.	...	242
Karnataka State Road Transport Corporation v. S. Manjunath (2000) 5 SCC 250;	...	1069
Kasturi v. Iyyamperumal 2005 (6) SCC 733;	...	792
Kewal Krishan v. Suraj Bhan (1980) Supp SCC 499;	...	673
– relied on.	...	673
Khurana (B.S.) and Ors. v. Municipal Corporation of Delhi and Ors. (2000) 7 SCC 679;	...	208
Khushboo (S.) v. Kanniammal & Anr. JT (2010) 4 SC 478;	...	158
Krishna Priya Ganguly etc.etc. v. University of Lucknow & Ors. etc. AIR 1984 SC 186;	...	351
– relied on.	...	351

(xxvi)

Krishna Swami v. Union of India & Ors. AIR 1993 SC 1407,	...	242
– relied on.	...	242
Kuldeep Singh v. Commissioner of Police & Ors. (1998) 3 Suppl. SCR 594	...	156
– relied on.	...	156
Kulwant Kaur & Ors. v. Gurdial Singh Mann (dead) by L.Rs. & Ors. AIR 2001 SC 1273;	...	224
– relied on.	...	224
Kulwant Kaur & Ors. v. Gurdial Singh Mann (dead) by L.Rs. (2001) 2 SCR 525	...	157
– relied on.	...	157
Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors. 1990 Suppl. (1) SCR 625	...	910
Kunhayammed & Ors. v. State of Kerala & Anr. 2000 (1) Suppl. SCR 538	...	321
– relied on.	...	321
Kunhayammed and Ors. v. State of Kerala and Anr. (2000) 6 SCC 359;	...	810
– relied on.	...	810
Kunhayippu v. State of Kerala (2000) 10 SCC 307;	...	5
– distinguished	...	5
Lachmeshwar Prasad Shukul and Ors. v. Keshwar Lal Chaudhuri and Ors. AIR 1941 F.C. 5	...	49
Larsen & Toubro Ltd. (M/s.) & Ors. v. State of Gujarat & Ors. AIR 1998 SC 1608;	...	254
– relied on.	...	254

(xxvii)

Lata Singh v. State of U.P. & Anr. (2006) 3 Suppl. SCR 350	...	158
Laungia (D.S.) & Anr. v. The State of Punjab & Ors. AIR1993 Pub.& Har. 54, – disapproved.	...	320
Laxmi Narayan Nayak v. Ramratan Chaturvedi & Ors. 1989 (2) Suppl. SCR 581 – relied on.	...	890
Life Insurance Corporation of India v. Asha Ramchandra Ambedkar (Mrs.) & Anr., (1994) 2 SCR 163 – relied on.	...	191
Madan Naik v. Hansubala Devi AIR 1983 SC 676; – distinguished	...	930
Madhu Sudan Malhotra v. K.C. Bhandari (1988) Supp. 1 SCC 424;	...	1122
Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain & Ors. 1994 ( 6 ) Suppl. SCR 344 – relied on.	...	321
Mahant Moti Das v. S.P. Sahi 1959 Suppl. SCR 503	...	633
Maharaj Krishan Bhatt & Anr. v. State of Jammu & Kashmir & Ors., 2008 (11) SCR 670 – relied on.	...	323

(xxviii)

Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupesh Kurmarsheth etc.etc. (1985) 1 SCR 29 – relied on.	...	191
Mahavir Singh Narwal v. Union of India and another 111 (2004) Delhi Law Times 550, – held inapplicable.	...	780
Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati (1964) SCR 267 – relied on.	...	158
Mahendra Pal v. Ram Dass Malanger (2000) 1 SCC 261; – relied on.	...	713
Mahindra and Mahindra Ltd. v. N.B. Jarawade (2005) 3 SCC 134	...	471
Malhotra (B.R.) (Lt. Col.) v. U.O.I. & Ors. 71(1998) Delhi Law Times 498, – disapproved.	...	779
Malpe Vishwanath Acharya & Ors. v. State of Maharashtra & Anr. AIR 1998 SC 602; – relied on.	...	224
Management of the Federation of Indian Chambers of Commerce and Industry v. Workman, Shri R.K. Mittal (1972) 1 SC 40	...	822
Managing Director, Uttar Pradesh Warehousing Corporation and another v. Vijay Narayan Bajpayee (1980) 3 SCC 459, – relied on.	...	468

Manindra Chandra Nandi <i>v.</i> Aswini Kumar Acharaya ILR (1921) 48 Cal. 427, –approved	...	434
Manohar Lal Chopra <i>v.</i> Rai Bahadur Rao Raja Seth Hiralal AIR 1962 SC 527; – relied on.	...	431
Maranadu & Anr. <i>v.</i> State by Inspector of Police, Tamil Nadu 2008 (16) SCC 529;	...	85
Masalti <i>v.</i> State of U.P. AIR 1965 SC 202; Masumsha Hasansha Musalman <i>v.</i> State of Maharashtra (2000) 3 SCC 557; – distinguished	...	85 5
Mauria Udyog Ltd. <i>v.</i> Commissioner of Central Excise, Delhi II (2003) 9 SCC 139 – relied on.	...	810
McDowell & Co. Ltd. <i>v.</i> Commercial Tax Officer 154 ITR 148(SC);	...	751
MD, Army Welfare Housing Organisation <i>v.</i> Sumangal Services (P) Ltd. (2004) 9 SCC 619; – relied on.	...	965
Meesala Ramakrishan <i>v.</i> State of A.P. (1994) 4 SCC 182 – relied on.	...	26
Messrs. Trojan & Co. <i>v.</i> RM.N.N. Nagappa Chettiar AIR 1953 SC 235; – relied on.	...	351

