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(i) O. 6, r. 17, Proviso - Amendment of pleadings
- Application for amendment of plaint filed after
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for orders - Allowed by High Court - Held: Proviso
inserted in r. 17 clearly states that no amendment
shall be allowed after trial has commenced except
when court comes to the conclusion that in spite of
due diligence, the party could not have raised the
matter before commencement of trial - On facts,
there is a clear lack of 'due diligence' and mistake
committed does not come within the preview of a
typographical error - Order passed by High Court
set aside.

(ii) O. 6 r. 17, Proviso - Amendment of pleadings
- Court's discretion to grant permission for - Held:
Lies on two conditions that no injustice must be
done to the other side and amendment must be
necessary for the purpose of determining real
question in controversy between parties - However,
to balance the interests of parties in pursuit of
doing justice, the proviso has been added which
clearly states that no amendment shall be allowed
after trial has commenced, unless court comes to
the conclusion that in spite of due diligence, the
party could not have raised the matter before
commencement of trial.

(iii) Term 'due diligence' - Meaning and usage of

- Held: Due diligence is the idea that reasonable
investigation is necessary before certain kinds of
relief are requested - It is specifically used in the
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in situations of requested amendment after
commencement of trial - Party requesting a relief
stemming out of a claim is required to exercise
due diligence and it is a requirement which cannot
be dispensed with.

(iv) Term 'typographical error' - Held: Is defined as
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(3) s.173 (8) - Further investigation in a murder case - Held: When Magistrate himself had expressed serious reservations about investigation and had directed further investigation, it was expected of High Court to look into the matter with greater care and caution - Additional Director of Police, State CID, directed to order a proper investigation by deputing a senior officer and furnish a report to trial court.

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(4) s.190(1)(b) - Cognizance of offence by Magistrate - Held: At the stage of taking cognizance of an offence, court has only to see whether prima facie there are reasons for issuing the process and whether ingredients of offence are there on record - At this stage Magistrate is required to exercise sound judicial discretion and apply his mind to facts and materials before him - In doing so, Magistrate is not bound by opinion of investigating officer and he is competent to exercise his discretion irrespective of the views expressed by police in its report and may prima facie find out whether an offence has been made out or not.

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(5) (i) ss.190 and 200 - A case based on police report and a complaint case - Procedure to be followed by Magistrate - Held: In a case based on Police report, court while taking cognizance will

straightaway examine whether a prima facie case is made out or not and will not enter into correctness of allegation leveled in F.I.R.; whereas a complaint case requires an enquiry by Magistrate u/s.200 if he takes cognizance of complaint - In case he refuses to take cognizance he may either dismiss the complaint or direct the investigating agency to enter into further investigation - In case, he does not exercise either of these two options, he will have to proceed with the enquiry himself as envisaged and enumerated u/s.200 - But, he cannot exercise option of directing the Police to submit a charge-sheet as such a course is clearly not envisaged under Cr.P.C. and more so in a complaint case.

(ii) ss.190(1)(c) , 200, 202, 156(3) - Complaint case - Closure report - Filing of chargesheet - Case registered against appellant on the basis of complaint u/ss.7 and 13(1)(d) r/w s. 13(1)(2) of Prevention of Corruption Act - After investigation, closure report submitted before Special Judge, who refused to accept the same and directed the police to file chargesheet against appellant - Held: Special Judge instead of following the procedure enumerated in the Cr.P.C. rejected the closure report and in the process committed error of law and jurisdiction - Special Judge was not competent to proceed in the matter without sanction for prosecution and, therefore, could not have ordered for reinvestigation - This amounted to sheer abuse of process of law resulting into vexatious proceedings and harassment of appellant for more than 10 years without discussing why the

Magistrate disagreed with closure report.

(iii) s.200 - Enquiry under - Necessity for - Discussed.

Vasanti Dubey v. State of Madhya Pradesh 330

(6) s.197 - Prosecution of public servant - Requirement of previous sanction - Held: Offence of cheating u/s 420 IPC cannot be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty - Therefore, sanction of competent authority u/s 197 CrPC was not required - Trial court shall proceed as per summoning order - Penal Code, 1860 - ss.420, 406 and 161.

(ii) s. 397 - Revision - Order of Magistrate directing issuance of summons - Held: Is open to challenge under revisional jurisdiction.

Om Kr. Dhankar v. State of Haryana & Anr. 1160

(7) ss.200, 204, 207, 208, 209, 319 - Issuance of summons by Magistrate against other person on a private complaint u/s.200 after committal of accused to Court of Session - Held: Once Court of Session takes cognizance of offence pursuant to committal order, the only other stage when court is empowered to add any other person to the array of accused is after reaching evidence collection when powers u/s.319 can be invoked - In the instant case, stage of s.209 having been reached, it was not open to Magistrate to exercise power

u/s.204(1)(b) and issue summons to the other person.

Jile Singh v. State of U.P. & Anr. 201

(8) (i) s. 313 - Examination of accused - Explained - Rash and negligent driving of accused by consuming alcohol killed seven persons and caused injuries to eight others - Held: Burden is on accused to establish that by not apprising him of incriminating evidence and inculpatory materials that had come in prosecution evidence against him, a prejudice has been caused resulting in miscarriage of justice - Conclusion drawn on completion of investigation was put to him - Neither the doctor, nor the Investigating Officer, were cross-examined in this respect - It cannot be said that the accused was not made fully aware of prosecution evidence that he had driven the car rashly or negligently in a drunken condition.

(ii) s. 211 - Framing of charge - Accused charged with offences punishable u/ss.304 (Part-II) and s.338 IPC for causing death of 7 labourers and injuries to 8 others by rash and negligent driving - Words 'drunken condition' not stated in the charge - Charge neither framed with offence punishable u/s 185, Motor Vehicles Act nor u/s 66 (1) (b) of Bombay Prohibition Act - Held: Omission of words 'in drunken condition' in the charge is not very material and, in any case, such omission has not at all resulted in prejudice to accused as he was fully aware of prosecution evidence which consisted of his drunken condition at the time of incident.

(Also see under: Penal Code, 1860)

Alister Anthony Pareira v. State of Maharashtra 145

(9) s.357 - Compensation to victim of crime - Power of court to award compensation - Held: Shall be exercised by courts having regard to the nature of injury or loss suffered by victim as also the paying capacity of accused - In the instant case, appellant was found guilty of offences punishable u/ss.143, 148, 323 and 325 r/w s.149 - Incident took place in the year 1997 - Appellant faced a prolonged trial and suffered trauma of uncertainty arising out of his conviction by courts below for murder - Besides he had no criminal antecedents or involvement in any case, before or after the incident in question - He is running a hotel - He is, therefore, directed to deposit the amount towards compensation to be paid to the widow of deceased and to injured victims.

(Also see under: Penal Code, 1860)

Roy Fernandes v. State of Goa and Ors. 477

COMPANIES ACT, 1956:

(i) Transfer of shares of a company - Situs of shares - Held: Situs of the shares would be where the company is incorporated and where its shares can be transferred - In the instant case, transfer of CGP share was recorded in Cayman Islands, where register of members of CGP is maintained - In the circumstances, it cannot be said that the situs of CGP share was situated in the place (India) where the underlying assets stood situated.

(ii) ss. 2(47) and 4 - 'Holding company' and

'Subsidiary' - Held: A company is a separate legal persona and the fact that all its shares are owned by one person or by parent company has nothing to do with its separate legal existence - The decisive criteria is whether parent company's management has such steering interference with subsidiary's core activities that subsidiary can no longer be regarded to perform those activities on the authority of its own executive directors - Principle of lifting the corporate veil - Doctrine of substance over form - Concept of beneficial ownership - Concept of alter ego.

(Also see under: Income Tax Act, 1961)

Vodafone International Holdings B.V. v. Union of India & Anr. 573

COMPENSATION:

(1) (See under: Code of Criminal Procedure, 1973) 477

(2) (See under: Motor Vehicles Act, 1988) 437

CONSTITUTION OF INDIA, 1950:

(1) Art. 14 - Classification between two sets of employees - Grant of incentives only to in-service employees who acquired professional qualifications after entering the service and not to those who had acquired same professional qualifications before entering the service - Held: The classification bore a just and rational nexus to the object sought to be achieved by introducing the incentive scheme - Grant of incentive in relation to in-service employees, in no way amounted to discrimination between in-service employees and employees recruited with higher qualification,

particularly when incentive was in the form of a special increment as 'personal pay' to be merged in pay at the time of promotion to next higher grade and thus, having no bearing on inter-se seniority and / or to future promotion to next higher grade - Service law.

Food Corporation of India & Ors. v. Bhartiya Khadya Nigam Karmchhari Sangh & Anr. 230

(2) Art. 14 - Held: Every citizen has a right to get his or her complaint properly investigated - The issue is akin to ensuring equal access to justice. (Also see under: Code of Criminal Procedure, 1973)

Azija Begum v. State of Maharashtra & Anr. 195

(3) Arts. 14 and 16.
(See under: Service Law) 445

(4) Arts. 14 and 16 - Held: The concept of equality has to be patently infringed by a provision before that provision or any part thereof, can be declared as unconstitutional - The mere fact that there is some inconvenience arising from language of a provision and its due implementation cannot be a ground for declaring a provision violative of fundamental rights - Besides, presumption of constitutionality is always in favour of a legislation, unless contrary is shown - In the instant case, s.7 of Indian Medicine Central Council Act, 1970, is neither *ultra vires* nor violative of Arts. 14 and/or 16 - Indian Medicine Central Council Act, 1970 - s.7.

(Also see under: Indian Medicine Central Council Act, 1970)

K.B. Nagur M.D. (Ayu.) v. Union of India 1023

(5) Arts. 21 and 22.

(See under: National Security Act, 1980) 1

(6) Arts. 21, 136 and 142.

(See under: Administration of Justice) 779

(7) (i) Art. 32 - Writ petitions seeking directions to Central and State Governments for effective management of water by nationalisation and inter-linking of rivers - Held: It will not only be desirable, but also inevitable that an appropriate body should be created to plan, construct and implement the inter-linking of rivers program for benefit of the nation as a whole - Union of India directed to constitute a Committee to be called a 'Special Committee for Inter-linking of Rivers' - Central and State Governments concerned directed to comply with the directions contained in the judgment effectively and expeditiously - Inter-State Water Disputes Act, 1956 - River Boards Act, 1956 - Public interest litigation - Judicial review.

