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REGULAR UPDATES!

[Issue No.:50(4) / 2022]

Regular¹ Legal Updates & Points

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[1] **Word/ Doctrine / Maxims of the Day:**

Doctrine of Specialty: This doctrine is an established rule of international law relating to extradition. Accordingly, an extradited person can only be charged for the offense for which the person was extradited, unless the person first returns to the country from which the person was extradited. Elaborately, when a person is extradited for a particular crime, he can be tried for only that crime. If the requesting State deems it desirable to try the extradited fugitive for some other crime committed before his extradition, the fugitive has to be brought to the status quo ante, in the sense that he has to be returned first to the State which granted the extradition and a fresh extradition has to be requested for the latter crime. The doctrine of specialty is in fact a corollary to the principles of double criminality and the aforesaid doctrine is premised on the assumption that whenever a State uses its formal process to surrender a person to another State for a specific charge, the requesting State shall carry out its intended purpose of prosecuting or punishing the offender for the offence charged in its request for extradition and none other. **Section 21** of the **Indian Extradition Act, 1962** incorporates this principle of specialty. **Daya Singh Lahoria Vs. Union of India & Ors.** (2001 4 SCC 516) is a leading case of the Hon'ble Supreme Court of India on doctrine of specialty and extradition.

[2] **Question (?) / Issue for Discussion of the Day:** Which steps are required for the constitutionalization of a commission? Do you think imparting constitutionality to the National Commission for Women would ensure greater gender justice and empowerment in India? Give reasons.

¹ . Earlier, it was published as "**Daily** Legal Updates and Points"



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[3] **Law / Bill of the Day: The Black Money Act, 2015:** This Act is formally known as “The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015” and consists of total 88 Sections. The purpose of this Act is to make provisions to deal with the problem of the black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto. As per this Act, any proceedings before tax authorities to be quasi-judicial proceedings. A person aggrieved by the proceedings under the Act may prefer Appeal to the **Commissioner (Appeal)** or Principal Commissioner (**Section 15**). In case, a person aggrieved by the order of the Commissioner (Appeal) or Principal Commissioner in appeal he may prefer Appeal to the **ITAT** (Income Tax Appellate Tribunal) (**Section 18**). If a person is also aggrieved by the order of the ITAT, he may prefer an appeal before the **High Court** concerned (**Section 19**). What is notable is that such appeal shall be heard by at least **two-judges (Division Bench)** (**Section 20**). If a person is further aggrieved by the order of the High Court in appeal he may prefer Appeal to the **Supreme Court** of India (**Section 21**). It be noted that notwithstanding any appeal preferred to the High Court or the Supreme Court, the tax shall be paid in accordance with the assessment made under this Act (**Section 25**). Under the Act, no court inferior to that of a metropolitan magistrate or a magistrate of the First Class shall try any offence under this Act (**Section 80**). Further, no suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act (**Section 82**).

[4] **Memorable Case Laws:**

(1) **Minerva Mills Ltd Vs. Union of India** [(1980) 3 SCC, 625]: The main point of challenge under this case was insertion of clause (4) and clause (5) to Article 368 by the 42nd Amendment Act, 1976. Vide this amendment the Parliament gained undefined power to amend the constitution and restrict the Judiciary’s power of Judicial Review. Furthermore, Article 31 C which provided a shield over DPSP was challenged in court for abrogating fundamental rights (Article 14 and Article 19). While applying the basic structure doctrine (**BSD**), percolated in the Indian Constitution from the American Constitution, the Hon’ble Supreme Court of India added a new addenda to the BSD that is *harmony and balance between Fundamental Rights (FRs) and Directive Principle of the State Policy (DPSPs)*. The court firmly condemned clauses (4) and (5) of Article 368



