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HIGHLIGHTS

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INDIAN SPOUSE'S PRESENCE, PHYSICAL OR VIRTUAL, NOW MANDATORY FOR OCI CARD APPLICATIONS: SUPREME COURT

The Supreme Court of India recently delivered a significant judgment stating that the physical or virtual presence of an Indian spouse is mandatory for the processing of an Overseas Citizen of India (OCI) card application by a foreign national. This ruling, which came as per Section 7-A(d) of the Citizenship Act, 1955, overturned a previous Delhi High Court decision that had allowed an exception to this rule.

A bench consisting of Justices Hrishikesh Roy, Sudhanshu Dhulia, and SVN Bhatti ruled that the Indian spouse's presence, either physically or virtually, is essential to verify the genuineness of the marriage. The judgment emphasizes that such a presence is not merely a formality but serves to prevent sham marriages or marriages of convenience that might exploit the OCI registration process.

The case in focus was *Union of India v Bahareh Bakshi* involving an Iranian national who had applied for an OCI card based on her marriage to an Indian national. The Delhi High Court had previously dispensed with the need for her husband's presence during the application process, accepting her plea that although the marriage was technically subsisting, the couple was estranged.

However, the Supreme Court took a different view. The court noted that the statute and Visa Manual explicitly mandate the spouse's presence for an interview. This requirement ensures that both the foreign national and their Indian spouse can be questioned separately to verify the authenticity of their relationship. The bench criticized the High Court's decision to label this requirement as arbitrary, arguing that it constituted a critical part of the verification process.

The Court cited Para 21.25(vi) of the Visa Manual, which mandates the Indian spouse's presence for an interview by authorities. The intent is to ensure that the marriage is genuine, preventing misuse of the OCI card registration process. The Supreme Court further observed that the absence of the spouse shifts the entire burden of verification onto the authorities, which is not the purpose of the OCI procedure. In its ruling, the Court made it clear that this condition cannot be bypassed without compromising the procedural integrity.

The Court did, however, acknowledge the unique circumstances of the case, as the applicant claimed to be abandoned despite the subsistence of the marriage. While the Court upheld the need for spousal presence, it left room for the Central Government to consider the case under Section 7A(3) of the Citizenship Act, which allows for exceptions in special cases. The Court made it clear that it was not expressing any opinion on on whether the respondent deserved such consideration but left the final decision to the Central Government.
This ruling by the Supreme Court reinforces the importance of the procedural safeguards in the OCI card registration process, particularly concerning marriages between Indian nationals and foreign spouses. It ensures that applications are thoroughly vetted to prevent misuse of the system while leaving room for special consideration in exceptional cases.

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- https://www.livelaw.in/pdf_upload/union-of-india-v-bahareh-bakshi-558782.pdf
- https://www.livelaw.in/top-stories/physicalvirtual-presence-of-indian-spouse-mandatory-to-process-foreign-nationals-oci-card-application-based-on-marriage-supreme-court-268253
- https://www.barandbench.com/news/indian-spouse-estranged-foreigner-oci-application-supreme-court
- https://www.deccanherald.com/india/presence-of-spouse-either-physically-or-virtually-mandatory-for-considering-oci-cards-sc-3172538

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SUPREME COURT GRANTS BAIL TO UAPA ACCUSED AFTER 3 YEARS IN CUSTODY, CITING TRIAL DELAYS

The Supreme Court granted bail to an accused, who had been in custody for over three years under the Unlawful Activities (Prevention) Act (UAPA) for alleged links with Naxalites in Chhattisgarh. The Court cited the prolonged delay in the trial and the unlikelihood of its early conclusion as key reasons for the decision.

The bench, consisting of Chief Justice of India DY Chandrachud and Justices JB Pardiwala and Manoj Misra, observed that Mukesh Salam, the accused, had been detained since May 6, 2020, with only 40 of the 100 prosecution witnesses examined. They further noted that 12 of his 14 co-accused had already been granted bail, which strengthened the argument for his release.

In the case, Mukesh Salam, charged under various sections of the UAPA, the Chhattisgarh Vishesh Jan Suraksha Adhiniyam, and the Indian Penal Code, was accused of maintaining contact with his nephew, Naxalite Commander Raju Salam, and supplying him with materials. After being denied bail by the Chhattisgarh High Court, he approached the Supreme Court for relief.

The prosecution alleged direct involvement between Salam and Naxalite activities, but the Supreme Court, weighing the extended period of detention and the slow pace of trial, ruled that continued custody would not “subserve the ends of justice.” The Court ordered his release on bail, subject to conditions set by the Special Judge (NIA Act) in Kanker, Chhattisgarh.

The Court expressed concern over the lengthy legal process and the limited progress made in the trial. “There is no likelihood of the early conclusion of the trial. The petitioner has already been in custody since May 2020,” the bench remarked, highlighting the principle that justice delayed is justice denied.

This decision underscores the Court’s focus on balancing national security concerns with the rights of individuals awaiting trial, especially in cases involving extended pre-trial detention.

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- https://www.livelaw.in/pdf_upload/mukesh-salam-v-state-of-chhattisgarh-558914.pdf
- https://www.thelawadvice.com/news/sc-grants-bail-to-uapa-accused-citing-over-three-years-in-custody-and-delayed-trial
- https://www.livelaw.in/supreme-court/supreme-court-grants-bail-to-uapa-accused-under-custody-for-over-4-years-says-trial-unlikely-to-conclude-soon-268283#:~:text=The%20Supreme%20Court%20recently%20granted,conclusion%20of%20trial%20was%20unlikely.

