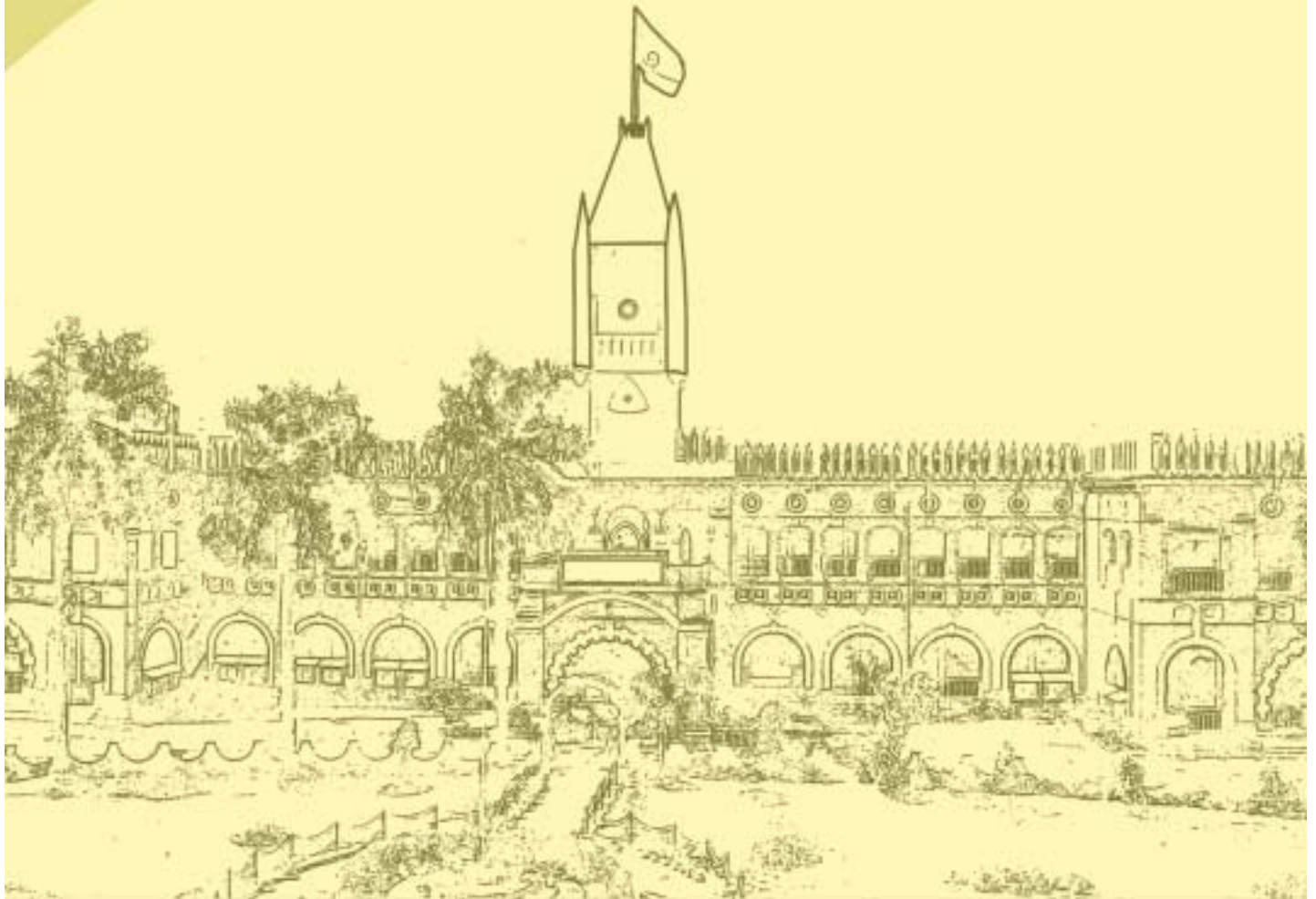




COURT NEWS

July - September, 2008

- . Recent High Court Judgements
- . Appointment / Retirement
- . Activities of O.J.A / O.S.L.S.A / H.C.L.S.C and in N.J.A
- . Institution / Disposal / Pendency



ISSUE NO. V



Orissa High Court

Meeting of the District Judges of Orissa (On 21.9.2008)



Hon'ble Shri Justice S.B. Sinha, Judge, Supreme Court of India, Hon'ble Shri Justice P.K. Balasubramanyan, Chairman, E-Committee, Supreme Court of India, Hon'ble Dr. Justice B.S. Chauhan, Chief Justice, Orissa High Court, Hon'ble Shri Justice M.B. Lokur, Judge, Delhi High Court, Hon'ble Shri Justice P.K. Tripathy and Hon'ble Shri Justice B.P. Das, Judges of Orissa High Court are on the Dias at the inauguration of the meeting.



Hon'ble Shri Justice S.B. Sinha, Judge, Supreme Court of India, addressing the meeting.



Hon'ble Shri Justice P.K. Balasubramanyan, Chairman, E-Committee, Supreme Court of India, addressing the meeting



Hon'ble Dr. Justice B.S. Chauhan, Chief Justice, Orissa High Court, addressing the meeting.



District Judges of the State attending the meeting.

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Editorial Board

Hon'ble Shri Justice P.K. Tripathy

Hon'ble Shri Justice L. Mohapatra

Hon'ble Shri Justice A.K. Parichha

Hon'ble Shri Justice I. Mahanty



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Dr. Justice B.S. Chauhan


FROM THE DESK OF THE CHIEF JUSTICE

This is the fifth Issue of Court News. I am happy to note that perseverance of this Court in publishing the successive Court News is commendable and highly encourageable.

During this quarter there was a Workshop on "Reporting of Court Proceedings by Media and Administration of Justice" on 30th August, 2008 in which Hon'ble the Chief Justice of India, Hon'ble Mr. Justice Ashok Bhan and Hon'ble Dr. Justice A.Pasayat, Judges of Supreme Court of India attended. On 21st September, 2008 a very fruitful meeting of the District Judges was organized on "Significance of e-Court Project" in which Hon'ble Mr. Justice S.B.Sinha, Judge, Supreme Court of India and Hon'ble Mr. Justice P.K.Balasubramanyan, Chairman of e-Court Project and Hon'ble Mr. Justice M.B.Lokur, Judge of Delhi High Court also attended the same.

To restore the confidence of the people on Law and Justice, it is necessary first to reshape Law in accordance with the wish of the people. The task is not an easy one. Law making requires imagination, wisdom, vision of the future. Nowadays that task is carried out collectively and if the provisions of different Laws become transparent, the cooperation of the people can be obtained by informing them the need of the legal provisions contemplated in the larger interest of all.

I wish and hope that publication of Court News may continue to disseminate vital information about this Court in order to help and hasten the process and transform the entire system for the benefit of all concerned.


(B.S. Chauhan)

HON'BLE JUDGES OF THE ORISSA HIGH COURT

HON'BLE THE CHIEF JUSTICE

Hon'ble Dr. Justice B.S.Chauhan, B.Sc., LL.B., Ph.D. (Law)

HON'BLE JUDGES

Hon'ble Shri Justice I.M.Quddusi, LL.B.

Hon'ble Shri Justice P.K. Tripathy, M.A., LL.B.

Hon'ble Shri Justice B.P. Das, M.A., LL.B.

Hon'ble Shri Justice L. Mohapatra, B.Sc., LL.B.

Hon'ble Shri Justice A.S. Naidu, B.Sc., LL.B.

Hon'ble Shri Justice Pradip Kumar Mohanty, LL.B.

Hon'ble Shri Justice S.R. Singaravelu, B.Sc., B.L.

Hon'ble Shri Justice M.M. Das, M.A., LL.B.

Hon'ble Shri Justice R.N. Biswal, M.A., LL.M.

Hon'ble Shri Justice A.K. Parichha, B.Sc., LL.B.

Hon'ble Shri Justice N. Prusty, LL.B.

Hon'ble Shri Justice I. Mahanty, LL.M.

Hon'ble Kumari Justice Sanju Panda, B.A., LL.B.

Hon'ble Shri Justice B.N. Mahapatra, M.A., LL.B., PGDTL.

Hon'ble Shri Justice B.P. Ray, LL.B.

Hon'ble Shri Justice S.C. Parija, LL.B.

Hon'ble Shri Justice L.K. Mishra, M.A., LL.M.

Hon'ble Shri Justice B.K. Patel, M.A., LL.B.

Appointment as Chief Justice of the Orissa High Court



(Hon'ble the Chief Justice, Dr. Balbir Singh Chauhan being Sworn-in by His Excellency Shri Syed Sibtey Razi, the Governor of Orissa on 16.7.2008.)

The Swearing-in-Ceremony of Hon'ble Dr. Justice Balbir Singh Chauhan as the Chief Justice of Orissa High Court was held in the High Court premises, Cuttack at 11.00 a.m. on 16.7.2008.

His Excellency Shri Syed Sibtey Razi, the Governor of Orissa administered the Oath of Office to Hon'ble the Chief Justice.

Hon'ble the Chief Minister of Orissa, Shri Naveen Patnaik, Hon'ble the Minister of Law, Shri Biswabhusan Harichandan, other Hon'ble Ministers, Hon'ble Shri Justice Ranganath Misra, former Chief Justice of India, Hon'ble Judges of Orissa High Court, Punjab & Haryana High Court, Rajasthan High Court and Allahabad High Court and other high dignitaries graced the occasion.

Hon'ble Dr. Justice Balbir Singh Chauhan was born on 2.7.1949. His Lordship graduated in Law in the year 1974 from Banaras Hindu University and made Doctorate from Victoria University, Manchester (U.K.) in the year 1979. His Lordship was enrolled as an Advocate in April, 1974, practised in the Supreme Court and Delhi High Court in Civil, Criminal, Commercial Taxes and Services Matters. His Lordship was elevated to the Bench of Allahabad High Court on 5.4.1995 and transferred to Rajasthan High Court on 19.7.1997, returned again to Allahabad High Court on 13.3.2003 and continued there till elevation as Chief Justice of Orissa High Court.

Major Events
(Subordinate Courts)



Inauguration of
A.D.J. Court at
Kuchinda on
26.7.2008.



Inauguration of A.D.J. Court
at Kuchinda on 26.7.2008.



Address by Hon'ble
Dr. Justice B.S. Chauhan,
Chief Justice, Orissa High
Court at the Inauguration of
A.D.J. Court at Kuchinda
on 26.07.2008

**SANCTIONED STRENGTH & VACANCIES IN HIGH COURT
(As on 30.9.2008)**

Sanctioned Strength	Working Strength	Vacancies
17 + 5* = 22	13 + 6* = 19	3

- (A)* Addl. Judges
(B) Two Hon'ble Judges of this Court have been transferred to other High Courts and two Hon'ble Judges of other High Courts have come on transfer to this High Court.

**INSTITUTION, DISPOSAL AND PENDENCY OF CASES IN THE HIGH COURT
(From 1.7.2008 to 30.9.2008)**

MAIN CASES

Pendency as on 1.7.2008		Institution during the period		Total disposal during the period		Pendency as on 30.9.2008	
Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal
108772	22551	7213	5955	8044	6847	107941	21659

MISC. CASES

Pendency as on 1.7.2008		Institution during the period		Total disposal during the period		Pendency as on 30.9.2008	
Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal
104886	583	6623	2885	4907	2945	106602	523

**TOTAL NO. OF CIVIL & CRIMINAL CASES DURING THE PERIOD
(From 1.7.2008 to 30.9.2008)**

	Opening Balance	Institution	Disposed of	Pending
Civil	213658	13836	12951	214543
Criminal	23134	8840	9792	22182

**SANCTIONED STRENGTH & VACANCIES
IN
DISTRICT AND SUBORDINATE COURTS**

(A) **DISTRICT & SUBORDINATE COURTS**

(As on 30.9.2008)

(Regular Establishment)

Sl. No.	Category of Posts	Sanctioned Strength	Working Strength	Vacancies
1.	District Judge including Additional District Judge	98	72	26*
2.	Civil Judge (Sr. Divn.)	129	123	06
3.	Civil Judge (Jr.Divn.) & Magistrates	286	180	106*
3.	Special Judicial Magistrates	18	15	03

* Selection process has already been completed for filling of the vacancies.