Minor Sunil Oraon Thr. Guardian & Ors. <i>v.</i> C.B.S.E. & Ors. AIR 2007 SC 458; – relied on.	...	255
Mohabbat Ali Khan <i>v.</i> Muhammad Ibrahim Khan & Ors. AIR 1929 PC 135; – relied on.	...	157
Mohammad Raza and Ors. <i>v.</i> Mt. Abbas Bandi Bibi AIR 1932 PC 158, – relied on.	...	930
Mohan Lal Tripathi <i>v.</i> District Magistrate, Rai Bareilly and Ors. 1992 (4) SCC 80;	...	591
Mohanlal Gangaram Gehani <i>v.</i> State of Maharashtra (1982) 1 SCC 700; – relied on.	...	26
Mohd. Arif <i>v.</i> Allah Rabbul Alamin AIR 1982 SC 948; – relied on.	...	930
Mohinder Singh Gill and Anr. <i>v.</i> Chief Election Commissioner, New Delhi and Ors. 1978 (2) SCR 272 – relied on.	...	910
Mohinder Singh <i>v.</i> Gulwant Singh (1992) 2 SCC 213 – relied on.	...	673
Moideenkutty Haji <i>v.</i> Kunhikoya (1987) 1 KLT 635;	...	673

(xxxi)

Molar Mal Through Lr. v. M/s. Kay Iron Works Pvt. Ltd. AIR 2000 SC 1261;		
– relied on.	...	224
Mukhtiar Chand (Dr.) & Ors. v. State of Punjab & Ors. AIR 1999 SC 468;		
– relied on.	...	256
Mukul Saikia and Ors. v. State of Assam and Ors. AIR 2009 SC 747,		
– relied on.	...	302 & 303
Muneeb Ul Rehman Haroon (Dr.) & Ors. v. Government of Jammu & Kashmir State & Ors. (1985) 1 SCR 344		
– relied on.	...	191
Municipal Committee, Bahadurgarh v. Krishnan Bihari & Ors. AIR 1996 SC 1249;		
– relied on.	...	242
Munnu Raja v. State of M.P. (1976) 3 SCC 104;		
– relied on.	...	25
Munshi Prasad & Ors. v. State of Bihar 2002 (1) SCC 351	...	85
Musheer Khan v. State of M.P. (2010) 2 SCC 748	...	1005
Muthu v. State by Inspector of Police, Tamil Nadu (2007) 12 SCALE 795,		
– distinguished.	...	5

(xxxii)

Mysore State Road Transport Corporation v. Mysore State Transport Appellate Tribunal (1974) 2 SCC 750;		
– relied on.	...	539
Nagaraj (K.) and Ors. v. State of Andhra Pradesh and Anr. 1985 ( 2 ) SCR 579	...	632
Nageshwar Prasad Singh v. Narayan Singh (1998) 5 SCC 694,	...	40
Nainsingh v. Koonwarjee AIR 1970 SC 997,		
– relied on.	...	431
Nanhau Ram v. State of M.P.(1988) Supp. SCC 152;		
– relied on.	...	26
Narasimham (T.V.V.) & Ors. v. State of Orissa AIR 1963 SC 1227;		
– relied on.	...	255
Narayana Rao (M.) v. G. Venkata Reddy & Ors. 1977 (1) SCR 490		
– relied on.	...	890
Narayanappa (H.C.) and Ors. v. State of Mysore and Ors. (1960) 3 SCR 742;		
– relied on.	...	539
Nasik Municipal Corporation v. Harbanslal Laikwant Rajpal and Ors. (1997) 4 SCC 199;		
– relied on.	...	208

(xxxiii)

National Building Construction Corporation v. S. Raghunathan & Ors. AIR 1998 SC 2779;		
– relied on.	...	254
Navinchandra Mafatlal, Bombay v. Commissioner of Income Tax, Bombay City AIR 1955 SC 58;		
– relied on.	...	591
Neelamma and others v. Sarojamma and others (2006) 9 SCC 612,	...	159
Nehru Motor Transport Co-operative Society Ltd. (M/s.) and Ors. v. State of Rajasthan and Ors. AIR 1963 SC 1098;	...	545
Nirmaljit Singh Hoon v. State of West Bengal (1973) 3 SCC 753;		
– relied on.	...	673
Nisar Ahmad and Ors. v. State of U.P. and Ors. 1994 Suppl. (3) SCC 460;	...	504
Nooruddin v. (Dr.) K.L. Anand (1995) 1 SCC 242;		
– relied on.	...	354
Om Kumar v. Union of India (2001) 2 SCC 386;	...	471
Om Prakash & Ors. v. Ram Kumar & Ors. AIR 1991 SC 409;		
– relied on.	...	351
Oswal Fats & Oils Ltd. v. Addl. Commissioner (Admn), Bareilly Division, Bareilly & Ors. JT 2010 (3) SC 510,		
– relied on.	...	354

(xxxiv)

