

Judiciary Digest

Current & Conceptual Weekly

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1. Supreme Court Corrects Error in Juvenility Determination

In *GAURAV KUMAR @ MONU vs. THE STATE OF HARYANA*, the Supreme Court reviewed its 2019 judgement regarding the determination of juvenility and corrected a manifest error concerning the applicable rules. The case, initiated by Gaurav Kumar alias Monu against the State of Haryana, raised the crucial issue of age at the time of an alleged offence.

Background and Error Correction

The Supreme Court had previously remitted the question of juvenility to the Punjab & Haryana High Court, opining that the relevant rules to be considered were the Juvenile Justice (Care and Protection of Children) Rules, 2001. However, upon review, the Division Bench, comprising CT Ravikumar and Rajesh Bindal, acknowledged a significant error and rectified it promptly.

Recognizing that the litigant should not suffer for the court's mistake, the Division Bench corrected the 2019 judgement, determining that the Juvenile Justice (Care and Protection of Children) Rules, 2007, were the applicable rules. This correction was crucial as it directly impacted the determination of juvenility in the case.

Application of Rules and Case Law

The appellant, in his defence against a murder conviction, had argued for the preference of the date of birth certificate obtained from the school over the birth certificate issued by the Corporation, citing Rule 12 of the 2007 Rules. However, the Supreme Court had initially deemed the 2007 Rules inapplicable, as the offence occurred before their enforcement in 2000.

Upon review, the Court reconsidered its position, relying on precedents such as *Murti vs. State of Karnataka* (2008) 7 SCC 517 and *Hari Ram v. State of Rajasthan and Anr.*, 2009 (13) SCC 211. These cases clarified the applicability of the Juvenile Justice Act and Rules, highlighting the retrospective effect of certain provisions, including the increase in the age of juvenility to 18 years.

In light of the error correction and the legal principles established in relevant case law, the Supreme Court revised its earlier stance. It determined that the Juvenile Justice (Care and Protection of Children) Rules, 2007, were indeed applicable, necessitating a reevaluation of the case's juvenility aspect.

2. "College Romance" Case

In *Apoorva Arora & Anr. etc. versus State (Govt. of NCT of Delhi) & Anr.*, the Supreme Court of India quashed a pending criminal case of obscenity against the makers of the web series "College Romance," emphasising the protection of artistic expression and the distinction between vulgarity and obscenity. The case, brought before the court by actors Apoorva Arora, Gagan Arora, Simarpreet Singh, and the series' creators, challenged the Delhi High Court's refusal to quash the obscenity charges.

Rejection of Obscenity Allegations

The Supreme Court, led by Justices A.S. Bopanna and P.S. Narasimha, reversed the Delhi High Court's decision, stating that the use of vulgar language and profanities in the series did not constitute obscenity under Section 67 of the Information Technology Act, 2000 (IT Act). The Court emphasised that obscenity must involve material that arouses sexual or lustful thoughts, which the language in question did not.

Error Correction and Legal Analysis

The Court identified a fundamental error in the High Court's approach, particularly its equating of profanity and vulgarity with obscenity. It clarified that while such language may be distasteful or improper, it does not inherently qualify as obscene. By contextualising the language within the plot and theme of the series, which portrays the college lives of young students, the Court underscored that the language was not sexually suggestive.

Judicial Scrutiny and Objectivity

The Supreme Court criticised the High Court's subjective analysis, urging a more objective approach to determine obscenity. It rejected the notion of using impressionable minds or courtroom decorum as standards, asserting that the test for obscenity must be based on its legal definition and impact on the average viewer. Additionally, the Court cautioned against unduly restricting freedom of expression based on subjective interpretations.

In its ruling, the Supreme Court clarified that the material in question did not meet the criteria for obscenity under Section 67 of the IT Act. It also determined that the charges under Section 67A, which pertains to sexually explicit content, were not applicable, as the complaint primarily concerned the use of vulgar language rather than explicit acts. Consequently, the Court allowed the appeal, overturning the High Court's decision and quashing the criminal case against the appellants.

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3. Requirement of Proof in Adverse Possession Claims

In **M. Radheshymlal v. V. Sandhya and Anr.**, the Supreme Court clarified the essential elements necessary to establish a claim of adverse possession over a property. Justices Abhay S. Oka and Ujjal Bhuyan, presiding over the bench, affirmed the findings of the High Court and Trial Court, emphasising the significance of proving ownership and uninterrupted possession for a specified period.

Key Observations

The Court held that a plaintiff seeking ownership through adverse possession must fulfil certain prerequisites, including identifying the actual owner of the property and proving uninterrupted possession for more than 12 years, known to the original owner. These material averments are essential and must be disclosed in the plaint to substantiate the claim adequately.

