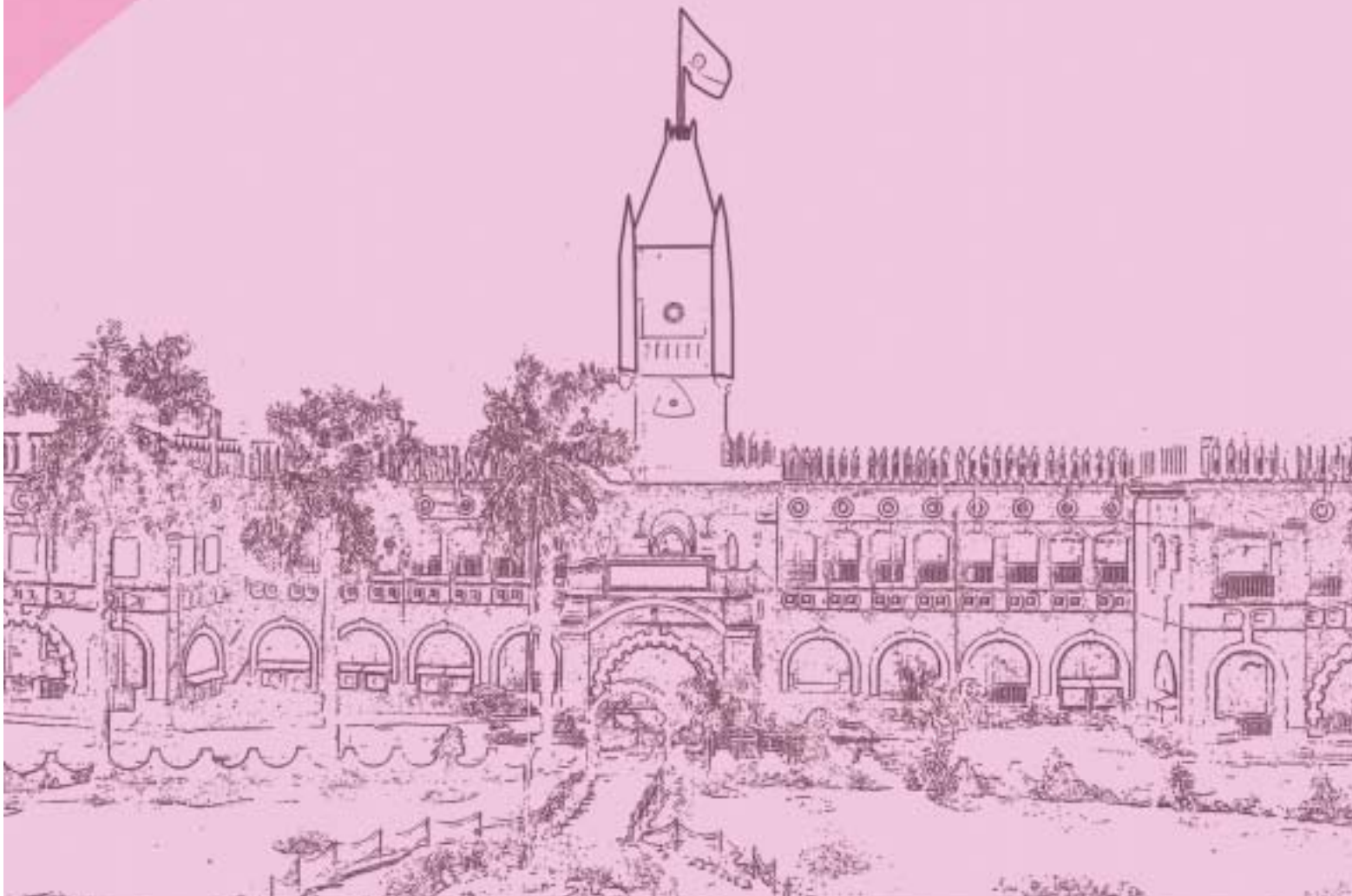




# COURT NEWS

October - December, 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. VI



## Orissa High Court



Hon'ble Dr. Justice Arijit Pasayat, Hon'ble Shri Justice Markandey Katju, Judges of Supreme Court of India, Hon'ble Dr. Justice B.S. Chauhan, Chief Justice, Hon'ble Shri Justice I.M. Qudusi, Hon'ble Shri Justice B.P. Das, Judges of Orissa High Court attending the **Zonal Mega Lok Adalat & Seminar on Mediation** at Puri on 31.12.2008



Hon'ble Shri Justice S.B. Sinha, Judge, Supreme Court of India, Hon'ble Dr. Justice B.S. Chauhan, Chief Justice, Hon'ble Shri Justice I.M. Qudusi, Hon'ble Shri Justice B.P. Das, Judges of Orissa High Court, Shri Sreeram Panchu, Shri Bharata Chakravorty, Master Trainers, Chennai Mediation Centre & Shri Braja Bihari, Master Trainer, Ranchi Mediation Centre attending the Inaugural Function of **Intensive Mediation Training Programme for the Mediators** held at Orissa Judicial Academy, Cuttack on 9.12.2008



Hon'ble Shri Justice S.B. Sinha, Judge, Supreme Court of India, Hon'ble Dr. Justice B.S. Chauhan Chief Justice, Hon'ble Shri Justice I.M. Quddusi, Hon'ble Shri Justice P.K. Tripathy, Judges of Orissa High Court, Shri Yeeshan Mohanty, President, Orissa High Court Bar Association, Shri S.C. Das, Chief Co-ordinator, General Insurance Companies & Shri Sreeram Panchu, Master Trainer, Chennai Mediation Centre attending the Seminar on Mediation - **"An Important Tool in dispensation of Speedy Justice & Zonal Districts Mega Lok Adalat"** held at Orissa High Court, Cuttack on 9.12.2008.



Hon'ble Shri Justice S.B. Sinha, Judge, Supreme Court of India Lighting the Lamp on the occasion of **Seminar on Mediation & Zonal Districts Mega Lok Adalat** held at Orissa High Court, Cuttack on 9.12.2008.

## Editorial Board

Hon'ble Shri Justice P.K.Tripathy  
Hon'ble Shri Justice L.Mohapatra  
Hon'ble Shri Justice I.Mahanty

### EDITORIAL ACKNOWLEDGEMENT

With profound gratitude we acknowledge the receipt of the letter of appreciations from the following Hon'ble Judges of Supreme Court of India and other High Courts.

**Hon'ble Shri Justice Harjit Singh Bedi,**  
Judge, Supreme Court of India, New Delhi.

"... I have carefully gone through the Court News July-September, 2008 edition. It is heartening to see the quality of work being done in the High Court and the efforts being made to bring down the pendency ..."

**Hon'ble Shri Justice Ajit Prakash Shah,**  
Chief Justice, High Court of Delhi, New Delhi.

"Thanks for sending me the fifth issue of "Court News". It is really a commendable effort, as noted by you in your message in the current issue. I wish all success to the publication.



Hon'ble Dr. Justice B.S. Chauhan,  
Chief Justice, Orissa High Court administered the Oath to the newly  
recruited Judicial Officers at O.J.A., Cuttack on 24.12.2008.

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## ***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 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.**



**CHIEF JUSTICE'S BUNGALOW  
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20th January, 2009

**Dr. Justice B.S. Chauhan**

### **FROM THE DESK OF THE CHIEF JUSTICE**

This is the sixth issue of Court News. I am very happy to note that publication of Court News of Orissa High Court since October, 2007 is being appreciated by high judicial fraternity, the lawyers and the common citizens interested in the affairs of judiciary.

During this quarter a new Court of Judicial Magistrate was opened at Chandabali in Bhadrak district. There were three Mega Lok Adalats and Seminars on "Mediation - An Important Tool in Dispensation of Speed Justice" were organized in Berhampur, Puri and Cuttack. Hon'ble Dr. Justice Arijit Pasayat and Hon'ble Mr. Justice Markandey Katju, Judges, Supreme Court of India attended the Seminar at Puri and Hon'ble Mr. Justice S.B.Sinha, Judge, Supreme Court of India attended the Seminar at Cuttack. In Mega Lok Adalats not only large number of different types of cases were disposed of, but also cheques worth crores of rupees were distributed to the claimants in Motor Accident Claim Cases.

The State Legal Services Authority organized 40 hours Intensive Training Programme from 9th to 14th December, 2008 on the instruction of Hon'ble Supreme Court Mediation & Conciliation Project Committee which was inaugurated by Hon'ble Mr. Justice S.B.Sinha, Judge, Supreme Court of India and Master Trainers from Delhi, Chennai and Jharkhand Mediation Centres imparted training to 22 Advocates.

With liberalization and globalisation, the problem seems to have assumed critical importance not only to individual litigants but also to the society as a whole. The society is progressing, the values are changing and the complexities of trade and commerce are posing hitherto unknown problems for resolution, this in turn is contributing not only to complexity of litigation but is also adding to the influx of disputes for resolution by courts. I am confident that the Courts will make all efforts to promote transparency, integrity and accountability in the judicial process.

We welcome comments and suggestions for improving the content and usefulness of the Court News so that it serves the needs of all those involved in administration of justice. It is our desire to devote each issue of the Court News to one major theme of relevance to the judiciary.

  
**(B.S. Chauhan)**

**Retirement of Hon'ble Judges  
of the Orissa High Court**  
(From 1st October, 2008 to 31st December, 2008)

Name of the Hon'ble Judge	Date of elevation to the Bench	Date of Retirement
Hon'ble Shri Justice Arun Kumar Parichha	05.07.2004	01.10.2008
Hon'ble Shri Justice Nityananda Prusty	14.07.2004	15.10.2008



Farewell to Hon'ble Shri Justice  
**Arun Kumar Parichha**  
on his Lordship's Retirement



Farewell to Hon'ble Shri Justice  
**Nityananda Prusty**  
on his Lordship's Retirement



**SANCTIONED STRENGTH & VACANCIES IN HIGH COURT  
(As on 31.12.2008)**

Sanctioned Strength	Working Strength	Vacancies
$17 + 5^* = 22$	$11 + 6^* = 17$	5

(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 1.10.2008 to 31.12.2008)**

**MAIN CASES**

Pendency as on 1.10.2008		Institution during the period		Total disposal during the period		Pendency as on 31.12.2008	
Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal
107941	21659	6952	6711	6019	5344	108874	23026

**MISC. CASES**

Pendency as on 1.10.2008		Institution during the period		Total disposal during the period		Pendency as on 31.12.2008	
Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal
106602	523	5929	2326	4034	2337	108497	512

**TOTAL NO. OF CIVIL & CRIMINAL CASES DURING THE PERIOD  
(From 1.10.2008 to 31.12.2008)**

	Opening Balance	Institution	Disposed of	Pending
<b>Civil</b>	214543	12881	10053	217371
<b>Criminal</b>	22182	9037	7681	23538

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

(A) **DISTRICT & SUBORDINATE COURTS**

(As on 31.12.2008)

(Regular Establishment)

Sl. No.	Category of Posts	Sanctioned Strength	Working Strength	Vacancies
1.	District Judge including Additional District Judge	98	75	23
2.	Civil Judge (Sr. Divn.)	134	121	13
3.	Civil Judge (Jr.Divn.) & Magistrates	286	235	51
3.	Special Judicial Magistrates	18	15	03

\* 23.12.2008 : 57 Civil Judges have been appointed.

\* Court recommended 10 officers in the cadre of Senior Civil Judge to the State State Govt. for their promotion and appointment in the cadre of District Judge.

