**Judiciary Digest**

**Current & Conceptual Weekly**

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# **1. Supreme Court Urges Expedited Bail Decisions by Bombay High Court Judges**

The Supreme Court has made a significant request to the Chief Justice of the Bombay High Court, urging all judges exercising criminal jurisdiction to expedite decisions on matters related to bail and anticipatory bail. In a recent development, the Supreme Court bench, comprising Justices B.R. Gavai and Sandeep Mehta, emphasised the need for prompt adjudication in such cases.

The case in question, ***Amol Vitthal Vahile vs. The State of Maharashtra****,* underscores the importance of timely bail hearings. In this instance, the accused, held in custody for over seven years, had filed a bail application before the Bombay High Court. However, the High Court deferred a substantive hearing and directed the applicant to seek bail from the trial court.

Dissatisfied with this decision, the accused pursued a criminal appeal before the Supreme Court. In a previous order dated January 29, 2024, the Supreme Court expressed concern over the High Court's failure to exercise its jurisdiction to decide bail applications on merit. Consequently, the Supreme Court set aside the earlier order and returned the case to the High Court, urging a decision within two weeks.

Although the Bombay High Court eventually granted bail to the accused-appellant in compliance with the Supreme Court's directive, the apex court noted a recurring pattern of delays in bail adjudication. Citing instances where bail and anticipatory bail applications remained undecided for years, the Supreme Court emphasised the fundamental rights enshrined in Article 21 of the Constitution.

Article 21, which guarantees the right to life and personal liberty, holds paramount importance in the Indian legal framework. The Supreme Court reiterated that the expeditious resolution of matters affecting an individual's liberty is essential to uphold constitutional values.

In light of these observations, the Supreme Court directed its Registrar (Judicial) to communicate the order to the Registrar (Judicial) of the Bombay High Court, ensuring awareness of the imperative for prompt bail adjudication.

This case serves as a reminder of the judiciary's duty to safeguard citizens' fundamental rights and underscores the necessity for swift and fair judicial proceedings, especially in matters concerning personal liberty.

# **2. Supreme Court Affirms Accused's Right to Access Case Diary for Cross-Examination**

The Supreme Court has reinforced an accused's right to cross-examine a police officer regarding entries made in the case diary when used to refresh memory. Additionally, when the court employs the case diary to contradict a police officer's testimony, the accused is entitled to peruse relevant entries and conduct cross-examination. Although Section 172(3) of the Code of Criminal Procedure (CrPC) prohibits the accused from seeking production of case diaries, exceptions arise when they are utilised for memory refreshing or contradiction.

Justice MM Sundresh and Justice SVN Bhatti elucidated these principles while adjudicating a criminal appeal concerning murder convictions. The bench emphasised the importance of case diaries in investigations, highlighting their role in recording day-to-day proceedings, including witness statements.

The judgement underscored the obligations of Investigating Officers to meticulously document investigation details in case diaries, ensuring fairness in the investigative process. Sections 161 and 145 of the Evidence Act, coupled with Section 172(3) of the CrPC, grant accused individuals the right to cross-examine police officers regarding case diary entries relevant to their defence.

Addressing the case's merits, the Court noted discrepancies in the case diary, including alterations and missing pages. These irregularities cast doubt on the prosecution's timeline and narrative. Consequently, the Court overturned the convictions, citing insufficient evidence and flawed trial findings.

In the case of ***Shailesh Kumar v. State of UP (now State of Uttarakhand)****,* the Supreme Court reaffirmed the importance of procedural integrity and the accused's right to a fair trial, emphasising the need for scrutiny of evidentiary materials like case diaries.

# **3. Curative Petition Proceedings**

In a recent ruling, the Supreme Court overturned an order issued by one of its Registrars, which had declined the registration of a curative petition on the grounds that the underlying review petition was dismissed after an open court hearing. The Court emphasised that such decisions are inherently judicial and should be made by a Bench of the Court, rather than delegated to the Registry.

The case originated from a suit filed under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, which was dismissed on appeal by the High Court. Despite subsequent appeals and a review petition being dismissed after an open court hearing, the Registrar refused to register the curative petition. This prompted the appellant to appeal against the Registrar's decision under Rule 5 of Order XV of the Supreme Court Rules, 2013.

In its observations, the Court clarified that the Registrar's authority to reject petitions is limited to the grounds specified in the rules and does not extend to dismissing a curative petition solely based on the review petition's dismissal after open court hearing.

Citing relevant precedents, including ***Union of India & Ors. v. M/s. Union Carbide Corporation & Ors****,* the Court reiterated that the decision on the maintainability of a curative petition ultimately rests with the Court itself.

Referring to the ***Rupa Ashok Hurra case,*** the Court emphasised the importance of specific averments in curative petitions but noted that failure to comply with these requirements should not automatically result in rejection by the Registry.

The Court outlined the procedural steps for cases where review petitions are dismissed after open court hearings, emphasising the need for applications seeking exemption from procedural requirements and subsequent communication with the Chamber Judge.

