

Judiciary Digest

Current & Conceptual Weekly

8th Jan - 14th Jan, 2024

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1. Supreme Court Sets Aside Remission in Bilkis Bano Case

Topics Covered:

Remission

Punishment

Rule of Law

The Supreme Court, in *Bilkis Yakub Rasool v. Union of India & Ors.*, overturned the remission of 11 convicts sentenced to life imprisonment for multiple murders and gang rapes, including Bilkis Bano, during the 2002 Gujarat communal riots.

The court held that the State of Gujarat, not being the "appropriate government," lacked the competence to decide on remission since the trial took place in Maharashtra. The court declared the remission orders invalid and directed the convicts to surrender within two weeks.

Philosophical Basis of Punishment:

Justice BV Nagarathna, in her judgement, invoked Plato's views on punishment, emphasising the curative aspect. She explored the reformatory theory of punishment, balancing the rights of victims and convicts, particularly in crimes against women.

Key Legal Issues Addressed by the Court:

The court answered five main issues, including the maintainability of Bilkis Bano's petition, the competence of the State of Gujarat to pass remission orders, and the legality of the impugned remission orders.

The court criticised the Gujarat Government for not seeking a review of the May 2022 judgement and emphasised the fraudulent nature of the convict's challenge to the Gujarat High Court's decision.

The court deliberated on the delicate issue of what would follow after setting aside the remission orders, weighing the rule of law against the personal liberty of the convicts.

2. Section 138 Proceedings Following Settlement

Topics Covered:

Section 138 NIA

ADR

In a Criminal Appeal related to proceedings under Section 138 of the Negotiable Instruments Act, 1881, the Supreme Court ruled that once a settlement has been reached, and the complainant has accepted a specific amount in full settlement, the Section 138 proceedings should be quashed.

The bench, comprising Justices Vikram Nath and Satish Chandra Sharma, emphasised the importance of settlements in such cases and held that the settlement, once signed by the complainant, should lead to the quashing of proceedings.

The appeal challenged a September 13, 2017, order by the High Court of Himachal Pradesh, Shimla Bench, upholding the conviction of the accused under Section 138 of the N.I. Act.

Despite the initial conviction, a compromise deed was later entered between the parties, where the complainant agreed to accept a specified amount as a full and final settlement for the cheque amount and the fine imposed by the Trial Court.

Supreme Court's Observations:

The Supreme Court, considering the overall facts and circumstances, observed that once a settlement has been reached, and the complainant has accepted a specific amount in full settlement, Section 138 proceedings need to be quashed.

The decision underscores the significance of settlements in cases under Section 138 of the N.I. Act, providing parties with the opportunity to resolve matters amicably and potentially avoid prolonged legal proceedings.

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
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Telegram Link	Youtube Link

3. Contempt Notices in Custodial Violation Case

Topics Covered:

Contempt Evidence

In TUSHARBHAI RAJNIKANTBHAI SHAH vs. KAMAL DAYANI, Supreme Court strongly rebuked Gujarat Police and a Magistrate for taking a man into custody, ignoring an interim anticipatory bail granted by the Apex Court. Contempt notices were issued to the Additional Chief Secretary of the Home Department, Commissioner of Police, Deputy Commissioner of Police (Surat), and Police Inspector of Vesu Police Station. The Additional Chief Magistrate, Surat, who remanded the petitioner, also received a notice.

Court's Displeasure

Expressing dissatisfaction with the police and the Magistrate, the bench issued contempt notices, emphasising the gross contempt of the Court's order. The petitioner alleged threats and beating while in custody, highlighting the violation of the Supreme Court's December 8 order.

Unconditional Apology Rejected:

The Additional Solicitor General offered an unconditional apology, acknowledging a "blunder" by the officers. However, the bench was not moved, terming the actions as "gross" and stating that the very filing of the remand application was contemptuous.

The petitioner's lawyer mentioned that the incidents in the police station were recorded on CCTV. The bench suggested obtaining copies of the footage. The State, however, claimed that the CCTV was not functional intentionally. The judges expressed disbelief and emphasised the mandatory requirement of CCTVs in police stations.

