



The Indian Law Institute



**THE INDIAN LAW INSTITUTE
NEW DELHI**

**ANNUAL SURVEY
OF
INDIAN LAW
VOLUME XLII : 2006**

**EDITOR : K. N. CHANDRASEKHARAN PILLAI
CO-EDITOR : THOMAS PAUL**



© The Indian Law Institute (2007)

The Indian Law Institute shall be the sole copyright owner of all the published material. Apart from fair dealing for the purposes of research, private study or criticism no part of this *Survey* may be copied, adopted, abridged, translated, stored in any retrieval system, computer system, photographic or other system or reproduced in any form by any means whether electronic, mechanical, digital, optical, photographic or otherwise without prior written permission from the publisher.

The editors, publishers and printers do not claim any responsibility for the views expressed by the contributors and for the errors, if any, in the information contained in the *Survey*.

Mode of Citation
XLII *ASIL* (2006)
July 2007

Inland : Rs. 600.00
Foreign : £ 25.00; \$ 40.00

DISTRIBUTOR

UNIVERSAL BOOK TRADERS

C-27, Connaught Place (Between Odean & Plaza) Middle Circle, New Delhi – 110001

Tel: 011-23416277, 23418671 FAX: 011-23418014

80, Gokhle Market, Opp. Tis Hazari Courts, Delhi – 110054

Tel.: 011-23911966, 23961288

FAX: 011-23924152 Email:unilaw@vsnl.com Website: www.unilawbooks.com

Published by Professor K.N. Chandrasekharan Pillai, Director for
the Indian Law Institute, www.ilidelhi.org and printed at
Shivam Press, A-12/1, Naraina Industrial Area-I, New Delhi-28



EDITORIAL COMMITTEE

CHAIRMEN

Chief Justice Y.K. Sabharwal
Chief Justice K.G. Balakrishnan
Presidents, Indian Law Institute

MEMBERS

Upendra Baxi
Formerly Vice-Chancellor
University of Delhi

P.P. Rao
Senior Advocate
Supreme Court

B.B. Pande
Formerly Professor of Law
University of Delhi

EDITOR

K. N. Chandrasekharan Pillai
Director
Indian Law Institute

CO-EDITOR

Thomas Paul
Associate Research Professor
Indian Law Institute



DISTINGUISHED FELLOWS OF THE INDIAN LAW INSTITUTE

Justice V. R. Krishna Iyer

Justice M. N. Venkatachaliah

Professor Lotika Sarkar

HONORARY PROFESSORS OF THE INDIAN LAW INSTITUTE

Dr. Rajeev Dhavan

Dr. K.M. Sharma

Professor Clarence J. Dias

Professor Yash Ghai

Professor A.R. Blackshield

Dr. D. Conrad



CONTENTS

1	Arbitration Law	— <i>A Francis Julian</i>	1
2	Civil Procedure	— <i>Vishnu Konoorayar</i>	29
3	Company Law	— <i>V Sudesh</i>	49
4	Conflict of Laws	— <i>C Jayaraj</i>	59
5	Constitutional Law - I (Fundamental Rights)	— <i>M P Raju</i>	75
6	Constitutional Law – II	— <i>A K Ganguli</i>	117
7	Consumer Protection Law	— <i>B C Nirmal</i>	197
8	Criminal Law	— <i>K N Chandrasekharan Pillai</i>	233
9	Criminal Procedure	— <i>K I Vibhute</i>	247
10	Direct Taxes Law (Income Tax)	— <i>G C Bharuka</i>	281
11	Election Law	— <i>K C Sunny</i>	299
12	Environmental Law	— <i>Satish C Shastri</i>	321
13	Family Law and Succession	— <i>Virendra Kumar</i>	345
14	Hindu Law	— <i>Poonam Pradhan Saxena</i>	373
15	Indirect Taxes Law – I (Central Excise and Customs)	— <i>K P Kylasanatha Pillay</i>	405
16	Indirect Taxes Law – II (Sales Tax)	— <i>H L Taneja</i>	433
17	Intellectual Property Laws	— <i>N S Gopalakrishnan</i>	467
18	Labour Law – I (Labour Management Relations)	— <i>Bushan Tilak Kaul</i>	489
19	Labour Law – II (Social Security and Welfare Legislations)	— <i>Thomas Paul</i>	537
20	Mercantile Law	— <i>Versha Vahini</i>	557
21	Property Law	— <i>M L Upadhyaya</i>	585
22	Public Interest Litigation	— <i>Jyoti Dogra Sood</i>	599
23	Women and Law	— <i>Kamala Sankaran</i>	607
24	Central Legislation	— <i>S Sivakumar</i>	623



