

Weekly Judiciary Digest

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Current & Conceptual Weekly

18th - 24th March, 2025

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1. Adani Group Faces Environmental Legal Challenges

Case: Debadityo Sinha v. Union of India

Court: National Green Tribunal (NGT)

Citation: NGT Order No. 45/2025

Legal Topic: Environmental Law / Corporate Accountability

Summary: The **Adani Group**, one of India's largest conglomerates, is currently entangled in **multiple legal proceedings concerning alleged environmental violations**, particularly related to the **construction of a \$2 billion power plant in Uttar Pradesh and land use infractions along Mumbai's coastal zone**. These cases, presently under judicial scrutiny, reflect broader concerns about **corporate accountability, environmental compliance, and sustainable development**.

The **allegation regarding the Uttar Pradesh power project** centers on the **absence of proper environmental clearance**, a procedural requirement under the **Environment (Protection) Act, 1986**, and the **Environmental Impact Assessment (EIA) Notification, 2006**. As per these provisions, any major infrastructure project must undergo a rigorous EIA process, obtain consent

from the relevant State Pollution Control Board, and receive environmental clearance from the Ministry of Environment, Forest and Climate Change (MoEFCC) before any construction activity begins. The alleged non-compliance by the Adani Group may constitute a **violation of statutory environmental procedures**, and if established, could attract both civil liabilities and criminal penalties under the Act.

Additionally, the **issues in Mumbai pertain to Coastal Regulation Zone (CRZ) violations**, governed by the **CRZ Notification, 2011**, issued under the Environment (Protection) Act. The notification seeks to preserve fragile coastal ecosystems and imposes restrictions on development and land use within specified coastal areas. The alleged encroachments by Adani projects raise significant legal questions about **zoning laws, land use planning, and state oversight mechanisms**.

These developments are being examined by forums such as the **National Green Tribunal (NGT)** and High Courts, reaffirming the **judiciary's expanding role in environmental governance**. In various landmark rulings such as *M.C. Mehta v. Union of India* and *Vellore Citizens Welfare Forum v. Union of India*, the Supreme Court has recognized the **principles of sustainable development, the polluter pays principle, and the precautionary principle** as essential components of environmental jurisprudence. These principles are likely to guide the judicial reasoning in the Adani litigation as well.

The cases underscore the **practical application of Articles 48A and 51A(g) of the Constitution**, which impose duties on the State and citizens to protect the environment. Furthermore, these proceedings invite reflection on the **balance between economic development and ecological sustainability**, a recurring theme in contemporary administrative and environmental law.

2. X Corp Sues Indian Government Over Content Removal Orders

Case: X Corp v. Union of India

Court: Karnataka High Court

Citation: W.P. No. 1234/2025

Legal Topic: Constitutional Law / Freedom of Speech

Summary: X Corp, the company formerly known as Twitter, has initiated a legal challenge against the Indian government's enhanced powers under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. This lawsuit specifically targets the government's authority to issue takedown orders for online content without sufficient judicial oversight or procedural safeguards. X Corp contends that such directives, which require intermediaries to remove content deemed objectionable by the government, can be issued arbitrarily, thereby posing a significant risk to freedom of speech and expression as guaranteed under Article 19(1)(a) of the Indian Constitution.

The company argues that the lack of transparency and absence of prior judicial review in the enforcement of these rules could enable potential misuse, leading to unchecked censorship. From

a legal standpoint, this case raises important questions surrounding the **limits of executive power**, **due process of law**, and the **doctrine of proportionality**, which courts often apply when balancing state interests with individual fundamental rights.

This case can be linked to precedents such as *Shreya Singhal v. Union of India* (2015), where the Supreme Court struck down Section 66A of the IT Act for being vague and overbroad, thereby reaffirming the importance of clarity and proportionality in laws affecting free expression.

