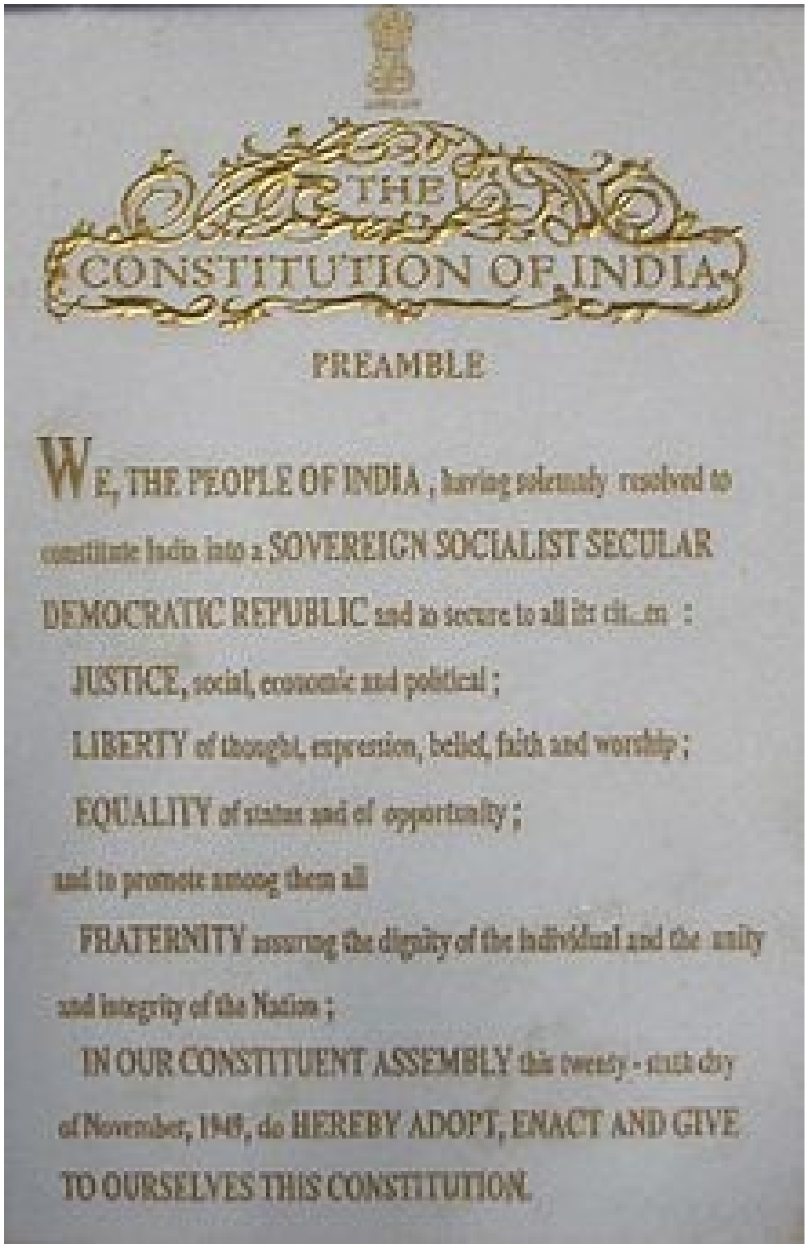
Contribution of Madras High Court and Madurai Bench of Madras High Court to the Development of Law in 2011


THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE, social, economic and political ;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and of opportunity ;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

National Conference of High Court Justices on Contribution of High Courts and the Supreme Court to the Development of Law in 2011

at

National Judicial Academy

February 18 – 19, 2012

Contribution of Madras High Court and Madurai Bench of Madras High Court to the Development of Law in 2011

CONTENTS

“ஓர்ந்துகண் ணோடா(து) இறைபுரிந்து யார்மாட்டும்

தேர்ந்துசெய் வ:.தே முறை” – Kural - 541

“ Investigate well, show favor to none, maintain impartiality, Consult the law, then give judgment-that is the way of justice ”

This is what Saint Thiruvalluvar said about justice delivery over 2000 years ago.

1. In 1892, nearly 110 years back, on the eve of handing over the key of the present High Court building to the then Hon'ble Chief Justice, the then Governor expressed full confidence that the administration of justice will be carried on with the ability and integrity that has always marked the Madras High Court.

2. Accepting the key, the then Hon’ble The Chief Justice, Sir Arthur Collins, Kt. stated: “so long as this High Court is an independent Court, with Judges who fear no man, and who administer law, according to the rules of law, equity and good conscience, with the jurisdiction it has exercised for so many years intact, I believe it will continue to have and to deserve the confidence of the public. ... In conclusion, I fervently hope that long after you and I, Your Excellency, have passed away to that undiscovered country of which we know so little, there may always continue to be found, men of ability and courage, who will administer law in these Courts without distinction of class, creed or race”.

3. In reply to this, expressing the same sentiments on purpose, on the eve of the centenary celebrations in 1963, the then Hon'ble Chief Justice, in his welcome address, pointed out “the duties of a Judge are vital to Democracy, for the Rule of law can be enforced by Courts alone and where the individual is trampled upon or sacrificed, lacking their protection, the darkness of the tyranny of man over man

has already fallen. From such an attitude of understanding, it is clear that the Judiciary serves, not merely some social purpose not inferior to that of any other group, but the highest of purposes. Man lives by Freedom even as much as by bread, and the Rule of Law is its indispensable element. "

4. Reflecting the same mood and the torch handed over held high, on the eve of the sesquicentennial Celebration in the year 2011, the Hon'ble the Chief Justice reaffirmed the commitment of this great chartered High Court to administer law according to rule of law, equity and good conscience, that access to justice is not just a theme, but a dream for this Court to lay an action plan for every citizen to realise and cherish.

5. Formally inaugurated 150 years back on 15^{th} August 1862, with a strength of five puisne Judges and a Chief Justice, this Court, today, has a total sanctioned strength of 60 Judges, and at present we are 49 Judges, including the Hon'ble Chief Justice.

6. In an attempt to realise this commitment, making optimum utilisation of the Court's hours, the Hon'ble Chief Justice has introduced in the course of this year, holiday family Courts to provide flexible timings for the parties to appear and resolve their cases before Family Courts in Chennai, as a model for expanding the same to other parts of the State and set a target of zero pendency in motor accident claims and Negotiable Instruments Act cases pending before the various Courts.

7. It is a matter of pride that under the able leadership and guidance of the Hon'ble the Chief Justice, for the third consecutive year, the Madras High Court has the

credit of having the maximum disposal of cases year in 2011, disposing 2,36,867 cases with a per Judge disposal rate at 4,833 cases, the average time taken for disposal of one case works out to just 29.2 seconds. The disposal of subordinate judiciary also shows that it stands first among all the subordinate Courts in the country. - ***Times of India edition dated 11th February, 2012*** reports :

In a record, lower courts dispose of 16.56L cases in 2011

TIMES NEWS NETWORK

Chennai: In a stellar performance, for the first time in more a decade, the disposal of cases by the subordinate judiciary in Tamil Nadu has overtaken the number of cases filed in 2011.

That is, while a total of 5,98,169 new civil and criminal cases were filed in the state, a record 16,56,290 cases were disposed of during the year. As a result, the pendency of cases will come down by at least 58,121 – from 12,41,370 in 2010 to 11,83,249.

"This is spectacular because for the past two years we are unable to augment the strength of subordinate judges. At least 185 civil judges (junior division) posts are lying vacant, and vacancies at the lowest rung has been having a cascading impact on the entire spectrum of the subordinate judiciary," a senior judge told The Times of India.

"I am informed that our subordinate judiciary has displaced Kerala at the top this year," another judge said.

The Madras high court has already created a record of sorts by clearing 2,36,837 cases, taking average 29.2 seconds to dispose of a case.

According to the figures made available to TOI, during

While a total of 5,98,169 new civil and criminal cases were filed in the state, a record 16,56,290 cases were disposed of during the year. As a result, the pendency of cases will come down by at least 58,121 – from 12,41,370 in 2010 to 11,83,249

2011 a total of 9,29,156 criminal cases were filed, whereas the disposal figure was 9,63,700. The pendency now stands at 7,15,702. Similarly, a total of 6,69,103 new civil cases were filed in 2011, whereas the disposal was 6,92,590. At present, pendency of civil cases is 4,67,547.

The subordinate judiciary in Puducherry too has done quite well. While a total of 25,826 cases were filed in 2011, more than 26,700 cases were cleared during the period.

8. Apart from the disposal before the Courts, there has been an effective implementation of settlement of cases through mechanics of alternate dispute resolution forums by holding continuous lok adalats, monthly lok adalats and

mega lok adalats. During this year, the Court annexed Tamil Nadu Mediation and Conciliation Centre has also contributed towards the substantial reduction of cases by settling those cases referred to by the Courts. Taking advantage of the 13th Finance Commission's assistance, knowledge empowerment programmes, training and sensitization programmes and seminars are conducted regularly by the Tamil Nadu State Judicial Academy under the Chairmanship of the Hon'ble the Chief Justice, to the Judicial Officers as well as to the Public Prosecutors on matters relating to their jurisdiction and on provisions of special enactments as well as on development of law.

With this prelude let us move on to a few judgments of this Court.

Compiled by :

Justice Chitra Venkataraman

and

Justice S. Nagamuthu

High Court, Madras.

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During 2011-12, there were as many as 13 Full Bench decisions on various subjects; 9 pertain to Civil matters and 4 under Criminal law. The decisions on criminal law are covered under the write-up given under the separate heading on criminal law. A separate Chapter is also devoted to cover cases under civil, service and constitutional law relating to community certificate vis-a-vis the Public Service Commission's jurisdiction, promotion in the case of punishment, inherent powers of Insolvency Courts to give protection, renewal of a mining lease, registration of a deed of cancellation of sale deed and confirmation of dissolution of marriage by the High Court under the Indian Divorce Act and the amendment to the said Act in 2001.

1. Part VI of the Constitution of India deals with special provisions relating to certain classes. Among other reservations provided under various Articles, Article 341 and Article 342 relate to the power of the State to specify the castes, races or tribes or parts of or groups within castes, races or tribes, which shall, for the purposes of this Constitution, be deemed to be Scheduled Castes/Scheduled Tribes, as the case may be.

2. Article 15(4) and Article 29(2) protect the State's authority in making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes or Scheduled Tribes. Article 16(4) enables the State to make provision on the reservation of the appointment or post in favour of any backward class of citizens, which, in the opinion of the State, is not adequately represented in the services of the State.

3. Clause (4A) of Article 16 empowering the State to make any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes, which, in the opinion of the State, are not adequately represented in the services under the State.

4. While considering the issue of reservation with reference to Articles 15(4) and 16(4) of the Constitution of India , speaking for the Bench, the Apex Court, in ***Indra Sawhney Vs. Union of India*** reported in ***1992 Supp (3) SCC 217,*** held:

> " The basic policy of reservation is to offset the inequality and remove the manifest imbalance, the victims of which for bygone generations lag far behind and demand equality by special preferences and their strategies.
>
> Thus, education, employment and economic empowerment are some of the programmes the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). "

5. In the backdrop of the above enunciation of law, the question as to "Whether the Tamil Nadu Public Service Commission could verify the genuineness of the Community Certificates for selection or their power to test the correctness of the information given in the certificates is limited only to see as to whether the certificates are true or not?" came up for consideration before the Full Bench of this Court. In the decision reported in ***2011 (5) CTC 1 : 2011-4-LW 673 :***

(2011) 6 MLJ 609 : 2011 (4) LLN 736 (Tamil Nadu Public Service Commission, rep. by its Secretary Vs. R.Manikandan and others), this Court held:

a) The scrutiny of the genuineness of the Scheduled Caste certificates can be made only by the District Level Vigilance Committee constituted by the State Government in terms of G.O. (2D) No. 108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007;

b) The scrutiny of the genuineness of the Scheduled Tribe certificates can be made only by the State Level Scrutiny Committee constituted by the State Government in terms of G.O. (2D) No. 108, Adi Dravidar and Tribal Welfare Department, dated 12.09.2007;

c) Such scrutiny of certificates, be it Scheduled Caste or Scheduled Tribe, cannot be made by the Tamil Nadu Public Service Commission;

d) For the purpose of processing the application and allowing a candidate to take part in the written examination and the consequential oral examination, the Service Commission would be entitled to verify as to whether the candidate has produced a Caste Verification Certificate obtained from the respective Committees and in the event such certificate is produced, the selection of the candidate cannot be withheld and the name should be forwarded to the appointing authority for making appointments;

e) In the event a candidate does not produce such a Caste Verification Certificate and in the event he is selected, his name cannot be withheld and can be forwarded for appointment with a clear indication that the selection is subject to the verification of the community certificate;

f) In terms of paragraphs 10 and 15 of the directions of the Apex Court in ***Kumari Madhuri Patil's case,*** a candidate who is selected and appointed subject to verification of the community certificate, shall not claim any benefit of such selection and in case the certificate is found to be false, the candidate should consequently lose his employment.

6. Promotion is not a matter of right. It is a settled principle of law that in matters of promotion, an employee has only a right to be considered for promotion and he has no right to claim promotion. The non-promotion of an employee or the penalty imposed cannot be considered to be a double jeopardy, are all established judicial precedents, about which there can be no doubt - vide ***(1991) 4 SCC 109 (Union of India and others Vs. K.V.Jankiraman & others).***

7. In the decision reported in ***(1995) 3 SCC 273 (State of Tamil Nadu Vs. K.S.Murugesan and others),*** the Apex Court held that for the purpose of promotion, the currency of punishment based on previous records, is an impediment. While holding so, the Supreme Court has again clarified that the Principle of Double Jeopardy will not apply in cases of imposing penalty in disciplinary proceedings and withholding of promotion on account of currency of punishment and that does not offend either Article 14 or 21 of the Constitution of India. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. The Full Bench of this

Court, in the decision reported in ***2011 (3) CTC 129: 2011 (2) LLN 530 : (2011) 4 MLJ 1 : 2011 (3) LW 673 (The Deputy Inspector General of Police, Thanjavur Range, Thanjavur and another Vs. V.Rani),*** considered the question as to whether the currency of punishment has to be treated as a bar for promotion in the context of the provisions of Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, 1955, Rules 17(b), 17(a), 8 and 17(e) and Tamil Nadu State and Subordinate Service Rules, 1955, Rules 36, 36(b)(ii), 36(a),39(a)(i) & (d).

8. There is no provision under the above-said Rules framed under Proviso to Article 309 of the Constitution of India regarding the manner of promotion, etc. However, Rule 39 enables a Government servant to be temporarily promoted in public interest, owing to emergency.

9. The Government issued instructions in G.O.Ms.No.368, Personnel and Administrative Reforms Department, dated 18.10.1993, giving instructions regarding the panel for appointment by promotion/by direct recruitment by transfer.

10. Therefore, on analysis of the entire case law on the subject, the Full Bench held:

   a) During the period of currency of minor punishment, an employee cannot claim, as a matter of right, to be promoted to the next category merely on the basis that he is otherwise fit for promotion, and to that extent, the finding of the Division Bench in ***Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and Ors. [2008 (5) MLJ 350]*** stands overruled. It is needless to state that after the currency of punishment period, the

Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

b) If any benefit has been conferred on the party to the judgment rendered by the Division Bench in ***Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and Ors. [2008 (5) MLJ 350],*** the same shall not be affected by the judgment of this Bench, since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.

c) The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993, issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be administrative instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

d) Government letter No. 18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexure 1 to 7 and Letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso to Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

e) Consequently, the embargo put on the right of the Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check period' viz., one year in the case of censure and five years in the case of other minor punishments is illegal and impermissible under the statutory rules.

