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**SUBJECT-INDEX****ADMINISTRATIVE LAW:**

Subordinate legislation.

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**ALL INDIA COUNCIL FOR TECHNICAL EDUCATION ACT, 1987:**

(i) ss.2(h), 10, 11, 12 and 13 - Technical education imparted by Universities and their affiliated colleges - Status of affiliated colleges - Purview of definition of "technical institution" - Role of AICTE - Held: The role of inspection conferred upon AICTE vis-à-vis Universities is limited to the purpose of ensuring proper maintenance of norms and standards in technical education system so as to conform to the standard laid down by it with no further or direct control over such Universities or scope for any direct action except bringing it to the notice of UGC - Role of AICTE vis-à-vis Universities is only advisory, recommendatory and one of providing guidance and has no authority empowering it to issue or enforce any sanctions by itself - Colleges affiliated to University/ Universities are part of them and exclusion of University in definition of technical institution as defined in s.2(h) of AICTE Act must be extended to affiliated colleges also - Provisions of AICTE Act are to be implemented through UGC - The powers and functions for controlling and regulating the Universities and its affiliated colleges has been

explicitly conferred upon UGC - University Grants Commission Act, 1956 - s.12A r/w ss.25 and 26.

(ii) s.2(g) - Technical education - Course in Computer Applications at post graduation level (MCA) - Contention raised on behalf of AICTE that technical education includes MCA - Held: MCA also comes within the definition of technology - The same is technical education and, therefore, comes within the definition of technical education but for its proper conduct of courses and regulation, role of AICTE must be advisory and for the same, a note shall be given to UGC for its implementation by it but not AICTE.

(iii) s.2(g) - Course in Management at post-graduate level (MBA) - If 'technical education' u/ s.2(g) of the AICTE Act - Held: MBA course is not a technical course within definition of AICTE Act - Reasons assigned for MCA course being 'technical education' does not hold for MBA course - Approval from AICTE not required for obtaining permission and running MBA course by appellant colleges.

(iv) s.24 - AICTE Regulations - Amended regulation introduced by AICTE in exercise of its power u/ s.10(k) of AICTE Act - However, amended Regulation not placed before Parliament as mandatorily required as per s.24 of AICTE Act - Effect - Held: If Statute prescribes a particular procedure to do an act in a particular way, that act must be done in that manner, otherwise it is not at all done - Non-placing of the amended Regulations on the floor of the Houses of Parliament as required

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u/s.24 of AICTE Act vitiated the amended Regulations in law - Administrative Law.

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CODE OF CRIMINAL PROCEDURE, 1973:

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CONSTITUTION OF INDIA, 1950:

(1) Arts.15(3) and 39.

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(2) Arts.72 and 161.

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(3) Art.136.

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CRIMES AGAINST CHILDREN:

Sexual assault - On minor children - Held: It is the duty of State to protect children from all forms of sexual exploitation and abuse - It is also duty of every citizen to report the act of assault or abuse on a minor child to police or Juvenile Justice Board - While dealing with an issue of child abuse, approach of court should be child centric - Proper and sufficient safeguards also need to be provided to persons who come forward to report such incidents - Supreme Court as a *parens patriae*, gave certain directions to State authorities, to educational institutions, medical institutions and homes wherever children are housed, to media, hotels, lodges, clubs, studios for protection of

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children from sexual abuse - Further directed that non-reporting of such crime would be a serious crime - Constitution of India, 1950 - Arts. 15(3) and 39 - United Nations Convention on the Rights of Children - Articles 3(2) and 34 - Protection of Children from Sexual Offences Act, 2012.

(Also See under: Penal Code, 1860)

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ENVIRONMENTAL LAW:

(See under: Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006)

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EVIDENCE:

Circumstantial evidence - Standard of proof - Held: Circumstances relied upon, must be fully established and chain of circumstances must be complete, so as not to leave any reasonable ground for a conclusion consistent with innocence of accused.

(Also See under: Penal Code, 1860).

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GUIDELINES:

Guidelines issued by Ministry of Tribal Affairs by its letter dated 12.7.2012.

(See under: Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006)

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HAZARDOUS WASTE (MANAGEMENT AND HANDLING) RULES, 1989:

r. 5 (2) - Allotment of area to petit

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treat, recycle, reprocess, store and dispose of hazardous waste - Subsequently, allotment to another concern also - Writ petition by petitioner challenging the order of curtailment - Held: The order is not patently unjust or illegal on the existing facts of the case - In view of the order of allocation specifically determining the territory which has been allotted to petitioner and fifth respondent, order of High Court as also of appellate authority do not need to be interfered with as High Court is justified in holding that petitioner would not encroach upon the territory which falls beyond the territory which had been allotted to it - Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 - Constitution of India, 1950 - Art.136.

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rr.36, 37 and 57.  
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MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957:

Right of State over mines or minerals lying underneath the forest land - Held: State holds the natural resources as a trustee for the people - s.3 of Forest Rights Act does not vest such rights on STs or other TFDs - PESA Act speaks only of minor minerals, which says that recommendation of Gram Sabha shall be made mandatory prior to grant of prospecting licence or mining lease for minor minerals in Scheduled Areas - State Government has power to reserve any particular area for Bauxite mining for a Public Sector Corporation - Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 - s.3 - Panchayat (Extension to Scheduled Areas) Act, 1996.

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PANCHAYAT (EXTENSION TO SCHEDULED AREAS) ACT, 1996:

s.4(d).  
(See under: Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006) ..... 881

PENAL CODE, 1860:

ss. 302, 376, 366-A, 363 r/w. s. 34 - Rape and murder of minor and intellectually challenged girl - By accused aged about 52 years - Conviction and death sentence by courts below - Held: Guilt of accused proved beyond reasonable doubt - Conviction upheld - However, sentence of death

reduced to life imprisonment - All other sentences awarded, directed to run consecutively - Sentence/ Sentencing.