(B) **FAST TRACK COURTS**

(As on 31.12.2008)

Functional Strength	Present Strength	Vacancies
35	31	4

**STATEMENTS SHOWING INSTITUTION, DISPOSAL & PENDENCY OF  
CIVIL & CRIMINAL CASES IN THE SUBORDINATE JUDICIARY  
FROM 1.10.2008 TO 31.12.2008**

Name of the Judgeship	CIVIL SUITS				CIVIL APPEALS				CIVIL MISC. APPEALS			
	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008
<b>Balasore</b>	19213	862	669	19406	1599	74	34	1639	1066	53	54	1065
<b>Bolangir</b>	2726	219	213	2732	575	37	19	593	111	11	05	117
<b>Cuttack</b>	20015	1408	1144	20279	1375	92	97	1370	787	133	145	775
<b>Dhenkanal</b>	3234	341	212	3363	339	88	83	344	86	15	17	84
<b>Ganjam</b>	4323	375	389	4309	583	53	21	615	211	18	13	216
<b>Kalahandi</b>	1453	127	93	1487	259	21	07	273	73	10	07	76
<b>Keonjhar</b>	996	118	115	999	133	25	16	142	48	11	14	45
<b>Khurda</b>	12352	772	484	12640	633	20	30	623	505	34	31	508
<b>Koraput</b>	1148	122	90	1180	253	27	28	252	119	22	13	128
<b>Mayurbhanj</b>	4493	295	305	4483	294	29	13	310	98	16	12	102
<b>Phulbani</b>	338	60	30	368	138	04	07	135	41	04	04	41
<b>Puri</b>	6132	419	326	6225	1066	50	19	1097	582	33	36	579
<b>Sambalpur</b>	3980	354	218	4116	380	41	55	366	83	35	32	86
<b>Sundargarh</b>	1127	166	119	1174	372	25	11	386	118	08	20	106
<b>Total :</b>	<b>81530</b>	<b>5638</b>	<b>4407</b>	<b>82761</b>	<b>7999</b>	<b>586</b>	<b>440</b>	<b>8145</b>	<b>3928</b>	<b>403</b>	<b>403</b>	<b>3928</b>

Name of the Judgeship	CIVIL REVISIONS				EXECUTION PROCEEDINGS				M.J.Cs. / SPECIAL ACT CASES			
	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008
<b>Balasore</b>	54	01	05	50	1407	33	21	1419	7586	581	482	7685
<b>Bolangir</b>	25	05	01	29	825	16	25	816	824	100	118	806
<b>Cuttack</b>	26	01	06	21	2808	92	61	2839	12771	1128	1183	12716
<b>Dhenkanal</b>	10	--	02	08	1785	44	14	1815	1900	216	151	1965
<b>Ganjam</b>	24	03	02	25	1750	45	32	1763	2503	231	209	2525
<b>Kalahandi</b>	09	--	01	08	463	19	08	474	852	81	59	874
<b>Keonjhar</b>	07	02	01	08	587	55	26	616	406	94	82	418
<b>Khurda</b>	46	07	15	38	1945	45	07	1983	7114	710	324	7500
<b>Koraput</b>	02	--	01	01	698	12	32	678	498	69	72	495
<b>Mayurbhanj</b>	13	04	05	12	702	22	14	710	838	78	153	763
<b>Phulbani</b>	--	--	--	--	204	05	08	201	180	39	18	201
<b>Puri</b>	61	02	02	61	767	21	21	767	3324	306	218	3412
<b>Sambalpur</b>	17	07	03	21	1426	25	26	1425	1564	156	118	1602
<b>Sundargarh</b>	11	01	02	10	727	25	16	736	695	95	189	601
<b>Total :</b>	<b>305</b>	<b>33</b>	<b>46</b>	<b>292</b>	<b>16094</b>	<b>459</b>	<b>311</b>	<b>16242</b>	<b>41055</b>	<b>3884</b>	<b>3376</b>	<b>41563</b>

Name of the Judgeship	M.A.C.T. CASES				SESSIONS CASES				CRIMINAL APPEALS			
	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008
<b>Balasure</b>	1826	171	152	1845	1012	124	107	1029	508	17	10	515
<b>Bolangir</b>	429	27	13	443	487	49	38	498	451	45	18	478
<b>Cuttack</b>	12689	559	754	12494	2019	188	196	2011	423	36	32	427
<b>Dhenkanal</b>	1061	142	74	1129	510	78	89	499	255	18	25	248
<b>Ganjam</b>	4182	267	417	4032	1908	129	75	1962	350	35	41	344
<b>Kalahandi</b>	272	30	14	288	230	36	50	216	270	21	07	284
<b>Keonjhar</b>	1413	45	160	1298	328	55	50	333	155	32	13	174
<b>Khurda</b>	3450	155	25	3580	1017	66	66	1017	270	20	21	269
<b>Koraput</b>	912	85	72	925	537	115	82	570	269	36	27	278
<b>Mayurbhanj</b>	981	84	65	1000	346	78	37	387	96	27	09	114
<b>Phulbani</b>	216	27	59	184	254	61	57	258	350	11	21	340
<b>Puri</b>	4226	150	182	4194	1652	146	87	1711	301	25	10	316
<b>Sambalpur</b>	1056	115	102	1069	981	129	140	970	173	24	43	154
<b>Sundargarh</b>	2729	113	129	2713	418	71	84	405	276	26	48	254
<b>Total :</b>	<b>35442</b>	<b>1970</b>	<b>2218</b>	<b>35194</b>	<b>11699</b>	<b>1325</b>	<b>1158</b>	<b>11866</b>	<b>4147</b>	<b>373</b>	<b>325</b>	<b>4195</b>

Name of the Judgeship	CRIMINAL REVISIONS				CRIMINAL MISC. CASES				SPECIAL ACT CASES			
	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12..2008
<b>Balasore</b>	419	36	36	419	113	566	592	87	247	60	08	299
<b>Bolangir</b>	202	40	21	221	89	455	491	53	112	12	06	118
<b>Cuttack</b>	213	31	31	213	127	1318	1228	217	239	21	16	244
<b>Dhenkanal</b>	105	32	26	111	92	393	435	50	249	21	11	259
<b>Ganjam</b>	267	30	32	265	112	642	665	89	196	39	04	231
<b>Kalahandi</b>	119	08	04	123	22	125	132	15	323	11	15	319
<b>Keonjhar</b>	20	07	04	23	30	262	266	26	60	06	10	56
<b>Khurda</b>	205	13	28	190	113	579	647	45	308	11	04	315
<b>Koraput</b>	72	37	21	88	76	412	446	42	252	14	13	253
<b>Mayurbhanj</b>	58	14	10	62	61	325	341	45	41	06	03	44
<b>Phulbani</b>	136	06	05	137	44	389	307	126	38	04	01	41
<b>Puri</b>	228	36	14	250	62	387	413	36	263	24	15	272
<b>Sambalpur</b>	114	43	56	101	145	861	927	79	192	30	43	179
<b>Sundargarh</b>	79	25	30	74	81	503	552	32	65	06	14	57
<b>Total :</b>	<b>2237</b>	<b>358</b>	<b>318</b>	<b>2277</b>	<b>1167</b>	<b>7217</b>	<b>7442</b>	<b>942</b>	<b>2585</b>	<b>265</b>	<b>163</b>	<b>2687</b>

Name of the Judgeship	PREVENTION OF CORRUPTION ACT (VIG. + C.B.I.)			
	Opening Balance as on 1.10.2008	Institution	Disposed of	Pendency as on 31.12.2008
Balasore	493	07	04	496
Bolangir	122	--	--	122
Cuttack	427	08	07	428
Dhenkanal	--	--	--	--
Ganjam	228	04	04	228
Kalahandi	--	--	--	--
Keonjhar	--	--	--	--
Khurda	804	22	19	807
Koraput	119	01	07	113
Mayurbhanj	--	--	--	--
Phulbani	--	--	--	--
Puri	--	--	--	--
Sambalpur	420	05	--	425
Sundargarh	01	--	--	01
<b>Total :</b>	<b>2614</b>	<b>47</b>	<b>41</b>	<b>2620</b>

Name of the Judgeship	CRIMINAL CASES OF MAGISTERIAL COURTS									
	Opening Balance as on 1.10.2008			Institution	Disposed of			Pendency as on 31.12.2008		
	Gen. File	Trial File	Total		Gen. File	Trial File	Total	Gen. File	Trial File	Total
<b>Balasore</b>	35672	21054	56726	3692	530	2206	2736	36467	21215	57682
<b>Bolangir</b>	15014	6696	21710	3269	280	3229	3509	14880	6590	21470
<b>Cuttack</b>	135608	39976	175584	4261	901	3750	4651	135735	39459	175194
<b>Dhenkanal</b>	45928	11788	57716	2841	747	1155	1902	46959	11696	58655
<b>Ganjam</b>	36219	20485	56704	6737	3569	3639	7208	35619	20614	56233
<b>Kalahandi</b>	25972	9177	35149	1704	22	1892	1914	25737	9202	34939
<b>Keonjhar</b>	13292	6838	20130	1143	173	1090	1263	13258	6752	20010
<b>Khurda</b>	95560	9474	105034	5936	3641	624	4265	97026	9679	106705
<b>Koraput</b>	48182	22127	70309	3096	269	3250	3519	48141	21745	69886
<b>Mayurbhanj</b>	17932	10173	28105	1331	68	1031	1099	18130	10207	28337
<b>Phulbani</b>	13021	6275	19296	958	374	987	1361	13605	5288	18893
<b>Puri</b>	23603	12270	35873	3536	821	1890	2711	23042	13656	36698
<b>Sambalpur</b>	62159	15922	78081	2265	05	2346	2351	61633	16362	77995
<b>Sundargarh</b>	60728	10237	70965	1795	297	1659	1956	60203	10601	70804
<b>Total :</b>	<b>628890</b>	<b>202492</b>	<b>831382</b>	<b>42564</b>	<b>11697</b>	<b>28748</b>	<b>40445</b>	<b>630435</b>	<b>203066</b>	<b>833501</b>

**TOTAL NO. OF CIVIL AND CRIMINAL CASES DURING THE PERIOD FROM 1.10.2008 TO 31.12.2008**

	<u>Opening Balance</u>	<u>Institution</u>	<u>Disposed of</u>	<u>Pendency</u>
<b><u>CIVIL</u></b>	186353	12973	11201	188125
<b><u>CRIMINAL</u></b>	855831	52149	49892	858088



## OUTLINES OF SOME RECENT ORISSA HIGH COURT JUDGEMENTS

### **SATYA SUNDAR TRIPATHY – V- MAMATA TRIPATHY.**

MATA NO. 59 OF 2007 ( DT. 01.10.2008)

**HINDU MARRIAGE ACT, 1955 SEC, 9 & 13.**

**r/w SEC. 6 & 13 HINDU MINORITY & GUARDIANSHIP ACT.**

Divorce sought by wife – Husband prayed for restitution of conjugal rights - Marriage dissolved by a decree of divorce during pendency of restitution petition - Decree challenged in appeal - Evidence of wife discloses deep anguish, disappointment and frustration against husband – Not shaken during the course of thorough and rigorous cross- examination – In the other hand husband not offered himself for examination in Court rather harassed the wife on different dates by adjourning the case and protracting the litigation – Judge Family Court as well as this Court taken all steps for reunion of the parties but wife became reluctant – Held, marriage has completely broken down and there is no chance of re-union between the parties. In the above circumstances granting a decree of divorce U/s 13 by Family Court during pendency of application U/s 9 is not fatal and the same is confirmed.

