

Judiciary Digest

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Court's Call for Better Training of Police Officers

In *Delhi Race Club (1940) Ltd. & Ors. v. State of Uttar Pradesh & Anr.*, the Supreme Court of India underscored the pressing need for enhanced legal training among police officers. This directive emerged from the Court's observation of the prevalent confusion between the offences of cheating and criminal breach of trust, both of which are distinct under the Indian Penal Code (IPC). The judgement, delivered by Justices JB Pardiwala and Manoj Misra, emphasizes that these two offences, governed by Sections 420 and 406 of the IPC (now referenced as Sections 318 and 316 in BNS, 2023), cannot coexist in the same factual scenario as they are fundamentally incompatible.

Distinction Between Cheating and Criminal Breach of Trust

The Supreme Court pointed out the crucial distinction between cheating and criminal breach of trust, which appears to be misunderstood not only by the police but also by the judiciary. Cheating, as per Section 420 IPC, requires the presence of criminal intent at the very inception of the act, where a person is deceived into parting with property or money. On the other hand, criminal breach of trust under Section 406 IPC involves the dishonest misappropriation of property that was lawfully entrusted to the offender. The Court observed that these two offences are mutually exclusive, and their simultaneous invocation in the same set of facts is legally untenable.

The Need for Judicial and Police Prudence

The Court's ruling reflects its concern over the routine practice of police officers registering First Information Reports (FIRs) for both offences without due application of mind. This mechanical approach not only leads to legal complications but also clogs the judicial system with cases that lack a clear basis for prosecution. The Court expressed disappointment that even after many years, this fine legal distinction has not been fully understood or applied consistently by the courts.

Furthermore, the judgement directed that a copy of the judgement be sent to the Principal Secretary of the Ministry of Law & Justice and the Ministry of Home Affairs, urging them to take necessary steps to address this issue. This highlights the Court's intent to bring about systemic

changes in how the police and judiciary handle cases involving allegations of cheating and criminal breach of trust.

The Case at Hand: Misapplication of Legal Principles

The Supreme Court's observations came while deciding an appeal against a High Court order that refused to quash a process issued by a magistrate for offences under Sections 406, 420, and 120B of the IPC. The case involved a complaint against a company and its office bearers, alleging non-payment for the sale of horse grains and oats. The Court criticised the lower courts for failing to distinguish between the allegations that might constitute a civil wrong and those that could amount to a criminal offence. The evidence presented did not support the essential elements of either cheating or criminal breach of trust, leading the Supreme Court to conclude that the prosecution was fundamentally flawed.

Magistrates' Responsibility in Issuing Process

The judgement also addresses the responsibilities of magistrates when dealing with private complaints. The Court emphasised that the issuance of summons in a criminal case is not a routine matter but a serious step that should only be taken after careful scrutiny of the complaint and the supporting evidence. Magistrates must apply their minds to the specific facts of each case and determine whether the allegations genuinely constitute an offence. This duty is even more critical when the complaint involves complex legal issues such as those concerning the distinction between cheating and criminal breach of trust.

Vicarious Liability of Corporate Officers

Another significant aspect of the ruling was the Court's clarification regarding the vicarious liability of corporate officers. The Penal Code does not automatically impose liability on office bearers for offences allegedly committed by the company unless there are direct allegations of involvement against them. In the case at hand, the Court found that the complaint did not substantiate any direct involvement of the company's officers in the alleged offences, and therefore, the issuance of summons against them was unjustified.

Retrospective Application of BNSS Section 479 to Undertrials

In a significant judgement aimed at addressing the issue of overcrowding in Indian prisons, the Supreme Court of India, in the case *In Re-Inhuman Conditions In 1382 Prisons v. Director General of Prisons and Correctional Services and Ors.*, held that Section 479 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) would apply retrospectively. This provision, which replaces the corresponding section in the Code of Criminal Procedure (CrPC), is designed to provide relief to undertrial prisoners across the country. The Court's decision means that Section 479 BNSS will apply to all undertrials in cases registered before July 1, 2024.