(B) **FAST TRACK COURTS**

(As on 30.9.2008)

Functional Strength	Present Strength	Vacancies
33	31	2

**STATEMENTS SHOWING INSTITUTION, DISPOSAL & PENDENCY OF
CIVIL & CRIMINAL CASES IN THE SUBORDINATE JUDICIARY
FROM 1.7.2008 TO 30.9.2008**

Name of the Judgeship	CIVIL SUITS				CIVIL APPEALS				CIVIL MISC. APPEALS			
	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008
Balasore	19284	800	871	19213	1572	66	39	1599	1069	38	41	1066
Bolangir	2743	204	221	2726	567	40	32	575	119	22	30	111
Cuttack	19903	1130	1018	20015	1370	116	111	1375	868	86	167	787
Dhenkanal	3148	396	310	3234	346	41	48	339	82	19	15	86
Ganjam	4313	414	404	4323	561	46	24	583	212	26	27	211
Kalahandi	1472	155	174	1453	249	16	06	259	71	11	09	73
Keonjhar	997	134	135	996	129	27	23	133	51	15	18	48
Khurda	12020	767	435	12352	597	58	22	633	509	40	44	505
Koraput	1134	137	123	1148	246	22	15	253	75	58	14	119
Mayurbhanj	4518	324	349	4493	268	32	06	294	96	08	06	98
Phulbani	359	55	76	338	139	06	07	138	44	01	04	41
Puri	6110	428	406	6132	1031	54	19	1066	605	37	60	582
Sambalpur	3957	305	282	3980	414	19	53	380	86	14	17	83
Sundargarh	1145	108	126	1127	375	17	20	372	141	03	26	118
Total :	81103	5357	4930	81530	7864	560	425	7999	4028	378	478	3928

Name of the Judgeship	CIVIL REVISIONS				EXECUTION PROCEEDINGS				M.J.Cs. / SPECIAL ACT CASES			
	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008
Balasore	60	01	07	54	1434	41	68	1407	7539	553	506	7586
Bolangir	31	03	09	25	828	12	15	825	847	87	110	824
Cuttack	25	05	04	26	2952	44	188	2808	13064	1170	1463	12771
Dhenkanal	08	03	01	10	1778	46	39	1785	1866	215	181	1900
Ganjam	18	08	02	24	1762	34	46	1750	2465	267	229	2503
Kalahandi	09	01	01	09	470	09	16	463	926	40	114	852
Keonjhar	09	04	06	07	611	33	57	587	415	75	84	406
Khurda	42	07	03	46	1898	72	25	1945	6679	729	294	7114
Koraput	07	--	05	02	729	18	49	698	507	54	63	498
Mayurbhanj	13	04	04	13	717	18	33	702	896	83	141	838
Phulbani	--	--	--	--	208	02	06	204	192	22	34	180
Puri	62	02	03	61	768	18	19	767	3284	326	286	3324
Sambalpur	17	02	02	17	1413	40	27	1426	1565	155	156	1564
Sundargarh	15	--	04	11	716	35	24	727	717	70	92	695
Total :	316	40	51	305	16284	422	612	16094	40962	3846	3753	41055

Name of the Judgeship	M.A.C.T. CASES				SESSIONS CASES				CRIMINAL APPEALS			
	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008
Balasore	1792	82	48	1826	1037	92	117	1012	485	31	08	508
Bolangir	412	49	32	429	413	121	47	487	441	45	35	451
Cuttack	12520	711	542	12689	2015	222	218	2019	418	51	46	423
Dhenkanal	1125	109	173	1061	489	99	78	510	264	47	56	255
Ganjam	4102	277	197	4182	1832	139	63	1908	358	38	46	350
Kalahandi	264	37	29	272	235	58	63	230	261	19	10	270
Keonjhar	1489	57	133	1413	316	76	64	328	154	31	30	155
Khurda	3322	170	42	3450	1021	74	78	1017	265	39	34	270
Koraput	906	79	73	912	533	98	94	537	255	31	17	269
Mayurbhanj	1066	50	135	981	309	79	42	346	80	21	05	96
Phulbani	216	25	25	216	255	49	50	254	364	11	25	350
Puri	4136	156	66	4226	1632	120	100	1652	304	19	22	301
Sambalpur	1030	133	107	1056	981	145	145	981	173	30	30	173
Sundargarh	2743	102	116	2729	410	84	76	418	274	40	38	276
Total :	35123	2037	1718	35442	11478	1456	1235	11699	4096	453	402	4147

Name of the Judgeship	CRIMINAL REVISIONS				CRIMINAL MISC. CASES				SPECIAL ACT CASES			
	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008
Balasore	415	37	33	419	59	667	613	113	225	31	09	247
Bolangir	209	19	26	202	56	517	484	89	113	15	16	112
Cuttack	186	52	25	213	154	1336	1363	127	236	11	08	239
Dhenkanal	94	40	29	105	59	597	564	92	240	35	26	249
Ganjam	271	31	35	267	106	827	821	112	183	21	08	196
Kalahandi	111	10	02	119	28	239	245	22	328	10	15	323
Keonjhar	28	07	15	20	51	292	313	30	68	07	15	60
Khurda	219	31	45	205	91	939	917	113	289	20	01	308
Koraput	72	22	22	72	73	524	521	76	262	09	19	252
Mayurbhanj	50	17	09	58	57	302	298	61	36	06	01	41
Phulbani	135	08	07	136	49	169	174	44	36	02	--	38
Puri	236	19	27	228	87	431	456	62	264	09	10	263
Sambalpur	122	52	60	114	124	1082	1061	145	197	36	41	192
Sundargarh	97	12	30	79	77	473	469	81	76	02	13	65
Total :	2245	357	365	2237	1071	8395	8299	1167	2553	214	182	2585

Name of the Judgeship	PREVENTION OF CORRUPTION ACT (VIG. + C.B.I.)			
	Opening Balance as on 1.7.2008	Institution	Disposed of	Pendency as on 30.9.2008
Balasore	492	09	08	493
Bolangir	122	--	--	122
Cuttack	424	16	13	427
Dhenkanal	--	--	--	--
Ganjam	231	10	13	228
Kalahandi	--	--	--	--
Keonjhar	--	--	--	--
Khurda	812	30	38	804
Koraput	121	05	07	119
Mayurbhanj	--	--	--	--
Phulbani	--	--	--	--
Puri	--	--	--	--
Sambalpur	405	18	03	420
Sundargarh	01	--	--	01
Total :	2608	88	82	2614

Name of the Judgeship	CRIMINAL CASES OF MAGISTERIAL COURTS									
	Opening Balance as on 1.7.2008			Institution	Disposed of			Pendency as on 30.9.2008		
	Gen. File	Trial File	Total		Gen. File	Trial File	Total	Gen. File	Trial File	Total
Balasore	34742	20703	55445	3757	305	2171	2476	35672	21054	56726
Bolangir	14851	6701	21552	3157	64	2935	2999	15014	6696	21710
Cuttack	140218	33820	174038	6370	1641	3183	4824	135608	39976	175584
Dhenkanal	44750	11970	56720	3300	898	1406	2304	45928	11788	57716
Ganjam	38137	19401	57538	7407	4468	3773	8241	36219	20485	56704
Kalahandi	26412	9515	35927	1928	11	2695	2706	25972	9177	35149
Keonjhar	13109	7102	20211	1381	158	1304	1462	13292	6838	20130
Khurda	94489	8612	103101	5324	2595	796	3391	95560	9474	105034
Koraput	46606	22596	69202	4494	377	3010	3387	48182	22127	70309
Mayurbhanj	17623	10297	27920	1542	48	1309	1357	17932	10173	28105
Phulbani	11598	6411	18009	2905	322	1296	1618	13021	6275	19296
Puri	23202	12186	35388	3612	867	2260	3127	23603	12270	35873
Sambalpur	62059	15758	77817	3789	12	3513	3525	62159	15922	78081
Sundargarh	61070	10143	71213	2338	532	2054	2586	60728	10237	70965
Total :	628866	195215	824081	51304	12298	31705	44003	628890	202492	831382

TOTAL NO. OF CIVIL AND CRIMINAL CASES DURING THE PERIOD FROM 1.7.2008 TO 30.9.2008

	<u>Opening Balance</u>	<u>Institution</u>	<u>Disposed of</u>	<u>Pendency</u>
<u>CIVIL</u>	185680	12640	11967	186353
<u>CRIMINAL</u>	848132	62267	54568	855831

OUTLINES OF SOME RECENT ORISSA HIGH COURT JUDGEMENTS

HERAMBA CHANDRA DANI & ORS. -V- STATE OF ORISSA & ORS

W.P. (C) No. 10635 of 2003 (Dt. 03.07.2008)

ORISSA JUDICIAL SERVICE (SPECIAL SCHEME) RULES, 2001 - RULE 5(4) AS AMENDED IN 2003.

Fast Track Courts - Establishment of - High Court without making fresh advertisement resolved in Full Court to issue interview letters to those who had secured 35% marks in each paper and 40% marks in aggregate in the written test held for direct recruitment to Orissa Judicial Service (Senior Branch) pursuant to Advertisement No. 1 of 2000 - O.P. 6 to 12 were selected and appointed - Petitioners challenged their appointment - Advertisement of 2000 shows minimum qualifying marks for viva voce test is 50% in each paper in the written test - O.P. 6 to 12 were disqualified Candidates in that test - They got appointment by reducing the norms - Since there was no fresh advertisement Prospective Candidates deprived of to complete for the post - Violative of Art. 16 - Held, appointment of O.P. 4 and 5 (O.P. 5 is no more alive) is upheld and appointment of O.P. 6 to 12 are found illegal and are quashed.

(I.M.Quddusi, J. & B.N.Mahapatra, J.)

SURENDRANATH PANDA – V – STATE OF ORISSA.

CRLMC NO.2558 OF 2007.(DT.07.07.2008)

NDPS ACT, 1985 – SEC.20(b) (I) & 29 (1)

Seizure of 69 Kgs of contraband Ganja alongwith vehicle – Prayer to release vehicle – Prayer rejected by trial Court – Hence this application - Vehicle lying at the Police Station subject to vagaries of nature – Detaining the vehicle will not serve any useful purpose rather it will deteriorate further and cause reduction in value – Held, this Court released the vehicle in favour of the petitioner for an interim period subject to final decision in the Case.

(L.K.Mishra, J.)

PRASANNA PAJPALIA -V- STATE OF ORISSA

Criminal Appeal No. 8 of 1997 (Dt. 8.7.2008)

CRIMINAL PROCEDURE CODE, 1973 - SEC. 164

Confessional statement - Conviction U/s. 302 I.P.C. based on such statement - Conviction challenged on the ground that accused was not cautioned while his statement was recorded - Hence this appeal.

While accepting confessional statement the Court must apply double test (i) Whether the confession was perfectly voluntary and (ii) if so whether it is true and trust worthy.

In the present Case evidence of Magistrate (P.W. 15) shows that not only the accused was granted sufficient time for cool reflection but also he was made aware that he was not bound to confess and if he makes confession then it may go against him - In spite of that the accused confessed that

the deceased loved his (the accused's) beloved Tapaswini and therefore he killed the deceased - This confession does not suffer from any defect or lacunae so as to render it inadmissible - That confession by itself proves the Crime against the appellant - Held, Evidence of eyewitnesses with the confessional statement of the accused prove the charge of murder against the appellant beyond all reasonable doubt.

(P.K.Tripathy, J. & N.Prusty, J.)

SAFI AKHTAR KHAN -V- UNION OF INDIA & ORS.
O.J.C.NO.101 OF 2002 (DT.15.07.2008)

CONSTITUTION OF INDIA, 1950 – ART 226 & 227.

Compassionate appointment – Father of the petitioner serving as a driver under the Opp.Parties – Died in harness leaving behind his widow, two sons, two married and two unmarried daughters- Mother requested O.P.1 to appoint her son the petitioner- Mother expired – Petitioner submitted application – Opp.parties turned down the prayer – Petitioner approached the Tribunal – Opp.Parties submitted that the minor daughters were paid family pension till their marriage and the Family has been paid terminal benefits – Moreover the petitioner is a settled businessman in Balasore – Tribunal dismissed original application being devoid of merit – Hence this Writ petition.