(ii) Art. 262, Seventh Schedule, List I, Entries 56, and 97, List II, Entry 17 and List III, Entry 20 - Adjudication of disputes relating to waters of inter-State rivers - Inter-linking of rivers - Held: By and large, there is unanimity in accepting interlinking of rivers but the reservations of the States concerned can also not be ignored, being relatable to their particular geographical and socio-economic needs - These are matters which

squarely fall within the domain of general consensus and, thus, require a framework to be formulated by the competent Government or the Legislature, as the case may be, prior to its execution - By virtue of Art. 262 read with Entries 17, 56 and 97 of List I and Entry 20 of List III, Parliament gets wide field of legislation relatable to various subjects, including regulation and development of inter-State rivers and to create adjudicatory mechanism.

In Re: Networking of Rivers 1118

(8) Art. 49.

(See under: Ancient Monuments And Archaeological Sites And Remains Act, 1958) 260

(9) Arts. 51A(g) and 48A.

(See under: Wild Life (Protection) Act, 1972) 923

(10) Art. 129.

(See under: Motor Vehicles Act, 1988) 874

(11) Art. 136 - Jurisdiction of Supreme Court to interfere with order of Magistrate taking cognizance, as affirmed by High Court - Held: The order whereby cognizance of offence has been taken by Magistrate, unless is perverse or based on no material, should be sparingly interfered with - In the instant case, it is evident from the order of Magistrate taking cognizance that there has been due application of mind by him and it is a well reasoned order - The concurrent orders of

Magistrate and High Court not interfered with.

Dr. Mrs.Nupur Talwar v. C.B.I., Delhi & Anr..... 31

(12) Art. 226 - Scope of interference - Held: Courts should interfere with the administrative decisions pertaining to pay-fixation and pay-parity only when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors - Judicial review.

Food Corporation of India & Ors. v. Bhartiya Khadya Nigam Karmchari Sangh & Anr. 230

(13) Arts.226 and 136.

(See under: Central Sales Tax Act, 1956) 808

(14) Arts. 226 and 136 - Writ petition filed without availing of statutory remedy - Order of Regional Provident Fund Commissioner challenged in writ petition by exempted establishments - Held: Normally, statutory remedy of appeal should be availed of - However, in view of peculiar facts of the case, it would not be correct exercise of judicial discretion to send the matter back to the remedy of appeal - Employees' Provident Fund and Miscellaneous Provisions Act, 1952 - s.71 - Appeal.

(Also see under: Employees' Provident Fund and Miscellaneous Provisions Act, 1952)

Regional Provident Fund Commissioner v. The Hooghly Mills Co. Ltd. & Ors. 363

(15) Art. 311(2) - Dismissal of employee of Central

Cooperative Bank - Opportunity of hearing - Held: Since no prejudice has been caused to the delinquent by non-supply of enquiry report or second show cause notice under Art. 311(2), it cannot be said that the disciplinary proceedings had been vitiated on account of such non-supply. (Also see under: Service Law)

Burdwan Central Cooperative Bank Ltd. & Anr. v. Asim Chatterjee & Ors. 390

CONTEMPT OF COURT:

(See under: Motor Vehicles Act, 1988) 874

CONTRACT:

Tender - Bid for installation of Steam Generator Package - Rejected - Held: Evaporator being an integral part of Steam Generator, Qualified Steam Generator Manufacturer would have to be the manufacturer of evaporator itself and could not have outsourced the manufacture thereof - Evaporator being offered was one which had been manufactured not by Qualified Steam Manufacturer but by a third party, which was not contemplated in the condition of tender document - Rejection of bid upheld.

NTPC Limited v. Ansaldo Caldaie Boilers India P. Ltd. & Anr. 966

CONTRACT ACT, 1872:

(1) (i) ss. 23 and 28 - Two courts having jurisdiction to try a suit - Parties to an agreement mutually agreeing to exclude jurisdiction of one court in preference to the other - Contract for supply of goods between parties and agreement to the

effect that dispute would be subject to jurisdiction at place 'C' - Suit for recovery filed by petitioner at place 'C' - On receiving summons, respondent filed a separate suit at place 'V' - Recovery suit by respondent decreed - Decree upheld by High Court - Held: Though the courts at place 'V' along with the courts at place 'C' would have jurisdiction u/s. 20 CPC to entertain and try a suit relating to and arising out of the agreement and the mutual understanding as part of the cause of action of the suit had arisen within the jurisdiction of both the said courts, such jurisdiction of courts at place 'V' would stand ousted by virtue of exclusion clause in agreement - Decree passed by Civil Judge at place 'V' and judgment of High Court set aside - Trial court at place 'V' directed to return the plaint to respondent to present the same before appropriate court at place 'C'.

(ii) ss. 23 and 28 - Contract in violation of ss. 23 and 28 - Permissibility of - Held: Parties to an agreement cannot contract against the statutory provisions.

(Also see under: Jurisdiction)

A.V.M. Sales Corporation v. M/s. Anuradha Chemicals Pvt. Ltd. 318

(2) s.139 - Liability of guarantor - Held: Is equal to and co-extensive with borrower - Guarantor cannot avoid his liability simply on the basis of promissory note made out or an equitable mortgage created by borrower in favour of lender.

M/s H.D.F.C. v. Gautam Kumar Nag & Ors. 430

COSTS:	
(See under: Representation of the People Act, 1951) 527
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(1) (See under: Penal Code, 1860) 822 and 1009
(2) (See under: Protection of Women from Domestic Violence Act, 2005) 867
CRIMINAL LAW:	
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(Also see under: Penal Code, 1860)	
<i>Lokesh Shivakumar v. State of Karnataka</i> 896
CUSTOMS ACT, 1962:	
s.2(ii).	
(See under: Central Sales Tax Act, 1956)	.... 808
DELAY/LACHES:	
Appeal by Government Department - Delay in filing - Condonation of - Held: Law of limitation binds everybody including the Government - Government Departments are under a special obligation to ensure that they perform their duties with diligence and commitment - In the instant case, certified copy of impugned judgment was applied by Department after a period of nearly four months - There was delay at every stage and, there was no explanation as to why such delay had occasioned - Department miserably failed to give any acceptable and cogent reasons sufficient to	

condone such a huge delay.	
<i>Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr.</i>	.... 1045
DOCTRINES / PRINCIPLES:	
(1) (i) Concept of alter ego.	
(ii) Concept of beneficial ownership	
(iii) Doctrine of substance over form.	
(iv) Principle of lifting the corporate veil (See under: Companies Act, 1956; and Income Tax Act, 1961)	.... 573
(2) (i) Public trust doctrine - Held: Is meant to ensure that all humans have equitable access to natural resources treating all natural resources as property and not life - Principle of sustainable development and inter-generational equity too presupposes higher needs of humans and lays down that exploitation of natural resources must be equitably distributed between present and future generations.	
(ii) Anthropocentrism <i>vis-à-vis</i> ecocentric approach - Held: Anthropocentrism considers humans to be the most important factor and value in the universe and states that humans have greater intrinsic value than other species - Under this approach, environment is only protected as a consequence of and to the extent needed to protect human well being - On the other hand, ecocentrism supports the protection of all life forms, not just those which are of value to humans	

or their needs and underlines the fact that humans are just one among the various life forms on earth - Intrinsic value of environment also finds a place in various international conventions like, Convention for Conservation of Antarctic Living Resources 1980, the Protocol to Antarctic Treaty on Environmental Protection 1998, the Bern Convention on Conservation of European Wildlife and Natural Habitats 1982, CITES, and CBD.

(Also see under: International Treaties; and Wildlife Protection Act, 1972)

T. N. Godavarman Thirumalpad v. Union of India & Others 923

EDUCATION / EDUCATIONAL INSTITUTIONS:

(See under: Interim Orders) 136

ELECTION LAWS:

(1) (See under: Orissa Gram Panchayat Act, 1964) 464

(2) (See under: Representation of the People Act, 1951) 956

EMPLOYEES' PROVIDENT FUND AND

MISCELLANEOUS PROVISIONS ACT, 1952:

(i) ss. 17(1A)(a) and 14-B - Exempted establishment - Defaults in payment of contributions to the Fund - Power to recover damages - Held: In a case of default by employer of an exempted establishment, in making its contribution to Provident Fund, s.14B of the Act will be applicable - If there is a default in payment of contribution to the scheme, it amounts to contravention of s.14-B and damages can be levied.

(ii) s. 71.

(Also see under: Constitution of India, 1950; and Interpretation of Statutes)

Regional Provident Fund Commissioner v. The Hooghly Mills Co. Ltd. & Ors. 363

ENVIRONMENT (PROTECTION) ACT, 1986:

Object of the enactment - Discussed.

(Also see under: Doctrines/Principles; International Treaties: and Wildlife Protection Act, 1972)

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EVIDENCE:

(1) Burden of proof as to age.

(See under: Orissa Gram Panchayat Act, 1964) 464

(2) Circumstantial evidence.

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FELLING OF TREES (REGULATION) ACT, 1964:

(See under: Wild Life (Protection) Act, 1972) 923

INCOME TAX ACT, 1961:

(i) s.45 read with ss. 195, 201 and 201(1A) - Capital gains - Offshore transaction - Territorial tax jurisdiction of Indian tax authorities - Transaction between VIH and HTIL with regard to sale and purchase of the entire share capital of CGP - Held: Indian tax authorities had no territorial jurisdiction to tax the said offshore transaction -

Applying the look at test, in order to ascertain the true nature and character of the transaction, the Offshore Transaction in the instant case, is a bonafide structured FDI investment into India which fell outside India's territorial tax jurisdiction and, as such, not taxable - The said Offshore Transaction evidences participative investment and not a sham or tax avoidant preordained transaction.

(ii) s.9(1)(i) - Income deemed to accrue or arise in India - Expression, 'transfer of a capital asset situate in India' - Held: s.9(1)(i) cannot by a process of interpretation be extended to cover indirect transfers of capital assets/property situate in India - s.9(1)(i) is not a "look through" provision - Interpretation of Statutes.

(iii) s.195 - Deduction of tax at source - Scope and applicability of - Held: The payment in question must have an element of income embedded in it which is chargeable to tax in India - If the sum paid or credited by the payer is not chargeable to tax then no obligation to deduct the tax would arise - Shareholding in companies incorporated outside India (CGP) is property located outside India - Where such shares become subject matter of offshore transfer between two non-residents, there is no liability for capital gains tax - In such a case, question of deduction of TAS would not arise - In the instant case, Revenue has failed to establish any connection with s.9(1)(i) - Under the circumstances, s.195 is not applicable.