11. The question as to whether Insolvency Court is empowered to pass interim order of protection before the order of adjudication is made by Insolvency Court, came up for consideration before the Full Bench of this Court reported in ***2011 (4) CTC 481 : 2011-3-LW 769 : (2011) 6 MLJ 1 (Ramalingam Vs. Radha and others).*** While examining the said question, the Full Bench applied the law laid down in ***Padam Sen v The State of Uttar Pradesh ((1961) 1 SCR 884),*** holding "The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purpose mentioned in s.151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature" and dealt with the provisions of Section 4 of the Provincial Insolvency Act, 1920 (5 of 1920), in particular with reference to the general powers and inherent powers of the Court, namely Section 151 of C.P.C. This Court held that there is no bar for the Insolvency Court in exercising its inherent powers of granting interim orders before adjudication process, that Section 23 does not take away the power of Insolvency Court to pass interim orders which are preventive in nature.

12. This Court further pointed out that while trying the Civil Suit, the Civil Court has inherent power of granting interim orders under Section 151 of the Code of Civil Procedure. Simply because Section 23 of the Provincial Insolvency Act enables the Court to release the debtor who has been arrested or imprisoned in execution of a decree of any Court for the payment of money, it does not, in effect, take away the power of the Insolvency Court to pass interim orders which are preventive in nature, of course in appropriate cases, based on the facts and circumstances of the case. Therefore, on a combined reading of the provisions as a whole, especially, taking note of Sections 4 and 5 of the Provincial Insolvency Act, the Full Bench held "there is no bar for the insolvency Court in exercising its inherent powers of granting interim orders before the adjudication process, as a matter of prevention."

13. The Hon'ble Supreme Court, in the judgment in *Rajendra Singh Vs. State of Madhya Pradesh* reported in *(1996) 5 SCC 460,* held that mining lease is not a fundamental right in nature but a statutory right.

14. A Full Bench of this Court, in ***C.Muthukrishnan Vs. The District Collector, Tirunelveli District,*** reported in ***2011 (5) CTC 577 : (2011) 7 MLJ 641,*** had an occasion to consider the issue as to whether the lease granted on Mining Rights for a period of less than ten years be taken as ten years under amended Rule 8 of the Tamil Nadu Minor Mineral Concession Rules, 1959. The Full Bench considered the prospective amendment brought and held that even though the amended Rule confers right on the lessee in respect of virgin quarry for a period of ten years, when parties to the lease deed agreed for a lesser period, the lessee cannot claim

extension of lease under the amended Rule. On the lease granted in respect of Virgin Quarries before the amendment, there was no mandatory clause of lease for ten years. Holding that the amendment is prospective in nature, this Court held that such persons cannot, as a matter of right, claim further extension of ten years. Rule 8(11) stated that no lease granted under this Rule shall be renewed.

15. Thus when notification was issued based on the pre-amended Rule, the benefit of the amendment would now extend to those agreements entered prior to the amendment to Rule 8(8).

16. By going through the terms of amended Rule 8(8) of the Rules, the Court held that the date of commencement of the period of lease is as per the contents of the lease deed executed and on expiry of the specified period of lease, no extension of period of lease could be made, as the amended provision is not merely a procedural law, but is a substantive law. Therefore, the question of retrospective applicability of the amendment does not arise. This Court further pointed out that if the amendment to the Rules had reduced the lease period, then the Government is estopped from reducing the lease period after having consciously entered into a lease transaction for a specified period. Extending the same logic, the Court rejected the plea of the petitioners to extend the benefit of the amendment to the Rule in place of the agreed term of the lease.

17. There is no provision in the Transfer of Property Act or in the Registration Act, which deals with the cancellation of Deed of Sale, for, the execution of a Deed of Cancellation by the vendor does not create, assign, limit or extinguish any right,

title or interest in the immovable property and the same has no effect in the eye of law.

18. The primary object of the Registration Act is to provide a conclusive guarantee of the genuineness of an instrument and to give notice to the world that such a document has been executed. The Act also seeks to prevent fraud and to provide a secure and reliable account of all transactions affecting the title to the property. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration vide ***(2009) 7 SCC 363 (Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana and another)***.

19. The question as to whether when once sale is made absolute by transfer of ownership of the property from the vendor to the purchaser, such transfer can be annulled or cancelled by the vendor by executing a Deed of Cancellation, was considered by the Full Bench of the Madras High Court in the decision in ***Latif Estate Line India Ltd. Vs. Hadeeja Ammal*** reported in ***2011 (2) CTC 1 : 2011-1-LW 673 : (2011) 2 MLJ 569 : AIR 2011 Madras 66 : 2011 (3) KLT (SN) (C.No.70).*** The following questions were formulated by the Bench for its decision:

(i) Whether cancellation of a registration of a registered sale deed of an immovable property having valuation of more than one hundred rupees can be registered either under Sections 17 or 18 or any other provision of the Registration Act?

(ii) Whether for such cancellation of a registered sale deed, signature of person claiming under the document for sale of property is required to sign the document, if no such stipulation is made under the Act? And

(iii) Whether the decisions of the single Judge dated 10.2.2009 made in W.P.No. 8567 of 2008 and the Division Bench dated 1.4.2009 made in W.A.No. 194 of 2009 amount to amending the provisions of the Registration Act and the Rules framed thereunder, by inserting a clause for extinguishing right, title or interest of a person on an immovable property of value more than Rs.100/- in a manner not prescribed under the Rules?

20. The Full Bench of Madras High Court held that the vendor, by the unilateral execution of the cancellation deed, cannot annul a registered document duly executed by him; as such, an act of the vendor is opposed to public policy. This Court held that the unilateral consideration of a registered document at the instance of the vendor only encourages fraud and is against public policy. However, there is no dispute that the third party can claim title to the property against the purchaser who purchased the property for valuable consideration. It is the Civil Court of competent jurisdiction to give such declaration in favour of such third party or stranger. But there are circumstances where the deed of cancellation presented by both the vendor and the purchaser for registration has to be accepted by the Registrar if other mandatory requirements are complied with.

(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.

(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

21. Under the unamended provisions of the Indian Divorce Act, 1869, every decree for dissolution of marriage granted by a Principal District Judge, had to be subsequently confirmed by a Court comprised of three Judges. The effect of the Indian Divorce Amendment Act of 2001, doing away with this provision was considered in conjunction with Section 6 of the General Clauses Act, 1897 in the

decision reported in ***2011 (5) CTC 481 : 2011-4-LW 957 : (2011) 7 MLJ 417 (D.Anthony Marianathan Vs Josephine Sahayarani).***

22. The question was whether the amendment was prospective or retrospective in nature and whether decrees for dissolution of marriage granted prior to the date of amendment had to be so confirmed by a Court comprised of three Judges, in respect of a case where such decree was passed on 10.8.2000. The Full Bench, agreeing with the decisions of other High Courts viz., the Delhi High Court in *Nisha Ribero v. Mr. George Mario Ribeiro* reported in *2003 (2) DMC 807* and Patna High Court in Deepa Raj Kumar Singh v. Deepak Kumar reported in *2005 (2) DMC 352*, held that the amendment carried out to the Indian Divorce Act is only prospective and it would not have the effect on an application already filed under the unamended Act and pending before the Court. On the facts of the case, it was pointed out that when the Trial Court passed the order of divorce on 10.08.2000, the amendment had not come into effect. Since the amendment came into effect only on 3.10.2001, the application under Section 17 of the Indian Divorce Act, required confirmation by three Judges of the High Court, as per the unamended Act.

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The compilation of judgments under Civil law includes decisions pertaining to "Public Interest Litigations" on child welfare measures and the involvement of the "Tamil Nadu State Legal Services Authority" to oversee the implementation of the State programme; thereby indicating a proactive role the High Court has played in improving the living conditions and protecting of the basic rights of the child, the uniform standard of school education policy and the authority of the State to amend the law to put it on hold when it is already implemented, protecting the ecology in the State, implementation of development programme, protecting the green space and the right of the State to change the open space in the sanctioned plan outlay, protection of the elephant corridor, "doctrine of necessity" in the context of the principles of natural justice, conduct of disciplinary proceedings and the language of the proceedings, the degrees obtained in open university system of education and its relevancy for promotion Article 226 via-a-vis Section 141 C.P.C. as regards orders passed in a case where the petitioner dies before the disposal of the writ petition and the order made in the name of the dead person, presentation of plaint and the signing of the same by an authorised person, Order VII Rule 11, Order III Rule 2, Order VI Rule 14 CPC, Rules 16 and 17 of the Tamil Nadu Civil Rules of Practice, Section 5 of the Limitation Act and its relevance to Order 21 Rules 104 to 106 of CPC, transmission of decree as regards the award passed under the Arbitration and Conciliation Act, 1996, inherent powers of the Court in revisional proceedings to set right a mistake of law, compensation in the case of custodial death as per the Motor Vehicles Act, binding nature of decree obtained in a foreign Court in marriages solemnized in India, jurisdiction of the Debt Recovery Tribunal to impound the passport of the defaulter, conduct of election and the power of the Election commission to issue circular on search of the vehicles.

1. *"In the little world in which children have their existence*", says Pip in Charles Dicken's Great Expectations, 'there is nothing so finely perceived and finely felt, as injustice." A cry relevant even at this distance of time and as though remedying the same, befitting its role as a Patria-Potestas, this Court took up the report of the National Legal Services Authority as a Public Interest Litigation. In the decision reported in ***(2011) 7 MLJ 1**, **– W.P.No. 15882 of 2010 (Taken up as PIL) – Union of India, rep. by Secretary to Government, Ministry of Social Welfare, New Delhi and Others,*** this Court considered the provisions of "Child Labour and Regulations Act" and the need for proper implementation of the National Child Labour Scheme and the funds provided to be used for the welfare of the children. This Court further called upon the District Legal Services Authorities to monitor the implementation of the schemes and submit periodical report to the State Legal Services Authority. This judgment, thus, indicates the active role that the Court plays in building a strong nation and the care that we need to show in the well-being of the children who are the future of this country.

2. The doctrine of colourable legislation states, "Whatever legislature cannot do directly, it cannot do indirectly." An Amending Act, which has the effect of repeal of the parent Act, under the guise of postponement of its implementation, when in fact, the parent Act has already been implemented, though partially, has to be held to be an arbitrary piece of legislation which does not satisfy the touchstone of

Article 14 of the Constitution of India. Amendments to principal or subordinate legislation, either by executive decisions or by legislative Act, should normally have one paramount consideration in mind, that is, the persons who are going to be affected by such amendment. In other words, legislative impact is one aspect which always should be examined by the Government concerned before it takes any decision, which is likely to affect a larger section of the society.

3. With a view to bring Uniform Standard of Education, the Government of Tamil Nadu brought in a legislation known as *Tamil Nadu Uniform System of School Education Act, 2010 (Samacheer Kalvi Thittam).* Holding that the State had exceeded its powers in bringing the Amending Act to postpone an enactment which had already come into force, in the decision reported in ***2011 WLR 577,*** **(K.Shyam Sunder vs The State of Tamil nadu and others),** this Court referred to the doctrine of colourable legislation and observed that if a legislature has no power to legislate on an item either because it is not included in the list assigned to it as per Schedule VII of the Constitution or on account of the limitations imposed under Part III of the Constitution dealing with the Fundamental Rights, yet, when the legislature enacts a statute in assumption of such power, it is colourable legislation. It has reference only to the legislative incompetence. If the legislature enacts law in assumption of the exercise of its legislative power, though actually it does not possess such power, the legislation is void.

4. Feeling the need to protect the interests of the student community and the impact that the Amending Act would have, if implemented, and to avoid any chaos and confusion in the young minds, this Court pointed out that notwithstanding the

competence of the legislature to pass an amendment Act, this Court had to see the impact of the amendment in view of the sudden change in the policy brought about by the new Government. This Court further pointed out that the Court can tear the veil to decide the real nature of the legislation if the facts and circumstances warrant such a course. If a law was passed only ostensibly, but was, in truth and substance, one for accomplishing an unauthorised object, the Court would be entitled to tear the veil and the declaration by the legislature would not preclude a judicial examination. Therefore, it is evident that the purpose and intent of the Amending Act was, in effect, to do away with the Uniform System of Education under the guise of putting on hold the implementation of the parent Act, which the State was not empowered to do, more so when the validity of the parent Act has been upheld by the Division Bench, which judgment and order was confirmed by the Supreme Court.

5. In ***(1996) 5 SCC 647 (Vellore Citizens Welfare Forum Vs. Union of India)***, the Apex Court pointed out that "The traditional concept that development and ecology are opposed to each other, is no longer acceptable. Sustainable development is the answer. ... Sustainable development, as a balancing concept between ecology and development, has been accepted as a part of the customary international law, though its salient features are yet to be finalised by the international law juris".

6. Pointing out that a nation's progress largely depends on development, therefore, development cannot be stopped, but we need to control it rationally, in ***(2006) 6 SCC 371 – Karnataka Industrial Area Development Board Vs. C.Kenchappa and others],*** the Apex Court reiterated the need for scientifically assessing the ecological impact of various developmental schemes.

7. On a Public Interest Litigation, seeking a Writ of Mandamus to forbear the Planning, development and Special Initiatives Department, Chennai Metro Rail Ltd., from acquiring lands, wherein, the Institute of Poultry Production and Management, belonging to the Tamil Nadu Veterinary Animal Sciences University, is housed and where there are about 300 trees and wild animals like spotted deer etc., rare varieties of birds visiting the site for breeding purpose, in the decision reported in ***MANU/TN/1111/2011 – (B.Ramesh Babu Vs. The Secretary, Planning, Development and Special Initiatives Department, Chennai, Metro Rail Limited, rep. by its Managing Director and the Registrar, Tamil Nadu Veterinary and Animal Sciences University),*** this Court pointed out that the acquisition of the land and the decision taken by the Metro Rail authority to shift the poultry production and Management are in the larger interests of common public, who would be benefited through the Metro Rail Project.

8. Referring to the decision reported in ***(2004) 2 SCC 392 (Essar Oil Limited Vs. Halar Utkarsh Samiti)*** emphasizing the need for creating harmony between economic and social needs on one hand and environmental consideration on the other hand, that neither one can be sacrificed at the altar of the other, this Court

allowed the Metro Rail Project to be completed on the land in question and issued the following directions:

"(i) All endeavours shall be made to retain all the trees, and only those trees, which come in the core operational zone shall be cut.

(ii) Those indigenous trees which are cut shall again be planted in the ratio of 1:10 as per the policy of the Respondents. As stated by the first Respondent only 28 trees may get affected in the Station Operational Area. As per the undertaking, the second Respondent-Chennai Metro Rail Limited (CMRL) shall prepare an Environment Management Plan for this location and ensure that the ecological balance shall be maintained.

(iii) The lands acquired shall not be used for metro-entertainment hall, film shooting and property development etc. Only the basic requirement and amenities like Chamiers Station with Entry-Exit facilities, multi-model traffic integration with adequate parking facilities, Back-up Operation Control Centre and maintenance operator headquarters.