DEHLI HC MANDATES VIDEO RECORDING OF SC/ST BAIL HEARINGS, INCLUDING SEXUAL OFFENCE CASES

The Delhi High Court has declared that all proceedings under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989—including bail hearings—must be video recorded, even in cases involving sexual crimes against women and children. This includes sensitive cases under the Protection of Children from Sexual Offences (POCSO) Act and sexual offences under the Indian Penal Code (IPC).

The court, presided over by Justice Vikas Mahajan, clarified that Section 15A(10) of the SC/ST Act, which mandates video recording, does not exempt sexual offence cases. The ruling came in response to a bail plea from Laxmi Narayan, who was accused of the rape and murder of a minor girl.

The victim’s father had contended that the law explicitly required video recording of all proceedings under the SC/ST Act, including bail hearings. On the other hand, the Additional Public Prosecutor opposed the motion, citing Section 23 of the POCSO Act and Section 228A of the IPC, which prioritize the protection of a sexual offence victim’s identity. The prosecutor argued that these provisions should override the video recording requirement to prevent the risk of exposing sensitive details.

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However, the court clarified that video recording does not imply public disclosure of the footage. Justice Mahajan emphasized that the recordings could be securely stored to safeguard the victim's privacy while still fulfilling the mandatory video recording requirement.

Justice Mahajan, in his judgment, noted that the legislature did not intend to exclude sexual offences from the purview of video recording under Section 15A(10) of the SC/ST Act. He emphasized that the law is mandatory and must be followed, even in highly sensitive cases involving sexual offences.

"The upshot of the above discussion is that the provisions of Section 15A(10) of the Act are mandatory, and the present bail proceedings will have to be video recorded. It is, however, clarified that this judgment will not affect the cases in which proceedings in terms of Section 15A(10) of the Act have not been video recorded and it will take effect prospectively," stated the court order.

This decision strikes a balance between upholding legal safeguards for marginalized groups and ensuring the protection of victims of sexual offences. The ruling ensures transparency in legal proceedings while also protecting the identity of victims through secure handling of video recordings.

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- https://taxguru.in/corporate-law/video-recording-bail-proceedings-sc-st-act-mandatory-sexual-offences-delhi-hc.html
- https://www.barandbench.com/news/delhi-high-court-video-recording-bail-proceedings-sc-st-act-mandatory-sexual-offences

KERALA HC QUASHES RAPE CASE DUE TO 16-YEAR DELAY

In a recent ruling, the Kerala High Court quashed criminal proceedings in a rape case, citing a 16-year delay in filing the complaint as detrimental to the prosecution. The court highlighted that the prolonged and unexplained delay cast doubts on the credibility of the allegations, raising concerns of false motives.

The petitioner's counsel, Advocate V Sethunath, argued that the First Information Report (FIR) was lodged 16 years after the alleged incident, initially implicating four individuals but ultimately naming only the petitioner in the final report. The defence further asserted that the relationship between the petitioner and the complainant was consensual, involving financial transactions, including a loan of Rs 20 lakh from the complainant to the petitioner. It was noted that both parties had since settled the matter.

Justice A Badharudeen, who presided over the case, observed that the complainant had maintained a relationship with the petitioner even after the alleged incident in 2001, which complicated the case. The court remarked that such a delay in reporting the alleged crime was "prima facie not believable" and indicated the possibility of false implications, especially given the financial dealings between the parties.

"The allegation of rape made after 16 years is prima facie not believable because of the long delay, and such a relationship is to be considered consensual in nature. The allegation of rape was raised with ulterior motives, particularly when money from the accused was allegedly due to the complainant," the court stated.

The court concluded that without a proper explanation for the long delay, the prosecution's case was weakened, ultimately leading to the quashing of the criminal proceedings. The complainant had also filed affidavits indicating that the matter had been resolved, leaving no outstanding grievances.

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This ruling underscore the significance of timely reporting in criminal cases and highlights the challenges that arise when accusations surface after long periods.

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- https://www.barandbench.com/news/16-year-delay-reporting-rape-case-kerala-high-court
- https://www.news18.com/india/16-year-delay-in-filing-rape-case-fatal-to-prosecution-suggests-false-motive-kerala-hc-9039325.html#
- https://www.livelaw.in/high-court/kerala-high-court/kerala-hc-quashes-rape-filed-after-delay-16-years-unexplained-long-delay-fatal-prosecution-268451

SUPREME COURT REJECTS PIL FOR CASTE-BASED CENSUS

In a significant development, the Supreme Court on Monday declined to entertain a Public Interest Litigation (PIL) seeking the Centre's direction to conduct a caste-based census for the "welfare of backward and marginalised sections" of the population. The plea, which emphasized the importance of socio-economic data in achieving social justice, was eventually withdrawn by the petitioner's counsel.

A bench headed by Justice Hrishikesh Roy, along with Justice SVN Bhatti, remarked that the issues raised in the PIL fell within the domain of policy. "Whether it is to be conducted now or after six months, these all are essentially the domain of governance," the bench noted, emphasizing that it would not intervene in policy matters. Faced with the prospect of dismissal, the petitioner chose to withdraw the PIL.

The PIL had called for an expeditious enumeration of data for the upcoming 2024 census, with a focus on conducting a comprehensive Socio-Economic Caste Census (SECC). The petition argued that an SECC is essential for identifying disadvantaged groups, ensuring equitable distribution of resources, and implementing welfare policies effectively.

Citing Article 340 of the Constitution of India , which mandates the investigation of socially and educationally backward classes, the petition underscored the need for updated and accurate socio-economic data to guide policy decisions. It highlighted that the delay in conducting the Census-2021, initially due to the Covid-19 pandemic, has resulted in a major data gap, with the last census conducted in 2011.