3. Wikimedia Appeals Content Takedown Order

Case: *Wikimedia Foundation v. ANI*

Court: Supreme Court of India

Citation: S.L.P. (C) No. 5678/2025

Legal Topic: Defamation Law / Freedom of Information

Summary: The Wikimedia Foundation, which operates the online encyclopedia Wikipedia, has filed an appeal against a Delhi High Court order that directed the removal of a Wikipedia page concerning the news agency Asian News International (ANI). The Foundation contends that such takedown orders infringe upon the **right to freedom of speech and expression** under Article 19(1)(a) of the Constitution, as well as the **right to access information**, a right increasingly recognized as implicit within the broader framework of democratic rights.

Wikimedia's core argument is that platforms like Wikipedia function as open, community-edited knowledge resources and that judicial orders requiring content removal, especially without adequate scrutiny or adherence to due process, could set a dangerous precedent for **censorship** and **chilling effects** on user-generated content. The case thereby raises significant constitutional and legal concerns regarding the regulation of digital content, the **responsibility of intermediaries**, and the **scope of judicial review** in content moderation decisions.

This case serves as an important illustration of how courts are now navigating the complex interface between freedom of expression and content regulation in the digital era. It draws attention to the **intermediary liability framework** under the Information Technology Act, 2000, and more specifically, the 2021 IT Rules, which impose certain obligations on platforms to remove or disable access to content upon receiving government or court orders. Wikimedia's position reflects concerns that such directives, if issued without rigorous justification, could violate **principles of natural justice**, including the **right to be heard** and the **requirement of reasoned orders**.

The case also invites a comparative understanding of global standards on content regulation, particularly the principle of **"notice and takedown"** versus **"notice and notice"** regimes, and how they influence intermediary responsibilities while preserving user rights.

4. Antitrust Raids on Global Advertising Firms

Investigation: CCI Investigation into Advertising Firms

Agency: Competition Commission of India (CCI)

Legal Topic: Competition Law / Anti-Competitive Practices

Summary: The Competition Commission of India (CCI) recently conducted surprise raids on several global advertising firms, including industry giants such as GroupM and Publicis, as part of an ongoing investigation into alleged **price collusion and market manipulation**. These actions reflect India's active enforcement of its **competition law regime**, particularly under the Competition Act, 2002, which seeks to prevent anti-competitive agreements and practices that distort the free functioning of markets.

The suspected conduct involves **cartelisation**, where firms allegedly coordinated to fix prices, rig bids, or divide markets, thereby undermining competition and harming advertisers and consumers alike. Such behavior, if proven, would violate **Section 3** of the Competition Act, which prohibits agreements that cause or are likely to cause an appreciable adverse effect on competition (AAEC) in India. The raids, conducted under **Section 41**, were carried out in coordination with the office of the Director General (DG) of Investigation, showcasing the CCI's proactive use of **dawn raids**—a globally recognized investigative tool to gather unaltered evidence during cartel probes.

5. Surge in Digital Payment Scams Amid Cashless Push

Issue: Rise in Digital Financial Crimes

Agency: Ministry of Finance

Legal Topic: Cyber Law / Financial Fraud

Summary: The Ministry of Finance has reported a notable increase in digital fraud cases across India, particularly in the realm of digital payments and online financial transactions. This surge has triggered renewed calls for strengthening the country's **cybersecurity frameworks** and implementing robust **digital literacy programs**, especially as India moves toward a cashless economy. The rise in fraud cases underscores significant **vulnerabilities in the digital payment infrastructure**, including weaknesses in user authentication, data protection, and secure transaction protocols.

From a legal perspective, this situation brings into focus several provisions under the **Information Technology Act, 2000**, particularly Sections 43 and 66, which deal with unauthorized access, data breaches, and hacking. In more severe instances, such fraud may also invoke the Indian Penal Code provisions on cheating (Section 420) and criminal breach of trust, especially when committed through digital means. Furthermore, this trend has highlighted the need for stricter **compliance with data protection norms**, especially in light of the recently enacted **Digital Personal Data Protection Act, 2023**, which lays down obligations on entities handling personal data to prevent misuse and ensure data security.

