

# Judiciary Digest

Current & Conceptual Weekly

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## Supreme Court Upholds Rights of Indigent Litigants

In **ALIFIYA HUSENBHAI KESHARIYA v. SIDDIQ ISMAIL SINDHI & ORS.** , the Supreme Court ruled on the rights of an indigent person

### The Bench's Observations on Indigency

The Bench of Justices J.K. Maheshwari and Sanjay Karol referred to Order XXXIII and Order XLIV of the CPC, 1908, emphasising that financial incapability should not prevent a person from accessing justice. They highlighted that these provisions ensure that the lack of monetary resources does not bar a person from seeking legal redress.

### Case Background and High Court's Error

The appellant, injured in an accident, was awarded around Rs. 2 Lakhs by the Motor Accident Claims Tribunal, despite claiming Rs. 10 Lakhs for her permanent disablement. Dissatisfied, she appealed to the High Court as an indigent person. Despite acknowledging that she had not received any compensation, the High Court dismissed her application, prompting her to approach the Supreme Court.

### Supreme Court's Reference to Precedents

The Court drew on precedents such as *Union Bank of India v. Khader International Construction & Ors.*, noting that deferred payment of court fees is designed to aid poor litigants. The Supreme Court criticised the High Court for dismissing the appeal application, as the appellant's indigency persisted due to non-receipt of compensation.

### Procedural Lapses and Court's Conclusion

The Court noted that the High Court failed to conduct a necessary inquiry under Order XLIV Rule 3(2) of the CPC. Given the appellant had not initially approached the tribunal as an indigent person, the statutory requirements were not met. Consequently, the Supreme Court set aside the High Court's order.

## Final Decision and Directive to the High Court

Instead of remanding the matter, the Supreme Court allowed the appellant to file the appeal as an indigent person, considering the elapsed time. The Court also directed the High Court to resolve the appeal within six months, ensuring a timely decision for the appellant.

## Tenant Liability for Mesne Profits

In **BIJAY KUMAR MANISH KUMAR HUF VERSUS ASHWIN BHANULAL DESAI**, the Supreme Court held that landlords are entitled to mesne profits if tenants remain in premises after tenancy rights are extinguished.

### Understanding Mesne Profits

The Court clarified that tenants who lawfully entered a property but continued possession after their rights expired are liable to compensate landlords. Justices JK Maheshwari and Sanjay Karol emphasised this principle, noting that tenants must pay for occupying property post-lease expiration.

### Tenant at Sufferance

A "tenant at sufferance" is defined as one who remains in possession after the lawful title has ended. The Court ruled that such tenants must pay mesne profits to the landlord, affirming the position that tenants cannot occupy premises without compensation after their legal rights have ceased.

### Precedent and Legal Interpretation

The judgement referred to the precedent set in *Indian Oil Corporation Ltd. v. Sudera Realty Private Limited*, 2022 LiveLaw (SC) 744, where it was observed that tenants continuing in possession post-lease expiry are liable for mesne profits. The Court explained that terms like 'determination', 'expiry', 'forfeiture', and 'termination' all result in the extinguishment of tenant rights, thereby necessitating the payment of mesne profits.

### Compensation and Fair Justice

The Court observed that delaying rent or dues payments substantially impacts the landlord, as evidenced by market reports. In the interest of justice, the Court ordered the tenant to deposit the claimed amount, ensuring that landlords receive due compensation for the prolonged occupancy.

## Powers Under Section 156(3) CrPC

In **M/S SAS INFRATECH PVT. LTD. VERSUS THE STATE OF TELANGANA & ANR.**, the Supreme Court reiterated that a Judicial Magistrate does not take cognizance of an offence merely by directing a police investigation under Section 156(3) of the Code of Criminal Procedure (CrPC).

## **Reversal of High Court's Findings**

The bench of Justices Bela M Trivedi and Pankaj Mithal reversed the High Court's findings, drawing upon the precedent set in Devarapalli Lakshminarayana Reddy And Others Versus V. Narayana Reddy And Others (1976) 3 SCC 252. The Supreme Court emphasised that when a Magistrate exercises judicial discretion to direct an investigation under Section 156(3) CrPC, it does not constitute taking cognizance of an offence. Cognizance is only taken when the Magistrate, after applying his mind, decides to proceed under Chapter XV of the CrPC, specifically under Section 200.

