

Judiciary Digest

Current & Conceptual Weekly

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1. Supreme Court Upholds Right to Anticipatory Bail

In *Ashok Kumar v. State of Union Territory Chandigarh*, the Supreme Court of India reinforced the importance of anticipatory bail, ruling that it cannot be denied solely on the grounds of the accused's custody being required by the State for interrogation.

State's Burden in Anticipatory Bail Cases

The bench, comprising Justices JB Pardiwala and Manoj Misra, emphasised that while custodial interrogation is indeed a crucial aspect of investigation, the State must provide substantial evidence as to why such interrogation is necessary. This ruling marks a significant departure from previous practices where the mere assertion of the State's need for custody was often sufficient to deny anticipatory bail.

Balance of Justice

Moreover, the court clarified that the absence of a need for custodial interrogation does not automatically entitle the accused to anticipatory bail, particularly in cases of serious offences. This balancing act between the rights of the accused and the interests of justice underscores the court's commitment to fair and equitable legal proceedings.

The justices noted, "There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature."

Case Background and Decision

The case in question revolved around Ashok Kumar, who sought anticipatory bail for charges under various sections of the Indian Penal Code and the Prevention of Corruption Act. Kumar's plea for anticipatory bail had been rejected by both the trial court and the high court, citing the State's requirement for custodial interrogation.

However, Kumar's cooperation with the investigation, as evidenced by his participation and the recording of his statements, presented a compelling argument in his favour. The Supreme Court acknowledged Kumar's proactive involvement in the investigation, stating, "One good ground which has persuaded us to exercise our discretion in favour of the appellant is that the appellant has already joined the investigation. He has cooperated in the investigation so far."

2. Supreme Court's Directive on Compliance with Section 173(2) of Cr.P.C.

In *DABLU KUJUR VERSUS THE STATE OF JHARKHAND*, the Supreme Court of India issued a significant directive emphasising the mandatory compliance with Section 173(2) of the Criminal Procedure Code (Cr.P.C.) by police officers submitting police reports or chargesheets to magistrates. The bench, comprising Justices Bela M. Trivedi and Pankaj Mithal, underscored the necessity for adherence to the particulars outlined in Section 173(2), warning that non-compliance would be strictly viewed by the courts where the charge sheet or police report is filed.

The court observed, "We are more concerned with Section 173(2) as we have found that the investigating officers while submitting the charge sheet/Police Report do not comply with the requirements of the said provision."

Case Background and Decision

The case involved a bail application against the Jharkhand High Court's decision denying bail to the accused. While the Supreme Court ultimately denied bail due to the trial being at an advanced stage, it expressed strong concern over chargesheets being filed without adequate details and particulars. The court highlighted the importance of fulfilling the requirements of Section 173(2) of Cr.P.C. by investigating officers while submitting police reports.

Earlier in the proceedings, the court had directed the Directors General of Police (DGPs) for the States of Bihar and Uttar Pradesh to submit status reports regarding steps taken to ensure compliance with legal requirements in filing chargesheets or police reports.

Directive for Compliance

The Supreme Court outlined specific directions for officers in charge of police stations across the country to follow when submitting chargesheets or police reports. These directions include:

- Providing a report in the form prescribed by the State Government, containing essential details such as names of parties, nature of information, names of individuals acquainted with the case, whether an offence has been committed, and the status of the accused.
- Clear indication in the report if there is insufficient evidence to justify forwarding the accused to a magistrate.
- Submission of all relevant documents and statements of witnesses when forwarding the report to the magistrate.
- Compliance with the above requirements in cases of further investigation.
- The Supreme Court emphasised the significance of the police report in determining the nature of the alleged offence and its role in the court's decision-making process.

The court also clarified the distinction between scenarios where police reports are not filed in compliance with Section 173(2) and cases where reports are submitted for some accused individuals but not others. It underscored that incomplete chargesheets or pending investigations regarding other accused individuals do not entitle the accused to claim default bail.

