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HIMACHAL PRADESH HIGH COURT RULES BIRTH REGISTRATION CANNOT BE DENIED TO CHILDREN BORN FROM INVALID MARRIAGE

According to a recent ruling by the Himachal Pradesh High Court, a child born out of an invalid marriage is entitled to birth registration. The idea that children shouldn't be punished for things that are beyond their control, like the legality of their parents' marriage, is emphasized by this important ruling. This ruling was made by Justice Satyen Vaidya in response to a child's birth registration being denied because of concerns regarding the validity of the parents' marital status. Authorities denied the woman petitioner's plea to have her child's birth registered, stating that her marriage to the child's father was illegal.

According to the court, such acts are discriminatory and infringe the fundamental rights protected by the Constitution, especially Article 21, which guarantees the right to life and dignity. Justice Vaidya underlined that birth registration is a crucial legal document that grants identity and access to basic rights including social assistance programs, healthcare, and education. Inequality and stigmatization are perpetuated when a child is denied this privilege because of the legality of the parents' marriage. India has ratified various international treaties which have been referred to by the court, including the United Nations Convention on the Rights of the Child. These treaties state how children possess the right to registration at birth and that their concerns must hold primacy in all decisions affecting them. The court observed that these principles are violated when birth registration to children is denied just based on the legality of a marriage.

The court reasserted earlier Supreme Court rulings that a child should not be stigmatized due to state illegitimacy. The legal system must ensure protection of children from biases in society biases and that equality is observed. The court shed light on provisions under the Registration of Births and Deaths Act, 1969, and other statutory rules approving birth registration without discrimination. No amount of authority lies with officials to deny this right based on marital status parental disputes.



The Himachal Pradesh High Court's ruling is a positive step in terms of development towards protection of the identity and dignity of children born from invalid marriages. It eliminates a discriminatory barrier that could otherwise hinder such children from fully participating in society. This landmark decision serves as a reminder that every child deserves an equal start in life, irrespective of the circumstances of their birth.

Read More:

- <https://www.barandbench.com/news/birth-registration-children-invalid-marriage-himachal-pradesh-high-court>
- <https://www.livelaw.in/high-court/himachal-pradesh-high-court/himachal-pradesh-high-court-children-from-void-marriages-entitled-to-independent-consideration-birth-registration-despite-lack-of-legal-sanctity-274241>

HIMACHAL PRADESH HIGH COURT RULES HOW USING TELEPHONIC CONVERSATION AS EVIDENCE VIOLATES RIGHT TO PRIVACY

In a recent landmark ruling, the Himachal Pradesh High Court ruled that utilizing phone conversations as evidence without the parties' consent violates their right to privacy under Article 21 of the Indian Constitution. This decision has significant ramifications for India's privacy rights, particularly with regard to court cases and the gathering of evidence.

In a divorce dispute, one party tried to use a recorded phone call as evidence, which led to the ruling. It was up to the Court to decide whether or not these recordings, which were made without the parties' agreement, could be accepted as evidence. Introducing such evidence, according to the petitioner, violated their fundamental right to privacy.

The High Court stressed that the right to privacy, recognized as a basic right by the Supreme Court in Justice K.S. Puttaswamy v. Union of India (2017), extends to all parts of an individual's life, including telephonic contacts. This constitutional guarantee is violated when private phone conversations are recorded or used without permission, unless there are extenuating circumstances. The Court upheld the Puttaswamy case's fundamental tenet that privacy is a necessary component of human liberty and dignity. Any infringement on this right must pass the proportionality, necessity, and legality tests.

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The Court decided that unless specifically permitted by law, recording or using private phone conversations without authorization is a violation of privacy. This indicates that such activities are unlawful if they are carried out in violation of statutory provisions, such as those pertaining to public interest or national security. The Court pointed out that although evidence is essential to legal procedures, its gathering and application must not infringe upon fundamental rights. Accepting evidence that was obtained unlawfully could create a risky precedent and weaken constitutional safeguards.

The ruling demonstrates the courts' increased awareness of privacy issues in the digital era. Unauthorized recording and surveillance have increased in frequency due to technological improvements. The Himachal Pradesh Court has reiterated the significance of defending individual liberties in an age of growing technological intrusion by ruling that the unlawful use of phone conversations as evidence is a violation of privacy rights.

Read More:

- <https://www.barandbench.com/news/telephone-conversation-evidence-privacy-himachal-pradesh-high-court>
- <https://www.livelaw.in/high-court/himachal-pradesh-high-court/himachal-pradesh-high-court-recorded-telephonic-conversations-are-not-admissible-as-evidence-due-to-privacy-infringement-274210#:~:text=The%20Himachal%20Pradesh%20High%20Court,an%20individual%27s%20right%20to%20privacy.>

FIRS ARE NOT ENCYCLOPEDIAS, COURTS MUST ALLOW INVESTIGATIONS TO PROCEED

In a pivotal judgment, the Supreme Court upheld the Madhya Pradesh High Court's acquittal of three individuals accused of a 1996 murder, reversing the life imprisonment imposed by the trial court. The case involved allegations that the accused fatally assaulted the victim with weapons, relying heavily on oral testimonies from family members and witnesses.