(iv) ss. 163(1)(c) r/w ss. 161 and 9(1)(i) - "Agent"

in relation to a non-resident - Held: s.161 makes a representative assessee liable only if the eventualities stipulated in s.161 are satisfied - Revenue has invoked s.163(1)(c) - Both ss. 163(1)(c) and 9(1)(i) state that income should be deemed to accrue or arise in India - Both these Sections have to be read together - On facts, s.163(1)(c) is not attracted as there is no transfer of a capital asset situated in India - Consequently, 'VIH' cannot be proceeded against even u/s 163 of the Act as a representative assessee.

(Also see under: Company Law; and Legislation)

Vodafone International Holdings B.V. v. Union of India & Anr.

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INDIAN MEDICINE CENTRAL COUNCIL ACT, 1970:

(i) ss.3(1)(a)(b), 4 and 7 - Central Council of Indian Medicine - Term of office of the members and other office bearers - Held: Is five years - Elections are expected to be held within the said period of five years to ensure that immediately after expiry of the specific term, members holding the office quit and newly elected members assume charge - To extend beyond a regular term the tenure of members, would not only be impermissible in law but would also be illegal.

(ii) s.7 - Continuance by members of Central Council of Indian Medicine after expiry of specified period of 5 years - Clause, "or until his successor shall have been duly elected or nominated, whichever is longer" - Connotation of - Held: The clause has been provided to protect a situation where elections cannot be held within

the prescribed time for valid reasons - No elected person shall hold the office of President, Vice President or Member beyond the period of three months from the expiry of his term - s.7 or any part thereof is neither ultra vires nor violative of Arts.14 and/or 16 of the Constitution - Constitution of India, 1950 - Arts. 14 and 16 - Maxim, 'ut res valeat potius quam pereat' - Applicability of.

(iii) ss.3, 4 and 7 - Central Council of Indian Medicine - Obligations of Central Government - Held: Central Government has a major role to play in constitution, establishment and activities of Council - It is obligation of Central Government to hold election to Central Council before expiry of the term of Members and other office bearers of the Council as provided u/s 7 - Judicial notice.

K.B. Nagur M.D. (Ayu.) v. Union of India 1023

INQUIRY:

Matter of escape of criminals from police custody and role of various officers posted at the District - Held: The direction given by High Court to refer the matter to CBI to hold an enquiry into the matter has lost its relevance since the President, Board of Revenue has already held the enquiry and submitted his report - Though order of High Court is set aside, the matter being grave, State Government directed to take appropriate action against erring official/s and to take all remedial measures - State Government directed to make amendment in existing rules relating to transfer of dangerous or sensitive prisoners from one jail to another jail, or taking them out for court

appearance or on administrative grounds; as also State Government shall, in consultation with High Court, take a decision about construction of single court room complexes for holding trial of dreaded criminals/dangerous prisoners in proximity to Central Jails.

State of M.P. & Anr. v. Ram Prakash Singh & Anr. 54

INTERIM ORDERS:

Writ petition by medical college seeking increase of seats for MBBS course from 150 to 200 for the academic year 2011-12 - High Court granting the permission by an interim order - Held: High Court erred in permitting increase in seats by interim order - If on ultimate analysis it is found that college's claim for increase of seats is untenable, in such an event, admission of students with reference to increased seats shall be illegal - Courts cannot by its fiat increase seats, and that too by interim order - Interim order passed by High Court set aside - Education.

Medical Council of India v. JSS Medical College & Anr. 136

INTERNATIONAL LAW / INTERNATIONAL TREATIES AND CONVENTIONS:

(i) Convention on Biological Diversity (CBD) and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) - Object of - Held: CBD mandates the contracting parties to develop and maintain necessary legislation for protection and regulation of threatened species and also regulate trade therein - CITES classifies

species into different appendices in the order of their endangerment, and prescribes different modes of regulation in that regard - Species listed in Appendix-II shall include all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation - Environmental Protection Act, 1986 - Wild Life (Protection) Act, 1972.

(ii) Incorporation of provisions of treaties in domestic law - Held: Provisions of Treaties/Conventions which are not contrary to municipal laws would be deemed to have been incorporated in domestic law.

(iii) Convention for Conservation of Antarctic Living Resources 1980.

(iv) Protocol to Antarctic Treaty on Environmental Protection 1998

(v) Bern Convention on Conservation of European Wildlife and Natural Habitats 1982.

(vi) Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES)

(vii) Convention of Biological Diversity 1992 (CBD)
(Also see under: Doctrines / Principles, and International Treaties)

T. N. Godavarman Thirumalpad v. Union of India & Others 923

INTERPRETATION OF STATUTES:

(1) Deemed incorporation.
(See under: International Treaties) 923

(2) Purposive construction - Social welfare legislation - Held: Normal canon of interpretation is that a social welfare legislation or a remedial statute receives liberal construction and if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted - Further, a purposive approach is to be adopted which promotes purposes of the Act - Employees' Provident Fund and Miscellaneous Provisions Act, 1952 - ss.14-B and 17(1A)(a).

Regional Provident Fund Commissioner v. The Hooghly Mills Co. Ltd. & Ors. 363

(3) (See under: Income Tax Act, 1961) 573

INTER-STATE WATER DISPUTES ACT, 1956:

(See under: Constitution of India, 1950) 1023

JUDICIAL NOTICE:

(1) (See under: Indian Medicine Central Council Act, 1970) 1023

(2) (See under: Penal Code, 1860) 145

JUDICIAL REVIEW:

(See under: Constitution of India, 1950) 230
and 1118

JUDICIARY:

Judicial Service - Annual confidential remarks - Held: Greater importance is to be given to opinion or remarks made by immediate superior officer as to functioning of judicial officer concerned for

the purpose of his compulsory retirement - In the instant case, District and Sessions Judges had opportunity to watch the functioning of the officer concerned from close quarters, and have reported favourably regarding his overall performance except about his disposal, in recent ACR for two years - High Court was not justified in sustaining the order of compulsory retirement passed by the Full Court on administrative side.

(Also see under: Service Law)

Nand Kumar Verma v. State of Jharkhand & Ors. 504

JURISDICTION:

(i) Territorial or pecuniary jurisdiction - Held: Parties cannot confer jurisdiction on a court which has no territorial or pecuniary jurisdiction to entertain a matter.

(ii) Cause of action - Held: Comprises a bundle of facts which are relevant for determination of lis between parties.

(Also see under: Contract Act, 1872)

A.V.M. Sales Corporation v. M/s. Anuradha Chemicals Pvt. Ltd. 318

KARNATAKA FOREST ACT, 1963:

s.83.

(See under: Wild Life (Protection) Act, 1972) 923

KARNATAKA VALUE ADDED TAX, 2003:

(See under: Central Sales Tax Act, 1956) 808

KERALA FOREST (AMENDMENT) ACT, 2010:
ss.47A and 47C.

(See under: Wild Life (Protection) Act, 1972) 923

LAND ACQUISITION:

Acquisition of land for construction of Dam - Rehabilitation and Resettlement Policy (R & R Policy) framed by State Government - Claim for 2 hectares of land for each major son of landholder whose land had been acquired - Held: Since the claim of entitlement of land is based exclusively on a policy decision of State Government which has been incorporated in R & R Policy, entitlement would be determined strictly based on the Policy - If each major son of displaced family had not been separately deprived of 25% of land, then even as per R & R Policy, they were not entitled to 2 hectares of land.

(Also see under: Administration of Justice)

State of Madhya Pradesh & Anr. v. Bheru Singh & Ors. 535

LEGISLATION:

(1) Need for legislation - Tax statutes - Held: FDI flows towards location with a strong governance infrastructure which includes enactment of laws and how well the legal system works - Certainty and stability form the basic foundation of any fiscal system - Tax policy certainty is crucial for taxpayers (including foreign investors) to make rational economic choices in the most efficient manner - Legal doctrines like "Limitation of Benefits" and "look through" are matters of policy - It is for the

Government to have them incorporated in Treaties and in laws so as to avoid conflicting views.

(Also see under: Income Tax Act, 1961)

Vodafone International Holdings B.V. v. Union of India & Anr. 573

(2) Need to revisit sentencing policy reflected in s. 304A IPC, emphasized.

(See under: sentence/Sentencing) 145

LIMITATION ACT, 1963:

ss. 2(j) and 4.

(See under: Arbitration and Conciliation Act, 1996) 403

MADHYA PRADESH REVENUE CODE:

(See under: Wild Life (Protection) Act, 1972) 923

MAXIMS:

'Ut res valeat potius quam preat.

(See under: Indian Medicine Central Council Act, 1970) 1023

MOTOR VEHICLES ACT, 1988:

(1) ss. 41(6) and 109(3) - High Security Registration Plates (HSRP) Scheme - Implementation of - Held: Installation of HSRP is a statutory command which is not only in the interest of security of State, but also serves a much larger public interest - Therefore, it is not only desirable, but mandatory, for every State Government and Union Territory to comply with statutory provisions/orders of Supreme Court in terms of Art. 129 of the Constitution - All State

Governments and Union Territories, therefore, are mandated to fully implement the scheme of fixation of HSRP in their entire territories, positively within the time specified - Constitution of India, 1950 - Art. 129 - Contempt of Court - Motor Vehicles Rules, 1989 - r.5 - Costs.

Maninderjit Singh Bitta v. Union of India & Ors. 874

(2) s.118 - Accident claim case - Award passed by Tribunal - High Court passed certain directions including directions 3 and 5 relating to construction of Bus Bays on all road-sides in the State through which stage carriage operation is permitted and to provide sufficient parking space for vehicles on road side - Held: High Court was hearing an appeal from an award that was confined to grievances raised by aggrieved party - Such general directions of wide ramifications ought not to have been given in such proceeding - Moreover, the facts which were relevant and germane for issuance of such directions were not before High Court - Directions 3 and 5 set aside - Rules of the Road Regulations, 1989 - Para 15.

State of Kerala v. E.T.Rose Lynd & Ors. 1001

(3) Compensation - Disbursement of - Case of *Susamma Thomas*, explained - Held: Sufficient discretion has been given to Tribunals not to insist on investment of compensation amount in long term fixed deposit and to release even the whole amount in the case of literate persons - The guidelines were not to be understood to mean that Tribunals were to take a rigid stand while

considering an application seeking release of money - The guidelines cast a responsibility on Tribunals to pass appropriate orders after examining each case on its own merits - Prayer in the application of appellants for release of the amount invested in long term deposits, stands allowed - The entire amount of compensation shall be withdrawn and paid to appellants.

