**Judiciary Digest**

**Current & Conceptual Weekly**

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# **1. Supreme Court Bans Mention of Caste or Religion in Court Filings**

**SHAMA SHARMA v. KISHAN KUMAR**

In a landmark move, the Supreme Court of India has issued a general order prohibiting the mention of caste or religion in the memo of parties filed in petitions or proceedings before the courts. This directive aims to uphold the principles of equality and non-discrimination within the judicial system.

To ensure immediate compliance, the Court has instructed copies of this order to be submitted to the concerned Registrars and circulated to the Registrar Generals of all High Courts across the country.

Addressing concerns raised by the petitioner's counsel regarding potential objections from the registry if changes are made to the memo of parties filed in lower courts, the Supreme Court clarified that its directive applies regardless of whether caste or religion details were provided in previous court filings.

The Court emphasised that henceforth, irrespective of any prior submissions, the caste or religion of parties should not be mentioned in petitions or proceedings filed before it. Additionally, all High Courts are directed to enforce this practice in petitions, suits, or proceedings brought before them and subordinate courts within their jurisdictions.

This decision builds upon earlier efforts to eliminate references to caste or religion within the judicial system. Notably, in October of the preceding year, a bench led by Justice Abhay SA. Oka had criticised the practice of mentioning caste or religion in the cause title of judgments.

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# **2. Non-Appearance of Accused Not Ground for Bail Cancellation**

**RISHNA SHARMA ALIAS KRISHNA KUMAR SHARMA vs. THE STATE OF WEST BENGAL**

In a recent ruling, the Supreme Court of India emphasised that the non-appearance of the accused party alone is not sufficient grounds for the cancellation of bail. The three-judge Bench comprising Justices B.R. Gavai, Sanjay Karol, and Sandeep Mehta made this observation while hearing a criminal appeal stemming from a decision by the Calcutta High Court to cancel bail.

The High Court had cancelled the bail citing the absence of the accused and their lawyer, characterising it as an attempt to evade legal proceedings. However, the Supreme Court, upon hearing the appeal, considered the reasons behind the non-appearance. The appellant's counsel explained that the accused couldn't attend court due to a traffic jam caused by VIP movements, and the lawyer's absence was due to the withdrawal of their Vakalatnama.

The Court reiterated that bail could be cancelled if conditions were violated or if there was misuse of liberty, such as influencing witnesses or tampering with evidence. However, it stressed that mere non-appearance by the accused does not warrant bail cancellation. The parameters for granting bail and cancelling bail are distinct, and cancellation is justified only if conditions are breached or liberty is abused.

Not finding any valid reasons for bail cancellation in the impugned judgement, the Supreme Court overturned the decision.

# **3. Procedure for Disputing Signatures in Cheque Dishonour Cases**

**Ajitsinh Chehuji Rathod v. State of Gujarat and another**

In a recent ruling, the Supreme Court clarified the procedure for disputing signatures in cases under Section 138 of the Negotiable Instruments Act, particularly when the accused contests the authenticity of their signature on a cheque.

The Court explained that when the accused disputes the signature on the cheque, certified copies of signatures from the bank can be summoned to compare them with the signature in question. Citing Section 118(e) of the Negotiable Instruments Act, the Court emphasised that endorsements on a cheque carry a presumption of genuineness, placing the onus on the accused to provide evidence to rebut this presumption.

A bench comprising Justices BR Gavai and Sandeep Mehta addressed an appeal challenging the Appellate Court's refusal to accept additional evidence in a cheque dishonour case. The appellant sought to present evidence from a handwriting expert regarding the signature at the appellate stage.

However, the Court noted that the appellant hadn't made efforts to disprove the signature during the trial and hadn't challenged the rejection of an application for comparing signatures by a handwriting expert. It highlighted that if the appellant wished to contest the authenticity of the signature, certified copies of their specimen signatures from the bank should have been procured, and relevant bank officials summoned to provide evidence.

Given these circumstances, the Supreme Court upheld the High Court's judgement, dismissing the appeal.