## **Understanding Cognizance and Judicial Discretion**

The Court clarified that upon receiving a complaint, if a Magistrate applies his mind to proceed under Section 200 and subsequent sections in Chapter XV, he is deemed to have taken cognizance of the offence under Section 190(1)(a) CrPC. Conversely, if the Magistrate, in the exercise of judicial discretion, orders an investigation under Section 156(3) or issues a search warrant, it does not amount to taking cognizance of the offence.

## **Case Background and Supreme Court's Judgement**

In the case, the Magistrate had reviewed the complaint, supporting documents, and submissions, and upon being prima facie satisfied, directed an investigation under Section 156(3) CrPC. The accused challenged this order under Section 482 CrPC before the High Court, which set aside the Magistrate's directive for a police investigation.

The Supreme Court held that the High Court erred in exercising its discretionary powers under Section 482 CrPC. The Court stated that the Magistrate's order was just, legal, and proper, and the High Court should not have interfered, especially given the limited scope of its powers under Section 482 CrPC.

## **Restoration of Magistrate's Order**

The Supreme Court allowed the complainant's appeal, restoring the Magistrate's order for a police investigation. This judgement shows the proper interpretation of judicial discretion and the limits of cognizance under the CrPC, reinforcing that Magistrates can direct investigations without being seen as having taken cognizance of the offence.

## **Old versus New: Commutation Provisions**

The provisions for commutation of sentences under the Code of Criminal Procedure (CrPC) Section 433 and the new law (BNSS) Section 474 have notable differences and similarities.

### **Old Law: CrPC Section 433**

Under Section 433 of the CrPC, the appropriate Government holds the power to commute sentences without the consent of the person sentenced. The key points are:

1. **Death Sentence:** Can be commuted to any other punishment provided by the Indian Penal Code (IPC).

2. **Life Imprisonment:** Can be commuted to imprisonment for a term not exceeding fourteen years or for a fine.
3. **Rigorous Imprisonment:** Can be commuted to simple imprisonment for any term to which the person might have been sentenced, or for a fine.
4. **Simple Imprisonment:** Can be commuted to a fine.

### **New Law: BNSS Section 474**

Section 474 of the BNSS modifies and expands the provisions for commutation of sentences. The significant changes are:

1. **Death Sentence:** Can only be commuted to imprisonment for life.
2. **Life Imprisonment:** Can be commuted to imprisonment for a term not less than seven years.
3. **Imprisonment for Seven Years or More:** Can be commuted to imprisonment for a term not less than three years.
4. **Imprisonment for Less Than Seven Years:** Can be commuted to a fine.
5. **Rigorous Imprisonment:** Can be commuted to simple imprisonment for any term to which the person might have been sentenced.

### **Past Exam Highlights**

#### **Prelims**

1. "Sarkaria Commission" was concerned with Administrative Reforms

- a. Electoral Reforms
- b. Financial Reforms
- c. Centre-state relations
- d. None of the Above

**Answer:** Centre-state relations

**Explanation:** The Sarkaria Commission was established in 1983 to examine and review the working of the existing arrangements between the Centre and the States in India. Its primary focus was to recommend changes to improve the relationship and ensure a more balanced distribution of powers. The commission submitted its report in 1988.

2. Part IX of the constitution of India dealing with panchayats was inserted in the constitution by

- a. 73rd Amendment

- b. 42nd Amendment
- c. 44th Amendment
- d. None of the above

**Answer:** 73rd Amendment

**Explanation:** The 73rd Amendment Act of 1992 inserted Part IX into the Constitution of India, which deals with the Panchayats. This amendment provided a constitutional status to the Panchayati Raj institutions and established a uniform structure and system for rural local governance across India. The act came into effect on April 24, 1993.

3. Section 113B of the Indian Evidence Act, 1872 deals with

- a. Estoppel
- b. Leading question
- c. Presumption as to dowry death
- d. Proof of signature

**Answer:** Presumption as to dowry death

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**Explanation:** Section 113B of the Indian Evidence Act, 1872, deals with the presumption as to dowry death. It states that when a woman dies within seven years of her marriage under suspicious circumstances, and it is shown that she was subjected to cruelty or harassment for dowry by her husband or his relatives, the court shall presume it to be a dowry death.