(Also See under: Crimes against children)

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SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006:

(i) ss. 3 and 6 - Primitive Tribal Groups - Specific protections extended to their "habitat and habitations" - Bauxite Mining Project (BMP) in Kalahandi and Rayagada Districts of Orissa - Violation of rights of Scheduled Tribes (STs) and "Traditional Forest Dwellers" (TFDs) - Role of Gram Sabha - Held: STs and other TFDs have a vital role to play in the environmental management and development because of their knowledge and traditional practices - State has a duty to recognize and duly support their identity, culture and interest so that they can effectively participate in achieving sustainable development - STs and other TFDs residing in Scheduled Areas have a right to maintain their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands - Gram Sabha to consider whether STs and other TFDs, had any religious rights i.e. rights of worship over the Niyamgiri hills, which is the hill top known as Niyam-Raja - Gram Sabha also to examine whether proposed mining area would in

any way affect the abode of Niyam-Raja - State Government as well as Ministry of Tribal Affairs, Government of India, to assist Gram Sabha for settling of individual as well as community claims - Further directions given - Environmental Law.

(ii) s.6 - Nature and extent of "individual"/ "community rights" of Scheduled Tribes (STs) and other "Traditional Forest Dwellers" (TFDs) and their customary and religious rights - Determination of - Role of Gram Sabha - Discussed - Held: Gram Sabha is the authority to initiate process for determining the nature and extent of individual or community forest rights or both that may be given to forest dwelling STs and other TFDs within the local limits of their jurisdiction - Gram Sabha functioning under Forest Rights Act r/w s.4(d) of PESA Act has an obligation to safeguard and preserve the traditions and customs of STs and other forest dwellers, their cultural identity, community resources etc., which they have to discharge following the guidelines issued by Ministry of Tribal Affairs by its letter dated 12.7.2012 - Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2007 read with the 2012 Amendment Rules - Panchayat (Extension to Scheduled Areas) Act, 1996 - s.4(d).

(iii) Object and purpose of the Act - Discussed - Held: The Act is a social welfare or remedial statute - It intends to protect custom, usage, forms, practices and ceremonies which are appropriate to the traditional practices of forest dwellers - The Act protects a wide range of rights of

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and STs including customary rights to use forest land as a community forest resource and not restricted merely to property rights or to areas of habitation.

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SENTENCE/SENTENCING:

(i) Death sentence - Award of - Held: While awarding death sentence, courts should apply 'crime test', 'criminal test' and 'rarest of rare test' - 'Crime test' has to be fully satisfied - 'Rarest of rare test' should be 'society centric' and not 'judge centric'.

(ii) Death sentence - Award of - By treating pendency of criminal case against accused as aggravating circumstance - Propriety of - Held: Pendency of criminal cases as such is not aggravating circumstance unless accused is found guilty and convicted in those cases.

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(iii) Death sentence - Rarest of Rare case principle - Applicability of - Discussed - Death penalty and its execution should not become matter of uncertainty - Law Commission of India should examine whether death penalty is a deterrent punishment or is retributive justice or serves an incapacitative goal - Code of Criminal Procedure, 1973 - s. 432 - Constitution of India, 1950 - Arts. 72 and 161.

(iv) Death sentence - Commutation of - Need to record reasons for commuting the sentence - Discussed.

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SERVICE LAW:

(i) Departmental enquiry - Punishment imposed upon delinquent employee set aside by court/tribunal as the enquiry stood vitiated for technical reasons - Entitlement of employer to hold enquiry afresh from the point it stood vitiated - Held: Once court sets aside an order of punishment on the ground that enquiry was not properly conducted, court should not preclude employer from holding the enquiry in accordance with law - It must remit the case to disciplinary authority, to conduct enquiry from the point it stood vitiated, and to conclude the same in accordance with law - However, resorting to such a course depends upon gravity of delinquency involved.

(ii) Departmental enquiry - Enquiry at belated stage - If can be quashed on the ground of delay - Held: Court/tribunal should not generally set aside

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departmental enquiry, and quash charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review - Court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that proceedings are allowed to be terminated, only on the ground of a delay in their conclusion.

(iii) Departmental enquiry - Enquiry on vague and unspecified charges - Permissibility - Held: Nowhere should a delinquent be served a chargesheet, without providing to him, a clear, specific and definite description of charge against him - When statement of allegations are not served with chargesheet, enquiry stands vitiated, as having been conducted in violation of principles of natural justice.

(iv) Departmental enquiry - Enquiry against retired employee - Circumstances when such enquiry can be conducted - Held: Relevant rules governing the service conditions of an employee are determining factors as to whether and in what manner domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation - Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change - The punishment of dismissal/removal from service would not be imposed.

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(v) Departmental enquiry - For misconduct - Termination of appellant-employee - Challenge to - Meanwhile, appellant stood retired upon reaching the age of superannuation - Tribunal held that none of the charges levelled against appellant stood proved, and enquiry had not been conducted according to Rules - Termination order quashed - Single Judge of High Court upheld the judgment of Tribunal, - Division Bench too, upheld judgment of Single Judge, as well as that of Tribunal, but simultaneously also held, that respondents were at liberty to proceed with the enquiry afresh - Held: Division Bench committed error by giving liberty to respondents to hold a fresh enquiry - Charges levelled against appellant were entirely vague, irrelevant and unspecific - Question of holding any fresh enquiry on such vague charges, therefore, unwarranted and uncalled for - It was not necessary for Division Bench to permit the respondents to hold a fresh enquiry after more than a decade of retirement of appellant - Maharashtra Employees of Private School Rules, 1981 - rr.36, 37 and 57.

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