The PIL further pointed out that the SECC of 2011, the first such effort in post-independence India, aimed to collect comprehensive data on socio-economic indicators, including caste. However, challenges in data classification and concerns over data quality have stalled the release and effective utilisation of this information. Despite the formation of an Expert Group to address these concerns, the group's recommendations have not yet been made public by the government.

The plea concluded by stressing that a data-driven approach is crucial for informed policy-making, enabling targeted interventions for disadvantaged communities. The failure to conduct the census, according to the petition, risks leaving a critical gap in the country's socio-economic data framework.

While the withdrawal of the petition halts the immediate legal pursuit for a caste-based census, the debate on the necessity of updated socio-economic data for ensuring social justice remains a critical point of discussion.

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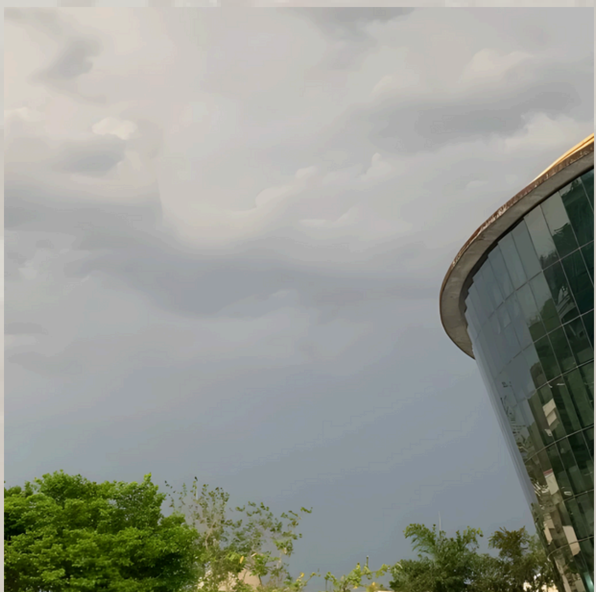
- https://www.barandbench.com/news/supreme-court-refuses-entertain-pil-social-caste-census
- https://www.thenewsminute.com/news/sc-dismisses-pil-seeking-caste-based-census
- https://www.thehindu.com/news/national/sc-refuses-to-entertain-plea-for-caste-census-says-issue-in-domain-of-governance/article68596509.ece#:~:text=The%20Supreme%20Court%20on%20Monday,in%20the%20domain%20of%20governance.



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IS AGREEING TO A DEFAMATORY WHATSAPP GROUP MESSAGE AN OFFENSE?

Recently in the case of Air Marshal Harish Masand vs. The State of Madhya Pradesh and Others, it was held by the Madhya Pradesh High Court whether simply agreeing to a defamatory WhatsApp group message constitutes an offense. These circumstances of the present judgment showcase the acceptance of the judiciary to the evolved complexities of defamation law in the digital age, especially in the context of social media platforms like WhatsApp, where interactions can be rapid, informal, and often unintentional.

In the present case, Marshal Harish Masand, a retired officer of the Indian Air Force, had filed a defamation complaint after allegedly defamatory messages were circulated in a WhatsApp group. These messages, which questioned his integrity and tarnished his reputation, were shared in a group that included multiple individuals. Masand's complaint was not only directed at the person who posted the original defamatory messages but also at several members of the group who had expressed agreement with the content, either by responding affirmatively or by clicking on emojis such as "thumbs up" or "like." The primary question was whether these individuals, who had not directly posted the defamatory content but had shown agreement, could also be held liable for defamation or not?

Under Section 354 of Bharatiya Nyaya Sahitya, defamation requires the publication or dissemination of false statements intended to harm the reputation of another individual. But there is a lacuna regarding if passive approval, such as agreeing with a defamatory message, is sufficient to meet the legal threshold for defamation. In its ruling, the Madhya Pradesh High Court also clarified that merely agreeing with a defamatory message in a WhatsApp group does not, by itself, make a person criminally liable for defamation. The court emphasized that defamation requires active participation, such as composing, sharing, or forwarding defamatory content with the intent to harm the targeted individual's reputation. Therefore, it was held in the current case that the original poster of the defamatory message could be held accountable, the other group members who simply agreed with the message could not be prosecuted for defamation based on their passive agreement.

Air Marshal Harish Masand vs. The State of Madhya Pradesh is an important ruling as it showcases and clears the gap regarding the defamation laws in a modern digital landscape as well as discussing the accountability of people on social media.

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- https://www.barandbench.com/news/is-agreeing-defamatory-whatsapp-group-message-offence-madhya-pradesh-high-court-answers#:~:text=The%20Madhya%20Pradesh%20High%20Court%20was
- https://www.scconline.com/blog/post/2022/02/25/whether-the-creator-or-administrator-of-a-whatsapp-group-is-criminally-liable-for-offensive-content-posted-by-a-group-member/#:~:text=Kerala%20High%20Court:%20While%20addressing%20the

PMLA PREVAILS OVER CRPC IN SUMMONING PROCEDURE

There has been a continuous conflict between special and general laws in India but in the recent judgment of *Abhishek Banerjee v Directorate of Enforcement* there was an assertion of the Prevention of Money Laundering Act, 2002 (PMLA) over the Code of Criminal Procedure, 1973 (CrPC), particularly concerning the summoning of accused individuals.

The CrPC covers a wide array of rules regarding investigations, summoning, and arrest processes for various criminal offenses. However, the emergence of complex crimes such as money laundering necessitated the enactment of specialized legislation like the PMLA, aimed at addressing these offenses with more stringent measures. Wherever the procedures of the PMLA are in conflict with from those of the CrPC, the courts have increasingly leaned towards upholding the provisions of the PMLA, particularly in matters involving financial crimes.