Finally, while setting aside the Registrar's order, the Court declined to remand the matter due to substantial time elapsed since its initiation in 2020. After reviewing the curative petition and the review court's order, the Court found no grounds for further consideration.

This ruling, in the case of ***M/s Brahmaputra Concrete Pipe Industries Etc. Etc. v. The Assam State Electricity Board and Others,*** reaffirms the Court's authority in curative petition proceedings and underscores the importance of adherence to procedural fairness.

# **4. Then and Now: Offences against Women**

Traditionally, the IPC categorized offences against women and children under various chapters and sections, with a piecemeal approach to addressing sexual violence.

**Introduction of the BNS**

The BNS represents a modernised legal approach, consolidating offences against women and children into a single chapter. This organisational shift underscores a heightened recognition of these offences' seriousness and the need for a more focused legal response.

**Marital Rape with Minor Wife as Offence**

Echoing the Supreme Court's earlier stance, the BNS explicitly criminalizes marital rape where the wife is under eighteen years of age.

**Addressing Deceitful Sexual Intercourse**

The BNS introduces a provision for sexual intercourse by deceitful means or under false pretenses of marriage, punishable by up to ten years in prison. This addition addresses a gap in the IPC, recognizing the complexity of consent and the need to protect women from exploitation under false pretences.

**Enhanced Punishment for Gang Rape of Minors**

The BNS stipulates life imprisonment or death for individuals involved in the gang rape of minors under eighteen, signifying a zero-tolerance policy towards such heinous crimes. This contrasts with the IPC's previous provision, which set the age threshold at sixteen for enhanced punishment.

# **5. Past Exam Highlights**

***Mains Question:***

**Q.: He, who accepts the benefits under the instruments, must also bear the burden". Explain, and also discuss whether this doctrine is available to cure an illegality?**

**[HPJS 2014]**

The Doctrine of Election is a fundamental principle in property law, particularly under Section 35 of The Transfer of Property Act, 1882, encapsulating the essence that one must choose between two conflicting rights emanating from the same source. The core idea is that a beneficiary of a certain provision cannot selectively accept what is favourable to them without also embracing the accompanying responsibilities or burdens. This doctrine is deeply entrenched in the principle of equity, ensuring that legal transactions are carried out fairly and justly, preventing any form of unjust enrichment that may arise from accepting benefits while disregarding the associated burdens.

**The Principle of Bearing Benefits and Burdens**

The Doctrine of Election operates on the premise that the benefits and burdens outlined in a legal instrument are inseparable. When an individual accepts benefits conferred by a deed or legal instrument, they are implicitly bound to fulfil any obligations or burdens imposed by the same instrument. This principle is crucial in upholding the integrity and intended effect of legal transactions, ensuring that beneficiaries cannot cherry-pick aspects of the instrument that serve their interests while ignoring those that do not.

**Case Law and Application**

Historical judgments have played a pivotal role in shaping the understanding and application of the Doctrine of Election. In Cooper v. Cooper (1873), the House of Lords elucidated the doctrine by highlighting the duty of the beneficiary to give full effect to the will or instrument from which they derive benefits. Similarly, the case of Muhammad Afzal v. Gulam Kasim (1903) showcased the application of this doctrine, emphasising that for the doctrine to apply, the conflicting rights or benefits must stem from the same transaction.

**The Doctrine and Illegality**

The question of whether the Doctrine of Election can cure an illegality presents a complex legal issue. Generally, the doctrine is not designed to rectify illegal transactions or confer legality on instruments that are inherently unlawful. The purpose of the doctrine is to ensure equity and fairness within the confines of legal and valid transactions. If a benefit derived from an instrument is illegal or the instrument itself contravenes the law, the Doctrine of Election cannot be invoked to legitimise the benefit or cure the illegality. Legal systems typically separate issues of equity and legality, where equity can aid in interpreting and enforcing legal rights but cannot override the fundamental principles of law or legitimise an illegal act.

***Prelims Questions:***

**1. Where a thirty years old document is produced before the Court, it may presume**

**(1) That the facts stated in the document are proved**

**(2) That the document is duly executed**

**(3) That the content of it are proved**

**(4) All the above**

**Ans: (2)**

**Explanation:** According to Section 90 of IEA, when such a document is produced from proper custody, the court may presume that the signature and handwriting are genuine, and if the document is executed or attested, that it was duly executed and attested. However, this presumption primarily concerns the execution and attestation of the document, not necessarily the truth of the facts stated within the document itself.

**2. A document can be proved**

**(1) By producing it before the Court**

**(2) By examining the party who has produced it**

**(3) By examining the person in whose hand writing the document is written or signed**

**(4) By examining the person in whose favour the document is executed**

**Ans: (1)**

**Explanation:**This is the basic and most straightforward method of proving a document's existence and relevance in a legal proceeding.

**3. A confessional statement made before police**

**(1) is admissible**

**(2) is not admissible**

**(3) is admissible only if it relates to a fact discovered in consequence of it**

**(4) is admissible if it is made on oath in writing**

**Ans:** (3)

**Explanation:** According to Section 27, if a confessional statement leads to the discovery of a fact, then so much of the statement as relates directly to the fact discovered can be admitted as evidence.

