**Judiciary Digest**

**Current & Conceptual Weekly**

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# **1. Supreme Court Overrules 1998 Judgment on Legislative Immunity in Bribery Cases**

In a significant move on Monday, March 4, the Supreme Court of India overturned a pivotal judgement from 1998 involving former Prime Minister PV Narasimha Rao. The landmark 1998 judgement had previously established that members of parliament (MPs) and legislative assemblies could claim immunity from prosecution for bribery under Articles 105(2) and 194(2) of the Constitution, specifically in the context of votes or speeches within the legislature.

**The Unanimous Verdict by a Seven-Judge Bench**

The recent verdict was delivered by a seven-judge bench led by Chief Justice of India DY Chandrachud, alongside Justices AS Bopanna, MM Sundresh, PS Narasimha, JB Pardiwala, Sanjay Kumar, and Manoj Misra. This bench set aside the earlier ruling that granted legislative members immunity from bribery charges, stemming from an appeal by Jharkhand Mukti Morcha leader Sita Soren. Soren's appeal was initially dismissed by the Jharkhand High Court, prompting the matter to be taken up by the Supreme Court.

**The Court's Reasoning and Implications**

The Supreme Court's judgement articulated a clear stance against the immunity from prosecution on charges of bribery, stating that such immunity does not align with the fundamental principles of public interest, probity in public life, and the essence of parliamentary democracy. It emphasised that the doctrine of stare decisis, which encourages courts to stand by precedent, is not absolute and can be reconsidered, especially when previous decisions have far-reaching implications on public interest and governance.

**The Distinct Spheres of Jurisdiction**

The court further clarified the distinction between the jurisdiction exercised by a court in criminal offences and the authority of the House to discipline its members for breaches of discipline, including accepting bribes. This distinction underscores the court's position that legislators cannot shield themselves from criminal prosecution under the guise of parliamentary privileges.

**The Test of Essential Functions**

A significant part of the Court's reasoning involved the introduction of a two-fold test to determine the legitimacy of claiming constitutional privileges: whether the act is tethered to the collective functioning of the House and whether it is necessary for the discharge of a legislator's essential duties. The court concluded that acts of bribery fail this test, as they are not essential for the functioning of a legislator's duties and, therefore, do not warrant immunity.

# **2. Para-wise Reply in Civil Litigation**

In ***THANGAM AND ANOTHER V. NAVAMANI AMMAL***, the Supreme Court of India reinforced the critical importance of a defendant providing a specific para-wise reply to the allegations made in a plaintiff's plaint. This decision highlights the procedural necessity under the Civil Procedure Code (CPC) for defendants to address each allegation distinctly to avoid the assumption of admission.

**The Essence of Order VIII Rules 3 and 5 CPC**

Justices C.T. Ravikumar and Rajesh Bindal clarified the obligations under Order VIII Rules 3 and 5 of the CPC, emphasising the requirement for specific admissions and denials of the pleadings presented in a plaint. The Court elucidated that a general or evasive denial would not suffice, and in certain cases, even admitted facts might need to be proven, albeit this remains an exception to the general rule where admitted facts are typically not required to be proved.

**Background of the Case**

The matter arose from a civil appeal wherein the plaintiff/respondent sought a declaration and injunction concerning a property claimed through a registered 'Will'. The appellant/defendant contested the Will's validity, citing the testator's purported lack of capacity to comprehend its contents. However, the defendant's written statement failed to specifically deny the allegations made in the plaint, leading to a judgement by the trial court in favour of the plaintiff, a decision that was later upheld by the High Court upon appeal.

**Supreme Court's Observations**

The Supreme Court underscored the absence of a specific admission or denial by the defendant regarding the allegations in the plaint, noting the challenges this poses for the Court in determining which allegations were admitted or denied. Justice Rajesh Bindal, authoring the judgement, pointed out that such an absence turns the judicial inquiry into a "roving" one, complicating the Court's task.

**Legal Ramifications of Non-Specific Denials**

The Supreme Court cited previous judgments, including Badat and Co. Bombay Vs. East India Trading Co. and Lohia Properties (P) Ltd., Tinsukia, Dibrugarh, Assam Vs. Atmaram Kumar, to reinforce the imperative of dealing specifically with each allegation in the plaint. Failure to provide a specific denial results in the assumption of admission, thereby obviating the need for further proof of those facts.