Understanding Section 479 of BNSS

Section 479 of the BNSS introduces a significant provision concerning the release of undertrial prisoners on bail. According to this section, undertrials who have been in detention for a period

extending up to one-half of the maximum imprisonment specified for the offence they are accused of, can be released on bail. This provision is crucial for reducing the burden on the judicial system and alleviating the overcrowded conditions in prisons.

A notable aspect of Section 479 BNSS is its proviso, which introduces a new relaxation for first-time offenders. For undertrials who have never been convicted of any offence in the past, the proviso allows for their release if they have undergone detention for a period extending up to one-third of the maximum period prescribed for the offence. This is a significant departure from the previous provision under Section 436A of the CrPC, which required undertrials to serve one-half of the maximum period before being eligible for release on bail.

Court's Directive for Expedient Implementation

The Bench, comprising Justices Hima Kohli and Sandeep Mehta, emphasised the importance of expedient implementation of Section 479 BNSS. The Court directed superintendents of jails across the country to process the applications of undertrials eligible under this provision through the concerned courts. The order specifically highlighted that these steps should be taken as quickly as possible, preferably within three months. The Court's directive aims to ensure that undertrials who have served the requisite period are not unduly detained, thus helping to mitigate the issue of prison overcrowding.

Addressing Overcrowding in Prisons

The Supreme Court's ruling came in response to a public interest litigation (PIL) filed to address the inhuman conditions in 1382 prisons across India. The PIL highlighted the severe overcrowding in prisons, a problem exacerbated by the large number of undertrial prisoners who remain in detention for extended periods due to delays in the judicial process. Senior Advocate Gaurav Aggarwal, representing the petitioners, argued that the implementation of Section 479 BNSS could significantly alleviate overcrowding by facilitating the timely release of undertrials who have already served a substantial portion of their potential sentences.

Union of India's Stance and Court's Order

During the proceedings, the Additional Solicitor General (ASG) Aishwarya Bhati confirmed that the Union of India supported the retrospective application of Section 479 BNSS. The ASG stated that the provision should be given full effect, meaning that it would apply to any undertrial who had completed up to one-third of the imprisonment period specified for their offence. This alignment between the judiciary and the executive branch underscores the consensus on the need for legal reforms to address the systemic issues plaguing the prison system.

Following this submission, the Supreme Court issued an order mandating the immediate implementation of Section 479 BNSS. The order called for superintendents of jails to process the applications of eligible undertrials and submit reports to their departmental heads within three months. These reports would then be compiled into comprehensive affidavits by each State and Union Territory, ensuring accountability and oversight in the implementation process.

Supreme Court Simplifies Bail Process

In *Girish Gandhi v. The State of Uttar Pradesh & Ors.*, the Supreme Court of India addressed the complexities surrounding bail conditions, emphasizing the importance of simplifying the process to ensure fairness and justice. The ruling is a crucial step in making the bail process more accessible and equitable for all individuals.

One Surety, Not Multiple

The Supreme Court ruled that accused individuals need not furnish multiple sureties for different bail orders. This decision comes in response to the difficulties faced by Girish Gandhi, who was granted bail in 13 cases but remained in custody due to the inability to provide sureties in various states. The Court highlighted that requiring multiple sureties creates unnecessary burdens and delays, which can render the bail order ineffective.

Easing the Local Surety Requirement

The Court also addressed the issue of local surety, recognizing that this condition often poses significant challenges, particularly when the bail order is issued in a location far from the accused's home state. In Gandhi's case, the bail order was from Jaipur, Rajasthan, while he hailed from Haryana, making it nearly impossible to comply with the local surety requirement. The Supreme Court emphasized that such conditions should not hinder the release of the accused and directed that local surety requirements be relaxed to prevent undue delays in bail.

Focus on Justice, Not Formality

The Supreme Court took a firm stance against excessive and onerous bail conditions, warning that such practices undermine the very purpose of granting bail. The Court referred to its previous ruling in *Satender Kumar Antil v. Central Bureau of Investigation & Anr.* (2022), where it was held that imposing conditions impossible to fulfill defeats the object of release. The Court's message is clear: the focus should be on ensuring justice, not adhering to rigid formalities that serve no practical purpose.