A.V. Padma & Ors. v. R. Venugopal & Ors. 437

MOTOR VEHICLES RULES, 1989:

r.5.
(See under: Motor Vehicles Act, 1988) 874

NATIONAL SECURITY ACT, 1980:

s.3(4) - Order of detention - Held: An individual incident of an offence under Indian Penal Code, however heinous, is insufficient to make out a case for issuance of an order of preventive detention - In the instant case, grounds of detention do not disclose any material which was before the detaining authority, other than the fact that there was every likelihood of detenu being released on bail - Detaining authority acted rather casually - Order of detention quashed - Constitution of India, 1950 - Arts.21 and 22 - Code of Criminal Procedure, 1973 - s.167.

Yumman Ongbi Lembi Leima v. State of Manipur & Ors. 1

ORISSA GRAM PANCHAYAT ACT, 1964:

s.31 r/w s.34 - Gram Panchayat elections - Election of Sarpanch - Election petition filed on

the ground that the returned candidate having not attained age of 21 years, was not qualified to contest the election - Courts below held that date of birth of returned candidate was 20.6.1986 - Held: The fact that returned candidate failed to prove her date of birth would not automatically lead to conclusion that the assertion of election petitioner was proved - Burden to prove that returned candidate was born on the alleged date rested on election petitioner which he failed to discharge - An admission must be clear and unambiguous to relieve the opponent of burden of proof - Evidence - Election laws.

Joshna Gouda v. Brundaban Gouda & Anr. 464

PANCHAYATS:

(See under: Orissa Gram Panchayat Act, 1964) 464

PENAL CODE 1860:

(1) ss. 143, 148, 323, 325 and 302 r/w s.149 - Death by stabbing - Trial court convicted all the five accused - High Court upheld conviction of accused who stabbed the victim, and the appellant while setting aside conviction of other three giving them benefit of doubt - Held: There was no evidence that the accused persons had come to place of occurrence with common object to kill the deceased - They certainly had come to spot with a view to overawe and prevent the deceased by use of criminal force from putting up the fence - There was no evidence to show that appellant had knowledge that members of the assembly or any one of them was likely to commit murder of

the deceased - Conviction of appellant for murder with aid of s.149 set aside - However, conviction u/ss.143, 148, 323 and 325 r/w s.149 maintained. (Also see under: Code of Criminal Procedure, 1973)

Roy Fernandes v. State of Goa and Ors. 477

(2) s.302/149 - 'Common object' to cause death - Held: Inference of common object has to be drawn from various factors such as weapons with which the members were armed, their movements, acts of violence committed by them and the result - Prosecution has been able to establish that all members of unlawful assembly acted in furtherance of common object to cause death of the victim.

Surendra and Others v. State of U.P. 1168

(3) s.302 r/w s.34 - Death by fatal blow - Common intention - Held: There was no discrepancy between ocular evidence and medical evidence - Since prosecution case was established by reliable ocular evidence coupled with medical evidence, issue of motive was not of any significance - Common intention can form and develop even in course of occurrence, therefore, the fact that appellant had not brought any weapon with him was of no relevance - It was appellant who struck the first blow on head of deceased and according to post-mortem report that blow itself caused his death - Appellant rightly convicted u/s.302 r/w s.34 - Motive.

(Also see under: Criminal Law)

Lokesh Shivakumar v. State of Karnataka 896

(4) ss. 302 and 201.

(See under: Sentence/Sentencing) 890

(5) ss. 302 and 307 and s.3 of Explosive Substances Act - Explosion in bus - Death of 4 persons and 24 sustained serious injuries - Conviction alongwith death sentence by courts below - Challenged, on the ground that the accused was not given assistance of a lawyer to defend himself during trial - Held: In view of difference of opinion as regards the issue whether the matter requires to be remanded for de novo trial of accused after giving him the assistance of a counsel, matter referred to larger Bench - Explosive Substances Act, 1908 - s. 3.

Mohd. Hussain @ Julfikar Ali v. The State (Govt. of NCT) Delhi 64

(6) (i) ss.304 (Part-II) and 338 - Causing of death and grievous hurt by rash and negligent driving - Permissibility of trial and conviction of a person for both offences for a single act of the same transaction - Held: Indictment of an accused u/ss 304 (Part-II) and 338 can co-exist in a case of single rash or negligent act where such an act is done with the knowledge of likelihood of its dangerous consequences - It cannot be said that two charges are mutually destructive - There is no impediment in law for an offender being charged with the offence punishable u/s 304 (Part-II) and also u/ss 337 and 338 IPC.

(ii) s.304 (Part-II) r/w s.299 (last clause) - Seven labourers, while asleep, were killed and 8 others suffered grievous injuries by rash and negligent

driving - Nature of the offence - Held: Rash or negligent driving on a public road with knowledge of dangerous character and the likely effect of the act resulting in death may fall in the category of culpable homicide not amounting to murder - In the instant case, essential ingredients of s. 304 (Part II) have been successfully established - View of High Court being consistent with evidence on record and law, upheld - Judicial notice.

(iii) ss.304 (Part-II), 337 and 338 - Death of seven labourers, while asleep, and grievous injuries to 8 others caused by rash and negligent driving - Sentence - Held: The facts and circumstances of the case undoubtedly show despicable aggravated offence warranting punishment proportionate to crime - For an offence like this, sentence of three years awarded by High Court is too meagre and not adequate, but since no appeal has been preferred by State, Court refrains from considering the matter for enhancement.

(Also see under: Code of Criminal Procedure, 1973)

Alister Anthony Pareira v. State of Maharashtra 145

(7) ss. 304-A, 337 and 279 - Five deaths caused due to rash and negligent driving and by colliding of two vehicles - Sentence - Held: While considering quantum of sentence to be imposed for offence of causing death or injury by rash and negligent driving, one of the prime considerations should be deterrence - Further, criminal courts cannot treat nature of offence u/s 304A as attracting benevolent provisions of s.4 of the

Probation of Offenders Act, 1958 - Order of High Court reducing the sentence to period undergone i.e. 15 days, set aside - Accused sentenced to six months RI each with fine - Probation of Offenders Act, 1958 - s. 4 - Sentence/Sentencing.

State of Punjab v. Balwinder Singh and Ors. 45

(8) ss. 323/302 - Death of appellant's wife as a result of poisoning - Conviction of appellant u/ss. 323/302 with life imprisonment - Interference with - Held: Not called for - Prosecution succeeded in proving the motive - Entire chain of circumstances was consistent with guilt of appellant - Prosecution has proved that it was a case of murder - Circumstantial evidence.

Shanmughan v. State of Kerala 411

(9) ss.364, 376, 377, 302 and 201 - Rape and murder of minor girl - Allegation against appellant that he took away the victim from her house in presence of her mother and grandmother and raped and murdered her - Held: As appellant was neighbour and known to the witness, no Test Identification Parade was necessary - Oral evidence, disclosure statement made by appellant, medical evidence and report of Forensic Science Laboratory proved beyond all reasonable doubt that it was the appellant alone who committed rape on victim and killed her and thereafter caused disappearance of evidence of offences - Conviction upheld.

(Also see under: Sentence/Sentencing)

Amit v. State of Uttar Pradesh 1009

(10) ss. 376 and 506 (2) - Commission of rape by accused aged 18/19 years on victim aged about 7 years - In view of the age of victim and the accused; and that the incident occurred nearly 10 years ago, sentence of life imprisonment modified to RI for 10 years with fine of Rs. 1,000/.

Bavo @ Manubhai Ambalal Thakore v. State of Gujarat 822

(11) ss.420, 406 and 161.

(See under: Code of Criminal Procedure, 1973) 1160

PHARMACY ACT, 1948:

(i) ss 36, 31, 32 and 33 - Cancellation of registration as pharmacist upon review - Held: s. 36(1)(i) gives sufficient power to Executive Committee to recall its decision - It provides for removing the name of a registered pharmacist in the event there is an error in his registration, or where it is registered on account of misrepresentation or suppression of a material fact - On facts, there was an error on the part of Pharmacy Council of Rajasthan in accepting the registration from Sikkim as a valid registration for transfer of appellant as a pharmacist in Rajasthan - Thus, there was no error in the decision to cancel registration of appellant.

(ii) Object of the Act - Held: Is to make better provisions for regulation of the profession and practice of pharmacy.

Rajendra Prasad Bagaria v. Pharmacy Council of State of Rajasthan & Anr. 836

PREVENTIVE DETENTION:

(1) (See under: Andhra Pradesh Prevention of Dangerous Activities of Boot-leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986) 26

(2) (See under: National Security Act, 1980) 1

(3) (See under: Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982) 985

PROBATION OF OFFENDERS ACT, 1958:

s. 4.

(See under: Penal Code, 1860) 45

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:

ss. 3,12,18,19,20,31 and 33 - Domestic violence complaint by wife - Held: Looking into a complaint u/s 12, conduct of parties even prior to coming into force of the Act, could be taken into consideration while passing an order u/ss 18, 19 and 20 - High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to protection of the Act - On facts, after more than 31 years of marriage, wife having no children, is faced with the prospect of living alone at the advanced age without any proper shelter or protection - The situation comes squarely within the ambit of s. 3, which defines "domestic violence" in wide terms, and, accordingly, no interference is called for with

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the order of High Court - However, it is directed that the wife be provided with a right of residence where the husband is residing, by way of relief u/s 19 - Protection orders u/s 18 are also passed - In addition, the husband shall also pay her maintenance, as directed.		
<i>V.D. Bhanot v. Savita Bhanot</i>	....	867
PUBLIC INTEREST LITIGATION:		
(1) (See under: Administration of justice; and Land Acquisition)	....	535
(2) (See under: Ancient Monuments and Archeological Sites and Remains Act, 1958)	....	260
(3) (See under: Constitution of India, 1950)	....	1118
REFERENCE TO LARGER BENCH:		
(1) Conflicting views in two judgments of Supreme Court - Held: Though there appears to be conflict in two judgments of Supreme Court in regard to claim of share by each major son of family whose land has been acquired for construction of dam, the issue arises out of a policy decision of State and is not really a legal issue emerging from any statutory provisions having a bearing in future on other similar controversy so as to refer it to a Constitution Bench, Court refrains from referring the question to a larger Bench. (Also see under: Land Acquisition)		
<i>State of Madhya Pradesh & Anr. v. Bheru Singh & Ors.</i>	535
(2) (See under: Code of Criminal Procedure, 1973)	1066

