

Weekly Legal Current Affairs

24–30 August 2026

This week at a glance

- Wife waived all maintenance in a settlement, took a mutual-consent divorce, then filed a DV Act complaint; the Court calls it abuse of process.
- A saving clause bows to a later non obstante clause: Port Trust custody under one Act does not shield it from customs duty on pilfered goods under another
- When a defective Form-25 affidavit sinks an election petition, and when the court can just strike out the corrupt-practice allegations instead.
- A GST notice cannot borrow the five-year window under Section 74 by merely chanting 'suppression'; the foundational facts must sit in the notice itself.

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Judgments of the week

1. Reji Baby v. Subi Mary & Ors. Family Law

2026 INSC 918 · Sandeep Mehta & Manmohan, JJ. (judgment by Manmohan, J.) · 24 August 2026

Facts. By a Settlement Agreement dated 23 July 2016 and an affidavit dated 24 January 2017 before the Family Court, the wife relinquished all monetary and maintenance claims against the husband, and the couple obtained a mutual-consent divorce decree under Section 10A of the Divorce Act, 1869 dated 30 January 2017. She and the daughter later launched proceedings under the Protection of Women from Domestic Violence Act, 2005, pleading that the settlement had been signed under duress to hasten the divorce before migrating abroad. The husband's petition to quash the complaint was dismissed by the High Court of Kerala.

Issue. Whether a wife who voluntarily and unconditionally relinquished all maintenance and monetary claims in a settlement, and obtained a mutual-consent divorce on that basis, can revive those claims through a DV Act complaint; and whether an unchallenged allegation of duress is enough to reopen the settlement.

Held. The Court held that once respondent No.1-wife had voluntarily relinquished all monetary claims including maintenance, and reiterated the waiver in an affidavit before the Family Court, revival of those claims through DV Act proceedings was an abuse of process, especially as the complaint related to acts predating the Settlement Agreement with no fresh post-divorce cause of action pleaded. Mere averments of coercion could not suffice where the wife had instituted no proceedings to set aside the divorce decree or to invalidate the Settlement Agreement, and the well-educated parties were deemed to have executed it consciously and voluntarily. Relying on the co-ordinate Bench in Dhananjay Rathi v. Ruchika Rathi, 2026 SCC OnLine SC 587 and the three-Judge Bench in Gimpex Private Limited v. Manoj Goel, (2022) 11 SCC 705, which held that a settlement subsumes the original complaint and parties cannot reverse its effect by pursuing fresh proceedings, the Court allowed the appeal, set aside the Kerala High Court order in CRL. MC No. 8568/2017, and quashed M.C. 23/2017 pending before the Judicial First Class Magistrate Court, Kalamassery. It clarified, however, that the respondent No.2-daughter, who had attained majority before the settlement and was not a party to it, retained liberty to initiate fresh proceedings for monetary relief in accordance with law.

Why it matters. *A waiver of maintenance in a settlement binds only its signatories; the party who wants to escape it must sue to set it aside, not simply allege duress in a later complaint.*

Provisions: Protection of Women from Domestic Violence Act, 2005; Divorce Act, 1869, s.10A; Negotiable Instruments Act, 1881, s.138

2. Union of India v. Board of Trustees of the Port of Bombay General

2026 INSC 919 · B.V. Nagarathna, J. & Manmohan, J. · 25 August 2026

Facts. Customs issued show cause-cum-demand notices to the Bombay Port Trust for duty on goods pilfered while in its custody during 1996–2000, and by Notification dated 11.10.2000 approved Mumbai Port Trust as custodian under Section 45(1) of the Customs Act, 1962. The Bombay High Court set aside the orders-in-original and quashed the Notification as ultra vires Section 45(1), holding the Port Trust's custody flowed from the Major Port Trusts Act, 1963. The Union appealed, and conceded that pre-Notification demands could not stand absent a prior Section 45(1) approval.

Issue. Whether the saving clause in Section 45(1) of the Customs Act, 1962 barred the Commissioner from approving the Port Trust as custodian, given its custody derived from the Major Port Trusts Act, 1963, and whether liability for pilfered goods under Section 45(3) could then be fastened on it.