Legal Framework for Adverse Possession

The Supreme Court reiterated the settled legal principles governing adverse possession claims, emphasising the burden on the plaintiff to establish adverse possession openly and continuously, with the true owner's knowledge. Failure to fulfil these requirements undermines the plaintiff's claim and weakens the foundation for seeking ownership through adverse possession.

Insufficient Evidence and Weak Claim

Upon review of the case, the Court found that the plaintiff failed to provide crucial evidence supporting their adverse possession claim. Notably, the plaintiff could not prove the property's actual owner or demonstrate that their possession was known to the owner for the requisite period. Moreover, discrepancies in tax payments and property maintenance further undermined the plaintiff's claim.

Based on the evidence presented, the Supreme Court dismissed the plaintiff's appeal, affirming the lower courts' findings. The Court deemed the plaintiff a trespasser and upheld the validity of the defendant's title to the property. Despite the absence of a probate certificate, the defendant's claim to the property was deemed superior to that of the plaintiff.

4. Old versus New: Electronic Evidence

The previous provisions from the Indian Evidence Act regarding electronic records (Sections 65A and 65B) and the new provisions under the Bharatiya Sakshya Adhiniyam have notable similarities but also significant updates that reflect the evolving nature of technology and its use in legal proceedings:

Scope of Applicable Technology: The old provision primarily discusses electronic records in terms of computer output, considering information stored or processed through optical or magnetic media. The new provision under Bharatiya Sakshya Adhiniyam broadens this definition to include not only computers but also communication devices and other forms of electronic storage such as semiconductor memory. This expansion accommodates the growing variety of devices that generate, store, and process information in contemporary settings, including smartphones, tablets, and cloud-based technologies.

Conditions for Admissibility: Both the old and new provisions set out specific conditions under which electronic records can be admitted as evidence without the need for the original device or media. These conditions ensure the integrity and reliability of the data by establishing requirements about the regular use of the device, the routine nature of the data inputs, and the proper functioning of the device during the relevant period. The new provision retains these core criteria but adapts them to account for a broader range of devices and information systems, reflecting a more integrated and networked technology environment.

Treatment of Multiple Devices and Networks: The new provision specifically addresses scenarios where information is processed or stored across multiple devices or through a network. It considers all involved devices or systems, whether standalone or interconnected, as a single unit for the purposes of satisfying admissibility conditions. This is particularly relevant in today's digital age, where data often transits through complex networks and multiple devices.

Certification Requirements: The certification process, which authenticates the electronic record and its production method, is detailed in both provisions. The new law continues to require a certificate that identifies the electronic record, describes its production, and addresses the conditions of admissibility. However, it emphasises that this certificate must be accompanied by expert verification each time the electronic record is submitted for admission in court, enhancing the credibility and scrutiny of digital evidence.

5. Past Exam Highlights: Prelims and Mains

Prelims

- | | |
|---|---|
| 1. Which section of the Indian Evidence Act, 1872 is founded upon the doctrine laid down in Pickard v. Sears? | a. Section 6
b. Section 32
c. Section 115
d. Section 167 |
|---|---|

Ans. (c)

Explanation: Section 115 of the Indian Evidence Act, 1872, is founded upon the doctrine laid down in the case of Pickard v. Sears. This doctrine is known as estoppel, which is detailed in Section 115 of the Act. It essentially states that when one person has, by their declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, they cannot later deny its truth to the detriment of the person who acted on their previous assertion.

2. Which section of the Evidence Act provides that the judge will decide as to admissibility of evidence?

- a. Section 5
- b. Section 23
- c. Section 136
- d. Section 148

Ans. (c)

Explanation: Section 136 of the Indian Evidence Act, 1872, specifies that the judge is the one to decide on the admissibility of evidence. This section outlines the judge's primary role in determining whether any particular piece of evidence should be allowed to be introduced in a case. It states that the judge has the authority to ask the party who wishes to submit evidence about the relevancy of that evidence.

3. Which of the following was used by the Indian Arbitration and Conciliation Act, 1996?

- a. Guidelines of Supreme Court of India
- b. European Commercial Arbitration Procedure
- c. UNCITRAL, 1985
- d. None of the above

Ans. (c)

Explanation: The Indian Arbitration and Conciliation Act, 1996, is based on the

UNCITRAL Model Law on International Commercial Arbitration of 1985. UNCITRAL, which stands for the United Nations Commission on International Trade Law, aims to provide a framework to standardise international commercial arbitration procedures, promoting fairness and efficiency in resolving disputes without needing court proceedings. The adoption of the UNCITRAL Model Law by India's Arbitration and Conciliation Act reflects an effort to align Indian arbitration laws with international practices, thereby making India a more favourable venue for international commercial arbitration.