The bench, comprising Justices CT Ravikumar and Sudhanshu Dhulia, ruled that the prosecution witnesses, including the deceased's mother and brothers, were unreliable.



It highlighted discrepancies in their testimonies and omissions that significantly weakened the case. The Court reiterated that FIRs are not exhaustive accounts but preliminary documents, which can be corroborated or challenged under the Evidence Act, 1872.

The Court expressed skepticism about the dying declaration allegedly made by the deceased to his mother, noting the lack of evidence about his mental fitness at the time. It also criticized the trial court's casual acceptance of such evidence without due care. Testimonies from the deceased's minor brothers further lacked credibility as they omitted naming the accused in their earlier statements to the police.

The Supreme Court emphasized that serious contradictions in prosecution evidence cannot be ignored, as they undermine the case's foundation. While acknowledging the potential for abuse of criminal law, the Court stressed the principle of treating accusations with caution and ensuring justice through the careful evaluation of evidence.

These ruling underscores the importance of upholding the presumption of innocence, especially when evidence fails to meet the standard of proof required in criminal trials. The Court reaffirmed its commitment to safeguarding the rights of the accused while ensuring justice for all parties.

Read More:

- <https://www.sconline.com/blog/post/2024/11/05/supreme-court-upholds-acquittal-of-three-in-28-year-old-murder-case/>
- <https://www.verdictum.in/court-updates/supreme-court/the-state-of-madhya-pradesh-v-ramjan-khan-2024-insc-823-murder-acquittal-1556066>

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HIGH COURT DECLARES ARREST ILLEGAL FOR VIOLATING FUNDAMENTAL RIGHT

In a landmark judgment, the Bombay High Court ruled that the arrest of a petitioner was illegal due to non-compliance with Section 50 of the Criminal Procedure Code, 1973 (CrPC), and Article 22(1) of the Constitution. Justices Bharati Dangre and Manjusha Deshpande emphasized that the petitioner was not informed of the grounds of his arrest, a fundamental right guaranteed under the Constitution and CrPC.

The Court underscored the distinction between "reasons for arrest" and "grounds of arrest," referencing the Supreme Court's ruling in *Prabir Purkayastha v. State (NCT of Delhi)*. Section 50 of CrPC mandates that an individual arrested without a warrant must be informed of the full particulars of the offense or other grounds for the arrest immediately.

The High Court observed that the arrest panchnama showed no direct communication of the grounds to the petitioner, and the remand application failed to rectify this lapse. The communication to the petitioner's wife was deemed insufficient to meet the requirements of the law.

The Court criticized the authorities for grossly neglecting procedural safeguards, which are essential to protect individual liberty. It emphasized that non-compliance with these safeguards renders an arrest illegal and constitutes a violation of fundamental rights under Article 22(1).

Declaring the arrest and subsequent remand orders null and void, the High Court directed the petitioner's immediate release upon furnishing a bail bond. The judgment reaffirms the judiciary's commitment to upholding the rule of law and protecting citizens' rights against arbitrary actions by law enforcement.

Read More:

- <https://www.scconline.com/blog/post/2024/11/04/bomhc-declares-arrest-illegal-as-grounds-of-arrest-were-communicated-to-accuseds-wife-but-not-to-accused/>

EVERY NUDE PAINTING IS NOT OBSCENE: BOMBAY HC

The Bombay High Court recently ruled in favor of B.K. Polimex India (P) Ltd., overturning the confiscation of artworks by renowned artists F.N. Souza and Akbar Padamsee. The Assistant Commissioner of Customs (ACC) had deemed these artworks "obscene," imposing a fine of Rs 50,000 on the importer. The court's decision emphasizes the importance of distinguishing between artistic expression and obscenity, asserting that not all nude or sexually suggestive art qualifies as obscene.

In 2022, the petitioner purchased seven drawings—three by Akbar Padamsee and four by F.N. Souza—at auctions in London. The artworks were declared as "nude drawings" to comply with customs regulations. Upon arrival in India, customs officials threatened confiscation and destruction, leading the petitioner to request re-export on April 17, 2023. However, all artworks were seized on April 20, 2023.

The Division Bench, comprising Justices M.S. Sonak and Jitendra Jain, criticized the ACC for relying solely on personal interpretations of obscenity without consulting expert opinions or considering established legal standards. The court noted the lack of expert consultation, as the ACC dismissed expert opinions that argued the artworks were significant pieces of art rather than obscene. The court clarified that nudity or sexual poses do not inherently equate to obscenity, emphasizing that "sex and obscenity are not always synonymous." Furthermore, the ACC's order failed to consider relevant legal precedents that recognize artistic merit and community standards in evaluating obscenity.



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The Bombay High Court's ruling underscores a critical perspective on artistic freedom, asserting that bureaucratic decisions should not suppress creative expression based on personal biases. The court ordered the immediate release of the confiscated artworks, reinforcing that customs laws do not impose unreasonable restrictions on recognized works of art. This case serves as a pivotal reminder of the delicate balance between societal norms and freedom of expression in art, ensuring that individual moral judgments do not override established legal principles.

