

Judiciary Digest

Current & Conceptual Weekly

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Admissibility of Oral Evidence under Section 92

In Radhe Yadav vs. Prabhas Yadav, the Patna High Court delivered a crucial judgement on the admissibility of oral evidence to prove the contents of a document, particularly in cases involving claims of misdescription of plot numbers in a sale deed. This ruling, delivered by Justice Arun Kumar Jha, highlights the interpretation of Sections 91 and 92 of the Indian Evidence Act, 1872.

Factual Background

The case arose from a dispute where the petitioner, Radhe Yadav, filed a suit for the declaration of title over a piece of land. The Munsif Court, however, barred the petitioner from cross-examining the respondent, Prabhas Yadav, regarding the boundaries mentioned in the sale deed. The lower court's decision was based on the belief that oral evidence could not be admitted to alter or contradict the terms of a document under Section 92 of the Indian Evidence Act.

Provisions of Sections 91 and 92

Section 91 of the Indian Evidence Act mandates that the terms of a document must be proved by the document itself or secondary evidence if the primary evidence is unavailable. Section 92 complements Section 91 by stating that once the terms of a document are proved as required, no oral evidence can contradict, vary, add to, or subtract from its contents. However, there are specific exceptions under Section 92, particularly Proviso (1), which allows oral evidence to prove factors such as fraud, mistake, or misdescription.

Court's Analysis and Observations

Justice Arun Kumar Jha noted that Sections 91 and 92 of the Indian Evidence Act are based on the 'best evidence rule.' This rule asserts that when superior evidence is available, inferior evidence should not be considered. It ensures that when a transaction is documented in writing, that document serves as the exclusive evidence of the transaction.

"The provisions of the aforesaid two sections are based on the 'best evidence rule' that when a transaction has been reduced to writing, it becomes the exclusive memorial thereof, and no external evidence is admissible either to prove independently the transaction or to contradict vary,

add to, or subtract from the terms of the documents, though the content of the document may be proved either by primary or secondary evidence. The law always requires that only the best evidence be laid and hence to admit inferior evidence when the law requires superior would be to nullify the law," the Court stated.

Exception to the Rule: Proviso (1) of Section 92

The Court highlighted that while Section 91 prohibits the use of oral evidence to prove the contents of a document, Proviso (1) of Section 92 allows for exceptions. Specifically, it permits oral evidence to prove any fact that could invalidate the document, such as fraud, intimidation, or a genuine mistake in fact or law. The Court emphasised that mistakes contemplated under this proviso must be genuine and accidental, such as the misdescription of property.

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In this case, the first vendor had admitted a mistake in the plot number and subsequently executed a rectification deed. The Court found this consistent with the petitioner's claim of misdescription.

Ruling

The Patna High Court set aside the Munsif Court's order, allowing the petitioner to present oral evidence to prove the incorrect plot number. Justice Jha stated:

“When there is an allegation about misdescription of khesra number in the sale deed, oral evidence as to its contents is admissible. Further, if there is any misdescription of the property or the khesra number has been wrongly mentioned, in my view, the same would come under the purview of Proviso (1) of Section 92 of the Act.”

The Court concluded that such oral evidence would not violate Sections 91 and 92 of the Indian Evidence Act, thus allowing the petitioner to cross-examine the respondent on the boundary details contained in the sale deed.

Bail in Delayed FIR Rape Case

In the case of Shrawan Ram v. State of Rajasthan and Anr., the Rajasthan High Court granted bail to an accused booked under the Indian Penal Code (IPC) and the SC/ST (Prevention of Atrocity)

Amendment Act, 2015 in an alleged case of rape. The bail was granted on the grounds of an unexplained delay in filing the FIR by the prosecutrix, which spanned 4-5 years.

Case Background

The bench of Justice Kuldeep Mathur was hearing an appeal filed by the accused, Shrawan Ram, challenging the order of the special judge under the SC/ST Act that had rejected his bail application. The accused contended that the allegations of sexual assault were not mentioned in the FIR or in the initial statement given to the police by the prosecutrix. The claims of sexual assault only surfaced in the statement made to the magistrate, alleging that the appellant had sexually assaulted her 4-5 years before the FIR was filed.