**VOLUMES
OF
ANNUAL SURVEY OF INDIAN LAW**

Vol. I	:	1965
Vol. II	:	1966
Vol. III-IV	:	1967-68
Vol. V	:	1969
Vol. VI	:	1970
Vol. VII	:	1971
Vol. VIII	:	1972
Vol. IX	:	1973
Vol. X	:	1974
Vol. XI	:	1975
Vol. XII	:	1976
Vol. XIII	:	1977
Vol. XIV	:	1978
Vol. XV	:	1979
Vol. XVI	:	1980
Vol. XVII	:	1981
Vol. XVIII	:	1982
Vol. XIX	:	1983
Vol. XX	:	1984
Vol. XXI	:	1985
Vol. XXII	:	1986
Vol. XXIII	:	1987
Vol. XXIV	:	1988
Vol. XXV	:	1989
Vol. XXVI	:	1990
Vol. XXVII	:	1991
Vol. XXVIII	:	1992
Vol. XXIX	:	1993
Vol. XXX	:	1994
Vol. XXXI	:	1995
Vol. XXXII	:	1996
Vol. XXXIII-IV	:	1997-98
Vol. XXXV	:	1999
Vol. XXXVI	:	2000
Vol. XXXVII	:	2001
Vol. XXXVIII	:	2002
Vol. XXXIX	:	2003
Vol. XL	:	2004
Vol. XLI	:	2005



TABLE OF CONTENTS

	1 ARBITRATION LAW	1
I	INTRODUCTION	1
II	LETTERS PATENT JURISDICTION	2
III	MANDATORY REFERENCE	4
	Subject matter of arbitration agreement	4
	Application under order 39 rules 1 and 2 CPC	5
	Waiver of reference and submission to the jurisdiction of civil courts	6
IV	INTERIM MEASURES AND ‘CELEBRITY CONTRACTS’	8
V	APPOINTMENT OF ARBITRATORS	9
	Domestic arbitration: waiver of right to appoint	10
	Substitute arbitrator	10
	International commercial arbitration	13
	Whether chief justice is a court?	13
	Appointment when refused	14
	Validity of arbitration agreement : severability	15
	Bona fide refusal and the right to appoint	16
VI	CHALLENGE TO AWARD	17
	Validity of partial awards, additional awards, and final awards	17
	Limitation	19
	Patent illegality	20
	Two tier arbitration awards	21
VII	THE 1940 ACT	23
	Arbitration of family disputes	24
VIII	FOREIGN AWARDS (RECOGNITION & ENFORCEMENT) ACT, 1961	25
IX	CONCLUSION	26
	2 CIVIL PROCEDURE	29
I	INTRODUCTION	29
II	JURISDICTION OF CIVIL COURT	29
	Bar of jurisdiction of civil court	29
	Ousting jurisdiction by a contractual agreement	30
	Ousting jurisdiction by an arbitration clause	30
	Territorial jurisdiction under the Copyright Act, 1957	31
	Ousting of jurisdiction under the Industrial Disputes Act, 1947	31



	Ousting of jurisdiction of civil courts under the Muslim Women (Protection of Rights on Divorce) Act, 1986	32
	Ouster of jurisdiction of civil court under the Companies Act, 1956.	32
III	RES JUDICATA	32
	Choice of issues	33
	<i>Res judicata</i> in tax matters	33
	<i>Res judicata</i> in public interest litigation	33
IV	APPEAL	34
	Filing of appeal memorandum	34
	The scope of questions of fact in second appeal	34
	Adjudication of second appeal without formulating substantial question of law	36
	Revision	36
V	PLEADINGS	36
	Rejection of plaint	36
	Stay of proceedings	37
	Delay in filing written statement	38
	Amendment of pleadings	40
VI	FRAMING OF ISSUES	40
	Issues of limitation as preliminary issue	41
VII	COMPROMISE DECREE /CONSENT DECREE	41
	Contempt of a consent decree	41
	Appeal against consent decree	42
VIII	EXECUTION	42
	Duties of an executing court	42
	Unrecorded compromise between decree holder and judgment debtor	43
	Calculation of interest	43
	Adjustment of part payment	44
IX	MISCELLANEOUS	44
	Power of court under section 151 CPC	44
	Article 20 of the Constitution of India	44
	Injunction	45
	Oral evidence	45
	Allegation as to bias against presiding officer	45
	Transfer of case	46
	Non-compliance with amended procedural provisions	46
	Equal opportunity to give evidence	46
	Appearance of party in person	46
	Scope of section 149 of CPC	47
X	CONCLUSION	48



3 COMPANY LAW		49
I	INTRODUCTION	49
II	PRELIMINARY ISSUES	49
	Unincorporated company	49
	Lifting the corporate veil	49
III	COMPANY LAW BOARD	50
	Necessary party	50
IV	INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO	50
	Change in name of the company	50
	Form of contracts – sections 46 and 48	51
V	SHARE CAPITAL AND DEBENTURES	52
	Whether section 108 of the Companies Act is mandatory or not?	52
	Board of directors’ power to ratify decision taken by managing director	52
VI	WINDING UP PROCEEDINGS	52
	Proof and ranking of claims in winding up – interpretation of sections 529 and 529-A of the Companies Act, 1956	52
	Role of official liquidator in winding up proceedings	53
	Company in liquidation – fastening liability on a third party corporation	55
	Evidence required for seeking winding up	57
4 CONFLICT OF LAWS		59
I	INTRODUCTION	59
II	DOMICILE	61
III	INTERNATIONAL COMMERCIAL ARBITRATION	65
	International chamber of commerce rules of arbitration	65
IV	FORUM SELECTION / FORUM NON-CONVENIENS	66
V	ADMIRALTY JURISIDCTION	69
VI	HAGUE CONVENTIONS ON PRIVATE INTERNATIONAL LAW AND INDIA	72
	Inter-country adoption	72
	Service abroad of judicial and extra judicial documents in civil or criminal matters	73
VII	CONCLUSION	73