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(3) (See under: Penal Code, 1860)	64
REMEDY:		
(1) Alternative remedy.		
(i) (See under: Constitution of India, 1950)	363
(ii) (See under: Central Sales Tax Act, 1956)	....	808
(2) (See under: Stamp Act, 1899)	....	422
RENT CONTROL AND EVICTION:		
(See under: Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972)	....	12
REPRESENTATION OF THE PEOPLE ACT, 1951:		
(1) ss.81, 86 - Election petition - Maintainability of - Election petition challenging the election of returned candidate on the ground that nomination papers of respondent were wrongly rejected by returning officer - Returned candidate filed applications for dismissing election petition for non-compliance of s.81(1) and for non-disclosure of cause of action - Election Tribunal dismissed the applications - Held: The view taken by Election Tribunal was correct that the election petition filed by respondent was required to be considered on evidence on account of allegations made therein - The question regarding right of second proposer to be a subscriber to nomination paper filed by respondent was fundamental question which could only be decided on evidence - No interference called for with order of Election Tribunal.		
<i>Kapil Muni Karwariya v. Chandra Narain Tripathi</i>	....	956

(2) s.100(1)(d)(iv) - Election petition challenging the election of returned candidate - On the ground of non-compliance of provisions of the Constitution or the Act - Held: A mere non-compliance or breach of the Constitution or statutory provisions by itself, does not result in invalidating the election of a returned candidate u/s 100(1)(d)(iv) - For election petitioner to succeed on such ground, he has not only to plead and prove the ground but also that the result of election insofar as it concerned the returned candidate has been materially affected - In the entire election petition there is no pleading at all that suppression of information by returned candidate in affidavit filed along with nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of election insofar as it concerned the returned candidate - Election petition dismissed - Costs.

Mangani Lal Mandal v. Bishnu Deo Bhandari 527

RIVER BOARDS ACT, 1956:
(See under: Constitution of India, 1950) 1023

RULES OF THE ROAD REGULATIONS, 1989:
Para 15.
(See under: Motor Vehicles Act, 1988) 1001

SENTENCE/SENTENCING:

(1) Death sentence for offence of rape and murder - Held: In the instant case, when appellant committed the offence he was a young person aged about 28 years only - There was no evidence

that he had committed offences of kidnapping, rape or murder on any earlier occasion - There was nothing to suggest that he is likely to repeat similar crimes in future - On the other hand, given a chance he may reform over a period of years - Death sentence converted to life sentence, which shall extended to his full life subject to any remission or commutation at the instance of Government for good and sufficient reasons.

(Also see under: Penal Code, 1860)

Amit v. State of Uttar Pradesh 1009

(2) Imposition of death sentence - Propriety of - Appellant accused his mother to have been the cause of his wife running away from house and out of anger, he cut neck of his mother, severed her head and fled away with it - Conviction u/ss. 302 and 201 IPC and imposition of death sentence by courts below - Held: Appellant was an illiterate rustic and a cultivator residing in a village with virtually no control over his emotions - He over-reacted impulsively to the situation - Conviction upheld but sentence of death converted to life imprisonment - Penal Code, 1860 - ss. 302 and 201.

Absar Alam @ Afsar Alam v. State of Bihar 890

(3) (See under: Penal Code, 1860) 45

(4) Sentence u/s 304-A IPC - Held: In view of the large number of accidental deaths due to speeding and drunk driving, it is high time that law makers revisit the sentencing policy reflected

in s. 304 A IPC.

(Also see under: Code of Criminal Procedure, 1973)

Alister Anthony Pereira v. State of Maharashtra 145

SERVICE LAW:

(1) Appointment - Government's refusal to approve the subsequent selection lists recommending the candidates over and above the number of vacancies advertised - Held: It is well-established that an authority cannot make any selection/appointment beyond the number of posts advertised, even if there were a larger number of posts available than those advertised - A fresh advertisement is required to be published for filling up the remaining vacancies - Constitution of India, 1950 - Arts. 14 and 16.

Arup Das & Ors. v. State of Assam & Ors. 445

(2) Disciplinary proceedings:

(i) (a) Central Co-operative Bank taking disciplinary action against its employee for financial irregularities committed by him during his previous employment with the affiliated Society - Held: At the relevant point of time, delinquent was employed in Primary Co-operative Society which was affiliated to appellant-Bank and in view of this link, even though, delinquent was not under administrative control of appellant-Bank when he allegedly committed various financial irregularities, it was still entitled to commence disciplinary proceedings against him in view of his past conduct.

(b) Dismissal of employee of Central Co-operative Bank - Held: The order of punishment had been passed against delinquent on allegations of financial irregularities - Since a Bank acts in a fiduciary capacity in regard to people's investments, the very legitimacy of banking system depends on complete integrity of its employees - Order of Bank upheld.

(Also see under: Constitution of India, 1950)

Burdwan Central Cooperative Bank Ltd. & Anr. v. Asim Chatterjee & Ors. 390

(ii) Successive departmental proceedings on the same set of charges - Held: On general principles, there can be only one enquiry in respect of a charge for a particular misconduct and that is also what the rules usually provide - When proceedings of a completed enquiry are set aside by a competent forum on a technical ground or on the ground of procedural infirmity, fresh proceedings on the same charges are permissible - High Court, having accepted the explanations, could not have proceeded to pass order of initiating subsequent departmental proceedings - There is no justification for conducting a second enquiry on the very charges, which had been dropped earlier - Even though principle of double jeopardy is not applicable, law permits only disciplinary proceedings and not harassment - Allowing such practice is not in the interest of public service - In the circumstances, impugned order reverting the officer to lower post cannot be sustained.

Nand Kumar Verma v. State of Jharkhand & Ors. 504

(3) Incentives.

(See under: Constitution of India, 1950) 230

(4) (i) Promotion - Denial of - Judicial service - Member of Tripura Judicial Service (Grade-II) - Criteria for promotion being merit-cum-seniority - Held: In view of remarks in ACRs of officer for three years immediately preceding the date of consideration of officer's promotion, that he was not found fit for promotion, it cannot be said that he was wrongly denied promotion to Grade-I - Tripura Judicial Service Rules, 1974 - r.7.

(ii) Retirement - Judicial service - Member of Tripura Judicial Service - On completion of 58 years of age, service not extended upto 60 years - Held: Clause (B) has overriding effect over Clause (A) of amended r.20 of Tripura Judicial Service Rules, 2003 - Petitioner is not entitled to the relief - Tripura Judicial Service Rules, 2003 - r. 20(A) and (B).

N.C. Das v. Gauhati High Court thr. Registrar & Ors. 128

(5) Retirement: -

(i) Order of compulsory retirement - Judicial review of - Held: When an order of compulsory retirement is challenged, court has right to examine whether some ground or material germane to the issue exists or not - However, court is not to examine sufficiency of material upon which order of compulsory retirement rests - In the instant case, material on which the decision of compulsory retirement was based and material furnished by Judicial Officer would reflect that totality of relevant

materials was not considered or was completely ignored by High Court - Consequently, subjective satisfaction of High Court was not based on sufficient or relevant material - It cannot be said that the service record of Officer was unsatisfactory so as to warrant premature retirement from service - There was no justification to retire the Officer compulsorily from service.

(Also see under: Judiciary)

Nand Kumar Verma v. State of Jharkhand & Ors. 504

(ii) Retirement - Pre-mature retirement from service - Criterion adopted by Jal Nigam set aside by High Court and the said decision attained finality - Held: Order passed by Jal Nigam, prematurely retiring the petitioner from its employment, cannot be set aside merely because criterion adopted by Jal Nigam has been set aside - Veracity of impugned order will have to be examined independently of the criterion so as to determine, whether or not the impugned order is sustainable on the basis of record taken into consideration by Screening Committee - The service record of petitioner was objectively evaluated - Thus, impugned order cannot be described as arbitrary or unfair in any manner.

Om Prakash Asati v. State of U.P. & Ors. 246

SPECIFIC RELIEF ACT, 1963:

ss. 16(c) - Personal bars to relief - Enforcement of specific performance of contract - Essential ingredient of s. 16(c) - Held: Specific averments should be made in plaint that the plaintiff has

performed and has always been willing to perform the essential terms of the Act which have to be performed by him - In the absence thereof, decree for specific performance cannot be granted.

J. Samuel and Others. v. Gattu Mahesh and Others 295

STAMP ACT, 1899:

ss. 47A/33 - Deficiency in stamp duty - Execution of sale deed - Held: Nature of user is relatable to date of purchase and relevant for the purpose of calculation of stamp duty - At the time of execution of sale deed, property was used for residential purpose and stamp duty was paid based on the position and user of building - Mere use of property for commercial purpose at a later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty - Alternate Remedy.

State of U.P. & Ors. v. Ambrish Tandon & Anr. 422

SUGARCANE:

(See under: Uttar Pradesh Sugarcane (Regulation of Supply and Purchase Act, 1953) 352

SUITS:

Suit for specific performance - Applications for withdrawal of suit - Counsel for respondents made statement that he did not press the applications - In view of the said statement, trial court disposed of the said two applications and posted the matter for evidence - Revision petition by appellant

dismissed by High Court - Held: The fact situation on hand did not justify permitting the respondents to withdraw their earlier applications as a matter of course in the background of content of subsequent affidavit - Professional conduct of the counsel apart from anything else amounted to abuse of process of court - High Court erred in dismissing the revision petition of appellants - Matter remitted to High Court for consideration afresh.

Rattan Bai & Anr. v. Ram Dass & Ors. 855

TAMIL NADU FOREST ACT, 1882:

s.40G.