Arguments Presented

The appellant's counsel argued that the prosecutrix provided no explanation for the significant delay in lodging the FIR. Furthermore, it was highlighted that there was a substantial number of phone calls exchanged between the prosecutrix and the appellant—over 980 calls on various dates—indicating that they were in regular contact, which was inconsistent with the prosecutrix's allegations of rape.

Court's Observations and Ruling

After considering the arguments and the facts of the case, the Court agreed with the appellant's counsel. Justice Kuldeep Mathur observed that the prosecutrix had not provided a plausible explanation for the delay in filing the FIR. The Court also noted the extensive phone communication between the prosecutrix and the appellant, suggesting a continuous relationship. In the decision, the Court held:

“After perusal of the statements of prosecutrix recorded under Section 164 Cr.P.C., this Court prima facie finds that prosecutrix, in her statements, stated that she was subjected to forcible sexual assault/rape about 4-5 years from the date of lodging the FIR. This Court also prima facie finds that no plausible explanation has been furnished by the prosecutrix for lodging the FIR after a huge delay of 4-5 years.”

Investigation in Dowry Death Cases

In the case of Rammilan Bunkar vs. State of U.P., the Allahabad High Court issued significant directions to ensure a thorough investigation in dowry death cases. The Court emphasised the need for a "wide spectrum of investigation" by Investigating Officers (IOs) to determine the exact nature of the unnatural death of a married woman within seven years of her marriage. This directive aims to ascertain whether such deaths fall under murder (Section 302 IPC), dowry death (Section 304B IPC), or suicide due to abetment (Section 306 IPC).

Background of the Case

The bench, comprising Justice Rahul Chaturvedi and Justice Mohd. Azhar Husain Idrisi, addressed the petition by Rammilan Bunkar, focusing on the procedural lapses in investigating dowry deaths. The Court highlighted the need for IOs to gather comprehensive evidence and present a detailed report under Section 173(2) CrPC, which justifies the classification of the case under the relevant sections of the IPC.

Court's Observations

The High Court highlighted that the IOs must conduct an in-depth investigation, examining all possible angles of the case to ensure justice. The directive includes:

- Investigating if the death was due to murder by the husband or in-laws (Section 302 IPC).
- Determining if it was a case of suicide due to abetment by the husband or in-laws (Section 306 IPC).
- Assessing if it was a dowry death (Section 304B IPC).

Justice Chaturvedi stated: "...the I.O. of the case shall hold a wide spectrum of investigation to examine and collect the material during the investigation so as to justify his report u/s 173(2) Cr.P.C. as to whether such unnatural death of the lady falls within the ambit of Section 302 I.P.C. or it is a plain and simple Dowry Death punishable u/s 304B I.P.C. or it is a case of suicide punishable u/s 306 I.P.C. where the woman died on account of any abetment by her husband or in-laws."

Reference to Supreme Court Judgment

The Court referred to the Supreme Court's 2013 judgement in Jasvinder Saini vs. State (Government of NCT of Delhi), emphasising that the Investigating Agency should not be guided solely by the FIR. Instead, they should examine the case from every possible angle and then submit their report under Section 173(2) CrPC. This comprehensive approach ensures a fair and just investigation, considering all aspects of the unnatural death.



The banner features a light blue background with a white circular logo on the left containing a stylized 'f' and 'j' with 'De Facto IAS' written below it. To the right of the logo, the text 'Free Resources for Judiciary' is written in a large, bold, black font, with the website address 'www.DeFactoJudiciary.in' centered below it. The banner contains eight colored buttons arranged in two columns: 'Mains(PYQ) Solution' (green), 'Legal Doctrines' (yellow), 'Subject Wise Notes' (purple), 'Weekly Current Affair' (orange) on the left; and 'Concept Notes' (green), 'Prelims(MCQ) Solution' (yellow), 'Judgement Writing' (purple), 'Free Answer Writing Course' (orange) on the right.

Criticism of Routine Addition of Section 302 IPC

The Allahabad High Court also criticised the mechanical addition of Section 302 IPC (murder) by trial court judges in cases involving dowry deaths without supporting material. The Court explained that trial judges should only frame a murder charge if the evidence collected during the investigation, whether direct or circumstantial, prima facie supports and justifies such a charge. If

the main charge of murder is not proved during the trial, only then should the court consider the alternative charge of dowry death under Section 304B IPC.