5	CONSTITUTIONAL LAW (FUNDAMENTAL RIGHTS)	75
I	INTRODUCTION	75
II	DEFINITION OF “THE STATE”	75
	Effects of employer being state or non-state	75
	‘State’ and state government	76
	Whether a co-operative society is state	76
III	RIGHT TO EQUALITY	77
	Exclusion of creamy layer	81
	Other ghosts of <i>Nagraj</i>	81
	Equality – a part of basic structure of the Constitution	82
	No right to equality in illegality	82
	Disparity cannot be ordered to be continued	83
	Discrimination in termination	83
	Quota rule to be strictly implemented	83
	Right to exemption already accrued cannot be withdrawn	84
	Equality in contractual matters	84
	Classification permissible	85
	Compassionate appointment	85
	Open category if reserved candidate not available	85
	Principle of sustainable development	86
	Cut off date for pension	86
	Regularisation of services	89
	Classification of employees of government and corporations	93
IV	DISCRIMINATION ON PROHIBITED GROUNDS	93
V	RIGHT TO FREEDOM	95
VI	PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES	98
VII	RIGHT TO LIFE AND PERSONAL LIBERTY	99
	Right to rehabilitation of encroachers	99
	Compensation for custodial torture	100
	Ship with hazardous waste from foreign country	100
	Inter-generational equity and environment	100
	Prosecution of an officer in connection with a company	101
	Increase of water level of Mullaperiyar dam	101
	Rape a crime against right to life	101
	Pavement hawkers	101
	Environmental law and sustainable development	102
	Fair trial	102
	Disclosure of reasons for deportation	102
	Claim for police protection	103
	Right to wages of seamen	103



	Right to life not to include right to employment	103
	Protection of natural environment	103
	Right to food	103
	Natural tanks and artificial tanks	104
	Right to medical aid	104
	Traffic congestion	104
	Right to speedy trial	104
	Fundamental rights of prisoners	105
	Right to individual liberty	105
VIII	RIGHT TO EDUCATION	105
IX	PROTECTION AGAINST ARREST AND DETENTION	106
X	RIGHT AGAINST EXPLOITATION	108
XI	RIGHT TO FREEDOM OF RELIGION	109
XII	CULTURAL AND EDUCATIONAL RIGHTS	109
XIII	RIGHT TO CONSTITUTIONAL REMEDIES	110
	Pragmatic remedy	110
	Refusal of compensation	110
XIV	CONCLUSION	114
	6 CONSTITUTIONAL LAW-II	117
I	INTRODUCTION	117
II	CENTRE STATE RELATIONS	119
	Imposition of President's rule under article 356 of the Constitution	119
	Trade, commerce and intercourse	129
	Taxation	135
III	DISPUTE BETWEEN STATES	141
IV	JUDICIAL REVIEW	144
V	PUBLIC INTEREST LITIGATION	148
VI	LAW DECLARED BY SUPREME COURT	157
VII	POWER OF REVIEW	161
VIII	CONTEMPT OF COURT	163
IX	COMPOSITION OF RAJYA SABHA : MEANING OF "REPRESENTATIVE OF EACH STATE"	170
X	DISQUALIFICATION FOR MEMBERSHIP TO PARLIAMENT/STATE ASSEMBLY	177
XI	POWER OF PRESIDENT/GOVERNOR TO GRANT PARDON, REMIT OR COMMUTE SENTENCES	180
XII	PUBLIC EMPLOYMENT	185
XIII	CONCLUSION	190



	7 CONSUMER PROTECTION LAW	197
I	INTRODUCTION	197
II	IMPORTANT DEFINITIONS	199
	Consumer	199
	Service	200
	Unfair trade practice	202
III	RELATIONSHIP OF THE C P ACT WITH OTHER LEGISLATIONS	203
IV	REMOVAL OF A MEMBER OF DISTRICT FORUM	206
V	APPEAL TO STATE COMMISSION	207
VI	MAINTAINABILITY OF WRIT PETITION AGAINST ORDER OF STATE COMMISSION	208
VII	POWER TO SET ASIDE EX PARTE ORDERS	211
VIII	FINALITY OF ORDERS	212
IX	ENFORCEMENT OF ORDERS AND PENALTIES	212
	Constitutionality of section 27 of the Act	212
	Issue of non-bailable warrant against president of a co-operative society	213
	Compliance with requirements of natural justice before imposition of punishment under section 27	214
	Executing court has power to proceed under section 25	214
X	LIMITATION PERIOD	215
XI	DEFICIENCY IN SERVICE	215
	Investment	216
	General insurance	216
	Crops insurance	219
	Harassment of senior citizens	220
	Group insurance	221
	Municipal services	222
	Marine insurance	222
	Medical services	223
	Life insurance	225
	Air services	225
	Flats	226
	Non-delivery of car	227
	Electricity	227
	Banking service	229
XII	CONCLUSION	230



