**Judiciary Digest**

**Current & Conceptual Weekly**

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# **1. Authority to Assess Quashing Pleas Despite Charge Sheet**

In a recent ruling, the Supreme Court addressed the jurisdiction of High Courts to evaluate petitions for quashing First Information Reports (FIRs) even after the submission of a charge sheet against the accused. The case of ***Mamta Shailesh Chandra v. State of Uttarakhand & Ors.*** highlighted the crucial role of the judiciary in safeguarding the rights of individuals accused of criminal offences.

The appellant, in this case, filed a petition under Section 482 of the Criminal Procedure Code seeking the quashing of an FIR accusing them of offences under Sections 420 and 409 of the Indian Penal Code, 1860. However, the High Court dismissed the petition as infructuous upon the submission of a charge sheet against the appellant during the pendency of the quashing plea.

The Supreme Court, citing the precedent set in ***Joseph Salvaraj A. v. State of Gujarat & Ors*.**, clarified that even if a charge sheet is filed, the High Court retains the authority to examine whether the alleged offences are prima facie established based on the FIR, charge sheet, and other relevant documents.

Disagreeing with the High Court's reasoning, the Bench of Justices Aniruddha Bose and Sanjay Kumar emphasised that the filing of a charge sheet does not render the quashing petition irrelevant. Instead, the court reaffirmed the High Court's duty to thoroughly evaluate the merits of such petitions, ensuring justice is served.

Consequently, the Supreme Court allowed the appeal of the accused-appellant and directed the High Court to consider the quashing petition on its merits. Additionally, the Court ordered a stay on the appellant's arrest until the High Court reaches a decision on the petition, unless new developments necessitate detention, in accordance with Article 142 of the Constitution of India.

# **2. Haryana's Domicile Reservation Law**

In the case of ***State of Haryana v. Faridabad Industries Association,*** a bench comprising Justice PS Narasimha and Aravind Kumar of the Supreme Court sought responses from industry associations in Haryana regarding the state government's special leave petition. This petition raised concerns about the potential implications of the Punjab and Haryana High Court's decision regarding the Haryana State Employment of Local Candidates Act, 2020. Solicitor General of India Tushar Mehta, during the hearing, argued that the judgement lacked coherent reasoning.

The Punjab and Haryana High Court, in its verdict, invalidated the Haryana State Employment of Local Candidates Act, 2020, which had mandated a 75 percent reservation for Haryana domiciles in private sector jobs with a monthly salary below Rs 30,000. Justices GS Sandhawalia and Harpreet Kaur Jeewan, presiding over the division bench, unequivocally deemed the legislation unconstitutional, citing violations of fundamental rights. The court's decision was rooted in various grounds, including the discriminatory nature of the reservation, contravention of the right to equality enshrined in Article 14, encroachment upon the freedom guaranteed by Article 19, and the imposition of unreasonable restrictions.

Although the Act, introduced in the state assembly in 2020, aimed to address concerns regarding migrant competition for low-wage jobs and its consequential impact on local infrastructure, housing, and environmental and health issues, the High Court found substantial faults with the legislation. The court contended that the law created a discriminatory policy, relegating non-residents to secondary citizenship status and violating the principles of constitutional morality. The division bench, in declaring the law unconstitutional, emphasised that the freedom granted under Article 19 of the Constitution could not be abridged. They asserted that the provisions in question were in direct conflict with the foundational principles of India's Constitution, highlighting the impossibility of erecting barriers around states and undermining the unity espoused in the Constitution.

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# **3. 30-Year Sentence on Rapist in Brutal Case of Child Rape**

In a chilling case that sent shockwaves across the nation, the Supreme Court delivered a verdict in ***Bhaggi @ Bhagirath @ Naran v. The State of Madhya Pradesh,*** imposing a 30-year rigorous imprisonment term with a fine of Rupees One Lakh on a 40-year-old man convicted of raping a seven-year-old child.

The case unfolded when the victim's grandmother filed an FIR against the accused for the kidnapping and rape of her seven-year-old granddaughter. The prosecution successfully established that the accused had taken the young girl to a temple and committed the heinous act of rape. Initially sentenced to capital punishment by the trial court under Section 376 AB of the Indian Penal Code, the accused saw his sentence commuted to life imprisonment by the Delhi High Court. Dissatisfied with this decision, the petitioner approached the Supreme Court for redress.

