



CONTENTS

1	Administrative Law	— <i>P Puneeth</i>	1
2	Arbitration Law	— <i>A Francis Julian</i>	31
3	Civil Procedure and Law of Evidence	— <i>Vishnu Konoorayar K</i>	71
4	Constitutional Law – I (Fundamental Rights)	— <i>MP Raju</i>	113
5	Constitutional Law – II (Non-Fundamental Rights)	— <i>Krishan Mahajan</i>	153
6	Consumer Protection Law	— <i>Beant Singh Bedi</i>	175
7	Criminal Law	— <i>Jyoti Dogra Sood</i>	199
8	Criminal Procedure	— <i>K N Chandrasekharan Pillai</i>	217
9	Direct Taxes Law (Income Tax)	— <i>G C Bharuka</i>	229
10	Education Law	— <i>Arya A Kumar</i>	259
11	Election Law	— <i>K C Sunny</i>	281
12	Family Law and Succession	— <i>Virendra Kumar</i>	303
13	Hindu Law	— <i>Poonam Pradhan Saxena</i>	335
14	Indirect Taxes — I (Central Excise & Customs)	— <i>Jaya V S</i>	375
15	Indirect Taxes Law — II (Sales Tax)	— <i>H L Taneja</i>	399
16	Intellectual Property Laws	— <i>N S Gopalakrishnan</i>	435
17	Labour Law — I (Labour Management Relations)	— <i>Bushan Tilak Kaul</i>	461
18	Labour Law — II (Social Security Legislation)	— <i>Thomas Paul</i>	507
19	Mercantile Law	— <i>Versha Vahini</i>	529
20	Property Law	— <i>ML Upadhyaya</i>	553
21	Public Interest Litigation	— <i>A K Ganguli</i>	567
22	Muslim Law	— <i>Furqan Ahmad</i>	587
23	Tort Law	— <i>Lisa P Lukose</i>	613
24	Women and the Law	— <i>Kamala Sankaran</i>	637
25	Central Legislation	— <i>S Sivakumar</i>	661



**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
Vol. XLII	:	2006



TABLE OF CONTENTS

	1 ADMINISTRATIVE LAW	1
I	INTRODUCTION	1
II	SEPARATION OF POWERS	1
III	DELEGATED LEGISLATION	7
	Retrospective operation	7
	Effect of repeal of parent statute	8
	Primacy of statutory rules over executive power	8
	Scope of sub-delegated legislation	9
	Interpretation of subordinate/delegated legislation	9
	Delegated legislation as an external aid to interpret the parent Act	10
IV	PRINCIPLES OF NATURAL JUSTICE	10
	Applicability of principles of natural justice	10
	Right of hearing	11
	Right to notice	11
	Determination of compliance with natural justice	13
	Reasoned decisions	15
	Inapplicability of principles of natural justice	15
	Statutory exclusion of principles of natural justice	16
V	DOCTRINE OF LEGITIMATE EXPECTATION	17
VI	PROMISSORY ESTOPPEL	19
VII	JUDICIAL REVIEW OF ADMINISTRATIVE ACTION	22
	Wednesbury's principles	22
	Doctrine of proportionality	23
	Judicial review of policy decision/matters	24
	Judicial review in contractual matters	27
	Availability of alternative remedy	28
VII	CONCLUSION	29
	2 ARBITRATION LAW	31
I	INTRODUCTION	31
II	ARBITRATION AGREEMENT	32
	What is an arbitration agreement	32
	Survival of arbitration agreement	34
III	MANDATORY REFERENCE TO ARBITRATION	35
	Article 226 of the Constitution	36



	Article 142 of the Constitution	37
	Existence of dispute	38
IV	INTERIM MEASURE	39
	General principles	39
	Encashment of bank guarantee	40
	Encashment of letter of credit	41
V	APPOINTMENT OF ARBITRATORS	42
	Pre-SBP cases	42
	Scope of power under section 11	42
	Post-SBP cases	43
	Condition precedent for invoking section 11(6)	43
	Jurisdiction to decide arbitrability	44
	Right of a legal heir	45
	Existence of live claim	45
	Failure of a party to appoint arbitrator	47
	Institutional arbitration and section 11(6)	50
	International commercial arbitration	52
	Precondition to exercise of power to appoint arbitrator	52
	Appointment of arbitrator when fraud vitiates the agreement	53
	Appointment of presiding arbitrator as per arbitration clause	54
	Vagueness of claim and appointment of arbitrator	54
	Applicability of Indian Act	55
VI	ARBITRAL TRIBUNAL : JURISDICTION AND TERMINATION	57
	Estoppel by conduct after participating in arbitral proceedings	57
VII	CHALLENGES TO AWARDS	
	Period of limitation to challenge an award	58
	Award against specific terms of contract	58
	Appointment of arbitrator contrary to agreed procedure	59
VIII	APPELLATE JURISDICTION UNDER THE ACT	61
	Partial award and appeal	62
IX	ENFORCEMENT OF AWARDS	62
	Enforcement of cross awards under CPC	63
X	THE ARBITRATION ACT, 1940	63
	What is an arbitration agreement?	64
	Choice of court's jurisdiction	64
	Condonation of inordinate delay in challenging award	65
	Award contrary to terms of contract	66