4. Which of the following is not an essential condition for an arbitration agreement as per Section 7 of the Arbitration and Conciliation Act, 1996

- a. The agreement must be registered.
- b. The agreement must be to submit to arbitration all or certain disputes which have arisen or which may arise of a defined legal relationship whether contractual or not.
- c. The arbitration agreement must be in writing
- d. None of these

Ans. (a)

Explanation: The statement "The agreement must be registered" is not an essential condition for an arbitration agreement as per Section 7 of the Arbitration and Conciliation Act, 1996. According to this section, the key requirements for an arbitration agreement are that it must be in writing and that it must agree to submit to arbitration all or certain disputes which have arisen or which may arise out of a defined legal relationship, whether contractual or not.

5. "Administrative Law is the law concerning the powers and procedures of

administrative agencies, including especially the law governing judicial review of administrative action". This definition of Administrative Law is given by

- a. Ivor Jennings
- b. Garner
- c. K.C. Davis
- d. Wade

Ans.(c)

Explanation: The definition of Administrative Law as "the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative action" is given by K.C. Davis. Kenneth Culp Davis was a prominent American administrative law scholar known for his influential works on the structure, functioning, and legal complexities of administrative agencies. His work has significantly shaped the understanding of administrative law in academic and practical contexts, emphasising the interplay between law, administrative agencies, and judicial oversight.

6. "Administrative Law is the law relating to the administration. It determines the organisation, powers and duties of the administrative authorities."

Who among the following jurists has given the above definition?

- a. Ivor Jennings
- b. K.C. Davis
- c. Owen Hood Phillips
- d. Keith

Ans.(a)

Explanation: The definition of Administrative Law as "the law relating to the administration. It determines the organisation, powers and duties of the administrative authorities" was given by Ivor Jennings. Sir William Ivor Jennings was a distinguished British jurist and constitutional expert whose contributions to the field of administrative law are

well-regarded. His work particularly emphasised the structural and functional aspects of administrative bodies, focusing on how these entities are organised, the extent of their powers, and their duties.

7. Under the Hindu Marriage Act 1955 the Sapinda relationship extends in the line of ascent

- a. Two degrees through the mother and three degrees through the father
- b. Three degrees through the mother and five degrees through the father
- c. Four degrees through the mother and three degree through the father.
- d. Five degrees through the mother and seven degrees through the father.

Ans. (b)

Explanation: Under the Hindu Marriage Act, 1955, the Sapinda relationship extends up to three degrees through the mother and five degrees through the father. This means that individuals are considered Sapindas of each other if they are lineally related within these specified degrees. Sapinda relationship is an important concept in Hindu law as it restricts individuals within certain degrees of kinship from marrying each other, reflecting cultural and social norms about acceptable marital relationships.

8. When two persons are the descendants of a common ancestor but by different wives, they are said to be related to each other by

- a. Half blood
- b. Full blood
- c. Uterine blood
- d. Either (b) or (c)

Ans. (a)

Explanation: When two persons are descendants of a common ancestor but by different wives, they are said to be related to each other by half blood. This term refers to siblings who share only one biological parent, in this case, the same father but different mothers. This kind of relationship highlights the distinction from full blood (where both parents are the same) and uterine blood (where they share only the same mother).

9. Which one of the following Sections of the Hindu Succession Act, 1956 makes provision for 'Notional Partition'?

- a. Section 14
- b. Section 10
- c. Section 6
- d. Section 18

Ans. (c)

Explanation: Section 6 of the Hindu Succession Act, 1956, makes provision for 'Notional Partition'. This section was significantly amended in 2005 to provide for equal rights to daughters in the Hindu undivided family property as coparceners, akin to sons. The concept of notional partition

is used to determine the share of a deceased Hindu male, who dies intestate, in the joint family property.

10. Who is not a class I heir under Hindu Succession Act ?

- a. Mother
- b. Father
- c. Son
- d. Wife

Ans. (b)

Explanation: Under the Hindu Succession Act, the father is not classified as a Class I heir. Class I heirs typically include the spouse, sons, daughters, and the mother, among others, but the father falls into the category of Class II heirs. The classification of heirs in the Act is designed to prioritise immediate family members, such as a deceased person's children, spouse, and mother, for inheritance purposes. Class I heirs have the first right to inherit when a Hindu male or female dies intestate (without a will), receiving the property equally. If there are no Class I heirs, then Class II heirs, including the father, are considered for succession.

Mains

Q.: Discuss Section 498A, IPC and judicial trend to prevent its misuse in the country.

Section 498A of the Indian Penal Code (IPC) was introduced in 1983 with the noble objective of addressing the pervasive issue of dowry deaths and cruelty against married women by their husbands and in-laws. However, over the years, concerns have been raised regarding its misuse, leading to a reevaluation of its implementation.