Read More:

- <https://www.sconline.com/blog/post/2024/11/05/bom-hc-directs-release-of-confiscated-artworks-of-fn-souza-and-akbar-padamsee/>
- <https://www.barandbench.com/news/every-nude-painting-not-obscene-bombay-high-court-customs>

INSTITUTION OF NATIONAL IMPORTANCE CAN ALSO HAVE MINORITY CHARACTER : SUPREME COURT IN ALIGARH MUSLIM UNIVERSITY CASE

The Supreme Court, in a majority opinion, held that declaring an institution as being of "national importance" does not strip it of its minority status. The decision came in the Aligarh Muslim University (AMU) case, with the Court addressing whether AMU's designation under Entry 63 of List I as an institution of national importance impacts its minority character. Entry 63 includes institutions like AMU, Benares Hindu University, and Delhi University, and allows Parliament to declare institutions of national significance.

Chief Justice DY Chandrachud, addressing the Union's argument, clarified that AMU's minority status under Article 30(1) remains unaffected by its national importance designation. The Union had argued that as a national institution, AMU should represent broader social justice principles, including reservations for SC/ST/OBC communities. The Court, however, rejected this contention, emphasizing that national and minority characteristics can coexist.

The judgment stressed that the legislative competence to regulate universities does not undermine the constitutional rights of minority communities. CJI Chandrachud observed that "national" reflects the institution's importance across India, while "minority" pertains to the community that established and manages it. These attributes are distinct and not mutually exclusive.

The Court concluded that accepting the argument that national importance negates minority status would dilute Article 30(1) rights, making them subservient to parliamentary powers. It affirmed that parliamentary declarations under Entries 63 and 64 cannot override fundamental minority rights.

Case Details : *ALIGARH MUSLIM UNIVERSITY THROUGH ITS REGISTRAR FAIZAN MUSTAFA v NARESH AGARWAL* C.A. No. 002286 / 2006 and connected matters [2024 LiveLaw (SC) 869]

Read More:

- <https://www.livelaw.in/top-stories/institution-of-national-importance-can-also-have-minority-character-supreme-court-in-aligarh-muslim-university-case-274680#:~:text=The%20Supreme%20Court%20in%20its,Entry%2063%20of%20List%20I..>
- <https://www.indiatoday.in/india/law-news/story/supreme-court-aligarh-muslim-university-minority-status-article-30-constitution-government-funding-educational-institution-2630040-2024-11-08>

SUPREME COURT ORDERS UNION TO ESTABLISH MANDATORY GUIDELINES FOR PUBLIC ACCESSIBILITY UNDER RIGHTS OF PERSONS WITH DISABILITIES ACT

The Supreme Court, in a landmark judgment, directed the Union Government to frame mandatory rules under Section 40 of the Rights of Persons with Disabilities (RPWD) Act, 2016, to ensure accessibility for persons with disabilities (PWDs) in public spaces and services. A bench led by Chief Justice DY Chandrachud, with Justices JB Pardiwala and Manoj Misra, declared Rule 15 of the RPWD Rules, 2017, as ultra vires, holding it insufficient due to its lack of mandatory standards.

The judgment arose from a 2005 PIL by Rajive Raturi, a visually impaired petitioner, seeking access to public spaces for PWDs. The Court had previously tasked NALSAR's Centre for Disability Studies (CDS), led by Professor Amita Dhanda, to report on improving accessibility. The Court found the RPWD Act aimed for mandatory compliance but noted that the Rules merely provided self-regulatory guidelines, undermining the Act's intent.



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The Court emphasized that accessibility is foundational for PWDs to exercise other rights and requires retrofitting existing infrastructure and planning future initiatives. It directed the Union to prescribe non-negotiable rules within three months, consulting stakeholders, including CDS-NALSAR. Progressive compliance with the Accessible India Campaign must also continue.

Key principles for framing rules include:

- Universal Design: Ensuring usability for all without adaptations.
- Comprehensive Inclusion: Addressing diverse disabilities, including psychosocial and intellectual conditions.
- Assistive Technology: Mandating tools like screen readers and audio descriptions for digital accessibility.
- Stakeholder Consultation: Incorporating practical insights from PWDs.

Case : Rajive Raturi v Union of India [2024 LiveLaw (SC) 875]

Read More:

- <https://indianexpress.com/article/explained/explained-law/supreme-courts-accessibility-standards-disabilities-9669816/#:~:text=The%20judgment%20reaffirmed%20accessibility%20as%20a%20fundamental%20right.&text=A%20bench%20of%20the%20Supreme,DY%20Chandrachud%20headed%20the%20bench.>
- <https://www.livelaw.in/top-stories/supreme-court-directs-union-to-frame-mandatory-rules-under-rights-of-persons-with-disabilities-act-for-accessibility-of-public-spaces-274704>

SUPREME COURT ADVISES COURTS TO EXERCISE RESTRAINT IN ISSUING INTERIM ORDERS TO RESERVE SEATS IN COLLEGES

In a ruling addressing financial losses incurred by two medical colleges due to a High Court interim order, the Supreme Court has allowed monetary restitution through adjustments in future fee structures. The High Court's directive to keep one MBBS seat vacant for the academic year 2023-24 ultimately resulted in the seat remaining unfilled, causing financial harm to the colleges.

A bench comprising Justices BR Gavai and KV Viswanathan permitted the colleges to approach the Fee Fixation Committee of the State to account for the deficit in fees caused by the vacancy. The Committee has been directed to factor this loss into the fee structure for future batches, ensuring restitution while spreading the financial burden minimally over time.