	Award in accordance with terms of contract	67
	Challenge to a non-speaking award	68
	Scope of interference in a non-speaking award	69
XI	CONCLUSION	69
	3 CIVIL PROCEDURE AND LAW OF EVIDENCE	71
	PART A: CIVIL PROCEDURE	71
I	INTRODUCTION	71
II	JURISDICTION	72
	Distinction between courts lacking territorial / pecuniary jurisdiction and subject matter jurisdiction	72
	Revisional jurisdiction and appellate jurisdiction	73
	The meaning of ‘place of suing’	73
	Disobedience of interim injunction order issued by a court without jurisdiction	74
	Territorial jurisdiction of executing court	74
	Subordination of land acquisition courts	74
	Restriction of application of CPC by the Railway Claims Tribunal Act, 1987	75
III	RES JUDICATA	75
	Applicability of <i>res judicata</i> in case of delay	75
	Applicability of <i>res judicata</i> in a case for divorce based on cruelty	75
	Applicability of <i>res judicata</i> on purchaser of suit property from judgment debtor in an <i>ex parte</i> decree	75
IV	APPEAL	76
	Second appeal	76
	Difference between a ‘question of law’ and a ‘substantial question of law’	77
	Substantial question of law in second appeal	77
	Maintainability of second appeal against observations made by first appellate court	77
	Applicability of prohibition on further appeals as per section 100-A	78
	Does filing of an appeal make the decree inexecutable?	78
V	PLEADINGS	78
	Rejection of a plaint for fraud	79



	Rejection of a plaint on basis of an objection of misjoinder of parties	79
	Maximum time for filing of written statements	80
	Delay in filing written statement due to not sending documents alongwith summons	81
	Filing of additional written statements by legal representatives	81
	Amendment of a plaint	82
	Fifteen years delay in amending plaint	82
	Amendment of written statement	82
	Principles to be applied in amending plaint and written statement	82
	Delay in filing application for amending written statement is not a ground for its refusal	83
	Express and implied admission made in written statement	83
	Adding a condition through an amendment to admission made in written statement	85
VI	FRAMING OF ISSUES	85
	Severability of issues of law and issues of fact on trial	85
	Relevance of evidence adduced without a specific issue framed on that regard	86
VII	APPEARANCE OF PARTIES	86
	Non-appearance of counsel—whether party can be made to suffer?	87
	Is a civil court empowered to order parties to be present in person?	87
	Procedure to be followed in case of non-appearance of defendant	88
	Dismissal of suit before issuing summons to defendants	88
VIII	COUNTER CLAIMS	88
	Whether a counter claim can be raised after issues are framed and evidence is closed?	89
	A counter claim against co-defendant without directing it to plaintiff	89
	Limitation period for filing a counter claim in wrongful detention of goods	89
	Unification of suit and counter claim on appeal	90
IX	CROSS OBJECTIONS	90
	Memorandum of cross objection by respondent	90
X	COMPROMISE	91
	Settlement of matrimonial disputes outside court	92



	Separate suit for setting aside compromise decree is not maintainable	92
	Non-signing by a party in a compromise petition	92
	Order 23, rule 3A, and jurisdiction of high court	93
XI	JUDGMENTS, DECREES AND ORDERS	93
	Arbitration award cannot be equated to a decree for purposes of Insolvency Act	93
	Setting aside of <i>ex parte</i> decree	93
	Amendment of decrees, judgments and orders	94
	Auction sale of suit property without initiating formal final decree proceeding	95
	Order of withdrawal of suit is not a decree	95
	Judgments on admissions	95
	Enforcement of a foreign judgment	96
XII	SUIT AGAINST GOVERNMENT	96
	Dispensing with requirement of leave of court	96
	Maintainability of writ petition against a company which ceased to be a government company	96
XIII	REVISION	97
	Revision against an order in an interlocutory application	98
	Scope of inference by a revisional court in an award passed by a motor accidents claims tribunal	98
XIV	REVIEW	98
XV	DOCUMENTS	99
	Return of documents not admitted in evidence	99
	Effect of non-production of documents that plaintiff relies	99
	Admission of a document	99
XVI	MISCELLANEOUS	100
	Applicability of order III, rule 5 CPC	100
	Effect of conflict between original side rules of a high court and CPC	100
	Abatement of suit	100
	Substitution of legal representative of defendant	100
	Leave to defend a summary suit	101
	Meaning of 'immediately' in order 21, rule 84(1)	101
	Date of institution of suit for 'original parties to the suit' and parties added subsequently	101
	Internet powers of court under section 151 CPC	102
	Interest on capital: does it amount to punishment?	102
	Applicability of section 47 CPC between co-plaintiffs or co-defendants	102



