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SUBJECT-INDEX**ADMINISTRATIVE LAW:**

Delegated Legislation/Subordinate legislation - MCI and DCI introducing NEET by amending the relevant Regulations, for admission to medical and dental courses - Held: Freedoms and rights flowing from Arts. 19(1)(g), 25, 26, 29(1) and 30 of the Constitution cannot be superseded by Regulations framed by a statutory authority by way of delegated legislation - The fact that such power was exercised by MCI and DCI with previous approval of Central Government, as contemplated u/s 33 of 1956 Act and u/s 20 of the 1948 Act, would not bestow upon the Regulations framed by MCI and DCI, which are in the nature of subordinate legislation, primacy over the Constitutional provisions.

(Also see under: Education/Educational Institutions)

Christian Medical College Vellore & Ors. v. Union of India and Ors. 908

APPEAL:

(1) Appeal against acquittal.

(See under: Prevention of Corruption Act, 1988) 1130

(2) Criminal appeal - Decided by High Court in absence of counsel for accused - Held: Court should not decide criminal case in absence of counsel for accused - Accused should not suffer for the fault of his counsel and court must appoint another counsel as an amicus curiae to defend the accused - It is duty of appellate court to look into the evidence adduced in the case so as to arrive at the conclusion whether prosecution case can be said to have been proved beyond reasonable doubt - Credibility of a witness has to be adjudged by appellate court in drawing

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inference from proved and admitted facts - In the case on hand, the said recourse has not been followed by High Court - Impugned order is set aside and matter remitted to High Court for disposal afresh - Appellant is in custody for nearly two months as against the sentence of two years - Therefore, he is ordered to be released on bail till the disposal of appeal pending before High Court - Bail.

Shridhar Namdeo Lawand v. State of Maharashtra 1057

ATOMIC ENERGY ACT, 1962:

(See under: Land Laws) 863

BAIL:

(See under: Appeal) 1057

**CIRCULARS/GOVERNMENT ORDERS/
NOTIFICATIONS:**

(i) Notification No. MCI-31(1)/2010-MED/49068 dated 21.12.2010.

(ii) Notification No. MCI. 18(1)/2010-MED/49070 dated 21.12.2010.

(iii) Notifications both bearing No. DE-22-2012 and dated 31.5.2012, as regards BDS and MDS courses.

(See under: Education/Educational Institutions) 908

**COAL BEARING AREAS (ACQUISITION AND
DEVELOPMENT) ACT, 1957:**

(See under: Land Laws) 863

CODE OF CIVIL PROCEDURE, 1908:

(i) O.6, r.17 - Written statement - Amendment - Equitable set-off - Suit for declaration as regards plaintiffs' entitlement to certain amounts - Defendants seeking amendment of written statement after more than 3 years of its filing and seeking to grant of a decree for a certain amount - Held: Division Bench of High Court has rightly

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allowed the amendment on the basis that the claim put forth could be treated as a plea in the nature of equitable set-off, for it has treated the stand taken in the amendment petition to be a demand so connected in the nature and circumstances that they can be looked upon as a part of one transaction - The view expressed by the Division Bench has to be treated as a prima facie expression of opinion. Whether the claim would be allowable or not will depend upon the evidence adduced before the court so as to sustain a claim of equitable set-off. (ii) O. 8, rr. 6 and 6-A - Set off and counter claim - Legal set off and equitable set-off - Explained.

Jitendra Kumar Khan and Others v. The Peerless General Finance and Investment Company Limited and Others 1093

CODE OF CRIMINAL PROCEDURE, 1973:

s.438 - Anticipatory bail - Cancellation of - Investigation against appellants for causing gunshot injuries to complainant, pending - Addl. Sessions Judge granting anticipatory bail - Held: This is not a fit case for granting anticipatory bail, especially when investigation is not over and the weapon used in the offence is yet to be traced - None of the accused persons had disclosed the source from which the weapon and bullets were procured - Additional Sessions Judge, while granting anticipatory bail, opined that after having considered the medical report, the ingredients of s. 326 IPC have not been satisfied - It was too early for Additional Sessions Judge to express any opinion merely looking at the medical report, which, however, positively indicates of gunshot injury, may be simple, and it is due to that reason that the police has added the offences u/s. 307 IPC as well as s. 25 of Arms Act - Additional Sessions Judge has committed an error in granting anticipatory bail to respondents - Order passed by Additional Sessions Judge and the affirmation

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order passed by High Court, are set aside.

