




CONTRIBUTION OF MADRAS HIGH COURT  
TO THE DEVELOPMENT OF LAW  
MARCH OF LAW

"Justice" leads the humanity towards peace, harmony and equilibrium in human affairs. It is one of the virtues of the society. Law is one of the tools to accomplish justice. Timely justice will enhance the social order. In the words of Justice William J. Brennan of the U.S. Supreme Court, "Law is not an end in itself, nor does it provide ends. It is pre-eminently a means to serve what we think is right". Keeping the high tradition set by the great judges of yesteryears and eminent jurists while commemorating the 150<sup>th</sup> year of the establishment of this Court, we are proud to look back the year 2010-2011 which has witnessed the march of law to a greater extent. Like every year in the past, the year 2010-2011 also saw several land mark judgments. Since every judgment is a class by itself, it became a herculean task to select a few and to bring forth this work on March of Law. Law is not static ; it is vibrant. The more vibrant are the judgments of this Court covering almost all the branches of law.

I. Education for all is one of the superior constitutional goals and, therefore, we commence our journey with the judgments on education. The Government of Tamil Nadu, with a view to bring Uniform Standard of Education, brought in a legislation known as Tamil Nadu Uniform System of School Education Act, 2010 (Samacheer Kalvi Thittam). The constitutionality of the same was upheld by a Division Bench. The new Government which took over during May 2011, brought an amendment to the act thereby postponing the implementation of the act. The said amendment came to be challenged in a number of Public Interest Litigations. The Division Bench presided over by the **Hon'ble The Chief Justice** delivered a historic judgment striking down the Amendment Act passed by the State Legislature postponing the implementation of the act. On an appeal by the State Government, the Hon'ble Supreme Court upheld the judgment of the Division Bench



in toto and directed the Government to supply the textbooks which were already printed by the Government (vide **Shyam Sunder, K. Vs. The State of Tamil Nadu reported in 2011 (4) CTC 801**). In pursuance of the same, Uniform Standard System of Education has been implemented in the State.

2. Similarly, in the State of Tamil Nadu, some unaided private schools and the colleges were collecting unreasonable fees from the students making it very difficult for the poor students to meet such huge fees. With a view to regulate the same, the legislature enacted an Act known as "Tamil Nadu Schools (Regulation of Collection of Fee) Act, 2009". When a challenge was made by the schools, a Division Bench presided over by His Lordship Hon'ble **Mr. Justice H.L.Gokhale** (as His Lordship then was) rendered yet another historic judgment by upholding the Act vide (**Tamil Nadu Nursery, Matriculation and Higher Secondary Schools Association (Regd.) Vs. The State of Tamil Nadu (reported in 2010 (4) CTC 353**). The Division Bench went on to hold that "*the impugned Act has to be considered only in the said context as it provides for the first time the machinery for approval of the fee structure proposed by the private institutions and the determination of a different fee, in case the Committee was of the view that the fee structure was exorbitant or that there is an element of capitation fee or profiteering.*"

3. Right to education upto the age of 14 is a fundamental right under Article 21A of the Constitution of India and right to free and compulsory education has now been declared as a statutory right as well, under the Right of Children to Free and Compulsory Education Act [Central Act 35 of 2009]. Under the Act, there is prohibition for failing students and detaining them in the same standard for any reason including the reason that the student has secured very low marks in the examinations either in the class examinations or in term examinations or final examinations. Despite these fundamental and statutory rights of the children, based on a circular of the Government three lakhs of such children between the age group of 6 to 14 were failed for not securing the pass mark. In **Ka.Kalaikottuthayam v. State [2010 (5) MLJ 1139]** this court set aside such action of a school. The said order was upheld by a Division Bench. Following the said judgment, later on, the Government issued a direction to the schools to promote all such students who were earlier detained. The order of this court, thus paved way for restoring the rights of young students who are the national assets.

4. In order to regulate the designation of Head of the Departments in all aided colleges, including minority institutions, the Government issued an order [G.O.Ms.No.1785 – Education] directing the college authorities to designate the senior most person in the department as the Head of the Department. The minority institutions challenged the same alleging that it infringes the right of management and the internal autonomous of the Institution. A Division Bench in **W.A. [MD] No.649 of 2007 [The St. Joseph College, Trichirappalli Vs. State]** upheld the Government Order saying that Government Order is only regulatory in nature and the same does not infringe the rights of the minority Institutions to administer.

5. The Forum of Minority Institutions and Associations challenged Clause 3 of the Annexure to the University Grants Commission Regulations, 2000 regarding minimum qualification for appointment and career advancement of teachers in Universities and Colleges to be violative of the fundamental rights guaranteed under Article 30(1) of the Constitution of India. A Division Bench in **The Forum of Minority Institutions and Associations Vs. The State of Tamil Nadu** reported in **2011 (1) CTC 162** held that the right of Minority Institutions under Article 30 is an absolute right being basic structure of the Constitution and therefore, any regulation interfering with the right of administration would not be applicable to the Minority Institutions, being violative of Article 30(1) of the Constitution. Once the right of appointment of teachers is taken to be the right of administration, which is not even disputed by the respondents, no other conclusion than the one that the impugned Regulations would not apply to Minority Institutions can be arrived at. This Court ultimately issued a Mandamus directing the Government to approve the selection made by the Minority Institutions without reference to Clause 3 of Annexure to UGC Regulations, 2000.