P. Chandrasekharan & Ors. v. S. Kanakarajan & Ors. AIR 2007 SC 2306;		
– relied on.	...	224
Padam Sen v. State of Uttar Pradesh AIR 1961 SC 218;		
– relied on.	...	431
Panchi Devi v. State of Rajasthan & Ors. 2008 (17) SCR 1325		
– relied on.	...	323
Paniben v. State of Gujarat (1992) 2 SCC 474;		
– relied on.	...	25
Pappu v. State of M.P. (2006) 7 SCC 391;		
– distinguished	...	5
Parvathamma (D.S.) v. A. Srinivasan (2003) 4 SCC 705,	...	134
Pathumma & Ors. v. State of Kerala & Ors. 1978 (2) SCR 537	...	633
Perumal Nadar (Dead) by Lrs. v. Ponnuswami Nadar (minor) (1971) SCR 49		
– relied on.	...	158
Phool Rani (Smt.) and Ors. v. Shri Naubat Rai Ahluwalia, (1973) SCC 688;	...	49
Poonam Verma & Ors. v. Delhi Development Authority AIR 2008 SC 870;		
– relied on.	...	349



Prabodh Verma & Ors. v. State of U.P. & Ors. AIR 1985 SC 167		
– relied on.	...	291
Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors, AIR 2004 SC 4116;		
– relied on.	...	191
Pramod Kumar v. U.P. Secondary Education Services Commission & Ors. (2008) 7 SCC 153;		
– relied on.	...	256
Prativa Devi (Smt.) v. T.V. Krishnan (1996) 5 SCC 353;		
– relied on.	...	224
Preeta Singh & Ors. v. Haryana Urban Development Authority & Ors. 1996 (1) Suppl. SCR 621		
– relied on.	...	320
Prem Singh and Ors. v. Haryana State Electricity Board and Ors. (1996) 4 SCC 319;		
– relied on.	...	302
President, Board of Secondary Education, Orissa & Anr. v. D. Suvankar & Anr. (2006) 8 Suppl. SCR 1143		
– relied on.	...	191
Printers (Mysore) Ltd. v. Assistant Commercial Tax Officer (1994) 93	...	995

Punjab Engineering College, Chandigarh v. Sanjay Gulati & Ors., AIR 1983 SC 580;		
– relied on.	...	192
Punjab State Electricity Board and Ors. v. Malkiat Singh (2005) 9 SCC 22;		
– relied on.	...	303
R. v. Wilkes 1770 (98) ER 327	...	793
Ragavendra Kumar v. Firm Prem Machinery & Co. AIR 2000 SC 534;		
– relied on.	...	224
Raghubir Singh & Ors. v. State of Punjab (1996) 3 SCR 389		
– relied on.	...	411
Rahabhar Productions Pvt. Ltd. v. Rajendra K. Tandon AIR 1998 SC 1639;		
– relied on.	...	224
Rahim Khan v. Khurshid Ahmed and Ors. 1975 (1) SCR 643		
– relied on.	...	889
Raj Kishore Jha v. State of Bihar & Ors. AIR 2003 SC 4664;		
– relied on.	...	241
Raj Narain v. Indira Nehru Gandhi (1972) 3 SCC 850;		
– relied on.	...	713

(xxxvii)

Rajappa Hanamantha Ranoji v. Mahadev Channabasappa & Ors. AIR 2000 SC 2108; – relied on.	... 224
Rajappa Hanamantha Ranoji Vs. Mahadev Channabasappa & Ors. AIR 2000 SC 2108; – relied on.	... 157
Rajasthan State Warehousing Corporation v. Commissioner of Income-Tax 242 ITR 450;	... 754
Rajendra Kumar Sitaram Pande & Ors. v. Uttam & Anr. (1999) 3 SCC 134;	... 134
Rajesh Kumar Daria v. Rajasthan Public Service Commission & Ors. AIR 2007 SC 3127, – relied on.	... 292
Rajinder Kumar Kindra v. Delhi Administration, thr. Secretary (Labour) & Ors. (1985) 1 SCR 866 – relied on.	... 157
Rakesh Ranjan Verma & Ors. v. State of Bihar & Ors. AIR 1992 SC 1348; – relied on.	... 349
Rakhi Ray & Ors. v. The High Court of Delhi & Ors. AIR 2010 SC 932,	... 291
Ram Baran Prasad v. Ram Mohit Hazra AIR 1967 SC 744; – relied on.	... 930
Ram Beti v. District Panchayat Raj Adhikari and Ors.1998 (1) SCC 680;	... 591

(xxxviii)

Ram Chand and Sons Sugar Mills Pvt. Ltd.v. Kanhayalal Bhargav AIR 1966 SC 1899; – relied on.	... 431
Ram Dass v. Ishwar Chander & Ors. AIR 1988 SC 1422; – relied on.	... 224
Ram Dular Rai & Ors. v. State of Bihar 2003 (12) SCC 352;	... 85
Ram Krishna Verma and Ors. v. State of U.P. and Ors. (1992) 2 SCC 620;	... 540
Ram Manorath v. State of U.P. (1981) 2 SCC 654; – relied on.	... 25
Ram Narain Arora v. Asha Rani & Ors. (1999) 1 SCC 141; – relied on.	... 254
Ram Prasad Rajak v. Nand Kumar & Bros. & Anr. AIR 1998 SC 2730; – relied on.	... 224
Ram Singh and Ors. v. Col. Ram Singh 1985 (Supp) SCC 611 – relied on.	... 893
Ram Singh v. State of Haryana 2008 (2) SCR 216	... 1122
Ramachandra Reddy (K.) v. Public Prosecutor (1976) 3 SCC 618; – relied on.	... 25