So far custody of children is concerned both son and daughter are minors and their welfare being paramount they should remain with their mother and after they attain the age of majority it will be left to them to decide whether to stay with father or mother – However the father shall have the right to visit the children and interact with them. Appellant is directed to pay Rs. 8,000/- per month to the children for their educational expenses.

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

### **HRUDAMANI BEWA -V- STATE OF ORISSA & TWO ORS.**

CRL.REV. NO. 673 OF 2005 ( DT. 01.10.2008)

**CRIMINAL PROCEDURE CODE, 1973 - SEC. 203**

Dismissal of complaint Case - Order challenged - At the time of cognizance the test is whether there is sufficient material to proceed against the accused persons but it is not the duty of the Magistrate to see whether evidence is adequate for convicting the accused - Cognizance is taken at the initial stage when the Magistrate applies his judicial mind and at that time he shall have to see if ingredients of the offences have been fulfilled or not.

In the present Case Magistrate has given much importance on the discrepancies in the statement of the complainant and that of the witnesses examined by him - But Sec. 203 Cr.P.C. is no a regular stage for adjudicating the truth - On perusal of the statements of the witnesses, it reveals that a prima facie Case for some of the offences is established - Held, this Court set aside the impugned order and remitted the matter for application of mind afresh.

(Pradip Mohanty, J.)

**SRI DEBA @ DEBENDRA RAY –V– STATE OF ORISSA.**

BLAPL NO. 11456 OF 2008. ( Dt. 01.10.2008 ).

**CRIMINAL PROCEDURES CODE, 1973 – SEC, 439.**

Bail – Offence U /s. 13 (2) , 13(1) , 13(1) (d) P.C.Act & Section 420, 468, 471 IPC. – Petitioner was arrested and released on bail – Thereafter petitioner avoided to appear in the Case - N.B. W. as well as process U/s. 82,83, Cr.P.C. issued several times- He remained as an absconder for more than 18 years.

Once the petitioner is granted bail he will find out one way or other to avoid the process of the Court – No proof is submitted in support of the contention that the petitioner has a mentally retarded son and his presence is essential to take care of him – Held, prayer for bail is rejected especially for the conduct of the petitioner – However if trial is not concluded during the year 2008, the petitioner may renew his prayer for bail before the trial Court.

(L.K.Mishra, J.)

**REENA DUTTA -V- STATE OF ORISSA.**

BLAPL NO. 7944 OF 2008 ( Dt. 01.10.2008.)

**CRIMINAL PROCEDURE CODE, 1973 – SEC. 439.**

Bail – Offence U/s. 468, 417, 409 & 506 IPC. – Petitioner granted interim bail for two months – Prayer for regular bail – State raised objection that petition not maintainable as petitioner is not in custody.

If the petitioner granted interim bail for two months and he moved regular bail petition during that period he is to be considered in custody and such application can not be rejected on the ground of non-maintainability.

In the present Case most of the financial irregularities relate to a period when petitioner was not in employment – Her bonafides is apparent as she had tendered resignation alleging financial irregularities which was not accepted and the said fact was not disputed by the prosecution – Investigation of the Case is over so there is no chance of tampering with the evidence – The petitioner is a woman and a high placed officer and she having her home and hearth there is no chance of absconding -. Held, this Court is inclined to grant bail.

(L.K.Mishra, J.)

**SAROJ KUMAR PADHI & ORS. –V- STATE OF ORISSA & ORS.**

W.P.( C ) No. 9514/03 and batch ( Dt.15.10.2008 ).

**CONSTITUTION OF INDIAL 1950 – ART. 16.**

Appointment of a few persons working as Assistant Engineers on ad hoc basis have been validated ignoring the other similarly situated persons – Action challenged in different Writ petitions.

Once unequal became equal, the state has no authority to discriminate them and make equals as unequal.

Govt. Appointed Asst. Engineers on ad hoc basis from those junior Engineers who had degree in engineering – The stipendiary engineers who were appointed on stipendiary basis were also given

ad hoc appointment as Asst. Engineers – All the persons were working on ad hoc basis in the post of Asst. Engineers when the validation Act came into force but only 881 stipendiary Engineers turned Asst. Engineers were validated.

Held, the validation Act, 2003 is violative of Article 16 (1) of the Constitution and is declared invalid being ultra vires the constitution and a writ of mandamus is issued commanding the Opp.Party state to treat the same inoperative and quashed all consequential actions taken pursuant to the said validation Act.

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

**STATE – V – KUMAR PENTHEI & OTHERS**  
GOVT. APPEAL NO.5 OF 1985.(DT. 15.10.2008)

**CRIMINAL PROCEDURE CODE, 1973 - SEC. 378.**

Acquittal by the learned Sessions Judge, by giving benefit of doubt to the accused persons punishable U/s. 302 I.P.C.- Government challenged the said order in appeal.

This court observed that investigation in this Case has been conducted in a most slipshod and casual manner. When F.I.R discloses that some unknown person had killed the deceased evidence collected at the trial is completely at variance from the F.I.R story – I.O. did not care to direct the investigation in right earnest – He did not send the weapon of offence for examination immediately after seizure- The blood stained cloths seized from some of the accused persons were sent for examination more than two months after the seizure as a result of which the blood stains got deteriorated- Even though accused Kumar Penthei stated to have admitted the occurrence before the I.O., the I.O. did not take any steps to record his statement Us. 164 Cr.P.C. Held, investigation made in this Case was a tainted one – Conclusion arrived at by the learned Sessions Judge cannot be said to be unreasonable for interference.

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

**CHOUDHURY PRADHAN –V– STATE OF ORISSA & OTHERS**  
W..P.( C ) NO. 14276 of 2008 . (Dt.22.10.2008)

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

Suspension of Sarpanch – U/s. 115 (2) the Legislature made it clear that while keeping such an elected Candidate under suspension, the authority concerned should assign reasons for taking such a decision, there by intending that such order should not be passed in a routine manner, but should be passed with caution after due circumspection by assigning cogent reasons in support of such order.

In the impugned order no such reason has been assigned except stating that the state Government is satisfied that further continuance of the petitioner in the office of Sarpanch will be detrimental to the interest of the inhabitants of the Gram Panchayat.

Held, impugned order of suspension is quashed.

(M.M.Das, J.)

**MOHAMMAD RAHEMAT HOSSAIN. –V– THE REGISTRAR, ORISSA ADMINISTRATIVE TRIBUNAL, BHUBANESWAR & OTHERS.**

O.J.C. NO. 2675 OF 1999. (Dt. 23.10.2008 )

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

Service – Petitioner assails the promotion of O.P. 4 to 9 before the Tribunal – O.A. dismissed- Hence the writ petition.

There is no basis for the petitioner to claim seniority over the private Opp.Parties in Class-II Cadre - Petitioner admits that the private Opp.Parties were directly recruited and appointed in Class-II Cadre long before he was promoted to that Cadre- Direct recruitment was made in accordance with Government instruction in existence during that period – The petitioner did not chose to challenge the process of direct recruitment earlier – Therefore, at this stage, there is not scope for the petitioner to contend that the private Opp.Parties were not senior to him in Class – II Cadre – Held this Court does not find any infirmity in the impugned order.

(L.Mohapatra, J. & B.K.Patel, J.)

**GIRIJA MOHANTY. – V – REVENUE DIVISIONAL COMMISSIONER & ORS**

W.P.( C ) NO.8551 OF 2007. ( Dt.23.10.2008)

**ORISSA CONSOLIDATION OF HOLDINGS & PREVENTION OF FRAGMENTATION OF LAND ACT, 1972 – SEC. 37 (1), 41 (1) (2) r/w. RULE 36.**

Whether Tahasildar can be directed to decide and dispose of the Case pursuant to the remand order passed by the Revenue Divisional Commissioner when revision is pending before him, even if notification U/s. 41 (1) of the Act has been made – No.

In the event of a pending Case is remanded, the same can only be remanded to a subordinate authority under the Act and not to the local Tahasildar, who only possess the power to give effect to an order passed in a pending proceeding U/s. 41 (2) and has no power to adjudicate the same – In other words, only in a Case which is pending on the date of issuance of notification U/s.41 (1), where a positive direction to correct the land record or map, finally published, is passed, such order can be given effect to, by the local Tahasildar under Rule 36 – Held, the RDC was in error in remitting the Case to the Tahasildar instead of the Consolidation Officer Udala as the same is a whole remand requiring a fresh adjudication of the lis.

(M.M.Das, J.)

**BISRA STONE LIME COMPANY LTD. – V – SUBASINI NAIK**

F.A.O. NO. 130 OF 2006 ( DT. 29.10.2008 )

**WORKMEN'S COMPENSATION ACT, 1923 - SEC. 3(1) & 30**

Death of Workman - As per death Certificate he died due to diabetes mellitus, hypertension and cerebral haemorrhage while in duty as Security Guard - Commissioner for workmen's Compensation awarded compensation - Award challenged by employer.

Deceased while in duty as Security Guard complained of pain and feeling uncomfortable - In spite of such request he was not relieved till arrival of his reliever in the next shift - Thereafter he was admitted in hospital and died during treatment.

Held, death of the deceased workman had a casual connection with his employment as Security Guard, which was a contributory cause and accelerated his death and therefore the said death of the deceased workman arose out of and in course of his employment - No illegality committed by the Commissioner to warrant any interference.

(S.C.Parija, J.)

**MAYADHAR JENA – V – STATE OF ORISSA & ORS.**

W.P.( C ) NO. 7906 OF 2008, ( DT. 31.10.2008 )

**ORISSA GRAMA PANCHAYAT ACT, 1964 – SEC 124 (3), 133 (2) r/w. RULE 216 (b).**

Collector's direction to convene special meeting for taking action against Secretary Gram Panchayat ( G.P ) - Resolution of G.P to suspend Secretary- Resolution not approved by Sub-Collector – Collector asked petitioner to file a S.A U/s. 133 (2) before him – Petitioner preferred S.A – Subsequently he was put under suspension – Hence this writ petition.

U/s. 124 (3), Collector has the power to make requisition for convening a special meeting of the G.P and put an agenda to be considered in such meeting and it is the G.P which is to decide over such agenda and pass a resolution – No jurisdiction with the Collector to direct Sarpanch or any Gram Panchayat to take action against any of its employees.

In the present Case G.P. resolved to put the Secretary under suspension under Rule- 216 (b) – Nothing in the said rule that the resolution of the G.P is required to be approved by the Sub-Collector – Moreover the Collector is erred in directing the petitioner to prefer a S.A. against the order of dis-approval by the Sub-Collector – Held , action of the Collector is dis-approved by this Court – Notice of suspension against the petitioner is quashed and the petitioner shall continue to function as Sarpanch of the Gram Panchayat.

(M.M.Das, J.)

**SRI PARIKSHITA MALLICK –V – MAHILA KUTIR SILPA SIKSHYASRAMA.**

RSA. NO. 271 OF 2008 ( Dt. 31.10.2008 )

**CIVIL PROCEDURE CODE, 1908 – SEC. 100.**

First appellate Court dismissed Title Appeal on the ground of limitation by refusing to condone the delay – The same would amount to a decree which can be the subject matter of Second Appeal filed U/s. 100 C.P.C. – Held, Second Appeal is maintainable – Impugned orders dismissing the application for condonation of delay and consequently dismissing the appeal for being barred by time are set aside.

(M.M. Das. J.)

**GADEI DAKUA & ORS – V – RANGABATI GOUDA**

SECOND APPEAL NO. 263 OF 1986 (Dt. 03.11.2008)

**CIVIL PROCEDURE CODE 1908 – ( ACT V OF 1908) SEC.100.**

Defendant No. 3 executed a deed of settlement in favour of his wife (plaintiff ) in respect of the suit land – Subsequent disposal of property by def. No. 3 to Defendants No. 1 & 2 - Plaintiff filed suit for permanent injunction and recovery of possession – suit decreed – Decree confirmed in appeal. Hence this second appeal.