	Nature of <i>hand-loan</i> between relatives and determination of interest	102
	Withdrawal of a suit by a single plaintiff	103
	PART B: LAW OF EVIDENCE	103
I	INTRODUCTION	103
II	EVIDENCE IN CIVIL CASES	103
	Mistake in respect of boundary of the land sold	103
	Evidentiary value of bill of lading	103
	Carbon copy of documents as primary evidence	104
	Admissibility of photocopy of a document in evidence	104
	Whether marking of a document as an exhibit dispenses with requirements of proving that document	104
	Evidentiary value of attested copy of a document	104
	Acceptance of army record as a proof of marriage	105
	Doctrine of estoppel	105
	Advertisement as a promise	105
	Withdrawal of promise with retrospective effect by government	105
	Doctrine of promissory estoppel and doctrine of legitimate expectation	105
	Recording of evidence through video conference	106
	Cross examining co-defendant	106
	Evidentiary value of chief examination of an attester when he is not cross examined	107
	Cross-examination without chief-examination	107
	Filing of affidavit by a minor: whether hit by section 118 of Evidence Act	107
	Adverse inference	108
III	EVIDENCE IN CRIMINAL CASES	108
	Evidentiary value of delayed FIR	108
	Confession	109
	Confession made before an officer under NDPS Act: whether hit by section 25?	109
	Reliability of a confession	109
	Extra judicial confession: whether witnesses to whom such a confession is made has to remember the exact sentence	109
	Identification parade	110



	Showing photographs of suspects to witness before identification parade	110
	Miscellaneous	110
IV	CONCLUSION	110
4 CONSTITUTIONAL LAW – I (FUNDAMENTAL RIGHTS)		113
I	INTRODUCTION	113
II	GENERAL : FUNDAMENTAL-NESS OF FUNDAMENTAL RIGHTS	113
III	STATE AND ITS INSTRUMENTALITY	115
IV	LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS	117
V	RIGHT TO EQUALITY	118
	Article 14 a positive right	119
	Classification or class legislation	120
	Classification based on cut-off date permissible	120
	Not to discriminate among similarly situated	120
	No wooden equality permissible	121
	Unequals not to be treated equally	121
	Arbitrary taxation	121
	Different taxes on the basis of language	122
	Fairness even in subjective satisfaction	122
	Equality even in distribution of largesse	122
	No blind approach permissible	122
	Facts to be pleaded	123
	Arbitrariness in acquisition of property	123
	Land valuation survey by casual employees	123
	Public property by auction	124
	Vagueness in tender terms	124
	Change in policy	124
	Armed force	124
	Fairness not charity	124
	Applicability of expired criminal provision	125
	Expanded scope of article 14	125
	Prohibition of discrimination on certain grounds	127
	Public appointments to be in tune with the scheme of equality	130
	Service rule discriminating between direct recruits and promotees	130



	Right to be considered for promotion	130
	Different scales on qualification	131
	Different scales for trained and untrained	131
	Parity in pay	132
	Transfer	132
	DPC	132
	Promotion by seniority	133
	No right to appointment	133
	Transfer without consent	133
	Parity in pay	134
	Method of short listing not given in advertisement not permissible	134
	Reduction in cadre strength	135
	Right to be considered for promotion	135
VI	RIGHT TO FREEDOM : ARTICLE 19	136
	Freedom of speech and expression	137
	Freedom of profession, occupation, trade or business	138
VII	PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES	138
VIII	RIGHT TO LIFE AND PERSONAL LIBERTY : ARTICLE 21	141
IX	RIGHT TO EDUCATION: ARTICLE 21A	141
X	PREVENTIVE DETENTION: ARTICLE 22	142
XI	RIGHT TO FREEDOM OF RELIGION	142
XII	IMMUNITY AGAINST FUNDAMENTAL RIGHTS	144
XIII	RIGHT TO CONSTITUTIONAL REMEDIES	151
	Writ petition maintainable to implement an order	151
	Alternative remedy is only a rule of discretion	152
XIV	CONCLUSION	152
	5 CONSTITUTIONAL LAW - II	153
	(NON-FUNDAMENTAL RIGHTS)	
I	INTRODUCTION	153
II	MPs PRIVILEGES: ARTICLES 105(3) AND 194(3)	153
III	DEFLECTIONS : SCHEDULE X, ARTICLES 102 AND 191	154
IV	AMENDMENT : ARTICLE 368	155
V	NATIONAL SECURITY AND SC'S MANDAMUS: ARTICLE 141	156
VI	LEGAL DISCIPLINE IN HIGH COURTS : ARTICLE 226	156