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Subject Wise Notes	Legal Doctrines
Landmark Judgements	GS Notes
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3. Judicial Review in Employee Transfer Cases

In *Sri Pubi Lombi vs. The State of Arunachal Pradesh*, the Supreme Court of India provided significant clarity on the scope of judicial review concerning employee transfers initiated at the request of public representatives, such as Members of Legislative Assembly (MLAs). The court emphasised that judicial interference in such matters is permissible only in cases of malafide intentions or statutory violations, underscoring the limited role of courts in administrative decisions.

Background and Legal Proceedings

The case centred on the transfer of two state employees based on orders issued by the State Government, subsequently modified following representations made by a local MLA. While a High Court Division Bench overturned the decision of a Single Judge, directing the reinstatement of the employees to their original postings, the Supreme Court revisited the matter to address the principles of judicial review involved.

Judicial Review Parameters

In its analysis, the Supreme Court underscored the importance of distinguishing between legitimate administrative decisions and instances warranting judicial intervention. It highlighted the principle that courts should refrain from scrutinising transfers unless specific legal violations or malafide intentions are alleged.

Limited Judicial Scrutiny

Quoting from previous judgments, the court reiterated that judicial expertise in personnel management is lacking and emphasised the need for restraint in interfering with administrative actions. The court clarified that unless transfer orders are tainted by malafide conduct or violate statutory provisions, judicial review is impermissible.

Impleading Relevant Parties

Furthermore, the Supreme Court stressed the importance of impleading relevant parties in cases where malafide allegations are made. It emphasised that fairness dictates the inclusion of individuals against whom such allegations are levelled, ensuring their right to respond adequately.

Article 226 and Judicial Review

The court clarified that judicial review of transfer orders is not permissible under Article 226 of the Constitution unless malafide intentions, statutory violations, or adverse impacts on employee rights are evident. This reaffirmed the principle that administrative actions are subject to judicial scrutiny only to the extent necessary to ensure compliance with legal norms and safeguard individual rights.



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- Prelims(MCQ) Solution
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4. Old versus New: Medical Examination of Victim of Rape

Section 164A and BNSS Section 184

Under CrPC Section 164A, the examination must be carried out by a registered medical practitioner employed by a government or local authority hospital. In the absence of such a practitioner, any other registered medical practitioner may conduct the examination.

The victim's consent, or that of someone legally competent to give consent on her behalf, is mandatory. The victim must be sent to the medical practitioner within twenty-four hours of reporting the offence. The medical report must detail the victim's name, age, DNA evidence collected, any physical injuries, her mental state, and other relevant information.

The report must clearly state the rationale for each conclusion and note the exact times of the commencement and completion of the examination. This report is then forwarded by the practitioner to the investigating officer, who includes it in the documents sent to the magistrate.

BNSS Section 184 largely mirrors these procedures but introduces a specific timeline for the forwarding of the medical report. The registered medical practitioner must send the report to the investigating officer within seven days, ensuring a structured timeframe for this part of the investigation. This addition aims to streamline the process and possibly prevent delays in the judicial process.

Like CrPC, BNSS emphasises the importance of the victim's consent and the detailed recording of the examination's findings.

5. Past Exam Highlight: Prelims and Mains

Prelims

1. According to section 3 of the Transfer Property Act, 1882 'instrument' means:—

- a. testamentary instrument
- b. non-testamentary instrument
- c. both (a) & (b)
- d. None of the above

Ans. (b)

Explanation: Non-testamentary instruments are those which take effect during the lifetime of the person making them (e.g., sales deeds, gifts, leases) as opposed to testamentary instruments which take effect upon the death of the person (like a will). Therefore, in light of Section 5 of the Act, b is correct answer.

2. Which of the following mode of transfer of property is not covered by Transfer of Property Act, 1882-

- a. Sale
- b. Mortgage
- c. Testamentary disposition
- d. Exchange

Ans.(c)

Explanation: The Transfer of Property Act, 1882, primarily governs the transfer of property inter vivos, that is, between living

persons. Testamentary dispositions, which are transfers made through a will or testament that take effect upon the death of the testator, are not covered by the Transfer of Property Act.