The case arose when the High Court directed the colleges to keep a seat vacant in response to writ petitions by students. However, as the petitions were dismissed after the admission cut-off date, the seat could not be filled. The colleges sought compensation, highlighting the wastage of resources and financial harm from losing fees for the entire course duration.

The Supreme Court noted that the High Court's interim order lacked adequate reasoning, failing to assess the prima facie case or balance of convenience. It emphasized that interim orders to keep seats vacant should only be issued in exceptional cases with strong justification and urged courts to resolve such matters before the counselling process concludes. Additionally, the Court suggested requiring petitioner-students to provide financial security in similar cases to safeguard institutions against potential losses.

The bench underscored the principle of restitution, asserting that the colleges were unfairly prejudiced due to no fault of their own. By directing the Fee Fixation Committee to address the financial impact, the Court provided a pragmatic solution to neutralize the effect of the interim order while upholding fairness.

Case Title: *RAMKRISHNA MEDICAL COLLEGE HOSPITAL & RESEARCH CENTRE v STATE OF MADHYA PRADESH & ORS.*, SLP (C) No. 11785 of 2024 (and connected case) [2024 LiveLaw (SC) 877]

Read More:

- <https://www.sconline.com/blog/post/2024/10/16/fir-quashment-investigation-dishonest-conduct-allegation-sc-legal-news/>
- <https://factly.in/review-supreme-court-says-courts-must-exercise-caution-before-passing-interim-orders-directing-colleges-to-keep-seats-vacant/>

BULLDOZER JUSTICE HAS NO PLACE IN A SOCIETY GOVERNED BY RULE OF LAW: SUPREME COURT IN CJI DY CHANDRACHUD'S FINAL JUDGMENT

The Supreme Court has strongly condemned "bulldozer justice," where homes are demolished as punitive action for alleged crimes, deeming it incompatible with the rule of law. In a judgment authored by Chief Justice DY Chandrachud, the Court emphasized that such actions violate the constitutional right to property under Article 300A, reducing it to a dead letter.

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It warned against using demolitions as a form of selective reprisal, highlighting the importance of procedural safeguards to prevent arbitrary state actions. The case concerned the 2019 demolition of a house in Uttar Pradesh without due process. The petitioner claimed the demolition was retaliatory following a critical news report, but the Court focused on the lack of legal justification. Despite the state's claim of minor encroachment, the entire property was demolished without written notice or proper demarcation. Calling the action high-handed, the Court ordered ₹25 lakh interim compensation and disciplinary proceedings against the responsible officials.

The judgment stressed that punitive demolitions lack any basis in jurisprudence. While addressing encroachments is necessary, it must be done lawfully, ensuring prior notice and fair opportunity to respond. The Court reaffirmed that arbitrary demolitions erode constitutional rights, urging strict adherence to procedural safeguards to uphold the rule of law.

Case : In Re Manoj Tibrewal Akash [2024 LiveLaw (SC) 878]

Read More:

- <https://www.livelaw.in/supreme-court/bulldozer-justice-simply-unacceptable-under-rule-of-law-supreme-court-in-final-judgment-of-cji-dy-chandrachud-274765>
- <https://www.barandbench.com/news/litigation/bulldozer-justice-simply-unacceptable-civilised-system-supreme-court>

DETERMINATION OF ROYALTY FALLS UNDER EXECUTIVE'S AUTHORITY; COURTS MAY INTERVENE ONLY IF DECISION-MAKING PROCESS IS UNLAWFUL: SUPREME COURT

The Supreme Court dismissed a plea challenging the government's revised methodology for calculating royalties on minerals, underscoring that policymaking, especially in technical and economic domains, lies exclusively within the executive's purview. The bench led by CJI DY Chandrachud, along with Justices JB Pardiwala and Manoj Misra, clarified that courts are tasked with reviewing the legality of policies, not their wisdom or merits. Judicial interference is warranted only when a policy is manifestly arbitrary, unconstitutional, or beyond the policymaking body's authority.

The petitioner argued that changes in royalty computation under the Mineral Concession Rules, 2016, and the Mineral Conservation and Development Rules, 2017, caused cascading financial burdens, violating Article 14 of the Constitution. However, the Court rejected these claims, affirming that alterations to royalty calculations do not constitute arbitrariness merely because they differ from earlier methods.

The judgment emphasized judicial restraint in economic matters, highlighting that courts should defer to policy decisions unless they breach constitutional or statutory provisions. It upheld clarifications within the rules as legitimate, addressing ambiguities without exceeding legislative intent.

Acknowledging existing anomalies in royalty calculations, the Court granted the Union of India two months to review the computation mechanism, ensuring compliance with statutory principles. This balance of judicial oversight and executive discretion reinforces the separation of powers while maintaining constitutional safeguards.