	Disobeying SC's directions/judgments	156
	Presiding and puisine judge	157
	Respecting decisions of coordinate benches	157
	Interim relief, alternative remedy and no reasons	158
	Judicial restraint	160
	Contractual matters	160
	Service cases	160
VII	ARTICLE 226: WHAT CANNOT BE DONE	162
VIII	WINDOW FOR HIGH COURTS IN ARTICLE 226	163
IX	GOVERNMENTS SHOULD NOT BURDEN ARTICLE 226	165
X	HIGH COURT ADMINISTRATION: ARTICLE 229(2)	165
XI	HIGH COURT v. TRIBUNALS	166
XII	SC AND SEPARATION OF POWERS	166
XIII	BASIC FEATURE	167
XIV	DIRECTIVE PRINCIPLES	167
XV	ARTICLE 136: SKY IS THE LIMIT	168
XVI	PROPERTY RIGHT: ARTICLE 300 A	168
XVII	SC/ST AND ELECTION COMMISSION: ARTICLES 332 (3) AND 341	169
XVIII	ELECTRICITY CONSUMPTION TAX: ARTICLE 254 ENTRY 53 LIST II AND ENTRY 38 LIST III	169
XIX	SERVICES: ARTICLE 162	170
XX	CRIMINAL LAW: ARTICLES 72, 161	171
XXI	NON LEGISLATOR MINISTER: ARTICLE 164	172
XXII	ADVERSE REMARKS AND ADVERSE POSSESSION	172
XXIII	ARTICLE 166	173
XXIV	ARTICLE 142	173
	6 CONSUMER PROTECTION LAW	175
I	INTRODUCTION	175
II	INSURANCE	175
	Exclusionary clause	175
	Third party claims	179
	Extending coverage	181
III	HOUSING	182
IV	MISCELLANEOUS	185
	Judicial activism v. judicial overreach – its impact on structure and infrastructure of consumer fora	185
	Service / consideration	186



	Consumer jurisdiction	188
	Camp sitting of national commission	189
	Procedure	190
	Consensual settlement of consumer disputes	191
	Conduct of consumer fora	192
	Electricity	194
	Section 10 of the Carriers Act	195
V	CONCLUSION	196
	7 CRIMINAL LAW	199
I	INTRODUCTION	199
II	OBSCENITY	199
III	OFFENCES AGAINST HUMAN BODY	200
	Alteration from section 302 to section 304	200
	Distinction between exceptions 1 and 4 to section 300	200
	IPC – reiterated	
	Intention to be gathered from facts	201
	Recklessness and negligence distinguished	202
	Dying declaration – facts are determinative	203
IV	GENERAL DEFENCES	204
	Insanity	204
	Right of private defence	204
V	JOINT LIABILITY	206
VI	INCHOATE OFFENCES	207
	Attempt	207
	Abetment	208
	Conspiracy	208
VII	CHEATING	208
VIII	SEXUAL OFFENCES	209
	Rape	209
	Gang rape	210
	Benefit of doubt should be in favour of accused even in case of rape	210
	Murder or rape?	210
IX	DOWRY DEATH	211
	Meaning of dowry	211
	Conviction in dowry death case	212
	Knowledge of fact	212



X	CIRCUMSTANTIAL EVIDENCE	212
	Missing link in the chain	213
	Imposing of death penalty	213
XI	SENTENCING	214
	Principle of proportionality	214
	Number no criterion	215
XII	CONCLUSION	215

8 CRIMINAL PROCEDURE 217

I	INTRODUCTION	217
II	INHERENT POWER	217
III	INVESTIGATION	220
IV	PRE TRIAL PROCEDURE	221
V	TRIAL	221
VI	TRIAL PROCEDURE	222
VII	BAIL	225
VIII	SENTENCE	226
IX	APPEAL	226
X	LIMITATION	228
XI	CONCLUSION	228

