

# Judiciary Digest

Current & Conceptual Weekly

15th Jan - 21st Jan, 2024

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## 1. Legal Reforms in Bail Applications

In a move to streamline the bail application process and uphold the principles of transparency in the Indian judicial system, recent recommendations in **KUSHA DURUKA v. THE STATE OF ODISHA** suggest mandatory disclosures in bail applications. These include providing details and copies of orders from earlier bail applications, whether decided or pending. Moreover, all bail applications related to the same FIR should be listed before the same Judge, except in exceptional circumstances. The proposal aims to avoid discrepancies in orders and facilitate a clearer understanding of the case's history.

To enhance efficiency, the bail application should prominently state whether it is the first, second, or subsequent application, aiding both the court and higher authorities in assessing arguments appropriately. The court registry is also urged to provide a system-generated report on decided or pending bail applications related to the specific crime case. This protocol extends to private complaints as well, ensuring uniformity in case tracking.

Furthermore, investigating officers are assigned the responsibility of updating the State Counsel on court orders pertaining to different bail applications or proceedings within the same crime case. The legal counsel, in turn, is expected to act as officers of the court, conducting themselves with the utmost integrity.

## 2. Public Servant Immunity

In a significant ruling, the Supreme Court of India has overturned the order of the High Court of Karnataka, reiterating that Section 197 of the Code of Criminal Procedure (CrPC) does not grant an absolute shield to public servants for every act or omission during their service. The two-judge bench, comprising Justice Abhay S Oka and Ujjal Bhuyan, delivered the verdict in the case of **Shadakshari v. State of Karnataka and another**.

The case originated in 2020 when the High Court of Karnataka dismissed the complaint and chargesheet against public servants accused of involvement in the creation of fraudulent property documents in the name of deceased individuals. Initially, in 2018, the High Court refrained from intervening, citing the preliminary nature of the First Information Report (FIR). However, in 2020, the public servants sought the court's intervention to quash the charges against them, arguing that

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Section 197 of the CrPC provided immunity for actions undertaken during the discharge of official duties.

The Supreme Court, in its verdict, emphasised that the immunity granted by Section 197 is specific to acts or omissions committed during the course of official duty. The court asserted that the High Court had erred in quashing the complaint and charge sheet entirely, highlighting that the protection under Section 197 is designed to shield public servants from "undue harassment" in the performance of their public duties.

Referencing the precedent established in the 2004 case of State of Orissa v. Ganesh Chandra Jew, the court underlined the importance of due procedure and the specific circumstances under which the protection of Section 197 can be invoked. The accused public servant must provide evidence demonstrating that the accusations are related to the official duties they were performing. This verdict clarifies the limitations of immunity for public servants and reinforces the principle that protection under Section 197 is contingent upon a direct link between the alleged actions and the discharge of official duties.

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### 3. Guidelines for Religious Conversions in Inter-faith Marriages

In a landmark decision, the Delhi High Court, in the case of **MAKSOOD AHMAD v. STATE OF NCT OF DELHI**, has issued comprehensive guidelines for individuals seeking religious conversions in the context of inter-faith marriages. The directives include specific prerequisites and compliance measures to ensure informed consent and understanding of the implications of religious conversion.

The guidelines mandate the submission of certain documents as proof of consent for religious conversion. Individuals are required to provide an affidavit stating their awareness of the consequences and implications of their decision to embrace another faith before entering into matrimony. The court emphasised the importance of informed consent, ensuring that the person is fully cognizant of the multifaceted implications embedded in such a significant life choice.

Justice Swarana Kanta Sharma, presiding over the case, highlighted the necessity for a detailed understanding of religion and its associated ramifications. The court emphasised that uninformed conversions may lead to unforeseen consequences, especially if the chosen religion restricts the individual from following their previous faith.

The judgement is binding on parties seeking religious conversion for the purpose of inter-faith marriages. The court clarified that its concern is particularly related to situations where legal, matrimonial, succession, and custody-related consequences may arise due to the conversion.

As per the guidelines, the concerned individual must submit a certificate of conversion in the vernacular language of the person converting, ensuring a clear understanding of the process. Affidavits, obtained at the time of inter-faith marriage after conversion, are mandated to ensure that individuals are well-informed about their decision.

Notably, the guidelines do not apply to individuals converting back to their original religion, as they are presumed to be well-versed in their original faith.

#### **4. THEN and NOW : Confession of Co-accused**

The old law, the Indian Evidence Act (Section 30), and the new law, the Bharatiya Sakshya Adhinyam (Section 24), deal with the consideration of a proved confession affecting the person making it and others who are jointly tried for the same offence.

##### **Similarities**

- **Joint Trial Consideration:** Both the old and new laws allow for the consideration of a confession made by one person in a joint trial involving multiple individuals accused of the same offence. The court may take such a confession into consideration against both the person making the confession and others involved in the joint trial.
- **Inclusion of Abetment and Attempt:** Both sections include an explanation clarifying that the term "offence" encompasses not only the main offence but also its abetment or attempt.