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# **4. Then and Now: Production of Documents**

Under the Indian Evidence Act, 1872 (Section 162), a witness summoned to produce a document must bring it to the court, notwithstanding objections to its production or admissibility, with the court having the authority to decide the validity of such objections. Similarly, the Bhartiya Sakshaya Adhiniyam, 2023 (Section 165) upholds this requirement, reflecting the same essence as its predecessor.

**Inspection of Documents:**

The Indian Evidence Act, 1872 (Section 162) empowers the court to inspect the document or gather other evidence to determine its admissibility, except in matters pertaining to the State. Correspondingly, the Bhartiya Sakshaya Adhiniyam, 2023 (Section 165) provides a similar provision, allowing the court to conduct inspections or obtain additional evidence for admissibility decisions.

**Translation of Documents:**

Both legislations address the necessity of document translation. The Indian Evidence Act, 1872 (Section 162) permits the court to direct translators to keep contents secret unless presented as evidence, with disobedience constituting an offence. Likewise, the Bhartiya Sakshaya Adhiniyam, 2023 (Section 165) maintains this provision, with a specific reference to Section 198 of the Bharatiya Nyaya Sanhita, 2023 for offences related to non-compliance.

**Exception for Matters of State:**

Both acts exempt matters of State from document inspection. However, the Bhartiya Sakshaya Adhiniyam, 2023 (Section 165) additionally stipulates that no communication between Ministers and the President of India shall be produced before the court, highlighting a specific exception not present in the Indian Evidence Act, 1872.

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# **5. Past Exam Highlights**

***Mains Question:***

**Q.: What are the elements of a "representative suit" under the Code of Civil Procedure, 1908. [RJS 2014]**

A representative suit, as delineated under Order I Rule 8 of the Code of Civil Procedure (CPC), denotes a legal action initiated by or against one or more individuals on behalf of themselves and others who share a common interest in the subject matter of the suit. This procedural mechanism facilitates the adjudication of disputes involving numerous parties with similar interests without necessitating separate lawsuits for each individual involved.

**Definition and Object**

A representative suit can be defined as a legal proceeding filed by or against one or more parties who represent the interests of themselves and others with the same stake in the litigation. The primary objective behind this provision is to streamline the resolution of disputes wherein a large number of individuals are affected by common grievances or issues. By permitting representative suits, the legal system aims to expedite the adjudication process, minimise litigation costs, and prevent the proliferation of multiple lawsuits over identical matters.

**Conditions for Filing a Representative Suit**

For a representative suit to be maintainable under Order I Rule 8 of the CPC, certain conditions must be met:

* **Numerous Parties:** The parties involved in the suit must be numerous, implying a group of individuals with a shared interest in the subject matter. While there is no fixed limit to the number of parties, the court must ascertain whether the group constitutes a sufficiently substantial body of persons to warrant representation.
* **Common Interest:** All parties represented in the suit must possess a common interest or grievance related to the dispute. This commonality of interest serves as a prerequisite for initiating a representative suit, ensuring that the relief sought is beneficial to all individuals represented.
* **Permission by the Court:** The court must grant permission or provide direction for the filing of a representative suit. This authorization is crucial to ensure that the interests of the represented parties are adequately safeguarded and that the litigation process proceeds in a fair and equitable manner.

In **T.N. Housing Board v. T.N. Ganapathy**, the Supreme Court upheld the maintainability of a representative suit filed by residential allottees against the Housing Board. Despite separate demand notices being issued to each allottee, the court ruled that all allottees shared a common interest in challenging the excess demand, thus validating the representative nature of the suit.

Furthermore, the Explanation to Rule 8 of Order I, inserted by the Code of Civil Procedure (Amendment) Act, 1976, clarified that parties represented in a representative suit need not have the same cause of action. This amendment aimed to remove any ambiguity regarding the requirement of a common cause of action for initiating a representative suit, thereby facilitating broader access to justice for affected parties.

