**Judiciary Digest**

**Current & Conceptual Weekly**

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# **1. Supreme Court Emphasises Caution in Convicting Based on Extra-Judicial Confessions**

In a significant ruling on February 20, the Supreme Court underscored the need for caution when convicting based on extra-judicial confessions. The case, Kalinga @ Kushal Versus State of Karnataka, highlighted that conviction solely relying on circumstantial evidence requires a complete chain of circumstances to establish guilt. The court stressed that when the prosecution's case hinges entirely on circumstantial evidence, it must ensure the chain of events is fully established beyond a reasonable doubt. The judgement emphasised that the purpose of a criminal trial is not only to punish the guilty but also to ensure the innocent are not wrongly convicted, reinforcing public trust in the rule of law.

# **2. Supreme Court Clarifies Limitations of Power over High Courts**

In ***Ganpat @ Ganapat v. State of Uttar Pradesh***, the Supreme Court made a significant observation regarding its jurisdiction over the High Courts, emphasising the clear division of powers between the two institutions. The bench, comprising Justices Dipankar Datta and Augustine George Masih, stated that the Supreme Court does not possess superintendence powers over the High Courts, unlike the power granted to High Courts under Article 227 of the Constitution. The court's decision came in response to a writ petition filed under Article 32 by a petitioner aggrieved by the delay in hearing their criminal appeal in the High Court.

Referring to the precedent set in Tirupati Balaji Developers (P) Ltd. Vs. State of Bihar (2004) 5 SCC 1, the Supreme Court emphasised the need for mutual respect between the Supreme Court and High Courts, respecting the division of jurisdiction outlined in the Constitution. The court highlighted that issuing directions to a High Court in such matters would be inappropriate and would undermine the principle of mutual respect between constitutional courts.

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# **3. Inclusion of Key Judgments in Judicial Academies**

In a recent development on February 13, the Supreme Court directed the High Courts to ensure the inclusion of two landmark judgments, namely Siddharth v. State of UP and Satender Kumar Antil v. Central Bureau of Investigation, in the curriculum of judicial academies. The Division Bench comprising Justices MM Sundresh and SVN Bhatti issued this directive while hearing an application in the main matter of Satender Kumar Antil. These judgments focus on preventing unnecessary arrests and ensuring strict adherence to legal procedures during investigations and trial proceedings.

The Supreme Court further directed the High Courts to monitor compliance with these directives, particularly regarding the application of the Satender Kumar Antil judgement to petitions under Section 438 of the Criminal Procedure Code (CrPC). Additionally, States are tasked with ensuring that prosecutors accurately represent the legal positions outlined in these judgments. Regular training and updates for prosecutors are also mandated to uphold the integrity and efficiency of the criminal justice system.

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# **4. Then and Now: Sedition**

**Sedition Under the Indian Penal Code (IPC)**

Sedition, as defined by Section 124A of the IPC, criminalised any acts, spoken or written words, signs, or visible representations that bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards the Government established by law in India. This provision, rooted in colonial objectives, has been criticised for its broad and ambiguous phrasing, which, critics argue, could potentially curb freedom of expression and dissent against governmental policies.

**Transition to Bharatiya Nyaya Sanhita (BNS)**

The BNS introduces a pivotal redirection in addressing acts against the nation. By replacing the term "government" with "country," the BNS seeks to differentiate between dissent against government policies and actions that threaten the nation's sovereignty, unity, and integrity. This change is not merely semantic but reflects a deeper understanding of the nature of threats to a nation's integrity versus the criticism of its government.

**Key Features of Section 152 under the BNS**

Section 152 of the BNS outlines the penalization of acts endangering the unity and integrity of India. This provision is comprehensive, covering not only spoken or written words but also signs, visible representations, electronic communications, the use of financial means, and other methods that could potentially excite secession, armed rebellion, or subversive activities. The punishment under this section is severe, with the possibility of life imprisonment or imprisonment up to seven years, along with fines.

Notably, the BNS incorporates a safeguard for freedom of expression. It explicitly states that expressing disapproval of the government's measures or actions with the intention of seeking change through lawful means does not constitute an offence under this provision. This clause aims to protect legitimate dissent and criticism, ensuring that the law does not stifle democratic engagement and the citizens' right to express dissatisfaction with governmental policies.

# **5. Past Exam Highlights**

***Mains Question:***

**Q.: “Mimamsa" as a source of Hindu Law. [HPJS 2014]**

"Mimamsa," often referred to as "Purva Mimamsa," is one of the six classical schools of Indian philosophy that primarily focuses on the interpretation of the Vedas, the ancient religious texts of India. The Mimamsa school plays a pivotal role in understanding Hindu Law as it lays down rules for the interpretation of texts, which are extensively applied in deciphering the legal principles and codes that are foundational to Hindu jurisprudence.