The Division Bench, led by justices C.T Ravikumar and Rajesh Bindal, characterised the crime as barbaric, emphasising the age disparity between the accused, aged 40, and the victim, a mere seven-year-old child. Despite the absence of extreme brutality, the Court condemned the act as heinous and noted the traumatic impact it would have on the victim's life.

Acknowledging the gravity of the offence and its repercussions on the victim's future, particularly her married life, the Supreme Court opted to modify the sentence. While the High Court had commuted the punishment to life imprisonment, the Supreme Court invoked its authority to prescribe the length of incarceration, settling on a 30-year rigorous imprisonment term, inclusive of the period already served.

Furthermore, the Court emphasised the imposition of a fine, amounting to Rupees One Lakh, to be utilised for the victim's medical expenses and rehabilitation. Despite the accused's conviction under the Protection of Children from Sexual Offences Act, 2012, separate sentences were not imposed due to the capital punishment already awarded, an aspect overlooked by the High Court.

Drawing on legal precedents, notably the case of Mulla v. State of U.P., the Supreme Court justified its decision to modify the sentence, emphasising the need for deterrence and justice in cases of such depravity.

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# **4. Then and Now: Admissibility of Electronic Evidence Under Bharatiya Sakshya Adhiniyam**

The Bharatiya Sakshya Adhiniyam 2023 (BSB) has ushered in a new era in the legal arena, particularly concerning the admissibility of electronic and digital evidence. This landmark legislation has revolutionised the treatment of electronic records, aligning them with traditional documentary evidence and introducing crucial amendments to the Indian Evidence Act, 1872. Here's a comprehensive overview of the key changes introduced under BSB:

**Equality with Documentary Evidence:** Section 61 of BSB unequivocally places electronic and digital records on par with traditional documentary evidence. This provision ensures that electronic records maintain the same legal effect, validity, and enforceability as other documents, thereby eliminating any discriminatory treatment based on their digital nature.

**Inclusion in Definitions:** BSB expands the definitions of "document" and "evidence" to explicitly include electronic and digital records. This broad interpretation reflects the evolving nature of information recording and acknowledges the prevalence of electronic mediums in contemporary society.

**Primary Evidence Status:** BSB establishes specific scenarios where electronic or digital records qualify as primary evidence, reinforcing their credibility and importance in legal proceedings. These circumstances include simultaneous or sequential storage in multiple files, proper custody, video recordings, and storage in multiple spaces within a computer resource.

**Scope Expansion:** The ambit of electronic evidence under BSB extends beyond traditional storage mediums to encompass semiconductor memories and communication devices. This broadened scope reflects the diverse forms electronic evidence can take and ensures its inclusivity in legal proceedings.

**Certificate Requirement:** While maintaining the requirement of a certificate for the admissibility of electronic evidence, BSB streamlines the process by allowing certification by any person in charge of the relevant device or an expert. Moreover, the legislation introduces standardised formats for certificate production, enhancing clarity and consistency in evidence presentation.

# **5. Past Exam Highlights**

***Mains Question:***

**Q.: “How a money decree can be executed” ?**

A money decree is a judgement passed by a court directing the defendant (judgement debtor) to pay a specified sum of money to the plaintiff (decree holder). Under the Code of Civil Procedure, 1908 (CPC), there are several methods to execute a money decree:

1. **Attachment and Sale of Property**: Under Order 21, Rule 41, CPC, the court may order attachment and sale of the judgement debtor's property, movable or immovable, to realise the decree amount. This is one of the most common methods of executing a money decree.
2. **Attachment of Debts**: Debts due or accruing to the judgement debtor from a third party can be attached and paid to the decree holder under Order 21, Rule 46, CPC.
3. **Arrest and Detention of Judgment Debtor**: As a more severe measure, under Order 21, Rule 37, CPC, the court may order the arrest and detention of the judgement debtor. However, this is used as a last resort when the court is convinced that the debtor will not pay the decree amount unless compelled by detention.
4. **Receiver Appointment**: The court may, under Order 40, CPC, appoint a receiver to manage and dispose of the judgement debtor's property, and apply the proceeds to satisfy the decree.
5. **Garnishee Order**: This involves a direction by the court to a third party (Garnishee) who owes money to the judgement debtor to pay that money instead to the decree holder.
6. **Cross Decrees Adjustment**: Under Order 21, Rule 18, CPC, where both parties owe money to each other, and a decree has been passed for each party, the court can adjust the amounts against each other.