In the present case, the Apex court has rejected the appeal by Trinamool Congress MP Abhishek Banerjee of the TMC to quash the summons issued by the Enforcement Directorate (ED) under Section 50 of the Prevention of Money Laundering Act, 2002 (PMLA). The Court ruled that the procedures outlined in the Prevention of Money Laundering Rules, 2005 for summoning individuals under Section 50(2) and (3) of the PMLA take precedence over any procedures established in the Code of Criminal Procedure.

This decision has its pros as well as con because while by affirming that the PMLA holds precedence over the CrPC in summoning procedures, the court has reinforced the need for efficient handling of financial crimes.

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This judicial interpretation empowers law enforcement agencies, allowing them to operate with greater flexibility in gathering evidence and summoning individuals implicated in money laundering activities. However, on the other hand, this shift raises significant concerns regarding individual rights and due process. The provisions under the PMLA allow for extended detention periods and broader powers for the authorities to freeze and seize assets, which, while essential for combating economic offenses, may infringe on the rights guaranteed under the CrPC.

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- https://www.verdictum.in/court-updates/supreme-court/abhishek-banerjee-v-directorate-of-enforcement-2024-insc-668-ed-summons-pmla-1550774#:~:text=The%20Supreme%20Court%20has%20dismissed%20the

- https://www.livelaw.in/supreme-court/pmla-prevails-over-crpc-regarding-procedure-for-summoning-persons-supreme-court-269034#:~:text=The%20provisions%20of%20the%20Prevention%20of

ALL EVIDENCE USED TO JUSTIFY PREVENTIVE DETENTION MUST BE PROVIDED TO THE DETAINED INDIVIDUAL: SUPREME COURT

In the recent judgment of *Jaseela Shaiji v Union of India,* the Supreme Court ruled that all materials relied upon to justify the preventive detention of an individual must be provided to the detenu, reaffirming the principles of natural justice. This ruling ensures that detainees have an opportunity to adequately defend themselves, aligning with Article 22(5) of the Constitution of India. Article 22(5) mandates that all grounds for detention must be supplied to safeguard the personal liberty of the detenu, emphasizing the importance of transparency and fairness in the detention process.

However, the ruling does not imply that authorities are required to provide documents referenced casually or in passing. It stresses that only the substantive evidence forming the basis of the detention must be disclosed. Furthermore, the Supreme Court recognized technological advancements and emphasized the need for timely communication, especially in cases involving personal liberty, to ensure that justice is not delayed.

In the present case, the individual was detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act), following a raid at his home. The detention was based on evidence that included WhatsApp conversations and witness statements. The detenu's wife petitioned the court, claiming that critical documents, particularly the statement of a key witness, had not been provided to the detenu. The Kerala High Court dismissed this petition, holding that the other materials supplied were sufficient to justify the detention.

However, the Supreme Court overturned this decision, upholding the detenu's rights under Article 22(5). The Court reprimanded the jail authorities for their negligence in failing to forward the necessary documents, including the challenge to the detention order. This critical error in the legal process, the Supreme Court held, warranted the quashing of the detention order.

This judgment reaffirms the importance of procedural fairness in preventive detention cases, ensuring that all relevant materials are provided to the detenu to safeguard their constitutional rights.

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- https://lawchakra.in/supreme-court-clarifies-rights-of-detained-persons/#:~:text=The%20ruling%20affirms%20that%20individuals%20detained%20under%20preventive,allowing%20them%20the%20opportunity%20to%20defend%20themselves%20adequately.

- https://www.barandbench.com/news/all-material-relied-preventive-detention-supply-detenue-supreme-court?access-token=972da584-b4bb-484c-9c35-8e8d4da0dc25-1727433413539

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SUPREME COURT ISSUES NOTICE ON PIL SEEKING INCLUSION OF ANTI-RAPE LAWS IN SCHOOL CURRICULUM

The recent judgment of *Aabad Harshad Ponda v Union of India* led to a bench of Chief Justice of India (CJI) DY Chandrachud and Jusitce JB Pardiwala and Manoj Mishra to issue notice in a Public interest Litigation (PIL) to raise awareness as anti-rape laws in schools and in society at large because knee- jerk reactions like making punishments harsher after a gruesome crimes is hardly any solution.

Senior Advocate Aabad Harshad Ponda, with over 32 years of experience in criminal law and a primary practice in the Bombay High Court, has filed a petition seeking the Court's intervention to tackle the underlying causes of these grave crimes. The petition mentions that despite India's strong legal framework, which includes strict laws against sexual offenses, the rising incidence of crimes like rape indicates a failure in both the enforcement and communication of these laws. Moreover, the petition, filed through Advocate-on-Record Sandeep Sudhakar Deshmukh, raises concerns about the gap between the creation of laws by the legislature and their communication to the public, especially in terms of educating society about the consequences of such offenses. It emphasizes the urgent need for proactive measures to prevent these crimes rather than just responding to incidents after they occur.

This PIL highlighted the growing concern about the need for early education on sexual violence and legal rights, given the alarming rates of sexual crimes in India. The petitioner argued that children, particularly in their formative years, should be made aware of gender-related issues, including concepts of consent, boundaries, and the legal consequences of sexual offenses. Incorporating this knowledge into school syllabus would help reduce the prevalence of sexual crimes by fostering a culture of respect and equality among young people. This notice asked the government to provide an answer regarding the implementation process and feasibility of such a curriculum as even after stringent rape laws introduced after the 2012 Nirbhaya case, including harsher punishments, the rate of such crimes remains alarmingly high

This idea is two folded in nature as it does not only create awareness but also to ensure that future generations are equipped with the necessary knowledge to combat sexual violence and contribute to a safer society. The introduction of anti-rape laws in school curriculums is seen as a step towards creating a more informed and responsible society in matters pertaining to sex education.