Purpose of providing compassionate appointment is to enable the family of the deceased employee to tide over the sudden Crisis due to the death of the sole bread earner - Held, after lapse of ten years from the death of the father of the petitioner, the object underlying the rules providing compassionate appointment does not subsist – No infirmity in the impugned order .

(I.M.Quddusi, J. & N.Prusty, J.)

MRUTUNJAYA NAYAK - V – STATE OF ORISSA & ORS.
W.P (C) No.14085 OF 2007 (Dt.16.07.2008).

CONSTITUTION OF INDIA, 1950 – ART 15 (1), 16(1)(4) & 335.

Examination for Orissa superior Judicial Service (Sr.Branch) – Petitioner a member of Schedule Caste to appear in the said examination – No relaxation of marks for candidates belonging to reserved categories – Writ petition filed to grant relaxation of marks as had been done on earlier occasions- Provisions contained in Art. 15 & 16 are enabling provisions which empower the statutory authorities to grant relaxation, if they so consider- But in exceptional Cases state may relax qualifying marks without affecting general efficiency of service as mandatorily provided under Art. 335 – In the present case Opp.Parties have taken a decision not to grant relaxation although the same had been granted in the past – Moreover selection process already started – Held, it is the settled legal position that the criteria of selection cannot be changed by any means after commencement of the selection process – Writ Petition lacks merit and it is accordingly dismissed.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

STATE OF ORISSA -V- BANDHU BEHERA
GOVT. APPEAL NO. 29 OF 1988 (Dt. 16.7.2008)

CRIMINAL PROCEDURE CODE, 1973 - SEC. 378

Offence U/s. 456, 376 IPC - Trial Court acquitted the accused with the finding that ingredients of offence of rape not proved and even if the accused had sexual intercourse with the victim it was with consent - Hence this appeal - In the present Case there was no bodily injury on the victim - No mark of violence detected by the doctor - The victim being a married lady she did not take adequate care to close the door by bolting it from inside infers that the victim was offering an opportunity to the respondent to visit her house - Evidence of the victim that the accused put his hands on her mouth for which she could not raise hullah but at the same time she also stated that the accused removed her saree and laid her down on the ground and at that time she also did not resist and raise any hullah and only after seeing her husband she complained - From those circumstances it can be inferred that it is a clear Case of consent - Held, finding recorded by the trial Court is correct and it needs no interference.

(Pradip Mohanty, J.)

SHASHI BHUSAN PRASAD – V – INSPECTOR GENERAL, CISF & ORS
O.J.C. NO.16872 OF 1997 (Dt.17.7.2008)

CONSTITUTION OF INDIA, 1950 – ART, 226 & 227.

Petitioner a Constable in CISF – Faced Criminal trial U/s, 25(1) (a) Arms Act – Departmental Proceeding – Disciplinary authority dismissed him from service – Subsequent acquittal in Criminal trial - Departmental Appeal and Revision preferred but dismissed – Orders challenged in Writ Petition – Acquittal in Criminal Case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent – Which is directory but not mandatory - Yardstick and standard of proof in a Criminal Case is different from the one in disciplinary proceeding – Strict principle of the Indian Evidence Act would not be applicable to a departmental proceeding – If it satisfies the conscience of the Inquiry Officer he can also rely upon hearsay evidence - Held, since it satisfies the conscience that the petitioner had kept the revolver with ammunitions knowing that the revolver was used in a murder Case, we loath to interfere with the orders of Disciplinary, Appellate and Revisional authorities.

(B.P. Das, J. & R.N. Biswal, J.)

KHETRABASI SRICHANDAN & ORS -V- GOPINATH SRICHANDAN
O.J.C. No. 6367 of 1999 (Dt. 18.07.2008)

CIVIL PROCEDURE CODE, 1908 - ORDER 9, RULE 13

Setting aside ex parte decree - Grounds for non-appearance - Relevant documents could not be collected and Defendant No. 1 who was entrusted to file W.S. became indisposed - Prayer allowed by learned Civil Judge on payment of cost of Rs. 250/- - Plaintiff filed revision - Order of the Civil Judge set aside as Defendants failed to establish "Sufficient Cause" - Hence this Writ Petition.

Sufficient Cause for the purpose of Order 9, Rule 13 must be liberally construed to enable the Court to do complete justice between the parties particularly when no negligence or inaction is imputable

to the erring party - In the present Case absence of defendants was not intentional or malafide which can be compensated with cost - Revisional Court has adopted a very narrow and technical approach - Held, impugned order set aside, Order of the learned Civil Judge restored and the cost enhanced to Rs. 1000/-.

(Sanju Panda, J.)

FAKIRMOHAN DAS & ORS. -V- GOVT. OF ORISSA & ORS.
W.P.(C) Nos,12191 OF 2004 (WITH BATCH OF CASES). (DT.22.07.2008)

CONSTITUTION OF INDIA, 1950 – ART. 243-G R/W SECS.122,123 ORISSA GRAM PANCHAYAT ACT (AS AMENDED)

Amendment of Section 122 & 123 G.P.Act – Induction of VLWs & VAWs to function as executive Officers- Position of the secretary Gram Panchayat minimized – Orders issued to handover charge of relevant records by the Secretary to the VLWs & VAWs – Writ petition to declare the provision ultra vires – Creating the post of Executive Officers as per amended provisions in Sec. 122 (1)(2) is within the jurisdiction and competency of the State legislature – Secretaries/ Sarapanches of Panchayats cannot question the same as the act does not run contrary to the mandate of the Constitution – However if the VLWs being Executive Officers of the Panchayats remain under the specific control of Director, Collectors and District Panchayat Officers, then the Panchayats can not function with independence – Violation of principles of self governance – Held, provisions in Sec. 122(3) of the Act ultra vires the Constitution- As a consequence the circulars at annexures 1 & 3 are also quashed.

(P.K.Tripathy, J, & A.K.Parichha, J.)

SMT. ARTIBALA DASH & ANOR. -V- STATE OF ORISSA & ORS
W.P.(C) No.8331 OF 2006(Dt.22.7.2008).

CIVIL PROCEDURE CODE,1908 – ORDER – 39, RULE –1 & 2.

Suit for declaration of right of user over the suit property as the approach road from the house of the Plaintiffs to National Highway – Application for grant of temporary injunction against defendants from obstructing the passage – Application dismissed on the ground that Plaintiffs have no prima facie Case- Appeal before District Judge- Addl District Judge passed order of status quo – Hence this Writ petition- concurrent finding of the Courts below that plaintiffs have got alternative passage- No evidence that any portion of the Suit Plot was ever used by the Petitioners for their ingress and outgress to their residential Plot- No plausible reason to accept the plea of the petitioners – Held, Judgment of the Trial Court affirmed.

(Indrajit Mahanty, J.)

JANARDAN MOHAPATRA & ORS. -V- BRAJABANDHU MOHAPATRA & ORS.
W.P. (C) No. 964 of 2007 (Dt. 22.7.2008).

CIVIL PROCEDURE CODE, 1908 - ORDER 22, RULE 4 R/W SEC. 5 LIMITATION ACT.

Death of defendant - Plaintiff as well as the Court were informed - Application for substitution, setting aside abatement and Condonation of delay filed - Order challenged in this Writ Petition - Application rejected on the ground of delay -

The expression "Sufficient Cause" contained in Sec. 5 Limitation Act is adequately flexible and widely elastic to enable the Courts to apply law in a meaningful manner - Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and defeat the cause of justice - So trial Court should effectively exercise its jurisdiction in a manner so as to justify the ends of justice as has been described as the "Life purpose for the existence of the institution of Courts".

Apart from other considerations it must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so - Held, impugned order quashed and all the applications allowed.

(Indrajit Mahanty, J.)

PAURNAMASI LENKA -V- TAHASILDAR, BHUBANESWAR & ANOR

W.P(C) No.9373 OF 2008 (Dt.23.7.2008).

ORISSA MINOR MINERAL CONCESSION RULES,2004 –RULE-44.47.48 & 49.

Bid to operate a Sairat- Petitioner participated – Became highest bidder- Bid confirmed- Deposited 50% of the bid amount – Failed to deposit the balance within 30 days – Bid cancelled – Forfeiture of the amount deposited – Fresh advertisement issued – Challenging advertisement but not challenging the acceptance of the bid – Challenging consequential order without challenging the basic order – Writ not maintainable - Oral prayer to quash the order cancelling the bid in the absence of order under Challenge – Order cannot be quashed – Moreover in the present case there is non compliance of statutory requirement – Held, Writ petition is liable to be dismissed.

Since petitioner deposited 50% instead of 25% of the bid amount forfeiture of entire amount will not be justified – He is entitled to get refund of the rest 25%.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

JAGANNATH MUDULI – V – NIRUPAMA BEHERA

MATA NO. 26 OF 2007 ,(Dt. 25.07.2008).

HINDU MARRIAGE ACT, 1956 – SEC.12.(1) (a).

Marriage not consummated due to sexual infirmity of wife - Before marriage doctor advised for recanalisation of vaginal channel – Marriage solemnized by practicing fraud- Husband filed petition to declare the marriage void – Family Court dismissed petition being barred by time - Husband approached this Court.

Marriage under Hindu law is not a pure religious ceremony – A wife who is not fit to have sex or beget child would be unable to fulfil the main object of marriage- It cannot be denied that the sexual activity in marriage without sex is an anathema – For physical infirmity of wife husband forced to lead a life of celibacy – Such a life is one of perpetual torture and detrimental to the health of a man. Doctor (P.W.3) examined wife and opined that without Canalization of vagina consummation is not possible- Held, impotency of wife results in her inability to discharge her marriage obligation which amounts to both legal & mental cruelty – Marriage declared null & void.

(A.S.Naidu, J & B.P.Ray,J.)

M/S. HERO SOAP & CHEMICALS & ANR. -V- STATE OF ORISSA & ORS.

O.J.C. No. 10414 of 2000 (Dt.27.07.2008).

CONSTITUTION OF INDIA, 1950 - ART. 14 & 21

Exemption of Tax as per finance Department Notification - Application before General Manager, DIG, Ganjam for such exemption - Application rejected without assigning any reason - Order challenged in Writ Petition.

Public authority - Duty to act fairly - An act un-informed by reason is arbitrary - Giving of reasons is an essential element of administration of justice - It is the settled proposition of law that any order even in administrative matters, the authorities to pass a speaking and reasoned order indicating the material on which its conclusions are based - Rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being - It is the trite law that "be you ever so high, the laws are above you" - This is what a man in power must remember always.

Held, the impugned order suffers from want of reasons.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

RAMJI SINGH & ORS -V- STATE OF ORISSA & ORS

O.J.C. No. 5473 of 1999 (Dt. 28.7.2008)

CONSTITUTION OF INDIA, 1950 - ARTS. 226 & 227

Public Interest Litigation - Petitioners grievance is Rourkela Development Authority earlier earmarked certain area for hospital, Post Office and Sulav Sauchalaya - Construction of Commercial Complex on the said land and allotment of shops to private persons - Prayer to demolish the shops and to restore the land to its original position.

Courts should not exercise this jurisdiction lightly but should exercise in rare Cases involving public interest of a large number of people who can not afford litigation and are made to suffer at the hands of the authorities - However the forum cannot be invoked for the purpose of serving private ends and professional rivalry.

No document filed to show the land in dispute had earlier been earmarked for hospital etc. - Not a single person who has been allotted the shops is a party before the Court - Held, the petition suffers from want of proper pleadings and issues raised are not worth entertaining.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

M.D., M/S. DEY CONSTRUCTION COMPANY -V- JAMUNA DEI

M.A. No. 839 of 1999 (Dt. 28.7.2008).

WORKMEN'S COMPENSATION ACT, 1923 - SEC. 2(N)

Deceased a night watchman - Fell down from chair while performing his duty on 10.5.1991 - Expired in hospital on 26.6.1991 - No eye witness that the accident took place inside the appellants premises - Post mortem report shows cause of death is due to respiratory failure - None examination of doctor - Grave doubt about the nature and place of death - No prove that the deceased died only out of an accident and whether that accident took place in course of his employment - There is also

doubt whether this will be an accident causing spinal cord injury and whether such a spinal cord injury will cause death out of respiratory failure.

There is no supporting material regarding the reason of death or place of accident and an accident in course of employment - Held, the claim could not be sustained - appeal allowed and impugned award set aside.