Held. The Court held that Section 45(1)'s saving clause, "save as otherwise provided in any law for the time being in force", excludes the Commissioner's power to approve a custodian only where another law itself fastens customs-duty liability for pilfered goods; the Major Port Trusts Act, 1963 does not, as Sections 42 and 43 impose only a conditional bailee's liability under Sections 151, 152 and 161 of the Indian Contract Act, 1872 owed to the owner, arising only if a receipt under Section 42(2) is issued. Since Section 13 of the Customs Act absolves the importer of duty on pilfered goods, Parliament inserted Section 45(3) by Act 22 of 1995 with effect from 26.05.1995, opening with a non obstante clause, to fasten that duty on the approved custodian and prevent loss of Revenue. Relying on *Aswini Kumar Ghosh v. Arabinda Bose*, AIR 1952 SC 369 and *Dominion of India v. Shrinbai A. Irani*, AIR 1954 SC 596 on the reach of non obstante clauses, the Court found no conflict between the two enactments, their liabilities being distinct in source, nature and object. The High Court was wrong to hold the Commissioner lacked jurisdiction; the Notification is valid, though the pre-11.10.2000 demands were not pressed and stand quashed.

Why it matters. *A saving clause and a later non obstante clause can coexist: the override in Section 45(3) bites only because the Major Port Trusts Act never taxed pilferage; read "any law for the time being in force" against "any other law" as Aswini Kumar Ghosh directs.*

Provisions: Customs Act 1962, s.45; Customs Act 1962, s.45(1); Customs Act 1962, s.45(3); Customs Act 1962, s.13; Customs Act 1962, s.23; Customs Act 1962, s.8; Major Port Trusts Act 1963, s.42; Major Port Trusts Act 1963, s.43; Indian Contract Act 1872, s.148; Indian Contract Act 1872, s.151; Indian Contract Act 1872, s.152; Indian Contract Act 1872, s.161

3. Hafiz Rashid Ahmed Choudhury v. Kripanath Mallah General

2026 INSC 915 · J.B. Pardiwala, K. Vinod Chandran (judgment by K. Vinod Chandran, J.) · 24 August 2026

Facts. The appellant's Election Petition against the returned candidate from No.7 Karimganj Parliamentary Constituency, Assam, was rejected by the High Court on the ground that copies served were not properly attested. Two rubber stamps had been used across the copy ('attested to be true copy' up to page 84, 'certified to be true copy' thereafter), and the Form-25 affidavit alleging corrupt practices in the served copy showed no notarization or attestation by the Commissioner of Affidavits.

Issue. Whether inconsistent attestation of the served copy under Section 81(3) and the absence of attestation on the Form-25 affidavit are defects entailing peremptory dismissal of the Election Petition under Section 86 of the Representation of the People Act 1951.

Held. The Court concurred with *F.A. Sapa v. Singora* (1991) 3 SCC 375 that Section 81(3) prescribes no particular form of attestation, so the two rubber stamps conveying the same meaning suffice, and reversed the High Court's contrary finding. On the Form-25 defect, the Court held that the Constitution Bench in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* (1963 SCC OnLine SC 129) holds the field over the three-Judge Benches in *Dr Shipra v. Shanti Lal Khoiwal* (1996) 5 SCC 181 and *T. Phungzathang v. Hangkhanlian* (2001) 8 SCC 358 by virtue of *National Insurance Co. Ltd. v. Pranay Sethi* (2017) 16 SCC 680, and that absence of affirmation on the copy is not fatal unless it misleads the returned candidate. Since the defect under Section 83 does not entail peremptory dismissal under Section 86, the Court allowed the appeal, reversed the order and restored the Election Petition, requesting the High Court to verify whether due attestation exists in the original affidavit and, if not, to bar the corrupt-practice allegations while trying the other grounds on merits.

Why it matters. *Section 86 mandates peremptory dismissal only for breach of Sections 81, 82 or 117; a Section 83 verification defect can be cured or cause only the corrupt-practice pleas to be struck, echoing Murarka Radhey Shyam.*

Provisions: Representation of the People Act 1951, s.81; Representation of the People Act 1951, s.82; Representation of the People Act 1951, s.83; Representation of the People Act 1951, s.86; Representation of the People Act 1951, s.117; Conduct of Elections Rules 1961, r.94A (Form-25); Code of Civil Procedure 1908

4. M/s Tata Steel Limited v. Union of India Limitation

2026 INSC 920 · J. B. Pardiwala & K. Vinod Chandran, JJ. (judgment by K. Vinod Chandran, J.) · 25 August 2026

Facts. A Section 74 CGST show cause notice dated 13.06.2025 was issued to Tata Steel for FY 2018-19 to 2020-21, arising from a CAG audit objection on ITC mismatch and short payment of tax. The Assessing Officer had earlier consigned the matter to the 'call book' (kept in abeyance) and had contested the audit objection before the Public Accounts Committee, yet revived the notice on 01.07.2025 as a 'protective demand' as limitation was closing.