Nasiruddin v. State (NCT) Delhi and Ors. 1085

COKING COAL MINES (NATIONALISATION) ACT, 1972:

(See under: Land Laws) 863

CONSTITUTION OF INDIA, 1950:

(1) Arts. 19(1)(g), 25, 26 and 30 - National Eligibility-cum-Entrance Test (NEET) for Medical and Dental courses - Held: The course of action adopted by MCI and DCI would not qualify as a reasonable restriction, but would amount to interference with rights guaranteed under Art. 19(1)(g) and, more particularly, Art.30, which is not subject to any restriction similar to Art. 19(6) - Admissions to educational institutions have been held to be part and parcel of their right to administer and the same cannot be regulated, except for the purpose of laying down standards for maintaining the excellence of education being provided in such institutions.

(Also see under: Education/Educational Institutions)

Christian Medical College Vellore & Ors. v. Union of India and Ors. 908

(2) Arts. 19(1)(g), 25, 26(a), 29(1) and 30(1) - Seventh Schedule, List I, Entry 66 - List III, Entry 25.

(See under: Education/Educational Institutions) 908

(3) (i) Art.136 - Supreme Court of India - Power to modify its decisions - Held: Constitution of India bestows upon Supreme Court the inherent power to modify its earlier decision if it finds that the error pointed out in the modification petition was under mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration had resulted in miscarriage of justice - Interlocutory

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applications.

(ii) Art. 141.

(Also see under: Extradition Act, 1962)

Abu Salem Abdul Qayyum Ansari v. Central Bureau of Investigation & Anr. 1061

(4) Arts. 294 and 297.

(See under: Land Laws) 863

DENTISTS ACT, 1948:

(See under: Education/Educational Institutions) 908

EDUCATION/EDUCATIONAL INSTITUTIONS:

Medical and Dental education - Admission to MBBS, Post-Graduate Medical Courses, BDS and MDS courses - National Eligibility-cum-Entrance Test (NEET) - Held: The Notifications and the 2010 (Amendment) Regulations whereby MCI introduced NEET and the corresponding amendments in the Dentists Act, 1948 are ultra vires the provisions of Arts. 19(1)(g), 25, 26(a), 29(1) and 30(1) of the Constitution, since they have the effect of denuding the States, State-run Universities and all medical colleges and institutions, including those enjoying the protection of these constitutional provisions, from admitting students to their M.B.B.S., B.D.S. and Post-graduate courses, according to their own procedures, beliefs and dispensations, which is an integral facet of the right to administer - MCI or DCI has no authority under the relevant Acts to take away the right of educational institutions to admit students - MCI is not empowered under 1956 Act to conduct NEET - Regulations cannot prevail over the constitutional guarantees under Arts. 19(1)(g), 25, 26, 29(1) and 30 of the Constitution - Impugned Notifications are quashed - This will not, however, invalidate actions so far taken under the amended Regulations, including the admissions already given on the basis of NEET conducted by

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MCI, DCI and other private medical institutions, and the same shall be valid for all purposes - Indian Medical Council Act, 1956 - s. 33 r/w ss. 19 and 20 - Dentists Act, 1948 - Constitution of India, Arts. 19(1)(g), 25, 26(a), 29(1) and 30(1) - Seventh Schedule, List I, Entry 66 - List III, Entry 25.

(Also see under: Constitution of India, 1950)

Christian Medical College Vellore & Ors. v. Union of India and Ors. 908

EVIDENCE:

(1) Appreciation of evidence - Minor contradictions and inconsistencies - High Court setting aside the conviction and acquitting the accused by referring to some discrepancies - Held: Every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments not affecting the core of the case, should not be taken to be a ground to reject prosecution evidence - While appreciating the evidence of a witness, approach must be as to whether evidence of witness read as a whole appears to have a ring of truth - High Court in its appreciation of evidence has laid undue emphasis on some contradictions which do not affect prosecution case - It has read the evidence not as a whole but in utter fragmentation and appreciated the same in total out of context - Testimonies of prosecution witnesses are credible and there is no reason to treat their testimony as untrustworthy - Penal Code, 1860 - s.302.

(Also see under: Penal Code, 1860)

Mritunjoy Biswas v. Pranab @ Kuti Biswas and Anr. 1105

(2) Evidence of complainant in a bribe case - Nature of - Discussed.

