

Judiciary Digest

Current & Conceptual Weekly

22nd - 28th April, 2024

1. Stridhan Property Rights Affirmed by Supreme Court.....	1
2. Summons Based on Prima Facie Case.....	2
3. Supreme Court Registry Rejects Petition to Abolish Collegium System.....	2
4. Old v. New: Sentencing Powers of Magistrate.....	3
5. Past Exam Highlights: Prelims and Mains.....	4
6. Clear Concept: Doctrine of Election.....	6

1. Stridhan Property Rights Affirmed by Supreme Court

In **MAYA GOPINATHAN vs. ANOOP S.B.**, the Supreme Court resolutely upheld the principle that stridhan constitutes the absolute property of a woman, reaffirming her unassailable rights over it. The ruling, delivered by the Bench of Justices Sanjiv Khanna and Dipankar Datta, held that husbands have no authority over stridhan, though they may utilise it during exigencies. Importantly, the Court emphasised the moral imperative for husbands to restore stridhan or its value to their wives, solidifying the foundation of gender equality within marital relationships.

The Court's pronouncement drew heavily on precedent, particularly the landmark case of **Rashmi Kumar v. Mahesh Kumar Bhada (1997) 2 SCC 397**, wherein it was unequivocally established that stridhan remains the exclusive property of the wife and does not morph into joint property upon marriage. This legal doctrine clarifies the distinction between marital assets and stridhan, ensuring the protection of a woman's pre-marital, marital, and post-marital gifts.

The crux of the present case centred on the appellant's assertion of her stridhan rights. The appellant, alleging misappropriation of her stridhan by her husband, pursued legal recourse through civil proceedings rather than filing a criminal complaint. In this regard, the Court held that the standard of proof applicable in civil matrimonial cases, emphasising the importance of a 'preponderance of probabilities' over the stringent 'beyond reasonable doubt' standard observed in criminal trials.

The factual narrative presented a scenario where the appellant, upon marriage, received substantial gold jewellery from her family, which was allegedly misappropriated by her husband. Despite initial success in the family court, the appellant faced a reversal of fortunes in the High Court, prompting her to seek redress from the apex court.

Critically analysing the impugned judgement, the Supreme Court lamented its reliance on conjecture rather than concrete evidence. The Court chastised the High Court for doubting the appellant's bona fides based solely on the timing of her legal action, acknowledging the complexities and sensitivities inherent in matrimonial disputes.

Furthermore, the Court scrutinised the husband's claim regarding the custody of the jewellery, asserting that the appellant's decision to entrust her jewellery to her husband was more plausible than the alternative scenario proposed by the respondent. This reasoning, grounded in practicality and human behaviour, shows the Court's commitment to adjudicating cases based on the probabilities inherent in everyday life.

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2. Summons Based on Prima Facie Case

In **ANIRUDDHA KHANWALKAR VERSUS SHARMILA DAS & OTHERS**, the Supreme Court emphasised that the establishment of a prima facie case, grounded in the allegations of the complaint and pre-summoning evidence, is sufficient for the summoning of an accused. This verdict, delivered by a bench comprising Justices C.T. Ravikumar and Rajesh Bindal, marks a departure from the approach taken by lower courts in quashing summoning orders.