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- https://www.barandbench.com/news/supreme-court-notice-pil-awareness-anti-rape-laws-school-syllabus
- https://www.thehindu.com/news/national/sc-notice-on-plea-supporting-awareness-rather-than-knee-jerk-changes-in-anti-rape-law/article68639758.ece

TRANS PERSONS CANNOT USE LAW AGAINST SEX ON FALSE PROMISE OF MARRIAGE

In the case of *Bhupesh Thakur v State of Himachal Pradesh*, the Himachal Pradesh High Court, under the bench of Justice Sandeep Sharma, provided significant clarity regarding the liability of transgender individuals under Section 69 of the Bharatiya Nyaya Sanhita (BNS) 2023. Section 69 of the BNS deals with specific offenses related to women, recognizing crimes committed against them in particular contexts, and addressing their legal rights and protections. The section refers to offenses that apply explicitly to "women" as defined in the law, offering gender-specific protections.The court observed that the BNS, as mentioned above in its provisions, explicitly differentiates between the legal identities of "women" and "transgender" persons, recognizing them as independent and distinct categories within the legal framework

Justice Sharma emphasized that under the BNS, "women" and "transgender" are defined separately, and their respective legal rights and liabilities are addressed accordingly. Section 69 of the BNS specifically refers to "women" as defined under Section 2(35) and since the prosecution in the case had identified herself as a transgender individual, the court found merit in the argument that Section 69 could not be applied, as it is expressly limited to women as defined under Section 2(35) and further under The Transgender Persons (Protection of Rights) Act, 2019 there was a legal recognition and protection for transgender individuals in India. It affirms their right to self-identify as male, female, or transgender and provides protection against discrimination. However, it does not explicitly address the intersection of transgender rights with criminal laws that apply to gendered categories, leading to cases like Bhupesh Thakur where the judiciary must interpret these laws in a broader social and legal context.

In this case, the complainant, a transgender woman, alleged that during the COVID-19 lockdown, she met the accused through Facebook, and they developed a relationship. She claimed that the accused, fully aware of her gender identity, promised to marry her, and his parents suggested she undergo a sex change operation. After undergoing the surgery, the accused refused to marry her and arranged a marriage with someone else. The court held that Section 69 could not be applied in this case because it specifically pertains to "women," which, under the BNS, is defined separately from transgender persons. Since the complainant identified as a transgender woman, the court agreed that Section 69 was inapplicable. The ruling reaffirmed that transgender individuals fall under a distinct legal category and therefore cannot be subjected to the same legal provisions that are explicitly designed for cisgender women.

This interpretation sets a crucial precedent in understanding the distinct legal treatment and rights afforded to transgender persons under the new legal framework of the Bharatiya Nyaya Sanhita in addition to the Transgender Persons (Protection of Rights) Act. The ruling marks a significant step in the jurisprudence around transgender rights, particularly in the context of criminal liability as well as the modern and evolving mindset of the Indian Judiciary which is the need of the time considering the increasing complexities of the genders as well as the world.

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- https://www.livelaw.in/high-court/himachal-pradesh-high-court/himachal-pradesh-high-court-bharatiya-nyaya-sanhita-transgender-individuals-ineligible-to-invoke-section-69-for-false-promise-of-marriage-269650?fromIpLogin=59369.33572979601
- Trans persons can't invoke law penalising sex on false promise of marriage: Himachal Pradesh High Court (barandbench.com)

SUPREME COURT CONFIRMS NO OWNERSHIP TRANSFER WITHOUT REGISTERED DOCUMENT

In a recent ruling in *Beena v Charan Das* (2024 INSC 680), the Supreme Court of India reaffirmed that property ownership can only be transferred through a registered document. This decision came in the context of a dispute between a landlord and tenant, where the tenant claimed ownership of the property based on a settlement agreement with the landlord. The Court clarified that the settlement, which stipulated conditions for eviction, did not amount to a sale of the property and thus could not confer ownership rights upon the tenant.

The case arose from an eviction suit filed by the landlord, who sought to remove the tenant from the property due to its dilapidated condition. During the proceedings, both parties reached a settlement under which the tenant was to deposit a sum of ₹12,000 to avoid eviction. The tenant later argued that this payment granted him ownership of the property. However, both the trial court and the first appellate court ruled in favor of the landlord, rejecting the tenant's claim for a permanent injunction. The tenant then appealed to the High Court, which reversed the decision, stating that the tenant had become the rightful owner upon depositing the stipulated amount.

On further appeal, the Supreme Court overturned the High Court's ruling, stating that the settlement was strictly related to the eviction and did not imply a transfer of title. The Court emphasized that a registered instrument is mandatory for any transfer of property under Indian law. The absence of such a document in this case meant that no ownership transfer could occur. The judgment underscored the importance of legal formalities in property transactions, noting that without a registered deed, even a settlement agreement cannot grant ownership rights.

The decision reinforces the legal principle that ownership of immovable property cannot be transferred merely through informal agreements or settlements but requires adherence to statutory procedures, including the execution of a registered document.
Case Reference: *Beena v Charan Das* through LRs Civil Appeal No 3190 of 2014, 2024 Livelaw (SC) 706.

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Read More:

- https://www.livelaw.in/supreme-court/no-transfer-of-title-in-absence-of-registered-document-supreme-court-rejects-tenants-claim-for-ownership-based-on-settlement-with-landlord-269725?infinitescroll=1
- https://www.foxmandal.in/News/no-transfer-of-title-in-the-absence-of-explicit-document/#:~:text=In%20a%20recent%20ruling%20in,title%20of%20the%20disputed%20property.