(iv) The CMRL shall pay compensation of Rs.50 crores for the purpose of establishment of Institute of Poultry Production and Management with all modern facilities. The Poultry Research Facility shall be completed within a period of six months from today.

(v) As admitted by the Respondents, for the purpose of this Metro Rail Project, the lands owned by the schools, hospitals and religious institutions shall as far as possible be avoided from acquisition proceedings. However, if inevitable, the acquisition proceedings shall be to the minimal extent required for the project and not more. Further, the lands so acquired shall not be used for any commercial purposes for the benefit of private corporate houses.

(vi) All endeavours shall be made by CMRL and the Forest Department to protect the wild animals, if any, including the deers for translocating them to the nearest forest reserve and also by putting a fence in order to retain the deers in the area and to ensure their safety under the care and guidance of Wild Life Wing of Tamil Nadu Forest Department.

(vii) As undertaken by the Respondent, separate arrangement shall be made for safe harboring of the improved variety of birds maintained at the Institute of Poultry Management. Further in case of damages to any machineries, scientific hi-tech plant and incubators, including birds during transit and shifting, the Respondent-CMRL shall pay adequate damages and compensation that may be assessed by the competent authority. "

9. Green space is an essential feature in any development, as it not only serves as lung space, but also meets the communal and recreational requirements of the inhabitants. The reserved space is primarily meant for the use of the occupants in any development. The residents or purchasers of the plots are also obligated to maintain the same as reserved space, namely, park, etc. Conservation of such open space thus becomes more pronounced, as the lands in cities have become more scarce, with population increase and infrastructure development. Open space element is also a part of general development. In that sense, land use planning is a process by which the land is allocated to secure the orderly development of land in

an environmentally sound manner to ensure the creation of sustainable human settlements. The development, control and function cannot and should not operate in a vacuum. The process of land use planning primarily consists of the twin functions of the development/land use, planning and development control.

10. On a question as to whether the planning authority/State Government has the jurisdiction to alter the conditions imposed in the layout by earmarking open space to be used for public purpose, in the decision reported in ***(2011) 3 MLJ 69 : 2011 (1) CTC 257 : (K.Rajamani and others Vs. Alamunagar Residents Welfare Association, a society registered under the Societies Registration Act, having its Regn. No. 131/2005 1-A, Coimbatore and others),*** this Court held that the area reserved for public purpose cannot be altered to be put to use for any other purpose.

11. Once new town development permission is accorded under Section 47 of the Tamil Nadu Town and Country Planning Act, 1971, and in that permission, if a specified area is earmarked for public purpose, even the planning authority shall not have power to exempt that land for being put to use for any other purpose. In that context, the State Government also cannot have any jurisdiction to alter the conditions imposed in the layout, whereby certain lands are earmarked as open space to be used for public purposes. This Court held that the land once earmarked for public purpose cannot be earmarked for any other purpose and particularly, to de-reserve or put to use as housing plots.The Government's power to de-reserve the land is not available after the layout plan is approved, except as per the provisions of Section 90.

12. Article 51-A(g) of the Constitution of India says "it is the duty of every citizen of India to protect and improve the natural environment including the wildlife." In tune with the above constitutional mandate, the Government of India enacted a comprehensive legislation - Wildlife (Protection) Act, 1972. Chapter IV of the said Act enables the State Government to declare any area as a "sanctuary" or "national park" and destruction of the same and/or removal of the animals from those areas is prohibited except under very limited circumstances. In 1977, Indian Elephant was brought within the purview of Schedule -A of the Act. In exercise of its authority, the State Government notified "Elephant Corridors" as a management strategy. It is also authorised by the Central Government scheme known as 'Project Elephant'.

13. In dealing with the provisions of the Act and the notification issued thereon identifying the elephant corridors, in the decision reported in ***(2011) 4 MLJ 20 : CDJ 2011 MHC 3464 (In Defence of Environment and Animals, by its Manager Trustee Elephant G. Rajendran, Chennai-600 017 Vs. Principal Chief Conservator of Forest, Chennai – 15 and others),*** this Court considered the following questions:

    1. Whether the State Government is empowered to exercise its power to identify elephant corridors and notify such areas?

    2. Whether traditional forest dwellers are legally entitled to be protected from eviction?

3. Whether private resort owners who have illegally constructed the resorts in the notified elephant corridors can claim protection from eviction under right to practice profession guaranteed under Article 19(g) of the Constitution?

This Court also considered the need for identifying and protecting the interests of traditional forest dwellers and the need for providing them with best alternate accommodation.

14. In considering the above, this Court held:

> "1. The State Government is empowered to identify Elephant Corridors in view of the Wild Life (Protection) Act, 1972 whereby any area having adequate ecological floral faunal and geomorphological, natural or zoological significance can be identified for the purpose of protection and development of wild life or its environment as its protected areas.
>
> 2. The State Government under Article 51A(g) of the Constitution is duty bound to protect and improve natural environment including forests, lakes, rivers for wild life and to have compassion for living creatures.
>
> 3. Traditional forest dwellers are entitled for protection of forest rights and occupation of forest lands under The Scheduled Tribes and other Traditional Forest Dwellers Act, 2006.
>
> 4. Private resort owners who have illegally constructed resorts in notified areas cannot claim protection from eviction under the ground that such eviction will infringe their rights to practice any profession guaranteed under Article 19(g) of the Constitution. "

15. Although the compliance of the principle of natural justice has been held as a principle inhered in every action affecting the rights of an individual, irrespective of

whether a statute expressly provides for it or not, in the decision reported in ***AIR 1985 SC 1416 (Union of India Vs. Tulsiram Patel),*** the Apex Court pointed out that the two rules of natural justice, namely, *nemo judex in causa sua* and *nemo judex in causa sua,* must yield to changes with exigencies of different situations and are subject to the Doctrine of Necessity. The Apex Court pointed out that it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; and where if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi case, such right can be excluded.

16. In considering the application of the said principle in a matter pertaining to the eviction of an unauthorised occupier of public premises, in ***Bharat Sewak Samaj Vs. CS, State of Tamil Nadu*** reported in ***(2011) 1 MLJ 306 : 2011 (2) RCR (Rent) 127,*** this Court applied the aforesaid statement of law and pointed out that the principles of natural justice can not only be modified, but can be excluded, as it has to yield to the doctrine of necessity. This Court held:

> " Necessary requirements of public good are stronger than private and so action taken to recover possession without notice under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act cannot be said to be arbitrary or violative of the principles of natural justice especially when notices have been issued to hand over possession for over two years.

Needless to say that the Government who seeks to evict an unauthorised occupant cannot be compelled to provide an alternative accommodation, whatever be the object and activities of a voluntary organisation and on that ground, nobody has a right to squat over a property and keep it locked. At this juncture, even if the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act were invoked, it authorises use of such force, as may be necessary to evict such person.”

17. In service law, adherence to the principles of natural justice, whether demands conducting the disciplinary proceedings in a language known to the delinquent, was the question before this Court in ***(2011) 7 MLJ 64 : CDJ 2011 MHC 054 (S.Dhanasekaran Vs. Commandant 42 Bn., CRPF, Narasinghar Agartala and another).*** This Court answered the question in the affirmative and held:

> " 1. Conducting disciplinary proceedings in the language known to the delinquent forms part of the principles of natural justice, viz., the principles of affording proper opportunity to the delinquent in disciplinary proceedings.
>
> 2. When a dismissal order is passed which deprives the right of livelihood of a delinquent, it is necessary that the disciplinary proceedings be conducted not only in the manner known to law but also in the language known to the delinquent. "

18. The grounds on which a plaint can be rejected are listed under Order 7 Rule 11, C.P.C. A defect which is curable in nature, does not fall within the ambit of Order 7 Rule 11 C.P.C. This is why, even in cases where the relief claimed is under-valued or where the relief is properly valued but the plaint is insufficiently stamped, the

Court is required to call upon the plaintiff to correct the valuation and supply the requisite stamp papers. A defective presentation of a plaint cannot result in the rejection of the plaint and a defect which is curable in nature does not fall within the ambit of Order 7 Rule 11 of C.P.C.

19. Rules 16 and 17 of the Civil Rules of Practice (Tamil Nadu and Pondicherry) prescribe the procedure to be followed in the matter of signing and verifying the pleading in any proceeding. Rule 16 refers to a case of party appearing by an agent other than a Pleader or Advocate, namely a power of attorney holder, who has to file the power of attorney or written authority authorising him to make such application, appearance or act. Rule 17 deals with signing or verification by an agent.

20. On a question as to whether the signing of a plaint by an authorised agent could call for rejection of the plaint in the absence of a power of attorney, in the decision reported in ***(2011) 3 MLJ 34 (K. Santhanam Vs. S. Kavitha through her sub-power agent K. Seerappan through her power agents),*** this Court considered the phrase 'any person duly authorised' by a party to sign the plaint, as appearing under Order 6 Rule 14 C.P.C. and appearing as power of attorney under Order 3 Rule 2 C.P.C. and 'some other person' empowered to verify the pleadings as appearing in Order 15 Rule 1 C.P.C. and held "While Order 3 C.P.C. enables 'the holder of a power of attorney' to appear, apply and act on behalf of a party to a suit, as his 'recognised agent', Order 6, Rule 14 C.P.C., enables 'any person duly

authorized by a party to sign the pleading' if the party pleading is, by reason of absence or for other good cause, unable to sign the pleading. While Order 3, Rule 2, uses the expressions "recognised agent" and "persons holding powers of attorney", Order 6, Rule 14, uses the phrase "any person duly authorized by him". Rule 15(1) of Order 6 goes one step further and empowers "some other person" to verify the pleadings, if it is proved to the satisfaction of the Court that he is acquainted with the facts of the case. This Court held that an error of procedure is merely an irregularity and that the plaintiff has a right to rectify the defect and so the plaint shall not be rejected on that score.

21. The question as to whether Section 5 of the Limitation Act is applicable in execution proceedings to condone the delay in filing an application to set aside an ex parte order made in the execution proceedings under Order XXI Rule 104 to 106 CPC, came up for consideration in the decision reported in ***(2011) 8 MLJ 12 : 2011-5-LW 174 : 2011 (6) CTC 268 (N. Rajendran Vs. Shriram Chits Tamil Nadu Pvt. Ltd., rep., by its Branch Manager/Foreman, Tiruvarur).*** This Court pointed out that it is fundamental that the applicability of Section 5 of the Limitation Act, 1963 would stand on a different footing than the power of a Court to condone the delay, flowing out of the provisions contained in a statute, which itself prescribes the period of limitation. There are several special enactments where period of limitation are prescribed. When those special enactments themselves provide a period of limitation as well as a power upon the Court to condone the delay, they should draw such a power from the very provisions of the

enactment under which a case is decided and the said power cannot be obliterated, except by any express or implied repeal, in terms of any amendment made specifically. In such cases Section 5 of the Limitation Act is not applicable. This Court held that refusing to entertain the application on the ground that it was filed beyond 30 days and that there was no power to entertain the same, is not in accordance with law.

22. Filing of execution petition in one Court and seeking transmission to another Court for the purposes of execution in the matter of awards made under the Arbitration and Conciliation Act 1996 is a question of considerable importance, considering the fact that resort to arbitration as Alternative Dispute Resolution in commercial matters is gaining momentum at a time when commercial transactions are going global.

23. A comprehensive analysis of Sections 37, 38, 39 41, 42 of Code of Civil Procedure relating to execution of decrees would show that every decree of a Civil Court is liable to be executed primarily by the Court which passed the decree. Therefore, an application for execution is expected to be filed in the first instance, only in the Court which passed the decree. It is only in cases where the Court which passed the decree is unable to execute it, that the provisions for the transfer or transmission of such decree and the procedure prescribed therefor, come into play.

24. Under Section 36 of the Arbitration and Conciliation Act, 1996, an award passed by an Arbitral Tribunal is equated to the decree of a Court, for the purpose of execution and only for that purpose. In so far as foreign awards are concerned, they are also equated to the decrees of Courts under Section 58 of the 1996 Act. An Arbitral Tribunal is not bound by the Rules of Procedure formulated in the Code, is made clear by Section 19(1) of the Arbitration and Conciliation Act, 1996. Hence, it follows that an award is elevated to the level of a decree only for the purpose of execution, and by that, it does not elevate the Arbitral Tribunal to the status of a Civil Court. Therefore, an Arbitral Tribunal is not a Court. Under the 1996 Act, an award can be executed directly without a seal of approval by a Civil Court. Therefore, the provisions of Section 38 and Order XXI, Rules 5, 6 and 10 of the Code of Civil Procedure cannot be applied to an Arbitral Tribunal.

25. While the award passed by an Arbitral Tribunal is deemed to be a decree of a Civil Court under Section 36 of the 1996 Act, there is no deeming fiction anywhere to hold that the Court within whose jurisdiction the arbitral award was passed, should be taken to be the Court which passed the decree. Therefore, the whole procedure of filing an execution petition before the Court within whose jurisdiction the arbitral award was passed, as though it is the Court which passed the decree, is pathetically misconceived, No Court to which an application for execution of an award is presented, can insist on the filing of the execution petition first before some other Court and to have it transmitted to it later.

26. Noting the above, in the decision reported in ***2011 (6) CTC 11 : 2011-4-LW 745 : (2011) 7 MLJ 1267 (Kotak Mahindra Bank Ltd., Vinay Bhavya Complex, 4th Floor, 156-A, CST Road, Kalina Santa Cruz (East), Mumbai-400 098 rep., by B. Muthu Kumar, Senior Manager-South -vs- 1. Sivakama Sundari 2. S. Narayana 3. S.B. Murthy),*** this Court held that the 1996 Act transcends all territorial barriers. There is no provision under the 1996 Act (i) either to make the Arbitral Tribunal come within the meaning of the expression "Court which passed the decree"; (ii) or to provide for the transmission of the awards from one Court to another for the purpose of execution. In the absence of any provision in the 1996 Act, requiring a Court to pass a decree in terms of the award (except in terms of Section 34) and in the absence of any provision in the 1996 Act making the Arbitral Tribunal a Court which passed the decree and in the absence of any provision anywhere making the Court within whose jurisdiction an award was passed as the Court which passed the decree, it is not open for any executing Court (i) either to demand transmission from any other Court; (ii) or to order transmission to any other Court."

27. The question as to whether under Section 152 C.P.C., the Court, in a revision petition, could correct mistakes committed by the Subordinate Court, came to considered in a land acquisition matter regarding the grant of interest. The issue before the Madras High Court was as to whether the land owner was entitled to get 9% interest for the award amount from the date of taking possession or from the date of Award.

28. In the decision reported in ***(2011) 7 MLJ 34 : 2011 (2) CTC 407 (Executive Engineer, Administrative Officer, Tamil Nadu Housing Board, Ellis Nagar, Madurai-10 Vs. S.Jeya, rep., by her power of agent S. Ramanathan and another),*** this Court held that in the context of Section 28 of the Land Acquisition Act, 9% interest can be awarded from the date of taking possession of the land. Considering the interest granted by the Tribunal from the date of the award, referring to Section 152 C.P.C., this Court further held that "even a cursory look of the said provision, it is pellucid that if any clerical or arithmetical mistake is found in judgments and decrees, the same can be corrected either by the concerned Court of its own motion or on the basis of application filed by anyone of the parties". This Court further held that the revisional Court has ample power to correct any mistake committed by the Subordinate Courts by exercising its administrative control or power.

