

Judiciary Digest

Current & Conceptual Weekly

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Supreme Court's Clarification on Hindu Marriages

In a recent ruling in the case of **Dolly Rani v. Manish Kumar Chanchal**, the Supreme Court elucidated the legal requisites and sanctity of Hindu marriages under the Hindu Marriage Act 1955.

The court stressed that for a Hindu marriage to be considered valid, it must adhere to the appropriate rites and ceremonies, such as saptapadi (the ritual of seven steps around the sacred fire), when included. Furthermore, proof of these ceremonies is indispensable in case of disputes.

The registration of a Hindu marriage under Section 8 of the Hindu Marriage Act facilitates proof of the marriage but does not confer legitimacy if the marriage was not solemnised according to Section 7 of the Act, which specifies the requirements for a valid Hindu marriage ceremony.

Moreover, the court emphasised that the Marriage Registration Officer cannot register a marriage if it has not been performed according to customs and ceremonies.

The court deprecated the practice of marriages of convenience for "practical purposes" without following customs, stressing the sacred nature of Hindu marriage as a sacrament and the foundation of a new family.

In its observations, the court highlighted that a Hindu marriage is not merely an event for celebration but a solemn institution of great value in Indian society, facilitating procreation, consolidating family units, and fostering fraternity within communities.

The court reiterated the importance of strictly adhering to marriage ceremonies prescribed under the Hindu Marriage Act, emphasising that the genuine conduct and participation in these rites and ceremonies are essential for the sanctity of marriage.

Clarity and Completeness in Chargesheets

In **Sharif Ahmed and others vs State of Uttar Pradesh**, the Supreme Court indicated the vital role of a comprehensive chargesheet in facilitating the judicial process. Justices Sanjiv Khanna and SVN Bhatti emphasised the necessity for chargesheets to contain clear and complete entries, ensuring a lucid understanding of the crimes committed and the evidence available.

The bench highlighted that chargesheets must not merely replicate the details from the First Information Report (FIR) but should comprehensively outline the facts constituting the offence and provide relevant evidence. They deprecated the practice of filing chargesheets without adequate details or evidence, noting its prevalence in some states.

While acknowledging that chargesheets need not extensively evaluate evidence since evaluation is a matter for trial, the court advocated for inclusion of substantiated reasons and grounds for the offence. Such details serve as a valuable resource for magistrates to determine the course of action, including whether there are sufficient grounds for taking cognizance and initiating proceedings.

Citing precedents such as **H.N. Rishbud and Inder Singh v. State of Delhi and Dablu Kujur v. State of Jharkhand**, the court reiterated the essential steps of investigation and emphasised compliance with Section 173(2) of the Criminal Procedure Code (Cr.P.C.). Failure to adhere to these mandatory requirements would be strictly viewed by the courts.

Ultimately, the judgement emphasises the pivotal role of the chargesheet in enabling magistrates to effectively adjudicate cases, ensuring a fair and transparent legal process.

Important Links for Judiciary Free Resources (Click on Each to Open Respective Pages)

Subject Wise Mains PYQ Solution	Essay for Judiciary
Subject Wise Notes	Legal Doctrines
Landmark Judgements	GS Notes
Weekly Current Affair	Subject Wise Prelims PYQ Solution
Free Answer Writing Course	Judgement Writing
Telegram Link	Youtube Link

Caution on Routine Issuance of Non-Bailable Warrants

In a significant ruling in the case of **Sharif Ahmed and others vs State of Uttar Pradesh**, the Supreme Court cautioned against the routine issuance of non-bailable warrants. Justices Sanjiv

Khanna and SVN Bhatti emphasised that such warrants should only be issued in cases where the accused is charged with a heinous crime and is likely to evade the process of law or tamper with evidence.

The court observed that while there are no comprehensive guidelines for the issuance of non-bailable warrants, it has consistently held that such warrants should not be issued as a matter of routine. Instead, they should be reserved for cases where there is a genuine risk of the accused evading justice or interfering with evidence.

The non-bailable warrant in this case was issued against the accused/appellant by the trial court after the accused failed to appear despite the issuance of a bailable warrant. The chargesheet filed against the appellant contained offences under various sections of the Indian Penal Code.

In overturning the findings of the High Court, Justice Sanjiv Khanna's judgement noted that the issuance of non-bailable warrants against the appellant was unsustainable and should be quashed. The court reiterated the settled principle that the liberty of an individual should not be curtailed unless it is necessary for the larger interest of the public and the state.