Issue. Whether a Section 74 notice, invoking the extended five-year period, can be sustained where the notice pleads no foundational facts of fraud, willful misstatement or suppression, and whether the normal three-year limitation under Section 73 had in any event expired.

Held. The Court held that proceedings under Sections 73/74 require the Assessing Officer's own satisfaction, and for Section 74 that satisfaction must extend to fraud, willful misrepresentation or suppression having caused the mismatch or short payment, not merely their occurrence. Explanation 2 to Section 74 could not be relied on as it stood omitted with effect from 01.11.2024, and the argument that proceedings began before the Section 73 limitation expired was rejected because Section 73(10) fixes the time to pass the order under Section 73(9), with the notice under sub-section (2) due at least three months earlier. Computing the extended annual-return dates under Section 44 and Rule 80, and excluding 15.03.2020 to 28.02.2022 per *In Re: Cognizance for Extension of Limitation* (Suo Motu WP (C) No.3 of 2020), the three-year limitation for all three years expired on 28.02.2025, so the SCN dated 13.06.2025 and the Order-in-Original dated 26.12.2025 were set aside. Liberty was granted to initiate fresh Section 74 proceedings with foundational facts stated in the notice and an order passed before 28.02.2027, the five-year window not yet being over.

Why it matters. *Extended limitation is not lip service; like a Section 149 CPC or a fraud plea, the material facts must be pleaded, not the label alone recited.*

Provisions: Central Goods and Services Tax Act 2017, s.73; Central Goods and Services Tax Act 2017, s.74; Central Goods and Services Tax Act 2017, s.44; Goods and Services Tax Rules 2017, r.80

Statutes, appointments & policy

NEW LAWS, AMENDMENTS & KEY BILLS

- **Tribunals Reforms Act, 2026 brought into force.** The Ministry of Law and Justice issued a commencement notification (F. No. J-18/57/2026-JUDICIAL) bringing all provisions of the Tribunals Reforms Act, 2026 into force with effect from 25 August 2026. The Act replaces the Tribunals Reforms Act, 2021 (several provisions of which the Supreme Court had struck down), sets uniform terms for tribunal Chairpersons (5 years or age 70) and Members (5 years or age 67), and provides a framework for tribunal appointments, service conditions and oversight. (This is the commencement notification, a distinct event from the earlier-August Presidential assent.) — **25 August 2026** · sconline.com

POLICY & JUSTICE ADMINISTRATION

- **Mediation Council of India formally established.** The Central Government, through the Department of Legal Affairs, Ministry of Law and Justice, notified the establishment of the Mediation Council of India under Section 31(1) of the Mediation Act, 2023, via a Gazette of India (Extraordinary) notification dated 27 August 2026, with its head office at Delhi. The Council is the statutory body responsible for registering and regulating mediators and mediation service providers and promoting institutional and community mediation, marking a key step in operationalising the Mediation Act, 2023. — **27 August 2026** · livelaw.in

Clear Concepts — textbook revision of two core concepts**Election Petitions: The Only Door to Challenge an Election**

Constitution / Election Law

Representation of the People Act 1951, ss.80-86, 100-101, 123; Article 329(b)

Article 329(b) shuts the courts out of a live election: an election to Parliament or a State Legislature can be called in question only by an election petition under the RP Act 1951. The right to elect and to dispute an election is purely statutory, so the Act is a self-contained code whose conditions must be strictly met. This week's *Hafiz Rashid Ahmed Choudhury v Kripanath Mallah* arose from an order under s.86.

The bar and the forum.

- Art. 329(b) is a non-obstante bar: no election may be called in question except by an election petition, and it ousts even Art. 226 (*Ponnuswami, Mohinder Singh Gill*).
- s.80A: the petition is tried by the High Court of the State sitting as a statutory tribunal; appeal lies to the Supreme Court under s.116A.
- s.81: any candidate or elector must present it within 45 days from the date of declaration of the result.
- There is no interlocutory remedy; grievances about nomination or the poll wait for the petition after the result.

Grounds and corrupt practices. Two operative outcomes, resting on two different sets of grounds.

- s.100: grounds to declare the election void, e.g. disqualification of the returned candidate, corrupt practice by him or his agents, improper acceptance or rejection of a nomination, or non-compliance materially affecting the result.
- s.101: the petitioner may have himself or another candidate declared elected where that candidate in fact received a majority of valid votes but for the wrong done.
- s.123 lists the corrupt practices: bribery, undue influence, appeals on religion, race, caste or language, and booth capturing.
- A charge of corrupt practice is quasi-criminal and must be proved beyond reasonable doubt (*Prabhoo, Tukaram Dighole*).