# **3. Evidence Beyond Pleadings in Civil Litigation**

The Supreme Court of India, in a recent judgement, underscored a fundamental principle of civil litigation: evidence that is not part of the pleadings cannot be considered during the trial. This observation was made by a bench comprising Justices C.T. Ravikumar and Rajesh Bindal, emphasising the inviolable nature of this rule within the legal framework.

**Background of the Dispute**

The case, titled ***Srinivas Raghavendrarao Desai (Dead) by LRs. Vs. V. Kumar Vamanrao @ Alok and Ors***., revolved around a civil appeal against the High Court's decision, which had taken into account evidence not initially pleaded by the plaintiff/respondent. The plaintiff/respondent contested the sale of a property, arguing that a partition in 1965 did not grant the appellant the authority to sell the property due to lack of title.

**Supreme Court's Observations**

Justice Rajesh Bindal, authoring the judgement, highlighted a procedural misstep by the High Court in its reliance on an oral partition from 1965, a matter not pleaded by the plaintiffs in their suit. The plaintiffs had sought to amend the plaint to include this partition, but the trial court rejected this amendment, and the decision was not further contested, thereby achieving finality.

The Supreme Court pointed out that reliance on the 1965 partition, which was not part of the original pleadings and whose amendment was expressly rejected, was a grave error. The court reiterated the principle that evidence not grounded in the pleadings is impermissible, ensuring that the boundaries of a dispute are defined by the issues the parties choose to bring before the court.

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# **4. Then and Now: Kinds of Punishments**

The legal landscape is a dynamic field where the balance between tradition and innovation is crucial in adapting to the evolving societal norms and expectations. This balance is vividly illustrated in the punitive measures prescribed by the Indian Penal Code (IPC) and its contemporary counterpart, the Bharat Nayaya Sanhita (BNS). Both legal frameworks aim to uphold justice while reflecting on the changing perspectives towards crime and punishment.

**The Continuity in Punishments**

At the core of both the IPC and BNS is the retention of traditional punitive measures, underscoring a commitment to established legal principles. These punishments include:

* **Death Penalty:** Both legal codes preserve the death penalty for the gravest offences, signalling a continuous stern stance on the most heinous crimes. This ultimate punishment underscores the principle of retributive justice for acts deemed unforgivable by societal standards.
* **Imprisonment for Life:** Serving as a deterrent for severe crimes that fall short of warranting capital punishment, life imprisonment remains a cornerstone in both codes. It reflects the gravity with which the legal system views certain offences, offering a life-long repercussion for grievous wrongdoings.
* **Imprisonment (Rigorous and Simple):** The nuanced categorization of imprisonment into rigorous and simple forms allows for a tailored approach to punishment. This distinction provides the judiciary with the discretion to factor in the nature of the crime and the circumstances surrounding it, ensuring a more individualised form of justice.
* **Forfeiture of Property:** The continuation of this punishment emphasises the relevance of economic sanctions in the legal framework. By stripping offenders of property rights, the law extends its punitive reach beyond physical and liberty constraints to financial aspects, reflecting a multifaceted approach to deterrence.
* **Fine:** The imposition of fines remains a flexible punitive measure under both codes. Fines serve as a versatile tool for the judiciary, applicable to a wide range of offences and adaptable to the severity and context of the crime.

**Innovation in Punishments**

In the realm of innovation, the BNS marks a significant departure from purely retributive measures towards a more rehabilitative justice model through the introduction of community service as a form of punishment. This inclusion reflects a modern, progressive shift in penal philosophy, recognizing the potential of rehabilitation and the importance of restorative justice. Community service as a punitive measure aims to integrate offenders back into society by engaging them in constructive activities that benefit the community, thereby fostering a sense of responsibility and the opportunity for redemption.

**Balancing Tradition and Innovation**

The juxtaposition of traditional and innovative punishments in the IPC and BNS illustrates a legal system in flux, striving to maintain its foundational principles while adapting to contemporary demands. The retention of established punitive measures ensures that the legal framework remains anchored in tried and tested principles, providing a sense of continuity and stability. Simultaneously, the introduction of community service signals an openness to progressive penal philosophies that prioritise rehabilitation over retribution, reflecting a nuanced understanding of crime and punishment in a modern society.