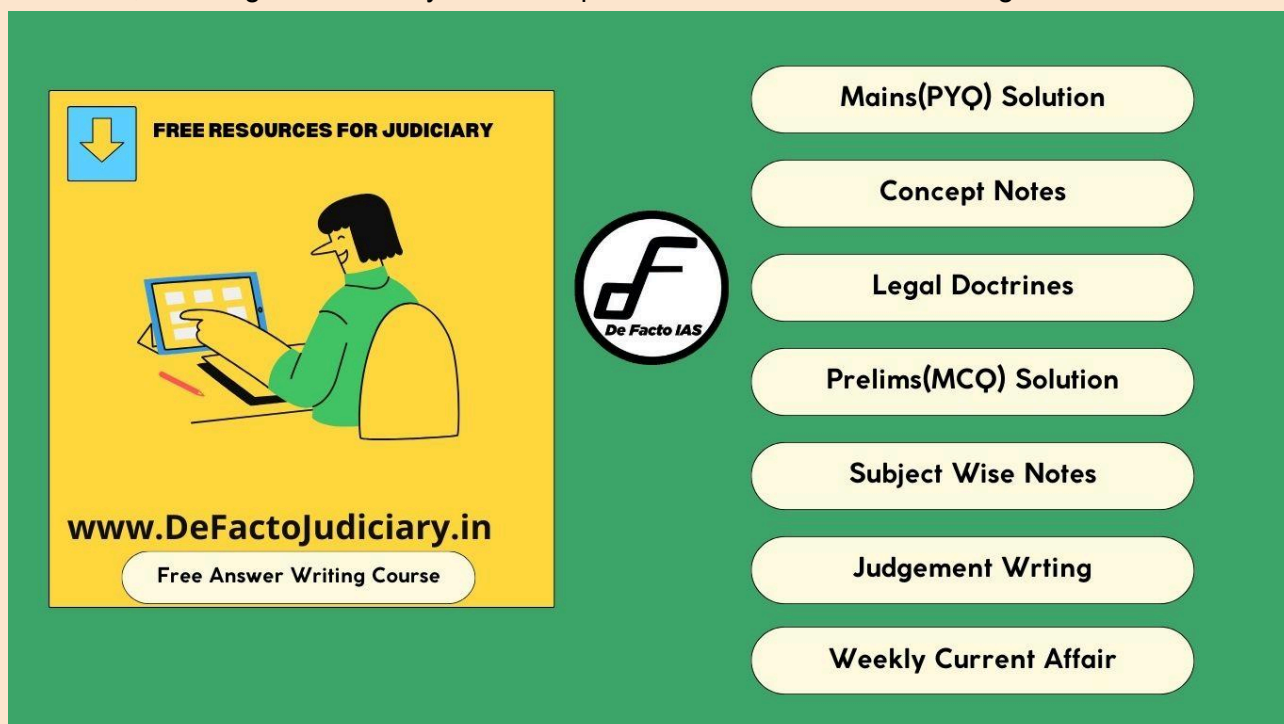
The Court, in reversing the findings of both the High Court and the Sessions Court, criticised their inclination towards conducting what amounted to a mini-trial, akin to determining guilt or innocence. Emphasising the preliminary nature of summoning proceedings, the Court clarified that a prima facie case, derived from the allegations presented, is all that is required to justify the issuance of summons.

The case in question revolves around allegations that the respondent, a woman, deceived the appellant, a man, by presenting a forged divorce decree from her previous marriage, thereby inducing him to believe that she was eligible for remarriage.

Notably, the Court chastised the lower courts for overlooking crucial facts, such as the production of a forged decree and its display to the appellant via mobile phone. These actions, the Court asserted, suffice to establish a prima facie case under Section 420 read with Section 120-B of the IPC, warranting the issuance of summons against the respondents.

Justice Rajesh Bindal, in authoring the judgement, admonished the Sessions Court for delving into an assessment of evidence as if adjudicating the guilt or innocence of the respondents. Such premature scrutiny, the Court held, runs counter to the essence of the pre-summoning stage, where the focus should solely be on establishing a prima facie case.

Consequently, the Court ruled in favour of allowing the appeal, setting aside the impugned orders of both the High Court and the Sessions Court. The issuance of summons by the Magistrate was reinstated, affirming the necessity for the respondents to face trial for the alleged offences.