(See under: Wild Life (Protection) Act, 1972) 923

TAMIL NADU PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DRUG OFFENDERS, FOREST OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS, SAND OFFENDERS, SLUM GRABBERS AND VIDEO PIRATES ACT, 1982:

ss. 3 and 2(f) - Detention order u/s. 3 - Habeas Corpus petition - Dismissed by High Court - Held: Detaining Authority, on consideration of materials placed, found that the detenu was habitually committing crimes and also acting in a manner prejudicial to maintenance of public order and as such he was a 'goonda' as contemplated u/s. 2(f) - It cannot be said that there was non-application of mind by Detaining Authority; and that there was non-consideration of representation of detenu -

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High Court rightly upheld the detention order. <i>Subramanian v. State of Tamil Nadu & Anr.</i> 985
TAMIL NADU SANDALWOOD POSSESSION RULES, 1970: (See under: Wild Life (Protection) Act, 1972)	.... 923
TAMIL NADU SANDALWOOD TRANSIT RULES, 1967: (See under: Wild Life (Protection) Act, 1972)	.... 923
TAXATION: Tax avoidance - Offshore transaction - Held: When it comes to taxation of a Holding Structure, at the threshold, burden is on Revenue to allege and establish abuse, in the sense of tax avoidance in creation and/or use of such structure(s) - Onus will be on Revenue to identify the scheme and its dominant purpose - In the instant case, sale of shares is relevant and not sale of assets, item-wise - Revenue has adopted a dissecting approach at Department level - It cannot be said that the structure was created or used as a sham or tax avoidant. (Also see under: Income Tax Act, 1961) <i>Vodafone International Holdings B.V. v. Union of India & Anr.</i> 573
TRIPURA JUDICIAL SERVICE RULES, 1974: r.7. (See under: Service Law) 128

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TRIPURA JUDICIAL SERVICE RULES, 2003: r. 20(A) and (B). (See under: Service Law) 128
UTTAR PRADESH SUGARCANE (REGULATION OF SUPPLY AND PURCHASE) ACT, 1953: s. 16 - Fixation of State Advised Price (SAP) for sugarcane, over and above the minimum price fixed by Central Government - Power of State Government - Conflicting judgments by Constitution Benches - Matter referred to a larger Bench of at least seven judges - However, directions issued to sugar factories to pay balance outstanding principal amount to cane growers or to co-operative societies according to SAP of relevant crushing seasons. <i>West U.P. Sugar Mills Association & Ors. v. State of Uttar Pradesh & Ors.</i> 352
UTTAR PRADESH URBAN BUILDINGS (REGULATION OF LETTING, RENT AND EVICTION) ACT, 1972: s.21 - Eviction application - Bonafide need - Held: All the sons of landlord were educated but unemployed - They wanted to start business in tenanted premises - The hardship landlords would suffer by not occupying their own premises, would be far greater than the hardship the tenant would suffer by having to move out to another place - Tenant granted six months time to vacate the premises - U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - r.16(2) - Rent control and eviction. <i>Mohd. Ayub & Anr. v. Mukesh Chand</i>	.... 12

UTTAR PRADESH URBAN BUILDINGS

(REGULATION OF LETTING, RENT AND EVICTION) RULES, 1972:

r.16(2).

(See under: Uttar Pradesh Urban Buildings (Regulation of Letting, Rent And Eviction) Act, 1972)

12

WILD LIFE (PROTECTION) ACT, 1972:

(i) Object of the enactment - Discussed.

(ii) s.2(27) - "Specified plant" - Sandalwood - Central Government directed to take a decision as to whether Sandalwood is to be notified as a specified plant and be included in Schedule VI of the Act and to formulate a policy for conservation of sandalwood - It should also formulate rules and regulations for effective monitoring, control and regulation of sandalwood industries - States are directed to immediately close down all un-licensed sandalwood oil factories, if functioning, and take effective measures for proper supervision and control of existing licensed sandalwood oil factories in States - Constitution of India, 1950 - Arts. 51A(g), 48A - Environmental Protection Act, 1986.

(iii) Sandalwood - Legislative measures taken by some of the States - Discussed - Kerala Forest (Amendment) Act, 2010 - ss.47A, 47C - Tamil Nadu Forest Act, 1882 - s.40G - Tamil Nadu Sandalwood Possession Rules, 1970 - Tamil Nadu Sandalwood Transit Rules, 1967 - Karnataka Forest Act, 1963 - s.83 - A.P. Forest Act, 1967 - A.P. Sandalwood Possession Rules, 1969 - A.P.

Sandalwood and Red Sanderswood Transit Rules, 1969 - Felling of Trees (Regulation) Act, 1964 - Bombay Forest Rules 1942 - Madhya Pradesh Revenue Code - Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES), the Convention of Biological Diversity 1992 (CBD).

(Also see under: International Law / International Treaties and Conventions)

T. N. Godavarman Thirumalpad v. Union of India & Others

923

WITNESSES:

Interested witness - Reliability of - Held: An interested witness must have some direct interest in having the accused somehow convicted for some extraneous reason and a near relative of the victim is not necessarily an interested witness.

Amit v. State of Uttar Pradesh

1009

(ii)

**REFERENCE MADE BY
HON'BLE THE CHIEF JUSTICE OF INDIA
SHRI S.H. KAPADIA
IN THE MEMORY OF
LATE SHRI A.D. KOSHAL
FORMER JUDGE,
SUPREME COURT OF INDIA
ON 24TH JANUARY, 2012**

My esteemed colleagues, learned Attorney General, President of the Supreme Court Bar Association, President of the AOR Association, Members of the Bar, Ladies and Gentlemen.

We have assembled here this morning to pay our homage to Justice A.D. Koshal who adorned the Bench of this Court from 17th July, 1978 to 6th March, 1982 and who left for heavenly abode at the age of 94 on 22nd November, 2011 in Ludhiana after a brief illness.

His Lordship was born at Ahmedgarh, District Sangrur on 7th March, 1917. He did his schooling from S.D.S.E. High School, Patiala and from Public High School, Ahmedgarh. He passed his matriculation examination in 1930. Later on, His Lordship did his F.Sc. (Non-Medical) from F.C. College, Lahore and thereafter he obtained Degree in Arts from Government College, Ludhiana. He passed his LL.B. from Law College, Lahore in 1936. In the same year, he began his legal practice at Ludhiana. In 1939, Justice Koshal started practising in Malerkotla High Court, however, in 1945 he again resumed his practice at Ludhiana. He enrolled himself as an Advocate of Punjab High Court in 1948. He was appointed as ADJ, Ferozepur on 2nd February, 1960 and later transferred on promotion as District & Sessions Judge, Amritsar on 13th

(i)

March, 1961. He served as a Legal Remembrancer of Punjab Government from 10th July, 1966 to 31st October, 1966 and thereafter in the same capacity served Haryana Government from 1st November, 1966 to 18th June, 1967, on which date His Lordship was appointed as Registrar of Punjab & Haryana High Court. On 28th May, 1968, His Lordship was elevated as a Judge of the Punjab & Haryana High Court and remained as such till 27th June, 1976. He was transferred to Madras High Court on 5th July, 1976 and remained there till 31st July, 1977. He was again transferred to Punjab & Haryana High Court on 8th August, 1977 and was appointed as Chief Justice of Punjab & Haryana High Court on 1st November, 1977. On 17th July, 1978, he was elevated as a Judge of the Supreme Court wherefrom he retired on 6th March, 1982. After retirement, in 1985, His Lordship was appointed as the first Lokayukta of Karnataka State and remained as such for five years.

Late Justice A.D. Koshal authored a large number of judgments as a Judge of the Supreme Court. This included pronouncements on criminal jurisprudence, rent laws, Hindu law as well as matters under constitutional law. In the case of *Shetkari Sahakari Sakhar Karkhana Ltd. v. The Collector of Sangli* [(1980) 1 SCC 381], Justice Koshal took the view that Parliament has the power to retrospectively validate the imposition of cess imposed under invalid State Act, because to hold otherwise would be to cut down the width and amplitude of legislative competence conferred upon Parliament under Article 248 of the Constitution read with Entry 97 List I of Seventh Schedule to the Constitution. In *Zohra Khatoon v. Mohd. Ibrahim* [(1981) 2 SCC 509], while explaining the word 'wife' appearing under Explanation (b) to Section 125(1) of Cr.P.C. 1973 (unamended), he took the view that the expression 'wife' would include divorced Muslim wife even where dissolution of marriage was obtained by a Muslim wife under the Dissolution of Muslim Marriage Act, 1939.

(iii)

Justice Koshal was a man of impeccable integrity. He led a life of simplicity. He commanded equal respect from the Bench and the Bar. Law reports of Punjab & Haryana High Court and of the Supreme Court bear testimony of his judicial acumen and versatility, his painstaking diligence and his fine understanding and exposition of legal principles. He wore his industry unwrinkled. He died in the fullness of the years at the age of 94. God gave him long life which he put to good use and now he has gone to meet his Maker.

As a matter of tribute to the learned Judge, I wish to quote the English translation of a Tamil proverb :

**"Lamps do not give light that honest men desire,
It is the light of truth that illuminates their path".**

Justice Koshal is survived by his two sons Jagjivan and Ranbir Koshal who are doing exceedingly well in their respective careers in US.

On behalf of my brother and sister Judges, I wish to convey to the family of the bereaved our deep felt condolences in their hour of mourning.

I pray to God that the departed soul may rest in peace!

**REFERENCE MADE BY
ATTORNEY GENERAL FOR INDIA
SHRI G.E. VAHANVATI IN THE MEMORY OF
LATE SHRI A.D. KOSHAL
FORMER JUDGE, SUPREME COURT OF INDIA
ON 24TH JANUARY, 2012**

My Lord Justice Kapadia, Chief Justice of India, Hon'ble Judges, learned Solicitor General Mr. Rohinton F. Nariman, Mr. PH Parekh, President of the Supreme Court Bar Association, office bearers of the Bar Association, Law Officers, Members of the Bar, friends, ladies and gentlemen.

We have assembled here today to pay tributes to the late Justice A.D. Koshal, a distinguished Judge of this Court who having retired as far back as on 6th March, 1982, passed away on 22nd November, 2011 in Ludhiana after a brief illness. He was one of the few retired Judges of this Court who have lived into the 90s. Only Justice V.R. Krishna Iyer is elder to him. Justice Krishna Iyer is presently 96 years of age.

Justice Koshal was born on 7th March, 1917 at Ahmedgarh situate in the erstwhile Malerkotla State. He was a product of SDSE High School, Patiala which proudly describes him as one of its distinguished alumni on its website. He then went on to the Public High School, Ahmedgarh from where he passed the matriculation examination in 1930. Having graduated from the Law College in Lahore in 1936, he started practice as a pleader in Ludhiana.

Justice Koshal was one of those Judges who made it to the highest Court having worked his way up through different levels of the judiciary. He was appointed Additional District & Sessions Judge, Ferozepur on 2nd February, 1960 and

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thereafter, transferred as District & Sessions Judge, Amritsar where he worked up to 9th July, 1966. His stints as Legal Remembrancer and Secretary to Government, Law Department in Punjab and Registrar of the High Court of Punjab & Haryana was stepping stones to his elevation to the Punjab & Haryana High Court where he was made a Judge on 28th May, 1968.