29. Article 229 of the Constitution of India specifically provides that for promotion to certain posts, including Assistants, a candidate must hold B.A./B.Sc./B.Com/B.A. (Hons.)/B.Sc.(Hons.)/B.Com. (Hons.) degree of the Madras University or equivalent thereof of a recognized University. The object of Article 229 has been elaborately discussed by the Supreme Court in the case of ***M.Gurumoorthy v. Accountant General, Assam (Nagaland) MANU/SC/0675/1971 : AIR 1971 SC 1850 : (1971) 2 SCC 137 : 1971-II-LLJ 109.*** The Supreme Court, in the said judgment, observed as under at page 114 of LLJ:

> "11. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointment of officers and servants of a High Court it is the Chief

Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article. Object of Article 229 is to secure the independence of the High Court and all powers vested in the Chief Justice and the High Court to run the High Court administration. Clause (1), read with Clause (2) of Article 229 conferred exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court.... The power to make rules relating to the conditions of service of the staff of the High Court vested in the Chief Justice of the Court under Section 242(4), read with Section 241 of the Government of India Act, 1935. "

30. In the case of ***Annamalai University Vs. Secretary to Government, Information and Tourism Dept. and Ors.*** reported in ***MANU/SC/0283/2009 : (2009) 4 SCC 590,*** the Supreme Court considered the interpretation and application of the U.G.C. Act 1956 and the Indira Gandhi National Open University Act, 1985, (for short, Open University Act) and held that the U.G.C. Regulation shall prevail over any other Act and Rule framed by the State, as also the Government Order issued by the State. In the context of the Rules framed by the High Court, for the purposes of promotion, the degree obtained in open university, without having the basic +2 qualification, would not be considered for promotion.

31. The Tamil Nadu Government issued an order in G.O. No. 107 dated 18.8.2009, which inter alia provides that those degrees issued by the Open University shall only be recognized and accepted for appointment and promotion, provided, the said degree has been obtained after completing +2 (Higher Secondary) Examination. In

the context of the above Government Order, the question as to "Whether a candidate, who obtained B.A./B.Sc./B.Com. degree directly, without completing 12 years schooling, be denied of promotion to the higher post on the basis of the said degree through correspondence course" came up for consideration in ***(2011) 1 MLJ 785 – T.L. Muthukumar and others Vs. Registrar General High Court, Madras and another).***

32. This Court pointed out that in terms of the Government Order, the first degree by correspondence course without having the basic +2 qualification, having not been recognized under the Rules framed by the High Court in exercise of powers conferred under Article 229 of the Constitution of India and the conditions contained in the High Court Service Rules, cannot, in any way, be superseded by any other law not applicable to the employees of the High Court and that the petitioners cannot claim promotion on that basis.

33. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993) (RDDBFI Act) was enacted to provide for establishment of Tribunals, for expeditious adjudication and recovery of debts due to Banks and financial institutions with the powers to regulate their own procedure and therefore, it is regulatory in nature. Likewise, The Passport Act, 1967 was also enacted to issue Passport and travel documents to regulate the departure from India of citizens of India and other persons. Both are special enactments made by the Parliament by virtue of the powers conferred under List I of Seventh Schedule.

34. There can be no doubt to hold that the Tribunal/Appellate Tribunal enjoy wider inherent power than an ordinary Civil Court, which could be exercised to pass interim order to meet the ends of justice, including an order to impound a passport. The only limitation would be that, such orders should ensure the implementation of the provisions of the RDDBFI Act, particularly to protect the interest of the Banks/financial institutions to recover the dues.

35. Though Debts Recovery Tribunal, constituted under the RDDBFI Act, is not a Court stricto senso, still, undoubtedly, it exercises judicial powers and such judicial powers flow from the RDDBFI Act. The said Act not only empowers the Tribunal to pass interim orders in order to recover the dues, but also enables it to regulate its own procedure. Though there is no specific provision in the Act for impounding a passport, such power is inherent in the Tribunal, conferred under Section 19(25) of the RDDBFI Act. The power of the Tribunal to make such orders can be traced to Section 22 of the RDDBFI Act and Rule 18 of the Rules as well. Clause 75 of the Second Schedule to Income Tax Act, is also made applicable to the Tribunals by virtue of the provisions of Section 29 of the RDDBFI Act. Thus, on the question as to whether the Debts Recovery Tribunal could impound the passport and travel document in the case of a defaulter company whose businesses were

shut and the guarantors were directed to surrender their passport, in the decision reported in ***2011 (6) CTC 70 : CDJ 2011 MHC 5452 (ICICI Bank Limited, represented by its Chief Manager, N.Anandakumar having its Zonal Office at ICICI Bank Towers, 4th Floor, West Wing Plot No.24, Ambattur Industrial Estate, Chennai-600 058 Vs. 1. The Debts Recovery Appellate Tribunal, Ethiraj Salai, Egmore,Chennai – 600 008. 2. The Debts Recovery Tribubnal – 2, Deva Towers, 6th Floor, No.770-A, Anna Salai, Chennai 600 002. 3. R. Subramanian),*** this Court held that the inherent power of the Tribunal or Appellate Tribunal is wider than a Civil Court and is not excluded by the provisions of the Passport Act by passing interim orders to meet the ends of justice. This Court, however, cautioned that such power should be used sparingly and with caution to meet the ends of justice, vide decision of the Apex Court in *Maneka Gandhi's case,* as such deprivation may amount to infringement of Article 21 of the Constitution of India.

36. Binding nature of the decree of divorce granted by a Foreign Court to a Hindu couple, married according to Hindu Marriage Act and whether this would result in an automatic dissolution of marriage is a vexed question more often faced by Indian Courts. ***In 2011 (4) CTC 20 : 2011-3-LW 369 : (2011) 5 MLJ 663 (Manorama Akkineni Vs. Janakiraman Govindarajan)***, this Court held:

> " the Hindu marriage has not lost its sanctity and sacredness and even today the Hindu marriage is viewed only as a sacrament and not a contract. "

37. This Court further observed "It is not in dispute that foreign judgment on matrimonial dispute is a binding force between the parties". However, this Court pointed out that the petition for dissolution of the marriage, filed at Superior Court of California, County of Alameda, U.S.A., was pertaining to the certification of Marriage, dated 28.9.1986 between the petitioner and the respondent, which was obtained in U.S.A. This certification of marriage dated 28.9.1986 obtained in U.S.A, in the eye of law, has to be viewed only as a second ceremony of their marriage at U.S.A., when the marriage between the parties is subsisting in view of their marriage at Chennai, according to Hindu rites. Merely because the Superior Court had granted divorce, it cannot be said that the said order covers the dissolution of marriage between the parties which had taken place according to Hindu rites and customs. Holding so, this Court set aside the order of the Family Court, Chennai, rejecting the original petition filed for divorce and the Family Court was directed to take the rejected Original Petition and dispose of the same in accordance with law. Further, this Court observed that the Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact, which has to be gathered on the basis of the averments made in the plaint in its entirety, taking those averments to be correct.

38. The heart of the parliamentary system is free and fair elections periodically based on adult franchise. Election is the engine of every democracy. Part XV of the Constitution of India and The Representation of the People Act, 1950 (for short, the

1950 Act) and The Representation of the People Act, 1951 (for short, the Act), Rules framed thereunder, instructions issued and exercises prescribed, constitute the package of electoral law governing the parliamentary and assembly elections in the country - vide ***(1978) 1 SCC 405 (Mohinder Singh Gill Vs. Chief Election Commissioner).*** In the decision reported in ***2011-2-L.W. 545 : 2011 (1) CWC 513 : (2011) 3 MLJ 513 : AIR 2010 MAD 124 (Makkal Sakthi Katchi Vs. The Election Commission of India and others),*** this Court considered the question as regards the direction to be issued to the Election Commission of India to reschedule the General Election to the State Legislative Assembly of Tamil Nadu from 13.4.2011 to some other day. Taking note more particularly of the welfare of the students whose annual examinations were scheduled during that period, this Court considered the issue as regards the use of schools' campus as polling booths and deploying of the teachers for election duty and the training imparted to them before the election and held that since election would be held in the State of Tamil Nadu and the Union Territory of Puducherry, though after completion of the examinations, it was necessary to impose the following conditions:

(i) No teachers of the school, where examinations are held shall be deployed or called for training before the completion of the above mentioned examinations.

(ii) No school buses and other vehicles owned by the educational institutions shall be requisitioned or seized before 11.04.2011 for the purpose of election.

(iii) The Respondents shall take special care, before requisitioning the State Transport Vehicles in the State, for the convenience of the students, who use the same for reaching their examination centers.

(iv) There shall be no campaigning or election canvassing by any political party, its followers or sympathizers within 200 meters of any school which have been designated as examination centres.

39. In yet another decision as to the authority of the Election Commission to issue instruction on the expenditure and in conducting search and seizure of vehicles and other places to curb money power in electoral process, in the decision reported in ***2011 (3) CTC 785 (K.Manivannan Vs. Election Commission of India),*** this Court emphasized the need for conduct of free and fair election and impressed on the need for the Election Commission to curb malpractices. In considering the guidelines issued called "Instructions on Expenditure monitoring in Elections" dated 17th March, 2011 this Court viewed as follows:

> "34. Representation of People Act, 1951 (in short "Act, 1951") cast a mandate on every candidate to maintain the account of expenditure incurred during the election. The Election Commission has prescribed a detailed guideline called "Instructions on Expenditure Monitoring in Elections". By instruction dated 17th March, 2011, issued by the Election Commission, standard operating procedure for dealing with unaccounted and other valuables have been prescribed. According to the instructions, if cash is being carried with proper documents or if it is for any other purpose and the person carrying those valuables satisfy the officers conducting the search and seizure, then those valuables shall be returned to the owner forthwith. It is well settled law that the duty of the Election Commission, inter alia, is to prevent distribution of money to the public and Commission should take all steps to curb those activities. The election being a very important event for the State, the Election

Commission has to maintain law and order to ensure free and fair election and also curb the malpractices. "

"35. The Supreme Court in number of decisions held that the powers of the Election Commission under Article 324 includes all other incidental powers, which are not specifically provided in additional to superintendence, direction and control in conducting the elections. If before the search and seizure, the authorities of the Election Commission is directed to arrive at a subjective satisfaction and record reasons, then the very purpose of search and seizure will be frustrated and it will amount to curbing the powers of the Election Commission conferred by the Constitution and the Representation of People Act."

40. This Court also issued the following directions and observations:

i. To ensure free and fair elections to the Legislative Assembly in the State of Tamil Nadu to be held in April, 2011, the authorities of the Election Commission shall follow the instructions contained in "Expenditure Monitoring in Elections", and other guidelines issued time to time.

ii. The standard procedure for dealing in unaccounted cash and other valuables shall be followed, and in case some criminal linkage is found, the seizure shall be effected. However, it is made clear that if cash or other valuables is being carried with proper documents, then no seizure shall take place and the same shall be retuned to the person concerned.

iii. The whole operation should be video graphed and the flying squad shall ensure all politeness, decency and courtesy.

iv. But, in no case the distribution of money or other valuables to the public shall be permitted till the election is over.

v. The Commission is also directed that for curbing large scale crimes, extra ordinary security measures should be taken till the election results are announced, and the safety and security of the Flying Squads shall be taken care.

The above directions of this Court were scrupulously followed by the Election commission to result in a fair and free election in a peaceful atmosphere.

41. The jurisdiction of the Court under The Companies Act, in the matter of granting sanction to a compromise or arrangement, is very wide. Even after the sanctioning of the compromise under Section 391 of the Act, the Court has continuing supervision of implementation of compromise and arrangement. Where the Court is satisfied about the fairness and legality of the compromise/arrangement, there can be no impediment in granting the sanction to the scheme of arrangement or compromise. The Chapter on the scheme of compromise, arrangement and amalgamation is a complete code by itself.

42. On the question as to the locus standi of the third party/objector to object to the scheme of amalgamation under Section 391 of the Companies Act, and the locus standi of the Income Tax Department to object to the scheme on the ground that the holding company is in arrears of income tax, came up for consideration in the

decision reported in ***[2011] 167 CC 566 (Essar Telecommunication Holdings P. Ltd. In re).*** As far as the third party/ objector is concerned, the group company, including the transferor company, held approximately 33 percent equity interest in the objector company.

43. This Court pointed out that once a scheme of compromise or arrangement squarely falls within the four corners of the Section 391 of the Act, it can be sanctioned and the remedy with regard to enforcement of rights by a third party is to be independently availed of and cannot be a ground to object to the scheme of arrangement. The only objection which may be raised by any person in response to the notice, can be with respect to the legality of the scheme or it being in violation of any law. On the demand raised by the Income Tax Department against the holding company, there being no claim against the transferor or transferee company, this Court held that the Income Tax Department did not have locus standi to contest the scheme. As regards the third party objector seeking inclusion of the Securities and Exchange Board of India as a party is concerned, this Court held that the said objector did not have locus standi to make any objection as a party to the proceedings. The scheme of amalgamation being beneficial to both the transferor and transferee companies, its shareholders and its creditors, the objector cannot claim the documents, nor could make an objection to the scheme being granted.

44. The sale by the Official Liquidator of the assets of the company in liquidation not being a transfer by operation of law or in execution of the decree of a Court, the same does not fall within the exception under Section 2(d) of the Transfer of

Property Act. On the question as to whether the said sale has to comply with the statutory requirement under second paragraph of Section 54, in the decision reported in ***[2010] 157 CC 439 (Official Liquidator, High Court, Madras, In re),*** this Court considered the provisions of Indian Stamp Act, 1899, and the Indian Registration Act, 1908 and held that a 'certificate of sale' issued by the Revenue or Civil Court or Collector or the Revenue Officer is chargeable with duty prescribed in Article 18 under Schedule I of the Indian Stamp Act, 1899. While Section 17(1) of the Indian Registration Act, 1908, deals with documents which require registration compulsorily, sub-section (2) thereunder lists the exceptions thereto. Section 18 deals with document which could be registered at the option of the parties. Merely because the registration of these documents has been made optional, it does not follow as a corollary that all these documents are exempt even from payment of stamp duty. However, the option given under the Indian Registration Act, 1908 to the makers of certain documents to register them or not, is not be construed as an exemption from payment of stamp duty under the provisions of the Indian Stamp Act, 1899 and under the provisions of the Indian Registration Act, 1908. On a combined reading of Sections 1, 4 and the second paragraph of Section 54 of the Transfer of Property Act, 1882, Section 3, read with Articles 18 and 23 under Schedule I to the Indian Stamp Act, 1899 and Sections 17(2)(xii), 18, 49 and 89 of the Indian Registration Act, 1908, it is clear that the relevant statutory provisions, which a Registering Officer is obliged to take note of and also comply with, are not to be traced merely to the Indian Registration Act, 1908, but also to be traced to the Indian Stamp Act, 1899.