4. Order VI rule 17 of the civil procedure code, 1908 deals with
- a. Revision
  - b. Setting aside abatement
  - c. Amendment of pleadings
  - d. Counterclaim

**Answer:** Amendment of pleadings

**Explanation:** Order VI Rule 17 of the Civil Procedure Code, 1908, deals with the amendment of pleadings. This provision allows parties to make necessary amendments to their pleadings at any stage of the proceedings, provided such amendments are essential for determining the real issues in dispute and do not cause prejudice to the other party.

5. Right of an accused to speedy trial is a fundamental right under which Article of the constitution of India?
- a. 21
  - b. 32
  - c. 226
  - d. None of the above

**Answer:** 21

**Explanation:** The right of an accused to a speedy trial is considered a fundamental right under Article 21 of the Constitution of India. Article 21 guarantees the right to life and personal liberty, which includes the right to a fair and speedy trial, as established by the Supreme Court in the landmark case of Hussainara Khatoon v. State of Bihar (1979).

6. Nothing is an offence under the Indian Penal Code if it is done by a child under
- a. Fourteen years of age
  - b. Seven years of age
  - c. Five years of age
  - d. Sixteen years of age

**Answer:** Seven years of age

**Explanation:** According to Section 82 of the Indian Penal Code, 1860, nothing is an offence which is done by a child under seven years of age. This provision recognizes the incapacity of children under this age to understand the nature and consequences of their actions, thereby exempting them from criminal liability.

7. Warrant-case means a case relating to an offence punishable with
- a. Death
  - b. Imprisonment for life
  - c. Imprisonment for a term exceeding two years
  - d. All of above

**Answer:** All of the above

**Explanation:** A warrant-case, as defined under the Code of Criminal Procedure, 1973, relates to offences that are punishable with death, imprisonment for life, or imprisonment for a term exceeding two years. These cases require a more detailed and stringent procedure compared to summons-cases.

8. Under the provision of Section 6 of the Transfer of Property Act, 1882, a mere right of re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.
- (A) The statement is true
  - (B) The statement is false
  - (C) The statement is partly true
  - (D) None of the above

**Answer:** (A) The statement is true

**Explanation:** Section 6 of the Transfer of Property Act, 1882, outlines what property cannot be transferred. It explicitly states that a mere right of re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby. This provision ensures that such rights are retained by the owner alone and cannot be alienated separately.

9. Under the Transfer of Property Act, 1882 the condition restraining alienation is provided in

- (A) Section 10
- (B) Section 9
- (C) Section 8
- (D) Section 7

**Answer:** (A) Section 10

**Explanation:** Section 10 of the Transfer of Property Act, 1882, deals with conditions restraining alienation. It provides that any condition or limitation absolutely restraining the transferee from disposing of his interest in

the property is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him.

10. The provision of fraudulent transfer is dealt under

- (A) Section 49 of the Transfer of Property Act, 1882
- (B) Section 50 of the Transfer of Property Act, 1882
- (C) Section 51 of the Transfer of Property Act, 1882
- (D) Section 53 of the Transfer of Property Act, 1882

**Answer:** (D) Section 53 of the Transfer of Property Act, 1882

**Explanation:** Section 53 of the Transfer of Property Act, 1882, deals with fraudulent transfers. This provision states that any transfer of immovable property made with the intent to defeat or delay the creditors of the transferor is voidable at the option of the creditors. It aims to protect the interests of creditors against any dishonest actions by the debtor.

### Mains

**Q. Explain the following as provided under the UP Consolidation of Holdings Act, 1953 :Declaration and notification regarding consolidation.**

#### **Declaration of Consolidation Area**

**Initiation of the Process** The consolidation process begins with a declaration by the State Government, identifying specific areas where land consolidation is necessary. This step is taken to eliminate land fragmentation and improve agricultural productivity.