Article 315 of the Hindu Law stipulates that a wife cannot herself demand a partition but if a partition does take place between her husband and sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband. Held, in the present Case by virtue of the deed of settlement executed by defendant No .3 in favour of his wife coupled with delivery of possession, the plaintiff has acquired valid right, title and interest in respect of the suit property. No reason to interfere with the concurrent decree impugned in this appeal.

(A.S.Naidu, J.)

**NARAYAN CHANDRA NAYAK – V – HARISH CHANDRA JENA & TWO ORS.**

W.A. NO.67 OF 2008, ( Dt. 04.11.2008)

**ORISSA PANCHAYAT SAMIT ACT, 1959 – SEC. 44 – L, R/W RULE 30 OF ORISSA PANCHAYAT SAMITI ELECTION RULES, 1991.**

Panchayat Samit Election – Application for recounting of votes - In recounting appellant was declared elected by one vote only – Res . No.1 filed Election petition and an application for recounting of votes – Application allowed – Appellant challenged the order in Writ petition – Writ dismissed by learned Single Judge- Hence this appeal.

Case of illegally accepting or rejecting the ballots has to be pleaded giving serial number of ballots, the source of information the name of the agent who had furnished such information and the Note Book on the basis of which such details had been furnished must be produced.

However the secrecy of the ballot must be zealously guarded and recounting can be permitted in exceptional circumstances where the Court comes to the conclusion that Election petitioner is not seeking a roving and fishing inquiry.

Held, question for recounting had been taken by the Election Tribunal at this appropriate stage i.e. after evidence had been adduced by the parties – However recounting of votes shall be in respect of the votes in dispute and there shall be no recounting of all the votes as stated in the election petition.

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

**ASHOK KUMAR SAHU -V- RAGHAB CHANDRA BHOI & ORS.**

W.P.(C). No. 8832 of 2007 ( Dt.4.11.2008 )

**ORISSA GRAM PANCHAYAT ACT, 1964 - SEC. 31, r/w. SEC. 2 OF CIVIL COURTS ACT.**

Filing of election Petition - Not only the Election Petition is prescribed to be filed before the Civil Judge (Jr. Divn.) but also it is necessary that the concerned Gram Sasan in respect of which the election dispute is raised, must be situated within the territorial jurisdiction of the said Civil Judge (Jr. Divn.).

In the instant case, Civil Judge (Jr. Divn.), Bolangir who passed the impugned order has no territorial jurisdiction over the concerned Gram Sasan and he can not exercise jurisdiction in deciding the election dispute - Held, the Addl. Civil Judge (Jr. Divn.), Loisinga under whose territorial jurisdiction the concerned Gram Sasan is situated, can only have jurisdiction to entertain and try the election dispute.

(M.M.Das, J.)

**SK. SIRAJ & OTHERS -V- NILAMANI MOHAPATRA & OTHERS**

W.P. (C) No. 14718 of 2008 (Dt. 12.11.2008 )

**CIVIL PROCEDURE CODE, 1908 - (Act V of 1908) Order-1, Rule- 10.**

Partition suit - Defendant Nos. 16 to 18 sold the suit land in favour of the Petitioners - Petitioners filed application under Order-1, Rule-10 C.P.C. to implead them as parties in the suit - Application rejected taking into consideration the provision U/s 52 T.P. Act - Hence the writ petition.

The object of Order 1, Rule-10(2) C.P.C. is to facilitate an effectual adjudication of all the material questions arising between the parties inter se vis-a-vis the property in question. However, the effect of Sec. 52 T.P. Act is that a lis pendens transferee is bound by the decree whether on contest, ex parte or on compromise.

In the present case petitioners purchased some property from one of the co-sharers and they can put forth their claim on the undivided share of their vendor in the suit. Held, this Court set aside the impugned order with a direction to implead the petitioners as parties to the suit.

(Sanju Panda, J.)

**UTKAL CHRISTIAN COUNCIL – V – STATE OF ORISSA & ANR.**

W.P. (C) NO. 16121 OF 2008 (Dt. 17.11.2008)

**COMMISSION OF INQUIRY ACT, 1952 - SEC. 3, R/W SEC. 5(3) & 7****ORISSA LOKPAL & LOKYUKTA ACT, 1995.**

Assassination of Swami Laxmanananda Saraswati - Disturbance in Phulbani & Kandhamal area - Govt. appointed Justice S.C.Mohapatra, former Lokpal as Commission of Enquiry - Appointment challenged - Ground is earlier appointment of Justice Mohapatra as Lokpal makes him ineligible to be appointed as Commission of Inquiry.

U/s. 5(3) of the 1995 Act, once a person has been appointed as Lokpal, such person is disqualified from holding any employment either under the State or any Local authority - U/s. 3 of the Commissions of Inquiry Act, 1952, the Commission of Inquiry is appointed for the purpose of making an inquiry into any definite matter of Public importance - So such appointment can not be termed as "employment under the State" - Held, Commission of Inquiry does not fall within the disability prescribed U/s. 5(3) of the Act, 1995 being not employment. Writ petition is liable to be dismissed.

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

**NABAKISHORE MOHAPATRA -V- CUTTACK DEVELOPMENT AUTHORITY & ORS.**

O.J.C. NO. 4728 OF 2001 (Dt.18.11.2008)

**ORISSA CIVIL SERVICES (CCA ) RULES, 1962****RULE –15 R / W RULE 6 ORISSA DEVELOPMENT AUTHORITIES RULES, 1983.**

Service –Removal of Petitioner by the Chairman CDA Under Rule 6 of CDA Rules – Order challenged in Writ Petition – Allegation is petitioner was indulged in preparation of forged documents like approval of building plan and permission letter in favour of one B.K.Panda – After removal from

service Criminal Case registered against the petitioner in which he was acquitted – In the present Case CCA Rules are applicable - Under Rule- 15 CCA Rules disciplinary authority shall frame definite charges on the basis of which inquiry is to be held – Admittedly, the said Rules not followed while passing the impugned order – Held, Order of removal is set aside and the matter is remitted back to the authorities to frame definite charges against the petitioner and proceed and conclude the inquiry under the provisions of CCA Rules.

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

**GARUDA MEHER. -V- STATE OF ORISSA.**  
JAIL CRIMINAL APPEAL NO. 40 OF 1999, (Dt.20.11.2008)

**INDIAN PENAL CODE, 1860 – SEC. 84, r/w SEC. 313 Cr. P.C.**

Admission of the Crime at the Stage of recording of Statement U/s. 313 Cr.P.C by itself cannot give only implication that the accused possesses an abnormal mind – It may also a Case of repentance or frankness or boldness - In the absence of proof that accused was suffering from unsoundness of mind so as not to be capable of Judging good or bad of the act done by him, the benefit of the provision of Section 84 IPC. Cannot be extended to him – Held, finding of the Trial Court for the conviction of the appellant Under Section 302 IPC is confirmed.

(P.K.Tripathy, J. & Sanju Panda, J.)

**STATE OF ORISSA -V- RAMA BAHADUR PANDEY (SINCE DEAD AFTER HIM)**  
**SMT. KEWAL PANDEY & ORS.**

Govt. Appeal No. 14 of 1995 ( Dt.21.11.2008 )

**CRIMINAL PROCEDURE CODE, 1973 - SEC. 378, R/W. SEC. 62 NDPS ACT.**

Sessions Judge while convicting the deceased respondent U/s. 18 & 20(b)(i) NDPS Act directed return of seized Cash of Rs. 5,68,417.55 p. to him (Now his legal heirs) - State in this appeal challenged the part of the impugned judgment directing return of money.

Since Sec. 378 Cr.P.C. provides for appeal in case of acquittal this Court construed this appeal to be one U/s. 454 Cr.P.C.

U/s. 62 NDPS Act any amount is liable to be confiscated only when it is found to be the sale proceeds of contraband sold by the accused - None of the witnesses testified regarding sale of the contraband by the deceased respondent - They simply deposed regarding seizure of contrabands and Cash - In the present case Prosecution itself having admitted absence of any nexus between the seized Cash and contrabands, there is no scope for confiscation of the Cash as sale proceeds of illicit drugs.

Held, there is no infirmity in the order directing return of seized Cash.

(B.K.Patel, J.)



**SATRUGHNA MALLICK – V- STATE OF ORISSA & ORS.**

O.J.C. NO. 7808 OF 2001 ( Dt. 27.11.2008 )

**ORISSA LEGISLATIVE ASSEMBLY SECRETARIAT ( RECRUITMENT AND CONDITIONS OF SERVICES RULES 1983 ( AS AMENDED IN 1989 ) - RULE 7-B.**

Petitioner, a member of Schedule Caste – He faced type test and joined as Junior Grade Typist – Post of Sr. Grade Typist fell vacant – Eligibility of petitioner for promotion - Opp.Party No.2 refused promotion under Annexure –1 on the ground that the petitioner had not passed departmental type test – Hence the writ petition .

Rule 7-B inserted to 1983 Rules in 1989 which was in vogue during 1991, when the post of Sr. Grade Typist fell vacant is silent with regard to passing of speed test for promotion to the post of Senior Grade Typist – However Rule 7-B (I) which was inserted in 1983 Rules in 1992 provides that a Junior Grade Typist is required to pass departmental speed test to be eligible to the next higher post on promotion.

Held, Post which fell vacant prior to amended Rules would be governed by the Old Rules but not by the new Rules. O.P.2 is erred in passing Annexure – 1 which is quashed. Petitioner is not required to pass departmental speed test in type writing to come under consideration zone for promotion to Senior Grade Typist.

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

**PURNA CHANDRA PATNAIK -V- STATE OF ORISSA & 2 ORS.**

O.J.C NO. 6712 OF 2000. (Dt.28.11.2008).

**ORISSA CIVIL SERVICE ( CCA ) RULES 1962 – RULE 13.**

Diciplinary Proceeding – Petitioner was serving as SDJM – Charge sheet served on him – Enquiring Officer exonerated him from all the nine charges – This Court while considering the Enquiry report in its administrative side cautioned the officer to be careful in future and shall be kept under observation – Hence the Writ Petition.

If the competent authority does not agree with the inquiry officer, he must record reasons for disagreement and supply the same to the delinquent to file his objection – Moreover as per the Rules “ Suspension “ is a punishment but the direction “ to be cautioned and be careful in future and shall be kept under observation “ was outside the aforesaid Rules – Since the Full Court has not disagreed with the Enquiring Officer nor it recorded any reasons for disagreement nor gave any notice to the petitioner, this Court is of the opinion that such an order is not sustainable in law- Held, the impugned order is quashed and the period of suspension is to be treated as part of service – The arrear be paid to the petitioner with interest 9% per annum.

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

**PRASANT KUMAR KHUNTIA - V- UNION OF INDIA & ANR.**

O.J.C. NO.5431 OF 2000 (Dt. 02.12.2008)

**CONSTITUTION OF INDIA, 1950 – ART. 226.**

Petitioner is an advocate – Filed Writ petition for a direction for payment of Professional fees from his client along-with interest.

The contract between the parties is in the realm of private law- Generally a Writ does not lie for recovery of an amount under a contract – If a term of contract is violated ordinarily the remedy is not the Writ petition under Article 226 which is a matter for adjudication by a Civil Court - Writ Petition should not be entertained as there can not be a separate law for advocates – Held, Writ petition dismissed with liberty to the petitioner to claim the relief before the appropriate forum or settle with respondents amicably .