45. Thus, on the question of payment of stamp duty on sale by the Official Liquidator, this Court held:

> " ... the Official Liquidator was to issue a certificate of sale or execute a sale deed, in accordance with the choice of the auction purchaser. .... the Official Liquidator was to indicate that the auction purchaser was obliged to pay stamp duty for the sale value, calculated at the rate prescribed in Article 18 read with Article 23 of Schedule I to the Indian Stamp Act, 1899, in the case of a certificate of sale or at the rate prescribed in Article 23 in the case of a sale deed. The Official Liquidator was also to put the auction purchaser on notice that if he did not pay stamp duty and did not choose to have the document registered, it may become inadmissible in evidence, in view of Section 35 of the 1899 Act and Section 49 of the 1908 Act. ......"

Sales Tax and VAT

46. On the tax liability on 'deemed sale', the issue on tax on transfer of right to use goods as a deemed sale, often poses difficult questions from the context of the possession of goods either being with the assessee/ vessel operator or with the charterer.

47. On the question as to whether time charter agreement would attract the chargeability to sales tax as lease of hiring of a vessel so as to be assessed as a

deemed sale, in the case of ***The State of Tamil Nadu rep. By the Deputy Commissioner Vs. Essar Shipping Limited in T.C.(R) Nos. 184, 1563, 1589 and 1590 of 2006 and W.A.No. 1140 of 2010***, under judgment dated 29.8.2011, this Court considered the said issue from the context of possession being with the time charterer. In considering the said aspect, this Court considered the use of the phrase such as 'let', 'hire', 'delivery' or 'redelivery' and held that in a time charter, there was no transfer of right to use goods in the sense of transferring possession by the vessel operator in favour of the charterer to have an effective control of the vessel under the time charter so as to attract the charge under the provisions of Section 3A of the Act relating to levy of sales tax on transfer of right to use goods. This Court also considered the time charter transactions with reference to the phrase 'transfer of right to use goods' and held that there was no transfer of possession accompanied by transfer of right to use.

48. This Court also considered the right of an assessee to raise a question on the very chargeability of the transaction in a Tax Case filed by a State, where the assessee is figured as a respondent and without filing a separate tax case. The assessee succeeded in the Tribunal on its contention on deduction; hence, according to the assessee, it did not file a separate tax case on the very levy. However, the assessee raised a cross objection in the State Tax Appeal that even without a separate Tax Case, the assessee is entitled to question the very chargeability of the transaction, it being, pure and simple, a legal issue.

49. This Court considered the revisional jurisdiction of this Court under the Tamil Nadu General Sales Tax Act. Comparing the jurisdiction of the Tax Court with

Section 115 C.P.C., this Court held that where there is an error of law, the Court has plenary powers of interference, that the ultimate endeavour in recognising such a right in the opposite party in a tax litigation being one of arriving at appropriate and correct tax adjustment, if the mistake of law is not rectified by a Court in a revision filed by an aggrieved party, but such rectification is sought for by the opposite party, not only the manifested injustice resulted to the party aggrieved could not at all be removed, but also such injustice would be inflicted on the litigant public, in the system of administration of law. In so holding, this Court referred to the decision of the Apex Court reported in ***[1980] 121 ITR 572 (Commissioner of Income Tax Vs. Damodaran).***

50. On the question of use of drilling machine on an agreement with ONGC for conducting drilling operations in the offshore waters of India, this Court considered the issue of transfer of right to use the goods. This Court pointed out that when the effective control of the rigs remained with the operator/owner, the mere fact that the area of operations were under the direction of ONGC, the same would not make the rigs as being under the possession and control of ONGC so as to bring transactions as assessable under Section 3A of the Tamil Nadu General Sales Tax Act.

51. The fine distinction between fee, cess, duty/tax assumes significance in the matter of levying additional duty of customs under the Customs Tariff Act. In the decision

reported in ***AIR 1999 SC 1847 (Hyderabad Industries Limited and another Vs. Union of India),*** the Apex Court pointed out that Section 3 of the Customs Tariff Act is a charging provision. In the context of the levy under the Rubber Act, the question as to whether the payment of cess under the Rubber Act can be treated as excise duty for the purpose of levying additional customs duty under Section 3 of the Customs Tariff Act, 1975, came up for consideration in the decision reported in ***(1998) 1 SCC 616 (State of Kerala Vs. Madras Rubber Factory Limited),*** wherein the Apex Court held that in the context of sales turnover under the Kerala General Sales Tax Act, the cess paid under Section 12 of the Rubber Act is nothing but excise duty; hence, to be included in the sales turnover for the purposes of purchase tax levy.

52. On the question as to whether the Customs Department is justified in issuing a notice to levy additional duty of customs on the levy of cess payable under the Rubber Act on similarly produced indigenous rubber in the country, particularly when the levy of cess under Section 12 of the Rubber Act by the Customs Department was set aside by the CESTAT and further appeal to the Supreme Court by the Revenue, withdrawn, this Court held that the levy of cess under the Rubber Act is in the nature of Excise Duty; that for the purposes of levy of additional duty of customs under Section 3 of the Customs Tariff Act, the rate as applicable to indigeneous manufactured rubber under the Rubber Act alone is adopted on the import of similar goods. In so initiating such a proceeding, it cannot be held that what is now sought to be levied is only additional duty of customs and not cess under the Rubber Act.

53. India being signatory to GATT, in terms of WTO mandate, the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury), Rules 1995 enacted to give a fillip to the export industry as well as protection to the domestic producers._

54. On the question of initiation of proceedings under the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury), Rules 1995, by a 'Domestic Industry' as defined under Rule 2(b) read with Rule 5(3), came up for consideration before this Court. On the interpretation of Rule 2(b), the Calcutta High Court, in its decision in ***W.P.No.3184 of 2011, rendered on 19.8.2011 in Century Plyboards (I) Ltd. and another Vs. The Additional Secretary and Designated Authority and others),*** held that when the language of Rule is clear, there could be no discretion available with the Designated Authority to include excepted category of industry as a domestic industry for the purposes of assuming jurisdiction to initiate an enquiry on the Anti Dumping activity complaint of.

55. On the interpretation of Rule 2(b) defining 'Domestic Industry', as it stood in 2000, the provision 'in such case the term domestic industry may be construed as referring to the rest of the producers only' this Court held that the excepted category of imported domestic producers, producers who are associates of importers/exporters do not come anywhere near the zone of consideration even as a matter of inclusion by exercise of discretion; that the discretion vested with the Designated Authority to construe a producers as a 'domestic industry', can only be with reference to those domestic producers other than imported domestic

producers, producers who are associates of importer/exporter. Even among those industries which fall within the category of 'domestic industry', the qualifying 25% of production given as a benchmark for enabling the Designated Authority to initiate enquiry as given under proviso to Rule 5 has to be seen with reference to the entire production relating to the qualified 'domestic industry'. On facts, this Court held that given the fact that M/s.DCW Limited being the only 'domestic industry' qualified to be held so under Rule 2(b), the four percent production of the said company constituted 100% of the production by the 'domestic industry' as required under the proviso to Rule 5 to enable the Designated Authority to assume jurisdiction for enquiry. The presence of the phrase 'only' in Rule 2(b) is a qualification having reference to those producers other than the producers who are themselves importers, or associate of an importer/exporter to fall under the category of 'domestic industry' vide ***1993 Supp (3) SCC 97 (M/s.Saru Sterling (P) Ltd. Vs. Commissioner of Sales Tax, Lucknow).***

Income Tax

56. Under proviso to sub section (4) of section 260A of the Income Tax Act, the High court has power to deal with substantial question of law not formulated at a time when the appeal was entertained, subject to the satisfaction of the Court, that such a question was involved in the case and for reasons to be recorded for that purpose. In framing of question before this Court, on a reassessment, the assessee/appellant sought for consideration on the very reopening of the

assessment under Section 147 and 148 of the Income Tax Act. This Court pointed out that when the assessee had already raised an issue as regards the correctness of reopening the assessment under Section 147, in the absence of any fresh materials, and the same was contested by the parties before the Tribunal, the mere absence of such a question formulated at the time of admission would not disable the appellant/assessee from raising such a question at the time of hearing of the appeal. This Court pointed out that there is every power vested in this Court to deal with the substantial question of law not formulated at the time when the appeal was entertained, subject however to the satisfaction of the Court that such a question was involved in the case and the reasons to be recorded for that purpose.

57. Section 10B of the Income Tax Act is a special provision introduced to grant benefit to the newly established 100% export oriented undertaking. The Section, as it originally stood, contemplated tax holiday by excluding the profits and gains derived by the assessee from 100% export oriented undertaking from the total income of the assessee, subject to certain conditions given in the provision. The exemption was available for a period of consecutive five years falling within a period of eight years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles. On account of the exemption thus granted, considerations on the grant of depreciation and set off of loss are also provided therefor under Section 10B. Sub section (4) provides that the various benefits available under normal circumstances, thus need to be worked on the machineries and plant, in spite of the fact the income is

exempted from tax. On the working of short-term capital gains under Section 50 of the Income Tax Act, on the transfer of block of assets from the 100% Export Oriented Unit to the Sister Unit, the question arose as to the working of written-down value of the assets, which necessarily involves the consideration of depreciation. On a consideration of Section 10B and Section 50 of the Act, particularly with reference to the question as to whether the asset transferred qualified for being termed as block of assets for working out the percentage of depreciation, this Court held in the decision dated ***10.8.2011 in TC(A) No. 188 of 2005*** in the case of ***S.Muthurajan Vs. The Deputy Commissioner of Income Tax, Special Investigation Circle, Salem,*** that the assets transferred from the 100% export oriented unit and assets purchased thereafter by the purchaser come for same percentage of depreciation as prescribed under the Rules. Thus the assessee is entitled to have the adjustment in the matter of working out the capital gains. This Court pointed out that the use of phrase 'business of export undertaking' in Section 10B is meant to identify industry or undertaking which qualifies for tax holiday exemption. On the expiry of the tax holiday, the block of assets are always available for working out the relief under section 50(2).

58. On the question as to whether interest tax could be charged on the interest receipts on loans and advances to the supplier on the provisions of Interest Tax Act 1974, this Court, in the decision reported in ***[2011] 339 ITR 391 (CIT Vs. Integrated Finance Co. Ltd.),*** pointed out to the distinction between 'loan' and 'advances', and 'deposit' and held that Trade advance given by the assessee to the manufacturer for the purchase of machinery in connection with the hire purchase

transaction did not fall within the phrases 'loan' or 'advance' or otherwise; hence, the interest earned on the trade advance did not attract the provisions of Interest Tax Act. Thus even though the assessee is a credit company engaged in the business of hire purchase and financing, the trade advance given by the assessee company for the purchase of machinery did not fit in with the 'loans', 'advances' or 'otherwise' as given under sub clause (4) of Section 5B of the Interest Tax Act.

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Judgments cataloged under Criminal Jurisdiction of the Madras High Court cover issues which are of great practical guidance to Judicial Officers, particularly on the legal principles governing admissibility of evidence as primary evidence, substitution of evidence recorded in other case and consideration of the said evidence, when police custody could be granted, remand, cognizance in cross cases, committal by jurisdictional Magistrates, parole and suspension of sentence, constitution of special courts and their jurisdiction and joint trial. The selected decisions also cover issues on child rights, child marriage, on preventive detention on the basis of solitary instance, nuisance to public in the context of the Constitutional protection and Directive Principles of State Policy.

2. The relationship between law and technology has not always been an easy one. However, law has always taken note of technology development wherever it is found effective and necessary. New techniques and new devices are the order of the day. For many years, photographs have been admissible in evidence on proof of producing negatives. The definition of 'evidence' under Section 3 of the Indian Evidence Act includes documents, including electronic records produced for the inspection of the Court. Such documents are called 'documentary evidence'. In ***AIR 1971 SC 1162 (Sri Rama Reddy Vs. V.V.Giri),*** the Apex Court held that like any documents, the tape recorder itself was primary and direct evidence, admissible of what has been said and picked up by the receiver. After coming into force of the Information Technology Act, 2000, the traditional concept of evidence stands totally reformed. As per Section 2(t) of the said Act, 'electronic record' means data

record or data generated image or sound stored, received or sent in an electronic form like micro film or computer generated micro fiche. Thus Section 92 of this Act, read with Schedule 2, amends the definition of 'evidence' as contained in Section 3 of the Indian Evidence Act.

3. In the matter of admissibility of photograph as primary evidence, Courts have held that in the absence of primary evidence viz., negatives, photos are not admissible in evidence. Due to advancement in science and technology, nowadays, there are digital cameras which can photograph anything without there being photo-films. Therefore, the question of producing the negatives does not arise. Emphasizing the need for taking note of technology advancement in the matter of considering whether an evidence let in has to be treated as primary evidence or not, in the decision reported in ***2011-2-L.W. (Crl.) 275 : (2011) 4 MLJ (Crl) 565 (Unnikrishnan & another Vs. The State),*** this Court pointed out - From a digital camera, photos can be directly printed. When a photograph is taken by using a Digital camera, the photograph itself is the primary evidence.

4. The question as to whether evidence recorded in one case, substituted in another case, be considered as a procedural irregularity or illegality offending fair trial, thus offending Article 14, came to be considered in the judgment reported in ***2011-1-LW (Crl) 709 : 2011 (5) CTC 747 : 2011 (2) MWN (Crl) 261 (Ganesan Vs. State).*** The judgment is also significant in declaring the law on the jurisdiction of the Court of Sessions to take cognizance of an offence when the case has not been committed to Court by the Judicial Magistrate. The issue arose in the context of a case where, out of a single First Information Report, four different charge sheets

were filed, on which, cognizance was taken separately. Some of the cases were triable exclusively by the Court of Sessions. The charges were related to the offences punishable under Sections 354 and Section 354 read with Section 109 I.P.C.

Case A: as regards A1 and A2;

Case B: under Section 354 against A3 and Section 324 against A2;

Case C: A3 - under Section 376, A2 under Section 372, 376 read with Section 109 I.P.C.;

Case D: A3 under Section 376, A2 under Section 372, 376 and 109 I.P.C.;

5. Cases C & D were duly committed under Section 209 Cr.P.C., by the Judicial Magistrate to the Court of Sessions for trial. Curiously, Cases A and B were withdrawn by the Additional Sessions Judge for trial. All the four cases were made over to the file of the Additional Sessions Judge, Mahila Court, Chennai. The evidence recorded in one case by the learned Additional Sessions Judge was substituted in all the three cases. A common judgment was made, convicting A1 and acquitting A2 and A3 in one case, but convicted in other cases. Dealing with joinder of charges as given under Section 219, Cr.P.C., on facts, the Court held that there was no joint trial in respect of the four cases, but there was separate trial. Pointing out that in such circumstances, the Court could not make use of the evidence in one case in the other cases, this Court referred to the decision of the

Apex Court reported in ***1990 Supp SCC 145 (Nathi Lal Vs. State of U.P.)*** and held:

> " .... delivering a common judgment in respect of four different offences on four different occasions at four different places is illegal and the same is a procedure unknown to criminal law. Therefore, on this account, the entire judgement of the trial court is vitiated. "

6. This Court further pointed out that substitution of evidence recorded in one case and consideration of the said evidence in other cases is not mere procedural irregularity, but illegality offending fair trial guaranteed under Article 21 and that evidence not recorded in a given case is no evidence at all in the eye of law.