***Prelims Questions***

**1. The principle enshrined in the Specific Relief Act qua injunctions are not applicable to temporary injunctions under Order XXXIX of the CPC. The said statement is;**

**(1) Correct**

**(2) Not correct**

**(3) Misleading**

**(4) Merely a belief**

**Ans: (2)**

**Explanation:** The principles enshrined in the Specific Relief Act regarding injunctions do apply to temporary injunctions under Order XXXIX of the Civil Procedure Code (CPC). Temporary injunctions are indeed governed by the procedural framework established under the CPC, but the overarching principles that guide the granting of injunctions, including those for temporary injunctions, draw from the broader legal and equitable considerations outlined in the Specific Relief Act.

**2. A defendant in a suit for recovery of possession of immovable property.**

1. **Can take the plea of lawful title and in the alternative the plea of adverse possession.**
2. **Cannot take the plea of lawful title and in the alternative the plea of adverse possession as the two are antithetical to each other.**
3. **Can take a plea of lawful title and in the alternative the plea of adverse possession and succeed on both.**
4. **Can take a plea of lawful title and in the alternative the plea of adverse possession and succeed on either.**

**Ans: (2)**

**Explanation:** This is because claiming lawful title asserts a legal right to the property based on valid documentation or transaction, while claiming adverse possession is based on occupying the property without the owner's permission for a period sufficient under law to obtain title, despite not having a formal legal right initially.

**3. For granting specific performance of a contract for the construction of any building, the following condition has/have to be fulfilled?**

1. **The building is described in the contract in terms sufficiently precise to enable the Court to determine the exact nature of the building.**
2. **The plaintiff has sufficient interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief.**
3. **The defendant has, in pursuance to the contract, obtained possession of the whole or any part of the land on which the building is to be constructed.**
4. **All of the above.**

**Ans: (4)**

**Explanation:** All these conditions ensure that the court has a clear understanding of what was agreed upon, acknowledges the unique interest of the plaintiff that cannot be satisfied by mere monetary compensation, and recognizes any change in the status quo that supports the fairness of enforcing specific performance.

**4. A Court is empowered to grant in injunction to perform the negative agreement:**

**(1) Where the contract comprises an affirmative agreement to do a certain act coupled with a negative agreement not to do a certain act.**

**(2) In all cases where a contract comprises an affirmative agreement to do a certain act.**

**(3) Only in the case of contracts of musical performance.**

**(4) Only in the case of contracts of stage performance musical or theatrical.**

**Ans: (1)**

**Explanation:** Using Section 42 of the Specific Relief Act, the provision clearly supports that a court can grant an injunction to enforce a negative agreement within a contract. This is applicable when a contract includes both an affirmative agreement to do a certain act and a negative agreement, whether express or implied, not to do a certain act.

**5. In a suit for specific performance of a contract, the plaintiff has not claimed compensation for breach in substitution of such performance. The court concludes that though the defendant is in breach, the discretion implicit in the grant of relief of specific performance be not exercised in favour of the plaintiff. The court in such a situation.**

**(1) In the absence of the claim the plaintiff for compensation cannot award such compensation to the plaintiff.**

**(2) Notwithstanding the plaintiff having not claimed compensation is empowered to award such compensation to the plaintiff as may be deemed appropriate.**

**(3) Notwithstanding the plaintiff having not claimed compensation is empowered to award compensation to the plaintiff if the plaintiff has led any evidence of equal compensation.**

**(4) Notwithstanding the plaintiff having not claimed compensation and having not having not led evidence, is required to give an opportunity to the plaintiff to lead evidence qua compensation.**

**Ans: (4)**

**Explanation:** Subsection (5) of Section 21 of the SRA clearly states that no compensation shall be awarded unless the plaintiff has claimed such compensation in his plaint. Yet, it also provides for the court to allow the plaintiff to amend the plaint to include a claim for compensation, if such a claim was not initially made. This shows the court's discretion to permit the addition of a compensation claim even if it was not part of the original suit, ensuring justice is served by allowing for compensation in cases where specific performance is not granted.

**6. An agency is terminated:**

**(1) By the principal revoking the authority of the agent**

**(2) By the agent renouncing the business ol agency.**

**(3) By the death of the principal or agent.**

**(4) All of the above.**

**Ans: (4)**

**Explanation:** An agency is terminated by all of the scenarios mentioned:

By the principal revoking the authority of the agent: The principal has the right to revoke the authority given to an agent, subject to the terms of any agreement between them and any applicable laws.

By the agent renouncing the business of agency: The agent can also terminate the agency relationship by renouncing his or her authority. However, this must be done in a manner that does not unduly harm the principal's interests, again subject to any agreement and laws.