Case Title: *KIRLOSKAR FERROUS INDUSTRIES LIMITED & ANR v UNION OF INDIA & ORS.*, WRIT PETITION (C) NO. 715 OF 2024 [2024 LiveLaw (SC) 880]

Read More:

- <https://www.livelaw.in/supreme-court/computation-of-royalty-within-executives-domain-courts-interference-barred-unless-decision-making-process-is-illegal-supreme-court-274782#:~:text=Noting%20that%20the%20computation%20of,in%20the%20royalty%20calculation%20method.>
- <https://www.barandbench.com/news/computation-royalty-minerals-policy-decision-beyond-court-expertise-supreme-court>



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NO DISCIPLINARY PROCEEDINGS ALLOWED POST-RETIREMENT OR AFTER EXTENDED SERVICE

The Supreme Court invalidated the disciplinary proceedings initiated against a retired bank employee, stating that such proceedings cannot be commenced after the employee's retirement or the end of an extended period of service. The bench, comprising Justice Abhay S. Oka and Justice Ujjal Bhuyan, held that while disciplinary proceedings initiated before superannuation may continue after retirement under a legal fiction of service continuation, initiating them after retirement is impermissible.

The case involved an employee who joined the State Bank of India in 1973 and rose to managerial positions. Initially set to retire on December 26, 2003, after 30 years of service, his tenure was extended until October 1, 2010, for operational reasons. The disciplinary proceedings were initiated on March 18, 2011, after the extended service period ended, though a notice to show cause had been issued on August 18, 2009.

The appellant bank argued that since the notice was issued during the employee's extended service, the proceedings were valid. However, the respondent contended that the proceedings were void ab initio, as they commenced after his superannuation. He referred to Rule 19(3) of the SBI Officers' Service Rules, which permits the continuation of proceedings initiated before retirement but does not allow initiation after superannuation.

Rejecting the bank's arguments, the Court relied on the precedent set in *Union of India vs. K.V. Jankiraman* (1991) and clarified that disciplinary proceedings commence with the issuance of a charge sheet, not earlier notices. Since the charge sheet was filed after the extended term, the proceedings were deemed invalid. The Court reiterated that proceedings must begin while the employee is in service or during the period of deemed continuation of service.

The appeal was dismissed, and the Court directed the bank to release the respondent's pending dues within six weeks. It emphasized that disciplinary proceedings initiated during an employee's service could continue post-retirement for the conclusion, but initiating proceedings after retirement or the extended service period is legally unsustainable.

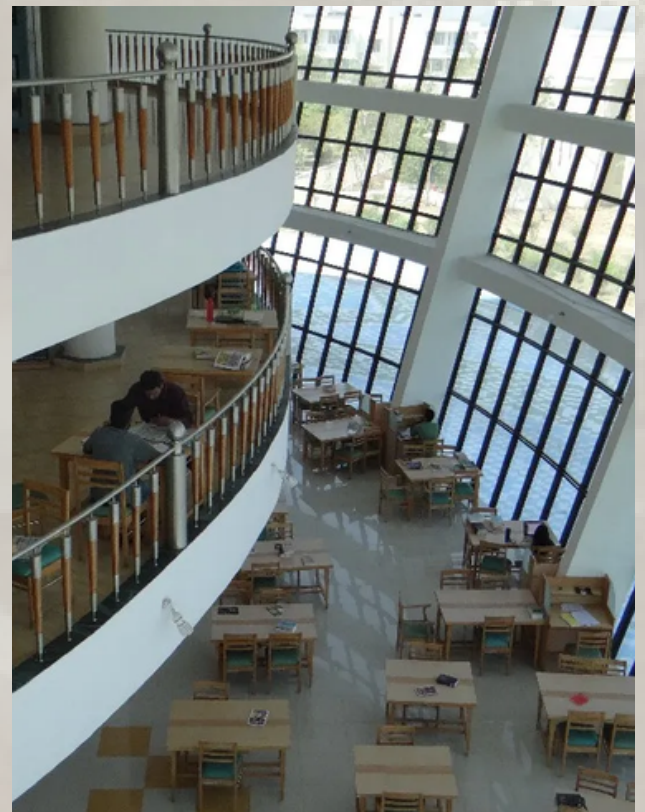
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- <https://www.livewlaw.in/supreme-court/no-disciplinary-proceedings-can-be-initiated-after-employee-retires-or-after-extended-period-of-service-supreme-court-275696>
- <https://www.deccanherald.com/india/no-disciplinary-proceedings-can-be-initiated-against-employee-after-retirement-supreme-court-3282937>

MOBILE TOWERS & PRE-FABRICATED BUILDINGS QUALIFY AS 'CAPITAL GOODS' FOR CENVAT CREDIT

The Supreme Court recently ruled that mobile service providers (MSPs) could avail themselves of the benefit of Central Value Added Tax (CENVAT) Credit for excise duties paid on mobile towers and prefabricated buildings (PFBs). The bench, comprising Justice BV Nagarathna and Justice N Kotiswar Singh, held that these structures are movable properties since they can be detached and relocated. This categorization qualifies them as "capital goods" or "inputs" under the Central Value Added Tax/CENVAT Credit Rules, 2004, as they enhance the functionality of antennas on mobile service towers, making them essential for providing mobile services.

The main issue was whether MSPs could claim CENVAT Credit for towers and PFBs under the CENVAT Credit Rules. The Court examined whether these items fell within the definitions of "capital goods" or "inputs" as per Rule 2(a)(A) and Rule 2(k) of the 2004 Rules. The scheme allows set-off benefits for manufacturers when specific inputs are used in producing the final product.