Upholding Equality: Justice Krishna Iyer's Legacy

The Supreme Court's ruling also resonates with the principles articulated by Justice Krishna Iyer in the landmark 1978 case *Moti Ram and Ors. v. State of Madhya Pradesh*. Justice Iyer criticized the practice of demanding local sureties from the court's district, arguing that such requirements could lead to discrimination against individuals from different states or regions. His words highlighted the need for a legal system that treats all citizens equally, regardless of their geographical location. The Supreme Court's current ruling reaffirms this commitment to equality and accessibility in the bail process.

Then and Now: Mob Lynching

Mob lynching, an act of extrajudicial execution carried out by a group of individuals based on factors such as race, caste, community, language, and personal beliefs, has been a pressing issue in India. Despite its prevalence, there was no specific provision addressing mob lynching under the Indian Penal Code, 1860 (IPC). However, the introduction of the Bhartiya Nyaya Sanhita, 2023 (BNS) has brought significant changes, including specific provisions aimed at tackling this heinous crime.

New Provisions Under Bhartiya Nyaya Sanhita, 2023

Section 103(2): Punishment for Mob Lynching Leading to Murder

The newly introduced Section 103(2) of the BNS specifically addresses the crime of mob lynching resulting in murder. This provision states that when a group of five or more individuals, acting together, commits murder based on factors such as race, caste, community, sex, place of birth, language, or personal belief, each member of the group will face severe penalties. The punishment for this crime includes either the death penalty or life imprisonment, along with a fine.

The essential elements of this offence are:

- A group of five or more persons.
- Acting in concert.
- Committing murder.
- On grounds such as race, caste, community, sex, place of birth, language, or personal belief.

This provision reflects the seriousness with which the law now treats mob lynching, especially when it results in the loss of life, and serves as a deterrent against such crimes.

Section 117(4): Punishment for Grievous Hurt by a Mob

Section 117(4) of the BNS deals with cases where a mob, again consisting of five or more persons, causes grievous hurt to an individual based on similar grounds. Under this section, each member of the group is guilty of causing grievous hurt and is subject to imprisonment for up to seven years and a fine.

The critical elements of this offence include:

- A group of five or more persons.
- Acting in concert.
- Causing grievous hurt.
- On grounds such as race, caste, community, sex, place of birth, language, or personal belief.

This section is particularly important as it criminalises not only the act of murder by a mob but also the act of causing serious injury, acknowledging the severity of both forms of violence.

Past Exam Highlights

Prelims

1. The cardinal principle of Criminal Law Nullum crimen nulla poena sine lege means

- (a) No crime or punishment can exist without a pre-existing penal law
- (b) A man is presumed to be innocent until proven guilty
- (c) Ignorance of law is no excuse
- (d) An act must be accompanied by a criminal intent to constitute an offence

Answer: (a) No crime or punishment can exist without a pre-existing penal law

Explanation: "Nullum crimen nulla poena sine lege" is a Latin phrase that means no crime or punishment can exist without a pre-existing penal law. This principle affirms that an act cannot be punished unless it is clearly described as an offence under existing law.

2. The doctrine of Necessity has been elaborately considered in the landmark decision of

- (a) Ry. McNaghten (1843) 8 Eng Rep 718
- (b) Basdev v. State of PEPSU AIR 1956 SC 488
- (c) Rv. Dudley and Stephens (1884) 14 QBD 273
- (d) Bimbardhar Pradhan v. State of Orissa AIR 1956 SC 469

Answer: (b) Basdev v. State of PEPSU AIR 1956 SC 488

Explanation: The doctrine of Necessity was elaborated upon in the landmark case of Basdev v. State of PEPSU. The doctrine justifies an act done out of necessity and aims to balance between individual rights and societal interests.

