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## SUBJECT-INDEX

### ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT, 1958:

(i) Rules framed under - Mining operations - In the protected area around 'Protected Monuments' declared under the Central and the State Acts - Permissibility - Extent of - Writ petition in public interest praying for cancellation of mining lease and stopping of mining operations within a radius of one kilometer from Jambunatha Temple which was declared as a protected monument under State Act - Petition dismissed by High Court - Appeal to Supreme Court - Constitution of Expert Committee by the Court -Held: Mining operations in the vicinity of protected ancient and historical monuments and archaeological sites are regulated by 1958 Act (Central Act) or the 1961 Act (State Act) and Rules made thereunder, and not by 1957 Act or the rules made thereunder - Mining operations were without permission under 1958 and 1961 Acts and the Rules framed thereunder - Hence, cannot be allowed to operate mines in the protected/regulated area - Recommendation of Expert Committee accepted and State

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Government directed to implement the recommendations - Direction to Expert Committee to undertake similar exercise, as in the present case, in respect of other protected monuments in the State, having mining operations in their vicinity and submit its report to State Government - Central Government also directed to appoint an Expert Committee to examine impact of mining on protected monuments under 1958 Act - Ancient Monuments and Archaeological Sites and Remains Rules, 1959 - r. 10 - Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Rules, 1966 - rr. 11 to 15 - Mines and Minerals (Development and Regulation) Act, 1957 - Mineral Concession Rules, 1961 - Mineral Conservation and Development Rules, 1988 - Constitution of India, 1950 - Directive Principles - Art. 49.

(ii) Protection of Ancient Monuments - Mining activities around protected ancient monuments - Ban on - Effect of - On right to development - Held: Right to developmental includes whole spectrum of civil, cultural, economic, political and social process for the improvement of people's well being and realization of their full potential - In view of the principle of sustainable development, the protection of ancient monuments has necessarily to be kept in mind, while carrying out development activities - Principle of sustainable development.

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Grants Commission Act, 1956 - To revise the pay of teachers and connected staff of the State Universities and educational institutions and to increase their age of superannuation from 62 to 65 - States were required to accept the Scheme in composite form, but the acceptance thereof was left to the discretion of the States - States were unwilling to accept the Scheme in its composite form - Giving rise to present litigations - Held: Education being List III subject of VII Schedule of the Constitution, States are at liberty to frame their own laws on this subject and the same will have primacy if it does not encroach upon jurisdiction of Parliament - In absence of any such legislation by the Central Government under Entry 25 of List III, the Regulations framed by way of delegated legislation, has to yield to the jurisdiction of the State - States, therefore, were not bound to accept or follow the regulations framed by UGC - But if they wish to adopt the Regulations, the States will have to abide by the Conditions laid down by the Commission - There can be no automatic application of the recommendations made by the Commission, without any conscious decision being taken by the State in this regard - Constitution of India, 1950 - VII Schedule List III, Entry 25 - University Grants Commission Act, 1956.

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ENVIRONMENTAL LAW:

Mushrooming of large number of hydroelectric projects in the State of Uttarakhand and its impact on Alaknanda and Bhagirathi river basins - Cumulative impact of those project components on eco-system - Direction to Ministry of Environment and Forest to constitute expert body to make detailed study as to the effect of the projects on environmental degradation - Till then MoEF as well as State Government directed not to grant any hydroelectric power project - Disaster Management Authority of the State also directed to submit its report to the Supreme Court as to whether they had any disaster management plan for combating unprecedented tragedy in the State of Uttarakhand.

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EVIDENCE ACT, 1872:

s. 32 - Dying declaration.  
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HYDROELECTRIC POWER PROJECTS:

Environmental and Forest clearance for - Granted to project developer - Writ petition filed objecting to the clearance - High Court directing the Ministry of Environment and Forest to hold public hearing - Held: Project in question is ongoing project, environmental clearance and forest clearance wherefor were granted way back in 1985 and 1987

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- 95% work is already over and nearly 4,000/- crores been spent on the project - No purpose would be achieved by way of public hearing at this stage - Now the safety and security of the dam and the people is of paramount importance - Directions issued to the authorities concerned and to the project developer to give effect to recommendations made by the Technical experts.

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PENAL CODE, 1860:

(1)(i) ss. 302, 324 and 323 r/w. s. 34 - Prosecution under - Of 4 accused - 3 injured eye-witnesses to the incident - Conviction by courts below - Held: Prosecution case is established by the evidence of injured eye-witnesses which was corroborated by medical evidence - Conviction of all the accused u/ss. 324 and 323 r/w. s. 34 is affirmed - But as regards conviction u/s. 302/34, in the facts of the case, accused No.4 alone can be held responsible for the death of the deceased and not accused Nos. 1, 2 and 3 - Hence, conviction of accused No. 4 u/s. 302 is affirmed and conviction of accused Nos. 1, 2 and 3 is set aside.

(ii) s. 34 - Liability under - Invocation of - Held: Liability u/s. 34 is a matter of inference to be drawn from the facts and circumstances of each case.

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(2) s. 304 (Part II) - Prosecution for murder - Conviction u/s. 302 by trial court and acquittal

therefrom by the High Court - Held: In view of the two dying declarations implicating the accused, and the same having been corroborated by the circumstantial evidence regarding the recovery of articles and evidence of PWs 2, 3 and 8, the prosecution case is proved - However, in absence of proof regarding intention of the accused for causing death, the accused can be held guilty of culpable homicide not amounting to murder - His conviction altered to one u/s. 304 (Part II) - His sentence, in the circumstances of the case, reduced to period already undergone i.e. six years with fine of Rs. 2000/- - Evidence Act, 1872 - s. 32 - Dying declaration.

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PUBLIC INTEREST LITIGATION:

Power of Supreme Court - To issue directions, which may appear to be contrary to the statutes - Scope of.

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RES JUDICATA:

Applicability of - Held: In absence of record of the previous proceedings, principle of res judicata cannot be applied in the present case.

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SERVICE LAW:

Seniority - Date of seniority - Seniority granted w.e.f. the date of promotional order - Promotee claimed retrospective seniority w.e.f. the date the vacancy had arisen - High Court allowed the claim of the promotee on the grounds that the service rules provided to decide seniority w.e.f. the date of arising of vacancy; and that there has been hostile discrimination against the promotee as other 10 promotees had been accorded seniority w.e.f. the date of arising of vacancy - Held: Conferment of retrospective seniority to the promotee by High Court is not tenable - As per service rules the seniority has to be computed from the date of appointment, unless otherwise stipulated in the letter of appointment - High Court misdirected itself in holding that there was discrimination because the promotee in question and the other 10 promotees were governed by different set of rules - Uttar Pradesh Ayurvedic Aur Unani Mahavidyalaya Adhyapako ki Seva Niyamavali, 1990 - r. 21 - Constitution of India - Art. 14.

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