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

**DILLIP NAIK & ANOTHER –V- STATE OF ORISSA.**  
CRIMINAL APPEAL NO. 250 OF 1997. (Dt. 02.12.2008 )

**INDIAN PENAL CODE, 1860 - SEC. 302/34, 307/34 & SEC. 27 ARMS ACT.**

Conviction U/s 302/34 & U/s. 307/34 I.P.C and Sec. 27 Arms Act – Conviction challenged by the appellants.

P.W.3 wife of the deceased & informant in the Case and P.W.4 the son of the deceased who accompanied the deceased to the place of occurrence have stated categorically regarding firing and throwing of bombs – Evidence of P.W.s 3, 4 & 5 is consistent with the medical evidence – Learned Sessions Judge on going through the evidence of P.Ws 1, 2, 3, 4, 5, 6, & 12 reached to an irresistible conclusion that both the appellants have fired from their respective pistols at P.W.4 and the deceased in furtherance of their common intention which resulted in death of the deceased.

Held, this Court finds no infirmity in the impugned judgment and order of conviction.

(L.Mohapatra, J. & B.P.Ray, J.)

**JATIM MOHAPATRA @ MALLIK – V - STATE OF ORISSA.**  
CRIMINAL APPEAL NO. 345 OF 1993. ( DT.02.12.2008 )

**INDIAN PENAL CODE, 1860 - SEC.302.**

Conviction U/s. 302 I.P.C is under challenge - It is proved through evidence that the appellant is the author of the fatal injuries received by the deceased on his abdomen, which caused his death.

Undisputedly, there is one injury which resulted in death of the deceased and the same is attributed to the appellant. It is also an admitted position that the quarrel preceded the assault. The quarrel also took place at the spot itself – There was no premeditation nor is there any evidence that the appellant was expecting the deceased to come to that place. There was no direct quarrel between the appellant and the deceased on any issue. From the above circumstances it can reasonably be inferred that there was no intention to cause death. The incident took place at the spur of the moment in the heat of passion. Appellant can be held guilty U/s. 304 (I) instead of Section 302 IPC and ten years R.I. will meet the ends of justice.

(L.Mohapatra, J. & B.P.Ray, J.)

**UNION OF INDIA & ANR. –V – SHRI SHYAM SUNDAR MOHANTY.**  
ORIGINAL JURISDICTION CASE NO. 17699 OF 2001 ( Dt.02.12.2008)

**CONSTITUTION OF INDIA ,1950 – ART. 309 R/W RULE 9 CCS ( Pension ) Rule 1972.**

Withholding of Pension – Opp.Party challenged the action before the Tribunal – Tribunal quashed such Punishment – Hence the Writ Petition.

UPSC upon perusing the records of the disciplinary proceeding found that there was no loss caused to the Govt. by the action of the charged officer and no malafide attributed to him and only default is failure in obtaining orders of the higher ups prior to disposal of the unserviceable materials.

Tribunal in the impugned judgment recorded that before passing the order for disposal of unserviceable materials the Opp.Party had obtained advice of the Internal Financial Advisor so the Lapse does not amount to “grave misconduct” within the meaning of Sub Rule 1 of Rule 9 of the CCS (Pension) Rules 1972. Held, the contention of the learned Counsel for the Opp.Party that Rule 9 cannot be invoked in Case of grave misconduct unless pecuniary loss is caused to the Government is unsustainable - This Court affirmed the order passed by the Tribunal.

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

**BENUDHAR SWAIN -V- PRESIDING OFFICER, LABOUR COURT,**  
O.J.C NO. 10611 OF 1999 ( Dt. 03.12.2008 )

**INDUSTRIAL DISPUTES ACT, 1947 - Sec.10.**

Termination of Workman – Termination challenged by the General Secretary of the Employees Association – Preliminary enquiry was conducted – General Secretary did not pursue the matter- Dispute raised by petitioner and conciliation having failed, reference made to the Labour Court U/s.10 ID Act.

Decision of the Presiding Officer that the dispute having been raised 11 years after termination from service, the Court is incompetent to adjudicate the dispute is challenged in this Writ application. In this case Presiding Officer, Labour Court has erred in law in refusing to adjudicate the dispute referred to it solely on the ground of delay in raising the dispute – Held, impugned award is quashed – Matter remitted back to the Labour Court to answer the reference referred to it in accordance with law.

(M.M.Das, J.)

**GIRIJA SHANKAR DAS. –V– STATE OF ORISSA & ORS.**  
O.J.C. NO.309 OF 1994. (Dt.04.12.2008)

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

Petitioner claims full salary in UGC scale of pay- Claim refused for deficiency in qualification – Action challenged – This Court in the Case of Kalidas Mohapatra & Others. – V – State of Orissa & Ors. (O.J.C. No. 15062/96) held that petitioners who did not secure 54 % marks at P.G. level examination having been condoned by the University and their appointments being approved prior to 01.04.1989, they were entitled to get U.G.C scale of pay .

In the present Case petitioner's appointment was approved prior to 01.04.1989 and his deficiency in qualification has already been condoned by the University - Moreover the post in which the petitioner was appointed on 10.11.1980 was created in the year 1977 and five years have completed by June 1982 - By then the post was eligible to get direct payment i.e. full cost of salary.

Held, petitioner is entitled to direct payment on and from completion of five years from July, 1977 when the post was created in the college and got Government concurrence.

(B.P.Das, J. & I.Mahanty, J.)

**PRASANNA KUMAR RATHA.-V – DISTRICT JUDGE, GANJAM, BERHAMPUR & ANR.**

W.P.( C ) NO. 10153 OF 2008 . ( Dt.05.12.2008 )

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

Service – Delinquent faced departmental proceeding as well as Criminal trial – Petition filed before Enquiry Officer for stay of departmental proceeding till disposal of Criminal Case – Petition rejected – Hence this Writ Petition.

There is no prohibition for continuing both the proceedings simultaneously – However Disciplinary Proceeding may in an appropriate Case be kept in abeyance where the same are exclusively based on the incident on which the delinquent is facing the Criminal trial and for both the Proceedings the evidence is same and charge framed against the delinquent is of very grave in nature and Case involves complicated question of facts and law.

In the instant Case Criminal trial is not on the same charge as involved in the Disciplinary Proceedings – In the Departmental Proceedings, four charges have been levelled against the petitioner and only one out of the said charges is pending before the Criminal Court and three other remaining charges in the Departmental Proceeding are serious in nature – Held, it is not a fit Case where Disciplinary Proceeding should be stayed till conclusion of the trial of Criminal Case.

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

**M/S. UTKAL DISTILLERIES LTD. – V – STATE OF ORISSA & ORS.**

OJC NO. 9369/1998, W.P ( C ) No.3097/ 2003 & 7108 / 05 ( Dt.05.12.2008 )

**BIHAR & ORISSA EXCISE ACT, 1915 – SEC. 27 (1) r/w. ENTRY 51 OF LIST 2 OF SCHEDULE 7 OF THE CONSTITUTION.**

Demand notice to pay duty on the weak spirit is under challenge. State legislature had no authority to levy duty or tax on alcohol which is not for human consumption as that could only be levied by the Center.

State can impose excise duty only within the ambit of the constitution and when constitution does not permit the State to impose duty on the alcoholic liquor not fit for human consumption, the State has no authority to impose duty on such alcoholic liquor.

Held, the impure spirit / weak spirit which according to the chemical analysis is not fit for human consumption cannot be subjected to duty and therefore the demand notices demanding excise duty in respect of the same are illegal and liable to be quashed.

(I.M.Quddusi, J. & Sanju Panda, J.)

**DEEPAK KUMAR PATRO @ DIPU & ORS. – V – STATE.**  
CRIMINAL APPEAL NO. 62 OF 2003. ( Dt. 05.12.2008 )

**INDIAN EVIDENCE ACT, 1872 – SEC. 27.**

Patricide alleged against the appellant – Discovery of the weapon of offence i.e. the sword (M.O.I) - P.W.4 was a witness for recovery of M.O.I. but he did not support the prosecution in respect of such recovery – P.W.5, the I.O. stated that on failure of the Fire Brigade to drain out water from the well he took assistance of two persons to pick up M.O.I – Those two witnesses were not examined and accused deprived of to cross- examine those two persons – After bringing out the sword from the well it was not confirmed from the accused if that was the weapon of offence used by him – Moreover, 'O' group blood found in the wearing apparels of the accused and the deceased which alone is deficient to prove the charge U/s. 302, 201/34 I.P.C.

Held, prosecution has failed to prove the charges beyond all reasonable doubt and this Court grants benefit of doubt to the accused persons.

(P.K.Tripathy, J. & Sanju Panda, J.)

**SUBHRASMITA SAHOO -V- STATE OF ORISSA & ANR.**  
CRL.REV. NO.1433 OF 2008. (Dt.05.12.2008)

**CRIMINAL PROCEDURE CODE, 1973 – SEC. 401.**

Kidnapping – F.I.R, loded – Statement of victim girl recorded U/s.164 Cr.P.C. – Victim was sent to short stay home – She filed petition seeking permission to stay with her husband (the accused) on the ground that in the meanwhile she became major and she is in advance stage of Pregnancy – Learned SDJM rejected such application – Hence the revision .

A husband is not the custodian of his wife who is a major Magistrate recorded statement U/ s. 164 Cr.P.C and estimated her age to be 18 years – Once the petitioner is accepted to be major there can not be any question of her custody – Learned Court below has committed an error in holding that setting her at liberty would amount to review of his earlier order since the earlier order giving her custody to short stay home was passed when she was a minor and under changed circumstances when she becomes a major the earlier order has lost its bindings force – Held, there is no merit in the impugned order which is set aside.

(L.K.Mishra, J.)

**PERINTI VEKATA RAO. -V- UNION OF INDIA & ORS.**  
O.J.C. NO. 4666 OF 2002. ( Dt.,05.12.2008 )

**CONSTITUTION OF INDIA, 1950 – ART 226, r/w SEC. 5 LIMITATION ACT.**

A writ application under Article 226 cannot be dismissed only on the ground of limitation. The equitable principle is that the delay should not be unreasonable and unexplained and a Court may refuse to grant relief where delay affects the merits of the petitioner's claim or affects the rights of a third party.

In the case at hand, there is no reasonable explanation for the delay – Opp.Party's Case is after lapse of 25 years of discharge of the petitioner from Military service his service records have been destroyed and disability gratuity already paid to him – Held, the petitioner is guilty of laches and this Court is not inclined to grant relief to the petitioner.

(A.S.Naidu, J.)

**JUBIDA BIBI & OTHERS –V- RAFIQUE MOHAMMED & ORS.**

MISC.CASE NO. 55 OF 2008 ( Dt.08.12.2008 )  
(Arising out of A.H.O. No. 6 / 1997.)

**CIVIL PROCEDURE CODE, 1908 – ORDER 41, RULE 1 R/ W SEC. 5 LIMITATION ACT.**

Delay may be condoned but in-ordinate delay may not be condoned unless there are compelling circumstances to do so.

Court has ample power to entertain a prayer for condonation of delay even orally and while considering such a prayer Court has to advance the cause of substantial justice – However, as delay crystallizes certain rights in favour of the other party the same don't require to be taken away lightly – The Court does not have the power to extend the period of limitation fixed by the legislature, but in exceptional circumstances it can condone the delay if the party had sufficient cause for not approaching the Court in time.