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Bharti Airtel, the appellant, was served a show-cause notice in 2006 alleging misuse of CENVAT Credit for items like towers and PFBs, which the Revenue deemed ineligible as "capital goods." Revenue authorities argued that towers and PFBs had independent utilities and were fixed to the earth, making them immovable. Consequently, the Commissioner imposed penalties, which the Central Excise and Service Tax Appellate Tribunal (CESTAT) and later the Bombay High Court upheld.

The Bombay High Court ruled that towers and PFBs became immovable properties upon installation and thus did not qualify as "capital goods" under Rule 2(a)(A). It emphasized that these items were not covered under the specified chapters of the Central Excise Tariff Act required to qualify for credit.

Contrarily, the Delhi High Court in Vodafone Mobile Services Ltd. held that these items were movable properties. The Court observed that towers and PFBs, supplied in knocked-down condition, could be dismantled and relocated without significant damage. It further categorized these items as "accessories" to Base Transceiver Stations (BTS) and antennas, making them essential components of "capital goods" under Rule 2(a)(A).

The Supreme Court aligned with the Delhi High Court, focusing on the nature of towers and PFBs as movable goods. It analyzed key legal principles, such as the functionality, marketability, and lack of permanency tests established in cases like Commissioner of Central Excise v. Solid and Correct Engineering. These tests confirmed that towers and PFBs, despite being temporarily fixed to ensure stability, could be dismantled and relocated without damage, retaining their marketable nature.

The Court emphasized that attachment to the earth does not inherently make an item immovable. If the attachment is temporary and serves to enhance functionality without altering the item's nature, it remains movable. Applying these principles, the Court held that towers and PFBs qualify as "capital goods" under Rule 2(a)(A) of the CENVAT Credit Rules. It concluded that these items, being movable, are eligible for CENVAT Credit, thus overturning the contrary view of the Bombay High Court.

This judgment clarifies the status of towers and PFBs under tax law, enabling MSPs to claim tax benefits and marking a significant precedent in determining the movable or immovable nature of similar structures in future disputes.

Read More:

- <https://www.livewlaw.in/top-stories/mobile-towers-pre-fabricated-buildings-moveable-properties-qualify-as-capital-goods-for-cenvat-credit-supreme-court-275975>
- [https://www.ey.com/en_in/technical/alerts-hub/2024/11/sc-holds-cenvat-credit-is-eligible-on-mobile-towers-prefabricatebuildings#:~:text=If%20the%20attachment%20is%20temporary,treated%20as%20"capital%20goods"](https://www.ey.com/en_in/technical/alerts-hub/2024/11/sc-holds-cenvat-credit-is-eligible-on-mobile-towers-prefabricatebuildings#:~:text=If%20the%20attachment%20is%20temporary,treated%20as%20)



ADVERSE POSSESSION OF STATE CANNOT BE CLAIMED ON PRIVATE PROPERTY: SC

The Supreme Court, in a recent ruling, held that a plea of adverse possession cannot be raised by the State against citizens' private property.

A bench of Justice Vikram Nath and Justice PB Varale in the case State of Haryana v Amit Lal (Since Deceased) Through Lrs, dismissed the appeal of the Government of Haryana challenging the Punjab and Haryana High Court order restoring the possession of land to a private party in which the state's Public Works Department has staked its claim.

The dispute pertains to a piece of land in Bahadurgarh, Haryana. The private parties had filed a civil suit in 1981 in respect of a land measuring 18 Biswas Pukhta adjoining the National Highway 10, alleging that the Haryana Public Works Department had unauthorisedly occupied it. The State opposed the suit claiming that they had been in continuous and uninterrupted possession of the suit land since 1879-80 and had perfected title through adverse possession.

The court said that "We find no merit in the appellants' contentions. The high court's judgement is based on sound legal principles and correct appreciation of evidence. The plaintiffs have established their ownership of the suit property, and the State cannot claim adverse possession against its own citizens."

The court pointed out that there was no specific denial of plea of ownership of plaintiff and the defendants instead relied on the plea of adverse possession. The court held that the state cannot claim adverse possession over the property of its own citizens. It was further observed that allowing the state to appropriate private property through adverse possession would undermine the constitutional rights of citizens and erode public trust in government.

Adverse possession is a doctrine under which a person in possession of land owned by someone else may acquire valid title to it. The court observed that appellant's possession lacks the element of hostility and the requisite duration in the present case. Thus, the court held that the plaintiffs have established their ownership of the suit property and the state cannot claim adverse possession against its own citizens.

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- <https://www.drishtijudiciary.com/current-affairs/adverse-possession-of-state-cannot-be-claimed-on-private-property>

LIFE INTEREST GIVEN TO A HINDU WOMAN WILL NOT TRANSFORM INTO ABSOLUTE OWNERSHIP

In a landmark judgment interpreting Section 14 of the Hindu Succession Act, 1956 (HSA), the Supreme Court clarified its scope, particularly regarding whether a life interest granted to a Hindu woman under a Partition Deed could be converted into absolute ownership under Section 14(1) or remain restricted under Section 14(2).

The bench, comprising Justices C.T. Ravikumar and Sanjay Karol, ruled that a Hindu woman granted a restricted estate in property cannot claim absolute ownership under Section 14(1) and is instead bound by the limitations of Section 14(2). As a result, such property cannot be transferred through a Will.