The s.86 threshold.

- s.86(1): the High Court shall dismiss a petition that does not comply with s.81 (limitation and presentation), s.82 (joinder of necessary parties) or s.117 (security for costs).
- This dismissal is mandatory, not discretionary; a defect in any of those three sections is fatal at the threshold, before any trial on merits.
- Once past the threshold, s.86 also directs the trial to proceed as expeditiously as possible.
- *Hafiz Rashid Ahmed Choudhury v Kripanath Mallah* reached the Supreme Court as an appeal from such a s.86 order rejecting the petition.

Leading cases.

- *N.P. Ponnuswami v. Returning Officer (1952)* — Art. 329(b) blocks any court interference during the election; the sole remedy is an election petition after the result.
- *Jyoti Basu v. Debi Ghosal (1982)* — outside the statute there is no right to elect, be elected or dispute an election, so the RP Act is a complete, self-contained code.
- *Mohinder Singh Gill v. Chief Election Commissioner (1978)* — Art. 329(b) is a blanket ban reaching even Art. 226; challenges must wait for the election petition.
- *Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kunte (1996)* — an appeal for votes on the ground of religion is a corrupt practice under s.123(3).
- *Tukaram S. Dighole v. Manikrao Kokate (2010)* — a charge of corrupt practice is equated with a criminal charge and demands proof beyond reasonable doubt.

Exam tip. Memorise s.86's three fatal sections: 81 (the 45-day limit), 82 (all necessary parties) and 117 (security); a slip in any one gets the petition dismissed before trial.

Domestic Violence Act 2005: Scope & Civil Reliefs

Family Law

Protection of Women from Domestic Violence Act 2005, ss.2, 3, 12, 17-22, 31

The PWDVA gives a woman a civil remedy against abuse in the home, and by s.36 it runs in addition to, not in derogation of, the criminal law. An aggrieved person (s.2(a)) is a woman in a domestic relationship (s.2(f)) with the respondent by blood, marriage, a relationship in the nature of marriage, adoption or joint family. Domestic violence (s.3) reaches physical, sexual, verbal, emotional and economic abuse, and dowry-linked coercion.

Who is covered.

- Only a woman can be the aggrieved person; the respondent need not be an adult male after Hiral Harsora struck those words from s.2(q).
- Domestic relationship needs past or present living together in a shared household, related by blood, marriage, adoption or joint family.
- A relationship in the nature of marriage (Velusamy) demands legal capacity, unmarried parties holding out as spouses & real cohabitation.
- A stray affair, a weekend or a 'keep' does not qualify; the bond must resemble a common-law marriage.

Reliefs & forum (s.12). Application goes to the Magistrate, aided by the Protection Officer who files the domestic-incident report and assists the woman.

- Protection order (s.18) restraining further violence, contact or alienation of assets.
- Residence order (s.19) securing the shared household; monetary relief (s.20) for loss, maintenance & expenses.
- Custody of children (s.21) and compensation (s.22) for injury and mental agony.
- Interim and ex-parte orders (s.23) can be passed pending disposal.

Shared household & civil character.

- Right to reside in the shared household (s.17) belongs to the woman whether or not she has any title in it.
- Shared household (s.2(s)) covers any home where she lived in a domestic relationship, owned or tenanted by either party.
- Satish Chander Ahuja (2021) overruled Batra and read s.2(s) widely, beyond husband-owned or joint-family property.
- Proceedings are essentially civil; only breach of a protection order is an offence under s.31.

Leading cases.

- D. Velusamy v. D. Patchaiammal (2010) — a relationship in the nature of marriage must meet common-law-marriage conditions: capacity, unmarried, holding out as spouses & cohabitation in a shared household.
- Indra Sarma v. V.K.V. Sarma (2013) — worked out a five-fold test for relationships in the nature of marriage that qualify for the Act.
- Hiral P. Harsora v. Kusum Narottamdas Harsora (2016) — struck down 'adult male' in s.2(q); female and minor relatives can now be respondents.
- Satish Chander Ahuja v. Sneha Ahuja (2021) — broadened the s.2(s) shared household and residence right under s.19, overruling Batra.
- S.R. Batra v. Taruna Batra (2007) — earlier narrow view confining shared household to husband-owned or joint-family property, now overruled.

Exam tip. DV Act proceedings are civil in nature; only breach of a protection order under s.31 is a cognisable, non-bailable offence.