In the present Case application for condonation of delay not filed – No explanation for the delay in filing the application for taking the decree on the record has been furnished except saying that the certified copy could not be filed "inadvertently". – Held, appellants are guilty of negligence and inaction – No obligation on the part of the Court to entertain the application after expiry of about twelve years – Misc, Case lacks merit and is accordingly dismissed – As a consequence there of, the appeal fails.

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

**RADHA KRISHNA PADHI -V- BHAJAKRUSHNA PANDA & ORS.**

A.H.O. NOS. 61, 62 & 63 OF 1994, ( Dt.08.12.2008 )

**SUCCESSION ACT, 1925 – SEC. 61.**

Will – Execution of – Will has to be proved giving strict adherence to the statutory provisions- The document should be prepared at the instance of the testator, out of his free will - The testator should be mentally and physically fit to take the decision voluntarily to execute such a document which should be free from well founded suspicions – If allegation of fraud or coercion or undue influence is alleged, the burden to prove the same lies on the Caveator.

In the present Case no cause is made out to doubt the validity of the will and the deed of settlement - There is nothing on record to show that Smt. Urmila Padhi was not in sound mind or was not physically fit to take a free decision or such decisions had been taken under pressure or coercion – Held, deed of settlement and the will executed by Smt. Urmila Padhi are Valid.

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

**STATE – V – ANIT SINGH @ RABI & ANR. HASINA @ HASTINA SINGH  
& ANOTHER –V– STATE & ANIT SINGH @ RABI – V – STATE OF ORISSA.**  
DSREF NO.2/ 2006 & JCRLA NO. 3/2007 & CRLA. No.58/2007 ( Dt.11.12.2008 )

**CRIMINAL PROCEDURE CODE, 1973 SEC.313.**

Examination U/s. 313 Cr.P.C.is not a mere formality - Relevant evidence, direct or circumstantial cannot be used against the accused unless it has been confronted to him in course of examination U/ s.313 Cr.P.C.

In this Case the accused persons were not confronted with the relevant incriminating evidence available against them either to explain or to take note of for explaining and to adduce defence evidence if any – If such evidence is excluded, then the chain of circumstances would not be complete - Here prosecution is not guilty of not adducing or suppressing such evidence but this Court finds a failure on the part of the learned Sessions Judge to take note of such evidence for the purpose of confronting the accused in course of their examination U/s. 313 Cr.P.C.

Justice is dearer to both the parties i.e. the victim of the offence and the accused but for laches, negligence or inaction of the Court either party should not suffer.

Held, order of conviction set aside, death reference discharged and the Sessions Case is remitted back for retrial from the stage of examination of accused U/s. 313 Cr.P.C.

(P.K.Tripathy, J. & Sanju Panda, J.)

**GANDHARBA KU. MOHANTY,  
AFTER HIM HIS WIDOW J.MOHANTY & ORS. -V- SURENDRA PRASAD NAIK**  
SECOND APPEAL NO. 27 OF 1993. (Dt..11.12.2008 )

**LIMITATION ACT, 1963 ( ACT NO. 36 OF 1963 ) – ARTS. 64 & 65.**

Adverse possession – A person who claims adverse possession is required to prove (1) on what date he came in to possession (2) what was the nature of his possession (3) whether the fact of possession was known to the other party (4) how long his possession has continued and (5) whether his possession was open and undisturbed.

In the present Case there is no evidence as to when the possession of the appellants became adverse – Mere pleading that there was uninterrupted possession for several years is not enough to claim adverse possession – Moreover long possession is not necessarily adverse possession – Held, none of the ingredients required to establish adverse possession is satisfied in this Case – This Court finds no infirmity or illegality in the impugned judgment and decree and declines to interfere with the same.

(A.S.Naidu, J.)

**RAJENDRA NARAYAN MISHRA -V- STATE OF ORISSA.**  
CRIMINAL APPEAL NO. 15 OF 1997, (DT.11.12.2008).

**INDIAN PENAL CODE, 1860 – SEC. 304-B, 498-A / 34, & SEC. 4 DP. ACT.**

Deceased Kalpana was given in marriage to Co-accused – Skirmishes erupted between them due to non-payment of Rs.5,000/- towards dowry - Appellant is the brother in law of the co-accused – Appellant and others committed murder of Kalpana & her male child – Trial Court relying on the evidence of P.Ws 1, 7, 10 & 11 found the accused persons guilty U/s. 304-B, 498-A & 34 IPC. & Sec.4 D.P.Act - Hence this appeal.

There is no sufficient material to hold that the appellant demanded any dowry from the deceased - Kalpana or from any of her relations – No evidence that the appellant tortured Kalpana for non-payment of dowry just before her unnatural death – Trial Court without analyzing the evidence properly found the appellant guilty – Held, judgment and order of conviction and sentence are set aside.

(R.N.Biswal, J.)

**DILIP KUMAR RAY . – V – STATE OF ORISSA & ORS.**  
CRIMINAL MISC. CASE NO. 771 OF 2002 (DT.15.12.08.)

**CRIMINAL PROCEDURE CODE, 1973 – SEC. 482.**

First Information Report lodged against petitioner U/s. 13 (2) r/w Sec. 13 (1)(e) prevention of corruption Act – Prayer to quash the F.I.R. – Allegation is petitioner acquired assets disproportionate to his known source of income.

Inherent powers U/s. 482 Cr.P.C could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of Justice – Perusal of the charge sheet which was filed during pendency of the proceeding shows that the same has been filed U/s. 13 (2) r/w Sec. 13(1) (e) of the P.C.Act awaiting sanction of the Governor of Orissa - Hence the grievances of the petitioner can be looked into by the investigating agency in accordance with law if it so decides – In the alternative, if sanction is accorded, the petitioner can file an application before the trial Court at the time of framing of charge raising the points highlighted in this application - Held, this Court is not inclined to interfere with the proceeding U/s. 482 Cr.P.C. and quash the F.I.R.

(B.P.Das, J.)

**SRI DOLA GOVINDA SAMAL -V- STATE OF ORISSA & ANR.**  
O.J.C. No. 13528 of 1997 ( Dt.16.12.2008 )

**ORISSA SERVICE CODE, 1939 - RULE - 71(a).**

Compulsory retirement - Authority must consider and examine over-all entries of the Officer concerned and not an isolated entry - In spite of satisfactory performance, the authority may desire to compulsorily retire an employee in public interest, as in the opinion of the said authority, the post has to be manned by a more efficient and dynamic person and if there is sufficient material on record to



show that the employee rendered himself a liability to the institution, there is no occasion for the Court to interfere in the exercise of its limited power of judicial review.

Moreover washed of theory does not have any universal application and it will have some relevance while considering the Case of Govt. Servant for further promotion but not in a Case where the employee is being assessed by the Reviewing Authority as to whether he is fit to be retained in service or require to be given compulsory retirement.

In the present Case petitioner had generally not been assessed as a good officer - He had been awarded adverse entries throughout his career and his integrity was recorded as doubtful several times and such entries does not stand washed off merely on the ground that petitioner was granted promotion ever after recording of such entries - Held, this Court is not inclined to entertain the Writ Petition.

(Dr. B.S.Chauhan, C.J. & I.Mahanty, J.)

**SAIBU @ TSMERING LEPCHA. – V– STATE OF ORISSA.**  
JCRL. APPEAL NO. 44 OF 1999. (Dt.16.12.2008 ).

**CRIMINAL PROCEDURE CODE, 1973 – SEC. 313.**

A conviction based on the accused' s failure to explain what he was never asked to explain is bad in law.

Question U/s. 313 Cr.P.C. relate to the whole Case generally and should also be limited to any particular part or parts of it – The whole object of the Section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the question must be fair and must be conducted in a form which an ignorant or illiterate person will be able to appreciate and understand.

In the present Case evidence tendered by the prosecution relating to the report of the serologist is a relevant evidence and crucial for the accused – When the said evidence not put to the accused utilizing such incriminating evidence against him is found to be not legal – Minus that evidence the chain of circumstances is not completed so as to fix the charge U/s.302 IPC. against the appellant – Held , appellant is entitled to benefit of doubt.

(P.K.Tripathy, J. & Sanju Panda, J.)

**M/s. JHOLEI BABA AGENCY & 2 ORS. – V – STATE BANK OF INDIA**  
W.P.(C) NO.18128 OF 2008 (Dt.17.12.2008)

**RECOVERY OF DEBTS DUE TO BANKS & FINANCIAL INSTITUTION ACT, 1993 - SEC. 19(4)  
R/W RULE 12 OF THE DEBT RECOVERY TRIBUNAL (PROCEDURE) RULES, 1993.**

Bank filed Suit on 01.9.2008 - It came up for hearing before the Tribunal on 22.10.2008 - Tribunal issued notice returnable on 2.12.2008 - Defendant - Petitioner appeared on 17.11.2008 - On 2.12.2008 defendant filed petition to grant time to file W.S. - Tribunal passed order at 4.00 O'Clock asking defendant to tile W.S. by 6.00 O'Clock on the same day or by 10.12.2008 on deposit of 5% of the claim amount with the applicant Bank - Order challenged.

“Lex non cogital impossible” (the law does not compel a man to do what he cannot possibly perform).

So there are implied obligations not to force a person to do something which is rendered impossible by causes beyond his control.

A person is not supposed to do impossible thing - Tribunal ought not to have proceeded with such a haste - held, Direction of pre-deposit of any part of the outstanding claim can not be directed to be deposited while considering the application for grant of time to file W.S.

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

**SURESH KUMAR SAHOO. – V – STATE OF ORISSA & ORS.**

W.P.( C ) NO. 5858 OF 2008. ( 17.12.2008).

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

Petitioner granted enhanced scale of pay being approved by the finance department – Allegation against petitioner by an anonymous letter – Enquiry started against the petitioner on the allegation of corruption which has not been proved but in the enquiry report an observation made that enhancement of petitioner’s scale of pay in 1986 was not proper – Order issued to stop drawyal of the petitioner’s pay in the higher scale till a final decision taken by the Govt. – Order challenged in Writ petition.

No justifiable reason was shown for withdrawing the benefit already granted to the Petitioner – Enquiry report does not indicate that there is any misconduct on the part of the petitioner - No definite charges of misconduct initiated against him – The order impugned amounts to punishment which cannot be awarded without following due process of law and without giving the petitioner an opportunity of hearing - Held, impugned order is illegal & the same is liable to be quashed .

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

**BABULA PATRA – V - STATE OF ORISSA.**

CRIMINAL APPEAL NO. 125 OF 1990 ( Dt. 17. 12. 2008)

**ESSENTIAL COMMODITIES ACT, 1955 ( ACT NO 10 OF 1955 ) – SEC. 7(1) (ii)  
r/w. CLAUSE 3(1) OF THE ORISSA RICE & PADDY CONTROL ORDER, 1995.**

Conviction U/s. 7(1) (ii) E.C.Act is under challenge. In order to prove a Case under Cause 3(1) of the Orissa Rice and Paddy Control Order, 1965 onus is on the prosecution to prove that the accused is a ‘dealer’ .

In the present Case Prosecution has failed to prove that the accused was a dealer at the relevant time – It has also failed to prove the same and purchase of any Paddy by the accused-appellant - None of the prosecution witnesses had seen the accused purchasing the seized paddy - On the contrary, defence proved that the accused-appellant had some land and the seized paddy was the yield of his land – Moreover prosecution has not seized Ext-3 i.e. the receipt of the market committee, Jeypore from the possession of the accused-appellant – Held, prosecution has failed to establish a Case beyond all reasonable doubt for conviction of the appellant U/s. 7(1) (a) (ii) E.C.Act.

(Pradip Mohanty, J.)