Ramakrishnan Unnithan (K.) v. State of Kerala (1999) 3 SCC 309;		
– distinguished	...	5
Ramawati Devi v. State of Bihar (1983) 1 SCC 211;		
– relied on.	...	25
Ramesh & Anr. v. State of Uttar Pradesh etc. etc. 2009 (15) SCC 513;	...	85
Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay 1992 (2) SCC 524;	...	792
Rameshwari Devi v. State of Bihar & Ors. (2000) 1 SCR 390	...	159
Ramji Dayawala and Sons (P) Ltd. v. Invest Import 1981 (1) SCC 80	...	793
Ramji Prasad Singh v. Ram Bilas Jha and Ors. 1977 (1) SCR 741		
– relied on.	...	889
Ramniklal N. Bhutta & Anr. v. State of Maharashtra & Ors. AIR 1997 SC 1236;		
– relied on.	...	354
Ramulu (K.) (Dr.) & Anr. v. Dr. S. Suryaprakash Rao & Ors. (1997) 3 SCC 59,		
– distinguished.	...	733
Ranjeet Mal v. General Manager, Northern Railway, New Delhi & Anr., (1977) 2 SCR 409		
– relied on.	...	280

Ranjit Singh v. State of Pepsu AIR 1959 SC 843;	...	673
Ranjit Thakur v. Union of India & Ors. (1987) 4 SCC 611;	...	822
Rasheed Beg v. State of M.P. (1974) 4 SCC 264;		
– relied on.	...	25
Rathore (S.S.) v. State of Madhya Pradesh (1989) 4 SCC 582;		
– relied on.	...	810
Raza Buland Sugar Co. Ltd. Rampur v. Municipal Board Rampur AIR 1965 SC 895;		
– relied on.	...	207
Re : The Kerala Education Bill, 1957 AIR 1958 SC 956;		
– relied on.	...	254
Regional Manager, R.S.R.T.C. v. Ghanshyam Sharma (2002) 10 SCC 330,		
– relied on.	...	242
Registrar, High Court of Gujarat v. C.G. Sharma (2005) 1 SCC 132	...	1069
Reserve Bank of India & Anr. v. Ramakrishna Govind Morey AIR 1976 SC 830;		
– relied on.	...	224
Revanna (H.D.) v. G. Puttaswamy Gowda (1999) 2 SCC 217;		
– relied on.	...	713

(xli)

Rishi Kumar Govil v. Maqsoodan and Ors. (2007) 4 SCC 465;		
– relied on.	...	224
Rosy v. State of Kerala (2000) 2 SCC 230,		
– explained	...	673
Rubber House (M/s.) v. M/s. Excellsior Needle Industries Pvt. Ltd. AIR 1989 SC 1160;		
– relied on.	...	207
Ruia (R.C.) v. State of Bombay 1958 SCR 618;		
– relied on.	...	673
Ruston & Hornsby (I) Ltd. v. T.B. Kadam, AIR 1975 SC 2025;		
– relied on.	...	242
S.J.S. Business Enterprises (P) Ltd. v. State of Bihar & Ors. (2004) 7 SCC 166;		
– relied on.	...	354
S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla & Anr. 2005 (3) Suppl. SCR 371		
– relied on.	...	696
Sabia Khan & Ors. v. State of U.P. & Ors. AIR 1999 SC 2284;		
– relied on.	...	354
Sahiti & Ors. v. Chancellor, Dr. N.T.R. University of Health Sciences & Ors. (2008) 14 SCR 1032		
– relied on.	...	191

(xlii)

Sait Nagjee Purushottam & Co. Ltd. v. Vimalabai Prabhulal & Ors. (2005) 8 SCC 252;		
– relied on.	...	254
Salem Advocate Bar Association v. Union of India 2005 (6) SCC 344,		
– relied on.	...	434
Sales Tax Cases; Whirlpool Corporation v. Registrar of Trade Marks (1998) 8 SCC 1;	...	995
Salgaocar (V.M.) & Bros. (P) Ltd. v. Commissioner of Income Tax 2000 ( 2 ) SCR 1169		
– relied on.	...	322
Salim Akhtar v. State of U.P. (2003) 5 SCC 499	...	1025
Samant N. Balkrishna v. George Fernandez (1969) 3 SCC 238;		
– relied on.	...	713
Samsher Singh v. State of Punjab and Anr. (1974) 2 SCC 831;	...	545
Sangamesh Printing Press v. Chief Executive Officer, Taluk Development Board (1999) 6 SCC 44;		
– relied on.	...	281
Sanjeevi Naidu (A.) Etc. v. State of Madras and Anr. (1970) 1 SCC 443;	...	545
Sapa (F.A.) v. Singora (1991) 3 SCC 375,		
– relied on.	...	714

(xliii)

Saraswati Industrial Syndicate Ltd. v. C.I.T. 1990 (Supp) SCC 675;		
– held inapplicable	...	51
Sardar Harcharan Singh Brar v. Sukh Darshan Singh (2004) 11 SCC 196;		
– relied on.	...	713
Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors. AIR 1987 SC 88;		
– relied on.	...	291
Sarju Pershad Ramdeo Sahu v. Raja Jwaleshwari Pratap Narain Singh and Ors. 1950 SCR 781		
– relied on.	...	889 & 890
Satbir Singh & Ors. v. State of Uttar Pradesh 2009 (13) SCC 790;	...	85
Satbir Singh v. State of Punjab 2001 (3) Suppl. SCR 353	...	1122
Satya Gupta @ Madhu Gupta v. Brijesh Kumar (1998) 6 SCC 423;		
– relied on.	...	224
Satyanarayan Reddy (Y.) v. Mandal Revenue Officer, Andhra Pradesh 2009 (13) SCR 872		
– relied on.	...	322
Saurashtra Oil Mills Assn., Gujrat v. State of Gujrat & Anr. 2002 (1) SCR 1099		
– relied on.	...	322