The Court clarified: "If the main charge of murder is not proved against the accused at the trial, the court then only switches over to look into evidence to determine whether the alternative charge of Dowry Death u/s 304B I.P.C. is established or not."

Old versus New: Certified Copies

Section 75 of Bharatiya Sakshya Adhiniyam

Section 75 mandates that public officers must provide certified copies of public documents upon request, assuming the requester has a right to inspect the document. The certified copy must be authenticated with the officer's signature, official title, date, and seal if applicable. The provision emphasises transparency and accessibility to public documents, reinforcing the principle that public records should be readily available to citizens, ensuring the right to information and accountability of public authorities.

Section 76 of Indian Evidence Act, 1872

Section 76 of the Indian Evidence Act, 1872, similarly requires public officers to provide certified copies of public documents on request, underlining the same procedural requirements as found in the Bharatiya Sakshya Adhiniyam, 2023. It ensures that these copies are verified, dated, signed, and sealed by the concerned officer, thus maintaining the integrity and authenticity of public records. This provision aims to uphold transparency and facilitate the public's access to official records.

Similarities

Both Section 75 of the Bharatiya Sakshya Adhiniyam, 2023, and Section 76 of the Indian Evidence Act, 1872, share several fundamental similarities. Primarily, both sections mandate that copies of public documents must be certified by the custodian officer. This certification process involves the inclusion of the officer's signature, official title, date, and, when applicable, a seal, ensuring the authenticity and integrity of the document. Additionally, both laws uphold the principle of accessibility, allowing any person with the right to inspect a public document to demand a certified copy upon payment of the legal fee. Furthermore, both sections recognize the authority of officers to deliver certified copies, effectively designating them as the custodians of these documents. This provision ensures that the process of obtaining certified copies is streamlined and reliable, maintaining the transparency and accountability of public records.

Differences

Despite their similarities, the two sections also exhibit notable differences, particularly in their terminological and contextual updates. The Bharatiya Sakshya Adhiniyam, 2023, employs more contemporary terminology and may include provisions and explanations tailored to the modern context of digital records and electronic documentation, which are not explicitly addressed in the Indian Evidence Act, 1872. This modern approach ensures that the new law is better equipped to handle the realities of current administrative and technological practices. Additionally, while the fundamental principles remain consistent, the new law might encompass broader definitions and procedural updates, reflecting the significant advancements in technology and changes in

administrative practices since 1872. These updates ensure that the legal framework remains relevant and effective in addressing contemporary needs and challenges.

Past Exam Highlights

Prelims

1. The provision regarding emergency was adopted in the Indian Constitution from-

- a. Constitution of France
- b. Constitution of Japan
- c. U.K. constitution
- d. German Constitution

Ans. (d)

The emergency provisions in the Indian Constitution were inspired by the German Constitution (Weimar Constitution). These provisions grant the central government extensive powers during times of crisis, allowing for the suspension of fundamental rights and the centralization of authority to maintain law and order.

2. How many types of Emergency have been envisaged by the Indian Constitution?

- a. Two
- b. Three
- c. Four
- d. None of these

Ans. (b)

The Indian Constitution provides for three types of emergencies: National Emergency (Article 352), State Emergency (President's Rule) (Article 356), and Financial Emergency (Article 360). These provisions allow the central government to take necessary actions in times of grave crisis, ensuring stability and governance.

3. Which Article of the Indian Constitution defines the proclamation of emergency ?

- a. Article 366(16)
- b. Article 366(17)
- c. Article 366(18)
- d. Article 366(19)

Ans. (c)

Article 366(18) provides the definition and scope for the proclamation of emergency. This article helps in identifying the specific circumstances under which an emergency can be declared, providing a legal framework for such proclamations.

4. Who is competent to dissolve the Rajya Sabha?

- a. The President
- b. The Chairman, Rajya Sabha
- c. The Lok Sabha
- d. None of the above

Ans. (d)

The Rajya Sabha, or Council of States, is a permanent body and is not subject to dissolution. Unlike the Lok Sabha, which has a fixed term, the Rajya Sabha is a continuous body with one-third of its members retiring every two years, ensuring continuity in the legislative process.

