

# Judiciary Digest

Current & Conceptual Weekly

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Forfeiture of Right to File Written Statements.....	1
Sentence for Attempt to Murder.....	2
Court Acquits Man Convicted for Wife's Murder.....	2
Old versus New: Right of Private Defence.....	4
Past Exam Highlights.....	4
Clear Concept: EWS Reservation.....	7

## Forfeiture of Right to File Written Statements

In the landmark case of **Kaushik Narsinhbhai Patel & Ors. Versus M/s. S.J.R. Prime Corporation Private Limited & Ors.**, the Supreme Court of India addressed the issue of whether a party whose right to file a written statement has been forfeited can introduce its case indirectly through evidence or written submissions. The bench, comprising Justices CT Ravikumar and Sanjay Kumar, held that such a party cannot circumvent the forfeiture by bringing in pleadings indirectly through evidence.

### Background of the Case

The case arose from a consumer dispute where the respondent/defendant had forfeited his right to file a written statement pursuant to the Supreme Court's order. Despite this, the defendant participated in the proceedings, cross-examined the complainant's witness, and attempted to introduce documentary evidence. This raised the question of whether the defendant could present evidence without having laid a foundation through a written statement.

### Forfeiture of Right to File Written Statement

The Supreme Court emphasised that the forfeiture of the right to file a written statement bars the opposite party from introducing its case indirectly through evidence or written submissions. This principle aligns with the decision in **Nalini Sunder v. GV Sunder (AIR 2003 Kar 86)**, where the Karnataka High Court held that the impact of forfeiture restricts the defendant from bringing forth any admissible evidence without prior pleadings.

### Order 6 Rule 7 of CPC

According to Order 6 Rule 7 of the Civil Procedure Code (CPC), a defendant is allowed to bring claims that are consistent with their previous pleadings. However, in the absence of previous pleadings due to forfeiture, the defendant cannot introduce new pleadings indirectly. This principle ensures that the procedural rules are upheld and prevents parties from bypassing the consequences of their procedural defaults.

### Participation in Proceedings

The Court clarified that while a defendant whose right to file a written statement has been forfeited cannot introduce new pleadings, they are still entitled to participate in the proceedings. This

includes cross-examining the complainant's witnesses and arguing legal points based on authorities and provisions of law.

### **Prohibition on Indirect Introduction of Pleadings**

The bench underscored that allowing a defendant to introduce their case through evidence or written submissions without a foundational pleading would defeat the purpose of the forfeiture. The Court noted, "In the absence of any specific provisions dealing with non-filing of written statements/forfeiture of the right to file a written statement, taking note of the general position as above, it can only be held that it should bar the opposite party in a proceeding before the Consumer Redressal Forums to bring in pleadings, indirectly to introduce its/his case and evidence to support such case."

### **Sentence for Attempt to Murder**

In the case of **AMIT RANA @ KOKA & ANR. Versus THE STATE OF HARYANA**, the Supreme Court of India delivered a significant ruling concerning the sentencing parameters for the offence of attempt to murder under Section 307 of the Indian Penal Code (IPC). The bench, comprising Justices CT Ravikumar and Rajesh Bindal, clarified that if a sentencing court does not impose a life sentence, the maximum imprisonment for attempt to murder cannot exceed 10 years.

The case arose when the accused, Amit Rana and another, were sentenced to 14 years of imprisonment under the second part of Section 307 IPC for causing hurt during an attempt to murder. The accused challenged this sentence, arguing that since the sentencing court did not impose life imprisonment, it was impermissible to impose a term exceeding 10 years.

### **Section 307 of the IPC**

Section 307 IPC deals with the punishment for attempt to murder. It is divided into two parts:

1. First Part: Provides a maximum sentence of up to 10 years of imprisonment and a fine.
2. Second Part: Provides life imprisonment if hurt is caused during the attempt to murder and includes the imposition of imprisonment as provided in the first part.

### **Supreme Court's Interpretation**

The Supreme Court held that if the sentencing court opts not to impose life imprisonment under the second part of Section 307 IPC, the maximum sentence should not exceed the 10-year limit prescribed in the first part. The bench stated, "When the court concerned upon convicting the accused concerned thought it fit not to impose imprisonment for life, the punishment to be handed down to the convict concerned in any circumstance cannot exceed the punishment prescribed under the first part of Section 307, IPC."

### **Court Acquits Man Convicted for Wife's Murder**

The Supreme Court of India acquitted Manharan Rajwade, who had been convicted for the murder of his wife based on circumstantial evidence under the "last seen" theory. The bench, comprising Justices Abhay Oka, Prashant Kumar Mishra, and Augustine George-Masih, set aside the judgments of both the trial court and the Chhattisgarh High Court, highlighting critical lapses in the prosecution's case.