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	<p>and declared them unconstitutional and also held that the limited amending power of the Parliament is a part of the basic structure doctrine.</p> <p>(2) Kihoto Hollohan Vs. Zachillu [1992 SCR (1) 686]: It is a leading case on Anti Defection Law. In this case 52nd Constitutional Amendment was challenged. The constitution bench of the Supreme Court analyzed in detail the various provisions of the 52nd amendment of the constitution which inserted a new schedule (tenth schedule) elaborating various provisions to protect the parties from defection. The Supreme Court upheld the constitutional validity of the 52nd Amendment to the Constitution as this amendment does not violate freedom of free speech or fundamental principle of the parliamentary democracy. However, the court held that Para 7 of the schedule is ultra vires to the Constitution as it tries to change the impact of Articles 136, 226 and 227 of the Constitution and thus excludes judicial review. The Court also clarified that the presiding officer has the power to make the decision and when that decision is pronounced and effected, it is subject to judicial review.</p>
<p>[5]</p>	<p>Memorable Points (Cr.P.C.): Memorable points² as to Criminal Procedure Code, 1973 (total 35 points as to Cr.P.C. already covered under previous issues of "Regular Updates") are as under —</p> <ol style="list-style-type: none">(1) Second Schedule of the Cr.P.C. contains total _____ no. of FORMS for various purposes—56 Forms .(2) "Bailable offence" means an offence which is shown as bailable in the _____ Schedule, or which is made bailable by any other law for the time being in force—First Schedule (Refer Section 2(a) of the Cr.P.C.)(3) As per Section _____ of the Cr.P.C., every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation—Section 357-A.(4) The trial court is empowered to convert summons-cases into warrant-cases under Section _____ of the Cr.P.C.—Section 259.(5) When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding _____ months, it appears to the Magistrate

². The readers please be informed that total **83 points** (the Indian Penal Code, 1860) , **84 points** (CPC) and **93** (Indian Evidence Act) **memorable points** have been covered under previous issues of "Daily Legal Updates & Points" now known as "**Regular Legal Updates and Points**".



	<p>that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may re-call any witness who may have been examined—Six months (Refer Section 259 of the Cr. P.C.)</p>
<p>[6]</p>	<p>Memorable Points (Misc.): Memorable points under Indian Constitution and various miscellaneous important Acts are as under (total 410 points already covered under previous issues of "Daily Updates")—</p> <ol style="list-style-type: none"> (1) Constitution of India, 1950: Every Judge of the Supreme Court shall hold office until he attains the age of _____ years—65-years (Refer Article 124(2) of the Constitution) (2) Code of Civil Procedure: The term "judgment" has been defined under Section ____ of the CPC—Section 2(9). (3) Indian Evidence Act, 1872: The legislature (Union as well as State) has power to make law relating evidence under Entry No. ____ of the Concurrent List of the Constitution—Entry No. 12. (4) Indian Penal Code, 1860: The term "movable property" has been defined under Section _____ of the IPC, 1860—Section 22 (5) Transfer of Property Act, 1882: Doctrine of priority is enshrined under Section ____ of the TPA—Section 48 (6) Indian Contract Act, 1872: A contract to do or not to do something, if some event, collateral to such contract, does or does not happen is called—Contingent Contract (Refer Section 31 of the Indian Contract Act, 1872) (7) Partnership Act, 1932: Where <i>no</i> provision is made by contract between the partners for the <i>duration of their partnership</i>, or for the determination of their partnership, the partnership is known as—"partnership-at-will" (Refer Section 7 of the Partnership Act, 1932) (8) Sale of Goods Act, 1930: Under the Sale of Goods Act, 1930, reasonable time a question of fact or law—Question of Fact. (Refer Section 63 of the SOGA,1930). (9) Specific Relief Act, 1963: As per Section _____ of the SRA, 1963, if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, <i>notwithstanding any other title</i> that may be set up in such suit - Section 6 (10) Negotiable Instrument Act, 1881: The term 'Negotiable Instrument' is defined under Section ____ of the NI Act as a promissory note, bill of exchange or cheque payable either to order or to bearer—Section 13.



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- [7] **G. K. / Current Affairs:** Under the G. K. / Current Affairs column total **49 points already covered** under previous issues—
- (1) Dr. B R Ambedkar got Bharat Ratna in the year_____posthumously—**1990**
 - (2) Who was the first Chief Justice of England?—**Justice Coke**
 - (3) Who was the first Law Minister of India?—**Dr. B R Ambedkar**
 - (4) In America, a person can be a Supreme Court judge till—**He maintains a good health.**
 - (5) Who was the first woman advocate in India—**Cornelia Sorabji**

Thanking You!