8 CRIMINAL LAW		233
I	INTRODUCTION	233
II	CRIMINAL RESPONSIBILITY FOR UNINTENDED DEATH	234
III	CRIMINAL RESPONSIBILITY – ABETMENT TO COMMIT SUICIDE	234
IV	EXCEPTIONS FROM CRIMINAL RESPONSIBILITY	235
	Applicability of section 80 IPC	235
	Applicability of section 84 IPC	235
	Right of private defence	236
V	CONSPIRACY UNDER SECTION 120 B IPC	236
VI	CONSTRUCTIVE LIABILITY	236
	Common intention	236
	Common object	237
VII	MORAL POLICING	238
	Proscribing publication	238
VIII	FACTS ARE DETERMINATIVE	238
IX	DOWRY DEATH AND MURDER	240
X	CRIME AGAINST WOMEN	242
	Outraging the modesty of women	242
	Abduction	242
	Rape	242
	Consent	243
	Gang rape	243
	Statutory rape	244
	Rape of pregnant woman	244
XI	SENTENCING	245
XII	PROPERTY OFFENCES	246
	Destruction of property under section 425 IPC	246
XIII	CONCLUSION	246
9 CRIMINAL PROCEDURE		247
I	INTRODUCTION	247
II	FIRST INFORMATION REPORT	247
	Delay in lodging FIR	248
III	INVESTIGATION AND INQUIRY	249
IV	CHARGE	251
V	EXAMINATION OF ACCUSED BY COURT	252
VI	PROSECUTION OF A PUBLIC SERVANT	253
VII	WITHDRAWAL OF PROSECUTION	256
VIII	CONTINUATION OF PROSECUTION AFTER DEATH OF COMPLAINANT	257



IX	APPEAL AGAINST ACQUITTAL AND CONVICTION	257
	Appeal against acquittal	257
	Leave to appeal against acquittal – judicial discretion	258
	Leave to appeal against acquittal by a private party – locus standi?	260
	Appeals against conviction	261
X	TRANSFER OF CRIMINAL CASES	262
XI	GRANT OF REMISSION	264
XII	SUSPENSION OF SENTENCE	265
XIII	INHERENT POWERS OF HIGH COURTS	267
	Nature and scope	267
	Quashing of FIR	267
	Quashing of a complaint	268
	Quashing of criminal proceedings	270
	Initiating fresh investigation and criminal proceedings	270
	Quashing of an order	272
	Permission for compounding a non-compoundable offence	274
	Ordering consecutive sentences of imprisonment to run concurrently	277
XIV	CONCLUSION	278
	10 DIRECT TAXES LAW	281
	(INCOME TAX)	
I	INTRODUCTION	281
II	CLAIM OF DEDUCTION	281
III	CLAIM FOR DEDUCTION OTHER THAN BY FILING A REVISED RETURN	282
IV	ADVANCE TAX AND INTEREST THEREON	283
V	INTEREST ON REFUND	284
VI	INTEREST ON INTEREST ON REFUNDS	285
VII	SPECIAL DEDUCTION ON EXPORTS	285
VIII	PENALTY FOR LATE FILING OF RETURNS	287
IX	BUSINESS LOSS DUE TO ILLEGAL ACTIVITIES	288
X	DEPRECIATION	289
XI	BUSINESS EXPENDITURE	289
XII	EXEMPTION OF INCOME OF A STATE FROM UNION TAXATION	291
XIII	EXPENDITURE RELATING TO ISSUANCE OF BONUS SHARES	292
XIV	APPOINTMENT OF A SPECIAL AUDITOR UNDER SEC 142(2A)	293
XV	PRESUMPTION AS TO POSSESSION UPON SEARCH UNDER SECTION 132	295
XVI	COMPUTATION OF PERQUISITES	296



XVI	PRE-EMPTIVE PURCHASE OF IMMOVEABLE PROPERTY	297
-----	---	-----

11 ELECTION LAW 299

I	INTRODUCTION	299
II	CORRUPT PRACTICES	299
	Bribery	300
	Undue influence	301
III	ELECTION PETITIONS	302
	Legal effects of findings in election petition	302
	Voter's privilege to maintain secrecy of voting	303
	Material facts	305
IV	ELECTION COMMISSION	306
	Model code of conduct	306
V	DISQUALIFICATIONS	307
	Office of profit	307
	Subsistence of contract with government	308
	Bigamy	309
VI	NOMINATIONS	310
	Nomination paper	310
VII	DUTY TO CAST VOTE	311
VIII	ELECTION TO THE COUNCIL OF STATES	311
	Residential qualification	312
	Open voting	315
IX	ELECTION TO LOCAL BODIES	316
	Writ jurisdiction on election disputes	317
	Interference by high court	318
	Recounting	318
	Eligibility to contest by a person married to a scheduled caste	318
	Disqualification on ground of dismissal from service	319
X	CONCLUSION	319

12 ENVIRONMENTAL LAW 321

I	CONSTITUTIONAL SAFEGUARDS	322
	Environment jurisprudence and protection of natural resources	322
	Shelter as basic human right	324
	Right to salubrious and decent environment	325
	Town planning versus ecology	326
	Industrial development versus ecological preservation	327
	Noise rules explained	328