Manharan Rajwade was accused of murdering his wife, who was found dead in her house around 5 PM on April 29, 2006. The prosecution alleged that Rajwade suspected his wife of infidelity, which led to frequent quarrels and ultimately her murder. The trial court and the High Court convicted Rajwade based on the circumstantial evidence of the "last seen" theory, which posits that the person last seen with the deceased is presumed to be the perpetrator.

### **Failure to Prove Last Seen Theory**

The Supreme Court emphasised that the prosecution failed to establish that Rajwade was the last person seen with his wife while she was alive. Justice Abhay Oka noted, "The prosecution did not discharge the burden on it to prove that the appellant was lastly seen together with the deceased wife. Therefore, there was no occasion for the accused to discharge the burden on him (to rebut presumption of guilt based on last seen theory)."

### **Witness Testimonies and Hostility**

The court observed that the two key prosecution witnesses, who initially supported the last seen theory, turned hostile during the trial. The sister-in-law of the appellant testified that she found the deceased unresponsive at 5 PM and that the appellant returned home at 7 PM. The second witness did not provide any testimony about the appellant's presence near the house at the time of the incident.

### **Inadequate Confrontation Under Section 161 CrPC**

The court noted that the prosecution failed to confront the hostile witnesses with their previous statements recorded under Section 161 of the Criminal Procedure Code (CrPC). This lapse further weakened the prosecution's case.

### **Appellant's Statement Under Section 313 CrPC**

Advocate Apoorv Shukla, representing the State, argued that the appellant failed to rebut the presumption of guilt under Section 106 of the Evidence Act. However, Justice Oka countered this argument, stating, "106 presumption will apply, firstly you have to discharge the burden to show that husband and wife were together in the same premises under the same roof. If you don't discharge that burden, where is the question of him discharging it?"

The appellant's statement under Section 313 of the CrPC, where he mentioned returning home around 4 to 5 PM and being informed of his wife's unresponsiveness by the witnesses, did not support the prosecution's case when taken in its entirety.

### **Justice Abhay Oka's Remarks**

After dictating the order, Justice Oka remarked on the systemic issues leading to the appellant's prolonged incarceration. He highlighted the inefficiencies in the judicial process, stating, "This is the problem in our system. Eight years he has undergone, nine years, with no evidence." He further commented on the delays caused by the state's frequent appeals against acquittals, which consume judicial time and resources.

### **Old versus New: Right of Private Defence**

Section 102 of the IPC, enacted in 1860, stipulates the commencement and continuance of the right of private defence of the body. According to this section, the right of private defence begins

when there is a reasonable apprehension of danger from an attempt or threat to commit an offence. This right persists as long as the apprehension of danger exists, regardless of whether the offence is ultimately committed.

The provision under Section 102 IPC is grounded in the principle that an individual's right to defend oneself or another person against potential harm is fundamental. This section provides a broad framework, ensuring that the right to self-defence is not limited by the actual occurrence of an offence but extends to situations where there is a reasonable threat of harm.

### **The Evolution Reflected in Section 40 BNS**

Section 40 of the BNS, a more recent codification, mirrors the essence of Section 102 IPC but introduces refinements to clarify the scope and application of the right of private defence. Similar to the IPC, the BNS acknowledges that the right of private defence begins when there is a reasonable apprehension of danger from an attempt or threat to commit an offence.

However, a key distinction lies in the explicit articulation of the duration for which this right continues. While Section 102 IPC implies that the right persists as long as the apprehension of danger exists, Section 40 BNS provides a more detailed explanation, ensuring that there is no ambiguity regarding the continuance of the right of private defence. This clarification enhances legal certainty, offering clearer guidelines for both the public and law enforcement agencies.

### **Comparative Analysis**

#### **Commencement of Right:**

- **IPC Section 102:** The right of private defence begins with a reasonable apprehension of danger from an attempt or threat to commit an offence.
- **BNS Section 40:** Similarly, the right commences with a reasonable apprehension of danger from an attempt or threat to commit an offence.

#### **Continuance of Right:**

- **IPC Section 102:** The right of private defence continues as long as the apprehension of danger exists, even if the offence is not committed.
- **BNS Section 40:** While also acknowledging the continuance of the right based on reasonable apprehension, it provides explicit details, reducing ambiguity and enhancing the clarity of the law.