##### **Differences:**

- **Explanation II in the New Law:** The new law introduces an additional explanation (Explanation II) which specifies that a trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 shall be deemed to be a joint trial for the purpose of this section. This inclusion highlights considerations related to absconding or non-compliance with legal proclamations in joint trials.

While there are some slight modifications in the language and the addition of Explanation II in the new law, the fundamental principles and the application of the provisions remain consistent. Both laws allow for the consideration of a confessed statement made by one accused in a joint trial against not only the confessor but also the co-accused.

#### **5. Past Exam Highlights**

##### ***Mains Question:***

**Q. "Fundamental changes in the law relating to marriage has been brought about by the Hindu Marriage Act, 1955". Comment on the above statement and evaluate how far the Act affected the sacramental character of Hindu. (U.P. CJ 2013)**

The Hindu Marriage Act of 1955 indeed brought fundamental changes to the legal landscape of marriage among Hindus in India. This Act marked a significant shift from traditional Hindu law, which viewed marriage primarily as a sacrament, to a more modern legal framework.

**Shift from Sacramental to Contractual:** Traditionally, Hindu marriage was considered a sacrament (samskara), a solemn, religious and spiritual union. The Act introduced a more contractual perspective, where marriage is seen as a civil contract with specific legal obligations

and rights. This shift allowed for the introduction of concepts like divorce and alimony, which were not traditionally part of the sacramental view of marriage.

**Introduction of Legal Provisions:** The Act laid down specific conditions for a marriage to be valid, such as the legal age for marriage, consent, and mental soundness. This formalisation meant that certain traditional aspects, which might not comply with these conditions, were no longer legally valid.

**Grounds for Divorce:** One of the most significant changes was the introduction of legal grounds for divorce. In traditional Hindu law, marriage was indissoluble. The Act provided various grounds for divorce, including cruelty, desertion, conversion, insanity, etc., thus altering the concept of marriage as a lifelong bond.

**Protection of Women's Rights:** The Act emphasised the protection of women's rights within the marital relationship. It provided legal avenues for women to seek divorce, alimony, and maintenance, which were not explicitly recognized in the traditional sacramental view.

**Registration of Marriages:** The Act also introduced the concept of marriage registration, which provided a legal document as proof of marriage, moving away from purely religious ceremonies as the sole validation of a marriage.

**Balancing Tradition and Modernity:** Despite these changes, the Act did not completely abandon the sacramental view. It still recognized the importance of traditional Hindu marriage ceremonies and rituals, thus trying to balance between respecting traditional values and adapting to modern legal principles.

In summary, the Hindu Marriage Act of 1955 significantly altered the landscape of Hindu marriage, introducing a more legal and contractual dimension while still maintaining respect for traditional ceremonies and rituals. This represented a major shift from viewing marriage solely as a sacred, indissoluble bond to recognizing it as a legal contract with defined rights and obligations, thereby affecting its sacramental character.

### *Prelims Questions*

1. Under Indian Evidence Act, 1872, the maxim "SALUS POPULI SUPREMA LEX" is related to-

- (a) Section 121
- (b) Section 122
- (c) Section 123
- (d) Section 124

**Ans: c**

**Explanation:** The maxim "Salus Populi Suprema Lex" translates to "the welfare of the people is the supreme law." It underscores the principle that the protection and welfare of the public is the foremost law, often justifying the withholding of certain

information from being disclosed in court to protect public interest.

Under the Indian Evidence Act, 1872, this principle is related to Section 123, which deals with evidence from unpublished official records. Section 123 stipulates that no one shall be permitted to give any evidence derived from unpublished official records without the permission of the head of the department concerned, if such evidence can affect affairs of state or public welfare.

2. Which of the following sections of the Indian Evidence Act, 1872 does not deal with the criminal matters:-

- (a) Section 23
- (b) Section 27
- (c) Section 53
- (d) Section 133

**Ans: a**

**Explanation:** Section 23 of the Indian Evidence Act, 1872, deals with the relevance of admissions in civil cases, specifically mentioning that an admission cannot be sufficient evidence for a court to grant a judgement against the person who makes the admission. Thus, it does not deal exclusively with criminal matters.

**3. The term "Judicial notice" under the Indian Evidence Act, 1872, means:-**

- (a) Notice given by the court
- (b) Information given to the court
- (c) To ask for evidence
- (d) To recognise without proof something as existing

**Ans: d**

**Explanation:** The term "Judicial notice" under the Indian Evidence Act, 1872, indeed means (d) To recognize without proof something as existing. Judicial notice allows a court to accept certain facts as known without requiring formal evidence. These can include facts that are so universally known within the community as not to be subject to reasonable dispute or facts that can be accurately and readily verified from sources whose accuracy cannot reasonably be questioned. This principle streamlines the legal process by avoiding the waste of time on proving facts that are already well-known and undisputed.