II	PROTECTION AND PRESERVATION OF ANIMALS	329
	Protection and preservation of animals –	
	A constitutional mandate	329
	Cruelty against animals versus customary and religious festivity	329
	Abattoir – laws and policies	330
III	CANSERVATION OF FORESTS AND WILDLIFE	332
	<i>Godavarman</i> revisited	332
	Flagman <i>T.N. Godavarman Thirumulpad</i> a milestone case echoed	334
	No right to live in wildlife area without permission/permit	335
	Forest produce	336
	Concept of forest during post-independence era	337
	Non-disclosure amounts to fraud	338
	Permission of the central government mandatory	339
IV	RIGHT TO WATER	340
	Right to water – part of right to life	340
	Raising water level of a dam is not an inter-state water dispute	341
V	PARKS AND PLAY GROUNDS	342
	Public parks	342
	Interference by court	342
VI	MISCELLANEOUS	343
	Directions of the pollution board should not be interfered	343
	Contemnor punished strictly	343
VII	CONCLUSION	344
	13 FAMILY LAW AND SUCCESSION	345
I	INTRODUCTION	345
II	INTER-CASTE MARRIAGES IN INDIA : AN ANTIDOTE TO CASTE SYSTEM	347
III	MANDATORY REGISTRATION OF MARRIAGES : A FUNCTIONAL NECESSITY	350
IV	TRIBAL WOMAN MARRIED TO NON-TRIBAL MAN : STATUS OF THEIR CHILDREN	354
V	DISSOLUTION OF MARRIAGE : A SHIFT FROM FAULT TO IRRETRIEVABLE BREADOWN OF MARRIAGE	357
VI	THE CONCEPT OF NOTIONAL PARTITION : ITS FUNCTIONAL OBJECTIVE	363
VII	SECTION 14 OF THE HINDU SUCCESSION ACT, 1956 : AMBIT OF ITS SUB-SECTIONS (1) AND (2)	365



14 HINDU LAW		373
I	INTRODUCTION	373
II	HINDU ADOPTION AND MAINTENANCE ACT, 1956	373
	Adoption by a married woman	373
	Proof of adoption	375
	Mandatory age gap, minimum age and marital status of the adopted child	376
	Maintenance under the Act	377
III	HINDU MINORITY AND GUARDIANSHIP ACT, 1956	377
	Custody of the child : welfare of the child of paramount importance	377
	Financial considerations alone not important	378
	Visitation rights	379
IV	HINDU MARRIAGE ACT, 1955	379
	Parties to the marriage must be Hindus	379
	Right to marry	381
	Child marriage	382
	Bigamy	383
	Registration of marriages	384
	Nullity of marriage	386
	Order of DNA test in case of dispute of paternity	386
	Restitution of conjugal rights	388
	Cruelty as a ground for divorce	389
	Normal wear and tear of married life	390
	Irretrievable breakdown of marriage	391
	A charge of adultery and plea for a DNA test	391
	Divorce by mutual consent	392
	Matrimonial property	394
	Interim maintenance	395
V	HINDU JOINT FAMILY	396
	Presumption of joint property	396
VI	THE HINDU SUCCESSION ACT, 1956	398
	Succession rights of parties to a void marriage and children	398
	Full ownership to Hindu women	398
	Succession to the property of a female intestate	400
	Preference of heirs of the full blood	401
	Partition of dwelling house at the instance of female heirs	401
VII	CONCLUSION	403



15 INDIRECT TAXES LAWS-I		405
(CENTRAL EXCISE AND CUSTOMS)		
I	INTRODUCTION	405
II	CENTRAL EXCISE	406
	Manufacture	406
	Classification of goods	408
	Valuation	411
	Exemption	414
	Penalty	418
	Exigibility to excise duty	418
	Extended period of limitation	419
III	CUSTOMS LAWS	419
	Exemption	420
	Valuation	422
	Abatement	424
	Maritime lien	425
	Limitation	426
	Classification	428
	Customs and anti-dumping	429
IV	CONCLUSION	431
16 INDIRECT TAXES LAW—II		433
(SALES TAX)		
I	INTRODUCTION	433
II	LIABILITY	433
III	ASSESSMENT	439
	Work contract	439
	Sale	441
	Check-post provisions	445
	Natural justice	449
IV	JUDGMENTS UNDER THE CENTRAL SALES TAX ACT, 1956	452
	Inter-state sale	452
V	JUDGMENTS HAVING A BEARING ON THE CONSTITUTION OF INDIA	459
	Article 14	459
	Article 226	462



17 INTELLECTUAL PROPERTY LAWS		467
I	INTRODUCTION	467
II	TRADEMARK	467
	Jurisdiction	467
	Registration – opposition	470
	Parallel import	471
III	PATENTS	474
IV	DESIGN	477
V	COPYRIGHT	481
	Concept of originality	481
	Copyright in artistic design	485
	Contract of service	486
	Moral right of performer	487
18 LABOUR LAW – I		489
(LABOUR MANAGEMENT RELATIONS)		
I	INTRODUCTION	489
II	INDUSTRIAL DISPUTES ACT, 1947	490
	Industry	490
	Workman	491
	Test for determining who is a ‘workman’	491
	Retainers are not ‘workman’: legitimacy to contractual appointments	491
	Retrenchment	494
	Concept of retrenchment and exclusionary clauses: pedantic approach	494
	Burden of proof relating to continuous service of one year on workman	497
	Some imaginative approach in retrenchment law	499
	Impact of new economic policy of government on normal relief of reinstatement for violation of section 25-F	501
	Issue relating to rule of ‘last come first go’	502
	Subject matter of reference and scope of powers of industrial tribunal	504
	Disputed questions of fact should form subject matter of reference and not of a writ petition	505
	Delay in seeking reference of dispute can be fatal	506
	Disciplinary jurisprudence: new approach of the Supreme Court	508
	The new economic policy and the court’s concern for discipline	508