TRAVESTY OF JUSTICE: SUPREME COURT HIGHLIGHTS ISSUE OF LOCAL SURETY IN BAIL CASES

In a recent ruling in Ramchandra Thangappan Aachari v. State of Maharashtra, the Supreme Court of India addressed a situation where a convict, despite being granted bail, continued to remain in custody due to his inability to provide a local surety. The Court emphasized that such a scenario undermines the fundamental rights of the prisoner, particularly under Article 21 of the Constitution of India, which guarantees the right to life and personal liberty.

In this case, the petitioner had been convicted under the Protection of Children from Sexual Offences (POCSO) Act and sentenced to ten years of imprisonment. Despite being granted bail in May 2024, he was unable to secure his release because he could not furnish local surety, a common condition for bail in many cases. The Court noted that keeping the petitioner in custody, even after a bail order, would be a "travesty of justice."

The Court underlined the importance of ensuring that financial incapacity does not prevent individuals from availing the benefits of bail. It recognized that indigent prisoners are often unable to meet stringent bail conditions due to their financial circumstances. Therefore, the Court ruled that the petitioner should be released on a personal bond, without the requirement of a local surety.

The ruling highlights the judiciary's approach toward making the legal system more accessible and fair, especially for underprivileged individuals who face financial barriers in meeting bail conditions. It reflects a broader commitment to protecting the fundamental rights of all citizens, regardless of their economic status.

This case brings attention to the broader issue of local surety requirements, which may need to be reconsidered in light of their impact on the rights of indigent prisoners.

The Court’s decision sets a precedent for future cases, ensuring that financial constraints do not override constitutional protections.

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- https://www.livelaw.in/top-stories/travesty-of-justice-if-prisoner-cant-get-benefit-of-bail-order-due-to-inability-to-furnish-local-surety-supreme-court-269973
- https://www.barandbench.com/news/justice-system-oblivious-indigent-convicts-supreme-court-bail-sans-surety

IPC PROVISIONS CANNOT BE INVOKED WITHOUT APPLYING PENAL PROVISIONS OF GST ACT

The Madhya Pradesh High Court recently ruled that provisions of the Indian Penal Code (IPC) cannot be invoked directly in cases related to Goods and Services Tax (GST) violations without first applying the relevant penal provisions under the GST Act. The case, *Deepak Singhal v Union of India* emphasizes the procedural requirements in GST-related offenses, reaffirming the primacy of the GST Act as special legislation.

The court highlighted that the GST Act, 2017, governs all aspects related to GST, including offenses and penalties. It contains detailed procedures that must be adhered to before any legal action can be initiated. The Division Bench, comprising Justices Sushrut Arvind Dharmadhikari and Duppala Venkata Ramana, held that bypassing the GST Act by directly invoking IPC provisions would undermine the procedural safeguards provided within the GST framework.

In this case, the GST authorities had conducted a search operation at M/s Shreenath Soya Exim Corporate. The investigation uncovered alleged fraudulent activities related to the issuance of fake invoices, leading to wrongful tax credit claims. An FIR was registered under various sections of the IPC, and the petitioner, Deepak Singhal, was implicated in the case based on evidence provided during police custody.

However, the petitioner argued that since the offense was primarily a GST-related matter, the penal provisions of the GST Act should have been invoked first. The court concurred, noting that no prior approval was obtained from the GST Commissioner, as required under Section 132(6) of the GST Act, before initiating criminal proceedings.

Ultimately, the High Court ruled in favor of the petitioner, quashing the FIR. The judgment reinforces the legal principle that offenses falling under the purview of the GST Act must be handled through the procedures outlined in that Act before involving IPC provisions. This decision has significant implications for future cases involving GST violations, ensuring that the procedural integrity of the GST Act is maintained.

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- https://www.barandbench.com/news/gst-authorities-cant-invoke-ipc-offences-covered-under-gst-act-madhya-pradesh-high-court

- https://www.livelaw.in/tax-cases/ipc-provisions-cant-be-invoked-directly-without-applying-penal-provisions-of-gst-act-madhya-pradesh-high-court-270060

SUPREME COURT ORDERS CBI PROBE IN FRAUDULENT PETITION CASE

The Supreme Court recently issued a critical ruling in the case of *Bhagwan Singh v State of Uttar Pradesh*, addressing an alarming instance of legal fraud. The case involved the filing of a Special Leave Petition (SLP) without the petitioner's consent or knowledge. Upon learning of this deceit, the Court expressed shock and directed the Central Bureau of Investigation (CBI) to initiate an investigation into the matter, underscoring the seriousness of filing fake petitions and the broader implications of undermining the judiciary.

The issue came to light when Bhagwan Singh, a petitioner in a case, was suddenly contacted by the police about a Special Leave Petition (SLP) filed in his name. To his surprise, he had neither signed any legal documents nor hired the lawyers who were supposedly representing him. This petition was filed to reopen a case against a key witness in the well-known Nitish Katara murder trial. It became clear that the petition was part of a conspiracy, aiming to manipulate legal proceedings using forged signatures and false documents. Bhagwan Singh, who had no part in this, was completely unaware of what was being done in his name.

The Supreme Court, with Justices Bela M. Trivedi and Satish Chandra Sharma presiding, expressed grave concern over this fraudulent act.

They highlighted that legal professional, especially advocates, have a duty to uphold integrity and ethics in their work. The judges pointed out that no lawyer is above the law, and anyone involved in such fraudulent activities must face legal consequences. They also criticized the involvement of multiple advocates and the improper use of notarized documents to carry out this deception, which severely undermined the court's trust.