**SURIA @ SURENDRA KUMAR SAHU – V – STATE OF ORISSA**  
JAIL CRIMINAL APPEAL NO. 37/2002 ( Dt.18.12.08)

**PENAL CODE, 1860 – SEC. 300, 302.**

Murder – Motive – Proof of – Though, it is a sound presumption that every Criminal act is done with a motive, it is unsound to suggest that no such Criminal Act can be presumed unless motive is proved.

In the present Case deceased suffered homicidal death due to asphyxia resulting from strangulation – It is also stated that the Colony people caught hold of the accused and after arrival of the Police he was handed over to it - Because of the clear evidence on record and the conscious act of the accused in throttling the deceased, the appellant is not to get any benefit on the ground of non – proof of the motive or intention – Held, impugned order of conviction & sentence is maintained.

(P.K.Tripathy, J. & Sanju Panda, J.)

**RATA TIRIA. -V- STATE OF ORISSA.**  
CRL.REV. NO.583 OF 2008 ( Dt.18.12.2008 )

**THE JUVENILE JUSTICE ( CARE & PROTECTION OF CHILDREN ) ACT, 2000**  
**SEC.7 - A ( AS AMENDED IN 2006 ) R / W RULE 12.**

Police registered Case under various Sections including Section 302 IPC – Petitioner was arrested during investigation – Petition filed on behalf of the petitioner for ossification and radiological tests in order to ascertain his age – Learned SDJM rejected the claim of the petitioner to be a juvenile of 15 years of age – Hence this revision.

Section 7-A provides that if a claim of juvenility is raised before the Court or if the Court forms an opinion that the accused was juvenile on the date of commission of offence it is obligatory on the part of the Court to make an inquiry and to take such evidence as may be necessary (but not an affidavit ) so as to determine the age of such person as per Rule 12.

In the present Case though a claim of juvenility was raised before the learned SDJM he did not follow the procedure prescribed in Sec. 7(A) or Rule 12 but relying on the age mentioned by the I.O. in the forwarding memo formed an opinion that the accused is not a juvenile – Held, impugned order is not sustainable and the same is quashed.

( L.K.Mishra, J.)

**TARKESWAR MOHANTY - V – INSURANCE CORPORATION OF INDIA & ORS.**  
W.P.( C ) NO. 2584 OF 2004. ( Dt.23.12.2008 )

**CONSTITUTION OF INDIA, 1950 – ARTS. 226 & 227.**

Removal from service – Allegation that the petitioner remained absent from headquarters unauthorisedly - Allegation does not find place in the charge sheet as well as in the report of the Enquiry Officer – Only allegation is that the petitioner did not attend the Counselling session held on 12.06.1995 – Order challenged.

In this case charges are not specific but the Enquiry Officer has submitted his report on five charges – Disciplinary Authority concurred with the findings of the Enquiry Officer, but has taken new ground for imposing major penalty – When charge has not been framed, punishment can not be imposed basing upon certain new charges, without giving an opportunity to the petitioner to defend his Case and the order imposing penalty is not legally tenable – Held, impugned order of removal from service is set aside so also the affirming orders passed by the appellate & Reviewing Authority and instead of reminding the matter to the authorities for imposing lesser punishment this Court directed reinstatement of the petitioner in service without any financial benefit – However the seniority of the petitioner be maintained and his pay shall be fixed notionally.

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

**RAMESH KUMAR GUPTA – V – STATE OF ORISSA & ORS.**

W.P.(C) NO.13545 OF 2008 (Dt.24.12.2008)

**BIHAR & ORISSA EXCISE ACT, 1915 - SEC. 42**

Cancellation of the licences in respect of five IMFL “off” shops of the petitioner - Order challenged in Writ Petition.

There are materials on record to show that seizure had been made in respect of some liquor bottles having no Company label or the label supplied by the State Government from one of the shops and prima facie the same is found to be duplicate - Held, State has competency U/s. 42 of the Act to cancel the licences in respect of all the five shops and there is no illegality in the impugned orders.

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

**SARASWATI DAS -V- STATE OF ORISSA & ORS.**

W.P. (C) No. 17281 of 2008 ( Dt.24.12.2008 )

**CONSTITUTION OF INDIA, 1950 - ART. 226 & 227**

Transfer - Grievance Petition against petitioner - Inspector of Schools conducted enquiry and submitted a report suggesting transfer of the petitioner - Petitioner transferred from Khannagar High School to Mahavir Bidyapitha, Mahanga - Order challenged in Original Application before the Tribunal - Original Application dismissed - Hence the Writ petition.

Order of transfer has been passed as a measure punishment and is punitive in nature - Petitioner had not been given an opportunity of hearing before such order of transfer was passed - No justification to uphold the order of transfer - Held, order of transfer as well as the impugned judgment of the Tribunal are set aside.

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

## **MAJOR EVENTS**

**1. Oath taking ceremony of newly recruited Judicial Officers.**

Hon'ble the Chief Justice, Orissa High Court administered the Oath to the newly recruited Judicial Officers (57 Judicial Officers) on 24.12.2008 in the Orissa Judicial Academy. Hon'ble Judges of the Court graced the occasion.

**2. Inauguration of the Fast Track Court Building at Bhadrak and opening of the Court Building for J.M.F.C.-cum- C.J.(J.D.), Chandabali.**

The Fast Tract Court Building at Bhadrak and Court Building for J.M.F.C.-cum- Civil Judge (Jr. Divn.) at Chandabali was inaugurated on 29.11.2008 by Hon'ble Dr. Justice B.S.Chauhan, the Chief Justice of Orissa High Court. Hon'ble Shri Justice S.R.Singharavelu, Judge, Orissa High Court also graced the said occasion.

**3. Intensive Mediation Training Programme for the Mediators from 9.12.2008 to 14.12.2008.**

The details report are indicated hereafter under the caption "Activities of Orissa State Legal Services Authority"

**4. 22<sup>nd</sup> Permanent & Continuous Lok Adalat for High Court Cases**

The details report are indicated hereafter under the caption "Activities of High Court Legal Services Committee"

**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 I.M.Quddusi	2.10.2008	Attend the Seminar on "Interaction on Implementation of National Rural Employment Guarantee Scheme at Vigyan Bhawan, New Delhi
		23.11.2008	Participate the National Conference on "Legislative Reform of Procedural Law for Timely Justice" at National Judicial Academy, Bhopal.
		25.11.2008	Attend the National Conference of Legal Experts on NREGA at NASC Complex, PUSA, New Delhi
2.	Hon'ble Shri Justice P.K.Tripathy.	2.10.2008	Attend the Seminar on "Interaction on Implementation of National Rural Employment Guarantee Scheme at Vigyan Bhawan, New Delhi
		15.11.2008	Attend the meeting of the Chairpersons of E-Courts Project, at New Delhi
3.	Hon'ble Shri Justice B. P. Das.	8.11.2008 & 9.11.2008	Attend the National Conference of High Court Justices on "Environmental Protection, Sustainable Development and the Law ; Key Issues and Challenges" at N.J.A., Bhopal.
4.	Hon'ble Shri Justice Pradip Kumar Mohanty.	8.11.2008 & 9.11.2008	Attend the National Conference of High Court Justices on "Environmental Protection, Sustainable Development and the Law ; Key Issues and Challenges" at N.J.A., Bhopal.
5.	Hon'ble Shri Justice M. M. Das.	18.10.2008 & 19.10.2008	Participate the National Conference of High Court Justices on Human Rights Law : Current Issues and Emerging Challenges at N.J.A., Bhopal.
6.	Hon'ble Kumari Justice Sanju Panda	13.12.2008 & 14.12.2008	Participate the National Conference of High Court Justices on Civil, Commercial and Economic Law in India : Current Issues and Emerging Challenges at N.J.A., Bhopal.
7.	Hon'ble Shri Justice B.N.Mahapatra.	18.10.2008 & 19.10.2008	Participate the National Conference of High Court Justices on Human Rights Law : Current Issues and Emerging Challenges at N.J.A., Bhopal.

## ACTIVITIES OF ORISSA STATE LEGAL SERVICES AUTHORITY

During the period from 1.10.2008 to 31.12.2008 four Zonal Districts Mega Lok Adalats were organized by this Authority for disposal of maximum number of Insurance related cases. Further, during the period under report, the State Legal Services Authority conducted Seminar on Mediation "An important tool in dispensation of speedy justice" at Balasore, Berhampur, Cuttack and Puri on zonal basis as per the instruction of the Mediation and Conciliation Project Committee of Supreme Court of India to sensitize the judicial officers, litigant public, lawyers including Govt. pleaders and other stake holders about the concept and utility of 'Mediation' as an alternative viable solution for resolution of disputes both at pre-litigative and post-litigative stages. Necessary logistic support was provided by the four general Insurance Companies to organize the Zonal Districts Mega Lok Adalats and Seminars.

In the **1<sup>st</sup> Zonal Districts Megal Lok Adalat** consisting of the undivided Districts of Balasore, Mayurbhanj and Keonjhar held at Balasore on 1.11.2008. 192 nos. of MACT cases were disposed of and an amount of Rs. 2,22,56,900/- towards compensation was awarded to the victims of road accidents. The Seminar on Mediation was followed by Megal Lok Adalat and it was inaugurated by Shri Prafulla Chandra Ghadai, Hon'ble Finance Minister, Orissa in presence of Hon'ble Mr. Justice I.M.Quddusi, Judge, Orissa High Court and Executive Chairman, Orissa State Legal Services Authority, Hon'ble Mr. Justice S.C.Parija, Judge, Orissa High Court, Hon'ble Mr. Justice A.K.Samantaray, President, Consumer Disputes Redressal Commission. About 31 nos. of Judicial Officers, Insurance Officers, Advocates had attended the Seminar.

The **2<sup>nd</sup> Zonal Districts Mega Lok Adalat** consisting of the undivided Districts of Ganjam, Koraput, Kalahandi and Phulbani was held at Berhampur on 15.11.2008, wherein 431 nos. of MACT cases were disposed of and Rs. 1,14,78,700/- was awarded as compensation to the victims of road accidents. The Seminar on Mediation was followed by Megal Lok Adalat and it was inaugurated by Hon'ble Dr. Justice B.S.Chauhan, the Chief Justice of Orissa High Court and Patron-in-Chief, Orissa State Legal Services Authority as Chief Guest in presence of Hon'ble Mr. Justice I.M.Quddusi, Judge, Orissa High Court and Executive Chairman, Orissa State Legal Services Authority and other Hon'ble Judges of the High Court Hon'ble Mr. Justice R.N.Biswal, Hon'ble Kumari Justice Sanju Panda, Hon'ble Mr. Justice B.N.Mahapatra, Hon'ble Mr. Justice B.K.Patel, Judges of the Orissa High Court had attended the Seminar as Guest of Honour. About 40 nos. of Judicial Officers of the aforesaid Districts, Insurance Officers, Government Pleaders/Public Prosecutors and Advocates had attended the Seminar.