Revision capsule — one-line recap of every ruling

- **Reji Baby:** Reviving relinquished maintenance claims through DV Act proceedings after a voluntary settlement and mutual-consent divorce is an abuse of process; bare averments of coercion, without any suit to set aside the settlement or decree, cannot revive the claims; the adult daughter, not a party to the settlement, retains her separate right to seek monetary relief.
- **Union of India:** The Notification dated 11.10.2000 approving Mumbai Port Trust as custodian under Section 45(1) is valid; the non obstante clause in Section 45(3) overrides the saving clause and the Major Port Trusts Act, because the latter fixes only a conditional bailee's civil liability to the owner, not a customs-duty liability to the Revenue for pilferage.
- **Hafiz Rashid Ahmed Choudhury:** Different rubber stamps conveying the same meaning satisfy Section 81(3); a Form-25 attestation defect falls under Section 83, not Sections 81, 82 or 117, and so does not entail peremptory dismissal under Section 86 unless the copy misleads the returned candidate.
- **M/s Tata Steel Limited:** A notice under Section 74 CGST Act invoking the extended limitation cannot stand unless the foundational facts of fraud, willful misrepresentation or suppression are evident from the notice itself; the mere mechanical recital of such words does not show the requisite satisfaction, and 'protective' assessment is alien to the GST regime.

Prelims Q&A — real past questions, with old→new code mapping

Q1. Under Section 86(1) of the Representation of the People Act, 1951, the High Court shall dismiss an election petition in limine for non-compliance with which of the following provisions?

- A. Section 83 (contents and verification of the petition)
- B. Section 100 (grounds for declaring an election void)
- C. Sections 81, 82 or 117
- D. Section 123 (corrupt practices)

Ans: C. Section 86(1) mandates in-limine dismissal only for non-compliance with Section 81 (presentation of petition), Section 82 (necessary parties) or Section 117 (security for costs). This week's Supreme Court ruling reaffirmed that a defect in the Form-25 verifying affidavit is governed by Section 83, which is NOT listed in Section 86(1); such a defect therefore does not entail peremptory dismissal unless the copy served actually misleads the returned candidate. Grounds under s.100 and corrupt practices under s.123 are decided at trial, not at the threshold. RoP Act 1951 unchanged. [\[This week's ruling: Hafiz Rashid Ahmed Choudhury v. Kripanath Mallah \(2026 INSC 915\)\]](#)

Q2. Non-compliance of, which of the following orders passed under the Protection of Women from Domestic Violence Act, 2005, is an offence:

- A. Maintenance order
- B. Custody order
- C. Residence order
- D. Protection order

Ans: D. Section 31 of the PWDVA, 2005 makes breach of a protection order (or an interim protection order) by the respondent a punishable offence (imprisonment up to one year and/or fine). Non-compliance with maintenance, custody or residence orders is enforced through execution/other remedies, but only breach of a protection order is itself constituted an offence. DV Act 2005 unchanged. [\[Rajasthan Judiciary Prelims 2017\]](#)

Q3. The extended period of limitation under Section 74 of the CGST Act, 2017 can be invoked in a show-cause notice only when—

- A. the proper officer records satisfaction in a separate internal file note
- B. the notice is issued on a 'protective' basis pending investigation
- C. the words 'fraud' or 'suppression' are mechanically recited in the notice
- D. the foundational facts of fraud, wilful misstatement or suppression are evident from the notice itself

Ans: D. Section 74 applies where tax is unpaid/short-paid by reason of fraud, wilful misstatement or suppression of facts. This week's ruling held that the extended limitation cannot stand unless the foundational facts of such fraud/suppression are evident from the notice itself; a mere mechanical recital of the statutory words does not demonstrate the requisite satisfaction, and a 'protective' assessment is alien to the GST regime. CGST Act 2017 unchanged. [\[This week's ruling: M/s Tata Steel Ltd. v. Union of India\]](#)

Q4. Expiry of period of limitation:

- A. Extinguishes the debt
- B. Renders the debts unenforceable
- C. Extinguishes the debt and renders it unenforceable
- D. None of these

Ans: B. The Limitation Act, 1963 bars the remedy, not the right: on expiry of the limitation period the debt is not extinguished but merely becomes unenforceable by suit. (The right itself is extinguished only in the special case of adverse possession of property under Section 27.) Limitation Act 1963 unchanged. [\[Odisha Judiciary Prelims 2019\]](#)

Q5. Doctrine of Election is explained in the Transfer of Property Act, 1882 in:

- A. Section 35
- B. Section 36
- C. Section 34
- D. None of these

Ans: A. Section 35 of the Transfer of Property Act, 1882 embodies the doctrine of election: a person taking a benefit under a transfer must also bear the burden and cannot approbate and reprobate. TPA 1882 unchanged. [\[Odisha Judiciary Prelims 2019\]](#)