7. The legal issues settled by this Court are as under:

    i. Under Section 193 of Cr.P.C., no court of sessions shall take cognizance of any offence unless the case is committed to it by the Magistrate under the Code of Criminal Procedure except as otherwise expressly provided in the Code of Criminal Procedure or by any other law for the time being in force.

    ii. The Court of Sessions has no power to direct a Magistrate to commit any case to his file nor can a Court of Sessions withdraw a case from a Magistrate to his file.

    iii. If any of the offences in a given case is exclusively triable by a Court of Sessions then, the legal duty of the Magistrate is to commit the case to the Court of Sessions for trial as provided in Section 209 of Cr.P.C.

    iv. In cross cases, where one of the cases involves offences exclusively triable by a Court of Sessions and in the other case none of the offence is exclusively triable by a Court of Sessions, then, as provided in Section 323 of Cr.P.C., the jurisdictional Magistrate should commit both the cases for trial to the Court of Sessions.

v. On such committal of cross cases arising out of the same occurrence, the Sessions Court shall scrupulously follow the procedure laid down by the Hon'ble Supreme Court in Nathi Lal v. State of U.P., 1990 Supp. SCC 145.

vi. In any other case involving offences which are not exclusively triable by a Court of Sessions and if it appears to the jurisdictional Magistrate that for any of the grounds enumerated under Section 407 (1) of Cr.P.C. that the case needs to be tried by a Court of Sessions, the learned Magistrate shall submit a report to the High Court and on such report, the High Court may order for committal of such case to the Court of Sessions for trial and thereupon on committal, the Sessions Court shall try the same as per Chapter XVIII of the Code of Criminal Procedure.

vii. In any event, the trial court shall not record common evidence, substitute the evidence recorded in one case as evidence in the other case and shall not consider the evidence recorded in one case in the other case.

viii. In no case, the trial court shall deliver a common judgement in two or more cases [vide Nathi Lal's case cited supra].

ix. In respect of the cases where trial has not already commenced before the Court of Sessions without the case being committed, the accused shall be at liberty to raise objection at the earliest opportunity or else, the Court shall follow the dictum laid down in State of Madhya Pradesh v. Bhooraji and others, 2001 Cri.L.J. 4228(1)

x. In respect of cross cases, for each case, there has to be a separate public prosecutor to conduct the prosecution.

8. The decision reported in ***2011-2 L.W. (Crl.) 789 : CDJ 2011 MHC 5616 : MANU/TN/4607/2011 (The Inspector of Police P.Saravanan Vs. K.C.Palanisamy),*** considered an important question relating to the conflict between the fundamental rights guaranteed under the Constitution which an accused possesses and the larger societal interest in effecting crime detection. In the decision reported in ***1978 SCC (Crl.) 236 (Nandhini Satpathy Vs. P.L.Devi and others),*** the Apex Court pointed out that there is a rivalry between social interest in crime detection and the constitutional rights of an accused person. Even in the background of growing rate of crimes and criminals deviating detection, protection of fundamental rights enshrined in our Constitution is of utmost importance. Thus, in the context of personal liberty guaranteed under Article 21, the Madras High Court considered the issue on taking custody of the accused for custodial interrogation and pointed out that before passing any order of remand, either to the judicial custody or to the police custody, it is absolutely necessary for the Magistrate to afford "hearing" to the accused, enabling him to make his representation, if any. This Court further held: "as provided in Section 167(3) of the Code of Criminal Procedure, if the Magistrate authorizes the detention in the custody of the police, he shall record his reasons for doing so. In order to ascertain as to whether there are reasons to authorize the detention in police custody, the Magistrate shall peruse the case diary and other relevant records and the representation of the accused. The High Court held:

"9. ... The remand of an accused, either to police custody or judicial custody, is governed by the provisions of the Code of Criminal Procedure. In other words, the curtailment of personal liberty of an individual by arrest and by remand by a Judicial Order, is done as per the procedure established by law, i.e., Code of Criminal Procedure. Apart from Articles 19 and 21 of the Constitution of India, the detention of an accused in police custody without the authorization of a Court beyond 24 hours from the time of arrest is governed by Article 22(2) of the Constitution of India and Section 57 of the Code of Criminal Procedure.

Custodial interrogation by the police during investigation is qualitatively more elicitation-oriented than questioning a suspect and in appropriate cases, to take forward the investigation further in the right direction. Whenever a request is made by the police for police custody of an accused for the purpose of interrogation, it is irrelevant that the accused expresses his desire not to make any statement, because as I have already stated, the accused has got no such absolute right to decline to answer the questions relating to the case put during the interrogation, otherwise he will be committing an offence under Section 179 of the Indian Penal Code. In the event the Court is satisfied on evaluating the factors like gravity, seriousness, magnitude, the absolute necessity etc., after recording the said reasons, as provided in Section 167(3) of the Code of Criminal Procedure, the Magistrate shall authorize the detention of the accused in police custody during the initial period of 15 days of remand for any appropriate period. This is what is reiterated in Rule 76 of the Criminal Rules of Practice. In a given case, whether it is absolutely necessary to grant police custody or not is a matter to be decided depending upon the facts and circumstances of each case and the same cannot be put into a straightjacket formula. "

9. On the question as to whether an accused need to be sent to the custody of the police when the request is made for the purpose of interrogation, the High Court held that the Police Officer can very well interrogate him in the prison itself. When the accused is in prison, the Police Officer has got every right to visit the prison and to interrogate him. However, merely because such power is vested with the police to go over to the prison to interrogate the accused, it does not mean that he has to necessarily resort to the said course without seeking police custody. This Court further held that in a case where the accused directly surrenders before the Court, since the police is deprived of having custodial interrogation of the accused which may extend to 24 hours' time, it may be a very strong circumstance justifying the detention of the accused in the police custody for the purpose of interrogation.

10. When an accused is in judicial custody in connection with one case, if formal arrest is effected in prison in connection with a different case, the question as to whether the accused will be in the custody of the police as embodied under Section 57 of the Code of Criminal Procedure and Article 22 of the Constitution of India and if the accused is not produced before the Magistrate for remand within 24 hours but produced beyond 24 hours **would make the detention illegal** came up for consideration in the decision reported in ***2011-2-L.W. 579 : MANU/TN/4205/2011 (State by Inspector of Police, Anti Land Grabbing***

Special Cell, City Crime Branch, Trichy Vs. K.N.Nehru & others). The Division Bench of this Court held as follows:

"1). When an accused is involved in more than one case and has been remanded to judicial custody in connection with one case, there is no legal compulsion for the Investigating Officer in the other case to effect a formal arrest of the accused. He has got discretion either to arrest or not to arrest the accused in the latter case. The police officer shall not arrest the accused in a mechanical fashion. He can resort to arrest only if there are grounds and need to arrest.

2). If the Investigating Officer in the latter case decides to arrest the accused, he can go over to the prison where the accused is already in judicial remand in connection with some other case and effect a formal arrest as held in Anupam Kulkarni case. When such a formal arrest is effected in prison, the accused does not come into the physical custody of the police at all, instead, he continues to be in judicial custody in connection with the other case. Therefore, there is no legal compulsion for the production of the accused before the Magistrate within 24 hours from the said formal arrest.

3). For the production of the accused before the Court after such formal arrest, the police officer shall make an application before the Jurisdictional Magistrate for issuance of P.T.Warrant without delay. If the conditions required in Section 267 of the Code of Criminal Procedure are satisfied, the Magistrate shall issue P.T. Warrant for the production of the accused on or before a specified date before the Magistrate. When the accused is so transmitted from prison and produced before the Jurisdictional Magistrate in pursuance of the P.T.Warrant, it will be lawful for the police officer to make a request to the learned Magistrate for authorising the detention of the accused either in police custody or in judicial custody. "

Thus with the question of personal liberty involved, deprivation of the same has to be in accordance with the procedure laid down by law and in conformity with the provisions thereof.

11. 'Bail' in a case relating to bailable offence/offences is the right of the accused. Therefore, it is all the more necessary to know whether an offence is bailable or non-bailable. Section 2(a) of the Code of Criminal Procedure, 1973 defines the expression "bailable offence" as an offence which is shown as bailable in the First Schedule or which is made as bailable by any other law for the time being in force and "non bailable" offence means any other offence. Undoubtedly, as per the First Schedule to the Code of Criminal Procedure, 1973, an offence under Section 506(i) is bailable. The Government of Tamil Nadu has issued G.O.Ms.No.S/4118-1/70, Public (S.C.), dated 03.08.1970, wherein, the offence under Section 506(i) has been declared as "non bailable" in the State of Tamil Nadu. Similar Government Orders have been issued in several other States like Gujarat, Delhi, Maharashtra and Uttar Pradesh. All these Government Orders were issued prior to the coming into force of the Code of Criminal Procedure, 1973 by the respective State Government in exercise of the power conferred upon it under Section 10 of the Criminal Law Amendment Act, 1932. The said provision states that:

"(1) the State Government may, by notification in the Official Gazette declare that any offence punishable under Sections 186, 189, 190, 228, 295A, 298, 505, 506 or 507 of IPC when committed in any area specified in the notification shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898 shall, while such notification remains in force, be deemed to be amended accordingly;

(2) The State Government may, in like manner and subject to the like conditions, and with the like effect, declare that an offence punishable under Section 188 or Section 506 of the Indian Penal Code shall be non-bailable."

12. The effect of the said Government Orders issued, which have got the effect of deemed amendment of the Code of Criminal Procedure, 1898, after the coming into force of the Code of Criminal Procedure, 1973, came up for consideration before various High Courts. The Division Bench of Delhi High Court, in ***Sant Ram v. Delhi State [1980 (17) DLT 490],*** held that an offence under Section 506 (i) of IPC is non-bailable. But the Division Bench of Allahabad High Court in ***Virendra Singh v. State of U.P. [2002 Crl.L.J. 4265],*** held that the same is bailable, holding that Section 10 of the Criminal Law Amendment Act, 1932 has become redundant and otiose. A Division Bench of Gujarat High Court in ***Vinod Rao v. State of Gujarat [1981 Crl.L.J. 23],*** held that an offence under Section 506(i) of IPC is non-bailable.

13. A Division Bench of this Court in ***K.M.Sundaram and antoher v. Inspector General of Police, Madras and others, 1970 L.W. (Crl) 299,*** did not answer the question, but left it open. Therefore, the said question was referred to a Division Bench. The Division Bench of this Court, after having elaborately dealt with the effect of repealing of the Code of Criminal Procedure, 1898 by the Code of Criminal Procedure, 1973 and the scope of Section 10 of the Criminal Law Amendment Act, 1932, finally held that the said notification issued under Section 10 of the Criminal

Law Amendment Act, 1932, survives even after the coming into force of the Code of Criminal Procedure, 1973. Thus, the offence under Section 506(i) of IPC is non-bailable in the State of Tamil Nadu ***[Vide Ganesan and another Vs. Inspector of Police, Iluppur Police Station, Pudukottai District in Crl.O.P.(MD) 14156 of 2011, under order dated 21.12.2011].*** This Court has further recommended to the State Government to have a re-look into the Government Order and to withdraw the same. This Court pointed out that when comparatively serious offences under Sections 324 and 325 of IPC are bailable, it does not stand to reason that an offence under Section 506(i) of IPC, which involves mere words of intimidation, should remain as non-bailable.

14. Similarly, yet another question arose, whether offences punishable under Sections 274, 324, 333 and 353 of IPC are bailable or non-bailable in the State of Tamil Nadu. Originally, in the State of Tamil Nadu, as per the First Schedule to the Code of Criminal Procedure, 1973, these offences were bailable. The Central Act 25 of 2005 substantially amended the Code of Criminal Procedure, 1973, in which these offences were re-classified as non- bailable offences. After the Bill was passed in the Parliament, various Advocates' Associations and the general public of the State of Tamil Nadu made representations to the Government to make a local amendment to the Code and to restore the original position to have the above offences as bailable. In response to the same, the State Government of Tamil Nadu introduced a Bill known as “Indian Penal Code and the Code of Criminal Procedure (Tamil Nadu Amendment) Bill, 2006" and the same was passed by the State Legislature. The same was submitted to His/Her Excellency The President of India

for assent as required under Article 254 of the Constitution of India. When the same is pending, many of the provisions of the Central Act 25 of 2005 were notified by the Central Government w.e.f. 23.06.2006. As per the said notification, these offences are non-bailable from 23.06.2006. It was argued by the Bar before the High Court of Madras that in view of the Indian Penal Code and the Code of Criminal Procedure (Tamil Nadu Amendment) Bill, 2006, these offences are bailable. When a detailed investigation was done by this Court, it came to light that the Indian Penal Code and the Code of Criminal Procedure (Tamil Nadu Amendment) Bill, 2006 has not been assented to by the President of India and thus, the same does not prevail in the State of Tamil Nadu. In view of the same and referring to Article 254 of the Constitution, this Court held that the offences under Sections 274, 332, 333 and 353 of IPC are non-bailable in the State of Tamil Nadu ***[Vide Vigneshkumar v. State, 2012 (1) CTC 269].***

15. The difference between a parole and a suspension of sentence assumes significance in the matter of counting the sentence period undergone by a convict. Clearing the doubt raised in these concepts, in the decision reported in ***2011-2-LW (Crl.) 257 : 2011 (5) CTC 353 (State & others Vs. Yesu @ Velaiyan),*** a Full Bench of this Court pointed out to the decision reported in ***AIR 2000 SC 1023 (Sunil Fulchand Vs. Union of India and others),*** holding that "even though the substantial legal effect on both Bail and Parole may be the release of a person from detention or custody, essentially, they are of different connotations in law." Keeping the law declared in ***(1981) 1 SCC 107 (Maru Ram Vs. Union of India)*** with reference to Sections 432 and 433 of Criminal Procedure Code on the one hand and Articles 72

and 161 of the Constitution on the other, that the period during which the detenu is on parole does not interrupt the period of detention and therefore, the said period spent on parole has to be counted as sentence period, unless the rules, instructions or permission granted on parole prescribes otherwise, this Court held that the express provision in Rule 36 of the Tamil Nadu Suspension of Sentence Rules on the treatment of period of leave, either emergency or ordinary, shall not be counted as sentence period. This Court held that temporary release on parole by way of administrative action and temporary release on suspension of sentence as per the Tamil Nadu Suspension of Sentence Rules are two different concepts having different connotations.

16. However, on the scope of parole to be given outside the purview of Tamil Nadu Suspension of Sentence Rules, 1982 through the executive power of the State issued under Article 162, the Full Bench, however, cautioned that outside the scope of the said Rules, the Government or any other Authority of the Government shall not grant any suspension of sentence to a prisoner. This Court further held that the Government and the Authorities under the Tamil Nadu Suspension of Sentence Rules, have got power only to grant suspension of sentence and not parole; that until a legislation is made or appropriate Rules are issued by the Tamil Nadu Government regulating the grant of parole [temporary release], there shall be no temporary release of any prisoner on parole at all. In the event any statute is made or the Government frames appropriate Rules regulating parole, the said Act or Rules may provide for the manner in which the period of parole may be treated either as part of the sentence period or not.

17. Laws relating to protection of child right are detailed in Article 39(f) as follows:

"39. Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing

(a) to (e) ....