(S.R.Singharavelu, J.)

NILAMANI PRADHAN & ORS. -V- NAROTTAM PRADHAN

CRP. NO. 33 OF 2006 (Dt. 31.07.2008)

CIVIL PROCEDURE CODE, 1908 - SEC. 47 & 151

Execution Proceeding - Judgment debtor filed petition U/s. 47 & 151 CPC. objecting execution on the ground original Defendant No. 1 died during pendency of final decree proceeding - No steps to substitute legal heirs of Defendant No. 1 and decree becomes a nullity - Application dismissed - Hence the revision.

The Court below found from record that in the final decree proceeding Defendant No. 1 had appointed a lawyer which shows he was alive after the final decree proceeding was initiated - The process server reported on 12.02.1995 that notice could not be served as Defendant No. 1 had been to some other place so fresh notice issued to him - On 18.10.1996 Process Server reported about his death- Necessary steps taken for substitution and notice served on his legal heirs - Legal heirs did not agitate such fact when appeared - So the conduct of the petitioners in this proceeding is doubtful - Even though death certificate is a public document it does not mean to accept it as true without considering the circumstances - Held, this Court does not find fault with the impugned order - Revision dismissed.

(Pradip Mohanty, J.)

SRI RABINDRANATH ROU TRAY-V- SANJUKTA SWAIN & ORS

W. P (C) NO.5414 OF 2008 (DT.31.07.2008)

ORISSA LAND REFORMS ACT,1960 – SEC.8(A) .R/W SEC. 44 EVIDENCE ACT.

Application by O.P.1 U/s. 8(A) OLR Act for conversion of Case land from agricultural to homestead- In the application she stated to be the only legal heir of the recorded owner- Application allowed and ROR corrected – Petitioner claims to be the brother of O.P.1 and as per the Registered family partition deed he is entitled to 50% share – Having failed in his attempt before the settlement authorities he approached this Court.

Admittedly petitioner is the brother of O.P.1 - O.P.1 dit not whisper anything about the petitioner – Not approached the Court with clean hands – She not only practiced fraud on the Court but also a party – Right of a party can not be extinguished by obtaining an order on misrepresentation – Moreover the recorded raiyat did not apply for conversion in the prescribed form – Held, impugned order quashed in exercise of jurisdiction under Article 227 of the Constitution – Case remanded to the Tahasildar to rehear and decide the same in accordance with law.

(Sanju Panda, J.)

PRADEEP KU. PARIJA -V- STATE OF ORISSA & 7 ORS

W.P.CRL NO. 374 OF 2008 (Dt.04.08.2008).

CONSTITUTION OF INDIA, 1950 – ART. 226 R/W SEC.35 EVIDENCE ACT.

Hebeas corpus – Daughter of Petitioner kidnapped by O.P. 5 - F.I.R. lodged – No action by Police to recover his daughter who was a minor and passed +2 Course - Writ Petition filed with a copy of her horoscope - Daughter decamped with Cash of Rs. 1 lakh and jewellery – She wrote letter to S.P., Jagatsinghpur saying that she was 22 years and got married to OP. 5 - No Reason as to why High School certificate not filed – No explanation under what circumstances the horoscope is admissible – It is apparent that the girl voluntarily abandoned her parents house with huge amount of Cash and jewellery and got married to O.P. 5 out of her free will and she was a major – Held, this case cannot be considered to be Case of habeas corpus.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

BIDULATA MAHARANA -V- BANK OF INDIA & TWO ORS.

W.P. (C) No. 10556 OF 2008 (Dt. 05.08.2008).

CONSTITUTION OF INDIA, 1950 - ART. 226 R/W. SEC. 13(2) “SECURITIZATION ACT” 2002.

Alternative remedy - Show cause notice U/s. 13(2) “Securitization Act” - Writ application to quash the show cause notice - Suit is pending in respect of the same subject matter - It would not be proper to allow the person to invoke the discretionary jurisdiction Under Article 226 of the Constitution.

Public Policy demands that a person has a right to choose the forum for redressal of his grievance but he can not be permitted to approach two forums in respect of the same subject matter simultaneously - There may be a case of forum hunting that a party who filed a suit, may not be able to get the interim relief - It may abandon the remedy before the Civil Court and approach the Writ Court - Thus it will amount to abuse of process of the Court by forum hunting - Held, Writ dismissed with liberty to pursue suit before the Civil Court.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

MISS PRITILATA NANDA -V- UNION OF INDIA & ORS.

O.J.C. NO. 9958 OF 2001 (Dt. 05.08.2008)

CONSTITUTION OF INDIA, 1950 - ART. 226 & 227

Notification inviting applications from physically handicapped Candidates for Class-III posts in Railways - Petitioner applied and selected - Select List for 17 Candidates - She was at serial No. 11 - Although 13 Candidates given appointment, Petitioner was not called as her name not sponsored by employment exchange - She approached CAT but no result - Hence the Writ petition.

Consistent view of the Apex Court as well as High Courts that compulsory sponsoring arrangement by Employment Exchange, if insisted upon, affects interest of those Candidates who have not been able to register their names or are awaiting to be so registered.

In the present Case petitioner had registered her name in the Employment Exchange - She satisfied all requirements of the advertisement inviting application by the Railways and after accepting her application and ultimately preparing a select list which contained her name, not issuing appointment

letter to her amounts to travesty of justice - Held, Writ petition allowed, impugned order quashed, direction to O.P. 4 and 5 to issue letter of appointment to the petitioner with effect from the date on which her juniors have been given appointment - Petitioner is entitled to full back wages and seniority.

(L.Mohapatra, J. & Indrajit Mahanty, J.)

KANAKA RANA -V- STATE OF ORISSA

O.J.C. NO. 1191 OF 2001 (Dt. 08.08.2008)

CONSTITUTION OF INDIA, 1950 - ART. 226 & 227

Torts - Petitioner opted Family Planning operation on 15.1.94 - She gave birth to a female child on 25.12.2000 - Failure of Tubectomy - Forced to have unwanted child - Writ petition claiming compensation.

To claim compensation for an unwanted child the petitioner has to establish that there has been negligence on the part of the doctor in sterilization operation - She has to produce Certificate issued to her that the operation was successful and establish that she was given assurance that she would not conceive in future.

In the present Case no pleadings to that effect - She produced sterilization Certificate Dt. 4.1.2001 which raises factual controversy - No averment to explain as to why petitioner gave birth to an unwanted child and did not opt for termination of pregnancy which is permissible under Medical Termination of Pregnancy Act, 1971 - Held, once the petitioner gave birth to a child it is not open to her to say that it was a Case of unwanted child.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

BALARAM SAHOO -V- SUB-COLLECTOR-CUM-EXECUTIVE OFFICER, ATHGARH & ORS.

W.P. (C) NO. 3952 OF 2008 (Dt. 08.08.2008)

CONSTITUTION OF INDIA, 1950 - ART. 226 & 227

Auction of Cycle stand 2008-09 - Date fixed to 20.2.2008 - No auction on that day - No information to participants - Cycle stand given to O.P. 3 in the auction held on 4.3.2008 pursuant to notice Dt. 20.2.2008 - Action challenged - This Court perused the auction file - Entry Dt. 10.3.2008 shows that fresh auction to be held for Cycle stand etc. and auction notice be served locally as well as through advertisement in an Oriya daily - Action of O.P.1 and 2 is arbitrary, highly unwarranted which deprived the petitioner and other aspirants from participating in the auction - Held, auction infavour of O.P. 3 for the year 2008-09 is quashed - Direction to hold fresh auction for the remaining period of 2008-09 within 4 weeks - O.P. 3 is allowed to run Cycle stand till fresh auction is finalized and he is entitled to get pro-rata refund for the period he is deprived of running the sairat unless he is a successful bidder in the fresh auction.

(I.M.Quddusi, ACJ & B.N.Mahapatra, J.)

AMBARISH DAS -V- STATE OF ORISSA,

CRIMINAL APPEAL NO.168 OF 1997 (Dt.14.8.2009)

INDIAN EVIDENCE ACT, 1872 – SEC. 376.

Sexual assault – On a seven years old girl – Accused is teacher of the victim – Conviction by trial Court – Hence this appeal – Version of the victim that accused entered his male organ in her private part – Trial Court recorded satisfaction that the victim understands all the questions and has

given rational answer – Nothing brought out in her Cross-examination to discredit her evidence – Mere entry of slightest part or even the tip of the penis in the entrance of the vulva would amount to Penetration – Consumation of a full sexual intercourse is not necessary to constitute rape – Corroboration is not necessary since version of Prosecutrix is cogent and it inspires confidence in the mind of the Judge – Held, this Court not inclined to interfere with the order of sentence passed by the Trial Court.

(B.P.Ray, J.)

SUBRAT KUMAR NAIK -V- STATE OF ORISSA & 2 ORS.

W.P. (C) No. 128 of 2008 (Dt. 20.8.2008)

NATIONAL SECURITY ACT, 1980 - SEC. 3(2)

Preventive detention - Order challenged - Ground is delay in disposing of representations - Solemn duty of the authorities to consider the representation with utmost promptness as it involves liberty of the detenu - Holidays and delay in postal service if any has to be excluded and each Case is to be examined on its own facts - Held, in the present Case there has been no delay in disposal of the representations.

Order of detention when detenu is in custody - In this Case detaining authority was aware of the fact - There was relevant materials before the authority on the basis of which he had reasons to believe that the petitioner was likely to be released on bail or there was possibility of being released on bail and on being released, he would indulge himself in the activities prejudicial to the public order hence it was necessary to detain him in order to prevent him from indulging in such activities - Held, detention order was necessary in such circumstances.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

UDE NAIK -V- STATE OF ORISSA

JAIL CRIMINAL APPEAL NO. 31 OF 1996 (Dt. 20.08.2008)

INDIAN PENAL CODE, 1860 - SECS. 302, 304 (PART-I)

Offence U/s. 302 IPC - Trial Court to appreciate evidence and determine if the deceased suffered homicidal death - If homicide is not proved by the Prosecution the accused cannot be held guilty for the offence of murder - On the other hand if it goes in favour of the Prosecution then evidence be assessed and it can be judged if the accused is the author of the Crime or has played any specific role in Commission of the Crime.

In the present case Evidence of P.Ws. 2, 3 and 4 proves that the accused shot the arrow which pierced into the right side chest of the deceased and evidence of P.W. 7 corroborates the same to be a homicidal death.

Admittedly, the arrow traveled a distance of above 50 feet and under such circumstances it could also assume as an act of accidental hitting of the arrow into the chest - Moreover there was provocation from the side of the deceased and in retaliation only the arrow was shot and prosecution does not say whether it was aimed to kill him, though the arrow shot injury killed the deceased - Held, conviction and sentence U/s. 302 IPC setaside and accused held guilty of offence U/s. 304, Part-I IPC with a custodial sentence of ten years.

(P.K.Tripathy, J. & N.Prusty, J.)

JASOBANT NARAYAN MOHAPATRA & 2 ORS. -V- STATE OF ORISSA & 2 ORS.
CRLREV. NO. 1007 OF 2007 (Dt. 20.08.2008)

CRIMINAL PROCEDURE CODE, 1973 - SEC. 401

Petitioners and the Co-accused are Police Officers - Co-accused was trapped on Dt. 5.5.98 for receiving bribe from the complainant - False Case against complainant by Petitioners persuading him to compromise the Vigilance Case against Co-accused - Complainant alleged Petitioners abetted the Co-accused for the offence and filed false Case to screen the Co-accused - Learned Special Judge framed charge U/s. 12 P.C. Act and Sec. 201 IPC. against the petitioners - Hence this case - Trapping of Co-accused held on 5.5.98 - Commission of offence U/s. 7 P.C. Act by Co-accused completed long before that date - So question of abatement for commission of offence U/s. 7 P.C. Act by Petitioners does not arise - Secondly filing of false Case may constitute other offence but it does not have any effect of disappearance of evidence already collected in the Vigilance Case - Held, materials don't justify framing of charge against the petitioners U/s. 12 P.C. Act and Sec. 201 IPC. and that part of the order against the petitioners is quashed.

(B.K.Patel, J.)

UTKAL PETROLEUM DEALERS ASSOCIATION -V- STATE OF ORISSA & 11 ORS.
W.P.(C) No. 1713 of 2006 (Dt. 21.8.2008)

CONSTITUTION OF INDIA, 1950 – ARTS 226 & 227.