Q6. Quasi-contracts are dealt with in :

- A. Section 62
- B. Section 63-68
- C. Section 68-72
- D. Section 72-75

Ans: C. Sections 68 to 72 of the Indian Contract Act, 1872 (Chapter V, 'Of certain relations resembling those created by contract') cover quasi-contracts — e.g. necessities supplied to a person incapable of contracting (s.68), reimbursement (s.69), benefit of non-gratuitous act (s.70), finder of goods (s.71) and money paid by mistake or coercion (s.72). Contract Act 1872 unchanged. [\[Odisha Judiciary Prelims 2019\]](#)

Q7. Two friends A and B were sleeping in a room which was bolted from inside. In the morning, A is found murdered. Under which provision of the Evidence Act, prosecution can claim shifting of burden on B to prove the manner in which the murder took place:

- A. Section 114 of the Evidence Act.
- B. Section 103 of the Evidence Act.
- C. Section 106 of the Evidence Act.
- D. Section 101 of the Evidence Act

Ans: C. When a fact is especially within the knowledge of a person, the burden of proving it lies on him. Where two persons are alone in a locked room and one is found murdered, the special-knowledge rule shifts the burden to the survivor to explain the circumstances (*State of W.B. v. Mir Mohd. Omar*). Old: s.106 Indian Evidence Act, 1872 -> New: s.109 Bharatiya Sakshya Adhiniyam, 2023 (verified against BSA). [\[Rajasthan Judiciary Prelims 2017\]](#)

Q8. Which one of the following Articles about Fundamental Rights is directly related to the exploitation of Children ?

- A. Article 18
- B. Article 19
- C. Article 22
- D. Article 24

Ans: D. Article 24 of the Constitution prohibits the employment of children below 14 years in any factory, mine or other hazardous employment, and is the fundamental right directly aimed at the exploitation of children. (Article 23 forbids traffic in human beings and forced labour.) Constitution unchanged. [\[Odisha Judiciary Prelims 2019\]](#)

Q9. Section 36 of the Specific Relief Act, 1963 classifies injunction into _____ categories.

- A. Two
- B. Three
- C. Four
- D. Five

Ans: A. Section 36 provides that preventive relief is granted by injunction, temporary or perpetual — i.e. two categories. Temporary injunctions (continuing for a specified time, governed by the CPC) and perpetual injunctions (granted by decree at the hearing) are then elaborated in Section 37. SRA 1963 unchanged. [\[Odisha Judiciary Prelims 2019\]](#)

Q10. Which of the following is not a negotiable instrument:

- A. Promissory note
- B. Fixed Deposit Receipt
- C. Bill of Exchange.
- D. A cheque

Ans: B. Section 13 of the Negotiable Instruments Act, 1881 recognises three negotiable instruments — the promissory note, the bill of exchange and the cheque. A Fixed Deposit Receipt is merely an acknowledgement of deposit and is not transferable by negotiation, hence not a negotiable instrument. NI Act 1881 unchanged. [\[Rajasthan Judiciary Prelims 2017\]](#)

Mains Q&A — real state mains questions, with model answers

Mains Q1. — UP Judicial Service (Civil Judge) Mains, 2018 · Constitution — Article 12: meaning of 'State' and enforcement of Fundamental Rights

Against whom Fundamental Rights are available? In this context, refer to the meaning of the term 'State' in Part III of the Constitution.

Fundamental rights in Part III are in the main rights of the individual against the State, a fundamental right being essentially a limitation upon the power of the State, as the Court reminded us in *M. Nagaraj v. Union of India*. The question of against whom these rights may be enforced therefore turns on how widely the Constitution defines the entity bound by them, and that is the office of Article 12, which supplies an inclusive definition of 'the State' for the whole of Part III (and, by extension, Part IV). The Article declares that 'the State' includes the Government and Parliament of India, the Government and Legislature of each State, and all local or other authorities within the territory of India or under the control of the Government of India. Because it uses the word 'includes', the definition is illustrative and not exhaustive, and the courts have read it to reach every organ through which governmental power is exercised.

The real difficulty has always lain in the residuary phrase 'other authorities'. An early attempt to confine it by the rule of ejusdem generis was rejected in *Rajasthan State Electricity Board v. Mohan Lal*, where a statutory body clothed with power to issue binding regulations was held to answer the description, there being no common genus among the named bodies. The doctrine matured in *Ramana Dayaram Shetty v. International Airport Authority and Ajay Hasia v. Khalid Mujib Sehravardi*, which held that an instrumentality or agency of the State is itself 'State' and laid down indicia such as the holding of share capital, deep financial assistance, conferment of monopoly status, and above all a deep and pervasive State control.