6. Now, moving on to the Registration Act, in **M/s.Latif Estate Line India Ltd., Vs. Mrs. Hadeeja Ammal** reported in **2011 (2) CTC 1** a Full Bench of this Court presided over by the Hon'ble The Chief Justice has rendered yet another historic judgment which is first of its kind. The question before the Full Bench was whether a Registering Authority under the Registration Act can decline to register a deed of cancellation of an earlier sale. A learned Single Judge of this Court had held in **G.D.Subramaniam Vs. The Sub Registrar**

reported in **(2009) 1 CTC 709** that unilateral cancellation of sale made earlier cannot be made and therefore the Registrar cannot register any such document. The learned Single Judge had disagreed with a Full Bench Judgment of Andhra Pradesh High Court in **Yanala Malleshwari Vs. Ananthula Sayamma** reported in **(2007) 1 CTC 97** where the Full Bench of the Andhra Pradesh High Court, by majority, had held that the Registrar has no power to decline to register such a deed of cancellation of a sale. When a doubt arose about the correctness of the judgment of the learned Single Judge which was followed by two other Division Benches, the matter was referred by yet another Division Bench to the Full Bench. The Full Bench has held that it is within the power of the Registrar to decline to register the deed of cancellation of sale as the document is void [vide **M/s.Latif Estate Line India Ltd., Vs. Mrs. Hadeeja Ammal** reported in **2011 (2) CTC 1**].

7. Under the Provincial Insolvency Act, whether a Court has got power to grant interim relief restraining the debtor from arrest came up for consideration before a Full Bench headed by the Hon'ble The Chief Justice in **Ramalinga Vs. Radha, 2011 (4) CTC 481**. Earlier there were two Division Bench judgments taking conflicting views. The Full Bench has held that though there is no specific provision in the Insolvency Act for granting such a relief, under the Code of Civil Procedure, the Insolvency Court has inherent power to grant such interim protection.

8. Indiscriminate mining of sand from the rivers and river beds was a concern for the Government as well as the public. A Public Interest Litigation was filed by one Mr.Nallakannu, Former State Secretary for the Communist Party of India before the Madurai Bench for a Mandamus to stop all kinds of mining of sand in Thamaraparani River in the State of Tamil Nadu. A Division Bench appointed a Committee of Experts, who in turn, submitted a report to the effect that indiscriminate mining of sand in Thamaraparani River which is a perennial river has caused extensive damage to the river and the Committee was of the further view that there shall be no further mining for the next five years. Acting on the said Report, the Division Bench directed that there shall be no mining in the entire stretch of Thamaraparani river and its tributaries for the next five years. The Division Bench also constituted a Committee headed by a retired Judge of this Court to monitor the mining operations in other rivers throughout the State and to look into the complaints in respect of illegal mining.



The Division Bench further directed that as far as practicable, mining shall be done manually and in the event it becomes imperative, the District Collector or the Government may permit not more than two machines per quarry site.

It is a more balanced judgment between protection of the environment and sustained development. [ vide **M.Periyasamy Vs. State of Tamil Nadu, CDJ 2010 MHC 7447**].

9. A batch of Public Interest Litigation's were filed before the Madurai Bench for protection of certain water bodies in Tiruchirapalli. The National Highways Authority had decided to lay a road across three important lakes in Thrichirapalli district to connect Tiruchirapalli and Karur. During the first round of Litigation, a Division Bench presided over by Hon'ble Mr. Justice D.Murugesan restrained the authorities from laying the road as proposed earlier across the lakes and instead it gave liberty to the National Highways Authority to appoint an Expert Body to go into the question. The Expert Body submitted a report to this Court to the effect that laying of road as proposed by the National Highways Authority across the lakes will completely make the lakes defunct. However, the Expert Body gave alternative suggestions. One such suggestion is to construct over bridge across the lakes or to take the route along the bunds of the lakes. The Division Bench directed the National Highways Authority to lay the road along the ridges of the lake without disturbing the water body or to construct over bridges. The judgment has saved the livelihood of several thousands of agriculturists vide **Tamil Nadu Agriculturist Association, Manikandam Ondrium Vs. Union of India** reported in **CDJ 2010 MHC 1834**.

10. Aggrieved over the establishment of a liquor shop in a residential locality, a litigation came up before a Division Bench in **The Tamil Nadu State Marketing Corporation Ltd., Vs. R.M.Shah** reported in **2011 (1) L.W.(Cri.) 346**. It was contended by the TASMAL that there is nothing in the statute which prohibits conduct of liquor bar in residential zone. Rejecting the said contention, the Division Bench held that any person who is deprived of peaceful life on account of the nuisance created by a liquor shop could challenge the action in locating the shop in a residential or semi-residential locality as offending the right to life guaranteed under Article 21 of the Constitution of India notwithstanding the fact that the liquor shop satisfies the distance criteria. Accordingly the Division Bench upheld the direction for shifting the liquor shop.

11. A Public Interest Litigation seeking issuance of Mandamus forbearing the Government from acquiring the land belonging to the Tamil Nadu Veterinary and Animal Sciences University for the purpose of construction of Metro Head Quarters in the City of Chennai came to be decided in **B.Ramesh Babu Vs. The Secretary, Planning, Development and Special initiatives Department** reported in **CDJ 2011 MHC 2688 : MANU/TN/111/2011**. Considering the importance of the project, this Court observed that "indisputably, because of expansion, rapid development and growth of Chennai City there has been severe traffic congestion in almost all of the roads, particularly, in the roads leading to T.Nagar there is extreme pressure on the adjacent roads owing to pick up and drop off of the passengers from the buses, taxis, autos and two wheelers. As per the studies conducted by the DPR, it has been estimated that by the year 2016 in the peak hours about 7,000 passengers will enter or leave the Chamiers Road Station every hour. Thousands of passengers are expected to use this metro station on the daily basis, which is a place of work and business leading to T.Nagar. It has, therefore, become an urgent need of the day to switch over to Metro Rail for the convenience and comfort of the public. Equally, it cannot also be disputed that Metro Rail is the only solution to mitigate the traffic congestion and air pollution. Hence, in our considered opinion, the decision taken by the respondents to shift the existing facilities available to the Poultry Production and Management is in the larger interest of common public, who will be benefited through this Metro Rail Project." The Division Bench, after having analyzed the pros and cons of the project had to strike a balance between the larger public interest and the private interest of the land owner. Accordingly the Division Bench allowed the Metro Rail Project to be completed on the land in question on certain conditions which shall be strictly followed.