Judicial Trends

In the landmark case of **Rajesh Sharma & Ors. v. State of U.P. & Anr** (2017), the Supreme Court acknowledged the misuse of Section 498A and laid down comprehensive guidelines to prevent such abuse. These guidelines included the establishment of Family Welfare Committees to scrutinise complaints before arrests, ensuring that arrests are made only when necessary, and prescribing specific procedures for police and magistrates to follow.

Similarly, in **Arnesh Kumar vs State of Bihar & Anr** (2014), the Supreme Court criticised the practice of automatic arrests under Section 498A, emphasising the need for police to exercise discretion and adhere to the principles outlined in Section 41 of the Criminal Procedure Code.

Legislative and Policy Measures

Various legislative and policy measures have been introduced to address the concerns surrounding the misuse of Section 498A:

- **Checkpoints for Police and Authorities:** Courts have stressed the importance of conducting thorough investigations before making arrests, thereby ensuring that the provisions of Section 498A are not weaponized for personal vendettas.
- **Awareness Programs:** Efforts have been made to educate law enforcement officials and the judiciary about the judicious application of Section 498A, aiming to prevent its misuse and promote fair and just outcomes.
- **Role of Counseling and Mediation:** There has been a growing emphasis on resolving matrimonial disputes through mediation and counselling, thus averting the need for arrests unless absolutely necessary.



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Section 498A of the IPC was enacted to protect women from marital cruelty, but its unintended misuse necessitated judicial intervention and policy reforms. The judiciary's proactive approach, as evidenced by landmark cases and the formulation of guidelines, demonstrates a commitment to balancing the rights of the accused with the protection of victims.

Moreover, legislative and policy measures aimed at promoting awareness, conducting thorough investigations, and encouraging alternative dispute resolution mechanisms signify a concerted effort to ensure that justice is served without undue harm to innocent individuals.

In essence, the evolution of the implementation of Section 498A reflects a shift towards a more cautious and balanced approach, wherein the rights of both victims and the accused are safeguarded, thus upholding the principles of justice and fairness in the legal system.

6. Clear Concepts: Well Known Marks

In Indian intellectual property law, the concept of a "well-known" trademark is pivotal, offering extensive protection that transcends conventional class-based trademark rights. The Trade Marks Act, 1999, supplemented by the Trade Mark Rules of 2017, establishes a robust legal framework for the recognition and protection of well-known trademarks.

Definition and Criteria for Recognition

A well-known trademark, as defined under Section 2(zg) of the Trade Marks Act, 1999, is recognized by a substantial segment of the public as associated with particular goods or services, such that its use on unrelated goods or services would likely suggest a connection to the original trademark owner. The criteria for recognition extend beyond mere popularity, encompassing:

Public Recognition: The degree to which the relevant consumer sector recognizes the trademark, influenced by factors like the mark's duration, extent, and geographic reach of use.

Promotional Activities: The scope of advertising, promotional campaigns, and participation in trade fairs, which contribute to the trademark's recognition.

Enforcement History: The historical effectiveness of legal protections enforced by the trademark owner, including prior litigation outcomes.

Procedural Developments under Trade Mark Rules 2017

The introduction of Rule 124 in the Trade Mark Rules 2017 marks a significant procedural development. Trademark owners can now proactively apply for the well-known status by filing Form TM-M, presenting a comprehensive case with evidence of the trademark's fame and recognition. This procedural option bypasses the need for recognition to arise solely from litigation or opposition proceedings, streamlining the process and providing a direct route for owners to secure the status.

Legal Protections for Well-Known Trademarks

The designation of a trademark as well-known yields substantial legal benefits, notably the expansive protection across all categories of goods and services, irrespective of the mark's original class registration. Key legal protections include:

Cross-Class Protection: Under Section 11(2) of the Trade Marks Act, well-known trademarks are shielded from registration or use of identical or similar marks across disparate categories, safeguarding the owner against dilution and unauthorised use.

Injunctive Relief: Judicial precedents, such as Daimler Benz v. Hybo Hindustan and Rolex Sa v. Alex Jewellery Pvt. Ltd., illustrate the courts' readiness to grant injunctions to prevent the misuse of well-known trademarks, recognizing their extensive goodwill and reputation.

Preventive Safeguards: The Trade Marks Registry actively refers to its list of well-known trademarks to preclude the registration of potentially conflicting marks, thus preemptively protecting the trademark's integrity.

Challenges and Considerations

Despite these protections, the determination of a well-known status remains challenging due to the subjective nature of the evaluation criteria. Trademark owners must meticulously gather and present evidence of their mark's renown, spanning various factors like market penetration, consumer recognition, and geographical spread. Additionally, the high standard of proof required poses significant hurdles.