The advertisement features a green background. On the left, there is a yellow box with a blue arrow pointing down and the text "FREE RESOURCES FOR JUDICIARY". Below this is an illustration of a person sitting at a desk with a laptop and a tablet. At the bottom of the yellow box, the website "www.DeFactoJudiciary.in" and "Free Answer Writing Course" are mentioned. To the right of the yellow box is the De Facto IAS logo, which consists of a stylized 'f' and 'I' inside a circle. Further to the right, there is a vertical list of seven white buttons with black text: "Mains(PYQ) Solution", "Concept Notes", "Legal Doctrines", "Prelims(MCQ) Solution", "Subject Wise Notes", "Judgement Writing", and "Weekly Current Affair".

3. Supreme Court Registry Rejects Petition to Abolish Collegium System

In a recent development, the Supreme Court's Registry, on April 24, declined to accept a writ petition seeking the abolition of the collegium system and the annulment of the 2015 National Judicial Appointments Commission (NJAC) verdict. Advocate Mathews J Nedumpara and several others filed the petition.

The Registrar, in his order, pointed out that the matter had already been settled by the Constitution Bench of the Supreme Court in the case of Supreme Court Advocates-on-Record Association and Anr. vs. Union of India (Writ Petition (Civil) No.13/2015). The Constitution Bench, in 2015, had declared the NJAC unconstitutional and void as it contravened the basic structure of the Constitution. The Registrar firmly stated that the current petition merely reiterates issues that had already been conclusively addressed by the aforementioned verdict. Additionally, he suggested that the petition may have been filed to circumvent established principles or with ulterior motives.

The petitioners argued that the Collegium System had resulted in the denial of equal opportunity for them and thousands of lawyers. They also sought to declare the NJAC as the will of the people and advocated that the appointment and transfer of judges of the Supreme Court and High Courts should fall under the exclusive purview of legislative and executive policy. However, the Registrar noted that even a review petition filed in 2018 against the NJAC verdict was dismissed by the Constitution Bench after thorough examination.

In light of this, the Registrar opined that the petitioners, under the guise of Article 32 of the Indian Constitution, were essentially attempting to seek a review of the 2015 judgement. He categorically

stated that the issues cannot be legally reopened. Furthermore, he criticised the practice of repeatedly litigating a matter that had already been adjudicated, citing its burden on the Court and lack of public interest.

Consequently, the Registrar refused to accept the petition in accordance with Order XV Rule 5 of the Supreme Court Rules, 2013. Order XV Rule 5 empowers the Registrar to reject a petition if it discloses no reasonable cause, is frivolous, or contains scandalous matter. The order cited that the petition did not warrant registration under this rule.

The NJAC, a body proposed to oversee appointments of Chief Justices, Supreme Court judges, and High Court judges, aimed to replace the collegium system. Established by the 99th Constitutional Amendment Act, 2014, it comprised the Chief Justice of India, two senior-most Supreme Court judges, the law minister, and two eminent persons selected by a committee consisting of the Prime Minister, Chief Justice of India, and Leader of the Opposition.

4. Old v. New: Sentencing Powers of Magistrate

CrPC Section 29 and BNSS Section 23

Under CrPC Section 29, the sentencing framework is stratified based on the class of magistrate. A Chief Judicial Magistrate can impose any sentence except for the death penalty, life imprisonment, or imprisonment exceeding seven years. A Magistrate of the first class can sentence up to three years of imprisonment or a fine up to ten thousand rupees, while a Magistrate of the second class can sentence up to one year of imprisonment or a fine up to five thousand rupees. The Chief Metropolitan Magistrate shares the powers of the Chief Judicial Magistrate and those of a Magistrate of the first class.

BNSS Section 23 maintains the sentencing structure similar to CrPC but introduces significant changes. While the upper limits of imprisonment and the structure of fines remain largely consistent for Chief Judicial Magistrates and Magistrates of the first and second classes, BNSS notably increases the maximum fine that can be imposed by a Magistrate of the first class from ten thousand rupees (in CrPC) to fifty thousand rupees. For Magistrates of the second class, the fine limit is raised from five thousand to ten thousand rupees.