Old versus New: Form of Summons

Section 61 and BNSS Section 63

Under CrPC Section 61, every summons must be in writing, issued in duplicate, and signed either by the presiding officer of the court or an officer designated by the High Court. This document must also bear the seal of the court. This traditional approach ensures the authenticity and formal recognition of legal documents, maintaining a clear, standardised procedure for the issuance of summons.

BNSS Section 63 retains these traditional features but introduces a significant modernization. It encompasses the same requirements as the CrPC for written summons, ensuring consistency in legal procedures. However, it extends the format to include encrypted or other forms of electronic communication.

This adaptation acknowledges the growing role of digital technology in the legal system, allowing for more efficient and potentially more secure communication of summons. The provision for digital signatures or the image of the court's seal on electronic communications reflects an effort to balance innovation with the need for authenticity and security in legal documents.

Past Exam Highlights: Pre and Mains

Prelims

De Facto IAS
Judiciary Exam: Current Affair

1. The definition of 'State' under Article 12 of the Constitution applies to :—

- a. Part III and Part IV of the Constitution
- b. Only Part III of the Constitution
- c. Only Part IV of the Constitution
- d. None of the above

Ans. (a)

Explanation: Article 12 of the Indian Constitution defines 'State' for the purposes of enforcing fundamental rights and directive principles. It includes the government and its departments, local or other authorities within the territory of India or under the control of the Government of India, ensuring that both fundamental rights and directive principles are protected against actions by these entities.

2. The objective of the Article 13 of the Constitution of India is to :—

- a. secure paramountcy to the fundamental rights
- b. limit the legislative power of the State
- c. define the word 'law'
- d. expand the powers of the courts

Ans. (a)

Explanation: Article 13 ensures that all laws are consistent with the fundamental rights, invalidating any law that contravenes them. It establishes the supremacy of fundamental rights over ordinary law, preventing the State from enacting laws that infringe on these rights.

3. 'The fundamental right can never be amended as it beyond the purview of the Parliament', such ruling was given in :—

- a. Keshav Anand Bharti Case
- b. Golaknath v. State of Punjab
- c. Golaknath v. State of Kerala
- d. Indira Gandhi v. Raj Narayan

Ans. (b)

Explanation: In this landmark case, the Supreme Court ruled that Parliament cannot amend the Constitution to take away or abridge any of the fundamental rights, marking a significant shift in understanding the immutability of these rights.

4. Which was the first case to introduce the concept of judicial review?

- a. Donoghue v. Stevenson (1932)
- b. Marbury v. Madison (1803)
- c. Entick v. Carrington (1765)
- d. Rylands v. Fletcher (1868)

Ans. (b)

Explanation: This U.S. Supreme Court case established the principle of judicial review, asserting the power of courts to scrutinise and invalidate legislation or executive actions that violate the constitution.

5. An equitable interest is an interest recognized by:

- a. The Court of Chancery
- b. The Common Law Courts
- c. Both (a) and (b)
- d. None of the above

Ans.(a)

Explanation: Historically, equitable interests were recognized and enforced by the Court of Chancery, distinct from common law courts, which focused on strict legal rights and remedies.

6. The meaning of the maxim "Equality is Equity" IS:

- a. Equity delights in equality
- b. Delay defeats equity
- c. Equity looks to the intent rather to the form.
- d. None of the above.

Ans.(a)

Explanation: This maxim reflects the principle that equity seeks to treat equals

equally, promoting fairness and justice in cases where strict legal rules might lead to inequitable outcomes.

7. Defamation is divided into libel and slander under-

- a. English law only
- b. Indian law only
- c. Both under English law and the Indian law
- d. None of the above

Ans. (a)

Explanation: In English law, defamation is categorised into libel (written defamation) and slander (spoken defamation). Indian law, however, treats all defamation under one single category without this specific division.

8. Action for trespass can be brought by a person-

- a. in possession who is also owner
- b. in possession even if he/she is not owner
- c. not in possession
- d. Both (a) and (b)

Ans. (d)

Explanation: A person in possession of property, regardless of ownership, has the right to bring an action for trespass, reflecting

the principle that possession itself grants certain legal protections against unauthorised intrusion.

9. The liability of joint tortfeasors is-

- a. Only joint
- b. Joint and several
- c. Only several
- d. Neither joint nor several

Ans. (b)

Explanation: Joint tortfeasors are liable both together (jointly) and individually (severally) for the full extent of the damage caused, allowing the injured party to claim the entire compensation from any one or all of the tortfeasors.