3. In his will, Mr. Y wrote: "I intend my property to be equally divided between my three children A, S and H." A dishonestly scratched out the name of H, intending that it may be believed that the whole of the property was left to the divided between H and himself alone. A is guilty of

- (a) Cheating
- (b) Forgery
- (c) Misappropriation
- (d) Theft

Answer: (b) Forgery

Explanation: A is guilty of forgery because he dishonestly altered the will by scratching out the name of H, intending to misrepresent the will's contents. This falls under Section 463 of the Indian Penal Code.

4. The general rules of succession in case of a female Hindu have been laid down in Section of the Hindu Succession Act, 1956.

- (a) 11
- (b) 12
- (c) 15

(d) 14

Answer: (c) 15

Explanation: Section 15 of the Hindu Succession Act, 1956, lays down the general rules of succession in the case of a female Hindu.

5. The limitation period for initiating action where no period of limitation is prescribed anywhere is

- (a) Three years from the date on which the right to apply accrues
- (b) One year from the date on which the right to apply accrues
- (c) Anytime from the date on which the right to apply accrues
- (d) None of the above

Answer: (a) Three years from the date on which the right to apply accrues

Explanation: Under Article 113 and 137 of the Limitation Act, 1963, where no period of limitation is prescribed, the general period is three years from the date the right to apply accrues.

6. According to Article 227 of the Constitution, every High Court shall have Over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction

- (a) Supervision
- (b) Superintendence
- (c) Overview
- (d) None of the above

Answer: (b) Superintendence

Explanation: Article 227 of the Indian Constitution provides that every High Court shall have superintendence over all courts and tribunals in its jurisdiction.

7. According to Article 233 of the Constitution, a District Judge is appointed by the

- (a) Chief Justice of the State High Court
- (b) Governor of the State
- (c) Chief Minister of the State
- (d) None of the above

Answer: (b) Governor of the State

Explanation: Article 233 of the Indian Constitution states that a District Judge is appointed by the Governor of the state.

8. Courts have jurisdiction to try all suits of a civil nature except suits, the cognizance of which is either expressly or impliedly barred, by virtue of

- (a) Section 7 of the CPC
- (b) Section 8 of the CPC
- (c) Section 9 of the CPC
- (d) Section 10 of the CPC

Answer: (c) Section 9 of the CPC

Explanation: Section 9 of the Code of Civil Procedure (CPC) states that courts have jurisdiction to try all civil suits unless barred expressly or impliedly.

9. Constructive res judicata is contained in

- (a) Explanation III to Section 11 of the CPC
- (b) Explanation VI to Section 11 of the CPC
- (c) Explanation VII to Section 11 of the CPC
- (d) Explanation IV to Section 11 of the CPC

Answer: (d) Explanation IV to Section 11 of the CPC

Explanation: Constructive res judicata is contained in Explanation IV to Section 11 of the CPC. It extends the principle of res

judicata to issues that could have been a part of the previous litigation.

- (c) Conciliation or mediation
- (d) All of the above

10. The Court under Section 89(1) of the CPC can refer the dispute for

- (a) Mediation or Lok Adalat
- (b) Arbitration or conciliation

Answer: (d) All of the above

Explanation: Section 89(1) of the CPC allows the court to refer the dispute for Mediation, Arbitration, or Conciliation.

Mains

Q. What are the conditions necessary for granting a claim of set-off?

Ans. The doctrine of set-off is intended to avoid multiple lawsuits by allowing both parties to settle their respective claims in a single proceeding. The relevant legal provisions for set-off are primarily found in Order VIII, Rule 6 of the CPC. Order VIII, Rule 6 of the CPC lays down the framework for a set-off, stating that a defendant in a suit may claim a set-off against the plaintiff if certain conditions are met. This rule is applicable in cases where the defendant has a counterclaim that can be legally enforceable against the plaintiff. The rule is designed to prevent multiplicity of litigation and ensure that the court resolves all related disputes in one proceeding.