A major innovation in BNSS is the introduction of "community service" as a potential sentence. This allows magistrates to assign work benefiting the community as a form of punishment, for which the convict receives no remuneration. This addition represents a shift towards restorative justice principles, aiming to rehabilitate offenders by engaging them in constructive community activities.

5. Past Exam Highlights: Prelims and Mains

Prelims

1. Before the commencement of the Transfer of Property Act, 1882, the transfer of immovable property in India was governed by the:-

- a. Principles of English Law and Equity
- b. Indian Registration Act, 1908
- c. British State of Goods Act, 1880
- d. Indian Contract Act, 1872

Ans. (a)

Explanation: Before the commencement of the Transfer of Property Act in 1882, the transfer of immovable property in India was indeed governed by the principles of English Law and Equity. This is because the legal system in colonial India was heavily influenced by British legal principles. English Law provided the foundational legal concepts and procedures, while equity filled in the gaps, offering remedies and fairness in cases where the strict laws might result in injustice.

2. Standing Timbers under the Transfer of Property Act, 1882 are:—

- a. immovable properties only so long as not severed from the earth
- b. immovable properties unless there is a contract to sever the same from the earth
- c. not immovable properties
- d. immovable properties if value exceeds Rs. 100

Ans. (c)

Explanation: According to the Act, standing timbers, growing crops, and grass are specifically categorised as movable property, regardless of whether they are attached to the earth.

3. A agrees to supply B sunflowers for extraction of oil at a future date at a price not fixed as per the current market price.

Can he do so?

- a. Yes, Section 6 recognizes the agreement effecting the present sale of future goods.
- b. No, agreement is void under Section 30 of the Indian Contract Act, 1872 as it is a wagering contract.

c. No, as the price is not fixed, under Section 9 of the Sale of Goods Act, 1930.

d. Since there are no goods, the contract is voidable under Section 7 of the Sale of Goods Act, 1930.

Ans. (a)

Explanation: According to Section 9 of the Sale of Goods Act, 1930, an agreement to sell goods at a future date must specify or have a mechanism in place to determine the price. If the price is not fixed or determinable in the manner prescribed by the agreement, the agreement cannot be enforced as a valid contract of sale.

4. The Negotiable Instruments Act makes specific mention of three instruments, namely Cheque, Bill of exchange and

- a. Promissory note
- b. Hundi
- c. Bank Draft
- d. All the above

Ans. (a)

Explanation: The Negotiable Instruments Act, 1881, in India, specifically mentions three main types of negotiable instruments: cheques, bills of exchange, and promissory notes. A promissory note is a written promise by one party (the maker) to pay another party (the bearer or payee) a definite sum of money either on demand or at a specified future date.

5. Any claim by way of a set off or a counter claim shall be treated as

- a. A separate suit
- b. The same suit
- c. May be separate or same suit
- d. None of the above

Ans. (a)

Explanation: A set off or counterclaim is treated as part of the same suit rather than as a separate suit. This procedural rule allows a defendant to assert a claim against the plaintiff within the context of the same proceedings rather than initiating a separate

lawsuit. This approach facilitates judicial efficiency by resolving all related disputes between the parties in one comprehensive hearing, avoiding multiple cases over interrelated issues.

6. Provisions of Section 4 of Limitation Act relating to expiry of prescribed period, when court is closed are applicable to

- a. Suit
- b. Appeal
- c. Application
- d. All of these

Ans. (d)

Explanation: Section 4 of the Limitation Act, 1963 stipulates that if the prescribed period for filing a suit, appeal, or application expires on a day when the court is closed, then the suit, appeal, or application can be filed on the next day the court is open. This provision ensures that litigants are not deprived of their right to approach the court due to its closure on the last day of the limitation period, such as on weekends or public holidays.