The background of the case dates back to when Bhagwan Singh filed an FIR alleging the kidnapping of his daughter. This led to a series of legal proceedings, and eventually, a false petition was filed in his name to quash charges against some accused. When the petitioner became aware of this fraudulent act, he immediately denied any involvement and informed the Court. The Court, alarmed by the misuse of legal channels, directed the CBI to investigate all those involved—from the advocates to those who notarized the forged documents—and to provide a report within two months.

This case serves as a strong warning against legal fraud and highlights the importance of maintaining ethical standards in the legal profession. It underscores the need for vigilance in court proceedings and sends a clear message that any attempt to deceive the judiciary will be met with serious consequences.

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https://www.scconline.com/blog/post/2024/09/21/filing-petition-without-petitioner-knowledge-fraud-on-court-sc-directs-cbi-probe/

https://www.livelaw.in/top-stories/supreme-court-orders-cbi-probe-into-fake-petition-filed-without-clients-knowledge-270119

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SUPREME COURT REVERSES FRAUDULENT SALE AGREEMENT UNDER ARTICLE 136

In *Lakha Singh v Balwinder Singh*, the Supreme Court of India overturned the concurrent findings of the Trial Court, First Appellate Court, and High Court, exercising its authority under Article 136 of the Constitution of India. The primary issue was the legitimacy of a sale agreement written on blank stamp paper, onto which the illiterate defendant's thumb impression was taken prior to the agreement's transcription.

The Court observed that the appellant-defendant's thumb imprint was obtained before the agreement was written, calling into doubt the document's legitimacy. The plaintiff sought particular execution of the contract, claiming that the appellant-defendant failed to appear before the Registrar to execute the sale deed as specified in the disputed agreement. A considerable percentage of the consideration had already been paid, with the remaining 15% due at the registry, which was set for sixteen months later.

The bench, which included Justices PS Narasimha and Sandeep Mehta, stated that the plaintiff's method of acquiring signatures on blank stamp paper was a "sheer piece of fraud and concoction." The Court noticed the fact that the agreement was typed on three pages, but only the last page had the respondent-plaintiff's signature and the appellant-defendant's thumb imprint. The big blank areas on the first two pages indicated that the agreement was written after the defendant's thumb impression was taken.

Furthermore, the Court noted the plaintiff's failure to notify the defendant or seek to execute the sale deed during the sixteen months preceding the planned registry. The Court dismissed the plaintiff's allegation that presence at the Registrar's Office proved preparedness to perform the contract, noting that the plaintiff did not carry the balance amount on the registry day.

The Court determined that the lower courts' concurrent judgments were perverse and based on a misunderstanding of significant facts. As a result, the appeal was permitted, and the lower court rulings were overturned.

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- https://www.livelaw.in/supreme-court/agreement-of-sale-a-sheer-piece-of-fraud-concoction-supreme-court-sets-aside-decree-for-specific-performance-271047
- https://www.verdictum.in/court-updates/supreme-court/lakha-singh-v-balwinder-singh-2024-insc-744-jurisdiction-article-136-1552969

SUPREME COURT UPHOLDS CONVICTION: CHARGE ALTERATION DOES NOT CONSTITUTE FAILURE OF JUSTICE

A recent Supreme Court ruling in the case of *Baljinder Singh v State of Punjab,* by Justices Dipankar Datta and Augustine George Masih upheld the conviction of multiple appellants in a murder case. The appellants were first prosecuted under Section 302 read with Section 149 of the Indian Penal Code (IPC) for operating with a "common object" but were later convicted under Section 302 read with Section 34 IPC, which deals with "common intention."

The appellants challenged this conversion, claiming that the High Court did not adequately evaluate the distinction between "common object" and "common intention" during the trial. They argued that their conviction under Section 34 IPC was incorrect, and that the charge change resulted in a "failure of justice."

The Supreme Court rejected the appeal, emphasizing the well-established legal principle that changing charges alone does not invalidate a conviction unless the accused can prove that the change produced serious prejudice or a miscarriage of justice. Referring to Section 464(1) of the Code of Criminal Procedure (Cr.P.C.), the Court stated that a conviction would not be declared unlawful owing to mistakes in charge framing unless the appellants can establish that the conversion resulted in an unfair consequence.

The Court further noted that shared purpose can be developed spontaneously and does not need extensive premeditation. As a result, the substitution of charges from Section 149 to Section 34 IPC was allowed, as both address collective culpability but differ in detail. The bench stated that the appellants were informed of the accusations and had adequate time to defend themselves throughout the trial, ruling out any failure of justice.

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Ultimately, the Court found no basis to reverse the conviction, noting that the appellants had failed to demonstrate that the change in charges jeopardized their right to a fair trial. The appeal was subsequently dismissed, and the life sentences were affirmed.

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- https://www.livelaw.in/supreme-court/s-464-crpc-conviction-cant-be-challenged-based-on-conversion-of-charges-unless-failure-of-justice-is-proved-supreme-court-270739?fromIpLogin=46694.80727611075
- https://thelegalaffair.com/news/supreme-court-upholds-conviction-in-murder-case-examining-the-interchange-of-common-object-and-common-intention/

SUPREME COURT OVERTURNS EX-PARTE DECREE: UPHOLDS RIGHT TO FAIR TRIAL IN EVICTION CASE

In *Ranjit Singh v State of Uttarakhand* (2024 INSC 724), the Supreme Court addressed critical procedural flaws that resulted in an ex-parte order against the appellants. The appellants, defendants in an eviction suit filed by the State of Uttarakhand, claimed that their right to defend the case was wrongfully deprived since the trial court prematurely dismissed their defence without sufficient notice.