3. Under the Limitation Act, 1963, which of the following is not a correct definition ?

- a. "Tort means a civil wrong which is exclusively the breach of a contract or the breach of a trust.
- b. 'Suit' doesn't include an appeal or an application.
- c. 'Foreign country' means any country other than India .
- d. None of the above option.

Ans. (a)

Explanation: This definition is incorrect because a tort is actually a civil wrong that is not exclusively the breach of a contract or the breach of a trust. Torts typically include wrongs such as negligence, trespass, defamation, and battery, among others, which arise independently of contractual obligations or trust breaches.

4. The provision for condonation of delay is given in:

- a. Section 3 of Limitation Act
- b. Section 4 of Limitation Act
- c. Section 5 of Limitation Act
- d. Section 6 of Limitation Act

Ans. (c)

Explanation: Section 5 of the Limitation Act, 1963, provides for the condonation of delay in filing certain appeals and applications, if the applicant can demonstrate that there was sufficient cause for not presenting the appeal or application within the prescribed period.

5. Which of the following contracts cannot be specifically enforced as per the provision of Section 14 of the Act?

- a. Execution of a formal deed of partnership
- b. Contract for the construction of any building or execution of any other work on land
- c. Contract which is determinable in its nature
- d. Contract to execute a mortgage or furnish any other security for repayment of any loan which the borrower is not willing to repay at once.

Ans. (c)

Explanation: According to Section 14 of the Specific Relief Act, contracts that are determinable in nature cannot be specifically enforced. A contract is considered determinable if either party has the option to terminate it under certain conditions, such as employment contracts or certain agency agreements.

6. In a suit for specific performance of a contract Court can award compensation to the plaintiff

- a. only if the defendant himself offers compensation

b. even if the plaintiff does not claim compensation

c. only if the Court thinks fit to award compensation

d. only if the plaintiff claims such compensation in his plaint

Ans. (d)

Explanation: Under the Specific Relief Act, the court can award compensation in addition to or in substitution of specific performance, but it typically does this only when the plaintiff has expressly claimed such compensation in the pleadings. This requirement ensures that the defendant has fair notice of the claims against them and can prepare their defense accordingly.

7. "Yatho Dharma Thatho Jaya" is the motto of-

- a. C.B.I
- b. Supreme Court of India
- c. Delhi Police
- d. None of the above

Ans. (b)

Explanation: The motto "Yatho Dharma Thatho Jaya" translates to "Where there is Dharma (Righteousness), there is Victory." This motto is used by the Supreme Court of India, symbolising the principle that justice must prevail in accordance with righteousness and moral order.

8. A Professor of a University, who is an eminent jurist, is eligible to be appointed as a judge of the :—

- a. High Court
- b. Both High Court and Supreme Court
- c. Neither in the Supreme Court nor in the High Court
- d. Supreme Court

Ans. (d)

Explanation: According to the Constitution of India, Article 124(3), one of the qualifications for being appointed as a judge of the

Supreme Court is that the person must be a distinguished jurist. This clause opens the possibility for a professor of a university, who is recognized as an eminent jurist, to be appointed to the Supreme Court.

9. Volenti non fit injuria is-

- a. A defence in an action founded on tort
- b. A ground for initiation of action for tort
- c. Not a defence in an action for tort
- d. None of the above

Ans. (a)

Explanation: "Volenti non fit injuria" is a Latin legal maxim that translates to "to one who is willing, no harm is done." This principle serves as a defence in tort law, where it can be argued that a person who has voluntarily consented to a risk of harm cannot later claim compensation for the injury resulting from that risk.

10. Which one of the following famous cases is related to an exception to the application of the pings volenti non fit injuria based on rescue cases ?

- a. Haynes v. Harwood
- b. Padmavati v. Dugganaika
- c. Ashby v. White
- d. Wooldridge v. Sumner

Ans. (a)

Explanation: In the case of Haynes v. Harwood, the principle of volenti non fit injuria was found to have an exception related to rescue scenarios. In this case, a police officer was injured while attempting to stop horses that had bolted from a van left unattended in a busy street. The court held that the officer, who acted to prevent harm to others, did not voluntarily accept the risk inherent in his rescue effort in the same way as someone who consents to a known danger for personal reasons.