7. "Partnership" means

- a. Joint venture
- b. Agreement between the persons to share the profit of a business carried on between them
- c. Agreement between the persons to do some work
- d. None of the above

Ans. (b)

Explanation: According to Section 4 of the Indian Partnership Act, 1932, a partnership is defined as a relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

8. The historic case laying down the test for determining the existence of partnership is

- a. Grave v. Smith
- b. Waugh v. Carver
- c. Bloream v. Pell

d. Cox v. Hickman

Ans. (d)

Explanation: Decided by the House of Lords in 1860, Cox v. Hickman established that the essence of a partnership depends not on the mutual responsibility for debts or the formal agreement between the parties, but rather on the intention to conduct business as co-owners for shared profit. This case shifted the focus from the formalities of the agreement to the functional relationship between the parties.

9. The term 'Agent' is defined in the Indian Contract Act, 1872 under Section:

- a. Section 180
- b. Section 181
- c. Section 182
- d. Section 183

Ans. (c)

Explanation: Section 182 of the Indian Contract Act, 1872 defines an 'Agent' as "a person employed to do any act for another or to represent another in dealings with third persons."

10. Which statement is wrong regarding "agency" under the Indian law of contract?

- a. Principal should be competent to contract
- b. The authority of agent may be expressed or implied
- c. Consideration is necessary to create an agency
- d. Guardian of a minor can appoint an agent for him

Ans. (c)

Explanation: It is not necessary for any consideration to be present to establish an agency relationship. This means that an agency can be created without any payment or exchange of value between the principal and the agent. This principle allows for flexibility in forming agency relationships, where the agent's authority to act on behalf of the principal can be granted based solely on

mutual consent without any financial transaction.

Mains

Explain the circumstances when the conduct of a party to the proceeding becomes relevant.

[BJS 2014]

Under Section 8 of the Indian Evidence Act, the conduct of any party or their agent in relation to a legal proceeding is considered relevant. Conduct can serve as evidence of a fact and may be proved by surrounding circumstances. For instance, if an accused person produces certain articles, it is considered relevant evidence of their conduct. Statements made alongside or explaining conduct are also deemed relevant as part of the conduct itself. In one case, recorded conversations over the telephone for arranging bribes were considered evidence of conduct.

The court referenced **R v Leatham**, stating that the manner in which evidence is obtained, even if obtained through theft, does not affect its admissibility. If such statements are absent from the record, the evidence remains incomplete. Additionally, courts often interpret documents based on how the property described in them has been managed and enjoyed.

The term "party" includes both the plaintiff and defendant in civil suits, as well as the accused in criminal prosecutions. For example, the conduct of an accused person absconding when police become suspicious of their involvement in a murder is relevant under this section and may indicate a guilty mind. However, the court must consider other possibilities, as innocent individuals may also evade arrest out of a natural instinct for self-preservation.

The presence of the accused before and after an incident in the vicinity where a crime occurred may be considered evidence of conduct admissible under this section.

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6. Clear Concept: Doctrine of Election

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Section 35 of the Transfer of Property Act introduces the concept of election, where a person must choose between two rights granted by an instrument. If one right is given in place of another, the person must elect one and cannot accept benefits while rejecting provisions. This principle stems from equity, preventing selective acceptance of favourable terms.

According to this section, if someone accepts a benefit under a deed, they must adhere to all provisions and renounce inconsistent rights. The rule can be summarised as follows: if someone claims to transfer property they don't own and confers a benefit on the owner in the same transaction, the owner must either confirm or dissent from the transfer. Dissenting means relinquishing the benefit.

Both the transfer and benefit must be part of the same transaction. If the owner dissents, the benefit reverts to the transferor. Compensation may be required if the transferor has passed away or the transfer was for consideration.

The owner must elect explicitly or implicitly through actions. Express election, using clear words, is final. Implicitly, if the owner accepts benefits with knowledge of their duty to elect, it's presumed they chose the transaction. Two situations imply knowing acceptance: two years of benefit enjoyment or actions making restoration impossible.

There's a one-year time limit for election. Failure to express intent within a year allows the transferor to request an election. If the owner doesn't comply within a reasonable time, it's presumed they confirmed the transfer.



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