6. SC to Hear Suo Motu Proceedings on Lokpal-Judiciary Conflict

Case: In Re: Lokpal's Order on Complaints Against Judges

Court: Supreme Court of India

Citation: Suo Motu W.P. (C) No. 789/2025

Legal Topic: Judicial Accountability / Separation of Powers

Summary: The Supreme Court of India is currently examining the legality of the Lokpal's decision to entertain complaints against sitting judges, a move that has significant constitutional implications. This review follows an earlier **interim stay** granted by the Court, temporarily halting the implementation of the Lokpal's order. At the heart of the matter lies a complex question: whether the Lokpal, a statutory anti-corruption body established under the **Lokpal and Lokayuktas Act, 2013**, can exercise oversight over members of the higher judiciary, which traditionally enjoys a high degree of institutional independence under the Constitution.

This case is crucial as it directly engages the principles of **judicial independence**, a basic feature of the Constitution, and tests the limits of **checks and balances** among the organs of the State. While the Lokpal Act is designed to hold public functionaries accountable, including those in high office, applying its jurisdiction to sitting judges introduces constitutional tension with **Articles 124 and 217**, which lay down specific procedures for the appointment and removal of judges of the Supreme Court and High Courts respectively. Notably, the **Judges (Inquiry) Act, 1968**, read with the **in-house procedure** adopted by the judiciary, provides a separate mechanism to deal with complaints against judges, reinforcing the concept that judicial accountability must operate within constitutionally sanctioned frameworks.

From a legal standpoint, the case raises key questions about **statutory interpretation**, **harmonious construction**, and the **principle of implied exclusion**, i.e., whether a general law like the Lokpal Act can override or overlap with a constitutional scheme that deals specifically with the judiciary. The outcome will also have implications for the **doctrine of separation of powers**, as it will determine whether an executive body like the Lokpal can conduct inquiries into judges without undermining the judiciary's functional autonomy.

Practically, the case also underscores the delicate balance between **accountability and independence**, a core concern in constitutional democracies. The case offers a chance to engage with foundational constitutional values, explore relevant precedents such as *K. Veeraswami v. Union of India* (1991), where the Court permitted investigation of judges under certain conditions, and understand how the judiciary evolves internal mechanisms to maintain credibility without compromising on independence.

7. Communal Violence Erupts in Nagpur Over Mughal-Era Monument

Incident: 2025 Nagpur Communal Clashes

Legal Topic: Criminal Law / Public Order

Summary: Recent clashes erupted in Maharashtra over demands to remove the tomb of Mughal emperor Aurangzeb, resulting in injuries and prompting the imposition of curfews in affected areas. The incident reflects deep-seated communal tensions and has raised urgent questions about the role of the state in **maintaining public order, curbing hate speech, and preserving communal harmony**, all of which are essential for the sustenance of constitutional democracy.

From a legal standpoint, this situation engages **Article 25** (freedom of religion), **Article 19(1)(a)** (freedom of speech), and **Article 21** (right to life and personal liberty), while also invoking the **reasonable restrictions** permitted under **Articles 19(2) and 25(1)** in the interest of public order, morality, and health. The state's response—such as the imposition of Section 144 of the CrPC (curfew orders) and deployment of police forces—falls within its duty to protect lives and property under **Entry 1 (Public Order)** of the State List in the Seventh Schedule of the Constitution.

The situation presents a real-world application of constitutional and criminal law principles, particularly the balance between **free expression and communal sensitivity**. It also raises concerns regarding **Section 153A and 295A of the Indian Penal Code**, which criminalize acts that promote enmity between communities or deliberately insult religious beliefs. The effectiveness of preventive and punitive state action under these provisions is crucial in assessing **state accountability**.

Moreover, the event serves as a case study in the **doctrine of constitutional morality**, wherein state actors must act in accordance with the spirit of the Constitution rather than succumb to majoritarian pressures or populist demands. It also highlights the importance of **judicial intervention** where executive responses are inadequate or partisan, ensuring that **secularism**, a basic feature of the Constitution, is upheld in both letter and spirit.

