# SUPREME COURT: EXPOUNDING TRANSFORMATIVE JURISPRUDENCE IN INDIA The Genesis of Law, Justice and Morality

### PROFESSOR DR. K.L. BHATIA

B.A. (Hons.) (J&K); LL.B. (ILS Pune University); LL.M., Ph. D. (Pune)
DAAD and Max-Planck Fellow and Alumni
Presently Professor in Law, National Law University, Jodhpur
(Former Head, Dean and Founding Director, The Law School, Faculty of Law,
University of Jammu; Director Amity Law School;
Dean and Professor Emeritus, University of Petroleum and Energy Studies;
UNDP Professor Public Law)

# Assisted by MANU BHATIA SHARMA

BSL LL.B. (ILS Pune University), LL.M. (GND University); ICRC, Henary Dunant and Max-Planck Fellow, Research Scholar

### Foreword

JUSTICE DR. A.S. ANAND

Former Chief Justice of India and Chairman National Human Rights Commission

# Afterword JUSTICE N.N. MATHUR

Former Judge, Rajasthan and Gujarat High Courts and Vice Chancellor, National Law University, Jodhpur



### **REGAL PUBLICATIONS**

New Delhi - 110 027

## **Contents**

	Preface	хi
	Foreword	xvii
	Table of Cases	xxi
١.	INTRODUCTION	ĺ
	Introduction	1
	Justice and Expounding Philosophy	2
	The Expounding Philosophy of the Textual Constitution of India 'Flashing the Flaming Sword of Its Inspiration'	5
	Judicial Governance-Supreme Court Collegium and Juristocracy	6
	Legal Profession-Integrating Human Values and Professional Ethics	20
	Judiciary v. Parliament-Judicial Remonstration	21
	Judiciary Not Corrupt But For Aberration	21
-	The Problems the Indian Judiciary Faces—Delay and Clogging the Courts with Arrears	21
	Public Interest Litigation—Judicial Legislation Not a Myth but a Reality	24
	Undertrials without Trials	24
	Judiciary and National Interest	25
	Judiciary and Gender Justice	25
	Conclusion	27
2.	INVISIBLE STATE : THE PUZZLE OF HIDE AND SEEK?	34
	Introduction	34
	Conceptual Analysis of Invisible State	35
	Contours of Judicial Policy—Judicial Activism and Social Change A Rarest Example of Invisible State Meddling with the Constitution Where It Has No Constitutional Mandate:	36
	Article 35A: A Mishmash of the Textual Constitution of India!	37

3. ADMINISTRATIVE PROCESS : NATURE AND SO ADMINISTRATIVE ACTION AND JUDICIAL REV	COPE OF 46
Administrative Action: Administrative, Ministerial as	nd
Judicial Functions: Distinction	70
Natural Justice	50
Delegated Legislation	55
Judicial Review	64
Tortious and Contractual Liability	80
Authorities or Regulatory Authorities under Custon Taxation Laws and Other Laws: Rules of Classificat Fair Hearing; Terms of Art. and Related Terms	84
4. ALTERNATIVE DISPUTES RESOLUTION MECH ARBITRAL PROCESS THROUGH ARBITRATION CONCILIATION AND MEDIATION	103
5. CONSTITUTIONAL LAW	120
Conceptual Framework of Fundamental Rights, Dis	ective
Principles of State Policy and Fundamental Duties:	126
Jural Postulates-Correlatives and Opposite	128
State	135
Separation of Powers	141
Disciplining the Subordinate Judiciary	
Relationship Between Supreme Court and High Co	urts 144
Rights to Equality, Life and Liberty and Necessity of Principle of Classification	148
(a) Reservation of Seats in Super-specialised Cours Institutions: Mediocracy versus Meritocracy	152
(b) Affirmative Action and Reservation Policy in	Educational 157
Institutions: Minority and Non-minority	166
Public Interest Litigation Slaughter of the Cow and Cow Progeny—The Ger	nesis of
Protection in the Interest of Agrarian Economy as	a 174
Source for Non-conventional Energy	186
Right to Freedom and Reasonable Restrictions	187
Population Control and National Interest	189
Right to Privacy—Proportionality of Procedure	
Sati Prevention Law-Glorification of Sati and Ru	194
Double Jeopardy	
Delay in Disposal of Cases: Could there be Direct Prescribing Time-limit for Speedy Trial?	173
Shatrughan Chauhan versus Union of India, 2014, A Highly Valued Articulation of the Supreme Co	urt 199

	D. H. C. C. D. L. T. C. C. L.	
	Environment Pollution vis-à-vis Right to Life with	
	Human Dignity	211
	Doctrine of Merger and Right of Review	215
	Teenaged Students' Right to Education:	
	Jawahar Navodaya Vidyalaya	218
	Maintainability of Writ under Article 226	220
	Rule of Stare Decisis: Articles 141 and 145-Supreme	
	Court v. Supreme Court	223
	Test of Reasonable Classification—Rationale	224
	Doctrine of Priority or Precedence of State Debts-	
	Rule of Necessity and Public Policy	226
	Public Distribution System—Constitutionality of Essential	
	Commodities Law	227
	Electricity Energy, What it is and What its Characteristics are;	
	What is Inter-State Sale	228
	Doctrine of Occupied Field-Per curiam-Resolution of	
	Conflict between Union and State Legislation	229
	The Novartis Case: Constitutional Savior of Economic	
	Unity and Fiscal Integration and Social Rights of Citizens—	
	A Perception	242
	AFTERWORD	271
•		<b></b> .
	Ditti:	30
	Bibliography	286
		•
	Index	290