	Disciplinary action and principles of natural justice	509
	Acquittal in criminal trial does not vitiate order of punishment based on proved misconduct in a departmental enquiry – the two being distinct	510
	Misconducts, disciplinary proceedings and scope of powers of labour court/industrial tribunal under section 11A	513
	Physical assault: A serious misconduct	513
	Use of abusive and threatening language as ‘misconduct’	515
	Betrayal of trust as ‘misconduct’	516
	Unauthorised absence as ‘misconduct’	517
	Grant of fictitious loan as ‘misconduct’	518
	Falsification of accounts/misappropriation as ‘misconduct’	519
	Being in possession of excess amount in violation of rules as ‘misconduct’	521
	Causing wilful loss as ‘misconduct’	522
	Scope of power of high court to interfere with punishment	523
	Scope of section 17-B: non-applicability even in case of professional/self employed	523
	Unfair labour practice	524
	Regularization	525
III	TRADE UNIONS ACT	533
	Maintainability of a writ petition by an unregistered trade union	533
IV	CONCLUSION	535
	19 LABOUR LAW –II	537
	(SOCIAL SECURITY AND WELFARE LEGISLATIONS)	
I	INTRODUCTION	537
II	CHILD LABOUR	537
	Dispute as regards age of child labour - procedure to be adopted	537
III	CONTRACT LABOUR	538
	Entitlement to absorption	538
IV	EMPLOYEES’ STATE INSURANCE	541
	Has ESI contribution to be related to ESI facilities availed?	541
	Transferee company liable to pay damages imposed on transferor company	542
V	GRATUITY	543
	Forfeiture of gratuity	543
	An Employee must opt a particular scheme of gratuity as a whole – not best terms of both	543



VI	MINIMUM WAGES	545
	No liability to pay minimum wages if employment is not listed in schedule to the Minimum Wages Act	545
	Right to minimum wage should be enforced in forum created under the statute	546
VII	MATERNITY BENEFIT	546
	Inflexible nature of liability	546
VIII	PENSION SCHEME	547
	Disablement pension	547
IX	PERSONS WITH DISABILITES	548
	Employee who acquires disability and person with disability – distinction	548
X	PROVIDENT FUND	550
	Meaning of employee	550
	Infancy protection	551
XI	WORKMEN'S COMPENSATION	552
	Power of commissioner to review his order	552
	'Casual worker' not 'workman' under the Act	553
	Insurer not liable to pay interest/penalty	553
	Workman suffering from chest disease dying of heart attack at work spot, not accident arising out of and in the course of employment	555
	Doctrine of election	555
XII	CONCLUSION	556
	20 MERCANTILE LAW	557
I	INTRODUCTION	557
II	LAW OF CONTRACTS	557
	Offer, invitation to offer	557
	Acceptance	558
	Auction, bidding	560
	Valid contracts	561
	Void agreements	562
	Voidable contracts	563
	Privity of contract	566
	Cancellation of contracts	566
	Time as essence of contract	567
	Frustration of contract	568
	Appropriation of payments	568
	Performance of contract	568



	Restitution	569
	Damages	570
	Liability of surety	570
	Bank guarantee	572
	Bailment	574
	Agency	575
	Power of attorney	576
	Judicial review in respect of contracts	577
III	NEGOTIABLE INSTRUMENTS ACT	577
	Special rules of evidence	578
	Crossed cheques	578
	Bouncing of cheques	578
IV	LAW OF SALE OF GOODS	580
	Definition of 'goods'	580
	Contract of sale	580
	Rights of unpaid seller against the goods	581
	Breach of contract	581
V	PARTNERSHIP ACT	581
	Nature of partnership firm	581
	Registration of firm	582
VI	CONCLUSION	582
	21 PROPERTY LAW	585
I	INTRODUCTION	585
II	GENERAL PRINCIPLES	585
	Attested	585
	Registration of composition deed not required	585
	Registration of relinquishment deed not required	586
	Operation of transfer	586
	Condition restraining alienation	587
	Transfer not to defeat the right of maintenance	587
	Transfer by ostensible owner	587
	Doctrine of <i>lis pendence</i>	588
	Doctrine of part-performance	588
III	SPECIFIC TRANSFERS	590
	Sale	590
	Mortgage	592
	Equity of redemption	593
	Foreclosure	593
	Redemption by person other than mortgagor	594
	Charge on immovable property	594