### **Past Exam Highlights**

#### **Prelims**

1. The Seven Judge Bench of the Supreme Court of India in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* 2002 (5) SCC 111 overruled its judgements in the case of :—

- a. Sabhajit Tewary

- b. R.D. Shetty
- c. Ajay Hasia
- d. G. Basi Reddy

**Ans. (a)**

**Explanation:** In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, the

Supreme Court overruled the *Sabhajit Tewary* case, which had a narrower interpretation of what constitutes a "State" under Article 12. The *Pradeep Kumar Biswas* case broadened the understanding of "State" to include more entities under significant governmental control.

2. In which one of the following cases was it held that a law made under Article 368 would be subject to Article 13(2) like any other law ?

- a. *Shankari Prasad v. Union of India*
- b. *Sayan Singh v. State of Punjab*
- c. *Golak Nath v. State of Punjab*
- d. *Minerva Mills Ltd. v. Union of India* us.

**Ans. (c)**

**Explanation:** In *Golak Nath v. State of Punjab*, the Supreme Court held that constitutional amendments are subject to Article 13(2) and therefore cannot abridge or take away Fundamental Rights. This landmark decision emphasised the inviolability of Fundamental Rights against legislative amendments.

3. Which of the following is a defence to the tort of nuisance?

- a. Prescription
- b. Statutory authority
- c. Both (a) and (b)
- d. None of the above

**Ans. (c)**

**Explanation:** Defences to the tort of nuisance include prescription and statutory authority. Prescription allows a nuisance to continue if it has been ongoing for a significant period, while statutory authority provides a legal basis for actions that would otherwise be considered nuisances.

4. The doctrine of *res ipsa loquitur* was applied by the Supreme Court in -

- a. *Jasbir Kaur vs. State of Punjab*
- b. *Alka vs. Union of India*
- c. *Asia Ram vs. Municipal Corporation of Delhi*

d. *Municipal Corporation of Delhi vs. Subhagwanti*

**Ans. (d)**

**Explanation:** The doctrine of *res ipsa loquitur* was applied by the Supreme Court in *Municipal Corporation of Delhi vs. Subhagwanti*. This case involved the collapse of a clock tower, and the court inferred negligence because such an incident would not normally happen without negligence.

5. The term 'goodwill' is a thing easy to describe but very difficult to define, is stated by

- a. Lord Herschell
- b. Lord Haldane
- c. Lord MacNaughten
- d. Lord Eldon

**Ans. (c)**

**Explanation:** This statement about the nature of 'goodwill' being difficult to define but easy to describe reflects the abstract nature of goodwill as an intangible asset, which is recognized for its value in commercial practices and was articulated by Lord MacNaughten.

6. Which of the following sections of the Indian Partnership Act bestows every partner with the authority of an agent?

- a. Section 17
- b. Section 18
- c. Section 19
- d. Section 20

**Ans. (b)**

**Explanation:** Section 18 of the Indian Partnership Act states that every partner is an agent of the firm for the purpose of the business of the firm. This provision establishes the basis for mutual agency, which is a fundamental characteristic of partnerships, enabling partners to conduct business on behalf of one another.

7. Provisions of Section 3 of the Limitation Act, 1963 are:

- a. directory



- b. discretionary
- c. mandatory
- d. permissive

**Ans. (c)**

**Explanation:** The provisions of Section 3 of the Limitation Act, 1963, are mandatory. The court is bound to dismiss any suit, appeal, or application if it is found to be barred by limitation, irrespective of whether the defence raises the issue or not.

8. Counterclaim, under section 3, Limitation Act, 1963, shall be deemed to have been instituted:

- a. On the same day when the suit, in which counterclaim is made, has been filed
- b. on the day on which the counter claim is made in court
- c. either (a) or (b) whichever is beneficial to the defendant
- d. either (a) or (b) whichever is beneficial to the plaintiff

**Ans. (b)**

**Explanation:** Under Section 3 of the Limitation Act, 1963, a counterclaim is deemed to have been instituted on the day the counterclaim is made in court. This ensures that the counterclaim is treated as a separate legal action from the date it is formally introduced.

9. Which Section is based on the principle of *lex non cogit ad impossibilia*—

- a. Section 4
- b. Section 5
- c. Section 14
- d. Section 15

**Ans. (a)**

**Explanation:** Section 4 of the Limitation Act, 1963, is based on the principle of *lex non cogit ad impossibilia*, which means the law does not compel a man to do what he cannot possibly perform. This section deals with the expiry of the prescribed period when the court is closed, allowing the action to be taken on the next day the court is open.