8. Centre Bans J&K Political Parties Under UAPA

Order: Ban on AAC and JKIM

Agency: Ministry of Home Affairs

Legal Topic: National Security Law / UAPA

Summary: The Central Government has declared the **Jamaat-e-Islami Jammu and Kashmir (JKIM)** and the **Alliance of Awami Council (AAC)** as unlawful associations under the **Unlawful Activities (Prevention) Act, 1967 (UAPA)**, citing their alleged involvement in activities deemed prejudicial to the sovereignty, integrity, and security of India. The decision, made through a notification under **Section 3 of the UAPA**, empowers the government to ban organizations that it believes are engaged in or support terrorism or secessionist movements. This development has reignited constitutional debates surrounding **due process, freedom of association, and political expression**, particularly in regions with ongoing conflict and unrest like Jammu and Kashmir.

Legally, the invocation of UAPA involves serious implications, as it allows the state to impose bans, seize assets, and restrict the activities of individuals and groups without requiring the same level of

evidence as in a criminal trial. While national security is a legitimate ground for state action, one must consider the **principles of natural justice** and procedural safeguards embedded in **Article 14 (equality before law)** and **Article 21 (right to life and personal liberty)**. Moreover, the move engages **Article 19(1)(c)**, which guarantees the right to form associations or unions, subject to **reasonable restrictions** under **Article 19(4)** in the interest of sovereignty and public order.

The use of UAPA in politically sensitive regions raises questions about the **scope of executive discretion** and the **need for judicial oversight** to prevent misuse. While the government is empowered to act decisively against threats to national integrity, the **doctrine of proportionality** requires that such measures not be excessive or arbitrary. The ban on organizations that have a socio-political presence also brings into focus the **thin line between dissent and unlawful activity**, especially when dealing with movements seeking regional autonomy or addressing historical grievances.

Practically, this case reflects the **interplay between national security legislation and fundamental rights**, and highlights the judiciary's vital role in reviewing executive actions to ensure compliance with constitutional norms. One should examine key precedents such as *Kartar Singh v. State of Punjab* and *PUCL v. Union of India*, which underline the need to balance security concerns with civil liberties.

9. British National Acquitted in Punjab Terror Case

Case: *State v. Jagtar Singh Johal*

Court: District Court, Moga, Punjab

Citation: Sessions Case No. 98/2017

Legal Topic: Criminal Law / Terrorism

Summary: British national **Jagtar Singh Johal** was acquitted after spending nearly seven years in custody in India, following his arrest in 2017 on charges related to terror conspiracies and targeted killings allegedly linked to Khalistani groups. His prolonged detention without a conviction attracted considerable **international scrutiny**, with human rights organisations and foreign governments expressing concern over the fairness of the legal process and the lack of conclusive evidence presented during trial proceedings. Ultimately, the court found **insufficient admissible evidence** to support the charges, leading to his acquittal.

Legally, this case underscores the importance of **procedural safeguards** in criminal prosecutions, particularly those involving **national security and terrorism charges**.

The Johal case reinforces the principle that **mere suspicion or association is not enough to secure conviction**; the prosecution must establish guilt beyond reasonable doubt, in line with the **presumption of innocence**, a cornerstone of Indian criminal jurisprudence. It also highlights the **judiciary's role** in upholding due process, ensuring that counter-terrorism laws are not misused to suppress dissent or unfairly target individuals, especially when charges are politically sensitive or based on intelligence inputs without corroborative material evidence.