The contempt petition was filed by Tusharbhaji Rajnikanth Bhai Shah, alleging arrest and remand in violation of the Supreme Court's interim order on December 8. The petitioner, named in a cheating FIR, approached the Supreme Court after the Gujarat High Court denied him bail.

4. Then and Now: CrPC versus BNSS

Section 223(2) of the BNSS Act now imposes conditions for a magistrate to take cognizance of a complaint against a public servant for an offence committed in the discharge of official duties. The public servant must be given an opportunity to assert the situation leading to the incident, and a report from the officer superior to the public servant must be received.

Deemed Sanction Provision Added:

Proviso second to Section 218(1) introduces a deemed sanction provision. If the competent authority fails to decide on the grant of sanction within 120 days from the receipt of the request, the sanction will be considered as deemed accorded. This provision addresses the issue of delays in sanction decisions.

Changes to Section 156(3) CrPC Power:

Section 175(3) of the BNSS Act, akin to Section 156(3) CrPC, empowers a magistrate to order an investigation by considering the complaint, making necessary inquiries, and considering submissions made by the police officer. The magistrate must conduct an inquiry before ordering an investigation in response to a private complaint by a police officer.

Section 175(4) of the BNSS Act introduces a special provision for complaints against public servants arising in the discharge of official duties. A magistrate can order an investigation only if conditions are met, including receiving a report from the superior officer and considering assertions made by the public servant regarding the incident.

These amendments aim to streamline procedures, ensure proper scrutiny in cases involving public servants, and address concerns related to the initiation of investigations. The inclusion of deemed sanction and specific provisions for complaints against public servants reflects an effort to balance the interests of justice and the protection of public servants in the discharge of their duties.

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5. Past Exam Highlights: Pre and Mains

Mains Question:

Q. What is a voidable contract? Describe the distinction between voidable contracts and contingent contracts. [M.P. CJ 2014]

Voidable Contract

A voidable contract is a valid contract that may be either affirmed or rejected at the option of one of the parties. At its inception, a voidable contract is considered to be valid and enforceable, but due to certain circumstances, one party has the option to make it void.

Characteristics

- **Presence of an Element Vitiating Free Consent:** A contract becomes voidable when it is affected by factors such as coercion, undue influence, fraud, misrepresentation, or mistake as defined under Sections 19 and 19A of the Indian Contract Act, 1872.

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- **Option to Rescind:** The aggrieved party has the right to rescind the contract. If they choose to rescind, the contract becomes void ab initio (from the beginning).
- **Enforceability:** Until rescinded, the contract remains valid and enforceable.
- **Restitution:** Upon rescission, both parties should ideally be restored to their original position (status quo ante).

Contingent Contract

A contingent contract, as per Section 31 of the Indian Contract Act, is a contract to do or not to do something if some event, collateral to such contract, does or does not happen.

Characteristics

- **Dependency on a Future Event:** The performance of the contract is contingent upon the occurrence or non-occurrence of a future uncertain event.
- **Event Must Be Collateral:** The event must be incidental to the contract and not its very substance.
- **Enforceability:** The contract cannot be enforced by law unless and until the event occurs. If the event becomes impossible, the contract becomes void.

Distinction between Voidable Contracts and Contingent Contracts

Basis of Comparison	Voidable Contract	Contingent Contract
Definition	A contract that is valid but can be voided at the option of one party due to the presence of elements like coercion or fraud.	A contract that depends on the occurrence or non-occurrence of an uncertain future event.
Nature of Contract	Initially valid but can be rendered void.	Validity and enforceability are dependent on a future event.
Cause of Voidability	Factors vitiating free consent.	The occurrence or non-occurrence of a specified uncertain event.
Initiation	Valid from the beginning but can be rescinded.	The effectiveness is conditional from the start.

Prelims Questions

1. As per Negotiable Instruments Act 1881, a 'Bill of Exchange' is :

1. **A Conditional promise to pay**
2. **An Unconditional order to pay**
3. **An Unconditional promise to pay**
4. **None of the above**

Ans: An Unconditional promise to pay

Explanation: As per the Negotiable Instruments Act of 1881, a 'Bill of Exchange' is defined as an "Unconditional order to pay"

a certain amount of money. This legal document is drafted by the drawer (the party that creates the bill) and instructs another party (the drawee) to pay a specified sum of money to a third party (the payee) or to the bearer of the document. Unlike a promissory note, which is a promise to pay, a bill of exchange involves three parties and acts as an order to pay, not a promise.