(xliv)

Seaford Court Estates Ltd. v. Asher 1949 (2) K.B. 481	...	591
Secretary and Commissioner, Home Department and others v. R. Kirubakaran 1994 Supp. (1) SCC 155		
– relied on.	...	173
Secretary, Ministry of Defence and Ors. v. A.V. Damodaran (D) through LRs. and Ors. 2009 (13) SCR 416		
– relied on.	...	508
Sewakram Sobhani v. R.K. Karanjia, Chief Editor, Weekly Blitz & Ors. (1981) 3 SCC 208;	...	134
Shakuntala Bai and Ors. v. Narayan Das and Ors. (2004) 5 SCC 772;	...	48
Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali & Anr. AIR 2007 SC 248;		
– relied on.	...	224
Sham Shankar Kankaria v. State of Maharashtra 2006) 13 SCC 165;		
– relied on.	...	25
Shamsher v. State of Punjab (1974) 2 SCC 834;	...	1069
Shankarsan Dash v. Union of India 1991 (2) SCR 567		
– relied on.	...	911
Shankarsan Dash v. Union of India AIR 1991 SC 1612;		
– relied on.	...	303

(xlv)

Shanti Sports Club & Anr. v. Union of India & Ors. 2009 (13) SCR 710		
– relied on.	...	323
Sharad Birdhichand Sarda v. State of Maharashtra 1984 (4) SCC 116,		
– relied on.	...	385
Sharad v. State of Maharashtra (1984) 4 SCC 116	...	1028
Sharif-Ud-Din v. Abdul Gani Lone AIR 1980 SC 303;		
– relied on.	...	207
Sharma (K.C.) & Ors. v. Union of India & Ors., (1997) 3 Suppl. SCR 87		
– relied on.	...	192
Sharwan Kumar & Ors v. Director General of Health Services & Ors, AIR 1992 SC 2202		
– relied on.	...	192
Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi & Ors. (1996) 6 SCC 263;	...	134
Sheel Chand v. Prakash Chand 1998 (1) Suppl. SCR 297	...	508
Sheel Chand v. Prakash Chand AIR 1998 SC 3063;		
– relied on.	...	224
Shiv Kumar Sharma v. Haryana State Electricity Board (1988) Suppl. SCC 669,		
– affirmed.	...	1072

(xlvi)

Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta AIR 1999 SC 2507;		
– relied on.	...	224
Shivcharan Lal Verma & Anr. v. State of M.P. (2007) 15 SCC 369,		
– relied on.	...	1151
Shivji v. Raghunath 1997 (10) SCC 309;		
– relied on.	...	930
Shri Chand v. Govt. of U.P. Lucknow and Ors. Citizen Council for Public Service v. Govt. of U.P. and Anr. (1985) 4 SCC169;	...	504
Shriram Refrigeration Industries v. Hon'ble Addl. Industrial Tribunal-Cum-Addl. Labour Court, Hyderabad & Ors. (2002) 9 SCC 708;	...	134
Shyam Babu Verma v. Union of India (1994) 27 ATC 121	...	983
Siddalingamma & Anr. v. Mamtha Shenoy AIR 2001 SC 2896,		
– relied on.	...	224
Siddartha Vashisht @ Manu Sharma v. State (NCT of Delhi) JT 2010 (4) SC 107		
– relied on	...	1004
Silak Ram & Anr. v. State of Karnataka 2007 (8) SCR 849		
– relied on.	...	413
Simanchal Panda v. State of Orissa and Ors. (2002) 2 SCC 669;		
– relied on.	...	303

(xlvii)

Singer India Ltd. v. Chander Mohan Chadha and Ors. (2004) 7 SCC 1	...	51
Sneh Prabha (Smt) v. State of U.P. & Ors., AIR 1996 SC 540;		
– relied on.	...	323
Sobha Hymavathi Devi v. Setti Gangadhara Swamy and Ors. (2005) 1 SCR 848		
– relied on.	...	158
Som Mittal v. Government of Karnataka (2008) 3 SCC 753,		
– relied on.	...	131
Sri Raja Lakshmi Dyeing Works (M/s) and Ors. v. Rangaswamy Chettiar (1980) 4 SCC 259,	...	49
Srinivas (K.P.) v. R.M. Premchand & ors. (1994) 6 SCC 620		
– relied on.	...	354
State of Andhra Pradesh v. Raj Gopal Asawa 2004 (3) SCR 32	...	1122
State of Bihar & Ors. v. Kameshwar Prasad Singh & Anr., 2000 ( 3 ) SCR 764		
– relied on.	...	323
State of Bihar & Ors. v. Shyam Yadav & Ors. (1997) 2 SCC 507	...	134
State of Bihar and Ors. v. Bihar Distillery Limited JT 1996 (10) S.C. 854;	...	591

(xlviii)

State of Bihar and Ors. v. Md. Kalimuddin and Ors. AIR 1996 SC 1145;		
– relied on.	...	303
State of Bihar and Ors. v. The Secretariat Assistant S.E. Union 1986 and Ors. AIR 1994 SC 736;		
– relied on.	...	302
State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and Ors. (2005) 8 SCC 534,	...	591
State of H.P. & Ors. v. Gujarat Ambuja Cements Ltd. (2005) 6 SCC 499	...	995
State of Haryana & Anr. v. Rattan Singh AIR 1977 SC 1512;		
– relied on.	...	241
State of Haryana and Anr. v. Raghubir Dayal (1995) 1 SCC 133,		
– relied on.	...	207
State of Haryana v. Bhajan Lal 1992 Supp. (1) SCC 335;	...	134
State of Haryana v. Karnal Distillery AIR 1977 SC 781;		
– relied on.	...	354
State of Haryana v. Ram Singh 2002 CLJ 987	...	1026
State of Kerala v. Kumari T.P. Roshana & Ors., (1979) 2 SCR 974		
– relied on.	...	192