During the Emergency Justice Koshal was transferred to Madras on 27th June, 1976 and, thereafter, when the emergency was lifted, he was brought back to Chandigarh on 31st July, 1977. He resumed office as a Judge of the Punjab & Haryana High Court on 8th August, 1977. He became Chief Justice of the Punjab & Haryana High Court on 1st November, 1977 and was elevated as a Judge of this Court on 17th July, 1978 where he sat for less than 4 years, retiring on 6th March, 1982.

During his tenure in this Court Justice Koshal was part of a Bench which gave a judgment in the Kissa Kursi Ka case which evoked controversy. Those were tumultuous times.

Justice Koshal wrote several dissenting judgments, and having regard to the fact that he sat with such giants as Justice Krishna Iyer, the fact that he disagreed with them on occasions is a tribute to his own intellectual capacity. For instance in the celebrated labour case **Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Majdoor Sabha**, (1980) 2 SCC 593, he dissented on three points from Justice Krishna Iyer, including on an important point that it was open to the High Court to revise the punishment meted out by the Management to the delinquent workmen and by doing so it had exceeded the limits of its jurisdiction under Article 227 of the Constitution. Justice Koshal said the High Court could not do so.

Another judgment in which he wrote a powerful dissent was the case of **LIC of India v. D.J. Bahadur and Others**, (1981)

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1 SCC 315, in which he set aside the judgment of the Allahabad High Court in relation to the right of the employer and the Union of India to change the conditions of service of an employee regarding payment of bonus. The High Court had issued a writ of mandamus against the LIC, which according to Justice Koshal, ought not to have been done.

In the case of **Saraswati Devi and Others v. State of UP and Others**, (1980) 4 SCC 738, Justice Koshal was the junior most judge on a Bench comprising Justice Y.V. Chandrachud, Justice P.N. Bhagwati, Justice V.R. Krishna Iyer and Justice Murtaza Fazal Ali. He wrote a well reasoned judgment in relation to Section 68-D of the Motor Vehicles Act, 1939 and the nature of objections which may be preferred by a party affected by a scheme.

While compiling this speech I turned to several members of the Bar who were active in Supreme Court at the time when Justice Koshal sat in this Court. One of them Soli J. Sorabjee told me that he was a tough judge and a strict disciplinarian. Soli remembers an occasion when a Senior Lawyer raised his voice in Justice Koshal's Court. Justice Koshal took grave exception to it and, as a matter of fact, asked him to get out of Court.

In 1984, the State of Karnataka enacted the Lokayukta Act and the then Chief Minister Mr. Ramkrishna Hegde persuaded Justice Koshal to become the Lokayukta of Karnataka in 1986, a post which he held till 1991. Needless to say the post of Lokayukta was not as high profile then as it has become subsequently. It reflected Justice Koshal's personality which was steady and solid.

Whilst I was doing some research on Justice Koshal, my Secretary came across some interesting material in Wikipedia about Koshals. Koshals, to which Justice Koshal belonged, are

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descendants of Raja Hawaha and Kachwaha. Koshals, being a martial lot, had a flair for riding and breeding warrior horses: that is why they were also called Ghorewaha. I am not sure whether Justice Koshal indulged in this. According to Wikipedia, other prominent Koshals today include the present Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry, who is described as the most prominent and powerful Koshal Rajput in Pakistan today, and certainly the most powerful Chief Justice of Pakistan ever.

I must confess that I felt handicapped when I started compiling this tribute to Justice Koshal. This is because when he became a Judge in 1968 I had not even joined the Law College. When he was elevated to this Court in 1978, I was just a junior with a few years standing. By the time he retired in 1982, I had started making my infrequent appearances in this Court. So, he belongs to another generation and to another era. So many people feel that those days gone by have been glorious days and mark a stunning chapter in this Court's history. In any case, Justice Koshal has now rejoined several of his colleagues who adorned this Bench during that period and are no more. They will all now meet and exchange memories of the days gone by. I am sure they will also assess what lies in store for us.

**REFERENCE MADE BY
PRESIDENT, SUPREME COURT BAR ASSOCIATION
SHRI PRAVIN H. PAREKH IN THE MEMORY OF
LATE SHRI A.D. KOSHAL
FORMER JUDGE, SUPREME COURT OF INDIA
ON 24TH JANUARY, 2012**

1. Hon'ble Mr. Justice S.H. Kapadia, the Chief Justice of India, My Lords Hon'ble Judges of the Supreme Court, Mr. Goolam E. Vahanvati, Learned Attorney General for India, Mr. Rohinton F. Nariman, the learned Solicitor General of India, the learned Additional Solicitor Generals, Mr. Sushil Kumar Jain, President A.O.R. Association, Office Bearers and Members of the Executive Committee of SCBA, my colleagues at the Bar, Ladies & Gentlemen.

2. The Supreme Court Bar joins your Lordships in condoling the sad demise of Hon'ble Mr. Justice Anand Dev Koshal. I adopt what my Lord the Chief Justice and the learned Attorney General have said about Justice Koshal.

3. Full Court Reference is an occasion not only to pay tribute to the eminent Judges and members of the Bar but it is also to remember, and borrow from the contributions made by them in building this great institution. It is also an occasion to renew our pledge and resolve to further take this institution to a greater glory and height.

4. I was fortunate to attend the swearing in by Justice Koshal in this court room on 17.07.1978. On that day Justice O. Chinnappa Reddy and late Justice A. P. Sen also took oath. I was lucky to participate in the farewell dinner hosted by Supreme Court Bar Association in honor of Justice Koshal at

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Phoolwari Restaurant, Pragati Maidan on 06.03.1982. I consider it a privilege to be able to pay homage to Justice Koshal this morning.

5. Justice Koshal during short tenure in this Hon'ble Court endeared himself to everyone. He was dignified, courageous, courteous and patient. Dignity was writ large on his face, in his conduct, behavior and in his court manners. Justice A.D. Koshal was a very dignified, competent and soft spoken judge. He had a calm and composed demeanor. He was a righteous man. He was happy with what God gave him. He desired nothing more. He had no grievance with anyone. I had the privilege of appearing before him in large number of cases. He extended fullest courtesy to the members of the Bar and the Bar as usual returned the courtesy in abundance.

6. After Justice Koshal retired, I met him only once in a wedding at Chandigarh. In 1998, I telephoned Justice Koshal as President of AOR Association to invite him to attend the function organized by the bench and bar to celebrate Golden Jubilee of this Hon'ble Court. He talked to me very nicely and fondly, inquired about some members of the Bar. He thanked me for sending him Supreme Court calendars. He said it is of no use to him but he felt happy to receive it. He asked me to continue sending him the Supreme Court Calendar, which I did, by even sending one of the very first copies of the 2012 Calendar of this Hon'ble Court.

7. Talking about Justice Koshal takes me down the memory lane.

(a) Every Monday a Constitution Bench used to sit in the Chief Justice's Court to hear all writ petitions for admissions. Normally, there used to be three-judge

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benches because one strong view was that two-judge benches of Supreme Court should not overrule division bench judgments of the High Courts, at least at the final hearing.

(b) Library-One was the only library. The 4th Chamber block, now known as R.K. Jain Chamber Block, was built. I was allotted a chamber in that block, till then me and all other members who had no chambers used to work in the corridor outside the court rooms. My office was supposed to be outside court no. 4, where I used to give dictation to my steno or meet the clients who were looking for me.

(c) There was no security. Only after the incident of a mad client throwing a knife at Justice Grover in this court room, where Chief Justice Hidayatullah was presiding, a small police post was created. Outside each court room, one peon was deployed by way of security. Vacation judges used to hear cases at their homes and most of them used to serve a cup of tea to the members of the bar, appearing before them.

(d) I was appointed as a part time reporter of Supreme Court Reports (SCR) by Chief Justice A.N. Ray. Judges used to read and correct the head notes prepared by the reporters of SCR. Many of them used to call the reporter to discuss head-notes. In case of ambiguity in the Judgment, reliance can be placed on the head-note of the authorized series. There was only 1 Registrar. He used to list matters according to the convenience of the advocates. This used to be done every Friday in this court room by the Registrar after the court rose.

8. Justice Koshal was born at Ahmedgarh, situated in the

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erstwhile Malerkotla state (now in Sangrur district of Punjab State), on March 7, 1917. He had his schooling in SDSE High School, Patiala, and Public High School, Ahmedgarh, from where he passed the matriculation examination in 1930. He went on to complete his F.Sc. (non-medical) examination from Forman Christian College Lahore and obtained his arts degree two years later from Government College. He graduated in law from Law College, Lahore in 1936. In 1939, he became an advocate of the Malerkotla High Court where he practiced till 1945 in which year he resumed his practice at Ludhiana. He was enrolled as an advocate of the Punjab High Court in 1948 and practiced as such at Ludhiana till February 1, 1960. He was appointed Additional District & Sessions Judge, Ferozepore, on February 2, 1960. He worked as Judge of the High Court of Punjab and Haryana till the June 27, 1976, when he was transferred to Madras. Justice Koshal occupied the office of Judge in the High Court of Judicature at Madras from July 5, 1976, to July 31, 1977. On his transfer to Chandigarh, he resumed charge of the office of Judge of the High Court of Punjab and Haryana August 8, 1977. Justice Koshal was elevated as Chief Justice of Punjab & Haryana High Court on November 1, 1977.

9. Justice Koshal was a party to the Constitution Bench Judgment which upheld the vires of the amendment made by this Court in Supreme Court Rules to hear the review petitions by circulation, without oral submissions in **Sita Ram & Ors v. State of U.P.** (1979) 2 SCC 656.

10. On the date of his sad demise, Justice Koshal was, amongst the retired Judges of this Court, the second senior most judge age-wise. Justice Koshal sat with Justice Krishna Iyer for a long time and he was party to many important judgments.

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11. (a) I would like to narrate my experience about Justice Koshal in the matter of **Gujarat Steel Tubes Limited Vs. Gujarat Steel Tubes Limited Mazadoor Sabha** reported in 1980 (2) SCC 593. The matter was heard in Court No. 3 by three Judge Bench consisting of Hon'ble Mr. Justice V.R. Krishna Iyer, Hon'ble Mr. Justice D.A. Desai and Hon'ble Mr. Justice A.D. Koshal. Justice Koshal gave his dissenting judgment.