5. Which of the following case is associated with the issue of 'domicile' in the State concerned for getting elected to the Council of States?

- a. *Rameshwar Prasad v. Union of India*
- b. *Kuldip Nayar v. Union of India*
- c. *S.R Bommai v. Union of India*
- d. *Satwant Singh v. Asst. Passport Officer*

Ans (b)

The case of *Kuldip Nayar v. Union of India* dealt with the requirement of domicile in the state for candidates contesting elections to the Rajya Sabha. The Supreme Court ruled

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that the requirement of domicile was not mandatory, allowing candidates to contest Rajya Sabha elections from states where they do not reside, thus enhancing the flexibility of the election process.

6. According to our Constitution the Rajya Sabha is; _

- a. dissolved once in 2 years
- b. dissolved every 5 years
- c. dissolved every 6 years
- d. not a subject to dissolution

Ans. (d)

The Rajya Sabha is not subject to dissolution. It is a permanent body, with one-third of its members retiring every two years. This system ensures continuity and stability in the legislative process, allowing the Rajya Sabha to function without the interruptions associated with the dissolution and re-election of the lower house.

7. Amendment to which of the following provisions of Constitution requires ratification by the State?

- a. Article 242
- b. List-I of Seventh Schedule
- c. Chapter V of Part IV
- d. Chapter II of Part XI

Ans. (b)

Amendments that change the distribution of powers between the Union and the States, such as changes to the Union List in the Seventh Schedule, require ratification by at least half of the state legislatures. This ensures federal consent for significant changes in the power structure.

8. Which of the following amendments was the most comprehensive amendment of the Constitution?

- a. 52nd amendment.

- b. 44th amendment.
- c. 68th amendment.
- d. 42nd amendment.

Ans. (d)

The 42nd Amendment Act of 1976, often referred to as the "Mini Constitution," made extensive changes to the Indian Constitution, including the addition of fundamental duties, changes in the Preamble, and amendments to numerous articles, significantly altering the structure and functioning of the government.

9. Which constitutional amendment is known as "Mini Constitution"?

- a. 31st Amendment
- b. 42nd Amendment
- c. 44th Amendment
- d. 91st Amendment

Ans. (b)

The 42nd Amendment, enacted in 1976, is called the "Mini Constitution" because it made far-reaching changes to the Constitution, affecting the Preamble, the Seventh Schedule, and numerous other articles, enhancing the power of the central government and the Prime Minister.

10. Out of the following, which is called as mini Constitution?

- a. Government of India Act, 1935
- b. 44th Constitutional Amendment
- c. 42nd Constitutional Amendment
- d. Government of India Act, 1919

Ans. (c)

This amendment is referred to as the "Mini Constitution" because it introduced extensive changes that affected almost every part of the Constitution, significantly enhancing the power of the executive and central government.

Mains

Q. Distinguish the following: F.I.R. and Complaint.

Ans. The Code of Criminal Procedure, 1973 (CrPC), provides the framework for reporting and addressing criminal offences in India. Two primary mechanisms for initiating criminal proceedings are the First Information Report (F.I.R.) and a Complaint. Both serve to inform law enforcement authorities about the commission of an offence, but they differ significantly in terms of procedure, purpose, and legal implications.

First Information Report (F.I.R.)

The First Information Report (F.I.R.) is defined under Section 154 of the CrPC. It is a written document prepared by the police when they receive information about the commission of a cognizable offence. The primary purpose of an F.I.R. is to set the criminal law in motion and to enable the police to start an investigation.

Procedure for Filing an F.I.R.

The procedure for filing an F.I.R. involves the informant providing detailed information about the offence, including the nature of the crime, the date, time, place, and the identity of the accused if known. The police officer records this information in writing, reads it back to the informant to ensure accuracy, and obtains the informant's signature. A copy of the F.I.R. is provided to the informant free of charge.

Filing an F.I.R. is crucial as it is the first step in the criminal justice process. It triggers the investigation process, allowing the police to collect evidence, question witnesses, and apprehend suspects. The F.I.R. also forms a critical piece of evidence during the trial, as it contains the earliest version of the alleged crime.