Writ jurisdiction – Petitioner an Association of Petroleum Dealers – Filed Writ Petition for a direction to the State for formulating statutory provisions or guidelines for setting up retail outlets along the National Highways / State Highways fixing distance between two Petrol Pumps- Under the constitutional scheme the Parliament exercises Sovereign power to enact law but not the Courts - Courts are to expound / interpret the law but do not make laws – Neither the Court can legislate nor it has any competence to issue directions to the legislature to enact law in a particular manner – Held. It is not possible for the Court to give direction as sought for by the petitioner.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

SUBAS INSTITUTE OF TECHNOLOGY -V - STATE OF ORISSA & ORS.
W.P(C) NOS.10697 & 10698 OF 2008 (DT.21.08.2008)

ALL INDIA COUNCIL FOR TECHNICAL EDUCATION ACT,1987- SEC.10 (K).

Technical Institution – Establishment of - All India Council for Technical Education (AICTE) accorded approval – However BPUT not according affiliation – Chairman JEE not allowing the Institution to take part in the process of Counselling for the academic session 2008-09 - Action challenged in Writ Petition – Once AICTE granted approval to the petitioner-institute basing on the report of the enquiry made by the expert Committee, University had no authority to withhold affiliation to the petitioner-institute- Held, Direction issued to BPUT to grant affiliation to the petitioner-institute immediately and allow it to take part in the on going process of Counselling, if the same is continuing, permitting them to give admission to the selected Candidates in the JEE, who are interested to take admission in the petitioner-institute.

(M.M.Das, J.)

PRASANTA KUMAR MALLICK & ORS. –v – STATE OF ORISSA.

BLAPL NOS. 3627, 6757 4347 , & 3807/2008 (Dt.21.08.08.)

CRIMINAL PROCEDURE CODE, 1973 – 439.

Bail – Offence U/s. 147 148 , 452, 323,324, 325, 307, 379,427,364/149 I.P.C . and U/s 9(b) I.E. Act- Prosecution Case is there was love marriage between the informant and the victim girl - Father of the victim came with miscreants in two vehicles and abducted the victim - Affidavit by victim that, her father rescued her from the clutches of the informant.

Power to grant bail has to be exercised judiciously and on well established principles i.e. the nature and gravity of the offence, severity of punishment in case of conviction ,apprehension of tampering with the evidence , possibility of the accused fleeing from justice, antecedents of the accused and the possible impact on the society if the accused is granted bail.

Bail by its very nature is person-specific - In the present case no specific overt act ascribed to any of the petitioners - two of them are drivers and one is a priest - No. T.I parade in the case - None of the petitioners named in the F.I.R - Held, petitioners are entitled to bail

(L.K.Mishra. J.)

THE ORIENTAL INSURANCE CO.LTD. -V- SMT. ANJAN PENTHO BEHERA & ORS.

AHO Nos. 12 & 13 of 2001 (Dt. 22.8.2008)

MOTOR VEHICLES ACT, 1988 - SECS. 170, 173.

Insurer challenged quantum of award - No permission U/s. 170 M.A. Act - Appeal dismissed by learned Single Judge - Hence the AHO - Owner was set exparte - Insurer argued that he had been impliedly granted permission to contest the Case.

U/s. 170 M.V. Act, Tribunal can grant permission to implead the insurer only in certain Cases where it comes to the conclusion that there is collusion between the Claimants and the insured or the person against whom the claim is made has failed to contest the claim and such permission must be in writing supported by reasons - In the present Case recording of reasons being explicit statutory requirement, even if Order of grant of permission is there it can not be termed to be valid Order, if not supported by reasons in writing.

In the instant Case no application for impleadment by the insurer on any of the grounds - Question of presumption that there had been any implied permission to contest the Case does not arise - Held, judgment of the learned Single Judge does not warrant interference.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

PURNA CHANDRA BEHERA -V- DIBAKAR BEHERA & 4 ORS.

W.A. NO. 120 OF 2008 (Dt. 27.08.2008)

ORISSA LAND REFORMS ACT, 1960 - SECS. 22 & 23

Land belongs to Schedule Tribe - Sale to non-Schedule Tribe - Without prior permission of Revenue Officer - Application U/s. 23 to cancel the saledeed - Saledeed declared null and void - Order challenged in appeal, revision and Writ petition but dismissed - Hence the Writ appeal.

There is no absolute Ban on alienation - The restriction is more or less regulatory and power is conferred on a public officer even to permit alienation - Sale deed executed in favour of appellant being in contravention of the mandatory provisions of the Act is void - Held, appellant can not be permitted to take advantage of mischief played by himself - Rather he disintitiled him self for any equitable relief - Non-issuance of notice to the transferor has not caused any prejudice to him - Appeal lacks merit and dismissed.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

**M/S. NEW INDIA ASSUANCE CO.LTD.-V- ADIKANDA DALAI & ORS
ADIKANDA DALAI & ORS -V- NIRANJAN DAS & ORS.
MACA NOS, 885 & 10112/2006 (Dt.27.08.2008)**

MOTOR VEHICLES ACT,1988 – SEC. 173.

Head on collision between Trekker and Auto rickshaw – Deceased was a passenger in Trekker - Tribunal held accident was solemnly due to rash and negligent driving of the driver of the Trekker and directed the appellant for payment of compensation – Appellant challenged the award in appeal - Evidence reveals that there was collision between the Trekker & Auto rickshaw causing death of a person so it can not be said that the driver of Auto rickshaw had absolutely no negligence - No prove by the insured and insurer that the driver of the offending vehicle was not negligent – Considering that Trekker was a heavier vehicle and its driver ought to have been more careful, this Court held the accident caused due to composite negligence of the drivers of both the vehicles and fixed 25% of the responsibility for the accident on the Auto Rickshaw and 75% on the Trekker.

(A.S.Naidu, J.)

**M/S. NATIONAL INSURANCE CO.LTD – V – RAMA KADRAKA & ORS.
M.A. NO. 380 OF 2000 (Dt.28.08.08)**

MOTOR VEHICLES ACT, 1988- SEC.149.

Accident – Wife expired – Husband & daughter claimed compensation – Award passed but challenged by insurer on the ground that driver of the offending jeep was not an employee at the time of accident – Doctrine of vicarious liability not applied – Neither the owner nor the Insurance Company liable to pay compensation .

Driver engaged by owner parked the vehicle and got down for taking tea leaving the keys in the vehicle – An outsider got into the vehicle and drove it causing the accident – Omission of driver in not taking the key with him could be nomenclatured as a negligent act on his part leading to accident - Neither the owner nor the insurer adduced evidence to establish that the authorized driver was not negligent – Held , Insurance company can not be absolved of its liability to pay compensation – This Court reduced the quantum and sets aside the direction of the Tribunal to pay default interest at the rate of 12% P.A.

(A.S.Naidu, J.)

**D.M.,ORIENTAL INSURANCE CO. LTD -V- SMT. GEETA PAREEK & ORS.
M.A.C.A.NO. 187 OF 2008 (DT.29.8,2008)**

MOTOR VEHICLES ACT, 1988 – SEC.168,173.

Appeal filed with a free copy of the award – Certified Copy not filed – No application for extension of time for filing of Certified copy- Free copy supplied to the parties U/s, 168(2) M.V.Act

for the purpose of information and compliance – Not for using the same in filing the appeal challenging the same award- No specific provision either U/s. 173 M.V Act nor Rule –21 (2) of the Orissa M.V .Rules to that effect – Law is settled that, if there is no specific provision with regard to requirements for the purpose of filing of an appeal under the special statute provision of the Code of Civil Procedure has to be followed - Hon'ble Supreme Court while interpreting Order 41 Rule-1 CPC. expressed that the Certified copy of the decree should be filed along with the memorandum of appeal which is mandatory – Held, filing of certified copy of the award along with the memorandum of appeal is a must, failing which it can never be treated to be proper presentation of the appeal.

(N.Prusty, J.)

M/S. NATIONAL INSURANCE CO. LTD - V- SMT. KUNI PANIGRAHI & ANOR.

A.H.O. No. 138 of 200 (Dt. 02.09.2008)

WORKMEN'S COMPENSATION ACT, 1923 – SEC. 4A (3) (b)

Award passed – Appellant directed to pay compensation within one month from the date of order, failing which he is to pay 50% penalty over the awarded amount – Award challenged but dismissed by the learned Single Judge – Hence this appeal.

Liability of Penalty cannot be fastened either to the insured or to the insurer at the time of making award because Penalty can be imposed if there is delay in payment of compensation – For that the Commissioner has to give show cause notice to the employer, consider his reply and if he finds the delay was unjustified can impose penalty to the tune of 50 % of the amount – However, it is not that in every Case Penalty has to be imposed to that extent but the same may vary from case to case – More so, even if the penalty is imposed that cannot be the liability of the insurer.

Held, in the instant Case Commissioner exceeded in its jurisdiction and imposed Penalty on the insurer - appellant at the time of making the award and this Court quashed that part of the award.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

B.M., NEW INDIA ASSURANCE CO. LTD. -V- SMT. JAYANTI MISHRA & ORS

M.A. No. 101 of 2001 & F.A.O. No. 51 of 2005 (Dt. 04.09.2008)

WORKMEN'S COMPENSATION ACT, 1923 - SEC. 30(1) & 2(1)(A).

Truck loaded with aluminium slabs - Two drivers engaged due to long route - Dacoits murdered all the employees of the truck - Widows of two drivers filed Cases for compensation - Liability of Insurance Company - Policy covers risk of one driver - Entitlement of second driver for compensation - Second driver Akshaya was employed in the truck by the owner - He possessed a valid D.L. - He was receiving Rs. 3,000/- as wages per month - It is also not known as to who among Akshaya and Manas was driving the truck at the relevant time - Claimants and the owner were examined - Their testimony not shaken in cross-examination - Insurance Company did not adduce any evidence to substantiate its stand that Akshaya was not an employee in the truck - Commissioner held Akshaya was travelling in the truck as an employee - This being a finding of fact, no interference by this Court in an appeal U/s. 30 of the Workmen's Compensation Act.

(A.S.Naidu, J.)

BASUDEV DANDASENA -V- STATE OF ORISSA & ORS.

W.P. (C) NO. 9229 / 2008 & MISC. CASE NO. 9639 / 2008 (Dt. 04.09.2008)

ORISSA GRAM PANCHAYAT ACT, 1964 - SEC. 115 (2)

Petitioner is the Elected Sarpanch - F.I.R. lodged against him for Commission of offences under the Immoral Traffic Prevention Act, 1956 - He was arrested and released on bail - He was placed under suspension by the Govt. - Action challenged - Order of suspension U/s. 115(2) is required to be passed by mentioning the reasons in writing in the said order - The ingredients upon which a Sarpanch can be removed from his office as provided U/s. 115(1) even if quoted in the order of suspension can not be construed to be the reasons recorded in writing for suspending the Sarpanch as per the mandate of Sub-section(2) of Sec. 115.

Held, Order of suspension can not be sustained hence quashed - Matter remitted back to the Govt. in its panchayati Raj Department to reconsider the question of suspending the petitioner.

(M.M.Das, J.)

COLONEL NARENDRA KUMAR- V- UNION OF INDIA & ORS.

W.P.(C) NO. 3823 OF 2008 (DT.5.9.2008)

ARMY ACT, 1950 – SEC. 27.

Petitioner a Commissioned Officer in the Indian Army – Subjective endorsements in his Confidential Report (C.R) from 14.02.2003 to 31.08.2003 by the then Higher Technical Officer (H.T.O) Major General S.K.Dahiya – Representation by Petitioner to Opp.Parties for debarring the endorsements in his C.R.- Representation not considered – Hence the Writ Petition – Relevant records produced before this Court shows there are recommendations of the authorities for expunction of the entire assessment of HTO as Mr. Dahiya has never visited and seen the petitioner working and there being no adverse remark he should not be deprived of his promotional rank – Held, direction issued to the O.P.s to consider the Case of the Petitioner afresh without taking into consideration the grading awarded by the then HTO S.K.Dahiya in the petitioners C.R. for the period form 14.02.2003 to 31.08.2003.

(B.P.Das, J & R.N.Biswal, J.)