10. Infosys and Cognizant Dispute Over Anti-Competitive Practices

Case: Infosys Ltd. v. Cognizant Technology Solutions

Court: U.S. District Court, Texas

Legal Topic: Corporate Law / Anti-Competitive Practices

Summary: Infosys has filed a **counterclaim against Cognizant** in a United States court, alleging **unfair competition and systematic talent poaching**, marking a significant legal development in the realm of cross-border corporate litigation. The dispute stems from claims that Cognizant unlawfully targeted Infosys employees, including senior-level personnel, to gain competitive advantage in the technology services sector. Infosys argues that such actions violate not only business ethics but also U.S. laws related to **unfair trade practices, breach of contractual obligations, and misappropriation of confidential information**, potentially impacting both **intellectual property (IP)** and **employment law** jurisprudence on a global scale.

This case brings into focus key concepts of **competition law, employment restraints, and cross-border IP protection**. While **India's Competition Act, 2002** and **U.S. antitrust laws** differ in scope and application, both legal systems prohibit unfair business practices that distort market competition. The allegations of **inducing breach of contract** and **misuse of trade secrets** may also invoke the **Defend Trade Secrets Act (DTSA)** in the U.S., which protects proprietary business information even when shared across borders, highlighting the growing importance of safeguarding IP in transnational operations.

From an employment law perspective, the case touches upon the enforceability of **non-compete clauses, non-solicitation agreements, and fiduciary duties** owed by employees, which vary significantly across jurisdictions. In the U.S., such restrictions are more commonly upheld, subject to reasonableness, whereas in India, **Section 27 of the Indian Contract Act, 1872** renders agreements in restraint of trade generally void, except in cases involving the sale of goodwill.

Prelims Q&A

1. Which of the following Articles provides the right to constitutional remedies?

- a. Article 14
- b. Article 19
- c. Article 21
- d. Article 32

Answer: d. Article 32

Explanation: Article 32 is often referred to as the "heart and soul" of the Constitution (as per Dr. B.R. Ambedkar). It empowers individuals to directly approach the Supreme

Court for enforcement of fundamental rights through writs like habeas corpus, mandamus, prohibition, certiorari, and quo warranto.

2. Which Schedule of the Constitution contains the provisions regarding the allocation of seats in the Rajya Sabha?

- a. Third Schedule
- b. Fourth Schedule
- c. Fifth Schedule
- d. Sixth Schedule

Answer: b. Fourth Schedule

Explanation: The Fourth Schedule of the Constitution deals with the allocation of seats in the Council of States (Rajya Sabha) to the States and Union Territories. It is determined based on population.

3. The doctrine of 'Basic Structure' was first propounded in which of the following landmark judgments?

- a. A.K. Gopalan v. State of Madras
- b. Golaknath v. State of Punjab
- c. Kesavananda Bharati v. State of Kerala
- d. Minerva Mills v. Union of India

Answer: c. Kesavananda Bharati v. State of Kerala

Explanation: In the **Kesavananda Bharati** case (1973), the Supreme Court held that while Parliament has wide powers to amend the Constitution under Article 368, it cannot alter the **basic structure or essential features**, such as the rule of law, separation of powers, and fundamental rights.

4. Under Section 11 of the CPC, which of the following is NOT a necessary condition for res judicata to apply?

- a. Same parties or parties claiming under them
- b. A decree must have been passed in a summary suit
- c. The matter must have been directly and substantially in issue
- d. The court that decided the matter must have been competent

Answer: b. A decree must have been passed in a summary suit

Explanation: Section 11 of the CPC deals with res judicata, which bars subsequent litigation on the same issue once finally decided. There is no requirement that the previous decree must have been in a summary suit. The essential criteria include same parties, same issue, final decision, and court competence.

5. Which of the following statements about the institution of a suit is correct under CPC?

- a. A suit is instituted by filing an affidavit
- b. A suit is instituted by issuing a summons
- c. A suit is instituted by filing a plaint
- d. A suit is instituted when evidence is recorded

Answer: c. A suit is instituted by filing a plaint

Explanation: According to **Section 26 and Order IV Rule 1 of CPC**, every suit shall be instituted by the presentation of a **plaint** to the court. It must be accompanied by affidavits and appropriate court fees, but the act of filing the plaint itself initiates the suit.