9 DIRECT TAXES (INCOME TAX) 229

I	INTRODUCTION	229
II	BEST JUDGMENT ASSESSMENT	229
III	DEDUCTION OF INTEREST	230
IV	CO-OPERATIVE SOCIETIES SPECIAL DEDUCTION UNDER SECTION 80-P(2)	231
V	PENALTY	234
VI	CASH CREDITS	234
VII	DOCTRINE OF MERGER	235
VIII	JUDICIAL DISCIPLINE	236
IX	SPECIAL DEDUCTION UNDER SECTIONS 80HH AND 81 I	237
X	VOLUNTARY DISCLOSURE OF INCOME SCHEME	238
XI	AVOIDANCE OF DOUBLE TAXATION	239
XII	REFERENCE TO HIGH COURT	242



XIII	VALUATION OF CLOSING STOCK	243
XIV	REVISION UNDER SECTION 263	245
XV	CHARITABLE PURPOSE	246
XVI	DEPRECIATION	247
XVII	ALLOWANCE UNDER SECTION 32AB	248
XVIII	RECTIFICATION OF MISTAKES	248
XIX	KAR VIVADH SAMADHAN SCHEME	249
XX	BLOCK ASSESSMENT	250
XXI	SPECIAL DEDUCTION ON EXPORTS UNDER SECTION 80 HHC	251
XXII	INSURANCE BUSINESS – SECTION 44	253
XXIII	OFFENCE BY COMPANY	254
XXIV	TAX DEDUCTED AT SOURCE (TDS)	255
XXV	SEARCH AND SEIZURE	256
10 EDUCATION LAW		259
I	INTRODUCTION	259
II	ADMISSION	260
	Fixation of fee	261
	Common entrance test	261
	Eligibility criterion	263
	Postal delay	264
	Principles of natural justice	264
	Admission test	265
	NRI quota	266
	Right under article – 21A	266
III	AUTHORITIES AND THEIR POWERS	266
	Establishment of new educational Institutions	267
	Distance education	267
	Upgradation	268
	Administration of educational institutions	269
	Recognition of NCTE	269
	Permanent recognition	269
	Withdrawal of recognition	269
	Internal administration	270
	Grant-in-aid	270
IV	EXAMINATIONS	271
	Criteria for appearing in examinations	271



	Award for grace marks	272
	Malpractices in examinations	272
	Evaluation	272
	Revaluation	273
	Leakage of question papers	273
V	TEACHERS	273
	Selection and appointment of teachers	273
VI	RESERVATION IN EDUCATIONAL MATTERS	274
	Reservation in admission	275
VII	MINORITY RIGHTS	276
	State regulation over administration of educational institutions	276
	Determination of minority status	278
VIII	MISCELLANEOUS	278
IX	CONCLUSION	279
	11 ELECTION LAW	281
I	INTRODUCTION	281
II	CORRUPT PRACTICES	281
	Procuring the assistance of government servants	281
III	PROCEDURAL ASPECTS OF ELECTION	282
IV	PETITIONS	282
	Material facts	283
	Cross examination	283
	Period of limitation	286
V	WRIT JURISDICTION	286
VI	ELECTION TO LEGISLATIVE COUNCILS	287
VII	RESERVATION OF SEATS FOR SC AND ST	289
VIII	DISQUALIFICATION	289
	Disqualification and expulsion	291
	Conviction for crime	294
IX	NOMINATIONS	294
	Improper acceptance of nomination papers	295
	Candidate set up by political party	295
X	ELECTORAL ROLL	297
XI	ELECTION DUTY	298
XII	ELECTION TO LOCAL BODIES	298
	Electoral rolls	298



	Eligibility to contest in reserved seats	298
	Eligibility to become <i>gram mukhiya</i>	299
	Pre election disqualification	299
	Improper rejection of nomination paper	300
	Right to vote	300
	Manner of voting	300
	Recount of votes	301
	Election Commission	302
	Election petition	302
XIII	CONCLUSION	302
	12 FAMILY LAW AND SUCCESSION	303
I	INTRODUCTION	303
II	MATRIMONIAL RECONCILIATION: BOUNDEN DUTY OF COURT	305
III	FATHER'S SELF ACQUIRED PROPERTY: ITS NATURE IN THE HANDS OF INHERITING SONS	308
IV	STATUS OF CUSTOM IN MATTERS OF INHERITANCE AND SUCCESSION	316
V	MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986: ITS BROAD AMBIT	320
VI	PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: ITS BASIC OBJECTIVE	326
	13 HINDU LAW	335
I	INTRODUCTION	335
II	HINDU MARRIAGE ACT, 1955	335
	Bigamy	335
	Plea for restitution of conjugal rights and its automatic conversion to divorce by mutual consent	335
	Continuity of annulment petition after death of one of the parties to the marriage	336
	Annulment of marriage	337
	Pregnancy at time of marriage	339
	Divorce	339
III	MAINTENANCE	340
	Eligibility to claim maintenance	349
	Non payment of maintenance	349