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

18. In the Full Bench decision of this Court reported in ***2011-2-L.W. (Crl) 385 : 2011 (5) CTC 689 : 2011 (5) LW 1 : (2011) 4 MLJ (Crl) 315 T.Sivakumar Vs. The Inspector of Police, Thiruvallur Town Police Station & Others),*** this Court considered in extenso, the issues relating to marriage of a girl below 18 years in the context of the Guardian and Wards Act, 1890, the Juvenile Justice (Care and Protection of Children) Act, 2000, Prohibition of Child Marriage Act 2006, Majority Act, 1971 and more, in particular, as to whether the Court dealing with the Writ of Habeas Corpus has the power to entrust the custody of the minor girl to a person who contracted the marriage with the minor girl and thereby committed an offence punishable under Section 18 of the Hindu Marriage Act and Section 9 of the Prohibition of Child Marriage Act, 2006. This Court pointed out as follows:

"57. In conclusion, to sum up , our answers to the questions referred to by the Division Bench are as follows:-

i. The marriage contracted by a person with a female of less than 18 years is voidable and the same shall be subsisting until it is annulled by a competent court under section 3 of the Prohibition of

Child Marriage Act. The said marriage is not a valid marriage stricto sensu as per the classification but it is not invalid. The male contracting party shall not enjoin all the rights which would otherwise emanate from a valid marriage stricto sensu, instead he will enjoin only limited rights.

ii. The adult male contracting party to a child marriage with a female child shall not be the natural guardian of the female child in view of the implied repealing of section 6(c) of the Hindu Minority and Guardianship Act, 1956.

iii. The male contracting party of a child marriage shall not be entitled for the custody of the female child whose marriage has been contracted by him even if the female child expresses her desire to go to his custody. However, as an interested person in the welfare of the minor girl, he may apply to the court to set her at liberty if she is illegally detained by anybody.

iv. In a habeas corpus proceeding, while granting custody of a minor girl, the court shall consider the paramount welfare including the safety of the minor girl notwithstanding the legal right of the person who seeks custody and grant of custody in a habeas corpus proceeding shall not prejudice the legal rights of the parties to approach the civil court for appropriate relief.

v. Whether a minor girl has reached the age of discretion is a question of fact which the court has to decide based on the facts and circumstances of each case.

vi. The minor girl cannot be allowed to walk away from the legal guardianship of her parents. But, if she expresses her desire not to go with her parents, provided in the opinion of the court she has capacity to determine, the court cannot compel her to go to the custody of her parents and instead, the court may entrust her in the custody of a fit person subject to her volition.

vii. If the minor girl expresses her desire not to go with her parents, provided in the opinion of the court she has capacity to determine, the court may order her to be kept in a children home set up for children in need of care and protection under the provisions of the Juvenile Justice [Care and Protection] Act and at any cost she shall not be kept in a special home or observation home meant for juveniles in conflict with law established under the Juvenile Justice [Care and Protection] Act, 2000.

viii. A minor girl whose marriage has been contracted in violation of section 3 of the Prohibition of Child Marriage Act is not an offender either under Section 9 of the Act or under Section 18 of the Hindu Marriage Act and so she is not a juvenile in conflict with law.

ix. While considering the custody of a minor girl in a habeas corpus proceeding, the court may take into consideration the principles embodied in Sections 17 and 19(a) of the Guardians and Wards Act, 1890 for guidance."

19. Creating good environment to ensure peaceful life without any kind of nuisance and to promote the well being of the people, is the absolute duty of the State. While there may be a good justification for the State to take up such activities that provide a major source of revenue, the same cannot be at the expense of the peaceful life of the citizen. In ***(1980) 4 SCC 162 (Municipal Council, Ratlam Vs. Vardichan and others),*** the Apex Court observed “the pressure of the judicial process, expensive and dilatory is neither necessary nor desirable if responsible bodies are responsive to duties.”

20. Dealing with Section 133 of Cr.P.C providing for conditional order for removal of nuisance, the Apex Court pointed out “Section 133 is categoric, although reads discretionary; and judicial discretion when facts for its exercise are present, has a mandatory import." It was also held that discretion becomes a duty when the beneficiary beings home the circumstances for its benign exercise. Thus the Supreme Court further observed “the guns of Section 133 go into action wherever there is public nuisance. The public power of the magistrate under the Code is public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here. "

21. Reflecting the same sentiments, in the matter of locating of liquor shops by the State run TASMAC Corporation, in the decision reported in ***2011-1-L.W. (Crl.) 319 : 2010 (2) CWC 337 : (2010) 8 MLJ 304 : 2011 WLR 267 (The Tamil Nadu State Marketing Corporation Ltd. Vs. R.M.Shah & others),*** the High Court observed that while there may be a good justification for the State to take up such activities that provide a major source of revenue, the same cannot be at the expense of the peaceful life of the citizenry.

22. This Court held that even if the shops are located in places situated beyond the distance stipulated in the Rules, yet, such compliance, per se, cannot come to the rescue of the licensee of the liquor shop, if such location of the shop poses a threat to the public and interference with the right to have a peaceful living. This Court took note of the need for creating a good environment and held:

> "21. ... the people of this great nation are the political custodian of power and the Government is accountable to the people.

23. Creation of Special Courts to deal with specific offences arising under Special Acts and the nature of jurisdiction of the Special Court are often outlined in the Special Act itself. The question as to whether the jurisdiction exercised therein is one of original jurisdiction or the jurisdiction it originally possesses, assumes significance both as to the width of its power under the special enactment as well as in the context of further appeal remedies thereon, on the judgment passed. Pointing out to the various enactments under which the Special Court constituted are to function and the nature of jurisdiction given to the Courts under the special Acts, the decision reported in ***2011-2-L.W. 298 : 2011 Crl.L.J. 4514 (Antony & others Vs. The State)*** pointed out that apart from the powers of the Court that it normally possesses, specific powers conferred upon the Special Courts under the respective enactments thus make the jurisdiction as one of original criminal jurisdiction. In the decision reported in ***AIR 1984 SC 718 (A.R.Antulay Vs. Ramdas Sriniwas Nayak),*** the Apex Court pointed out at paragraph 27 that except those specifically conferred and specifically denied, it has to function as a Court of original criminal jurisdiction not being hide-bound by the terminological status description of Magistrate or a Court of Sessions. Under the Code, it will enjoy all powers which a Court of original criminal jurisdiction enjoys, save and except the ones specifically denied.

24. Thus, following the said decision, dealing with the powers of the Special Court constituted under the Tamil Nadu Protection of Depositors Act, this Court pointed

out to the decision reported in ***AIR 1984 SC 718 (A.R.Antulay Vs. Ramdas Sriniwas Nayak)*** and held as follows:

> "23. ... the Special Court constituted under the TANPID Act does not enjoy the powers of a Court of Session though it is presided over by a Judge who is in the cadre of the District and Sessions Judge. By means of the deemed clause referred to above, he exercises the original jurisdiction of only a Magistrate. "

Thus this Court held that an appeal as against the judgment of the Special Court would be to the Principal Sessions Court only.

25. Although in the nature of civil liability, special provision under Section 138 of the Negotiable Instruments Act has given new dimension to criminal jurisprudence that a dishonour of a cheque where the cheque amount is not paid within the specified time after the receipt of the statutory notice of demand is made as an offence punishable before the Criminal Court, the cheque drawn in a foreign bank dishonoured either on account of want of funds or on account of stop payment instruction from the drawer, often gives rise to important issues in the context of both the drawer and the drawee being non-residents and the Bank being an Indian Bank, chosen for presentation of the cheque. Chapter XVI of the Negotiable Instruments Act, 1881 is a specific Chapter on international law, covering liability of maker, acceptor or indorser of foreign instrument.

There are four Sections in Chapter XVI-

i. Section 134 - the law governing the liability of maker, acceptor or indorser of foreign instrument,

ii. Section 135 – law applicable in case of dishonor of negotiable instruments when it is made payable in a different place from that in which it is made or endorsed,

iii. Section 136 – law applicable to negotiable instruments which are made in accordance with law of India even though made out of India and

iv. Section 137 – presumption as to the foreign law in this regard.

26. Dealing with the issue as to whether the issuance of statutory notice would itself give rise to the cause of action, particularly with reference to Section 138, in the decision reported in ***2011-1-L.W. 227 : 2010 (3) MWN (Crl.) DCC 81 : (2011) 1 MLJ (Crl.) 161 : 2011 AIR (NOC) 274 (Pale Horse Designs & another Vs. Natarajan Rathnam),*** this Court referred to the decision reported in ***2009-1-L.W. (Crl.) 582 (M/s. Harman Electronics (P) Ltd. and Anr. v. National Panasonic India Ltd.)*** as follows:

> "16. In M/s. Harman Electronics (P) Ltd. and Anr. v. National Panasonic India Ltd. reported in AIR 2009 SC 1168 : 2009-1-L.W. (Crl.) 582, a division bench of the Hon'ble Supreme Court dealt with the question whether the issuance of statutory notice would itself give rise to the cause of action. While dealing with the said question, the Hon'ble Supreme Court held that the place of communication of the statutory notice by itself would give rise to the cause of action to prefer the complaint in a court exercising jurisdiction over

the said place and the place of issuance of notice shall not have precedence over the place of service of notice in the matter of selection of jurisdiction. In the said judgment at paragraph 26 and 27, the Hon'ble Supreme Court has made the following observations:

> "26. Learned Counsel for the respondent contends that the principle that the debtor must seek the creditor should be applied in a case of this nature.
>
> 27. We regret that such a principle cannot be applied in a criminal case. Jurisdiction of the Court to try a criminal case is governed by the provisions of the Criminal Procedure Code and not on common law principle. "

27. Pointing out that the transactions were made in U.S.A. and the cheques were drawn on a Bank in U.S.A. payable at Massachusetts Branch, the complainant presenting the cheque in a Bank in Chennai, this Court held:

> "31. A combined reading of Sections 1, 11, 12 and 134 to 137 of the Negotiable Instruments Act, 1881, will make it clear that a cheque made/drawn in a foreign country on a drawee bank functioning in the foreign country and made payable therein shall be a foreign instrument and the law of the country wherein the cheque was drawn or made payable shall be the law governing the rights and liabilities of the parties and the dishonour of the cheque. As such the payee cannot select a country and present it through a bank therein for collection to confer jurisdiction on a court functioning therein. If the payee is given such a right to proceed criminally against the drawer by selecting the

jurisdiction, the same will encourage forum shopping making the payees to go to a country wherein the dishonour of the cheque is made a criminal offence and wherein the law is more favourable to the payee enabling him to collect the amount covered by the cheque by way of fine or compensation by resorting to criminal prosecution. A person who is not a citizen of India for an act committed in a foreign country wherein it is not a punishable offence, cannot be prosecuted in India. In this case, none of the petitioners is a citizen of India. The acts constituting the offence, namely issuance of the cheque, the dishonour of the cheque, the failure to make payment of the cheque after receipt of the statutory notice were all committed by them not in India, but in USA. Therefore, they cannot be prosecuted in India for the said act as an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. "

28. As the title suggests, Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Vide Pirates Act, 1982, is essentially an enactment aimed at preventive detention of a detenu involving in activities endangering public peace and tranquility. Resolving the question as to whether a solitary incident of robbery in a ground case would be sufficient to justify an order of detention of a person branding him as goonda, the Full Bench declared the law on this in the decision reported in ***2011-2-L.W. (Crl.) 372 : (2011) 3 MLJ (Crl.) 589 : 2011 (4) CTC 353 (Arumugam Vs. State of Tamil Nadu & another)*** as follows:

(i) To brand a person as Goonda as defined under Section 2(f) of the Act, it is absolutely necessary that there are to be more than one case involving offences punishable under the Chapters of the Indian Penal Code as enumerated in Section 2(f) of the Act.

(ii) To detain a Goonda, it is not necessary that there are to be more than one case which has got the propensity of disturbing the maintenance of public order. Out of all the cases against him even if a single incident resulting in a single case has the propensity of affecting the even tempo of life and public tranquility being prejudicial to the maintenance of public order that by it itself would be sufficient to pass a valid order of detention. There cannot be any straitjacket formula or universal rule in respect of number of cases because the necessity for passing a detention order depends upon the facts and circumstances of each case. "

29. The question as to whether the term "food" would mean solid substance alone or would include liquid substances, came up for consideration in the decision of the Apex Court reported in ***AIR 2001 SC 218 (S.Samuel M.D.Harrisons Malayalam and another VS Union of India),*** only to hold that the substance called "food" should possess the quality to maintain life and its growth. It must have nutritive or nourishing value so as to enable the growth, repair or maintenance of the body. In the absence of any definition as to the expression "food stuff", the question as to whether coffee is a food stuff so as to attract the provisions of the Essential Commodities Act, 1955, came up for consideration in the context of conviction and sentence imposed under the Essential Commodities Act on the offence committed by way of adulterated coffee provider and tea provider in the cashew rusk powder. In considering the defence taken that tea and coffee are not food stuff as stated in

Section 2 of the Essential Commodities Act, in the decision reported in ***(2011) 4 CTC 445 : (2011) 3 MLJ (Crl) 640 : 2011 (2) MWN (Crl) 79 (Mad) (Thiyagarajan Vs. State by Inspector of Police),*** the High Court held that coffee cannot be stated to be "food stuff" to fall within the definition under Section 2 of the Essential Commodities Act, and thereby acquitted the accused.

30. On the question as to whether police report could be filed in respect of offences under a specific Act where cognizance can be taken only on a private complaint to be preferred by a person authorized by the Central/State Government under that Act, the High Court considered the issue at length in ***Crl.O.P.No.13173 of 2011 etc. dated 05.01.2012 (Sengol and two others Vs. State rep. by Inspector of Police R.S.Mangalam Police Station, Ramanathapuram District) reported in MANU/TN/0011/2012.*** The issue was considered with reference to the I.P.C offence, charged under Section 143, Section 353, Section 506(1) of I.P.C. read with Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and Sections 4(1), 4(1A) and 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 36-A of the Mines and Minerals Concession Rules 1959. This Court pointed out that when the special statute lays down the procedure to be followed, the one laid down under the general law shall not be followed. This Court held:

> "i. Since, the offences under the Indian Penal Code involved in the cases before us and an offence under section 21 of the Mines and Minerals (Development and Regulation) Act 1957 are not the same offences in terms of Article 20(2) of the Constitution of India, the provisions of the Mines and

Minerals (Development and Regulation) Act will not exclude the provisions of IPC. Therefore, in respect of sand theft, it will be lawful for the police to register a case as provided in section 154 Cr.P.C., under section 379 and other relevant provisions of IPC, investigate the same as per the provisions of the Code of Criminal Procedure and to lay a final repost under section 173 of the Code of Criminal Procedure, upon which it will be well within the competence of the jurisdictional Magistrate to take cognizance. Therefore, such an FIR, where case has been registered only under the provisions of the Indian Penal Code, shall not be liable to be quashed.

ii. If an act of the accused constitutes offences under Indian Penal Code as well as the provisions of the Mines and Minerals (Development and Regulation) Act, the registration of a case both under the provisions of Indian Penal Code and Mines and Minerals (Development and Regulation) Act is not illegal and the police may proceed with the investigation. However, the police shall file a police report only in respect of the offences punishable under the Indian Penal Code and in respect of the offences punishable under the Mines and Minerals (Development and Regulation) Act, he may file a separate complaint, provided he has been authorized under section 22 of the said act.

iii. In any event, if the police officer, files a final report in respect of offences under IPC as well as under section 21 of the Mines and Minerals (Development and Regulation) Act, the Magistrate may take cognizance of the offences under IPC alone and proceed with the trial.

iv. In respect of offences under the Mines and Minerals (Development and Regulation)Act, the court shall take cognizance only on a complaint filed by a person authorized in that behalf by the Central Government or State Government and not on a police report.

v. In the State of Tamil Nadu, so long as the notification issued under G.O.Ms.No.114, Industries (MMC.I) Department, dated 18.09.2006 authorising the Inspectors of Police to file complaints under section 22 of the Mines and Minerals Act, is in force, on completing the investigation in respect of the offence under section 21 of the Mines and Minerals Act, it will be lawful for the Inspector of Police concerned, as an authorised person, to file a complaint under section 22 of the Mines and Minerals Act, before the jurisdictional Magistrate, upon which the Magistrate may take cognizance. ”

31. Crimes going cross-borders and issues on extradition of fugitive crimes of foreign State, involve considerable questions of law. In the decision reported in ***2012 (1) CTC 358 (R.Selvi vs. Union of India),*** the Madras High Court had an occasion to consider Sections 5, 6, 9, 25 and 34B of the Extradition Act 1962, relating to arrest, discharge and bail. This Court pointed out that upon receipt of a written request from foreign State, the Central Government may request the Magistrate to take competent jurisdiction of issue of provisional warrant of arrest of such fugitive criminals under Section 34B of the Act. The fugitive criminal is entitled for a discharge upon an application to High Court, if he is not surrendered either under Chapter 2 or returned under Chapter 3 within two months of his remand.