**4. Court can presume about the legality of digital signature on electronic record under Indian Evidence Act, 1872 when it is:-**

- (a) 30 years old
- (b) 15 years old
- (c) 5 years old

- (d) 12 years old

**Ans: c**

**Explanation:** According to Section 90A of the Indian Evidence Act, court can presume the legality of an electronic signature on an electronic record that is at least five years old, if the record is produced from a custody considered proper by the court. This section enables the court to accept that the electronic signature affixed to an electronic record, which is five years old or more, was indeed done by the person purported to have affixed it or by someone authorised by that person.

**5. "Presumption of fact" under the Indian Evidence Act, 1872:-**

- (a) is based on logic, human experience and natural events and law of nature
- (b) is based on provisions of law
- (c) cannot be ignored by the court
- (d) is of certain and uniform position

**Ans: a**

**Explanation:** This type of presumption is derived from common sense or experience about human behaviour and the natural course of events. Courts use these presumptions to fill in gaps when direct evidence is unavailable, assuming certain facts based on their likelihood or common occurrence in similar situations.

**6. The contents of electronic records may be proved under Indian Evidence Act, 1872 in accordance with the provisions of:-**

- (a) Section 65 C
- (b) Section 65 B
- (c) Section 66 B
- (d) Section 66 C

**Ans: b**

**Explanation:** Section 65B deals with the admissibility of electronic records as evidence in legal proceedings. It provides a specific procedure for presenting electronic

records as evidence, including requirements for a certificate that certifies the conditions under which the electronic record was produced.

**7. Electronic record presented for inspection of the court under Indian Evidence Act, 1872 is-**

- (a) Electronic evidence
- (b) Documentary evidence
- (c) Oral evidence
- (d) Modern evidence

**Ans: b**

**Explanation:** When an electronic record is presented for the inspection of the court under the Indian Evidence Act, 1872, it is classified as (b) Documentary evidence. According to the Act, electronic records are considered a subset of documentary evidence because they are documents stored in an electronic form.

**8. Which of the following is correctly matched according to Indian Evidence Act, 1872-**

- (a) Refreshing memory : Section 158
- (b) Identification parade : Section 10
- (c) Admission : Section 24
- (d) None of the above

**Ans: d**

**Explanation:** According to the Indian Evidence Act, 1872, the sections correctly related to the mentioned terms are: Refreshing memory (Section 159), Identification parade is not directly mentioned under a specific section but generally falls under procedures outside the purview of this Act, and Admission (Section 17 onwards).

**9. "Written document must be proved by writing only", this maxim has been**

**incorporated under which of the following sections of Indian Evidence Act, 1872-**

- (a) Section 87
- (b) Section 91
- (c) Section 121
- (d) None of the above

**Ans: b**



**Explanation:** The maxim "Written document must be proved by writing only" is incorporated under Section 91 of the Indian Evidence Act, 1872. This section mandates that when the terms of a contract, grant, or any other disposition of property have been reduced to the form of a document, no evidence shall be given in proof of the terms other than the document itself, or if a document is executed in several parts, any part thereof.

**10. Where the court has to form an opinion as to electronic signature of any person, the opinion of the certifying authority which has issued the electronic signature certificate is:-**

- (a) Fact in issue
- (b) Relevant fact
- (c) Proved fact
- (d) None of the above

**Ans: b**

**Explanation:** The opinion of the certifying authority which has issued the electronic signature certificate becomes a relevant fact when the court has to form an opinion regarding the authenticity of an electronic signature. This is because the certifying authority is responsible for verifying the credentials of the signer and issuing the electronic signature certificate, thereby making its opinion crucial in determining the authenticity of the electronic signature in question.



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## 6. Clear Concepts: Law Relating to Preventive Detention

Preventive detention allows authorities to detain individuals without trial or formal charges to prevent them from engaging in activities that are considered prejudicial to the state or its interests. The primary objective of preventive detention is not punitive but rather preventive in nature. This practice is governed by specific laws and regulations, and it is essential to strike a balance between maintaining national security and preserving individual liberties.

### Objectives of Preventive Detention:

The primary objective of preventive detention is to prevent individuals from committing actions or offences that may harm the state or its interests. It is not intended to punish individuals but to protect the security and stability of the nation. The authorities responsible for making preventive detention decisions exercise subjective satisfaction based on specific grounds, including:

- Security of the State
- Maintenance of Public Order
- Protection of Foreign Affairs

### Safeguards Provided in the Constitution:

To prevent the arbitrary use of preventive detention, the Indian Constitution includes certain safeguards:

- **Initial Detention Period:** A person may be detained for up to three months in the first instance. Beyond this period, the case must be referred to an Advisory Board composed of qualified individuals, typically judges of High Courts, for approval of further detention.

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- **Right to Know Grounds:** The detainee has the right to be informed about the grounds for their detention. However, the state may withhold this information if it is in the public interest, potentially leaving room for abuse.
- **Right to Representation:** Detainees must be provided with the earliest opportunities to make representations against their detention.

These safeguards are designed to minimise misuse of preventive detention and ensure that it aligns with the principles of justice and fairness.