	Lease and licence	594
	Notice to quit	595
	Determination of lease	595
	Waiver of notice to quit	596
	Effect of holding over	596
IV	CONCLUSION	597
	22 PUBLIC INTEREST LITIGATION	599
I	INTRODUCTION	599
II	AREAS OF PUBLIC INTEREST SPELTOUT	600
III	TOWN PLANNING: PUBLIC INTERNEST LITIGATION JUSTIFIED	601
IV	ABUSING PROCESS OF PIL	601
V	SOCIAL SECURITY	602
VI	NEED FOR RESTRAINTS AND CONSTRAINTS	602
VII	PIL SHOULD NOT BE USED IN DEROGATION OF AN EXISTING LAW	602
VIII	OVERRELIANCE ON PIL - IMPACT ON SOCIETY	603
IX	PIL AND DEVELOPMENTAL PROJECTS	603
X	ABUSE OF PIL BY STATE GOVERNMENT DEPRECATED	604
XI	PIL AND MISUSE OF SPORTS FACILITY	604
XII	CONCLUSION	605
	23 WOMEN AND LAW	607
I	INTRODUCTION	607
II	CASTE STATUS UPON MARRIAGE : DETERMINED BY PATRIARCHY?	607
	Are husband and wife one for purposes of serving notice?	609
III	CONTRIBUTION OF WOMEN TO HOUSEWORK AND TO MATRIMONIAL PROPERTY	610
IV	FAMILY RELATIONS AND DNA TESTING	611
V	FREEDOM TO MARRY AND REGISTRATION OF MARRIAGES	613
VI	PERFORMANCE OF CONJUGAL DUTIES AND DISSOLUTION OF MARRIAGE	615
VII	RIGHTS OF WOMEN IN SUCCESSION AND INHERITANCE	616
VIII	CUSTODY OF CHILDREN AND INTER-PARENTAL KIDNAPPING	618
IX	BAR GIRLS AND BLANKET BAN ON DANCE PERFORMANCE	619
X	MANNER OF DISPOSAL OF RAPE CASES	619
XI	WOMEN AND CHILDREN IN PRISONS	621



24 CENTRAL LEGISLATION		623
I	INTRODUCTION	623
II	ENVIRONMENTAL LAW	623
	Wildlife (Protection) Amendment Act, 2006	623
	The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006	624
III	CONSUMER LAW	624
	The Food Safety and Standard Act, 2006	624
IV	COMPANY LAW	626
	The Company Secretaries (Amendment) Act, 2006	626
	The Companies (Amendment) Act, 2006	627
V	REGULATORY LAW	628
	The Petroleum and Natural Gas Regulatory Board Act, 2006	628
VI	CHILD RIGHTS	629
	The Prohibition of Child Marriage Act, 2006	629
	The Juvenile Justice (Care and Protection of Children) Amendment Act 2006	630
VII	EDUCATION	631
	The National Commission for Minority Educational Institution (Amendment) Act, 2006	631
VIII	BANKING AND TAXATION	631
	Reserve Bank of India (Amendment) Act, 2006	631
	The Government Security Act, 2006	632
	The Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Act, 2006	632
IX	CONSTITUTIONAL LAW	632
	The Constitution (Ninety-fourth Amendment) Act, 2006	632
X	HUMAN RIGHTS	633
	Protection of Human Rights (Amendment) Act, 2006	633
IX	MISCELLANEOUS	633
	The National Institute of Fashion Technology Act, 2006	633
	The Parliament (Prevention of Disqualification) Amendment Act, 2006	634
	The Actuaries Act, 2006	634
X	CONCLUSION	635