(xlix)	
State of Madras v. Madurai Mills Co. Ltd. AIR 1967 SC 681; – relied on.	... 810
State of Maharashtra v. Chandrabhan 1983 (3) SCR 327	... 634
State of Maharashtra v. Digambar 1995 ( 1 ) Suppl. SCR 492	... 322
State of Maharashtra v. Vithal Rao Pritirao Chawan AIR 1982 SC 1215; – relied on.	... 241
State of Maharashtra vs. Krishnamurti Laxmipati Naidu (1980) Supp. SCC 455; – relied on.	... 25
State of Mysore v. K. Manche Gowda AIR 1964 SC 506 – relied on.	... 468
State of Mysore v. V.K. Kangan AIR 1975 SC 2190; – relied on.	... 207
State of Orissa v. Dhaniram Luhar AIR 2004 SC 1794; – relied on.	... 242
State of Punjab & Anr. v. Gurdial Singh & Ors. AIR 1980 SC 319, – relied on.	... 352
State of Punjab v. Dharam Singh AIR 1968 SC 1210;	... 1069

(l)	
State of Punjab v. Nathu Ram AIR 1962 SC 89; – distinguished	... 930
State of Punjab v. Raghbir Chand Sharma and Ors. AIR 2001 SC 2900; – relied on.	... 302
State of Rajasthan v. Dhool Singh (2004) 12 SCC 546; – relied on.	... 4
State of Rajasthan v. Kishore (1996) 8 SCC 217, – relied on.	... 26
State of Rajasthan v. Nav Bharat Construction Co. AIR 2005 SC 4430; – relied on.	... 965
State of Tamil Nadu & Ors. v. St. Joseph Teachers Training Institute & Anr. (1991) 3 SCC 87, – relied on.	... 255
State of Tamil Nadu v. M/s. Payarelal Malhotra and Ors. 1976 (1) SCC 834; – distinguished	... 591
State of Tamil Nadu v. Mahalakshmi Ammal and Ors. (1996) 7 SCC 269; – relied on.	... 208
State of U.P. & Ors. v. Chandra Prakash Pandey & Ors. AIR 2001 SC 1298; – relied on.	... 254



(li)

State of U.P. and Ors. v. Babu Ram Upadhya AIR 1961 SC 751, – followed.	...	207
State of U.P. and Ors. v. Harish Chandra and Ors. AIR 1996 SC 2173; – relied on.	...	303
State of U.P. and Ors. v. Ram Swarup Saroj (2000) 3 SCC 699; – relied on.	...	303
State of U.P. v. Battan & Ors. (2001) 10 SCC 607; – relied on.	...	241
State of U.P. v. Harish Chandra Singh AIR 1969 SC 1020, – distinguished.	...	471
State of U.P. v. Madan Mohan (1989) 3 SCC 390; – relied on.	...	26
State of U.P. v. Neeraj Awasthi and Ors. (2006) 1 SCC 667; – relied on.	...	349
State of U.P. v. Ram Sagar Yadav (1985) 1 SCC 552; – relied on.	...	25
State of Uttar Pradesh v. Kartar Singh (1964) 6 SCR 679;	...	633
State of Uttaranchal & Anr. v. Dinesh Kumar Sharma (2007) 1 SCC 683;	...	733

(lii)

State of Uttaranchal & Anr. v. Sunil Kumar Singh Negi AIR 2008 SC 2026 – relied on.	...	242
State of West Bengal v. Atul Krishna Shaw & Anr. AIR 1990 SC 2205; – relied on.	...	242
Steel Authority of India Ltd. v. J.C. Budharaja, Government and Mining Contractor (1999) 8 SCC 122; – relied on.	...	965
Subha B. Nair and Ors. v. State of Kerala and Ors. (2008) 7 SCC 210, – relied on.	...	303 & 304
Sudama Pandey v. State of Bihar (2002) 1 SCC 679 – distinguished.	...	1029
Sumtibai v. Paras Finance Co. 2007 (10) SCC 82;	...	792
Sunder vs. Union of India, (2001) 7 SCC 211	...	835
Supreme Court Employees' Welfare Association v. Union of India & Ors. 1989 (3) SCR – relied on.	...	322
Suraj Parkash Gupta & Ors. v. State of J & K and Ors. (2000) 7 SCC 561;	...	733
Surajdeo Ojha v. State of Bihar (1980) Supp SCC 769; – relied on.	...	25

(liii)

Surinder Singh and Ors. v. State of Punjab and Ors. AIR 1998 SC 18;		
– relied on.	...	302
Sushma Suri v. Government of National Capital Territory of Delhi and Anr. (1999) 1 SCC 330;		
– relied on.	...	303
Suvetha (U.) v. State By Inspector of Police & Anr. (2009) 6 SCC 757;		
– relied on.	...	1151
Swaran Lata etc. v. State of Haryana and Ors. JT 2010 (3) SC 602,		
– relied on.	...	206
T.M.A Pai Foundation & Ors.v. State of Karnataka & Ors. (2002) 8 SCC 481,		
– relied on.	...	254
Tamil Nadu Housing Board & Ors. v. Sea Shore Apartments Owners' Welfare Association 2008 (1) SCR 370		
– relied on.	...	320
Tarlochan Dev Sharma v. State of Punjab & Ors. (2001) 6 SCC 260,		
– relied on.	...	349
Tarsem singh .v. State of punjab 2008 (17) SCR 379		
	...	1125
Thakur Sen Negi v. Dev Raj Negi and Anr. 1993 Supp (3) SCC 645		
– relied on.	...	890