32. Under Chapter 4, where a fugitive criminal of any foreign State is found in India, he shall be liable to be apprehended and returned to foreign State and no Magistrate enquiry is necessary. In the case of fugitive criminal of Singapore, where there is no extradition treaty between India and Singapore and an arrest and remand of the criminal was made without any request by the Republic of Singapore, question arose as to the validity of the arrest. This Court pointed out that in the absence of any extradition treaty with the Republic of Singapore, Chapter 2 alone applied, which required that a requisition for surrender has to be made to the Central Government by the foreign State. This Court pointed out the difference between Chapter 2 and Chapter 3. However, under Chapter 2, the foreign State shall make the requisition to the Central Government for the surrender of fugitive criminal and upon such receipt, an order of magisterial enquiry will be passed and only thereafter, the Magistrate shall issue a warrant of arrest; whereas, under Chapter 3, where a fugitive criminal of any foreign State is found in India, he shall be liable to be apprehended and returned to the foreign State and no Magistrate enquiry is required. Section 25 of the Act deals with the release of the person arrested on bail and the provisions of the Code of Criminal Procedure relating to bail shall apply.

33. Thus, if chapter 3 is not applicable for a foreign State which has only extradition arrangement, the arrest cannot be affected either on the authenticated warrant of the search State or by provisional warrant by a Magistrate.

34. Issue relating to 'small quantity', 'intermediate quantity' and 'commercial quantity' and 'purity tests', as given in Sections 2(vii)(a), (xxiii)(a)/Table/Entry 56, 239, 2(xv),

2(xi)(b), 2(xvi)(e)/ 'Opium', 'Heroin' in Narcotics Drugs and Psychotropic Substances Act, 1985, came for consideration on reference before a Division Bench of this Court in ***M. Veludurain –vs- The State, rep by The Superintendent of Customs, Special Narcotic Cell, Nagercoil, O.R. No.1 of 2001, 2012 – L.W. (Crl.) 70.*** The question referred was "Whether in the absence of exact quantity / percentage of narcotic drug / psychotropic substance found in the seized contraband, the punishment for contravention in relation to manufactured drug and preparations, is to be imposed under Section 21(a) or under Section 21(b) of the Narcotics Drugs and Psychotropic Substances Act, 1985?"

The Division Bench answered the question referred as follows :

"i. If the contraband seized is either a mixture or a preparation with or without a neutral material, of any Narcotic Drug or Psychotropic Substance falling within the scope of Entry No.239 of the notification dated 19.10.2001 issued in S.O.No.1055(E) of the Central Government, it is absolutely necessary to conduct Purity Test to ascertain the exact quantity of the Narcotic Drug / Psychotropic Substance contained in the said mixture or preparation. In the absence of Purity Test, as indicated, the contraband seized shall be construed only as a small quantity and accordingly, the accused shall be liable for punishment.

ii. In the case of a contraband, which is neither a mixture nor a preparation falling within the sweep of entry No.239 and if the contraband is a Narcotic Drug / Psychotropic Substance simplicitor, there is no need for Purity Test and in such cases, the entire quantity of Narcotic Drug / Psychotropic Substance shall be taken into consideration for deciding as to whether the same is a small quantity or a commercial quantity or an intermediate quantity for the purpose of conviction."

The judgments, compiled herein on principles, rules, doctrines and definitions, are a sample of those rendered by the Madras High Court, constituting one large aspect of evolutionary process of law.

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"Law must be stable and yet, it cannot stand still", said Roscoe Pound. Justice Cardozo viewed "Law is a living growth, not a changeless code."

True to these statements, the judgments rendered by this court in exercise of its constitutional, civil, (original and appellate) and criminal jurisdiction, cover cases relating to individual rights issues, pertaining to matters of Constitutional mandate and public importance, and those touching on the current needs of the society. Thus, even as life is in locomotion, new human thought and experience bring in a change to add new dimension to the growth of law. Until then, these decisions constitute formal law.

So goes the journey .....

I - FULL BENCH DECISIONS

Sl. No.	Cause Title	Citation	Subject	Page No.
1	Tamil Nadu Public Service Commission, Rep. by its Secretary Vs. R. Manikandan	2011(5)CTC 1 2011(4) LW 673 2011(6) MLJ 609 2011(4) LLN 736	Constitution of India - Article 15(4), Article 29(2), Article 341_Article 342 - State's authority to make any provision in favour of the Scheduled Castes and the Scheduled Tribes – Tamil Nadu Public Service Commission – power to test the genuineness of Community Certificates.	6
2	The Deputy Inspector General of Police and The Director General of Police v. V. Rani	2011(3)CTC 129 2011(2) LLN 530 2011(4) MLJ 1 2011(3) LW 673	Promotion - Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, 1955, Rules 17(b), 17(a),8 & 17(e) and Tamil Nadu State and Subordinate Service Rules, 1955,Rules 36, 36(b)(ii), 36(a),39(a)(i) & (d) - Whether an employee can claim as a matter of right to be promoted to the next category during the period of currency of minor punishment.	9
3	Ramalingam Vs Radha & ors	2011(4)CTC 481 2011(3) LW 769 2011(6) MLJ 1	Provincial Insolvency Act, 1920 – Section 4 - general powers and inherent powers of the Court to pass interim order of protection before order of adjudication.	11
4	C. Muthukrishnan Vs The District Collector, Tirunelveli	2011(5)CTC 577 2011(7) MLJ 641	Tamil Nadu Minor Mineral Concession Rules, 1959 – Rule 8 – Period of lease in respect of Virgin Quarries – amendment – whether prospective or retrospective in nature.	12
5	Latif Estate Line India Ltd., rep. by its MD Vs Hadeeja Ammal & Ors	2011(2)CTC 1 2011(1) LW 673 2011(2) MLJ 569 2011 AIR (Mad) 66 2011(3) KLT 73 (SN)-(C.No.70)	Registration Act – Sections 17 and 18 – Whether Registered Sale Deed could be unilaterally cancelled or annulled by Vendor and whether such Cancellation Deed can be registered – Held – the proper procedure is to re-convey the property by Deed of Conveyance.	14
6	D.Anthony Marianathan Vs Josephine Sahayarani	2011(5)CTC 481 2011(4) LW 957 2011(7) MLJ 417	Indian Divorce Amendment Act 2001 - Section 17 – General Clauses Act, 1897 – Sec. 6 – Whether amendment regarding confirmation by three Judges of the High Court of the decree for dissolution of marriage is prospective or retrospective – Held – Amendment is prospective in nature.	17

II - CIVIL CASES

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1	Union of India, rep., by Secretary to Government, Ministry of Social Welfare, New Delhi and Others	2011 (7) MLJ 1	Child Labour and Regulations Act - need for proper implementation of national child labour scheme and the funds provided to be used for the welfare of the children – Directions issued.	19
2	K.Shyam Sunder Vs. The State of TN (Samacheer Kalvi Thittam)	2011 WLR 577	Tamil Nadu Uniform System of School Education Act, 2010 - Colourable legislation – Held, legislature has no power to legislate on an item either because it is not included in the list assigned to it as per Schedule VII of the Constitution or on account of the limitations imposed under Part III of the Constitution dealing with the Fundamental Rights	20
3	B.Ramesh Babu Vs. The Secretary, Planning, Development And Special Initiatives Department, Chennai, Metro Rail Limited Rep. by its Managing Director And The Registrar, Tamil Nadu Veterinary And Animal Sciences University	MANU / TN / 1111/ 2011	Public Interest Litigation, seeking a Writ of Mandamus to forbear the Planning, development and Special Initiatives Department, Chennai Metro Rail Ltd., from acquiring lands wherein, the Institute of Poultry Production and Management, belonging to the Tamil Nadu Veterinary Animal Sciences University, is housed – Held, acquisition of the land and the decision taken by the Metro Rail authority to shift the poultry production and Management is in the larger interest of common public who would be benefited through the Metro Rail Project.	22
4	K. Rajamani and others -vs- Alamunagar Residents Welfare Association	(2011) 3 MLJ 69 2011 (1) CTC 257	A society registered under the Societies Registration Act, having its Regn. No. 131/2005 1-A, Coimbatore and others – Held, area reserved for public purpose cannot be altered to be put to use for any other purpose.	25
5	In Defence of Environment and Animals, by its Manager Trustee Elephant G.Rajendran, Chennai-600 017 -vs- Principal Chief	(2011) 4 MLJ 20 CDJ 2011 MHC 3464	Wildlife (Protection) Act 1972, Chapter IV - Elephant Corridors notified as a management strategy – Held, Traditional forest dwellers are entitled for protection of forest rights and occupation of forest lands under The	26

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6	Bharat Sewak Samaj Vs. CS, State of Tamil Nadu	(2011) 1 MLJ 306 2011(2) RCR(Rent)127	Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act - eviction of an unauthorised occupier of public premises – Held, Necessary requirements of public good are stronger than private.	28
7	S. Dhanasekaran Vs. Commandant 42 Bn., CRPF, Narasinghar Agartala and another	(2011) 7 MLJ 64 CDJ 2011 MHC 054	Held - Conducting disciplinary proceedings in the language known to the delinquent forms part of the principles of natural justice - disciplinary proceedings be conducted not only in the manner known to law but also in the language known to the delinquent.	29
8	K. Santhanam -vs- S. Kavitha through her sub-power agent K. Seerappan through her power agents	(2011) 3 MLJ 34	Code of Civil Procedure – Or.7 R.11 – Rejection of plaint - Or. 6 R. 14, Or. 3 R. 2 and Or 15 R. 1 Code of Civil Procedure examined – Held – Error of procedure is curable.	30
9	N. Rajendran -vs- Shriram Chits Tamil Nadu Pvt. Ltd., rep., by its Branch Manager/ Foreman, Tiruvarur	(2011) 8 MLJ 12 2011(5) LW 174 2011(6) CTC 268	Limitation Act - sec. 5 – Code of Civil Procedure - Execution Petition with reference to Or. 21 Rules 104 to Rule 106 - condonation of delay – Law stated.	31
10	Kotak Mahindra Bank Ltd., Vinay Bhavya Complex, 4th Floor, 156-A, CST Road, Kalina Santa Cruz (East), Mumbai-400 098 rep., by B. Muthu Kumar, Senior Manager-South -vs- 1. Sivakama Sundari 2. S. Narayana 3. S.B. Murthy	2011 (6) CTC 11 2011(4) LW 745 2011(7) MLJ 1267	Civil Code of Procedure – Secs. 37, 38, 39 41, 42 - Arbitration and Conciliation Act 1996 – Secs. 19(1), 36 - seeking transmission to another court for the purposes of execution in the matter of awards – Held, the provisions of Section 38 and Order XXI, Rules 5, 6 and 10 of the Code of Civil Procedure cannot be applied to an Arbitral Tribunal.	34
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	Administrative Officer, Tamil Nadu Housing Board, Ellis Nagar, Madurai-10 -vs- S. Jeya, rep., by her power of agent S. Ramanathan and another	2011(2) CTC 407	Court, in a revision petition could correct mistakes committed by the Subordinate Court - Held, Court has ample power to correct any mistake committed by the Subordinate Courts by exercising its administrative control or power.	
12	T.L. Muthukumar and others -vs- Registrar General High Court, Madras and another	(2011) 1 MLJ 785	Whether a candidate, who obtained B.A./B.Sc./B.Com. Degree without successfully completing 12 years schooling can be a ground for promotion to the higher post on the basis of having qualification of graduation degree, that too through correspondence course – Held, the conditions contained in the High Court Service Rules cannot be in anyway superseded by any other law not applicable to the employees of the High Court and that the Petitioners cannot claim promotion on that basis.	37
13	ICICI Bank Limited, rep. by its Chief Manager, N.Anandakumar having its Zonal Office at ICICI Bank Towers, 4th Floor, west Wing Plot No.24, Ambattur Industrial Estate, Chennai-58 Vs 1.The Debts Recovery Appellate Tribunal, Ethiraj Salai, Egmore, Ch–8. 2. The Debts Recovery Tribunal–2, Deva Towers, 6th Floor, No.770-A, Anna Salai, Ch-2. 3.R. Subramanian	2011 (6) CTC 70 CDJ 2011 MHC 5452	The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993 (RDDBFI Act) - The Passport Act, 1967 -question as to whether the Debts Recovery Tribunal could impound the passport and travel document in the case of a defaulter company, whose businesses was shut and the guarantors were directed to surrender their passport – Held, the inherent power of the Tribunal or Appellate Tribunal is wider than a Civil Court and is not excluded by the provisions of the Passport Act by passing interim orders to meet ends of justice.	39
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17	K.Manivannan Vs. Election	2011 (3) CTC 785	Election Commission - Article 324	42

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5	Ganesan and another Vs. Inspector of Police, Iluppur Police Station, Pudukottai District.	Crl.O.P.No. 14156/2011 – Judgment dated 21-12-2011.	Criminal Procedure Code – Bailable and Non-Bailable Offences – Indian Penal Code – Sec. 506(1) – Non-Bailable in view of notification issued by Government of Tamil Nadu.	67
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7	State & others Vs. Yesu @ Velaiyan	2011-2-LW (Crl.) 257 2011 (5) CTC 353	Code of Criminal Procedure – Secs. 432, 433 - The Tamil Nadu Suspension of Sentence	69

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10	Antony & others Vs. The State	2011-2-L.W. 298 2011 CrLJ 4514	Tamil Nadu Protection of Depositors Act – Constitution of Special Courts presided by District Judges – powers clarified – discharges functions of a magistrate only – appeal against orders lies only to the Principal Sessions Judge – Law stated.	75
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INDIAN NATIONAL PLEDGE

India is my country and all Indians are my brothers and sisters.

I love my country and I am proud of its rich and varied heritage.

I shall always strive to be worthy of it.

I shall respect my parents, teachers and all elders and treat everyone with courtesy.

To my country and my people, I pledge my devotion.

In their well being and prosperity alone, lies my happiness.