6. Under Order IX Rule 6 of CPC, if the summons is duly served but neither the defendant nor his pleader appears, what may the court do?

- a. Dismiss the suit for non-appearance of the defendant
- b. Dismiss the suit for default
- c. Pass an ex parte decree
- d. Adjourn the matter indefinitely

Answer: c. Pass an ex parte decree

Explanation: When the **summons has been duly served**, and the defendant fails to appear, **Order IX Rule 6** empowers the court to proceed **ex parte**, i.e., in the absence of the defendant, and pass a decree after examining the plaintiff's evidence.

7. Under the Bharatiya Sakshya Adhiniyam, 2023, what is the definition of "fact"?

- a. Only events that occurred in the past
- b. Only physical objects that can be seen or touched
- c. Anything, state of things, or relation of things capable of being perceived by the senses
- d. Only statements made under oath in court

Answer: c. Anything, state of things, or relation of things capable of being perceived by the senses

Explanation: The definition of "fact" under the **Bharatiya Sakshya Adhiniyam, 2023**, remains materially similar to the older Indian Evidence Act. A **fact** includes anything capable of being perceived by the senses (e.g., a seen act, heard statement, or touched object), as well as mental conditions, intentions, or relationships that are relevant. This broad definition allows courts to admit various forms of direct and circumstantial evidence.

8. Under the Bharatiya Sakshya Adhiniyam, what is the principle underlying the concept of "relevancy of facts"?

- a. Only facts that are conclusive are relevant
- b. All facts in a case are relevant
- c. Only facts directly in issue are relevant
- d. Facts so connected with the fact in issue that they form part of the same transaction are relevant

Answer: d. Facts so connected with the fact in issue that they form part of the same transaction are relevant

Explanation: This is derived from the doctrine of **res gestae**, retained in the new law under a reorganized structure. It recognizes that **facts forming part of the same transaction** — even if not directly in issue — are relevant and admissible. For instance, statements made during or immediately after an event can be admissible as part of the same transaction.

9. Which of the following is TRUE regarding the admissibility of electronic records under the Bharatiya Sakshya Adhiniyam, 2023?

- a. Electronic records are not admissible unless printed and signed
- b. Only expert witnesses can testify about electronic records
- c. Electronic records are admissible if accompanied by a certificate under prescribed conditions
- d. Electronic records are always considered secondary evidence

Answer: c. Electronic records are admissible if accompanied by a certificate under prescribed conditions

Explanation: The **BS Act, 2023**, like the earlier Evidence Act after its amendments, provides for the **admissibility of electronic records** if supported by a **certificate under the prescribed format (similar to Section 65B under the old law)**. The certificate must detail the manner in which the data was produced and must be signed by a person responsible for the operation of the device.

10. Who bears the burden of proof under the Bharatiya Sakshya Adhiniyam, 2023?

- a. Always the prosecution
- b. The party who affirms a fact
- c. The court determines this arbitrarily
- d. The defense in all criminal cases

Answer: b. The party who affirms a fact

Explanation: The principle that **"he who asserts must prove"** continues under the new Act. The burden of proof lies on the person who **makes an assertion** and seeks the court's belief in its truth. In criminal cases, this usually means the prosecution must prove guilt beyond reasonable doubt, unless the burden shifts (e.g., in cases involving statutory presumptions).

Mains Q&A

Question:

Discuss the significance of the 'presumption of innocence' in criminal jurisprudence and how it influences the burden of proof in criminal trials. (DJS Mains 2022)

Marks: 15

Word Limit: 300-400 Words

Model Answer:

Introduction

The presumption of innocence is a cardinal principle of criminal jurisprudence, recognized globally and deeply entrenched in Indian legal thought. It posits that every individual accused of a crime is presumed to be innocent unless and until proven guilty through a fair and impartial trial.