	Evasion of responsibility to maintain children	351
	Adoption and Maintenance Act, 1956	352
	Adoption under Hindu law	353
	Maintenance claim after award of decree of restitution of conjugal rights	354
IV	HINDU MINORITY AND GUARDIANSHIP ACT, 1956/ GUARDIANS AND WARDS ACT, 1890	354
	Custody of minor married girl	355
	Disposal of property of minor by its guardian	355
V	DOMESTIC VIOLENCE ACT, 2005	356
	Right of residence in matrimonial home	356
VI	HINDU SUCCESSION ACT, 1956	357
	Property subject to inheritance rules	357
	Right of daughter to get a share in coparcenary property	359
	Property inherited from father: separate property in the hands of the son	359
	Heirs to a male intestate	360
	Succession rights of illegitimate children in the property of their putative father	361
	Preference to full blood relations over half blood	362
	Remarriage of a Hindu widow	362
	Full ownership in property to Hindu females	366
	Succession to property of a female intestate	367
	Preferential right to acquire joint family	368
	Daughter's right to partition dwelling house of father after the amendment of 2005	369
	Disqualifications	371
VII	CONCLUSION	372
 14 INDIRECT TAXES – I (CENTRAL EXCISE & CUSTOMS)		375
I	INTRODUCTION	375
II	CENTRAL EXCISE LAWS	375
	Dutiability	375
	Education cess	376
	Exemption	377
	Export oriented unit	377
	SSI exemption	378
	Manufacture	379



	Refund	380
	Recovery of dues	380
	Redemption fine	380
	Valuation	381
	Income tax	381
	Classification	382
	Departmental clarifications	383
	Appeal	384
	Writ jurisdiction	384
	Rectification of mistakes	385
	Sales tax law	385
	Cenvat	385
	Penalty	386
III	CUSTOMS	386
	Introduction	386
	Appellate jurisdiction of high courts	387
	Valuation	388
	Exemption	389
	Penalty	390
	Seizure	391
	Confiscation and redemption fine	391
	Settlement commission	393
	Compounding of offences	393
	Stay	394
	Classification	395
	Demand	396
	Refund	396
	Remand	397
IV	CONCLUSION	397
	15 INDIRECT TAXES LAW – II	399
	(SALES TAX)	
I	INTRODUCTION	399
II	LIABILITY	399
III	ASSESSMENT	403
	Works contract	403
	Assessment	410
	Best judgment assessment	411
	Re-assessment	413



	Check-post provisions	415
	Natural justice	418
IV	JUDGMENT UNDER THE CENTRAL SALES TAX ACT, 1956	420
	Deemed sale in the course of export	420
	Inter-state sale	423
V	JUDGMENTS HAVING BEARING ON THE CONSTITUTION OF INDIA	427
	Article 226/judicial review	427
	Legislative competence	430
	16 INTELLECTUAL PROPERTY LAWS	435
I	INTRODUCTION	435
II	TRADE MARK	435
	Passing off – use of slogan as trademark	436
	Passing off of design	436
	Jurisdiction in case of domain name dispute	438
	Other areas	439
III	PATENT	439
	Temporary injunction	448
IV	DESIGN	451
V	COPYRIGHT	451
	Permitted use of dress in film	451
	Protection of future works	454
	Copyright in industrial drawing	455
	Punitive damages	456
	Alternative dispute settlement	457
	Contempt of court in case of refusal to obey Anton Piller orders	457
	17 LABOUR LAW – I	461
	(LABOUR MANAGEMENT RELATIONS)	
I	INTRODUCTION	461
II	INDUSTRIAL DISPUTES ACT, 1947	461
	Retrenchment	461
	Master-servant relationship	472
	Scope of powers of government to make reference	476