2. Which of the following is not an eligibility criterion for election as President of India?

1. should be a citizen of India.
2. should be at least 35 years of age.
3. should be qualified for election to the House of the People.
4. He should be elected as a member of the House of the People.

Ans: He should be elected as a member of the House of the People.

Explanation: According to the Constitution of India, the eligibility criteria for a presidential candidate include being a citizen of India, being at least 35 years of age, and being qualified for election as a member of the House of the People (Lok Sabha). However, there is no requirement for the candidate to actually be elected as a member of the Lok Sabha or any other legislative body. The role of President is meant to be apolitical and above party politics, thus allowing candidates who are not actively involved in parliamentary politics to be eligible for the position.

3. "Death sentence should be awarded in rarest of rare cases" was held in:—

1. Bachan Singh v. State of Punjab
2. Rameshwar v. State of U.P.
3. T.V. Vatheeswaran v, State of Tamil Nadu
4. State of U.P. u M.K Anthony

Ans: Bachan Singh v. State of Punjab

Explanation: The principle that "Death sentence should be awarded in rarest of rare cases" was established in the landmark case of Bachan Singh v. State of Punjab in 1980. The Supreme Court of India, in this case, upheld the constitutionality of the death penalty for murder in India, provided it is imposed only in the "rarest of rare cases" when the alternative option is unquestionably foreclosed. This doctrine was intended to limit the imposition of the death penalty to the most egregious instances of aggravated

murders, ensuring that this extreme form of punishment is applied with the utmost restraint and in a highly selective manner.

4. Who is the ex-officio Chairman of the Rajya Sabha?

1. Vice President of India.
2. President of India.
3. Home Minister of India.
4. Prime Minister of India.

Ans: Vice President of India

Explanation: The ex-officio Chairman of the Rajya Sabha is the Vice President of India. According to the Constitution of India, the Vice President serves as the Chairman of the Rajya Sabha but does not have the right to vote in the House, except in the case of a tie. This role distinguishes the Vice President's position within the Indian parliamentary system, ensuring a direct connection between the executive and legislative branches of the government in this capacity.

5. Which one of the following thinkers called jurisprudence as the "Philosophy of Positive Law" ?

1. Salmond
2. H.L.A. Hart
3. Roscoe Pound
4. John Austin

Ans: John Austin

Explanation: Austin is known for his work in the field of legal positivism, where he emphasised the importance of legal sovereignty and the command theory of law. He distinguished between laws that are commands of the sovereign and other forms of rules or norms, focusing on the systemic and structural aspects of law as a system of control imposed by a political authority. Austin's perspective on jurisprudence as the philosophy of positive law highlights his focus on the nature, structure, and authority of enacted laws as opposed to moral or natural law theories.

6. Clear Concepts: Laws Applicable to International Arbitrations

In international arbitrations, various sets of laws may apply to different aspects of the proceedings. Understanding these laws is crucial for effective resolution. Here are key legal aspects:

Law Governing the Substantive Contract:

- The substantive law of the contract governs the tribunal's interpretation of rights and obligations arising from the contract.
- Issues include interpretation, validity, rights, performance, breaches, and remedies.

Law Governing the Arbitration Procedure:

- Determined by the juridical seat of arbitration, it governs procedural aspects.
- Includes formalities, extent of court jurisdiction exclusion, autonomy in choosing the arbitral procedure, court support, appeal possibilities, timescales, and enforceability of the award.

Law Governing the Arbitration Agreement:

- Governs the interpretation of the arbitration agreement and the tribunal's jurisdiction.
- If not expressly stated, the law governing the contract is presumed to extend to the arbitration agreement.

Law of the Jurisdiction(s) Where the Award May Be Enforced:

- Parties should consider laws and practices in jurisdictions where they have assets and where arbitral awards may be enforced.
- Ensures agreement terms align with laws governing arbitration enforcement in relevant jurisdictions.
- Verifies arbitrability of the subject matter under those laws.

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