12. The issue relating to the right to quarry stone for a period of 10 years, if it is a virgin quarry, as per Rule 8(8) of the Tamil Nadu Minor Minerals Concession Rules came up for consideration before a Full Bench presided over by the Hon'ble The Chief Justice in **C.Muthukrishnan Vs. The District Collector, Tirunelveli and others** reported in **2011 (5) CTC 577**. Originally on raising a doubt as to whether the term "shall" as employed in Rule 8(8) of the Rules may be construed as "may", the matter was referred to a Division Bench. As there was a conflicting view from a Division Bench, the same was referred to the Full Bench.



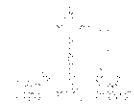
The Full Bench while construing the expression "shall" as found in Rule 8(8) held that "Mere reference to Rule 8(8), as amended by giving a period of 10 years lease by using the word "shall", cannot be construed to be a mandatory duty on the part of the District Collectors while giving notification. Such construction would mean that even in places where minerals may not be available for exploitation for a period of 10 years based on the scientific assessment the District Collector is compelled by giving such lease for 10 years, which cannot be the intent of the law makers in exploiting minor minerals. Further, such construction would mean that irrespective of any circumstances, when, for the first time, a lease is entered into by the District Collector it would be for a period of 10 years. In our view, while issuing notification, the District Collector decides about the availability of minor minerals for exploitation and then proceeds to notify indicating the period. It may not be said to be illegal or against the statute merely because the period is mentioned less than 10 years."

13. In the recent election to the Tamil Nadu State Assembly, the Election Commission of India took some initiatives to curb money circulation to the voters. The said act of the Election Commission was challenged before this Court in a Public Interest Litigation. On considering the said plea, the Division Bench presided over by the Hon'ble The Chief Justice held in ***K.Manivannan Vs. Election Commission of India*** reported in **2011 (3) CTC 785** that the power of the Election Commission under Article 324 includes all other incidental powers, which are not specifically provided in addition to superintendence, direction and control in conducting the elections.

14. In the matter of taking possession of secured assets under the SARFAESI Act a Division Bench of this Court in ***Indian Bank Vs. M/s.Nippon Enterprises*** (dated 08.03.2011) held that if a secured asset is in the occupation of a bona fide tenant, the Bank cannot take physical possession of the property and it can take only symbolic possession. The Division Bench held that SARFAESI Act is merely regulatory in nature to take possession of a secured asset and the same does not confer any right upon the bank to do away with the right of a tenant accrued on account of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960. This judgment is first of its kind in the Country.

15. Expressing concern for the health and well being of the Society in **Robustaa (Hyglow Cafe) Vs. The Commissioner, Corporation of Chennai** reported in **2011 (4) CTC 843** this Court observed that it is absolutely necessary for the State and the Authorities concerned as well as all other stakeholders to achieve the Constitutional goal to take immediate efforts in the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of usage of Tobacco products viz., cigars, cheroots, hookah, tobacco, pipe tobacco, pan masala, etc., which are injurious to health, by taking stringent action on all traders, who use such products in Restaurants or Eating Houses, thereby desisting them acting in a manner harmful to the entire society, particularly the younger generation. This Court further observed that the Government and Authorities concerned are to take appropriate measures to regulate the Hookah Bars, by prohibiting or permitting them with stringent conditions, in exercise of the powers conferred upon them under Section 349 of the Chennai City Municipal Corporation Act and they are to act immediately without any further delay upon the matter, taking into account the legislation, namely, the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and other related laws.

16. While quarrying operations are done as per the license granted and in accordance with the provisions of the Mines and Minerals Act when a specific issue was raised as to the safety of the public passing through, this court held that it is but necessary that before any untoward incident happens, the licensee must adopt safety measure, which includes maintenance of the safety distance. This court further held that mere fact that the Act prescribes a particular distance as a safety distance, perse, does not mean that anything beyond that, could not be adopted by the authority concerned, or for that matter, the licensee and similarly placed persons to do so. Thus, this court in **W.P.No.21296 of 2010 [dated 08.10.2010]** having regard to the safety of the residents of that particular locality confirmed the order of the District Collector prohibiting mining operations even beyond the distance prescribed in the rules by holding that the rules are merely hand-made for good administration, that in the name of observing rules public safety cannot be a casualty, a consideration which needs to have its own weightage both from the angle of the licensee's operation as well as from the perspective of the administration.





17. While considering the scope of the Employees' State Insurance Act, 1948 in **Pithavadian and Partners v. Deputy Director, RO, ESI Corporation, 2010 (3) L.W. 496**, this court held that a firm of Architects, which is more or less equivalent to the firm of lawyers cannot be brought within the ambit of the term 'shop' for the purpose of the Act. An Architect is not doing either a trade or a business and he is governed by a separate enactment and also governed by separate Rules. An Architect is pure and simple doing a profession. Therefore, the firm of architects cannot be held to be a 'shop' so as to bring the firm within the ambit of the Employees' State Insurance Act, 1948 in terms of the Government Order. But, at the same time, apart from doing professional work, if the firm of architects is involved in any trade or business, such as construction work, sale of goods etc., then the firm would certainly fall within the ambit of the Act.

18. A Division Bench of this Court in **K.Sakthi Rani Vs. The Secretary of The Bar Council of Tamil Nadu** reported in **2010 2 L.W. 746** has held that a degree from Open University under the Indira Gandhi National Open University Act, 1985 cannot be treated as a qualification for joining law course in a Law University recognised by the Bar Council of India.

19. The Tamil Nadu Public Service Commission refused to furnish information relating to the marks secured by the candidates who were selected to the post of Assistant Engineer claiming that the said information sought for is exempted under Section 8(1)(d) & (e) of the Right to Information Act. The said contention came to be examined by a Division Bench headed by the Hon'ble The Chief Justice in **Tamil Nadu Public Service Commission Vs. Tamil Nadu Information Commission** reported in **2011 (1) CTC 641**, where in the Division Bench held that the information sought for pertains to a selection to the post of Assistant Engineers in which selection process, the second respondent also participated. In no manner, it could be stated that the information sought for could be considered as a "commercial confidence", "trade secret" or "intellectual property" if disclosed would harm the competitive position of a third party. Therefore the information sought for will not fall within any of the exemptions contained under Section 8 of the RTI Act.