	Disciplinary action, principles of natural justice and the powers of industrial adjudicator under section 11A	480
	Disciplinary action and pendency proceedings	493
	Regularisation	494
	Execution proceedings	498
	Binding nature of settlement	502
	Miscellaneous	530
III	CONCLUSION	504
	18 LABOUR LAW – II	507
	(SOCIAL SECURITY LEGISLATION)	
I	INTRODUCTION	507
II	CONTRACT LABOUR	509
	Power of reference	509
	Powers of labour commissioner	510
	Prohibition of contract labour – only appropriate government has jurisdiction	511
III	EMPLOYEES STATE INSURANCE	512
	ESI hospitals under CP Act	512
	Section 82(2) of the Act – high court required to analyze the factual position	516
IV	GRATUITY	517
	Service in various units of same establishment to be taken into account	517
	Criminal prosecution for non payment of gratuity, existence of <i>mala fide</i> essential	518
	Applicability of the Act	518
	Statutory interest	518
V	PROVIDENT FUND	518
	To be a branch of the other – supervisory, financial or managerial control is must	519
	Clubbing of two or more establishments for coverage under the Act	519
VI	WORKMEN’S COMPENSATION	521
	Liability is on employer to pay compensation	521
	Liability to pay compensation – pre-requisites	521
	Ex-gratia payment to workman will not take away liability of employer to pay compensation	523
	Learner allowed to operate machinery sustains injury – employer liable to pay compensation	523



	Appointment letter not necessary to establish an employee as workman under the Act	524
	Continued employment or even promotion will not deprive the claimant of accident compensation	524
	Payment of compensation governed by provision of the Act	525
	Relevant factors relating to loss of earning capacity	525
	Determination of compensation amount	527
	Notional extension of time	527
VII	CONCLUSION	528
	19 MERCANTILE LAW	529
I	INTRODUCTION	529
II	LAW OF CONTRACTS	529
	Offer and invitation to offer	529
	Acceptance	529
	Auction bidding	531
	Valid contracts	532
	Voidable contracts	533
	Void agreements	533
	Performance of contract	534
	Frustration of contract	535
	Restitution	536
	Unjust enrichment	536
	Damages	538
	Interpretation of contracts	539
	Liability of surety	539
	Bank guarantee	540
	Bailment	542
	Agency	544
	Power of attorney	544
	Judicial review in respect of contracts	545
III	NEGOTIABLE INSTRUMENTS ACT	545
	Special rules of evidence	545
	Bouncing of cheques: requirement of notice	546
	Bouncing of cheques: liability of the director of a company	548
IV	LAW OF SALE OF GOODS	549
	Contract of sale	549



	Right to claim interest	549
V	PARTNERSHIP ACT	550
	Nature of partnership firm	550
	Registration of firm	551
	Partnership and arbitration	551
	20 PROPERTY LAW	553
I	INTRODUCTION	553
II	GENERAL PRINCIPLES	553
	Notice defined	553
	Attestation	554
	Actionable claim	554
	Transfer	554
	Passing of property to the transferee – how and when?	554
	Third person’s right to receive maintenance	555
	Transfer by ostensible owner	555
	Transfer by unauthorized person	555
	Doctrine of lis pendens	556
	Fraudulent transfer	557
	Doctrine of part performance of property	557
	Mortgages	558
	Right of redemption	559
III	LEASE	560
	Determination of lease	561
	The law on gifts	565
IV	CONCLUSION	565
	21 PUBLIC INTEREST LITIGATION	567
I	INTRODUCTION	567
	Separation of powers	568
	Access to justice	568
	Doctrine of locus standi	570
II	PIL IN SERVICE MATTERS	571
III	PIL TO DEFEAT PIL	573
IV	PIL TO SETTLE POLITICAL SCORES	574
V	PIL, JUDICIAL RESTRAINT AND SEPARATION OF POWERS	575
VI	PIL AND CRIMINAL PROCEEDINGS	580



VII	LIMITS OF JUDICIAL ACTIVISM	581
VIII	CONCLUSION	582

22 MUSLIM LAW 587

I	INTRODUCTION	587
II	HIZANAT AND VILAYAT	587
III	RIGHT TO INHERITANCE OF A FOREIGN NATIONAL	588
IV	THE INSTITUTION OF QAZI	589
V	MARRIAGE AND DIVORCE	590
	Breakdown theory of divorce	590
	Validity of <i>talaq namah</i> (divorce deed)	591
VI	RELINQUISHMENT OF MEHR	591
VII	DIVORCED MUSLIM WOMAN'S RIGHT TO MAINTENANCE	593
VIII	OTHER MATTERS RELATING TO MAINTENANCE	599
IX	ADOPTION AMONG MUSLIMS	600
X	LAW OF GIFT	600
XI	WAQF AND ITS ADMINISTRATION	601
	Sustainability of the <i>waqf</i>	601
	<i>Waqf alal aulad</i>	602
	Alienation of <i>waqf</i> property	603
	Who can file a suit	604
	<i>Wasiyat</i> of the <i>waqf</i> property	604
	When can a <i>mutawalli</i> be appointed	605
	Election of <i>mutawalli</i>	605
	<i>Inam and Atiya</i> – as <i>waqf</i> property	605
	Enquiry into claims of <i>mutawalliship</i>	606
	Status of committee after expiry of its term	606
	Justification for appointment of a committee	607
	Status of <i>mutawalliship</i>	607
	Alienation of <i>waqf</i> property	607
	Civil court v. <i>waqf</i> tribunal	608
	Jurisdiction of civil court <i>qua waqf</i> property	608
XII	CONCLUSION	609