SHRI ARJUNA CHARAN OJHA -V- UNION OF INDIA & ORS

W.P.(C) No. 9107 of 2004 (Dt. 05.09.2008)

CONSTITUTION OF INDIA, 1950 - ART. 226 & 227

Appointment to the post of EDMC - First Notification inviting S.T. Candidates with stipulation that in the absence of S.T., Candidates from OBC/SC/OC may apply - S.T. Candidates not available - Second Notification by same authority with same stipulation - O.P. 4 of OC Category got appointment - Petitioner an OBC Candidate challenged the Order in OA before the Tribunal - O.A. dismissed - Hence the Writ Petition - Notifications show the post meant for S.T. and in their absence Candidates from OBC be considered - In the absence of OBC, Candidates of S.C. and O.C. may apply - Held, Selection of O.P. 4 is against the norms - Order of Tribunal as well as appointment O.P. 4 is set aside - Direction to O.P. 1 to 3 to consider the OBC Candidates applied for appointment and most suitable Candidate from amongst the OBC Candidates be appointed to the said post.

(L.Mohapatra ,J. & I.Mahanty, J.)

**ORISSA STATE CASHEW DEVELOPMENT CORPORATION LTD. -V-
PRESIDING OFFICER & ANR**

O.J.C. No. 8179 of 1998 (Dt. 5.9.2008)

INDUSTRIAL DISPUTES ACT, 1947 - SEC. 33-C(2)

Workman's application U/s. 33-C(2) before the Labour Court claiming dues concerning break days and weekly off days - Management disputed the claim that Labour Court had no jurisdiction to adjudicate - Labour Court allowed the Case directing management to pay - Order challenged in Writ Petition - Plea raised by petitioner-Management regarding maintainability of the Proceeding U/s. 33-C(2) of the I.D. Act before the Labour Court is a pure question of law and petitioner can not be denied the right to raise such plea for the first time - Since the above plea has not been raised and adjudicated before the Labour Court which is the Court of first instance this Court quashed the impugned order and remitted the matter back to the Labour Court for reconsideration after giving reasonable opportunity of hearing to the Parties.

(S.C.Parija, J.)

SUDHANIDHI MISHRA -V- UNION OF INDIA & ORS.

O.J.C. Nos. 3682 of 1994 & 6672 of 1992 (Dt. 09.09.2008)

CONSTITUTION OF INDIA, 1950 - ART. 14 & 16

Departmental Proceeding concluded exparte - Petitioner dismissed from service - Order challenged - Order quashed calling upon the authorities to re-enquire into the charges after giving opportunity of hearing to the petitioner - Petitioner joined service - He was served with notice for denovo enquiry - He was again dismissed from service - Departmental appeal and revision dismissed - Hence the present Writ petition - Charge shows the petitioner only remained absent for about 4 months on the ground of illness - After recovery he joined duty voluntarily - No willful intention to flout the order - Petitioner was refused to engage a defence Counsel and he was not given an english version of the enquiry report at the time of enquiry - Action is arbitray - Punishment of dismissal for over staying leave period is harsh and dispropertionate to the charges - Held, Order of dismissal is quashed with liberty to award minor punishment.

(B.P.Das, J. & R.N.Biswal, J.)

NAYAK VARIETY STORE -V- COMMISSIONER OF SALES TAX, ORISSA

W.P.(C) NO.11871 OF 2008 (Dt.11.09.2008)

ORISSA VAT ACT, 2004 – SECS. 41,42 R/W RULE 44- (2) OVA T RULES 2005.

Petitioner is registered under the OVAT ,ACT – Notice under rules49(1) for audit assessment for the period 2005-06 and 01.04.06 to 31.10.06 – Petitioner produced Books of account – Audit completed by Assessing Officer U/s. 42 OVAT Act raising demands including penalty U/s 42(5) – subsequent notice under Rule 44 (2) OVAT Rules 2005 (Under Annexure-1) for conducting Tax Audit for the same period – Notice Challenged in Writ petition – Once audit assessment U/s. 42 is completed for a particular period, the assessing Officer becomes functus officio for the same period, so far second and subsequent assessment under that section is concerned- But there is no embargo for reopening the audit assessment earlier made U/s . 43 of the OVAT, Act- Held, the present notice issued vide annexure-1 for tax audit for the period from 1.4.05 till the date of audit visit is bad in law and liable to be quashed .

(Dr. B.S.Chauhan C.J. & B.N.Mahapatra, J.)

BIRANJAN PANDA & ANOR.-V- BANK OF INDIA & 6 ORS.W.P.(C) No.8389 OF 2008 (Dt.11.9.2008)**CIVIL PROCEDURE CODE,1908 – ORDER 17 RULE1 (2).**

Original application posted to 1.4.08 – Adjournment sought on the ground Senior Counsel not well – Medical Certificate Dt.31.3.08 for 15 days rest- Case adjourned to 8.4.08- On that day another application filed for time with the same medical certificate – Prayer refused – Hearing taken up – Petitioners refused to argue on merit- O.A. dismissed- Order challenged in Writ Petition – Adjournment cannot be sought by a litigant as a matter of right and in a routine manner – It must be bonafide attempt on behalf of the party- Illness of Counsel cannot be a ground of seeking adjournment- In certain cases Court can grant short time so that an alternative arrangement be made- It cannot be a means of Bench hunting or dilatory tactics- Where there are more than one Counsel, illness of one Counsel is no ground to adjourn the case- Suppression of material documents and facts – Held, petitioners failed to prosecute their case diligently and disentitled themselves from grant of equitable relief.

(Dr. B.S.Chauhan, C.J. B.N.Mahapatra, J.)

BENUDHAR MOHAPATRA -V- UNION OF INDIA & ORSW.P.(C) No. 12222 of 2005 (Dt. 19.9.2008)**CONSTITUTION OF INDIA, 1950 - ART. 226**

Service - Departmental Proceeding - Petitioner a teacher of Kendriya Vidyalaya filed reply - Inquiry continued for eight years - Direction from High Court to complete inquiry - Inquiry completed imposing penalty - Appeal before appellate authority - Appeal dismissed - Penalty challenged in OA - Tribunal quashed order of punishment and directed further enquiry - Order assailed in Writ Petition - Once Tribunal finds that the Case suffers from insufficiency of evidence could not have remitted back the Case to the inquiry Officer giving another opportunity to prove charges - Moreover specific finding of the Tribunal is that Petitioner denied his right to re-examine / cross-examine the witnesses without valid ground and the materials were insufficient to hold the Petitioner guilty of charges - Held , the report of the Inquiry Officer, the order of punishment passed by the disciplinary authority and the appellate order are quashed.

(L.Mohapatra, J. & I.Mahanty, J.)

CHITTARANJAN SAHU & ORS -V- STATE OF ORISSA & ORS.**RATIKANTA BEHERA -V- STATE OF ORISSA & ORS.**W.P.(C) Nos. 4736/ 2003 & 11876/2005 (Dt. 23.09.2008)**INDIAN FOREST ACT, 1927 - SEC. 2(4).**

“Forest Produce” - Plates, trays and Cups made out of sal and siali leaves - Resolution issued by Govt. compelling traders to obtain transit permit for transportation of such items - Resolution challenged on the ground that sal and siali leaves converted into plates etc. by manual and mechanical process and in the process alien articles like polythene, stitching and pasting materials are used and as such the end product does not remain a forest produce requiring transit permit for its transportation - State contends once the above items are dismantled they again become sal leaves and their transportation need transit permit.

In the present Case for making such plates, cups etc. alien articles like glue, strings, polythene are used but leaves continue its existence in the final product - Held, plates, trays and cups made out of sal and siali leaves remain as forest product so demand of transit permit for transportation of such goods was neither illegal nor against the spirit of the Constitution. Writ dismissed.

(P.K.Tripathy, J. & A.K.Parichha, J.)

MAHAMMED SAUD & ORS. -V- DR. (MAJ.) SHAIKH MAHFOOZ & ANOR.

L.P.A. NO. 7 OF 2008 (Dt. 24.09.2008)

LETTER PATENT APPEAL - Maintainability of - Whether judgment Dt. 06.08.2008 of learned Single Judge can be assailed in LPA after introduction of Sec. 100A C.P.C. w.e.f. 01.07.2002 - Two Division Bench judgments in V.N.N.Panicker -V- Narayan Pati & Anr., 2006(II) OLR 349 and Ramesh Chandra Das -V- Kishore Ch. Das & Ors., 2007 (Suppl.-1) OLR 1110 held LPA not maintainable but a contrary view taken by another Division Bench in Birat Chandra Dagara -V- Taurian Exim Pvt. Ltd. & Anr., 2006 (II) OLR 344 - To resolve the controversy this Bench was constituted - In course of hearing request made at the Bar to decide whether Writ appeals are maintainable against Orders passed by learned Single Judge in Writ Petitions filed under Article 226 and 227 of the Constitution and with regard to Orders passed under Special Acts.

Held, after introduction of Sec. 100-A in C.P.C. by amendment Act, 2002, no LPA is maintainable against Judgment/Order/Decree passed by a learned Singled Judge of a High Court - Decision in Birat Ch. Dagara has not laid down the correct position of law - But decisions in V.N.N. Paricker and Ramesh Ch. Das are held to be good law and are confirmed - A Writ appeal shall lie against the Judgment/ Order passed by the learned Single Judge in a Writ Petition filed under Article 226 of the Constitution - In a Writ application filed under Articles 226 and 227 if Order/Judgment passed in exercise of jurisdiction Under Article 226, a Writ appeal will lie but no Writ appeal will lie against the Judgment / Order / Decree passed by a Single Judge exercising powers of superintendence Under Article 227 of the Constitution - No LPA shall lie against Judgment/Order passed by a learned Single Judge in proceedings arising out of Special Acts.

(Dr. B.S.Chauhan, C.J., L.Mohapatra, J. & A.S.Naidu, J.)

PREMANIDHI SETH -V- STATE OF ORISSA

CRLMC. NO. 1769 OF 2008 (Dt. 24.9.2008)

CRIMINAL PROCEDURE CODE, 1973 - SEC. 482

Prosecution U/s. 13(2), 13(1)(d) P.C. Act and Secs. 420, 120-B I.P.C. - Allegation is during purchase of weighbridges the petitioner and the secretary R.M.C. conspiring with M/s. Weigh Care cheated the RMC/Govt. - Charge sheet against the petitioner - Hence this application - Court verified Casediaries - At the relevant time weighbridges purchased by RCMs., Sambalpur, Padampur, Attabira and Bargarh from the same firm at the same rate by adopting the same procedure - No scope to say that only the Chairman, Sambalpur RMC (Petitioner) had malafide intention - Approach of the investigating agency is not legal, fair and amounts to discrimination - No prima facie Case against the Petitioner - Held, Criminal Proceeding in CTR No. 29 of 2008 in the file of the learned Special Judge (Vigilance), Sambalpur arising out of Sambalpur Vigilance Case No. 58 of 1005 will be abuse of the process of the Court and the same is quashed.

(A.K.Parichha, J.)

KRUSHNA CHANDRA SAHOO -V- BANK OF INDIA & ORS.

W.P.(C) No. 10557 of 2008 (Dt. 25.09.2008)

SECURITIZATION & RECONSTRUCTION OF FINANCIAL ASSETS & ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - SEC. 13(3-A), 13(4) R/W RULE 3-A OF SECURITY INTEREST (ENFORCEMENT) RULES, 2002.

Notice served upon the Petitioner U/s. 13(2) - Objection submitted through Counsel - Without deciding objection notice issued U/s. 13(4) - Hence the Writ Petition - Above provisions are clear that it is obligatory on the part of the authority to consider and dispose of the objection by a reasoned order and communicate the same to the person aggrieved i.e. the borrower/guarantor - Refusal of O.P. 1 to dispose of the objection filed by the Petitioner on the ground that it had been submitted through his Counsel shocks the conscience of the Court - Disposal of objections by a speaking/reasoned order is a mandatory requirement under the statutory provisions - Held, impugned notice U/s. 13(4) being in total violation of the statutory requirement is quashed and O.P. 1 Bank is directed to decide the objection filed by the Petitioner by a speaking order and communicate the same to the petitioner.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

M/S. NEW INDIA ASSURANCE CO. LTD. -V- LAXMI SAHU @ DISOI & ORS.