Conditions Necessary for Set-Off

To successfully claim a set-off under Order VIII, Rule 6 of the CPC, the following conditions must be satisfied:

1. Reciprocal Claims

One of the fundamental conditions for granting a claim of set-off is that the claims must be reciprocal, meaning that the plaintiff and the defendant must be in the capacity of debtor and creditor to each other. In the case of *Raja Ram v. Lala Sohan Lal*, the court emphasised that the set-off must involve mutual debts and credits between the parties. This reciprocity ensures that the set-off is not merely a defence but a substantive counterclaim that can be adjusted against the plaintiff's demand.

2. Ascertained and Legally Enforceable Debt

The amount claimed as set-off must be an ascertained sum of money that is legally recoverable by the defendant. It is essential that the amount is definite and not subject to further determination or contingencies. For instance, in *Kishan Chand v. Sohan Singh*, the court held that an unliquidated claim or a claim dependent on the fulfillment of certain conditions could not be set off. The debt must be presently due and enforceable in the same manner as the plaintiff's claim.

3. Same Nature as Plaintiff's Claim

The claim of set-off must be of the same nature as the plaintiff's claim. This means that the defendant's claim should arise out of a similar transaction and be of the same legal character. The Supreme Court in *Mohanlal Goenka v. Benoy Krishna Mukherjee* held that a claim for damages cannot be set off against a liquidated debt. The principle is that the court should not entertain a

set-off if it introduces new issues unrelated to the original claim, thereby complicating the proceedings unnecessarily.

4. Jurisdiction of the Court

The court before which the set-off is claimed must have the jurisdiction to try both the original suit and the set-off claim. If the set-off involves an amount that exceeds the court's pecuniary jurisdiction, it cannot be entertained. For example, if a defendant in a suit before a small causes court claims a set-off that exceeds the court's pecuniary limits, the court would lack jurisdiction to adjudicate the set-off, as noted in *Jawala Singh v. Nathu Singh*.

Clear Concept: Polygraph Test

The law relating to the administration of polygraph tests, also known as lie detector tests, in India is intricately tied to constitutional safeguards, particularly the right against self-incrimination under Article 20(3) of the Indian Constitution. The Supreme Court of India, in a series of landmark judgments, has laid down the legal framework governing the use of such tests in criminal investigations. The most notable among these is the case of *Selvi v. State of Karnataka* (2010), where the Court extensively deliberated on the constitutionality and permissibility of polygraph tests, along with other similar investigative techniques like narco-analysis and brain mapping.

Consent as a Precondition

A crucial aspect of the *Selvi* judgment is the emphasis on consent. The Supreme Court ruled that no polygraph test or any similar procedure can be administered without the express and informed consent of the individual. This consent must be recorded before a Judicial Magistrate, ensuring that the individual is fully aware of the implications of undergoing such a test. The Court mandated that the subject must be provided with legal counsel and that the nature of the test and its potential consequences should be thoroughly explained to them.

This requirement of consent aligns with the National Human Rights Commission's guidelines, which the Court reiterated must be followed. The guidelines state that the accused must be informed of their right to refuse the test, and the consent must be voluntary, without any coercion.

Evidentiary Value of Polygraph Tests

The Supreme Court in the *Selvi* case also dealt with the evidentiary value of the results obtained from polygraph tests. The Court held that the results of such tests cannot be admitted as evidence in court because they do not constitute a "conscious statement" made by the accused. The responses elicited during a polygraph test are considered involuntary as they are not under the conscious control of the individual. Therefore, while the test results themselves are inadmissible, any subsequent discoveries made as a result of information obtained during the test can be admitted under Section 27 of the Indian Evidence Act, 1872, provided the information leads to the discovery of new evidence.

Guidelines for Conducting Polygraph Tests

1. **Voluntary Consent:** The individual must provide voluntary and informed consent before the test can be administered. This consent should be recorded by a Judicial Magistrate.
2. **Legal Representation:** The individual must have access to legal counsel, and the implications of the test must be explained to them by both their lawyer and the police.
3. **Recording of Consent:** The consent and the reasons for it must be recorded before a Judicial Magistrate, ensuring that the individual understands the nature of the test and its consequences.
4. **Independent Conduct of Test:** The polygraph test should be conducted by an independent agency, such as a hospital, in the presence of the individual's lawyer, to prevent any undue influence or coercion.