10. Condonation of delay under Section 5 of Limitation Act

- a. can be claimed as a matter of right
- b. is a matter of discretion of the court
- c. sufficient causes for the delay has to be shown
- d. none of the above

**Ans: (c)**

**Explanation:** Condonation of delay under Section 5 of the Limitation Act is a matter of discretion of the court, requiring sufficient causes for the delay to be shown. This discretion allows courts to balance the interests of justice with the need for adherence to statutory time limits, ensuring fairness in legal proceedings.

### Mains

**Q. Discuss the provisions relating to rehabilitation and reintegration of children under Juvenile Justice (Care and Protection of children) Act, 2015?**

**Ans.** The provisions relating to rehabilitation and reintegration of children under the Juvenile Justice (Care and Protection of Children) Act, 2015 focus on ensuring that children in need of care and protection, as well as children in conflict with the law, receive appropriate support to reintegrate into society. These provisions aim to provide individualised care plans and options for family-based care whenever possible.

According to Section 39 of the Act, the process of rehabilitation and social integration of children should be based on the individual care plan of the child. The Act emphasises family-based care as the preferred approach, which includes restoration to the child's own family or guardian, with or without supervision or sponsorship, as well as adoption or foster care. The intention is to provide a

nurturing and supportive environment that promotes the child's well-being and successful reintegration into society

The Act also highlights the importance of keeping siblings together, whenever possible, if they are placed in institutional or non-institutional care. This provision recognizes the significance of sibling relationships and the positive impact they can have on a child's development and emotional well-being. However, it acknowledges that in certain circumstances, it may not be in the best interest of the siblings to be kept together.

For children in conflict with the law, the Act states that rehabilitation and social integration should be undertaken in observation homes if the child is not released on bail. Alternatively, they may be placed in special homes, places of safety, fit facilities, or with fit persons as determined by the order of the Juvenile Justice Board. These arrangements aim to provide a structured and supportive environment for the child's rehabilitation and reintegration.

In cases where children in need of care and protection are not placed with families for various reasons, they may be placed in registered institutions or with fit persons or fit facilities on a temporary or long-term basis. The Act ensures that the rehabilitation and social integration process continues regardless of the child's placement.

Furthermore, the Act recognizes the need for financial support to help children leaving institutional care or special homes upon attaining eighteen years of age to reintegrate into mainstream society. Section 46 specifies that these individuals may be provided with financial assistance to facilitate their reintegration process.

#### **Clear Concept: EWS Reservation**

The reservation for Economically Weaker Sections (EWS) in India represents a significant shift in the constitutional landscape, primarily through the enactment of the Constitution (One Hundred and Third Amendment) Act, 2019. This amendment introduces reservations based on economic criteria, adding clause (6) to Articles 15 and 16 of the Constitution. This framework aims to provide a maximum of ten percent reservation for EWS in educational institutions and public employment, excluding those already benefiting from existing reservations for Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC).

#### **Rationale and Background**

The introduction of EWS reservation stems from the recognition that economic deprivation is a critical factor affecting access to education and employment opportunities. Traditionally, Indian affirmative action has focused on social and educational backwardness. However, this amendment acknowledges that poverty, irrespective of caste or social status, creates significant barriers that need to be addressed.

The EWS reservation faced numerous legal challenges, primarily on the grounds of violating the basic structure of the Constitution.

#### **Janhit Abhiyan v. UOI**

**Economic Criteria for Reservation:** The petitioners argued that reservations solely based on economic criteria were impermissible, contending that the Constitution's framework emphasised social and educational backwardness as the basis for affirmative action. However, the majority

opinion upheld the amendment, stating that economic criteria could serve as a legitimate basis for affirmative action without violating the basic structure.

**Exclusion of SCs, STs, and OBCs:** Another critical contention was the exclusion of socially and educationally backward classes from the benefits of EWS reservation. The Supreme Court found that this exclusion was constitutionally valid, as these groups already receive substantial benefits through existing reservations. The Court emphasised that the EWS reservation aimed to address a different dimension of disadvantage, focusing on economic hardship.

**Fifty Percent Ceiling on Reservations:** The petitioners argued that the EWS reservation breached the fifty percent ceiling on reservations established in prior judicial precedents. The Supreme Court held that this ceiling was flexible and not a rigid rule. The Court noted that extraordinary circumstances, such as addressing economic inequality, could justify exceeding this limit.

The Court's majority upheld the amendment, emphasising the constitutional mandate to promote social and economic justice.

Justice Dinesh Maheshwari, writing for the majority, highlighted that the amendment sought to achieve the Preamble's goal of justice, social, economic, and political. He noted that the EWS reservation did not undermine the principles of equality enshrined in the Constitution but rather expanded the scope of affirmative action to include economically weaker sections, thus promoting inclusivity.