20. An issue as to whether the Government of India was justified in including the Central Bureau of Investigation (CBI) in the Second Schedule of the Right to Information Act, 2005 thereby exempting the CBI from the provisions of the RTI Act subject to the proviso under Section 24(1) of the RTI Act came to be examined by a Division Bench of this Court headed by the Hon'ble The Chief Justice, in a challenge made to the Notification issued by the Government of India dated 09.06.2011, alleging that the said Notification is *ultra vires* of Section 24 of the RTI Act and Article 14 of the Constitution of India in **S.Vijayalakshmi Vs. Union of India** reported in **2011 (5) CTC 376**. The Division Bench held that the purpose and intent of the RTI Act is sufficiently provided for in the two provisos to Section 24(1) of the Act. The information pertaining to allegation of corruption and human rights violation are not excluded under sub-section (1) of Section 24. Therefore, the exemption by virtue of inclusion of CBI in the Second Schedule to the RTI Act is not a wholesale or a blanket exemption as contended by the petitioner. The Court further held that it cannot be stated that every Police *Thana* is an Intelligent Agency and should be treated on par with the CBI for the benefit of the exemption under Section 24 of the Act. Ultimately, the Division Bench held that the Notification is neither *ultra vires* of Section 24 of the RTI Act nor violative of the provisions of the Constitution.

21. A question arose as to whether the Human Rights Commission has got power to issue any direction to the Government or to the respondents to pay compensation or to issue any other direction like initiation of disciplinary proceedings against a public servant etc., This Court has held in **Rajesh Das, I.P.S., Vs. Tamil Nadu State Human Rights Commission (Reported in 2010 (5) CTC 589)** that under the Act, the Human Rights Commission is like a fact finding body and it can make only various recommendations to the Government including for payment of compensation. But such recommendations are not binding on the Government and it is for the Government either to accept or not to accept the said recommendations. Thus, the Human Rights Commission has no power to issue any direction for payment of compensation.



22. Constitutionality of Section 17-A of the Industrial Disputes Act, 1947 was challenged before this court in **Textile Tradesmen Association v. Union of India and others**, reported in **2010 WLR 1011: 2011(1) MLJ 986: 2011(3) LLN 395**. Earlier, the Andhra Pradesh High Court in **Telugunadu Workcharged Employees vs. Govt of India reported in 1997 (3) ALT 492**, declared the same as unconstitutional. In view of the same, a further question arose as to whether the Central Government would be entitled to implement Section 17-A of the Industrial Disputes Act in the Union Territory of Puducherry even after the said provision had been struck down by the Andhra Pradesh High Court. This Court held that such striking down by the Andhra Pradesh High Court binds the Central Government and, therefore, Central Government is not entitled to implement Section 17-A of the Industrial Disputes Act in any part of the country including the Union Territory of Puducherry. This court was of the view that Section 17-A of the Industrial Disputes Act infringes the independence of the judiciary, which is one of the basic structures of the Constitution and, therefore, the same is unconstitutional.

23. In the service jurisprudence, a question arose as to whether currency of punishment has to be treated as a bar for promotion during the said period. A Full Bench, presided over by the Hon'ble The Chief Justice, after extensively going through the constitutional provisions and various other judgments has held that during the period of currency of minor punishment an employee cannot claim, as a matter of right, promotion to the next category merely because he is otherwise fit for promotion. However, after the period of currency of punishment is over, he will be entitled for consideration for promotion to the next post if he is otherwise eligible. The Full Bench further held that "*The embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of 'check period' viz., one year in the case of censure and five years in the case of other minor punishments is illegal and impermissible under the Statutory Rules.*" vide **The Deputy Inspector General of Police, Thanjavur Vs. V.Rani 2011 (3) CTC 129 (FB)**

24. The option of the Government servant to resign his services and the power of the Government to either accept or reject the same, is the subject matter of a writ appeal in ***The Principal Secretary, Health and Family Welfare Department Vs. Dr.N.Udayakumar*** reported in **2010 (5) L.W.719**. This Court held that except for the cases falling within the categories of Rule 41-A(d), acceptance of resignation of the Government servant by the Appointing Authority is a Rule and for the cases falling under Rule 41-A(d), it is an exception, since a clause in the form of Rule 41-A(e) has been inserted into." This Court further held that since one cannot force some one to work who doesn't want to, so rejecting a resignation does nothing to solve the problem. In fact, it will have reverse and serious impact on the performance of the individual, which is quite dangerous for the society, more particularly in medical field.

25. In a contempt proceedings, whether the Court would be within its competence to direct the contemnor to pay compensation to the persons affected by such act of contempt? A Division Bench of this Court in ***G.Rajaram Vs. T.K.Rajendran, I.P.S., reported in 2010 (4) CTC 407*** has held that the power of the Court is not restricted only to imposition of punishments but the same may extend in appropriate cases to order for payment of compensation as well.

26. A Division Bench in ***V.Noble Kumar Vs. The Authorised Officer*** reported in **2010 CIJ 386 CLJ**, while dealing with the scope of enquiry to be held by the Magistrate under Section 14 of the SARFAESI Act held that the Magistrate has to hold a limited enquiry to verify as to whether the provisions of Section 13 have been strictly complied with and then to pass an order taking possession. This judgment has prevented mechanical exercise of power by the Magistrates under Section 14 of the Act.

27. Before Madurai Bench of this Court in ***J.Rajiv Subramanian Vs. M/s.Pandiyas*** reported in **2011 (3) L.W. 808** a Division Bench took the view that sale of secured assets under the SARFAESI Act by means of private treaty is permissible in law provided the debtor is also taken into confidence. If the debtor is kept in dark and the property is sold away under a private treaty, the said sale is not valid.