# **5. Past Exam Highlights**

**Q. Discuss the statement “Judgement and Decree are one and the same”. [MHJS 2012]**

The statement "Judgment and Decree are one and the same" is a common misconception within the context of legal proceedings, especially when considering the framework provided by the Code of Civil Procedure, 1908 (CPC) in India. While both judgement and decree are crucial outcomes of a legal process, they hold distinct meanings and implications within the judicial system.

**Definition and Distinction**

A judgement, as defined under Section 2(9) of the CPC, is the formal expression of the decision of the court. It is a detailed document that explains the reasoning, findings, and conclusions reached by the judge on the matters presented before the court. The judgement encompasses the background of the case, the issues under consideration, the evidence presented, the legal principles applied, and the final decision. It serves as a comprehensive record of the case proceedings and the rationale behind the court's decision.

A decree, on the other hand, is defined in Section 2(2) of the CPC as the formal expression of an adjudication from a suit, which conclusively determines the rights of the parties with regard to all or any of the matters in controversy. The decree is essentially the operative part of the judgement that formally establishes the legal consequences of the judgement. It is what gets enforced and may involve the awarding of damages, the transfer of property, or any other form of legal relief.

**Differences in Nature and Function**

The primary difference between a judgement and a decree lies in their nature and function within the judicial process. A judgement represents the logical reasoning and conclusions that lead to a decision, serving an explanatory and narrative purpose. It is through the judgement that the court's reasoning is made transparent, allowing for an understanding of how the decision was reached.

Conversely, a decree is actionable and enforceable. It is the formal expression of the outcome of a case and specifies the rights and obligations of the parties involved. While a judgement provides the "why" behind the decision, the decree provides the "what" - it spells out what is to be done following the court's decision.

***Prelims***

**1. "Decree" means**

**(1) Extract of the judgement**

**(2) Bill of costs**

**(3) Reasons for which the suit is decreed or dismissed**

**(4) Formal expression of the Court of an adjudication determining the rights of parties**

**Ans: Formal expression of the Court of an adjudication determining the rights of parties**

**Explanation:** A decree is a formal expression of the court's adjudication that determines the rights and obligations of the parties involved in a legal case. It is the court's final decision on the matter.

**2. "Judgement" means**

**(1) Part of the decree**

**(2) Statement of the Judges on the grounds of decree or order**

**(3) Adjudication of right**

**(4) None of the above**

**Ans: Statement of the Judges on the grounds of decree or order**

**Explanation:** A judgement is a written statement by the judges that provides the reasoning and grounds on which a decree or order is based. It explains the legal principles and facts considered by the court in arriving at its decision.

**3. If objection to the jurisdiction of the Court is taken at the hearing of any application for interim relief-the Court shall proceed to**

**(1) The trial of the suit immediately**

**(2) Frame the issues**

**(3) Decide interim application before framing preliminary issue of jurisdiction**

**(4) To determine issue as to the jurisdiction**

**Ans: To determine issue as to the jurisdiction**

**Explanation**: If an objection to the jurisdiction of the court is raised during the hearing of an application for interim relief, the court must proceed to determine the issue of jurisdiction before proceeding further with the case.

**4. Res-judicata means**

**(1) Staying the suit during pendency of the previous suit between the same parties involving similar issues**

**(2) Not trying the suit if suit involving similar issues between similar parties is decided**

**(3) Bar to further suit**

**(4) Expediting trial of the suit**

**Ans: Bar to further suit**

**Explanation:** Res judicata is a legal doctrine that means a matter that has been adjudicated by a competent court and has obtained finality cannot be re-litigated between the same parties. It operates as a bar to further suits on the same issue.

**5. Objection to the territorial jurisdiction of a Court can be allowed if it is raised**

**(1) At any stage of the trial**

**(2) At anytime before the plaintiff leads his evidence**

**(3) At the earliest possible opportunity and before issues are settled**

**(4) Even at the stage of appeal**

**Ans:** At the earliest possible opportunity and before issues are settled

**Explanation:** An objection to the territorial jurisdiction of a court can be allowed if it is raised at the earliest possible opportunity and before the issues in the case are settled. This allows for a timely resolution of jurisdictional disputes.