(liv)

Thaper Institute of Engineering & Technology, Patiala v. Abhinav Taneja & Ors. (1990) 2 SCR 394		
– relied on.	...	192
The Amalgamated Tea Estates Co. Ltd. v. State of Kerala 1974 ( 3 ) SCR 820		
	...	633
The National Federation of Blind v. Union Public Service Commission & Ors. (1993) 2 SCC 411		
	...	854
The Principal & Ors. v. The Presiding Officer & Ors. AIR 1978 SC 344;		
– relied on.	...	254
The Purtabpore Co., Ltd. v. Cane Commissioner of Bihar and Ors. AIR 1970 SC 1896;		
– relied on.	...	349
The Ramjas Foundation & Ors. v. Union of India & Ors. AIR 1993 SC 852;		
– relied on.	...	354
The Secretary, West Bengal Council of Higher Secondary Education v. Ayan Das & Ors. (2007) 10 SCR 464		
– relied on.	...	191
The State of Punjab v. The Okara Grain Buyers Syndicate Ltd., Okara & Anr. (1964) SCR 387		
– relied on.	...	280

(iv)

The Workmen of Cochin Port Trust v. The Board of Trustees of the Cochin Port Trust & Anr. 1978 ( 3 ) SCR 971		
– relied on.	...	321
Thomas (P.C.) v. P.M. Ismail & Ors. (2009) 10 SCC 239,		
– relied on.	...	890
Thulaseedharan (K.) v. Kerala State Public Service Commission, Trivendrum and Ors. (2007) 6 SCC 190;		
– relied on.	...	303
Tika Ram and Ors. v. State of U.P. and Ors. (2009) 10 SCC 689,		
– relied on.	...	209
Tilokchand Motichand (M/s) & Ors. v. H.B. Munshi & Anr. AIR 1970 SC 898;		
– relied on.	...	354
Treogi Nath and others v. Indian Iron and Steel Co.Ltd. and others AIR 1968 SC 205,		
– relied on.	...	572
Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors. (2009) 1 SCC 768,		
– relied on.	...	291
Triveni Rubber & Plastics (M/s.) v. Collector of Central Excise, Cochin AIR 1994 SC 1341;		
– relied on.	...	156

(vi)

U.P. State Electricity Board v. Ram Autar and Anr. (1996) 8 SCC 506;		
– relied on.	...	349
U.P. State Road Transport Corporation v. Basudeo Chaudhary & Anr. (1997) 11 SCC 370;		
– relied on.	...	242
U.P.S.R.T.C. v. Vinod Kumar, (2008) 1 SCC 115,	...	242
Udai Singh Dagar & Ors. v. Union of India & Ors. (2007) 10 SCC 306;		
– relied on.	...	256
Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar & Anr. AIR 1963 SC 786;		
– relied on.	...	291
UmaKant Tiwari & Ors. v. State of U.P. & Ors. (2003) 4 AWC 3016;		
– approved	...	256
Umarani (A.) v. Registrar, Cooperative Societies & Ors., (2004) 7 SCC 112;		
– relied on.	...	191
Umesh Challiyil v. K.P. Rajendra (2008) 11 SCC 740;		
– relied on.	...	713

(lvii)

Umrao v. Kapuria AIR 1930 Lahore 651; Union of India & Anr. v. International Trading Company & Anr., 2003 (1) Suppl. SCR 55	...	930
– relied on.	...	323
Union of India & Anr. v. Sher Singh & Ors. 1997 ( 1 ) SCR 1048	...	322
– relied on.	...	322
Union of India & Ors. v. Jaipal Singh 2003 (5) Suppl. SCR 115	...	322
– relied on.	...	322
Union of India & Ors. v. Keshar Singh 2007 (5) SCR 408	...	508
– relied on.	...	508
Union of India & Ors. v. Rakesh Kumar, 2001 (2) SCR 927	...	323
– relied on.	...	323
Union of India and Anr. v. Baljit Singh 1996 (7) Suppl. SCR 626	...	508
– relied on.	...	508
Union of India and Ors. v. Dhir Singh China (Colonel) Retd. 2003 ( 1 ) SCR 779	...	508
– relied on.	...	508
Union of India and Ors. v. Kali Dass Batish and Anr. AIR 2006 SC 789;	...	303
– relied on.	...	303
Union of India and Ors. v. Tarun K. Singh and Ors. (2003) 11 SCC 768	...	911

(lviii)

Union of India v. Azadi Bachao Andolan 263 ITR 706(SC),	...	751
Union of India v. C. Rama Swamy (1997) 3 SCR 760,	...	173
– relied on.	...	173
Union of India v. Harnam Singh (1993) 2 SCC 162;	...	173
– relied on.	...	173
Union of India v. S.S Uppal AIR 1996 SC 2340;	...	303
– relied on.	...	303
Union Territory of Chandigarh v. Dilbagh Singh and Ors. 1992 Suppl. (2) SCR 311	...	911
– relied on.	...	911
Usha P. Kuvelkar and Ors. v. Ravindra Subrai Dalvi (2008) 1 SCC 330;	...	48
Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P. (2006) 10 SCC 346;	...	734
Vadilal Panchal v. Duttatraya Dulaji Ghadigaonkar (1961) 1 SCR 1;	...	673
– relied on.	...	673
Vaid Brij Bhushan Sharma v. Board of Ayur & Unani Systems, Med. & Anr. SLP(C) No.22124 of 2002 decided by Supreme Court on 2.12.2002;	...	256
– relied on.	...	256
Vankata Reddy (D.) v. R. Sultan and Ors. 1976 (3) SCR 445	...	889
– relied on.	...	889