M.A.C.A. NO. 939 OF 2005 (Dt. 26.09.2008)

MOTOR VEHICLES ACT, 1988 - SEC. 173

Motor accident - Pillion rider of motorcycle expired - Legal heirs of the deceased claimed compensation - Tribunal assessed monthly income of the deceased as Rs. 3000/- - After deducting 1/3 towards personal expenses, contribution fixed at Rs. 2000/- PM - His age being 28 years Tribunal applied 18 multiplier and assessed compensation at Rs. 4.0 lakhs - Insurer challenged the award - Ground is in Case of motorcycle rider Tribunal held accident occurred due to contributory negligence and offending vehicle was liable to pay 50% of the award amount but in case of pillion rider of the same accident insurer of the offending Bus was asked to pay the total compensation - Held, where an accident occurred due to negligence of drivers of two vehicles, the pillion rider of the motorcycle has no role to play and he is entitled to get the entire amount of compensation and Tribunal is justified in directing the Insurance Company of the offending Bus to pay the entire award amount to the legal heirs of the deceased pillion rider.

(B.N.Mahapatra, J.)

RATNARANI POLAI & ORS -V- ATANU KUMAR BEHERA & ANR.

M.A.C.A. No. 623 of 2004 (Dt. 26.09.2008)

MOTOR VEHICLES ACT, 1988 - SEC. 173.

Accident in Bus on dt. 10.03.1995 - One Bijoy Polai sustained injury - He claimed compensation of Rs. 50,000/- - Subsequently he expired on 27.1.1999 - Legal heirs claimed compensation of Rs. 5,00,000/- - Nil award by Tribunal on the ground that ticket issued to Bijoy by the Bus Conductor was not produced and his name not mentioned in the FIR - Hence this appeal - Statement of P.W. 3 is that deceased was travelling in the offending Bus - Ext. 6 and 11 speaks of accident and injury sustained by the deceased - Held, this Court not inclined to accept the finding of the Tribunal that deceased Bijoy was not travelling in the offending Bus and did not sustain any injury out of the said accident - However no cogent evidence on record that death of deceased was the outcome of the accident Dt. 10.03.1995 - No valid Insurance Policy of the Bus at the time of accident - Compensation assessed to Rs. 40,000/- with 9% interest to be paid by the owner.

(B.N.Mahapatra, J.)

JAGADISH NARAYAN SINGH -V- STATE OF ORISSA & 3 ORS.

W.P. (C) No. 279 of 2008 (Dt. 30.09.2008)

CONSTITUTION OF INDIA, 1950 - ART. 21, 22(5), R/W. SEC. 3(2) NATIONAL SECURITY ACT.

Preventive detention - Documents relied on in the Order of detention not supplied to the detenu- Detenu failed to make effective representation - Plea that documents had already been made available to him in Criminal trial can not be a valid ground.

Non supply of documents on the basis of which detaining authority formed a subjective satisfaction would render the Order of detention illegal - The detenu can not be expected to rely upon his memory or may not be able even to collect the said documents for making an effective representation - Held, the detention Order becomes void being violative of the provisions of Articles 22(5) of the Constitution.

(Dr. B.S.Chauhan, C.J. & B.N.Mahapatra, J.)

SARAT KUMAR KAR -V- STATE OF ORISSA & ANR.

W.P. (C) NO. 905 OF 2007 (Dt. 30.09.2008)

COMMISSION OF ENQUIRY ACT, 1952 - SECS. 3 & 4

Speaker of 12th Assembly - Media publicity for illegal appointments and corruption in purchase of Computers for the Assembly Secretariat during his tenure - On recommendation of the Speaker 13th Assembly Govt. appointed a retired Judge of this Court as Commission of Enquiry - Petitioner moved a petition before the Commission challenging the authority of the Govt. - Commission passed order to deal with the same at the time of preparing the report - Hence this Writ petition.

There are three pillars of the Consitution, the Legislature, the Executive and the Judiciary - All are independent and are not subordinate to each other - Since the State Govt. has not been conferred with the residuary power as has been conferred to the Central Govt. under entry 97 of List I Seventh Schedule of the Constitution the appointment of Commission under the Commission of Inquiry Act in the instant Case is beyond the jurisdiction of the State Govt. - Held, impugned notification appointing the Commission is quashed - However the legislature has jurisdiction to entrust enquiry in accordance with law.

(I.M.Quddusi, J. & A.K.Parichha, J.)

MD. ZAMILUR RAHAMAN -V- STATE OF ORISSA & ORS.

W.P. (C) NO. 3912 OF 2007 (Dt. 30.09.2008)

CONSTITUTION OF INDIA, 1950 - ART. 39(d)

Equal pay for equal work - Petitioner appointed as Jr. Clerk on DLR basis - Filed Writ for regularisation - Prayer allowed - State challenged the Order - Apex Court vide Order dt. 18.4.1994 directed payment of minimum pay scale prescribed for regular employees belonging to same categories - Govt. implemented the Order - On 17.4.1998 Orissa Revised Scale of Pay Rules, 1998 came into force - Petitioner approached State Govt. for benefit under the said Rules - Although the Engineer-in-Chief granted the minimum of pay scale interms of ORSP Rules 1998, suddenly stopped the benefit on dt. 9.3.2007, relying on a judgment of the Supreme Court in the Case of State of Haryana Vrs. Jasmer Singh & others that daily rated workers cannot be treated at par with their counter parts in regular service - Hence this Writ petition.

Held, Right of the petitioner having been determined by the Apex Court in its order Dt. 18.4.1994 the same has attained finality and the said right cannot be taken away by virtue of a subsequent judgment of the Apex Court particularly where the petitioner was not a party - Impugned order Dt. 9.3.2007 is quashed.

(B.P.Das, J. & R.N.Biswal, J.)

MAJOR EVENTS **(Orissa High Court)**

Workshop on Reporting of Court Proceedings by Media and Administration of Justice for Legal Correspondents / Journalists

A Workshop on Reporting of Court Proceedings by Media and Administration of Justice for Legal Correspondents / Journalists was organised by High Court of Orissa on 30.8.2008 in the High Court premises in collaboration with National Legal Services Authority, Supreme Court Legal Services Committee, Orissa State Legal Services Authority, Press Council of India, Editors' Guild of India and Indian Law Institute. Hon'ble Shri Justice K.G.Balakrishnan, Chief Justice of India inaugurated the Workshop. Hon'ble Dr. Justice Arijit Pasayat, Judge, Supreme Court of India, Hon'ble Dr. Justice B.S.Chauhan, Chief Justice, Orissa High Court, Shri Biswabhusan Harichandan, Hon'ble Minister of Law, Orissa, Hon'ble Shri Justice G.N.Ray, Chairman, Press Council of India and Hon'ble Shri Justice I.M.Quddusi, Judge, Orissa High Court and Chairman, Organizing Committee presented their valuable address in the Inaugural session. All the Hon'ble Judges of Orissa High Court graced the occasion. Senior Judicial Officers and Legal Correspondents / Journalists participated the Workshop.

In Session - I (*Freedom of Press/Media in Reporting (Print & Electronic) Use and Abuse*) - Hon'ble Shri Justice Jasti Chelameswar, Chief Justice, Gauhati High Court was on the Chair. Hon'ble Shri Justice Shiva Kirti Singh, Judge, Patna High Court, Shri Anil Divan, Shri Ranjit Kumar, Senior Advocates of Supreme Court of India, Shri Sarat Mishra, Editor, Samaj, Cuttack were the Speakers. Shri P.H.Parekh, President, Supreme Court Bar Association was the Reporter and Mr. Yeeshan Mohanty, President, Orissa High Court Bar Association was the Coordinator.

In Session - II (*Reasonableness of Restrictions on Reporting Sub-Judice Matters*) - Hon'ble Shri Justice R.M.Lodha, Chief Justice, Patna High Court was on the Chair. Hon'ble Shri Justice Pinaki Ch. Ghose, Judge, Calcutta High Court, Shri Arun Jaitley, Senior Advocate, Supreme Court of India, Prof. K.N.Chandrasekharan Pillai, Director, Indian Law Institute were the Speakers. Dr. Jayadeb Pati, Principal, M.S. Law College, Cuttack was the Reporter and Shri Gopala Krushna Mohanty, Chairman, Orissa State Bar Council was the Coordinator.

In Session - III (*Trial by Media - Understanding Implications through case studies*) - Hon'ble Shri Justice Surinder Singh Nijjar, Chief Justice, Calcutta High Court was on the Chair. Hon'ble Shri Justice M.Y.Eqbal, Judge, Jharkhand High Court, Shri P.P.Rao, Senior Advocate, Supreme Court of India, Shri Bijoy K. Mahanti, Advocate General, Orissa, Shri Soumya Ranjan Patnaik, Editor, Sambad, Bhubaneswar were the Speakers. Shri U.B.Mohapatra, Member, I.L.I. was the Reporter and Shri Ramakanta Sahu, Vice-Chairman, Orissa State Bar Council was the Coordinator.

Hon'ble Dr. Justice Arijit Pasayat, Hon'ble Shri Justice Ashok Bhan, Judges of Supreme Court of India, Hon'ble Dr. Justice B.S.Chauhan, Chief Justice, Orissa High Court, Hon'ble Mrs. Justice Gyansudha Misra, Chief Justice, Jharkhand High Court, Shri Bhartruhari Mahatab,

Editor, the Prajatantra and Prof. (Dr.) S.Sivakumar, Professor, Indian Law Institute / Coordinator graced the Concluding Session.

All the Officers of the Registry and staff members of concerned Branches of the Court played vital role for making the Workshop a grand success.

Meeting of District Judges of Orissa

A meeting of District Judges of Orissa was held on 21.9.2008 to apprise them regarding implementation of the E-Courts Project.

The meeting was presided by Hon'ble Dr. Justice B.S.Chauhan, Chief Justice, Orissa High Court. Hon'ble Shri Justice P.K.Balasubramanyan, Chairman, E-Committee, Supreme Court of India addressed the meeting regarding E-Court Mission Mode Project. Hon'ble Shri Justice S.B.Sinha, Judge, Supreme Court of India, Hon'ble Shri Justice M.B.Lokur, Judge, Delhi High Court were Guest of Honour. Hon'ble Shri Justice P.K.Tripathy, Chairperson, Steering Committee for E-Courts Project, Orissa High Court delivered his welcome speech. During the Interactive Session, Shri S.B.Biswas, Director, Department of Justice, Govt. of India explained in brief about the E-Court Project. Shri C.L.M.Reddy, Senior Technical Director, N.I.C., New Delhi, explained about Project Implementation Plan and importance of Site Preparation. In the Post Lunch Session, service support issues regarding Laptops, Training, Laser Printers were taken up with respective vendors. The meeting ended with vote of thanks proposed by Hon'ble Shri Justice B.P.Das, Judge, Orissa High Court.

Appointment in the cadre of District Judge.

For filling up of 16 vacancies in the cadre of District Judge through Direct Recruitment from the Bar for the year, 2008, Advertisement No. 1/2008 was made on 11.4.2008. After scrutiny of applications for the post in the cadre of District Judge, 1457 candidates were called for written test which was held on 20.7.2008. After evaluation of answer papers, 22 candidates were called for viva-voce test which was held on 27.9.2008 and 28.9.2008. Out of them only five candidates namely Shri Devi Prasad Mohapatra, Shri Satya Narayan Mishra, Shri Bibhu Prasad Routray, Shri Goutam Sharma and Shri Biranchi Narayan Mohanty have been finally selected for appointment to the post in the cadre of District Judge as per the provision contained in the O.S.J.S. and O.J.S. Rules, 2007. The result was declared in the same day i.e. on 28.9.2008 and accordingly the State Government in Home Department has been moved for appointment of the five candidates in the cadre of District Judge.

Further for filling up on 21 vacancies in the cadre of District Judge through Limited Competitive Examination for the year, 2008, Advertisement No. 2/2008 was made on 11.4.2008. Written test for the said examination was held on 20.7.2008. Out of 43 officers in the cadre of Senior Civil Judge, only four officers were called for viva-voce test which was held on 20.9.2008. Out of them only three officers namely Shri Bijaya Ketan Mohanty, Shri Gayadhar Panda and Dr. Akshaya Kumar Mishra have been finally selected for appointment to the post in the cadre of District Judge. The result of such examination was declared through High Court web-site as well as daily News Paper on 28.9.2008. Accordingly the State Government in the Home Department has been moved for appointment in the cadre of District Judge.