23 TORT LAW 613

I	INTRODUCTION	613
II	CONSTITUTIONAL TORT	613



	Custodial death	613
	Illegal custody	616
	Police atrocity	616
	Culpable inaction	617
	Right to privacy	618
III	MALICIOUS PROSECUTION	619
IV	NEGLIGENCE	620
	Medical negligence	621
	Negligence of exam board	623
	Duty of care	623
V	VICARIOUS LIABILITY	623
	State's liability	623
	Liability of bank	624
VI	COMPENSATION	624
	Death of young children	625
VII	DEFAMATION	626
	Locus standi	627
VIII	RULE OF STRICT LIABILITY	628
IX	PROTECTION OF ENVIRONMENT AND PREVENTION OF NUISANCE	629
X	ACCIDENT LAW	630
	Legal representative	631
XI	JURISDICTION	632
XII	RES-IPSA LOQUITUR	632
XIII	LIMITATION	634
XIV	MISCELLANEOUS	635
	Contractual liability of state	635
V	CONCLUSION	636
24 WOMEN AND THE LAW		637
I	INTRODUCTION	637
II	EQUALITY OR PROTECTION? RECENT DEVELOPMENTS	637
	Reservation for women in employment – special reservation or social reservation?	641
	Sexual harassment at work	643
III	FAMILY RELATIONS AND THE RIGHTS OF PARTIES	645
	Dowry and its re-interpretation	647
	Succession rights and the Constitution	648
	Value of house work	649



	Pleadings in matrimonial cases	650
	DNA and paternity cases	650
	Legitimacy	651
	Guardianship in marriage of minor	652
	Maintenance	653
	Marriage and divorce	654
	Conflict of laws	655
IV	OTHER AREAS	657
	Crimes against women	657
	Sterilisation	658
	Policies and non statutory schemes affecting women	658
V	CONCLUSION	659
	25 CENTRAL LEGISLATION	661
I	INTRODUCTION	661
II	BANKING AND TAXATION	661
	The Taxation Laws (Amendment) Act, 2007	661
	The Banking Regulation (Amendment) Act, 2007	662
	The State Bank of India (Subsidiary Banks Law) Amendment Act, 2007	662
	The Securities Contracts (Regulation) Amendment Act, 2007	663
III	CONSTITUTIONAL LAW	663
	The Constitution (Scheduled Castes) Order (Amendment) Act, 2007	663
IV	CHILD RIGHTS	664
	The Commission for Protection of Child Rights (Amendment) Act, 2006	664
V	EDUCATION	664
	The Central Educational Institutions (Reservation in Admission) Act, 2006	664
	National Institute of Pharmaceutical Education and Research (Amendment) Act, 2007	665
	English and Foreign Languages University Act, 2006	666
	The National Institutes of Technology Act, 2007	666
	The Indira Gandhi National Tribal University Act, 2007	667
	Other University Acts	667
VI	ELECTRICITY LAW	667
	The Electricity (Amendment) Act, 2007	667



VII	MEDIA LAW	668
	The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007	668
	The Cable Television Networks (Regulation) Amendment Act, 2007	668
VIII	LABOUR LAW	668
	The National Rural Employment Guarantee (Extension to Jammu and Kashmir) Act, 2007	668
	The Apprentices (Amendment) Act, 2007	668
IX	TRANSPORT AND WAREHOUSING LAWS	669
	The Inland Vessels (Amendment) Act, 2007	669
	The Warehousing (Development and Regulation) Act, 2007	669
	The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Act, 2007	672
	The Merchant Shipping (Amendment) Act, 2007	672
	The Carriage by Road Act, 2007	673
	The Central Road Fund (Amendment) Act, 2007	675
X	TRIBUNALS	675
	The National Tax Tribunal (Amendment) Act, 2007	675
	The Administrative Tribunals (Amendment) Act, 2006	676
	The Competition (Amendment) Act, 2007	676
	The Armed Forces Tribunal Act, 2007	676
XII	MISCELLANEOUS LAWS	677
	The Maintenance and Welfare of Parents and Senior Citizens Act, 2007	677
XII	CONCLUSION	678