28. In **R.Sridharan Vs. The Presiding Officer, Principal Family Court, Chennai and another** reported in **2010 (4) CTC 822** a Division Bench has considered the legality of a matrimonial proceeding initiated by the wife before a Family Court in India invoking the provisions of the Hindu Marriage Act against her Hindu husband having domicile in New Jersey in the United States of America. Relying on **Y.Narasimharao Vs. Y.Venkatalakshmi** reported in **1991 (3) SCC 451**, the Division Bench proceeded to say that Section 19 clearly gives jurisdiction to the Court to deal with Matrimonial proceedings initiated by the wife, if she is residing within the jurisdiction of the said Court. There is no question of the second respondent initiating Divorce proceedings before the Court at United States of America invoking the provisions of the Hindu Marriage Act. The moment the appellant has married the second respondent, he has subjected himself to the jurisdiction of the Court designated to deal with matrimonial disputes under Section 19 of the Hindu Marriage Act.

29. In **Consim Info Pvt. Ltd. Vs. Google India Pvt. Ltd.** Reported in **(2010) 7 MLJ 497**, the grievance of the plaintiff was that the defendants who also have matrimonial web portals, rendering online matrimonial services in the internet, advertise their services in the search engine "Google", by adopting adwords and texts, which are exactly identical or deceptively similar to the registered trademarks of the plaintiff. This Court held: (1) In view of Sections 2(2)(b) and 2(2)(c) and 29 of the Trade Marks Act, 1999 the use of the mark as or as part of any statement about the availability, provision or performance of certain services, would tantamount to 'the use of the mark in relation to such services'. (2) If a person use the individual words constitution the registered trade marks of the plaintiffs, in their advertisements in the sponsored links column, then such use would certainly fall within Section 2(2)(c)(ii) and 29(6)(d) of the Trade Marks Act, 1999 (3) Honesty is actually an animus of mind and it can never be discovered either by the words spoken by a person or by the acts of omission and commission committed by him and as such, one can only make inference from the circumstances. (4) When the use by the defendants, of the individual words constituting the registered trademarks of the plaintiffs, in the advertisements in internet, may not amount to taking unfair advantage of and contrary to honest practices in industrial or commercial matters and when it is not shown that the use

is detrimental to the distinctive character of the mark, though the use by the defendants would be an use in the course of trade and an use in advertising, such use does not amount to an infringing use. (5) A registered trade mark cannot be held to be invalid in a legal proceeding on the ground that it was not registrable under Section 9 of the Trade Marks Act, 1999. (6) The offer of words by a search engine, in their keywords suggestion tool, may not per se amount to an infringement use of registered trademark, though it may amount to a use in the course of their own trade.

**30. In *Shanmugam Vs. The District Collector, Coimbatore* reported in 2010 (4) CTC 750** the concept of prospective overruling came to be considered before this Court. In ***State of Tamil Nadu Vs. Ananthi Ammal* reported in 1995 (1) CTC 465** the constitutionality of the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act came to be challenged. A Division Bench of this Court struck down the Act as unconstitutional. Thus all the proceedings pending as on the date of the judgment stood quashed. The matter was taken up to the Hon'ble Supreme Court, where the Hon'ble Supreme Court set aside the judgment of this Court and upheld the constitutionality of the Act. The question which came up for consideration before this Court in ***Shamugam's case*** was as to whether the proceeding which got lapsed in pursuance of the Division Bench judgment in ***Ananthi Ammal's case*** will get revived. The contention of the State was that ***Ananthi Ammal's case*** will have only prospective operation. But this Court rejected the said plea and held that ***Ananthi Ammal's case*** is retrospective in operation. Thus Eclipse caused on the acquisition proceedings during the period during which the order of the Division Bench was in force got removed by the judgment of the Hon'ble Supreme Court. In this case, this Court has elaborately dealt with the "Doctrine of Prospective overruling" and "Doctrine of Eclipse" and held that all the pending proceedings will get revived.

**31. In *Y.Raja Vs. The Joint Registrar of Co-opertive Society* reported in 2011 (1) CTC 18** a Division Bench of this Court held that a disciplinary proceeding initiated under Rule 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules shall be deemed to be a proceeding initiated under Rule 9(2)(a) of the Tamil Nadu Pension Rules and the same may be continued after the retirement of the Government servant which may result in any order under Rule 9(1) of the Pension Rules.

32. The persons who were denied of employment on the ground that they tested positive to HIV Test approached this Court seeking relief. This court held that the authorities had failed to adhere to the national policy on HIV and AIDS. Not only they were wrong in sending them to get tested for AIDS, but also only on the basis of the Medical Practitioner's report without there being any specific finding that their counts in the blood samples will totally disqualify them for holding the post of drivers cannot be supported. Being engaged in a public service, they are likely to come into contact with passengers/travelling public cannot by itself disqualify the persons having tested HIV positive. On the other hand, there must be specific finding that persons having the disease with so contagious and that he had become unemployable. But, there is no test for CD4 count dropping below 350 cells per microlitre of blood which alone can be the scientific test for negating such candidate from employment and not every case of being tested for HIV positive. [vide **Mr.Y Vs. The Secretary to the Government, Transport Department** reported in **2011 (1) CTC 645**].

33. On the Criminal side, a question was referred to the Full Bench as to when a person can be detained as a Goonda as defined under Section 2(f) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act and whether it is necessary that there must be more than one case involving offense punishable under the provisions of I.P.C. as enumerated under Section 2(f) of the Act. A Full Bench of this Court answered the question in the affirmative in **Arumugam Vs. State of Tamil Nadu (2011 (4) CTC 353)**. The Full Bench held that "It is not necessary that there are to be more than one case which has got the propensity of disturbing the maintenance of public order. Out of all the cases against him even if a single incident resulting in a single case has the propensity of affecting the even tempo of life and public tranquility being prejudicial to the maintenance of public order that by itself would be sufficient to pass a valid order of detention. There cannot be any straitjacket formula or universal rule in respect of number of cases because the necessity for passing a detention order depends upon the facts and circumstances of each case."