(Also see under: Prevention of Corruption Act, 1988)

State of Punjab v. Madan Mohan Lal Verma 1130

EXTRADITION ACT, 1962:

(i) ss.3(1) and 21 - Extradition - Accused in 1993 Bombay Blast case, extradited to India from Portugal (Extradition order dated 28.3.2003) on the assurance that he would not be awarded capital sentence and imprisonment for more than 25 years - Additional charges framed - Difference of opinion between Courts in India and courts in Portugal as regards trial of accused for additional charges - CBI seeking to modify judgment in *Abu Salem* and praying for withdrawal of additional charges - Held: Taking note of the fact that the offences for which the appellant was extradited to India are grave enough to even award him the maximum punishment and, therefore, no prejudice would be caused if the application for modification is allowed - Accordingly, prayer of CBI allowed and additional charges permitted to be withdrawn - However, the analysis and reasoning rendered in the judgment of *Abu Salem* with regard to the interpretation of the Principle of Speciality stands good as the law declared by the Court under Art. 141 of the Constitution of India and shall be binding on all courts within the territory of India - Constitution of India, 1950 - Art. 141.

(ii) ss. 3(1) and 21 - Ministerial order of Government of Portugal permitting extradition of accused in 1993 Bombay blast case - Additional charges framed by Special Court - Lisbon Court of Appeals holding the additional charges in violation of extradition order and authorization granted ought to be terminated - Held: Constitutional Court of Portugal holding that Portuguese law does not provide for any specific consequence for violation of the Principle of Specialty and the findings may not be construed as a direction to Union of India to return the appellant to Portugal but shall only serve as a legal basis for Government of Portugal, should

it choose to seek the return of appellant to Portugal through political, or diplomatic channels, which has not been done till date - In this view of the matter, order of Extradition dated 28.03.2003 stands valid and effective in the eyes of law.

(Also see under: Constitution of India, 1950)

Abu Salem Abdul Qayyum Ansari v. Central Bureau of Investigation & Anr. 1061

FIR:

Non-mentioning name of accused in FIR - Held: Evidence shows that accused was named at earliest opportunity - There is nothing on record to suggest that he was falsely implicated by way of an afterthought.

(Also see under: Penal Code, 1860; and Evidence)

Mritunjoy Biswas v. Pranab @ Kuti Biswas and Anr. 1105

HINDU LAW:

'Coparcenary property' - 'Coparcener' - Held: Coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor - So long, on partition, an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property and if a son is subsequently born, the alienation made before the birth cannot be questioned - But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener - Therefore, in the instant case, sale deeds and release deed executed by the father after the birth of his son, to the extent of the entire

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property are illegal, null and void.

Rohit Chauhan v. Surinder Singh & Ors. 897

INDIAN MEDICAL COUNCIL ACT, 1956:

(1) s.19-A(2) - Furnishing of copies of regulations and amendments by MCI to States - Held: Submission of draft amended Regulations to State Governments for their views cannot be said to be directory, since MCI has to take into consideration the comments, if any, received from any State Government in respect thereof, before submitting the same to Central Government for sanction.

(Also see under: Education/Educational Institutions)

Christian Medical College Vellore & Ors v. Union of India and Ors. 908

(2) s. 33 r/w ss. 19 and 20.

(See under: Education/Educational Institutions) 908

INTERLOCUTORY APPLICATIONS:

(See under: Constitution of India, 1950) 1061

INTERNATIONAL LAW:

Extradition - Explained.

Abu Salem Abdul Qayyum Ansari v. Central Bureau of Investigation & Anr. 1061

INVESTIGATION:

(See under: Penal Code, 1860) 1105

KERALA MINOR MINERAL CONCESSION RULES, 1967:

Mines and Minerals.

(See under: Land Laws) 863

LAND ACQUISITION ACT, 1894:

ss. 4, 6 and 23 - Acquisition of agricultural land for industrial development - Compensation - Comparative sale transactions - Criteria for determination of market value of acquired land - Explained - Held: That the acquisition of land is for

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commercial purpose should be the relevant criteria for determining the market value by Land Acquisition Officer and reference court - Reference court, while enhancing the compensation, was right in placing reliance upon sale instances even of small plots of land and holding that there is a trend of escalation of price of land situated in proximity of acquired land - The said finding of fact has been erroneously set aside by High Court - Reference court by placing reliance upon documentary and oral evidence on record, and by re-determining the market value, has awarded just and reasonable compensation - Judgment of High Court set aside and award passed by reference court, restored.