That the Ajay Hasia factors are guides and not a mechanical checklist was settled by the seven-Judge Bench in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, which asked whether the body is financially, functionally and administratively dominated by the Government, such control being particular and pervasive rather than merely regulatory. On that touchstone the Court in *Zee Telefilms Ltd. v. Union of India* held that the Board of Control for Cricket in India, lacking such control, was not 'State'.

A further limb concerns the judiciary. In its judicial capacity a court is not 'State', so a judicial order cannot itself be impugned as violating a fundamental right, as held in *Naresh Shridhar Mirajkar v. State of Maharashtra* and reaffirmed in *Rupa Ashok Hurra v. Ashok Hurra*; yet when a court acts on the administrative side it is bound like any other authority (*Riju Prasad Sarma v. State of Assam*). The settled position, then, is that fundamental rights run against the State and its instrumentalities as defined in Article 12, and even where a body falls outside that definition a writ under Article 226 may still lie against it if it owes a public duty.

Mains Q2. — Rajasthan Judicial Service Mains, 2017 · Criminal Law — Cheating (s.420 IPC / s.318 BNS) and the plea of double jeopardy

A gives a cheque of Rs. 10 lacs to B on 01.01.2014, for the discharge of his debt, knowingly that sufficient fund is not in his bank account. Cheque returned by bank unpaid and A is prosecuted by B for offence u/s 138 Negotiable Instruments Act. But, after trial, A is acquitted by court on 01.02.2018. Afterwards, on 05.02.2018, 'B' files another complaint before magistrate against 'A', u/s 420 IPC (cheating), for the same cheque. Whether, plea of double jeopardy, as provided in section 300 Cr.P.C. can be taken by A? Discuss elaborately with reasons and precedent.

The plea must fail. The protection against double jeopardy, whether traced to Article 20(2) of the Constitution or to its statutory expression in Section 300 of the Code of Criminal Procedure, 1973 (now Section 337 of the Bharatiya Nagarik Suraksha Sanhita, 2023), is attracted only where a person is sought to be tried a second time for the same offence. The settled test of sameness is the identity of the ingredients of the two offences, not the identity of the facts or of the transaction out of which they arise. Section 300(1) does bar a fresh trial on the same facts for any offence for which a different charge might have been framed under Section 221(1), but that bar too works by reference to the constituent elements of the competing offences.

Applying that test, the offence under Section 138 of the Negotiable Instruments Act, 1881 and the offence of cheating under Section 420 of the Indian Penal Code (Section 318(4) of the Bharatiya Nyaya Sanhita, 2023) are not the same offence. Section 138 is a statutory offence complete on the dishonour of a cheque drawn for the discharge of a debt, coupled with statutory notice and failure to pay within the prescribed period; the drawer's fraudulent or dishonest intention is not an ingredient, and the offence stands presumed once the cheque bounces. Cheating, by contrast, is defined in Section 415 IPC (Section 318(1) BNS) and turns on deception and a fraudulent or dishonest inducement existing at the very inception of the transaction, by which the victim is made to part with property. Mens rea, which is irrelevant under Section 138, lies at the very heart of Section 420.

Because the two provisions guard different interests and demand proof of different elements, an acquittal under Section 138 cannot operate as *autrefois acquit* against a prosecution under Section 420 for the same cheque. This is precisely what the Supreme Court held in *Sangeetaben Mahendrabhai Patel v. State of Gujarat* (2012), observing that though the facts may overlap, the ingredients of the two offences are entirely different and the subsequent prosecution is not barred. A's acquittal in the cheque-dishonour case therefore gives him no defence of double jeopardy, and B's complaint under Section 420 IPC is maintainable, provided of course that B can establish the dishonest inducement which that section, unlike Section 138, requires.

Mains Q3. — Odisha Judicial Service Mains, 2017 · Civil Procedure — Amendment of Pleadings (Order VI Rule 17 CPC)

Briefly analyze the circumstances under which the amendment of pleadings is permitted and refused in the light of the provisions envisaged under the Code of Civil Procedure, 1908. [25 marks]

Amendment of pleadings under Order VI Rule 17 sits where two values meet: confining a party to the case it has pleaded, and the larger purpose of deciding the real controversy on its merits rather than losing it to a technical slip. The rule empowers the court, at any stage of the proceedings, to allow either party to alter or amend its pleadings on such terms as may be just, directing that all amendments necessary "for the purpose of determining the real questions in controversy" be made. Its spirit was caught by the Privy Council in *Ma Shwe Mya v Mounng Mo Hnaung* (1921): rules of court are subordinate to the administration of justice, so powers of amendment must be liberally exercised, yet none exists to substitute one distinct cause of action for another or to change the subject-matter of the suit.