**Mimamsa's Philosophical Underpinning**

Mimamsa considers the Vedas to be eternal and self-evident. Jaimini, the founder of the Mimamsa school, set forth various principles in his work "Mimamsa Sutras" to guide the interpretation of the Vedas and other scriptures. These rules and methods of scriptural interpretation are crucial for extracting legal principles and norms, especially when interpreting the 'Smritis' and other legal treatises in Hindu law.

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**Rules of Interpretation**

Mimamsa provides a series of guidelines or interpretative rules known as 'Mimamsa Nyaya' for decoding the meaning of scriptural texts. Some of these rules include:

* **Upakrama-Upasamhara Ekavakayata:** The consistency between the beginning and the end of the text.
* **Abhyasa:** The repetition of words or phrases to emphasise the central idea.
* **Apurva:** The unique application of words to get the precise interpretation.
* **Phala:** The objective or the result, indicating the real meaning behind the words.

These rules are widely used in the interpretation of ancient Hindu legal texts such as Manusmriti, Yajnavalkya Smriti, and other Dharmashastra texts.

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The interpretive principles of Mimamsa have been invoked in Indian case law to understand Hindu Law better. In the case of The Commissioner Hindu Religious Endowments, ***Madras v. Sri Lakshmindra Tirtha Swamiar of Sri Shirur Mutt,*** the Supreme Court of India referred to Mimamsa principles while interpreting the term 'religion' under Article 26 of the Constitution of India. The Court applied the rules of interpretation from Mimamsa to reach a holistic understanding of religious practices and their legal implications.

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**Mimamsa's Influence on Personal Laws**

The Mimamsa school's rules of interpretation have had a profound influence on personal laws governing marriage, adoption, succession, and other aspects of Hindu Law. By providing a structured approach to interpreting ancient texts, Mimamsa helps in understanding the intended meaning, thus forming a basis for legal principles that are both contextual and adaptive.

**Comparison with Other Sources**

While other sources like custom, legislation, and precedent play a role in shaping Hindu law, Mimamsa serves as an interpretive tool that can validate or scrutinise these sources. It is unique because it provides a methodology for deriving the essence of legal principles from ancient scriptures, thereby acting as a bridge between tradition and contemporary legal systems.

***Prelims Questions***

**1.Under Section 12 (2) of the Specific Relief Act, 1963, the part performance of a contract can be enforced by:**

1. **Only by the defaulting party**
2. **Only by the non-defaulting party**
3. **Both the defaulting party and the non-defaulting party**
4. **None of the above**

**Ans:c**

**Explanation:** According to Section 12(2), the court may direct specific performance of so much of the contract as can be performed and award compensation in money for the deficiency, at the suit of either party. This means that both the defaulting and the non-defaulting party have the potential to enforce the part performance of a contract under certain conditions, where the unperformed part is a small proportion of the whole in value and can be compensated in money.

**2. Section 34 of the Specific Relief Act, grants the declaration of:**

1. **Legal character only**
2. **Any right to property only**
3. **Legal character or any right to any property**
4. **None of the above**

**Ans:c**

**Explanation:** Section 34 of the Specific Relief Act grants the declaration of "legal character or any right to any property." This section allows a person to seek a declaratory judgment from a court regarding their legal rights or status without necessarily seeking any further relief or action.

**3. ‘Alternate prayer for rescission in suit for specific performance’ is provided in the Specific Relief Act, 1963 in:**

1. **Section 28**
2. **Section 29**
3. **Section 30**
4. **Section 31**

**Ans: b**

**Explanation:** Section 29 of the Specific Relief Act, 1963, deals with the 'Alternate prayer for rescission in suit for specific performance.' This section provides a mechanism for the court to consider rescission of the contract as an alternative relief if specific performance is not granted, ensuring that parties have recourse to a suitable remedy based on the circumstances of their case.

**4. Section 20 of the Specific Relief Act, 1963 contains the provision regarding:**

1. **Discretion as to decreeing specific performance power to award compensation**
2. **Power to grant relief for possession**
3. **Power to grant relief for refund of earnest money**
4. **Power to grant relief for refund of earnest money**

**Ans: All are incorrect**

**Explanation:** After 2018 Amendment, now Section 20 contains provisions regarding substituted performance

**5. The India Evidence Act applies to:**

1. **Affidavits**
2. **Departmental proceedings**
3. **Arbitration proceedings**
4. **An inquiry to determine a jural relation between persons**

**Ans:d**

**Explanation:** The Indian Evidence Act, 1872, applies to judicial proceedings in or before any court, including arbitrations, but it does not specifically apply to affidavits, departmental proceedings, or arbitration proceedings

**6. Which section of the Indian Evidence Act, 1872 is substituted for the old section by the Information Technology Act, 2000?**

1. **Section 22**
2. **Section 39**
3. **Section 81**
4. **Section 85**

**Ans: b**

**Explanation:** With the amendment to Section 39 of the Indian Evidence Act, 1872, by the Information Technology Act, 2000, the provision now explicitly includes electronic records alongside traditional forms of evidence like documents, conversations, and books.