34. The post of the Public Prosecutor is an independent post which cannot be subjected to the control of a Police Officer and the Executive. Strangely Section 25-A of the Code of Criminal Procedure was not implemented in the State of Tamil Nadu, instead, the post of Director of Prosecution was held by a Police Officer in the cadre of Indian Police Service. The said appointment was challenged by way of a Public Interest Litigation in **S. Thamizharasan v. State of Tamil Nadu, reported in 2010 (1) CTC 229**. A Division Bench of the Madras High Court sitting at Madurai Bench held that the appointment of a Police Officer as Director of Prosecution, is against the basic concept of independence of Judiciary and Section 25-A of the Cr.P.C. and accordingly struck down the appointment.

35. An important question as to whether the period spent on parole by a convict shall be counted as sentence period or not, came to be dealt with by a Full Bench in **The State, represented by the Home Secretary Vs. Yesu** reported in **2011 (5) CTC 353**. The full Bench answered the said question as follows: (i) Temporary release on parole by way of administrative action and temporary release on suspension of sentence as per the Tamil Nadu Suspension of Sentence Rules are two different concepts having different connotations. (ii) The release on parole dealt with under Chapter - XIX of the Tamil Nadu Prison Rules is not stricto sensu temporary release of a prisoner as dealt with in **Sunil Fulchand Shah's Case** and in **Avtar Singh's Case**. Such release on parole under the Tamil Nadu Prison Rules is nothing but remission of sentence. (iii) Outside the scope of the Tamil Nadu Suspension of Sentence Rules, no authority has got any power to grant suspension of sentence in any form. (iv) In the State of Tamil Nadu, neither there is any Act of the Legislature nor any administrative rules or regulations issued under the executive power of the State Government under the Constitution enabling any authority, including the Government, to grant temporary release of prisoners on parole. Therefore, until such statute or administrative rule or regulation is made, neither the Government nor any other authority shall grant temporary release of prisoners on parole. (v) In the event any statutory provision or administrative rule or regulation is made regulating the temporary release of prisoners on parole, the same may provide the manner in which the parole period shall be treated. (vi) In the State of Tamil Nadu, as of now, since there is no statute or administrative rule or regulation, to grant temporary release on parole, such



release of prisoners granted hitherto shall be treated only as suspension of sentence and therefore the same shall not be counted towards the sentence period.

**36.** The distinction between enforcement of an order of maintenance under Section 128 Cr.P.C. and levying of fine or sentencing the defaulter to pay maintenance under Section 125(3) of the Cr.P.C. came up for consideration in **P.Vaithi Vs. Kanagavalli** reported in **2010 1 L.W.(Cri.) 574** and **Periyasamy Vs. Lakshmi** reported in **2010 1 L.W.(Cri.) 751**, this Court held that so far as the proceeding under Section 125(3) is concerned, the statute has prescribed a period of limitation of one year whereas in respect of the proceedings under Section 128 of Cr.P.C., there is no limitation at all provided. While exercising power under Section 128 Cr.P.C. the Magistrate has no power to impose sentence on the defaulter. A writ petition came to be filed in **S.T.Prabhakar Vs. Secretary to Government, Home Department** reported in **2011 (1) CTC 355** claiming compensation from the State for detaining a person by the Magistrate on an order made under Section 128 Cr.P.C. Reiterating the law laid down in the earlier judgments, this Court has held that while enforcing a maintenance order under Section 128 of Cr.P.C., the Magistrate has no power to impose sentence on the defaulter, whereas under Section 125(3) of Cr.P.C. if sufficient cause is not shown for the default, imprisonment can be imposed on the defaulter.

**37.** In **Ganesan Vs. State** reported in **2011 1 L.W.(Cri) 709**, this Court has summed up the legal position regarding the committal power of the Magistrate to the Court of Sessions for trial. This Court has held that in a case, involving any offence exclusively triable by the Court of sessions, the Magistrate has a legal duty to commit the same under Section 209 Cr.P.C. to the Court of Sessions for trial. In so far as the cross cases are concerned though one of the cases does not contain any offence exclusively triable by a Court of Sessions, even then, the said case should also be committed to the Court of Sessions under Section 323 of Cr.P.C. as held by the Hon'ble Supreme Court in **Nathi Lal Vs. State of U.P.** reported in **1990 Supp. SCC 145**. In respect of any other case where the Magistrate is of the view that it would be in the interest of justice that the said case, though it does not contain any offence exclusively triable by Court of Sessions should be tried by a Court of Sessions, the learned Magistrate is required to submit a report to the High Court under Section 407 of the Code of Criminal Procedure and the

High Court, on considering the same may give direction to the Magistrate to commit the same. Thereafter, the Magistrate shall commit the case. This Court has further held that clubbing of the cases and substituting evidence recorded in one case in the other are not permissible in law.

38. In **Antony Vs. State represented by Inspector of Police** reported in **2011 (2) L.W. (Cri.) 298** this Court has held that though the Presiding Officer of a Special Court under Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1977 is in the cadre of a Sessions Judge, still as per the provisions of the Act, is deemed to be only a Magistrate and therefore appeal against the conviction or acquittal passed by the Special Court shall lie only to the Sessions Court within whose jurisdiction the Special Court falls.

39. Mere pendency of an application or revision before the High Court without there being any stay order shall not be an impediment for the Trial Court to proceed with the Trial, this Court held in **Sivakami Vs. State** reported in **2011-1-L.W.(Cri) 567**. Similarly, in **O.C.Periyasamy Vs. D.Venkatesan @ Ravi** reported in **2010 (5) CTC 207**, this Court has held that though there is no specific provision in Cr.P.C. enabling the Magistrate to close a complaint for non appearance of the complainant, the Magistrate has got inherent power to do so without waiting for the appearance of the complainant.

40. In **Sellamuthu Vs. State** reported in **2011 (2) L.W. (Cri) 351**, a question arose before this Court regarding the legality of the conviction imposed by the Sessions Court for an offence punishable under Section 135(1)(b) of the Electricity Act, 2003. This Court after having considered the scope of the Amendment to Section 151 of the Act held that the said amendment is essentially relating to procedure and therefore it is retrospective in operation and thus the cognizance taken on the police report was held to be legal. This Court further held that in view of Section 465 of the Cr.P.C. the sentence imposed by the Trial Court cannot be interfered with unless it is shown that failure of justice has occasioned to the accused because of the error or omission in the proceedings.