***Prelims Questions***

**1. The fact that any person was born during the continuance of a valid marriage between his mother and any man:**

1. **Is conclusive proof that he is the legitimate child of that man.**
2. **Is conclusive proof that he is the legitimate child of that man unless it can be shown that the parties to the marriage had no access to each other at any time when the child could have been begotten.**
3. **Is no proof that the child is the legitimate child of that man.**
4. **Is no proof of legitimacy unless proved by other evidence.**

**Ans: B**

**Explanation:** This principle, as outlined in the Indian Evidence Act, presumes the legitimacy of a child born during the marriage, supporting the stability of familial and social relationships. The exception allows for the presumption to be contested only under specific circumstances where it can be conclusively proved that the spouses could not have possibly had conjugal relations leading to the conception of the child.

**2. Estoppel.**

1. **Is an equitable principle.**
2. **Is a rule of common law.**
3. **Is a principle evolved by judicial pronouncements.**
4. **Is codified in Indian Law**

**Ans: D**

**Explanation:** Estoppel is codified under Section 115 of the Indian Evidence Act, 1872. This section lays down the principle of estoppel, stating that when one person has, by his declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, deny the truth of that thing.

**3. A party to a suit can prove a fact in issue.**

1. **By examining one witness only in proof thereof.**
2. **By examining not more than three witnesses in proof thereof.**
3. **By examining any number of witnesses in proof thereof unless the Court is satisfied that ' examination of any particular witness is not relevant and is with the intent to delay the trial.**
4. **By examining any number of witnesses in proof thereof and the Court cannot limit the number of witnesses sought to be examined.**

**Ans: C**

**Explanation:** This principle permits a party in a legal suit to present any number of witnesses to support their case, ensuring thorough evidence presentation. However, it empowers courts to limit witness examination if deemed irrelevant or intended to delay the trial, balancing comprehensive evidence review with judicial efficiency and relevance.

**4. During continuance of possession of immovable property the person in possession is estopped from denying the title to such immovable property of the person who put him in such possession, if:**

1. **The possession is as a tenant.**
2. **The possession is as a licensee.**
3. **the person in possession is in unauthorised occupation.**
4. **both (A) and (B).**

**Ans: D**

Explanation: During the continuance of possession of immovable property, the person in possession is estopped from denying the title to such immovable property of the person who put him in such possession if the possession is as a tenant or as a licensee. This is covered under the principle of estoppel, which prevents a person from denying or asserting anything to the contrary of what has previously been established as truth, especially when another party has been led to act on the basis of that established truth.

**5. Limitation for claiming compensation for defamation is**

1. **Three years from the date when the libel is published.**
2. **Three years from the date when the published libel comes to the knowledge of the plaintiff.**
3. **One year from the date when the libel is published.**
4. **One year from the date when the published libel comes to the knowledge of the plaintiff or from the date when the damage for which compensation is claimed is caused, whichever is later.**

**Ans: C**

**Explanation:** The limitation for claiming compensation for defamation is "One year from the date when the libel is published." This timeframe is provided to ensure that claims of defamation are brought to court in a timely manner, allowing for the resolution of disputes while evidence and memories are still fresh.

**6. Limitation for a suit for compensation for inducing the person to break a contract with the plaintiff**

1. **Is of one year from the date of the breach.**
2. **Is of three years from the date of the branch.**
3. **Is of three years from the date when the damage caused by the breach has occurred.**
4. **Is one year from the date when the damage caused by the breach has occurred.**

**Ans: A**

**Explanation:** According to Article 78 of the Limitation Act, 1963, limitation for a suit for compensation for inducing a person to break a contract with the plaintiff is typically "Is of one year from the date of the breach." This period is designed to prompt parties to take legal action swiftly after the occurrence of the breach, ensuring that matters are resolved while the circumstances and evidence surrounding the breach are still relatively fresh and accessible.