Digamber & Ors. v. State of Maharashtra & Ors. 1037

LAND LAWS:

Jenmis or holders of jenmom rights in Malabar area - Rights with regard to minerals underneath the soil - Held: Ownership of sub-soil/mineral wealth should normally follow the ownership of land, unless owner of land is deprived of the same by some valid process - No such deprivation is brought to the notice of the Court - Appellants are, therefore, the proprietors of minerals obtaining in their lands - The recitals in patta or Collector's standing order that exploitation of mineral wealth in the patta land would attract additional tax cannot in any way indicate the ownership of State in minerals - The power to tax is a necessary incident of sovereign authority (imperium) but not an incident of proprietary rights (dominium) - Constitution of India, 1950 - Arts. 294 and 297 - Mines and Minerals (Regulation and Development) Act, 1957 - Mineral Concession Rules, 1960 - Kerala Minor Mineral Concession Rules, 1967 - Coking Coal Mines (Nationalisation) Act, 1972 - Coal Bearing Areas (Acquisition and Development) Act, 1957 - Atomic Energy Act, 1962 - Oilfields

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(Regulation and Development) Act, 1948 - Mines and Minerals.

Threesiamma Jacob & Ors. v. Geologist, Dptt. of Mining & Geology & Ors. 863

MINERAL CONCESSION RULES, 1960:

Mines and Minerals.
(See under: Land Laws) 863

MINES AND MINERALS:

(See under: Land Laws) 863

MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT, 1957:

Mines and Minerals.
(See under: Land Laws) 863

OILFIELDS (REGULATION AND DEVELOPMENT) ACT, 1948:

(See under: Land Laws) 863

PENAL CODE, 1860:

s.302 - Murder caused by gun-shot - Conviction by trial court - Acquittal by High Court - Held: Husband of deceased has clearly deposed to have seen the accused firing at his wife - Nephew of deceased (informant) has stood by his earlier version - They are the most natural witnesses and there is no reason that they would falsely implicate the accused - Besides, in the instant case, abscondence of accused gains significance - Non-examination of the treating doctor at Primary Health Centre does not affect prosecution case - When there is ample unimpeachable ocular evidence and the same has been corroborated by medical evidence, non-recovery of the weapon does not affect prosecution case - Judgment of acquittal passed by High Court being wholly unsustainable, is set aside and conviction recorded by trial court, restored - Investigation - Evidence.

Mritunjoy Biswas v. Pranab @ Kuti Biswas and Anr. 1105

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PREVENTION OF CORRUPTION ACT, 1988:

(i) ss. 7 and 13(1)(d) r/w s.13(2) - Conviction by trial court, set aside by High Court - Held: Demand of illegal gratification is sine qua non for constituting an offence under the Act - Mere recovery of tainted money is not sufficient to convict the accused, unless there is evidence to prove payment of bribe or that the money was taken voluntarily as a bribe - Prosecution has not disclosed the genesis of the case correctly - There is, therefore, no cogent reason to interfere with the conclusion reached by High Court - Appeal against acquittal.

(ii) s. 20 - Statutory presumption - Rebuttal of - Discussed.

State of Punjab v. Madan Mohan Lal Verma 1130

SUIT:

(See under: Wakf Act) 1033

WAKF ACT:

Wakf Tribunal - Jurisdiction of - Suit for perpetual injunction restraining the defendants/respondents from interfering in administration, management and peaceful possession and enjoyment of Mosque - Held: Dispute is with regard to management and peaceful enjoyment of Mosque and madrassa and assets which relate to Wakf - Nature of relief clearly shows that Wakf Tribunal has got jurisdiction to decide the disputes - There is no error in Wakf Tribunal entertaining the suit - High Court committed an error in holding otherwise - Order passed by High Court is set aside and the matter remitted to it to consider the revision on merits - Suit.

Akkode Jumayath Palli Paripalana Committee v. P.V. Ibrahim Haji and Others 1033

WORDS AND PHRASES:

Expression, 'regulate' - Connotation of - Explained.

Christian Medical College Vellore & Ors. v. Union of India and Ors. 908