**4. Admission is**

**(1) a conclusive proof of the fact stated therein**

**(2) not a conclusive proof but operates only as estoppel**

**(3) a weak piece of evidence**

**(4) an evidence on which the Court can act**

**Ans: (2)**

**Explanation:** While an admission can be very significant evidence in a case, it does not irrefutably establish the truth of the matter admitted. Instead, admissions primarily serve to prevent the person who made the admission from contradicting their own statement in court.

**5. Admission means**

**(1) statement made before Court**

**(2) statement made in a document**

**(3) statement suggesting inference as to any fact in issue**

**(4) none of the above**

**Ans: (3)**

**Explanation:** Admissions are statements made by a party in a proceeding, which have the effect of conceding some point or fact in dispute, thereby reducing the evidentiary burden on the opposing party. These statements can come from various sources, including but not limited to, documents, oral testimony, or conduct, and they are used to infer or establish the truth regarding a fact in issue or a relevant fact to the case.

**6. A fact is relevant**

**(1) if it is mentioned in the pleadings**

**(2) if it is mentioned in the document relied by any of the parties**

**(3) if it is connected with a fact in issue so as to form part of the same transaction**

**(4) all the above**

**Ans: (3)**

**Explanation:** A fact is relevant under the Indian Evidence Act, specifically as per Section 6, "if it is connected with a fact in issue so as to form part of the same transaction." This provision is known as the principle of res gestae, which allows for the admission of statements and actions that are so closely connected with the main fact in issue or event being considered that they are deemed to be part of the same transaction.

**7. A fact is said to be proved**

**(1) if it is admitted**

**(2) if it is incorporated in a document**

**(3) if it is not denied**

**(4) if its existence is so probable that a prudent man would accept it as existing**

**Ans: (4)**

**Explanation:** According to Section 3 of the Indian Evidence Act, a fact is said to be proved "if its existence is so probable that a prudent man would, under the circumstances of the particular case, act upon the supposition that it exists

**8. Evidence means and includes**

**(1) statements before police**

**(2) statements in pleadings**

**(3) statements of witnesses required to be made before the Court**

**(4) all of the above**

**Ans: (3)**

**Explanation:** As per Section 3 of the Indian Evidence Act, "evidence" refers to and includes all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry. Such statements are considered evidence when they are made before the court in the context of the trial or hearing.

**9. Primary evidence of a document means**

**(1) It's certified copy**

**(2) It's xerox copy**

**(3) Document itself**

**(4) Authenticated copy**

**Ans: (3)**

**Explanation:** Primary evidence of a document refers to the document itself. It is the highest and most direct form of evidence to establish the contents and authenticity of a document.

**10. A child born out of a valid marriage can be proved to be a legitimate child of the husband if it is born within its dissolution.**

**(1) 280 days**

**(2) One year**

**(3) Nine months**

**(4) None of the above**

**Ans:** **(1)**

**Explanation:** According to Section 112 of the Indian Evidence Act, a child born out of a valid marriage can be presumed to be the legitimate child of the husband if it is born within 280 days of the marriage's dissolution, provided that the husband has had access to the wife. This time frame (280 days) is considered to cover the period of gestation, acknowledging the possibility of the child being conceived before the dissolution of marriage and born afterward, thereby establishing the presumption of legitimacy.

# **6. Clear Concepts: Gift under Mohammedan Law**

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Under Mohammedan Law, the act of giving a gift, known as 'Hiba', is a revered practice, embodying generosity and goodwill. Unlike the formalities required in other legal systems, Mohammadan Law simplifies the process, emphasising the spirit of the gift over procedural intricacies. The validity of a gift under this legal tradition hinges on three fundamental elements: (1) a clear declaration of the gift by the donor; (2) acceptance of the gift, whether express or implied, by the donee; and (3) delivery of possession of the gift's subject from the donor to the donee.

This framework underscores the importance of intent, acceptance, and transfer of possession, allowing for the validity of oral gifts, a unique feature of Mohammadan Law. This aspect was notably upheld in landmark cases such as **Kamarun-nissa Bibi v. Hussaini Bibi**, where the Privy Council validated a verbal gift, reaffirming the principle that formal writing is not a prerequisite for the legitimacy of a gift.

**Judicial Interpretations and Landmark Decisions**

The Indian judiciary has played a pivotal role in interpreting and applying the principles of Mohammedan Law regarding gifts. One of the cornerstone cases, **Mohboob Sahab v. Syed Ismail,** reinforced the notion that a gift under Muslim Law does not necessitate writing or registration under the Registration Act. The Supreme Court highlighted the indispensability of the three essentials: declaration, acceptance, and delivery of possession, for a gift to be deemed complete and valid.

Furthermore, the case of **Hafiza Bibi v Shaikh Farid** brought clarity to the debate over written and oral gifts under Mohammedan Law. The Supreme Court elucidated that the mere act of documenting a gift does not transform it into a formal instrument requiring registration. This judgement emphasised that the essence of a gift lies in its adherence to the three foundational principles, irrespective of whether the gift is made orally or recorded in writing.