Complaint

A Complaint is defined under Section 2(d) of the CrPC as any allegation made orally or in writing to a Magistrate, with a view to taking action under the Code, that some person, whether known or unknown, has committed an offence. Unlike an F.I.R., a Complaint can pertain to both cognizable and non-cognizable offences and is typically lodged directly with a Magistrate.

Procedure for Filing a Complaint

The procedure for filing a Complaint involves the complainant approaching the Magistrate with their allegation. The Magistrate then examines the complainant and any witnesses on oath, records their statements, and may order an inquiry or investigation if necessary. The Magistrate can also dismiss the Complaint if there is no sufficient ground for proceeding.

A Complaint initiates judicial proceedings and empowers the Magistrate to take cognizance of the offence. It can lead to the issuance of process, summoning the accused, and conducting a trial.

Clear Concept: Law and Morality

The relationship between law and morality is a complex topic that has engaged legal philosophers and theorists for centuries. Understanding this relationship is crucial to comprehend the foundations of legal systems, the enforcement of laws, and the overall administration of justice.

Theoretical Perspectives on Law and Morality

One of the central debates in jurisprudence is whether there is an intrinsic connection between law and morality. Legal positivism, championed by figures like H.L.A. Hart, argues for a separation between the two. According to Hart, the validity of a law is determined by its adherence to established rules of recognition, not its moral content. He contended that laws could be valid even if they were morally reprehensible, provided they were created through legitimate procedures. Hart's view stresses the idea that while laws often reflect moral values, their legitimacy as laws is independent of their moral worth .

In contrast, natural law theorists argue that law and morality are inherently connected. They assert that for a law to be valid, it must conform to certain moral principles. This perspective is rooted in the idea that there exists a higher law, derived from nature or divine authority, which human laws must align with. St. Thomas Aquinas, a prominent natural law theorist, posited that an unjust law is not a true law but a perversion of law. This view was famously encapsulated in the maxim "Lex injusta non est lex" (an unjust law is no law at all) .

Lon Fuller and the Morality of Law

Lon Fuller provided a refined perspective on the connection between law and morality. He introduced the concept of the "inner morality of law," which refers to the procedural aspects that laws must satisfy to achieve their purpose of guiding behaviour. According to Fuller, law is an enterprise that aims to subject human conduct to the governance of rules. For laws to fulfil this role effectively, they must possess certain qualities: they should be general, public, prospective, clear, consistent, capable of being followed, stable, and congruent with the actions of officials enforcing them. These qualities ensure that laws are not only directives but also embody a form of procedural morality necessary for the law to function as intended .

Fuller's argument suggests that even if a law is substantively unjust, it must adhere to these procedural requirements to be considered a valid law. This idea of procedural morality highlights that the legitimacy of law is partly derived from its ability to guide behaviour through fair and predictable rules. Fuller's theory bridges the gap between legal positivism and natural law by emphasising that the process of lawmaking and enforcement must align with certain moral standards, even if the content of the law itself does not.

Ronald Dworkin and the Integrity of Law

Ronald Dworkin, another influential legal philosopher, introduced the concept of law's integrity. He argued that law is not merely a system of rules but also includes principles that judges must consider when making decisions. Dworkin contended that legal practice involves interpreting these principles to ensure that the law remains coherent and morally sound. He posited that judges should strive to interpret laws in a way that best reflects the community's moral and legal standards, thereby maintaining the integrity of the legal system .

Dworkin's theory challenges the positivist separation of law and morality by asserting that legal interpretation inherently involves moral reasoning. He argued that a legal system must embody principles of justice, fairness, and due process to maintain its legitimacy. This view aligns with the notion that the authority of law is not just a matter of formal validation but also depends on its alignment with moral principles that reflect the community's values.

The Symbiotic Relationship Between Law and Morality

Despite the differing views, there is a consensus that law and morality influence each other in significant ways. Laws often reflect the moral values of a society, and moral principles can guide the development and interpretation of legal rules. This interplay ensures that the legal system remains relevant and responsive to the changing moral landscape of the community.

The symbiotic relationship between law and morality is evident in various legal doctrines and principles. For instance, the principle of natural justice, which includes the right to a fair hearing and the rule against bias, is deeply rooted in moral considerations of fairness and justice. Similarly, human rights laws are grounded in moral principles that recognize the inherent dignity and worth of every individual .

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