41. In **P.Thangaraju Vs. State** reported in **2010 1 L.W.(Cri.) 707**, it was contended by the State that as against the order passed by a Special Court under the Prevention of Corruption Act, dismissing the plea for discharge, revision under



Sections 397 and 401 Cr.P.C. does not lie to the High Court. The State relied on the judgment of the Delhi High Court in **Dharambir Khattar Vs. C.B.I.** reported in **159 (2009) Delhi Law Times 636**. Earlier the Madras High Court in **V.R.Nedunchezian Vs. State** reported in **1999 I L.W. (Cri.) 358** on the very same subject taking a contrary view was not acceptable to the Delhi High Court. The Delhi High Court relied on **V.C.Shukla Vs. C.B.I.** reported in **AIR 1980 SC 962** justified its conclusion. But this Court, after making a through study of the judgments in **Madhu Limaye Vs. State of Maharashtra** reported in **(1997) 4 SCC 551**, **V.R.Nedunchezian Vs. State** reported in **1999 I L.W. (Cri.) 358** and **V.C.Shukla Vs. C.B.I.** reported in **AIR 1980 SC 962** affirmed the view that the order passed by the Special Court dismissing the plea for discharge is neither an interlocutory order nor a final order but an intermediate order as stated in **Madhu Limaye case** and so, as against such an order revision lies under Sections 397 and 407 of Cr.P.C. to the High Court.

42. The provisions of Sections 12, 18, 19 and 23 of Protection of Women from Domestic Violence Act, 2005 came to be challenged before this Court in **Dennision Paulraj Vs. Union of India** reported in **(2009) 6 MLJ 283**. on the ground of violation of Articles 14 and 16 of the Constitution, this Court taking a clue from Article 15(3) of the Constitution which provides that nothing in this Article shall prevent the State from making any special provision for women and children upheld the constitutionality of Sections 12, 18, 19 and 23 of the said Act.

43. In **2010 I L.W.(Cri.) 264** reported in **R.Nivendran Vs. Nivashini Mohan** a question arose as to whether in a proceeding under the Prevention of Women from Domestic Violence Act, 2005 woman falls within the scope of Section 2(q) of the Act. Taking a very rational view this Court held that even the female relatives of the respondent will fall within the ambit of Section 2(q) of the Act and therefore they can also be impleaded as respondents in a proceeding under the Protection of Women from Domestic Violence Act. This view has been now upheld by the Hon'ble Supreme Court also.

44. In **Thiyagarajan Vs. State by Inspector of Police** reported in **2011 (3) MLJ (Cri) 640**, this Court has held "coffee" is a beverage and the same is not a foodstuff to fall within the definition of 'Essential Commodity' as defined under Section 2 of the Essential Commodities Act.

45. In **R.Rathnappa Vs. V.Lakshmma** in Second Appeal No.1573 of 2002 dated 11.08.2011, a question arose as to whether Section 4 of the Benami Transactions (Prohibition) Act, 1988 is prospective or retrospective in its operation. It was argued before this Court that there is apparent conflict between two judgments of the Hon'ble Supreme Court one in **Mitileish Kumari Vs. Prem Behari** reported in (1989) 2 SCC 95 and **R.Rajagopal Reddy and others Vs. Padmini Chandrasekharan** reported in (1995) 2 SCC 630. This Court found that there is no apparent conflict between the two judgments. After analyzing various judgments in this aspect, this Court held that a claim made prior to the coming into force of Section 4 of the Act in respect of the property held benami can be continued. This is because, the benami transactions held already have not been declared as void by any of the provisions of the Act. In a suit where a claim on the basis of benami is made in the written statement filed subsequent to the crucial date i.e. 19.05.1988, the same shall not be allowed to sustain. After coming into force of the Act, either by way of suit, or by way of any claim or by means of written statement, a plea of benami can not be taken.

46. Whether a Christian parents can adopt a child? In **R.R.George Christopher and another** reported in 2010-2-L.W.881, this Court held that the Juvenile Justice Act itself was enacted with a view to fulfill the international obligations as well as the constitutional goal envisaged in Part IV of the Constitution. The aspiring parents, who intend to adopt children, without being inhibited by their personal laws, are entitled to adopt a child in terms of the provisions of the Juvenile Justice Act. This Court further went on to say that no religion can deny family love to these children of God and the Rule of Law must reach them.

47. In **Manorama Akkineni Vs. Janakiraman Govindarajan** in C.R.P.(PD) No.2170 of 2010 dated 30.03.2011 an interesting question came up for consideration as to whether the petitioner and respondent who are wife and husband having married in India as per the Hindu rites and customs and got certification, dated 28.09.1986 of the marriage between them in U.S.A. and had dissolution of the said marriage before the Superior Court of California, County of Alameda, U.S.A. can maintain an original petition before the Family

Court at Chennai for divorces. This Court held that such an order obtained from the Court in U.S.A. dissolving the marriage without there being a proper decree for divorce in India as per the provisions of the Hindu Marriage Act, is not valid.

48. But, in ***Dorothy Thomas Vs. Rex Arul*** [2011 (5) CTC 22], the order of the Superior Court of Cobb County of the State of Georgia, U.S.A., granting custody of a minor child to its father was under challenge. Though the Supreme Court had so far decided a total of seven cases on the same issue either by applying the principle of Comity of Nations or 'the interest and welfare of the child test', the question as to whether the procedure to be adopted by a Court in India in such circumstances should be elaborate or summary, remains elusive. After pointing out that from the theory of Comity of Nations, the law moved over to the theory of vested rights and later to the theory of municipal law, this court laid down certain additional safeguards to be adopted, apart from those already laid down by the Apex court. This court also observed that though all the 7 decisions so far rendered by the Apex court speak in one voice on the principles of law to be adopted in such cases, the results arrived at in those decisions were ultimately different, perhaps on account of the fact that law is not a perfect science.