AVAILABLE PUBLICATIONS OF THE INDIAN LAW INSTITUTE

Name of Publication	Year	Price
Golden Jubilee Volume (Hard Bound)	2007	450.00
Accessing Legal Information Resources & Services	2007	70.00
Indian Legal System, edited by Joseph Minattur, (2nd ed.) (revised)	2006	600.00
Disaster Management Law, edited by Vishnu Konoorayar and Jaya V.S.	2006	400.00
Essays on the Indian Penal Code, revised by K.N. Chandrasekharan Pillai and Shabistan Aquil	2005	400.00
Directory of Law Colleges, edited by K.N. Chandrasekharan Pillai	2005	80.00
Legal Dimensions of Cyberspace, edited by S.K. Verma and Raman Mittal.	2004	380.00
A Treatise on Consumer Protection Laws, prepared by S.K. Verma, M. Afzal Wani and assisted by S.S. Jaswal	2004	450.00
Intellectual Property Rights : A Global Vision, edited by S.K. Verma and Raman Mittal.	2003	750.00
Annual Survey of Indian Law (Issues from 1965 onwards available)		600.00
Legal Framework for Health Care in India, edited by S.K. Verma and S. C. Srivastava	2002	250.00
Rights of Persons with Disabilities, edited by S. K. Verma and S. C. Srivastava	2002	280.00
Legal Research and Methodology (2nd ed.), edited by S.K. Verma and M. Afzal Wani	2001	450.00
Labour Adjudication in India, edited by Z.M.S. Siddiqi and M. Afzal Wani	2001	350.00
50 Years of the Supreme Court of India : It's Reach and Grasp, edited by S.K. Verma and Kusum Kumar	2000	995.00
Right to Bail, edited by S.K. Verma and Afzal Wani	2000	225.00
De-Criminalisation : A Study, P.M. Bakshi	1994	125.00
Legal Interpretation, Ancient and Modern, P.M. Bakshi	1993	125.00
The Water (Prevention and Control of Pollution) Act, 1974, P.M. Bakshi	1993	125.00
Environmental Law : The Procedural Options, P.M. Bakshi	1993	125.00
The Air (Prevention and Control of Pollution) Act, 1981, P.M. Bakshi	1993	125.00
Drafting of Commercial Agreements : Basic Material, P.M. Bakshi	1993	125.00
Essays on Famine and Society, Jean Flound and Amrita Rangasami	1993	150.00
The Juvenile Justice Act, 1986, Ved Kumari	1993	250.00
Intellectual Property : Indian Trends, P.M. Bakshi	1992	85.00
The Environment Protection Act, 1986, P.M. Bakshi	1992	125.00
The Public Liability Insurance Act, 1991, P.M. Bakshi	1992	125.00
Role of Panchayat Institutions in Irrigation Management : Law and Policy, M.S. Vani	1992	125.00
Water Laws in India, Chhatrapati Singh	1992	400.00
Water Rights and Principles of Water Resources Management, Chhatrapati Singh	1992	100.00
Settlement of International and Interstate Water Disputes in India, B.R. Chauhan	1992	350.00
Nehru and the Constitution, Rajiv Dhavan and Thomas Paul	1992	250.00
Consumer Protection Law in India : An Eco-Legal Treatise on Consumer Justice, R.K. Nayak	1991	350.00
Valiant Victims and Lethal Litigation : The Bhopal Case, Upendra Baxi and Amita Dhanda	1990	350.00
Towards the Uniform Civil Code, Vasudha Dhagamwar	1989	100.00



Land System of Arunachal Pradesh, J.N. Das, edited by P.M. Bakshi and Kusum	1989	100.00
Towards Energy Conservation Law, Chhatrapati Singh, P.K. Choudhary and Rama Devi P.	1989	125.00
Energy (Conservation) Bill, Chhatrapati Singh and P.K. Choudhary	1988	20.00
Law and Social Change : Indo-American Reflections, edited by Robert F. Meagher	1988	100.00
Environment Protection Act : An Agenda for Implementation, Upendra Baxi	1987	30.00
Referencer to Statutory Rules and Orders, Amita Dhanda and Om Prakash Shukla	1987	100.00
B.N. Rau Constitutional Adviser, Mr. Justice E.S. Venkataramiah	1987	20.00
Law of Defamation : Some Aspects, P.M. Bakshi	1986	60.00
Violation of Freedom of the Press, Usha Loghani	1986	60.00
Government Regulation of Financial Management of Private Corporate Sector in India, V.D. Kulshreshtha	1986	120.00
Inconvenient Forum and Convenient Catastrophe: The Bhopal Case, Upendra Baxi	1986	100.00
Mass Disasters and Multinational Liability : The Bhopal Case, Upendra Baxi and Thomas Paul	1986	80.00
Litigation Explosion in India, Rajiv Dhavan	1986	75.00
Referencer to Statutory Rules and Order : 1982, Amita Dhanda	1986	100.00
Violation of Journalistic Ethics and Public Taste, Alice Jacob, Usha Loghani edited by S.N. Jain	1984	45.00
The East India Company's Sadar Courts 1801-34, Orby Mootham	1983	40.00
Official Secrecy and the Press, S.N. Jain	1982	15.00
Civil Marriage Law : Perspectives and Prospects, Tahir Mahmood	1978	15.00
The Supreme Court under Strain : The Challenge of Arrears, Rajiv Dhavan assisted by P. Kalpakam	1978	25.00
Constitutional Developments since Independence, Alice Jacob	1975	75.00
Justice in Pondicherry, Joseph Minattur	1973	25.00
The Abridged Trial Procedure in Indian Law, D.C. Pandey and V. Bagga	1973	15.00
Law of International Trade Transactions, Rahmatullah Khan	1973	25.00
Law Relating to Irrigation, Alice Jacob and Sheo Narain Singh	1972	15.00
Law Relating to Flood Control in India, Alice Jacob and K.C. Joshi	1971	15.00
Interstate Water Disputes in India, S.N. Jain, Alice Jacob and Subhash C. Jain	1971	25.00
Government Regulation of Private Enterprise, D.C. Pandey	1971	30.00
Law and Urbanisation in India, Under the auspices of The Indian Law Institute, New Delhi	1969	20.00
Educational Planning : Its Legal and Constitutional Implications in India, G.S. Sharma	1967	15.00
Property Relations in Independent India : Constitutional and Legal Implications, G.S. Sharma	1964	15.00
The Law of Sedition in India, D. Gopalakrishnan Sastri	1964	8.50
Administrative Process under the Essential Commodities Act, M.P. Jain	1964	15.00

Periodicals

Journal of the Indian Law Institute (Quarterly)
Index to Indian Legal Periodicals

Annual Subscription

350.00 per volume
300.00



The Indian Law Institute

2 0 0 6
Vol XLII

ISSN 0570-2666



Annual Survey of
Indian Law

Annual Survey
of
INDIAN LAW
2006



The Indian Law Institute, New Delhi