(lix)	
Veerappa Pillai (G.) v. Raman and Raman Ltd., (1952) SCR 583	
– relied on.	... 191
Vijay Kumar Gupta (Dr.) & Ors. v. State of U.P. & Ors. (1999) 2 UPLBEC 1063;	
– approved	... 256
Vijay Kumar Gupta (Dr.) & Ors. v. State of U.P. & Ors. (1999) AWC 1783;	
– approved	... 256
Vijaya Bank v. Additional Commissioner of Income Tax (1991) 187 ITR 541;	... 751
Vijendrajit Ayodhya Prasad Goel v. State of Bombay AIR 1953 SC 247,	... 1126
Vijendrajit v. State of Bombay AIR 1953 SC 247	... 1027
Virender Lal Vaishya v. Union of India & Ors. 2003 (2) Mah.LJ 64;	
– approved	... 256
Virender Nath Gautam v. Satpal Singh (2007) 3 SCC 617,	
– relied on.	... 714
Virsa Singh v. State of Punjab AIR 1958 SC 465;	
– relied on.	... 4
Vishwanatha Pillai (R.) v. State of Kerala & Ors. 2004 (1) SCR 360	
– relied on.	... 910

(lx)	
Vithal N. Shetti & Anr. v. Prakash N. Rudrakar & Ors. (2003) 1 SCC 18;	
– relied on.	... 254
W.B. State Warehousing Corporation and Anr. v. Sushil Kumar Kayan and Ors. (2002) 5 SCC 679,	... 965
Wahi (N.K.) v. Shekhar Singh & Ors. 2007 (3) SCR 883	
– relied on.	... 696
Whirlpool Corporation v. Registrar of Trade Marks (1998) 8 SCC 1	... 995
Yashoda v. State of Madhya Pradesh (2004) 3 SCC 98	... 1125
Yeshwant Singh Kothari v. State Bank of Indore & Ors. 1993 (1) SCR 208	
– relied on.	... 632
Yogendra Narayan Chowdhury & Ors. v. Union of India & Ors. 1995 ( 6 ) Suppl. SCR 17	
– relied on.	... 322
Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors., 2003 ( 2 ) SCR 662	
– relied on.	... 323
Yunis alias Kariya v. State of M.P. 2003 (1) SCC 425;	... 85
Zenit Mataplast P. Ltd. v. State of Maharashtra & Ors. 2009 (14) SCR 403	
– relied on	... 321
Zila Singh v. Hazari AIR 1979 SC 1066,	
– relied on.	... 931



(lxiii)

(lxiv)











(lxxiii)

(lxxiv)

(lxxv)

(lxxvi)

(lxxvii)

(lxxviii)

(lxxix)

(lxxx)

(lxxxi)

(lxxxii)



(lxxxiii)

(lxxxiv)

(lxxxv)

(lxxxvi)



THE

# SUPREME COURT REPORTS

*Containing Cases Determined by the Supreme Court of India*

**VOLUME INDEX  
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## **JUDGES OF THE SUPREME COURT OF INDIA**

(From 13.05.2010 to 8.07.2010)

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15. Hon'ble Mr. Justice Cyriac Joseph
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17. Hon'ble Mr. Justice R.M. Lodha
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(From 13.05.2010 to 8.07.2010)**

Hon'ble Mr. Justice H. S. Bedi, Judge, Supreme Court of India was on leave for one day on 08.07.2010 on full allowances.

Hon'ble Mr. Justice Cyriac Joseph, Judge, Supreme Court of India was on leave for one day on 05.07.2010 on full allowances.

Hon'ble Dr. Justice B. S. Chauhan, Judge, Supreme Court of India was on leave for four days from 05.07.2010 to 08.07.2010 on full allowances.

## ERRATA

Page No.	Line No.	Read for	Read as
852	17	HELD: 1.1 The respondent No. 1....	HELD: 1.1 <b>That</b> the respondent No. 1...

## CORRIGENDA

SCR Volume	Page No.	Para No.	Line No.	Read for	Read as
(2010) 7	421	18	4 (from bottom)	v. State of <b>Karnataka</b> reported	v. State of <b>Haryana</b> reported
(2010) 7	1041	10 Cont..	17	the exculpatory of the admission,	the exculpatory <b>nature</b> of the admission,
(2010) 7	1046	17	19	conviction but all	conviction but <b>if</b> all
(2010) 7	1046	17	22	used for <b>collaborating</b> the case .....	used for <b>corroborating</b> the case .....
(2010) 7	1047	19	14	or by <b>break opening</b> the lock	or by <b>breaking open</b> the lock
(2010) 7	1058	4 Cont..	7 (from bottom)	legal <b>preposition</b> advanced	legal <b>proposition</b> advanced
(2010) 7	1076	1 Cont..	2-3	It <b>appear</b> that,	It <b>appears</b> that,
(2010) 7	1091	12 Cont..	12	completed his period.....	completed his <b>probation</b> period.....
			15	completed or has not passed...	completed or <b>the probationer</b> has not passed...