49. In ***S.Anand (a) Akash Vs. Vanitha***, [2011 (2) CTC 736], this court pointed out that necessity for discarding the age old concepts of 'custody' and 'visitation rights' and to speak of new concepts such as 'residence orders', 'contact orders' and 'shared parenting'.

50. Is an unprobated Will admissible in evidence to prove the cancellation of an earlier Will upon which letters of administration is sought for? This question was resolved by a Division Bench in ***G.Ganesan Vs. P.Sundari*** reported in 2011 (4) M.L.J. 98. The Division Bench held that in view of the bar contained in Section 213 of the Indian Evidence Act, an unprobated Will cannot be admitted in evidence in any proceeding to establish any right or title derived under the Will; however, for collateral purposes such an unprobated Will can be proved in evidence. Further, even for such collateral purposes an unprobated will cannot be used in a probate proceedings.

51. Whether the Public Sector Oil Companies who have entered into license agreements with their dealers and inducted them in possession of the leased land, buildings

and equipment to run retail outlets would come within the meaning of Section 2(4)(ii)(a) and could maintain an application under Section 9 of the Chennai City Tenants' Protection Act, 1921 was dealt with by a Division Bench in **Bharat Petroleum Corporation Ltd., Vs. R.Ravikrishnan** reported in **2011 (5) CTC 437**. The Court held that the oil companies are in legal possession of the lands and superstructure in question, they are not entitled to maintain an application under Section 9 of the Chennai City Tenants' Protection Act, since actual physical possession is sine quo non for claiming the benefits of Section 9 of the City Tenants' Protection Act.

52. "Necessitas publico major est quant privato" – This means "public necessity is greater than private". Necessary requirements of public good are stronger than private. Law imposes upon every subject that he must prefer urgent service of the country than his. Public necessity always prevails against private necessities. Applying this "Doctrine of Necessity" in **Bharat Sewak Samaj v. Chief Secretary , State of Tamil Nadu (2011) 1 MLJ 306**, this Court held that when there is substantial compliance of principles of natural justice, the grievance of the petitioner that there was failure to adhere to the provisions of the Public Premises [Eviction of Unauthorised Occupants] Act cannot be accepted. Thus, this court upheld the eviction in the larger interest of the public.

53. An application under Section 9 of the Arbitration and Conciliation Act, 1996 was filed in respect of an arbitration agreement providing that the disputes, if any, would be resolved by arbitration. The substantive and procedural law would be Singapore law. This Court in **Financial Software & Systems Pvt. Ltd. Vs. ACI Worldwide Corporation** reported in **2011 (3) CTC 261** held that as per the agreement since the substantive law applicable to the agreement are the laws of Singapore and since the procedure for holding arbitration proceedings is also as per Arbitration Rules of Singapore International Arbitration Centre and the seat of arbitration is also Singapore, though the Arbitration Rule of Singapore International Arbitration Centre permit the parties or Tribunal to select seat of arbitration anywhere else, but the parties knowingly did not choose to fix seat of arbitration, the seat of arbitration is to be Singapore. Thus this Court negated the contention that the Madras High Court has got jurisdiction to entertain an application under Section 9 of the Arbitration and Conciliation Act.

54. An interesting question as to whether a court gets jurisdiction to entertain a petition under Section 34 of the Arbitration and Conciliation Act, solely on the ground that venue of arbitration and passing of award is within its territorial jurisdiction came up for consideration in **Motila Oswal Securities Limited v. D.Renuka, (2011) 3 MLJ 89**. This court held that as per the Arbitration Act, 1940 merely because the arbitrator chooses to hold proceeding in a place where no suit could be instituted and chooses to make aware at that place, it would not give jurisdiction on a court of that place territorial jurisdiction. This court further held that under Section 34 of the Arbitration and Conciliation Act, only when a part of cause of action regarding the arbitrable dispute has arisen under its territorial jurisdiction, the court will have jurisdiction.

55. Till the advent of Finance Act, 2007, the information technology which included maintenance of computer software, had been kept outside the purview of 'business auxiliary service' especially under Section 65. The term, 'goods' in the Finance Act, 2007 has included 'computer software' under Section 65 (105)(zzg). However, the Central Excise Department issued a circular placing reliance on the judgment of the Hon'ble Supreme Court in *Tata Consultancy Service v. State of Andhra Pradesh* to include all software being goods, any service relating to maintenance, repairing and servicing of the same is also liable for service tax. When the above circular came to be challenged in **Kasturi and Sons Limited v. Union of India (2011) 5 MLJ 24**, this court held that there had been exemption in respect of maintenance of computer software prior to 2006 and it is not even the case of the Central Excise Department that in 2007 when the amendment was brought in the Finance Act, it was given retrospective effect and even the altered definition of the term 'goods' in the Amendment of 2007 in the Finance Act, 1994, under Section 65(105) (zzg) also was not given retrospective effect and hence it cannot be held that the circular impugned attempts to give effect to the provision or explains the changes proposed in the Finance Act, 2005. This court further held that the judgment of the Hon'ble Supreme Court in *Tata Consultancy Service's* case cannot be cited for a clarification in respect of the Finance Act, 1994 which is a Parliamentary enactment, since that case relates to the Andhra Pradesh General Sales Tax which operates in a different sphere. Thus, this Court declared that the impugned circular has no application to the petitioner as the same is opposed to the provisions of the Finance Act.

56. Before the competent authority under the Smugglers and Foreign Exchange Manipulators [Forfeiture of Property] Act, 1976 the competent person to practice as a counsel is only an Advocate governed by the Advocates Act. Though basically the competent authority is drawn from the Income Tax Department citing the provisions of the Income Tax Act, the Chartered Accountant or an Auditor cannot be allowed to practice. This court held in **V.P.Ranganathan v. Appellate Tribunal Forfeited Properties, 2010 WLR 822.**

As *Denning, L.J.* remarked in *Packer vs. Packer*, "if we never do anything, which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on; and that will be bad for both". Therefore, we make every endeavour to take the law to the next level, so as to serve humanity best.

Compiled by  
Hon'ble Mr. Justice S.Nagamuthu