(b) In that case, all the workmen of the Appellant Engineering enterprise went on strike and some of the employees indulged in objectionable activities. The majority held that Arbitrator under Section 10-A of Industrial Disputes Act, 1947 is a statutory authority and amenable to writ jurisdiction. The majority held that the order of discharge simpliciter of employees was, in substance, punitive, which amounts victimization and unfair labour practice and the employees were directed to be reinstated. The majority held that even if the strike is illegal it can't be castigated as unjustified unless the reasons are perverse and unreasonable. The degree of culpability and the quantum of punishment would turn on the level of participation in the unjustified strike and workmen were directed to be reinstated with full back wages by the majority. The majority held that the Arbitrator under Section 10-A has power to bind even those who are not parties and the force of the Award is derived from the statute and therefore, the Arbitrator is a part of Infrastructure of the sovereign dispensation of justice and hence, the orders are amenable to judicial review under Article 226 and 227. Majority held that, "104.

.....*Statutory construction which fulfils the mandate of the statute must find favour with the Judges, except*

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where the words and the context rebel against such flexibility. We would prefer to be liberal rather than lexical when reading the meaning of industrial legislation which develops from day to day in the growing economy of India". Majority also held as under, "107.

.....Even if Section 11-A is not applicable, an arbitrator under Section 10-A is bound to act in the spirit of the legislation under which he is to function. A commercial arbitrator who derives his jurisdiction from the terms of reference will by necessary implication, be bound to decide according to law and, when one says 'according to law', it only means existing law and the law laid down by the Supreme Court being the law of the land, an arbitrator under Section 10-A will have to decide keeping in view the spirit of Section-11-A."

(c) Justice Koshal delivered a dissenting judgment, held that the discharge is a simpliciter discharge and the management had power to do so. There was no element of punishment and it cannot amount to dismissal. He held that the workmen did not respect the settlement. Justice Koshal in the dissenting judgment held that the High Court under Article 227 has limited jurisdiction. He held that Tribunal under Section 10-A was not empowered to interfere with the punishment if he found that misconduct was proved. Justice Koshal in his dissenting judgment held:

"167. I have had the advantage of going through the judgment of my learned Brother Krishna Iyer, J., but after giving the same my most serious consideration I regret that I find myself unable to endorse it as I hold a different opinion in relation to three important findings arrived at by him, namely,

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(a) that the discharge of workmen amounted really to their dismissal because the motivation for it was their alleged misconduct,

(b) that an arbitrator would fall within the ambit of the term "tribunal" as used in sub-section (2) of Section 11-A of the Industrial Disputes Act (hereinafter called 'the 1947 Act'), and

(c) that the High Court acted within the four corners of its jurisdiction under Article 227 of the Constitution of India while interfering with the finding of the arbitrator that the workmen were correctly punished with dismissal if the orders of discharge could be construed as such."

Lastly, Justice Koshal held that,

"193. I need not go into the other aspects of the case. In view of my findings-

(a) that the orders of discharge of the workmen could not be regarded as orders of their dismissal and were, on the other hand, orders of discharge simpliciter properly passed under MSO 23;

(b) that the arbitrator could not exercise the powers conferred on a Tribunal under Section 11-A of the 1947 Act and could not therefore interfere with the punishment awarded by the Management to the workmen (even if the discharge could be regarded as punishment), and

(c) that in any case the High Court exceeded the limits of its jurisdiction in interfering with the said punishment purporting to act in the exercise of its powers under Article 227 of the Constitution of

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India," the judgment of the High Court must be reversed and the order of the arbitrator restored."

(d) After the matter was heard for some time, it was obvious that Justice D.A. Desai was inclined to dismiss the Appeal of the Management. The same was the view of the Justice Krishna Iyer though he was open to hear the arguments. Justice Koshal was discussing with Justice Krishna Iyer that appeal deserved to be allowed. He also requested Mr. Ashok Sen who was the leading counsel for the Management and Mr. V.K. Tarkonde who was leading counsel for the Mazdoor Sabha and this was an evidently a fit case to settle the matter, however, the settlement could not take place.

12. (a) This Hon'ble Court had constituted an Organizing Committee headed by Justice S. P. Bharucha who was the then senior most judge of Hon'ble this Court to celebrate Golden Jubilee of this Hon'ble Court. This Committee used to invite the office bearers of Supreme Court Bar Association as well as Advocate-on-Record Association. Mr. K.K. Venugopal was the then President of Supreme Court Bar Association and I was the President of Advocate-on-Record Association. The Government of India had given handsome grant to this Hon'ble Court for the golden jubilee celebration. Substantial grant was returned by this Hon'ble court as unutilized. All the former judges of this Hon'ble Court with their spouse were invited and honoured at the Supreme Court lawn. They were also honoured by both the Bar Associations. The Government of India also gave to the Advocate-on-Record Association a grant of Rs. One Crore for golden jubilee celebration which was utilized for the main function, for publishing of 3 volumes of literatures including a book on Supreme Court Rules and Practice as well as lecture series and for holding an All India Seminar to mark the golden

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jubilee celebration held on 4th, 5th and 6th December, 1998, which was inaugurated by His Excellency Mr. K. R. Narayanan, the then President of India. Also All India Moot Court Competition was arranged. The photograph of all the 144 judges of this court was printed.

(b) I telephoned Justice Koshal requesting him to attend the Golden Jubilee Celebration of this Hon'ble Court. At that time Justice Koshal told me that normally he did not go to any function though he enquired about the Court and all of us at the Bar. He also conveyed his best wishes to the members of this Bar.

(c) In the book released by the Advocate-on-Record Association on the occasion of the Golden Jubilee celebration of this Court Justice Koshal's photograph appears at Sl.No.63 before the photograph of Justice O. Chinappa Reddy and Justice A.P. Sen as on the same date i.e. on 17.7.1978 all these three judges were sworn in as Judge of this Hon'ble Court. Justice R.S. Pathak was appointed on 20.2.1978 and immediately next Justice A.D. Koshal was appointed. In this connection, I had telephoned Justice Koshal requesting him to attend the function.

13. Punjab & Haryana High Court published a golden jubilee souvenir which was released on 14th March 2009 by Justice A.S. Anand, Former Chief Justice of India when My Lord Justice T. S. Thakur was the Chief Justice of Punjab and Haryana High Court. In that souvenir Justice M.R. Agnihotri, former Judge of Punjab & Haryana High Court, has written an incident about Justice A.D. Koshal and from that book, I quote:

"Once Hon'ble Justice A.D. Koshal, a typical Punjabi, heard a case in the Supreme Court and the counsel

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appearing, did not know Punjabi. In order to emphasize his point, the Counsel read a Section of the Act. "My Lord, kindly read with me the Section: Notwithstanding anything contained to the contrary, (comma), 'My Lord, once again with your Lordship's permission, I will read the Section: Notwithstanding anything contained to the contrary, (comma).' Your Lordship will pardon me, I again read: Notwithstanding anything contained to the contrary, (comma)." By that time, Justice A.D. Koshal who had lost patience, loudly said, "Oh chhadd pare (comme) nun, agey bhi tur." (Forget the comma, proceed further). The whole courtroom was convulsed with laughter." While the lawyer who was not conversant with Punjabi was not laughing, understanding nothing that was said by the court."

14. Justice Koshal has two sons, Mr. Jagjeevan Koshal, who is 70 years old and Mr. Ranveer Koshal, who is 68 years old. None of them joined legal profession. Both sons are settled in U.S.A. doing computer software business for more than 20 years. He had no daughter. Justice Koshal's wife Smt. Krishna Kumari expired on 25th May 1999. Thereafter, Justice Koshal had no family members living with him. Both his sons and their family members were very keen that Justice Koshal shifts to USA to live with them. However, his love and attachment to the soil of Ludhiana made him stay in Ludhiana till the end. Justice Koshal left for his heavenly abode on 22.11.2011. Cremation was performed after both his sons arrived from U.S.A. Uthala ceremony was performed at his residence in Ludhiana on 25.11.2011. Large number of residents of the city attended Uthala ceremony to mourn the demise of Ludhiana's first Supreme Court Judge and the country's first Lokayukta. The District and Sessions Judge Mr. S.P. Banger and President and members of the Ludhiana District Bar Association and other

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members of the legal fraternity as well as residents of Ludhiana paid their homage.

15. We, on behalf of the Supreme Court Bar gratefully recognize the contribution made by Justice Koshal to this great institution. We pray to almighty that let the soul of Justice A.D. Koshal rest in eternal peace. We convey our condolences to both sons of Justice Koshal and other family members.



सत्यमेव जयते

THE
SUPREME COURT REPORTS

Containing Cases Determined by the Supreme Court of India

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[2012] 1 S.C.R.

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PUBLISHED UNDER THE AUTHORITY OF THE SUPREME COURT OF INDIA
BY THE CONTROLLER OF PUBLICATIONS, DELHI
(Also available on www.supremecourtindia.nic.in)

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JUDGES OF THE SUPREME COURT OF INDIA

(From 04.01.2012 to 28.02.2012)

1. Hon'ble Shri Justice S.H. Kapadia, Chief Justice of India
2. Hon'ble Mr. Justice Altamas Kabir
3. Hon'ble Mr. Justice Dalveer Bhandari
4. Hon'ble Mr. Justice D. K. Jain
5. Hon'ble Mr. Justice P. Sathasivam
6. Hon'ble Mr. Justice G. S. Singhvi
7. Hon'ble Mr. Justice Aftab Alam
8. Hon'ble Mr. Justice Cyriac Joseph **(Retired on 27.01.2012)**
9. Hon'ble Mr. Justice Asok Kumar Ganguly
(Retired on 02.02.2012)
10. Hon'ble Mr. Justice R.M. Lodha
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15. Hon'ble Mr. Justice T. S. Thakur
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24. Hon'ble Mrs. Justice Ranjana Prakash Desai
25. Hon'ble Mr. Justice J.S. Khehar
26. Hon'ble Mr. Justice Dipak Misra
27. Hon'ble Mr. Justice J. Chelameswar

**MEMORANDA
OF
JUDGES OF THE SUPREME COURT OF INDIA**
(From 04.01.2012 to 28.02.2012)

Hon'ble Mr. Justice G.S. Singhvi, Judge, Supreme Court of India was on leave for five days w.e.f. 09.01.2012 to 13.01.2012, one day on 25.01.2012 and one day on 01.02.2012, on full allowances.

Hon'ble Mr. Justice Cyriac Joseph, Judge, Supreme Court of India was on leave for three days from 18.01.2012 to 20.01.2012 on full allowances.

Hon'ble Mr. Justice S.S. Nijjar, Judge, Supreme Court of India was on leave for two days on 27.01.2012 and 30.01.2012, on full allowances.

**ERRATA
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