The case involved a 3.55-acre property granted to Veerabhadramma through a deed that conferred her a life interest, specifying that the property would devolve equally among Swamy's heirs from his two marriages after her death. The appellants, Veerabhadramma's sons, argued that her life interest had transformed into absolute ownership under Section 14(1). This was contested by Swamy's sons from his first marriage, who maintained that her rights were limited under Section 14(2).

The Court analyzed the relationship between Sections 14(1) and 14(2). It observed that Section 14(1) converts property held by a Hindu woman based on pre-existing rights, such as maintenance, into absolute ownership. Conversely, Section 14(2) applies to property explicitly granted as a restricted estate through a legal document. The Court concluded that the life interest granted to Veerabhadramma was a restricted right under Section 14(2), preventing her from becoming the absolute owner or transferring the property via a Will.

The judgment highlighted that for Section 14(1) to apply, the property must be held in recognition of a pre-existing right. However, when a legal instrument explicitly grants only a limited life interest, as in this case, Section 14(2) takes precedence, barring the transformation of the interest into absolute ownership.

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SUPREME COURT AFFIRMS SECULARISM AS PART OF CONSTITUTION'S BASIC STRUCTURE

The Supreme Court of India, on November 25, 2024, dismissed petitions challenging the inclusion of the terms "Socialist" and "Secular" in the Preamble to the Constitution through the 42nd Amendment of 1976. A bench comprising Chief Justice Sanjiv Khanna and Justice Sanjay Kumar noted that even before the amendment, the Preamble inherently reflected secular values. While the term "secular" was not explicitly defined during the adoption of the Constitution in 1949, its essence was embedded in the ideals of justice, liberty, equality, and fraternity, which guaranteed dignity and equal opportunities for all.

The Court emphasized that secularism is evident in fundamental rights such as Articles 14, 15, and 16, which prohibit discrimination on religious grounds and ensure equality before the law and equal opportunities in public employment. Similarly, Articles 25, 26, 29, 30, and 44 further reflect secular principles. Article 25 protects freedom of conscience and the right to profess, practice, and propagate religion, subject to public order, morality, and health.

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Article 26 grants religious denominations the right to manage their own affairs, while Article 29 safeguards cultural distinctiveness, and Article 30 empowers minorities to establish and administer educational institutions. Article 44, under the Directive Principles of State Policy, allows the State to pursue a uniform civil code while respecting diversity.

The Court observed that India has evolved its own interpretation of secularism, wherein the State remains neutral, neither supporting nor penalizing any religion. Referring to landmark cases like *Kesavananda Bharati v. State of Kerala*, *S.R. Bommai v. Union of India*, and *R.C. Poudyal v. Union of India*, the Court reiterated that secularism is a fundamental feature of the Constitution. Even before the term's formal inclusion in the Preamble, the nation upheld the principle of treating all faiths equally without discrimination.

By dismissing the petitions, the Court reinforced that the inclusion of "Socialist" and "Secular" in the Preamble aligns with the Constitution's original values and reflects India's commitment to its pluralistic ethos.

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SUPREME COURT OBSERVES THAT UP GANGSTERS ACT APPEARS TO BE DRACONIAN

The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act held to be "draconian," according to the Supreme Court's observation in the present case. While considering a plea submitted by a man who had challenged an Allahabad High Court order from May 2023 that had dismissed his application to set aside proceedings against him that were still pending before a district court in Kasganj in a case registered under the Act, a bench consisting of Justices B R Gavai and K V Viswanathan made the observation.

The Supreme Court asked the Uttar Pradesh government and others for their opinions on the case during its November hearing last year, and it declared, "By way of ad-interim order, no coercive steps be taken against the petitioner qua Gangster Act."

According to the petitioner's counsel, he was charged with illegal mining in the Ganga River and was booked in the case under the 1986 Act. The attorney contended that a previous FIR about alleged illicit mining had been filed. The attorney countered, "They have booked me twice for the same allegation," The state's attorney made reference to the 1986 Act's provisions. The bench stated, "It requires consideration," and added that it was still considering a separate plea contesting the constitutionality of certain of the Act's provisions. In front of the High Court, the petitioner's attorney contended that he was wrongfully named in the Gangsters Act case.

Before the High Court, his attorney had argued that the case had only been filed under the Gangsters Act since it was based on another case in which the petitioner was not identified. A supplementary plea contesting the legality of several of the Act's provisions was accepted by the Apex Court on November 29. The Uttar Pradesh government was notified to respond to the suit.