By the death of the principal or agent: The death of either the principal or the agent automatically terminates the agency relationship, as the basis for the agency no longer exists.

**7. Which of the following contracts cannot be specifically enforced?**

**(1) Contract which is so dependent on the personal qualification of the parties that the Court cannot enforce specific performance of its material terms.**

**(2) A contract which is in its nature determinable.**

**(3) Where a party to the contract has obtained substituted performance of the contract.**

**(4) All of the above.**

**Ans: (4)**

**Explanation:** All the listed options represent contracts that cannot be specifically enforced. This includes contracts heavily reliant on personal qualifications, inherently determinable contracts, and situations where substituted performance has been obtained. Specific performance is unenforceable in these cases due to practicality, the nature of the contract, and the fulfilment of contractual obligations through alternative means.

**8. The act of submission of a tender is:**

**(1) An act of making an offer pursuant to the notice inviting tender.**

**(2) An act of acceptance of the offer contained in the notice inviting tender.**

**(3) An act of entering into the contract.**

**(4) An act of making a counter proposal in pursuance to the notice inviting tender.**

**Ans: (1)**

**Explanation:** When an entity submits a tender in response to a notice inviting tenders, it is effectively offering to fulfil the terms of the contract at a specified price and under specified conditions. This tender submission starts the process towards potentially entering into a contract, but it is not in itself an acceptance or the formation of a contract, nor is it a counter-proposal.

**9. When consent to an agreement is caused by coercion, fraud or misrepresentation:**

1. **The agreement is not a contract.**
2. **The agreement is a contract voidable at the option of the party whose consent was so caused.**
3. **The agreement is a contract voidable at the option of either party.**
4. **The agreement is a binding contract between the parties.**

**Ans: (2)**

**Explanation:** Section 19 of the Indian Contract Act, 1872 specifies that when consent to an agreement is caused by coercion, fraud, or misrepresentation, the agreement is voidable at the option of the party whose consent was so caused.

**10. If parties to an agreement are under a mistake as to a matter of fact essential to the agreement:**

**(1) The agreement is void.**

**(2) The agreement is voidable at the instance of both the parties.**

**(3) The agreement is binding between the parties.**

**(4) The agreement is voidable only at the instance of the party making the offer and not at the instance of the party accepting the offer.**

**Ans: (1)**

**Explanation:** This principle is outlined in the Indian Contract Act, 1872, specifically under Section 20, which addresses the effects of mistakes of fact on the validity of agreements. When both parties are mistaken about a fundamental fact that is crucial to the agreement, it is considered that there was never a meeting of the minds or mutual consent in the first place, rendering the agreement void and without any legal effect.

# **6. Clear Concepts: Intention to Enter into a Legal Relationship in Contract Law**

In the domain of contract law, the notion of intention to enter into a legal relationship plays a pivotal role in determining the validity and enforceability of agreements. While the Indian Contract Act does not explicitly stipulate the necessity of intention, judicial precedents and principles elucidate its significance in contractual obligations.

The landmark case of ***Banwari Lal v. Sukhdarshan Dayal (1973) 1 SCC 294***, as pronounced by the Supreme Court, underscores the essentiality of intention to create legal relations for the formation of a contract. This principle finds resonance in English law, where a common intention to incur legal obligations is deemed imperative for contract formation.

Historical cases such as ***Dalrymple v. Dalrymple (1811) 161 ER 665*** exemplify the judiciary's stance against treating casual conversations as binding contracts, emphasising the need for serious intent. Similarly, Balfour v. Balfour (1919) 2 KB 571 elucidates that agreements arising from familial or social settings may lack the requisite intention for legal enforceability, unless parties explicitly intend such consequences.

Contrarily, in ***Rose and Frank Co. v. J.R. Crompton and Bros. Ltd. (1923) 2 KB 261 (CA)*,** the Court delineated that contractual intention is deduced from the terms of the agreement and surrounding circumstances. While familial and social arrangements typically lack legal intent, exceptions exist when parties expressly contemplate legal ramifications.

An illustrative instance is found in ***McGregor v. McGregor (1888) LR 21 QBD 424,*** where a husband and wife's agreement to withdraw a complaint in exchange for financial provisions was deemed a binding contract due to their mutual intent for legal consequences.

Thus, while the absence of intention may preclude contractual validity in familial or social matters, parties' explicit intent can render such agreements legally binding. This nuanced understanding underscores the delicate interplay between social interactions and legal obligations in contract law.