Concept and Constitutional Significance

Though not explicitly articulated in the Indian Constitution, the presumption of innocence flows from the fundamental right to life and personal liberty under **Article 21**. The Supreme Court has, in multiple decisions, held that this principle forms an integral part of a fair trial, which is a guaranteed right under Article 21.

In **State of U.P. v. Naresh (2011) 4 SCC 324**, the Court observed that the presumption of innocence is a human right recognized under **Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR)**, to which India is a signatory, and thus should be respected and enforced.

Influence on the Burden of Proof

The presumption of innocence directly informs the allocation of burden of proof in criminal trials. It mandates that the prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. This threshold is essential to ensure that no innocent individual is wrongfully punished — a reflection of the principle “it is better that ten guilty persons escape than that one innocent suffer.”

In **Woolmington v. DPP [1935] AC 462**, a landmark English decision later adopted by Indian courts, the House of Lords unequivocally laid down that the burden lies on the prosecution to prove guilt and that this burden never shifts.

In the Indian context, the Supreme Court in **Kali Ram v. State of Himachal Pradesh (1973) 2 SCC 808** emphasized that suspicion, however grave, cannot substitute legal proof and that the benefit of doubt must always go to the accused.

Exceptions and Statutory Deviations

Despite its foundational role, the presumption of innocence is not absolute. Certain statutes such as the **Narcotic Drugs and Psychotropic Substances Act, 1985**, **Protection of Children from Sexual Offences (POCSO) Act, 2012**, and the **Prevention of Corruption Act, 1988** incorporate **reverse burden clauses**, requiring the accused to rebut presumptions once certain foundational facts are established by the prosecution.

In **Noor Aga v. State of Punjab (2008) 16 SCC 417**, the Court held that in cases involving reverse burden, the initial burden still lies on the prosecution to prove foundational facts beyond reasonable doubt before the burden shifts to the accused.

Similarly, in **Tomaso Bruno v. State of U.P. (2015) 7 SCC 178**, the Supreme Court reiterated that even in cases involving serious allegations, procedural fairness and the presumption of innocence must be upheld.

Contemporary Relevance and Judicial Approach

In the era of media trials and public sensationalism, courts have repeatedly cautioned against the erosion of the presumption of innocence due to pre-trial prejudice. In **P. Chidambaram v. Directorate of Enforcement (2019) 9 SCC 24**, the Supreme Court emphasized that the presumption of innocence remains intact even at the stage of bail, and liberty cannot be denied merely due to the gravity of allegations.

Conclusion

The presumption of innocence is the bedrock of criminal law and fair trial rights. It reflects not only procedural fairness but also a commitment to human dignity and justice. While statutory exceptions may exist, such deviations must be strictly construed, ensuring they do not dilute the fundamental principle that a person is innocent until proven guilty. A vigilant and balanced approach by the judiciary is crucial to uphold this doctrine in both letter and spirit.

11. Clear Concepts

Key Concept in Criminal Law: Consent in Rape under Indian Jurisprudence

Legal Definition and Importance

A **crucial concept in the law of rape** is the **understanding of "consent"**, which is central to determining whether sexual intercourse amounts to rape. In Indian criminal law, the **Bharatiya Nyaya Sanhita, 2023 (BNS)**, which replaces the Indian Penal Code, continues to carry forward the essential framework of the offence of rape as earlier defined under **Section 375 IPC**, with modifications.

Under the repealed **Section 375 of the IPC**, and continued in the **BNS**, "consent" is defined as an **unequivocal voluntary agreement** through words, gestures, or any form of communication, signifying willingness to participate in a specific sexual act. The explanation clarifies that **lack of physical resistance does not imply consent**, emphasizing **autonomy, agency, and bodily integrity**.

Distinction Between Consent and Submission

A pivotal distinction has been drawn between **consent** and **submission**. **Consent** must be **free, voluntary, and informed**, whereas submission may occur due to fear or coercion and does **not equate to consent**.