Mains

Q. : What is meant by jurisdiction of a civil court?

The jurisdiction of a civil court refers to its legal authority to hear and decide civil cases. This jurisdiction is defined by several parameters, determining what cases a court can preside over. The key aspects of the jurisdiction of a civil court include:

Territorial Jurisdiction: This determines the geographical area within which a court can exercise its authority. A civil court typically has the authority to hear cases that arise within its specific geographic boundaries. For example, a dispute involving property located within a particular district would ordinarily fall under the jurisdiction of the civil court of that district.

Pecuniary Jurisdiction: This relates to the financial value or amount involved in the dispute. Civil courts are often categorised based on the monetary limits up to which they can adjudicate cases. For instance, a lower civil court might only handle cases where the disputed amount is below a certain financial threshold, while higher courts handle cases involving larger sums.

Subject-Matter Jurisdiction: This refers to the nature of the dispute or the type of case the court can adjudicate. Some civil courts may have specialised jurisdiction over certain types of matters, such as family law, probate, land disputes, contract disputes, etc. Certain courts are designated to handle specific categories of cases.

Original and Appellate Jurisdiction: Original jurisdiction refers to the authority of a court to hear a case at its inception, as the first court to hear the matter. Appellate jurisdiction, on the other hand, allows a court to review the decisions of lower courts. Some courts may have both original and appellate jurisdiction, depending on the legal structure.

Limited or General Jurisdiction: Some courts have limited jurisdiction, meaning they can only hear certain types of cases as defined by law. Others have general jurisdiction and can hear a wide range of civil matters.

Exclusive or Concurrent Jurisdiction: In some instances, a particular type of case can only be heard in a specific court (exclusive jurisdiction), while in other scenarios, more than one court might have the authority to hear the same type of case (concurrent jurisdiction).

Understanding the jurisdiction of a civil court is crucial as it determines where a lawsuit can be filed and adjudicated. If a court lacks jurisdiction over a case, any decision or judgement it issues could be declared void. Therefore, determining the appropriate jurisdiction is a fundamental step in the legal process.

6. Clear Concepts: Foreign Judgement and CPC

In the intricate web of global commerce, the recognition and enforcement of foreign judgments stand as pillars of legal order, ensuring that obligations transcending borders are duly honoured. At the heart of this process lies the Code of Civil Procedure, 1908 (CPC), a foundational legal instrument guiding India's approach to foreign judgments. Defined under Section 2(6), a foreign judgement encapsulates the decisions rendered by courts beyond Indian jurisdiction. Yet, it is not a blanket endorsement; rather, the CPC meticulously delineates exceptions under Section 13, safeguarding against potential miscarriages of justice.

Setting the Boundaries

A foreign judgement, as per the CPC, is not an absolute decree but subject to stringent criteria. Section 13 outlines scenarios where a foreign judgement may not carry the weight of conclusiveness, emphasising the importance of due process and legal integrity. From jurisdictional competence to adherence to substantive merits and compliance with legal principles, each criterion is a safeguard against potential injustices stemming from foreign adjudications.

Jurisdictional Prerequisites

Central to the validity of a foreign judgement is the concept of jurisdictional competence. The court rendering the judgement must possess authority over the parties and the subject matter. Indian judicial precedents, such as the landmark *Bharat Nidhi Limited v. Megh Raj Mahajan* case, underscore the indispensability of jurisdictional competence for a foreign judgement to be accorded recognition.

Ensuring Substantive Justice

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A foreign judgement's conclusiveness hinges on its substantive merits—whether it was rendered after careful consideration of the facts at hand or merely as a perfunctory exercise. The CPC insists on judgments grounded in a fair assessment of the case, guarding against arbitrary or punitive rulings that undermine the essence of justice.

Upholding Legal Principles

Beyond mere jurisdictional competence and substantive merits, foreign judgments must adhere to legal principles recognized internationally and in India. Any deviation from fundamental norms of justice, such as the violation of natural justice or the perpetration of fraud, renders a foreign judgement vulnerable to challenge under the CPC.