The **3<sup>rd</sup> Zonal Districts Mega Lok Adalat** consisting of the undivided Districts of Cuttack, Sambalpur, Sundargarh, Bolangir, Sonepur and Dhenkanal was organized at Cuttack on 9.12.2008, wherein whopping 357 nos. of MACT cases were disposed of and Rs. 3,20,23,500/- towards compensation was awarded to the victims of road accidents. The Seminar on Mediation was followed by Mega Lok Adalat and it was inaugurated by Hon'ble Mr. Justice S.B.Sinha, Judge, Supreme Court of India and Chairperson, Mediation and Conciliation Project Committee of Supreme Court of India in presence of Hon'ble Dr. Justice B.S.Chauhan, the Chief Justice of Orissa High Court and Patron-in-Chief, Orissa State Legal Services Authority as Chief Guest in presence of Hon'ble Mr. Justice I.M.Quddusi, Judge, Orissa High Court and Executive Chairman, Orissa State Legal Services Authority, Hon'ble Mr. Justice P.K.Tripathy, Judge, Orissa High Court and Sriram Panchu, Master Trainer, Chennai Mediation Centre alongwith other Hon'ble Judges of Orissa High Court were present. Hon'ble Mr. Justice I.M.Quddusi had delivered welcome address and Hon'ble Mr. Justice P.K.Tripathy had extended vote of thanks. 74 nos. of Judicial Officers of the aforesaid Districts, Insurance Officers and Advocates had attended the Seminar.

The 4<sup>th</sup> **Zonal Districts Mega Lok Adalat** consisting of the undivided Districts of Puri and Khurda was held at Puri on 31.12.2008, wherein 146 nos. of MACT cases were disposed of and Rs. 1,77,21,253/- as compensation was awarded to the victims of road accidents. The Seminar on Mediation was followed by Mega Lok Adalat and it was inaugurated by Hon'ble Dr. Justice Arijit Pasayat, Judge, Supreme Court of India and Executive Chairman, National Legal Services Authority in presence of Hon'ble Mr. Justice Markandey Katju, Judge, Supreme Court of India, Hon'ble the Chief Justice, Orissa, Hon'ble Executive Chairman of State Legal Services Authority and other Hon'ble Judges of the High Court. Hon'ble Mr. Justice Markandey Katju, Judge, Supreme Court of India addressed the participants as the Chief Speaker. Hon'ble Dr. Justice B.S.Chauhan, Chief Justice, Orissa High Court and Patron-in-Chief, Orissa State Legal Services Authority had presided over the Seminar. Hon'ble Mr. Justice I.M.Quddusi, Judge, Orissa High Court and Executive Chairman, Orissa State Legal Services Authority delivered welcome address and Hon'ble Mr. Justice B.P.Das extended vote of thanks in the said Seminar. Hon'ble Mr. Justice Pradip Kumar Mohanty, Hon'ble Mr. Justice B.N.Mahapatra, Hon'ble Mr. Justice B.P.Ray and Hon'ble Mr. Justice B.K.Patel, Judges of Orissa High Court were present in the Seminar as distinguished guests. About 38 nos. of Judicial Officers of the aforesaid Districts, Insurance Officers and Advocates had attended the Seminar.

In the aforesaid Zonal District Mega Lok Adalats, 1144 numbers of MACT cases have been settled / disposed of through mediation / conciliation and a sum of Rs. 8,40,58,353/- has been awarded as Compensation, which exceeded the figure of the last five years. Similarly, during the aforesaid period, 183 nos. of District and Taluk Level Lok Adalats have been organized by the different District/Taluk Legal Services Authorities/Committees, where in 46111 nos. of cases in total has been disposed of which includes Civil - 333, Criminal- 13,789, Revenue - 29,736, Bank - 2187, Consumer - 15, Labour - 10 and Matrimonial Cases - 41. Besides that a sum of Rs. 1,01,23,081/- have been realized towards Criminal and Revenue fine.

During the period under report, 310 nos. of Legal Literacy/Awareness Camps including Micro Legal Literacy Camps have been organized through out the State by D.L.S.A. and T.L.S.Cs. to sensitize the common people about the provision of free Legal Services available to them and different laws benefiting particularly the members of SC, ST, Women, Labourers etc. Further more the benefits of the Scheme of free Legal Aid and Assistance has been provided by the Orissa State Legal Services Authority to 754 persons, which includes SC-118, ST- 49, Women - 377, Children - 6, In Custody - 42 and Other weaker Sections of the Society - 162. Similarly, 254 nos. of cases have also been settled in the Permanent and Continuous Lok Adalats functioning in the State.

Besides aforesaid Zonal Districts Mega Lok Adalats and Seminars, the State Legal Services Authority as well as District/Taluk Legal Services Authorities / Committees of the State have observed the **National Legal Aid Week for the persons suffering from Mental Disabilities** from 10th to 16th October, 2008 by organizing awareness campaign with a view to sensitize the people on the different aspects of Mental Health act. The State Legal Services Authority had conducted a Seminar on mental Health Issues for the persons suffering from mental disabilities on 16.10.2008 in the Conference Hall of the Hotel Pal Height, Bhubaneswar on 16.10.2008 in collaboration with the National Rural Health Mission. It was inaugurated by the Hon'ble Dr. Justice B.S.Chauhan, Chief Justice, Orissa High Court-cum-Patron-in-Chief of Orissa State Legal Services Authority. Sri Sanatan Bisi, Hon'ble Minister, Health & Family Welfare, Govt. of Orissa had attended the function as the Guest of Honour. The Seminar was presided over by the Hon'ble Mr. Justice I.M.Quddusi, Senior Most Judge, Orissa High Court and Executive Chairman of Orissa State Legal Services Authority.



On 9th November, 2008, the **National Legal Literacy Day** had been observed through out the State by the Orissa State Legal Services Authority as well as by the Dist./Taluk Legal Services Authorities/ Committees. To commemorate the occasion, a State Level function was organized on 9.11.2008 at Jayadev Bhawan, Bhubaneswar. Hon'ble Dr. Justice B.S.Chauhan, Chief Justice, Orissa High Court -cum- Patron-in-Chief, OSLSA inaugurated the function as Chief Guest. Hon'ble Mr. Justice I.M.Quddusi, Senior Most Judge, Orissa High Court and Executive Chairman of Orissa State Legal Services Authority presided over the function and Smt. Surama Padhi, Hon'ble Minister, Co-operation Department, Govt. of Orissa and Dr. (Mrs.) Bedabati Mohanty, Chairperson, Jeevan Rekha Parishad were the Guests of Honour. On this occasion, Hon'ble the Chief Justice, Orissa High Court had inaugurated Micro Legal Literacy Scheme launched by NALSA and a para legal training camp for tribal women was organized by a reputed NGO Jeevan Rekha Parishad. Hon'ble Chief Justice and Executive Chairman, OSLSA presented Legal Literacy materials to the Tribal girls on the said occasion. A Debate Competition was held on 8.11.2008 in the Madhusudan Law College, Cuttack amongst the Students of M.S. Law College, Cuttack, University Law College, Bhubaneswar and the Law College, Cuttack on the theme of Legal Aid. Hon'ble Dr. Justice B.S.Chauhan, Chief Justice of Orissa High Court awarded trophies and certificates to the winners of the competitions. A photo Exhibition of different Govt. Welfare Schemes was organized by the Directorate of Audio Visual Publicity (DAVP), Govt. of India at Jayadev Bhawan. Song and Drama Division, Govt. of India exhibited cultural programme in the said function.

The State Legal Services Authority had also organized 40 hours **Intensive Training Programme** with 10 actual mediation for the Advocates (22 in numbers) in the Orissa Judicial Academy from 9th to 14th December, 2008 as per the instruction of Hon'ble Supreme Court Mediation & Conciliation Project Committee. The training programme was inaugurated by Hon'ble Mr. Justice S.B.Sinha, Judge, Supreme Court of India in presence of Hon'ble the Chief Justice of Orissa High Court, Hon'ble the Executive Chairman, OSLSA and other Hon'ble Judges of the High Court of Orissa. The Advocates were equipped with various tools and techniques of Mediation with a view to employ those skills while dealing with cases to be referred to them for mediation. Master Trainers from Delhi, Chennai, Jharkhand Mediation Centres had imparted training to the Advocates.

The valedictory session of the training programme was organized on 14.12.2008. It was inaugurated by Hon'ble Mr. Justice I.M.Quddusi, Judge, Orissa High Court in presence of Hon'ble Mr. Justice P.K.Tripathy, Hon'ble Mr. Justice B.P.Das and Hon'ble Mr. Justice A.S.Naidu, Judges of Orissa High Court, Mr. M.L.Mehta, District Judge, Delhi Mediation Centre and Mr. R.R.Prasad, management Consultant, Ranchi were present. The trainees were awarded with certificates and mementos.

## ACTIVITIES OF HIGH COURT LEGAL SERVICES COMMITTEE

1. The 22<sup>nd</sup> Permanent & Continuous Lok Adalat for High Court Cases during the month of November, 2008 was held on 29.11.2008 in which Hon'ble Shri Justice L.Mohapatra, Hon'ble Shri Justice I.Mahanty, Hon'ble Shri Justice B.N.Mahapatra, and Hon'ble Shri Justice S.C.Parija presided over the Lok Adalat Benches in presence of Hon'ble Shri Justice P.K.Tripathy, Chairman, High Court Legal Services Committee.

In the said Lok Adalat, 7 M.A.C. Appeals, 2 other cases and 5 Bank Appeals (only S.B.I. Cases) have been disposed of by way of compromise between the parties. The General Insurance Companies present in the Lok Adalat agreed to pay compensation of Rs. 15,25,000/- to the claimants in MAC Appeals.

Shri S.K.Mishra, Registrar General, Orissa High Court, Shri S.Mohanty, Member Secretary, Orissa State Legal Services Authority and Officers of the Registry assisted the Hon'ble Judges in the Lok Adalat.

2. During the period under report, 82 applicants have been provided with the benefit under the scheme of Legal Aid and Advice by the High Court Legal Services Committee to file or defend their cases in High Court. Similarly, 116 Legal Aid Counsels have been paid their honorarium dues during the months from October, 2008 to December, 2008.

## 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.	05.10.2008 & 06.10.2008	Plea Bargaining	S.D.J.Ms. & Magistrates	24	S.D.J.Ms. = 12 Magistrate = 12
2.	14.10.2008 & 15.10.2008	Gender Justice	C.J.Ms, S.D.J.Ms. & Magistrates	25	C.J.Ms. = 8 S.D.J.M. = 9 Magistrates = 8
3.	08.11.2008 & 09.11.2008	Court & Docket Management	Civil Judges (Sr. & Jr. Divn.) & S.D.J.Ms.	23	C.J. (SD) = 9 C.J. (JD) = 5 S.D.J.M = 9
4.	14.11.2008 & 15.11.2008	Judicial Administration with Special reference to Financial & Resource Management.	District Judges & Registrars, Civil Courts.	22	Dist. Judges = 13 Registrars = 9
5.	13.12.2008 & 14.12.2008	Appreciation of Evidence in Civil & Criminal Cases	Civil Judges (Sr. & Jr. Divn.) & S.D.J.Ms.	24	C.J. (SD) = 10 C.J. (JD) = 5 S.D.J.M. = 9
6.	29.12.2008 & 30.12.2008	Cyber Law & Challenges of Cyber Space	Dist. Judges	25	District Judges



Hon'ble Dr. Justice B.S. Chauhan, Chief Justice & Hon'ble Shri Justice S.R. Singharavelu, Judge, Orissa High Court attending the Inauguration of F.T.C. Court Building at Bhadrak on 29.11.2008

Hon'ble Dr. Justice B.S. Chauhan, Chief Justice & Hon'ble Shri Justice S.R. Singharavelu, Judge Orissa High Court attending the Inaugural Ceremony of the Court of Civil Judge (J.D)-cum-J.M.F.C. at Chandbali on 29.11.2008



Hon'ble Shri Justice I.M. Qudusi, Hon'ble Shri Justice P.K. Tripathy, Hon'ble Shri Justice B.P. Das & Hon'ble Shri Justice A.S. Naidu attending the Valedictory Function of Intensive Mediation Training Programme for the Mediators held at Orissa Judicial Academy, Cuttack on 14.12.2008