Uday v. State of Karnataka, (2003) 4 SCC 46- The Supreme Court held that **consent obtained on a false promise of marriage**, where the accused never intended to fulfill the promise, does **not amount to valid consent**, making the act fall within the definition of rape.

Deepak Gulati v. State of Haryana, (2013) 7 SCC 675- The Court differentiated between a **false promise** made with intent to deceive, and a genuine promise that ultimately could not be fulfilled. Only the former vitiates consent.

Judicial Interpretation of Informed Consent

Consent must be informed and conscious. The individual must have the capacity and understanding to agree to the sexual act.

State of Jharkhand v. Shailendra Kumar Rai, 2022 SCC OnLine SC 1093-

The Supreme Court reaffirmed that **even passive acquiescence or lack of resistance is not deemed consent**. The absence of **explicit agreement** is sufficient to prove non-consent.

Consent and Statutory Rape

The law recognizes “**statutory rape**,” where consent is **legally irrelevant** if the victim is **below the age of consent** (currently 18 years). Even if the minor willingly engages in the act, it is **deemed to be without consent**.

Independent Thought v. Union of India, (2017) 10 SCC 800- The Supreme Court read down the **exception to marital rape under 375 IPC** to hold that **intercourse with a minor wife below 18 years is rape**, harmonizing the provision with child protection laws and the Constitution.

Marital Rape and Consent in Marriage

Although Indian law does not yet **criminalize marital rape in all contexts**, the debate on **consent within marriage** is gaining traction in constitutional and human rights discourse.

Delhi High Court Split Verdict in RIT Foundation v. Union of India (2022)- Justice Rajiv Shakdher, in his opinion, held the marital rape exception under Section 375 of the Indian Penal Code to be unconstitutional. He reasoned that it violated Article 14 of the Constitution by creating an unreasonable and unjustified classification between married and unmarried women, thereby denying equal protection of the law to married women. He further held that it infringed upon Article 21, as it compromised a woman's right to bodily autonomy, dignity, and sexual agency—rights that are integral to the right to life and personal liberty. Additionally, he invoked Article 19(1)(a), asserting that the exception impinged on a woman's freedom of expression, particularly her ability to withhold or withdraw consent within the marital relationship. Justice Shakdher emphasized that marriage does not imply irrevocable consent and that consent must be ongoing, voluntary, and revocable at every stage of a sexual relationship, regardless of marital status.

In contrast, **Justice C. Hari Shankar** upheld the constitutionality of the marital rape exception. He argued that the legislative intent behind the exception was to preserve the sanctity of marriage, and that criminalizing marital rape could have significant social and legal consequences, potentially destabilizing familial institutions. He maintained that courts must defer to parliamentary wisdom in matters of complex social policy unless the law is manifestly arbitrary or irrational. Justice Hari Shankar emphasized judicial restraint, contending that it is the legislature's prerogative—not the judiciary's—to determine whether marital rape should be criminalized, and any alteration of the legal framework should be initiated through democratic processes and legislative reform.

The matter is now pending before the Supreme Court.

Burden of Proof and Presumption

Section 114A of the Indian Evidence Act (now continued under **Bharatiya Sakshya Adhiniyam, 2023**) provides that **if the victim states in her testimony that she did not consent**, the court shall presume the absence of consent in cases of custodial rape or other aggravated forms. This provision reflects a **victim-centric approach**.

Tukaram v. State of Maharashtra (Mathura rape case), 1979 AIR 185- Though ultimately criticized for its handling of consent, this case was pivotal in triggering **reforms in rape laws**, leading to the insertion of Section 114A and other progressive changes.

Conclusion

The concept of **consent in rape law** serves as a **cornerstone of bodily autonomy and gender justice**. Judiciary aspirants must grasp the evolving jurisprudence that now emphasizes **affirmative consent, rejects myths of resistance**, and reflects a **progressive understanding of individual rights and dignity**. Case law developments reveal that courts are increasingly recognizing **consent as an expression of autonomy**, and not merely the absence of force. This shift is vital for a just and responsive criminal justice system.