**7. What is not correct regarding ‘admission’?**

1. **Admission may be documentary**
2. **All confessions are admissions but all admissions are not confessions**
3. **Admission relates to a civil transaction only**
4. **Admission may be proved against the representative in interest of the maker**

**Ans: c**

**Explanation:** Admissions can relate to both civil transactions and criminal cases. They are statements made by a party to the proceedings or under their authority, which can serve as evidence against them.

**8. The case of Budhsen Vs. State of U.P., AIR 1970, S.C. 1321 is related to:**

1. **Identification**
2. **Dying declaration**
3. **Documentary evidence**
4. **Burden of proof**

**Ans:a**

**Explanation:** In this case, the Supreme Court of India dealt with issues concerning the identification of accused persons, highlighting the importance and reliability of identification parades as part of the evidence. The case emphasised the procedures and significance of correctly identifying suspects in criminal cases, which plays a critical role in ensuring justice by accurately linking the accused to the crime.

**9. What is correct in reference to dying declaration?**

1. **It is a weaker kind of evidence**
2. **It cannot form basis of conviction without corroboration**
3. **It stands on the same footing as other types of evidence**
4. **It is by verbal statement only**

**Ans:c**

**Explanation:** A dying declaration is considered significant and reliable under the law, based on the principle that a person on their deathbed is unlikely to lie or fabricate a statement. Therefore, a dying declaration can be sufficient for conviction if it is found to be truthful and made under the belief of impending death, covering the facts leading to the declarant's death. It does not inherently require corroboration to be the basis of a conviction, although corroborative evidence may strengthen the case. Moreover, a dying declaration can be verbal or written, expanding its admissibility beyond just verbal statements.

# **6. Clear Concepts: Performing Rights under the Copyright Act**

**The Genesis of Performers' Rights**

Historically, copyright law focused predominantly on the protection of tangible forms of creativity, such as literary, musical, and artistic works. However, this left a gaping hole regarding the live performances that breathe life into these creations. The Copyright (Amendment) Act of 1994 addressed this oversight by introducing a special category of rights tailored for performers, thereby acknowledging their contribution to the cultural and creative milieu. These rights were extensively amended and expanded in 2012 to adapt to the changing dynamics of performances and their commercial exploitation.

**Defining Performers and Performances**

Under the Act, a 'performer' encompasses a broad range of artists, including musicians, singers, actors, and even lecturers, among others. The definition of 'performance' is equally broad, covering any visual or acoustic presentation made live by one or more performers. Notably, even a cricket match has been classified as a 'performance', underscoring the wide-reaching scope of these provisions.

**Rights Accorded to Performers**

Performers are granted an exclusive set of rights under Section 38 of the Copyright Act, including the right to make sound or visual recordings of their performance, issue copies to the public, communicate the performance publicly, and sell or offer the recording for commercial rental. These rights, akin to broadcast reproduction rights, empower performers to control the use of their performances, especially in the digital age where unauthorised copying and distribution are rampant.

Furthermore, performers are entitled to moral rights, which allow them to claim authorship of their performance and to object to any distortion, mutilation, or modification that would harm their reputation. These protections are crucial in maintaining the integrity of the performance and the performer's association with it.

**Commercial Use and Royalties**

A significant aspect of performers' rights is the entitlement to royalties for the commercial exploitation of their performances. This is particularly relevant when a performance is incorporated into a cinematograph film. The Copyright Rules, 2013, define 'commercial use' broadly, ensuring that performers are fairly compensated for the use of their performances across various mediums.

**Judicial Perspectives**

The jurisprudence around performers' rights, as evidenced in cases like CISAC v. Aditya Pandey, has been instrumental in clarifying the extent and limitations of these rights. The Supreme Court's rulings have underscored the importance of securing permissions and paying royalties to both the creators of underlying works and the performers, enhancing the legal framework protecting creative expressions.

**Exemptions and Infringement**

The Act also outlines specific scenarios where the making of sound or visual recordings does not constitute an infringement of performers' rights, such as for private use, bona fide teaching, or research. These exceptions strike a balance between protecting performers' rights and allowing for the fair use of performances for educational and non-commercial purposes.