From this flows the settled principle that amendment is the rule and refusal the exception. Because the object is to avoid multiplicity of litigation, courts lean towards allowing it wherever the opposite side can be compensated in costs. Bowen LJ's aphorism in *Cropper v Smith* (1884), that costs are the one panacea which heals every sore in litigation, remains the touchstone, and mere delay or negligence in the original omission is no bar.

The refusals cluster into a few situations. Leave is declined where the amendment would introduce a totally new, different and inconsistent case or change the fundamental character of the suit; where the application is not bona fide; where a party seeks to withdraw a clear admission, though it may still explain or qualify one (*Usha Balashaheb Swami v Kiran Appaso Swami*, 2007); and where the amendment would defeat an accrued right such as limitation, though even there the bar is not absolute, for *Pirgonda Hongonda v Kalgonda Shidgonda* (1957), following *Charan Das v Amir Khan*, treats limitation as a factor in discretion rather than a fetter on power.

The decisive modern gloss is the proviso inserted by the 2002 Amendment, barring amendment after the trial has commenced unless the court finds that in spite of due diligence the party could not have raised the matter earlier. In *Salem Advocate Bar Association v Union of India* (2005) the Court explained that this curbs frivolous, delay-driven applications, while *Baldev Singh v Manohar Singh* (2007) and *Vidyabai v Padmalatha* (2009) clarified that trial "commences" when evidence begins, on the filing of the affidavit in lieu of examination-in-chief. The

settled position is thus one of structured liberality: a bona fide amendment needed to decide the real dispute is granted almost as of course before trial, and thereafter only on a demonstrated want of due diligence, always subject to costs and to the twin limits that it neither changes the nature of the suit nor inflicts an injustice beyond compensation.

Mains Q4. — Karnataka Judicial Service (Civil Judge) Mains, 2017 · Evidence — presumptions: 'may presume', 'shall presume' and 'conclusive proof' (s.4)

Distinguish between 'may presume', 'shall presume' and 'conclusive proof'.

The Indian Evidence Act, 1872 operates largely through presumptions, and Section 4 supplies the three expressions that mark the intensity with which a court is directed to assume a fact without formal proof. 'May presume', 'shall presume' and 'conclusive proof' form an ascending scale: the first leaves the court a discretion, the second compels a presumption that still remains open to rebuttal, and the third compels a presumption that the law forbids any party to displace. These definitions are carried forward, substantially unchanged, into Section 2 of the Bharatiya Sakshya Adhiniyam, 2023.

Where the Act says the court 'may presume' a fact, it raises a presumption of fact and confers a pure discretion: the court may either regard the fact as proved unless and until it is disproved, or it may call for proof of it. The natural home of this expression is Section 114, whose illustrations let the court presume, for instance, that a man in possession of stolen goods soon after a theft is either the thief or a receiver unless he accounts for his possession. Nothing obliges the court to draw the inference, and it is always rebuttable.

'Shall presume' raises a presumption of law. The court has no choice in drawing it; it is bound to regard the fact as proved unless and until it is disproved by the party against whom it operates. Examples include the presumption of genuineness of certified copies of official documents under Section 79, the presumption of absence of consent in certain rape prosecutions under Section 114A, and the presumption of dowry death under Section 113B. The compulsion lies only in raising the presumption; the opposite party keeps the liberty to lead evidence and rebut it.

'Conclusive proof' is the strongest device. When one fact is declared conclusive proof of another, the court shall regard the latter as proved and, decisively, shall not allow evidence to be given to disprove it. It is, as the Supreme Court observed in *Somawanti v State of Punjab*, an artificial probative effect fastened on certain facts. Section 112, making birth during a valid marriage conclusive proof of legitimacy, illustrates this, yielding only to the narrow statutory exception of proof of non-access (*Goutam Kundu v State of West Bengal*).

The settled position is thus one of graduated compulsion: discretion under 'may presume', an obligation to presume that is still open to rebuttal under 'shall presume', and an irrebuttable presumption that shuts out contrary evidence under 'conclusive proof'.

Prelims answer key: 1-C 2-D 3-D 4-B 5-A 6-C 7-C 8-D 9-A 10-B

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