MAJOR EVENTS **(Subordinate Courts)**

Inauguration of the Court of Additional District & Sessions Judge at Kuchinda.

The Court of Additional District and Sessions Judge at Kuchinda was inaugurated on 26.7.2008 by Hon'ble Dr. Justice B.S.Chauhan, the Chief Justice of Orissa High Court.

Shri Biswabhusan Harichandan, Hon'ble Minister of Law, Shri Prafulla Chandra Ghadai, Hon'ble Minister of Finance, Hon'ble Shri Justice I.M.Quddusi, Hon'ble Shri Justice A.K.Parichha, Hon'ble Shri Justice I.Mahanty, Judges of Orissa High Court, Shri Kishore Kumar Mohanty, Chief Whip, Govt. of Orissa, Shri Rabinarayan Naik, M.L.A., Kuchinda and Shri Brundaban Majhi, M.L.A., Laikera, Shri S.K.Mishra, Registrar General, Orissa High Court, Shri Deb Patel, President and Shri Rabindra Kumar Naik, Secretary, Kuchinda Bar Association graced the said occasion.

Laying of Foundation Stone of construction of Judicial Court Building at Salipur

Laying of foundation stone of construction of Judicial Court Building at Salipur was held on 3.8.2008 at Salipur.

Hon'ble Dr. Justice B.S.Chauhan, Chief Justice, Orissa High Court laid the foundation stone in presence of Hon'ble Shri Justice I.M.Quddusi, Judge, Orissa High Court, Shri M.P.Misra, District & Sessions Judge, Cuttack, Shri Prabin Kumar Kanungo, President, Shri Bikram Keshari Bal, Secretary, Salipur Bar Association and Judicial Officers of the Salipur and members of Salipur Bar Association.

Inauguration of the newly constructed Fast Track Court Building at Balasore.

The newly constructed Fast Track Court building was inaugurated by Hon'ble Shri Justice S.R.Singharavelu, Judge, Orissa High Court on 4th September, 2008 within the Civil Court premises at Balasore.

Shri E.V.Rao, District & Sessions Judge, Balasore, Shri B.S.Mohapatra, Special Judge (Vig.), Balasore, Shri Nirajnan Panda, President, Shri Raghunath Pradhan, Secretary of the Bar Association, the D.I.G., Eastern Range, local Judicial Officers and Members of the Bar attended the function.

**State Level Lok Adalat at Dhenkanal, Baripada,
Puri, Bhubaneswar and Cuttack.**

- (1) A State Level Lok Adalat was held at Dhenkanal on 19.7.2008 in the august presence of Hon'ble Shri Justice I.M.Quddusi, Judge, Orissa High Court-cum-Executive Chairman, Orissa State Legal Services Authority and Hon'ble Shri Justice N.Prusty, Judge, Orissa High Court.

In all, 113 M.A.C. Cases was disposed of with an aggregate amount of Rs. 2,99,96,676/- towards compensation.

- (2) A State Level Lok Adalat was held in the Civil Court Premises at Baripada on 2.8.2008 in the august presence of Hon'ble Shri Justice N.Prusty, Judge, Orissa High Court.

In all, 88 M.A.C. cases was disposed of with an aggregate amount of Rs. 95,71,500/- towards compensation.

- (3) A State Level Lok Adalat was held in the Civil Court Premises at Puri on 9.8.2008 in the august presence of Hon'ble Shri Justice I.M.Quddusi, Judge, Orissa High Court-cum-Executive Chairman, Orissa State Legal Services Authority.

In all, there was disposal of 49 M.A.C. Cases with an aggregate amount of Rs. 44,41,000/- towards compensation.

- (4) A State Level Lok Adalat was held in the Civil Court Premises at Bhubaneswar on 6.9.2008 in the august presence of Hon'ble Shri Justice I.M.Quddusi, Judge, Orissa High Court-cum-Executive Chairman, Orissa State Legal Services Authority.

In all, there was disposal of 56 M.A.C. Cases with an aggregate amount of Rs. 51,92,000/- towards compensation.

- (5) A State Level Lok Adalat was held in the Civil Court Premises at Cuttack on 20.9.2008 in the august presence of Hon'ble Shri Justice I.M.Quddusi, Judge, Orissa High Court-cum-Executive Chairman, Orissa State Legal Services Authority and Hon'ble Shri Justice N.Pruty, Judge, Orissa High Court.

In all, there was disposal of 248 M.A.C. Cases with an aggregate amount of Rs.2,56,40,000/- towards compensation.

Major Events
(Subordinate Courts)



Hon'ble Dr. Justice
B.S. Chauhan,
Chief Justice, Orissa High Court
addressing the Seminar on
"Mental Health Issues for the
persons suffering from Mental
Disabilities" on 16.10.2008
organised by OSLSA, Cuttack.

Inauguration of Fast Track
Court Building at Balasore
on 4.9.2008
by Hon'ble Shri Justice
S. R. Singharavelu, Judge,
Orissa High Court.



State Level Lok Adalat at
Dhenkanal on 19.7.2008
presided by Hon'ble
Shri Justice I.M. Quddusi
& Hon'ble Shri Justice N. Prusty
Judges of Orissa High Court.



State Level Lok Adalat at Baripada on 2.8.2008 presided by Hon'ble Shri Justice N. Prusty, Judge, Orissa High Court.

State Level Lok Adalat at Bhubaneswar on 6.9.2008 presided by Hon'ble Shri Justice I.M. Quddusi, Judge, Orissa High Court.



State Level Lok Adalat at Puri on 9.8.2008 presided by Hon'ble Shri Justice I.M. Quddusi, Judge, Orissa High Court.

Names of Hon'ble Judges participating Programmes/ Courses at the N.J.A., Bhopal and other places

Sl. No.	Names of the Hon'ble Judges	Period	Topics
1.	Hon'ble Shri Justice P.K.Tripathy	6.9.2008 to 7.9.2008	Attend Judicial Workshop on Planning and Management for Timely Justice (PMT) : East Zone at Patna as Resource Person.
2.	Hon'ble Shri Justice B.P.Ray	27.9.2008 to 29.9.2008	Attend the National Conference of High Court Justices on Strengthening the Administration of Justice in India : Current Issues and Emerging Challenges at National Judicial Academy, Bhopal.
3.	Hon'ble Shri Justice L. K. Mishra	22.7.2008 to 27.7.2008	Attend the programme on Criminal Justice Administration ; Key issues and challenges for newly elevated High Court Judges from 22-25, July, 2008 and the National Conference of High Court Justices on the Criminal Justice Administration in India, Current Issues and emerg- ing challenges on 26-27, July, 2008 at National Judicial Academy, Bhopal.
4.	Hon'ble Shri Justice B. K. Patel	27.9.2008 to 29.9.2008	Attend the National Conference of High Court Justices on Strengthening the Administration of Justice in India : Current Issues and Emerging Challenges at National Judicial Academy, Bhopal.

ACTIVITIES OF ORISSA STATE LEGAL SERVICES AUTHORITY

During the period from 1.7.2008 to 30.9.2008 the State Level Lok Adalats were held at Dhenkanal, Koraput at Jeypore, Mayurbhanj at Baripada, Puri, Sambalpur, Bhubaneswar and Cuttack on 19.7.2008, 26.7.2008, 2.8.2008, 9.8.2008, 23.8.2008, 6.9.2008 and 20.9.2008 respectively. Similarly, 153 numbers of District and Taluk Level Lok Adalats and 110 numbers of Legal Literacy / Awareness Camps have been organized in the State of Orissa.

In the above State Level Lok Adalats, 609 numbers of MAC cases have been settled/ disposed of and a sum of Rs. 7,06,47,978/- has been awarded as compensation. Besides, in the District and Taluk Level Lok Adalats, 41543 numbers of cases have been disposed of in total, which include Civil - 243, Criminal - 11215, Revenue - 28505, Bank - 1562 and Labour - 18. A sum of Rs. 26,56,691/- towards Criminal fine and Rs. 79,60,172/- as Revenue have been realized in the above Criminal and Revenue cases respectively. The benefits of the scheme of Legal Aid and Assistance have been extended to 620 numbers of persons, which include SC- 88, ST- 35, OBC- 19, Women- 291, Children - 2, In-Custody - 24 and other weaker sections of the Society - 161. Besides these three cases referred by the Judge, Family Court, Cuttack have been disposed of on "mediation" in the Orissa Mediation Centre for the first time.

ACTIVITIES OF ORISSA JUDICIAL ACADEMY

During the period, following training programmes are organized in Orissa Judicial Academy imparting training on the topics as hereunder.

Sl. No.	Duration of the Programme	Course contents of the Training	Cadre of Officers participating	No. of Officers participated.	Remarks
1.	12.07.2008 & 13.07.2008	Learning fundamentals of computer	Civil Judges (Jr. Divn. & Judicial Magistrates	27	S.D.J.Ms. = 14 C.J.(JD) = 13 & JMFC.
2.	09.08.2008 & 10.08.2008	A course on Delay and Techniques for Arrear Reduction.	Civil Judges (Sr. & Jr. Divn. & S.D.J.Ms.)	23 (on 9.8.08) 22 (on 10.8.08)	C.J. (S.D.) = 8 S.D.J.M. = 7 C.J. (JD) = 8
3.	16.08.2008 & 17.08.2008	Workshop on Framing of Charges and Recording of Evidence in Criminal Cases.	Judicial Magistrates	25	J.M.F.C. = 25
4.	13.09.2008 & 14.09.2008	Workshop on Framing of Issues and Recording of Evidence in Civil Cases.	Civil Judges (Sr. & Jr. Divn.)	25	C.J. (S.D.) = 15 C.J.(J.D.) = 10

Workshop on Reporting of Court Proceedings by Media and Administration of Justice for Legal Correspondents / Journalists (On 30.8.2008)



Inauguration of Workshop on Reporting of Court Proceedings by Media and Administration of Justice.

Lighting of Lamps by Hon'ble Guests



Hon'ble Shri Justice K.G. Balakrishnan, Chief Justice of India delivering the inaugural speech.



Hon'ble Dr. Justice Arijit Pasayat, Judge, Supreme Court of India addressing the august gathering.

Hon'ble Shri Justice Jasti Chelameswar, Chief Justice, Gauhati High Court, Hon'ble Shri Justice S.K. Singh, Judge, Patna High Court, Mr. Anil Divan, Mr. Ranjit Kumar, Mr. P.H. Parekh, Sr. Advocates of Supreme Court, Mr. Sarat Mishra, Editor, the Samaj and Mr. Yeeshan Mohanty, President Orissa High Court Bar Association - **Session - I.**



Hon'ble Shri Justice R.M. Lodha, Chief Justice, Patna High Court, Hon'ble Shri Justice P.C. Ghose, Judge, Calcutta High Court, Shri Arun Jaitley, Senior Advocate, Supreme Court, Prof. K.N. Chandrasekharan Pillai, Director, ILI, Dr. Jayadev Pati, Principal, M.S. Law College and Shri G.K. Mohanty, Chairman, Orissa State Bar Council - **Session - II.**



Hon'ble Shri Justice S.S. Nijjar, Chief Justice, Calcutta High Court, Hon'ble Shri Justice M.Y. Eqbal, Judge, Jharkhand High Court, Shri P.P. Rao, Senior Advocate, Supreme Court, Shri Bijoy K. Mahanti, A.G. Orissa, Shri Soumya Ranjan Patnaik, Editor, Sambad, Shri U.B. Mohapatra, Member, ILI and Shri Ramakanta Sahu, Vice-Chairman, Orissa State Bar Council - **Session - III.**



Hon'ble Judges of Orissa High Court, other High Courts and other dignitaries attending the Workshop.



Hon'ble Shri Justice Ashok Bhan, Hon'ble Dr. Justice Arijit Pasayat, Judges of Supreme Court of India, Hon'ble Dr. Justice B.S. Chauhan, Chief Justice, Orissa High Court, Hon'ble Ms. Justice Gyansudha Misra, Chief Justice, Jharkhand High Court and Prof. (Dr.) S. Sivakumar, Professor, Indian Law Institute - **Valedictory Session.**