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- <https://www.verdictum.in/court-updates/supreme-court/up-gangsters-act-appears-to-be-draconian-supreme-court-1559969?infinite-scroll=1>
- <https://economictimes.indiatimes.com/news/india/up-gangsters-act-appears-to-be-draconian-observes-sc/articleshow/115969050.cms?from=mdr>



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STRICT PROOF OF MARRIAGE NOT PRECONDITION OF MAINTENANCE UNDER SECTION 125 OF CRPC: CALCUTTA HIGH COURT

A Single Bench of Justice Ajay Kumar Gupta observed that where a man and woman have been living together as husband and wife for a reasonable long period of time, strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Code of Criminal Procedure, 1973. Wife has to prove prima facie case of marriage so as to fulfil the true spirit and essence of the beneficial provision of the maintenance under Section 125 of the Code of Criminal Procedure, 1973. The wife had applied for maintenance for herself and her little daughter under Section 125 of the CrPC. The husband was ordered by the magistrate to provide the wife and daughter with a monthly maintenance payment. Due to the wife's failure to provide proof of marriage, the husband's application was refused maintenance by the trial court. Nonetheless, the daughter's support was increased by the court. The High Court noted that the purpose of Section 125 of the CrPC's charitable clause was to avoid vagrancy and guarantee that deprived mothers and neglected children receive timely sustenance. The Bench further pointed out that in its Order, the Magistrate had already ruled that the woman was a lawfully married wife and that the girl was the husband's legitimate child. Both parties are entitled to support from the opposing party after the Learned Civil Court ruled that the petitioner is a genuine wife and that her child is legitimate. Regarding the aforementioned judgment rendered by the learned judge, the opposing party does not contest it. Unless there is a stay, the appeal's pending status does not prevent payment of the trial court's maintenance award. The Appellate Court does not grant a stay in this case," it said.

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- <https://www.verdictum.in/court-updates/high-courts/calcutta-high-court-s-v-state-of-west-bengal-strict-proof-of-marriage-not-pre-condition-for-maintenance-section-125-crpc-1559411?infinite-scroll=1>
- <https://www.livelaw.in/high-court/calcutta-high-court/strict-proof-of-marriage-not-required-to-claim-maintenance-when-couple-have-been-living-as-husband-wife-for-long-time-calcutta-high-court-276542>

SUPREME COURT ON THE PLACES OF WORSHIP ACT: SAMBHAL CASE

The Supreme Court has upheld the constitutional validity of the Places of Worship (Special Provisions) Act, 1991, while resolving a dispute over the religious status of a site in Sambhal, Uttar Pradesh. The Act, which preserves aims to maintain communal harmony and uphold India's secular fabric.

The case involved conflicting claims by two religious communities. One sought to restore the site's "original" religious status, citing historical grievances, while the other argued that its character had remained consistent since 1947. The petitioners challenged the Act, claiming it violated their fundamental rights under Article 14 and Article 25, and alleged it unfairly perpetuated historical injustices.

The Court dismissed these arguments, stating the Act applies uniformly to all religious communities and is essential for preserving public order and preventing communal tensions. It emphasized that reopening historical disputes could destabilize societal harmony and disrupt India's pluralistic identity.

This judgment reaffirms the judiciary's role in safeguarding constitutional values, ensuring that historical grievances do not undermine public order or the country's secular framework. The Sambhal case sets a vital precedent for protecting religious harmony in India.

Case Reference: Sambhal Religious Site Case, Supreme Court of India, December 1, 2024.

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- <https://www.firstpost.com/explainers/sambhal-mosque-dispute-supreme-court-places-of-worship-act-13839925.htmlf>

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HIGH COURT REJECTS SUBSEQUENT BAIL PETITION IN JUDICIAL TREND CASE

Recent judicial decisions have highlighted a growing trend in Indian courts to impose stricter restrictions on the filing of successive bail petitions. This approach aims to uphold judicial discipline, ensure efficient case management, and prevent misuse of the legal process.

Courts have consistently emphasized that subsequent bail pleas can only be entertained under exceptional circumstances, such as the discovery of new evidence, legal errors in prior orders, or violations of fundamental rights. The judiciary views repetitive petitions without valid grounds as detrimental to the integrity of the justice system, leading to unnecessary delays in other cases and potential erosion of judicial authority.

This trend is evident in cases where high courts, including the Delhi High Court, have dismissed successive bail pleas, citing the principle of finality in judicial decisions. The courts have balanced individual liberty with broader concerns of public order and judicial economy, ensuring that frivolous applications do not clog the system.

By tightening the criteria for entertaining subsequent bail pleas, the judiciary seeks to discourage misuse while safeguarding the rights of genuinely aggrieved petitioners. This trend reinforces the importance of discipline and efficiency in criminal justice, reflecting a robust commitment to preserving the rule of law.

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RESTORATION OF SENIOR POLICE OFFICER TO POST IN HIMACHAL PRADESH

The Supreme Court has reinstated Sanjay Kundu as the Director General of Police (DGP) of Himachal Pradesh, overturning a Himachal Pradesh High Court order that had directed his removal over alleged procedural lapses in his appointment.

After reviewing the case, the Supreme Court found that Kundu's removal violated the rules governing the appointment and tenure of senior police officials. The Court stressed that following proper procedures and maintaining fairness are crucial for ensuring the independence and stability of public administration.

The case raised questions about whether Kundu's appointment followed guidelines set in the landmark *Prakash Singh v. Union of India* (2006) judgment, which introduced reforms for police administration. The Supreme Court ruled that removing senior officials arbitrarily could weaken these reforms and harm administrative efficiency.

By reinstating Kundu, the Court reaffirmed the importance of procedural fairness and warned against setting harmful precedents that could destabilize governance. This decision highlights the judiciary's role in protecting the integrity of public institutions and ensuring that the police force operates effectively under the rule of law.

Case reference: *Sanjay Kundu v Register General of High court of Himachal Pradesh* (2024) INSC 43.

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