**Legal Basis and Procedure** Under Section 4 of the Uttar Pradesh Consolidation of Holdings Act, 1953, the State Government can declare, through a notification in the Official Gazette, that any area will be subject to consolidation operations. This declaration clearly defines the boundaries of the area and specifies the start date of consolidation operations.

**Public Awareness and Participation** To ensure transparency, the notification must be widely disseminated. It should be published in the Official Gazette and made available locally through public announcements and notices, informing all landholders and stakeholders about the commencement of consolidation operations.

## **Notification Regarding Consolidation**

**Detailed Notification** Following the initial declaration, a detailed notification is issued, outlining the specifics of the consolidation process. This includes procedures to be followed, the rights and responsibilities of landholders, and the timeline for various stages of the consolidation process.

**Specific Provisions and Procedures** The detailed notification must comply with the provisions of the Act. It specifies the roles of officials like the Consolidation Officer and Settlement Officer and details the procedures for filing claims, objections, and appeals related to the consolidation scheme. This clarity helps maintain order and fairness.

**Addressing Public Concerns** The notification process allows landholders to file objections or suggestions regarding the proposed consolidation scheme. These objections are reviewed by the Consolidation Officer, who conducts inquiries and hearings to resolve disputes, ensuring that all stakeholders' voices are heard.

## **Finalization and Implementation**

**Confirmation of the Scheme** After addressing objections and suggestions, the consolidation scheme is finalized and confirmed by the Settlement Officer. The confirmed scheme is then published in the Official Gazette, including detailed maps and records of the reallocated holdings.

**Issuance of Orders** The Settlement Officer issues new allotment orders for the reallocated land holdings, marking the transition from planning to implementation. These orders ensure that all landholders receive their new parcels as per the finalised scheme.

**Legal Validity and Enforcement** The finalised and notified consolidation scheme confers legal validity to the new land holdings. These changes are binding and enforceable, ensuring the reallocated holdings are recognized and respected under the law, maintaining order and resolving future disputes related to the consolidated land.

## **Clear Concept: Substantial Question of Law**

Section 100 of Code of Civil Procedure (CPC) provides that a second appeal lies only if the High Court is satisfied that the case involves a substantial question of law. This requirement indicates the legislative intent to restrict second appeals to cases of significant legal importance, thereby preventing frivolous litigation.

In the landmark judgement of **Nazir Mohamed v. J. Kamala and Others** (2020 KHC 6507 : AIR 2020 SC 4321), the Supreme Court emphasised that the existence of a substantial question of law is a condition precedent for entertaining a second appeal. The High Court, while formulating the question, must demonstrate that it pertains to law and not merely to facts. This principle was also affirmed in **Kondiba Dagadu Kadam v. Savitribai Sopan Gujar** [(1999) 3 SCC 722], reiterating that the question must be substantial and not trivial.

The recent decision in **Government of Kerala v. Joseph** (2023 (5) KHC 264 : 2023 (5) KLT 74 SC) further clarified that the primary requirement for the maintainability of a second appeal under Section 100 CPC is the presence of a substantial question of law. The Court highlighted that this criterion has been consistently reiterated in numerous judgments. The legal position is unequivocal: for a second appeal to be admitted and maintained, the Court must formulate substantial questions of law, making this procedure mandatory.

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Although the CPC does not define "substantial question of law," the phrase signifies questions that are essential, real, and of considerable importance. It stands in contrast to technical questions that lack substance or consequence. Notably, the legislature deliberately refrained from qualifying the scope of "substantial question of law" with terms like "of general importance," as seen in other provisions such as Section 109 of the CPC or Article 133(1)(a) of the Constitution. Thus, a second appeal can be based on substantial questions of law even if they are not of general importance.

The distinction between a substantial question of law and other types of legal questions was articulated by the Constitution Bench in **Sir Chunilal V. Mehta & Sons Ltd. v. The Century Spg. & Mfg. Co. Ltd.** (AIR 1962 SC 1314). The Court laid down that a substantial question of law must be one of general public importance or one that directly and substantially affects the rights of the parties. It should be an open question, not finally settled by the highest courts, or one that is not free from difficulty and requires discussion of alternative views. If the question is well-settled by higher courts or involves merely applying established principles, it would not qualify as a substantial question of law.