**7. A CounterClaim, for the purposes of Limitation Act. is deemed to have been instituted:**

1. **On the same day as the suit in which the Counter Claim is made has been Hired.**
2. **On the day on which the counterclaim is made.**
3. **Either (1) or (2) whichever is beneficial to the defendant.**
4. **Either (1) or (2) whichever is beneficial to the plaintiff.**

**Ans: B**

**Explanation:** According to Section 3 of the Limitation Act, 1963, for the purposes of the Limitation Act, is indeed "On the day on which the counterclaim is made."

**8. The right to access and use of light or air shall be absolute and indefeasible where the access and use of light or air to and for any building have been Peaceably enjoyed therewith as an casement, and as of right without interruption for:**

1. **One year**
2. **Three years**
3. **Five years**
4. **Twenty years**

**Ans: D**

**Explanation:** The right to access and use of light or air becomes absolute and indefeasible where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right without interruption for twenty years.

**9. A suit field on the day next to the last date of limitation for filing thereof will not be barred by time:**

1. **If the plaintiff was outside India on the last date of limitation.**
2. **If the plaintiff was unwell and suffering from viral fever on the last date of limitation.**
3. **If the court was closed for half an hour on the last date of limitation.**
4. **If the advocate for the plaintiff forgot to file a complaint on the last date of limitation.**

**Ans: C**

**Explanation:** If a suit is filed on the day immediately following the last date of limitation because the court was closed on the last day, it will not be barred by time as per Section 4 of the Limitation Act. This section specifically addresses situations where the prescribed period for any suit, appeal, or application expires on a day the court is closed. In such cases, the act allows the suit, appeal, or application to be filed on the next day the court reopens.

**10. The share/interest of a partner in the partnership having immovable properties is:**

1. **Movable property**
2. **Immovable property**
3. **A right to sue**
4. **All the above**

**Ans: A**

**Explanation:** The share or interest of a partner in a partnership, even when the partnership has immovable properties, is considered to be "Movable property." In legal terms, a partner's interest in the partnership assets, including immovable properties, is treated as personal property that can be transferred without the formalities required for the transfer of immovable property.

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# **6. Clear Concepts: RCR**

The concept of restitution of conjugal rights arises from the primary duty of married parties to cohabit and fulfil their marital obligations. This duty, encompassing the right to consortium, denotes the entitlement of spouses to each other's society, comfort, and affection. Initially rooted in the husband's quasi-proprietary rights over the wife, including her society and services, this concept evolved over time to emphasise mutual respect and equality within the marital relationship.

In India, the remedy of restitution of conjugal rights has been borrowed from English Law, with courts historically recognizing and enforcing this right even before its codification. Section 9 of the Act explicitly provides for the restitution of conjugal rights, allowing aggrieved parties to petition the district court for relief when one spouse withdraws from the other's society without reasonable excuse. The burden of proving such an excuse lies with the withdrawing spouse, and the court may grant the petition upon satisfaction of the stated conditions.

**Ingredients of Section 9**

The provisions of Section 9 outline specific requirements for the grant of restitution of conjugal rights. These include:

1. Withdrawal from society without reasonable excuse by one spouse.
2. The burden of proving a reasonable excuse lies with the withdrawing spouse.
3. Filing of the petition in the district court.
4. Court's satisfaction with the truth of the statements and absence of other legal grounds for denial of relief.
5. Maintainability of the petition against either the husband or the wife, presupposing the existence of a valid marriage between the parties.

**Interpretation of "Withdrawal from Society"**

Withdrawal from society denotes the cessation of cohabitation in the matrimonial home by either spouse, resulting in a loss of consortium akin to desertion. This withdrawal requires both animus (intent) and factum (action), indicating an intentional departure without reasonable excuse. The withdrawing spouse's conduct is scrutinised, with the focus on whether their actions compel the other spouse to withdraw.

**Cohabitation and Matrimonial Home:**

Cohabitation encompasses living together as husband and wife, not necessarily under the same roof but in a manner that upholds the essence of the marital relationship. The choice of the matrimonial home historically favoured the husband, reflecting traditional customs and societal norms. However, modern interpretations acknowledge the equal rights of spouses in determining the matrimonial home, emphasising mutual agreement and reasonable accommodation.