**6. In case of a decree for the payment of money, the Court can order interest at the rate of**

**(1) 6% per annum**

**(2) 12% per annum**

**(3) 9% per annum**

**(4) 15% per annum**

**Ans: 6% per annum**

**Explanation:** Refere to Section 37 of CPC

**7. Under the inherent powers of the Civil Court, it can pass orders**

**(1) To refer the matter to Mediator**

**(2) Necessary for the ends of justice or to prevent abuse of the process of the Court**

**(3) For compelling the parties to settle their case**

**(4) For compelling a plaintiff to withdraw his suit**

**Ans: Necessary for the ends of justice or to prevent abuse of the process of the Court**

**Explanation:** The inherent powers of a civil court allow it to pass orders that are necessary for the ends of justice or to prevent abuse of the court's process. These powers are used under Section 151 of CPC to ensure that the legal process is fair and just.

**8. Defendant can claim temporary injunction in a suit filed by the plaintiff**

**(1) To prevent the suit property being alienated or damaged**

**(2) To prevent the plaintiff from dispossessing defendant from the suit property**

**(3) To prevent the plaintiff from causing any legal injury to the plaintiff**

**(4) All of the above**

**Ans:** All of the above

**Explanation:** According to Order XXXIX of CPC, the defendant in a suit filed by the plaintiff can claim a temporary injunction to prevent the suit property from being alienated or damaged, to prevent the plaintiff from dispossessing the defendant, or to prevent the plaintiff from causing any legal injury to the defendant. Therefore, the correct answer is "All of the above."

**9. The defendant shall present his written statement within days from the service of summons upon him.**

**(1) 90**

**(2) 120**

**(3) 30**

**(4) 60**

**Ans:** 30

**Explanation:** The defendant is typically required to present his written statement within 30 days from the service of summons upon him. This allows the defendant to respond to the plaintiff's claims in a timely manner.

**10. Where any period is fixed or granted by the Court for doing an act prescribed by the Code of Civil Procedure, the Court may enlarge such period**

**(1) Not exceeding 90 days in total**

**(2) Not exceeding 30 days in total**

**(3) Not exceeding 60 days in total**

**(4) Not exceeding 120 days in total**

**Ans:** Not exceeding 30 days in total

**Explanation:** The court has the authority to enlarge the period fixed or granted for doing an act prescribed by the Code of Civil Procedure under Section 148. However, this extension cannot exceed a total of 30 days.

# **6. Clear Concepts: Article 20 and Ex Post Facto Laws**

The principle against ex post facto laws stands as a bulwark protecting individuals from the retrospective application of criminal laws. This principle, embedded in legal systems worldwide, ensures that individuals are not punished for actions that were not crimes at the time they were committed.

**Understanding Ex Post Facto Laws**

Ex post facto laws are statutes that retroactively change the legal consequences of actions that were committed before the enactment of the law. Essentially, these laws make an action criminal after the fact or increase the punishment for a crime after it has been committed. The principle against such laws is pivotal in ensuring fairness and justice, preventing the state from altering the legal rules of the game in a way that would be disadvantageous to individuals.

**The Legal Prohibition and Its Rationale**

The prohibition of ex post facto laws is enshrined in numerous constitutions and legal frameworks, including the United States Constitution and the Indian Constitution under Article 20(1). This prohibition is rooted in the idea of legal certainty and the fundamental fairness that individuals should be able to rely on the law as it exists at the time of their actions. It protects individuals from the whims of legislative bodies that might seek to punish actions retroactively, ensuring a stable and predictable legal environment.

**Civil vs. Criminal Liability:** The principle distinctly applies to criminal legislation and not to the imposition of civil liabilities. For instance, retrospective imposition of tax liabilities or penalties under tax laws does not violate this principle, as seen in the Hathising Mfg. Co. case.

**Kedar Nath Bajoria v. State of W.B.:** This case illustrated the application of Article 20(1) in limiting the imposition of enhanced penalties for offences committed before the enactment of the amending legislation.

**Rattan Lal v. State of Punjab:** A reformative approach was demonstrated when the Supreme Court applied the Probation of Offenders Act, 1958, to reduce the punishment for a young offender, despite the act being passed after the offence was committed.