The claim, first brought in 2001, focused around the State's failure to pay rent, prompting the plaintiffs to pursue eviction under Section 106 of the Transfer of Property Act of 1882. Despite the appellants' several requests for postponement to file their written statement, the trial court ordered the matter to proceed ex-parte on April 22, 2002. Furthermore, on May 3, 2002, the appellants' defence was knocked down without notification to them.

The appellants claimed that this procedural mistake denied them a fair opportunity to contest the litigation. The Supreme Court agreed, emphasizing that even if an action is heard ex-parte, the defendant maintains the ability to cross-examine witnesses and challenge the complaint on legal grounds. The Court noted that the trial court's decision of setting the date without telling the defendants breached fundamental principles of natural justice.

Furthermore, the Supreme Court ruled that the ex parte decree and orders striking down the defense be overturned. The case was remanded to the trial court with specified conditions, including a directive for the appellants to deposit an ad hoc amount of ₹1,00,000 every month from July 2014 till the verdict of the matter.

This decision illustrates the Court's commitment to upholding procedural fairness and natural justice principles, particularly in civil cases involving significant property and financial interests.

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- https://www.livelaw.in/supreme-court/defendant-can-cross-examine-plaintiff-even-if-suit-is-proceeding-ex-parte-against-him-written-statement-isnt-filed-supreme-court-270606
- https://thelegalaffair.com/news/supreme-court-clarifies-defendants-retain-right-to-cross-examine-plaintiffs-witnesses-even-in-ex-parte-proceedings/

SUPREME COURT UPHOLDS STRICT INTERPRETATION OF POCSO

In *Just Rights for Children Alliance v S. Harish* (2024 SCC OnLine SC 2611), the Supreme Court of India addressed important legal problems under the Protection of Children from Sexual Offences Act, 2012 (POCSO) and the Information Technology Act, 2000 (IT Act). The appeal followed a Madras High Court ruling that rejected criminal proceedings against the accused for allegedly possessing child pornography, arguing that simple possession is not a crime under POCSO or the IT Act.

The case began when the All-Women's Police Station in Ambattur, Chennai, filed a FIR against the accused following receipt of a Cyber Tipline complaint from the National Crime Record Bureau. The accused reportedly downloaded and saved movies of child pornography on his mobile phone. Following an inquiry, two recordings showing juveniles in sexual behaviour were discovered, and charges were filed under Section 15 of the POCSO and Section 67B of the IT Act.

The High Court dismissed the charges, arguing that mere possession or viewing of child pornography without intent to disseminate does not come under Section 15(1) of POCSO or Section 67B of the IT Act. It ruled that these rules need proof of transfer or sharing of such material to establish criminal responsibility.

The Supreme Court disagreed with the High Court's restricted reading, underlining that Section 15 of POCSO criminalizes not only the transmission of child pornography, but also the simple possession of the information with the purpose to transmit or the failure to remove it. The Court emphasized the societal harms presented by child pornography and the importance of strict enforcement to safeguard minors from sexual exploitation.

The Court explains that possession of such material, along with a purpose to disseminate or transmit, is punishable under both POCSO and the IT Act. The decision further emphasized that “ignorance of the law is not a defence”, particularly when such actions entail significant social consequences.

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- https://www.livelaw.in/top-stories/when-can-ignorance-of-law-be-taken-as-defencesupreme-court-explains-270536
- https://www.scconline.com/blog/post/2024/09/23/storing-watching-child-pornography-crime-supreme-court-pocso-it-act/

SUPREME COURT REINFORCES LIMITS ON INTERIM RELIEF WHILE RELEGATING CASES TO HIGH COURTS

In *Gagan Banga v State of West Bengal* (Misc. Application No. 1861 of 2023), the Supreme Court reiterated the boundaries of granting interim relief when cases are relegated to High Courts. Gagan Banga, associated with Indiabulls Housing Finance, had sought relief under Article 32 of the Constitution of India. The case revolved around multiple FIRs filed across different states by disgruntled borrowers, which were claimed to be attempts to criminalize civil matters. The Supreme Court first granted the petitioners interim protection, preventing coercive action pending the High Court's final verdict. However, the Enforcement Directorate (ED) protested, claiming that the order was issued without a hearing.

In response, the Court noted the ED's arguments and underlined that providing interim relief while sending parties to higher courts may result in misinterpretations. Specifically, it stated that such measures might wrongly bind the High Courts and potentially influence their decisions, citing Neeharika Infrastructure (P) Ltd. v. State of Maharashtra, which established standards for exercising authority under Section 482 CrPC. The Court emphasized that when cases are relegated, all matters should be left open for the High Court to examine independently, without any predetermined notions or views.

The Court recognized the need to rectify errors in its July 2023 order, especially concerning the ED’s lack of opportunity to present its case. It recalled the previous directions that impacted the ED, allowing the Allahabad High Court to independently consider the matter on its merits.

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The bench, which included Justices Sanjay Kumar and Aravind Kumar, ruled that imposing protective orders without hearing all parties undermines the fairness of the judicial process and risks overstepping the High Court's authority.

This case emphasizes the need of correct procedural behaviour while moving matters from the Supreme Court to the High Court. It emphasizes that parties assigned to High Courts should not be awarded temporary relief in the usual procedure unless absolutely required to preserve impartiality in future proceedings.

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- https://www.livelaw.in/supreme-court/improper-for-sc-to-grant-interim-relief-in-normal-course-when-party-is-relegated-to-high-court-supreme-court-270808

- https://www.scconline.com/blog/post/2024/09/28/improper-for-court-grant-interim-relief-routine-situations-when-party-directed-seek-relief-from-hc-supreme-court/