10. Which one of the following is not an objective of the law of torts?

- a. Deterrence
- b. Imposition of moral blame
- c. Compensation
- d. Corrective justice

Ans. (b)

Explanation: The primary objectives of the law of torts include deterrence, compensation, and corrective justice, but not the imposition of moral blame, which is more relevant in criminal law rather than tort law.

Mains

Q. What do you understand by an arbitration agreement? Do you think that an oral arbitration agreement is also valid?

Ans: An arbitration agreement is a contract where parties agree to resolve their present or future disputes through arbitration rather than litigation in a court. This agreement is central to the dispute resolution process and is meant to ensure that both parties submit their grievances to an impartial private tribunal for adjudication.

The key elements of a valid arbitration agreement, as outlined by Section 7 of the 1996 Arbitration Act, include: (1) a mutual agreement to submit disputes to arbitration; (2) the agreement must be in

writing; (3) it should be part of a contract or exist as a separate agreement; and (4) it must relate to a defined legal relationship, whether contractual or not.

Intention to Enter into an Arbitration Agreement

The intention of the parties to enter into an arbitration agreement is fundamental. This intention must be clear and shared between the parties (consensus ad idem). The form or specific terminology like "arbitration" or "arbitral tribunal" is less important than the actual terms indicating a clear intent to arbitrate.

The Supreme Court, in the case of **Jagdish Chander v. Ramesh Chander**, emphasised that the terms should disclose an obligation to arbitrate, rather than just the possibility. Hence, an agreement suggesting a mere future possibility of arbitration is deemed non-binding and invalid.

Formal Requirements for a Valid Arbitration Agreement

Under Section 7 of the 1996 Arbitration Act, beyond the intent of the parties, certain formal requirements must be met. These include the arbitration clause being part of a contract or a separate agreement and the necessity of the agreement being in writing. The Act also recognizes several forms of written evidence, such as documents signed by the parties, exchanges of letters, or communications that can provide a record of the agreement.

Validity of Oral Arbitration Agreements

While the Indian Contract Act of 1872 acknowledges the validity of oral agreements in general, the 1996 Arbitration Act mandates that arbitration agreements must be in writing to be enforceable. This requirement aligns with international standards, such as Article II of the New York Convention, and ensures clarity and enforceability. Consequently, an oral arbitration agreement, despite being a valid contract under broader contract law, does not meet the specific criteria set out for arbitration agreements under the 1996 Act and is, therefore, not valid for the purposes of arbitration.



The banner features a blue background with a purple-to-cyan gradient. On the left, there is a circular logo with a stylized 'f' and 'D' and the text 'De Facto IAS'. To the right of the logo, the text 'Free Resources for Judiciary' is written in a large, bold, black font, followed by the website address 'www.DeFactoJudiciary.in' in a smaller black font. Below this, there are two columns of buttons. The left column contains four buttons: 'Mains(PYQ) Solution' (green), 'Legal Doctrines' (yellow), 'Subject Wise Notes' (purple), and 'Weekly Current Affair' (orange). The right column contains four buttons: 'Concept Notes' (green), 'Prelims(MCQ) Solution' (yellow), 'Judgement Writing' (purple), and 'Free Answer Writing Course' (orange).

Clear Concept: Sanction for Prosecution

"Sanction for Prosecution" refers to the legal requirement that, before certain public officials can be prosecuted for offences allegedly committed in the course of their official duties, a designated authority must grant permission or sanction. This principle is designed to protect public servants from frivolous or vexatious litigation that could arise from their official actions.

Section 197 of the Criminal Procedure Code (CrPC) of India encapsulates this requirement. It stipulates that no court can take cognizance of an offence alleged to have been committed by a public servant, such as a judge, magistrate, or other public officials not removable except by or with the sanction of the government, unless the appropriate government authority has granted prior sanction. This ensures that public servants can perform their duties without the constant threat of legal action for actions taken in good faith.

The section also specifies that this protection is only for those public servants whose removal requires government sanction. For instance, employees of nationalised banks, despite being public servants, do not fall under this protection if they can be removed without government intervention, as established in several legal precedents.

Furthermore, certain serious offenses like sexual assault, human trafficking, and specific forms of harassment are excluded from the need for sanction under Section 197, allowing for immediate legal action against the accused public servant.

In practice, the process of granting sanction can be lengthy, potentially delaying justice. To address this, the Supreme Court of India, in **Dr. Subramanian Swamy vs Dr. Manmohan Singh And Anr (2012)**, issued guidelines to streamline this process. These include a stipulation that all sanction proposals must be decided within three months, extendable by one month if necessary, for consultations with legal experts. If no decision is made within this timeframe, sanction is deemed to have been granted, allowing the prosecution to proceed.