

LAW CAPSULE

For Law Competitive Exams

THE SPECIFIC RELIEF ACT, 1963 PREVENTIVE RELIEF OR INJUNCTIONS



Raj Singh Niranjani*

"...discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal."

Specific Relief Act

Section 36 of the Specific Relief Act, 1963 provides for Preventive Relief to be granted at the discretion of the Court by injunction, temporary or perpetual.

Injunction

- Temporary [Section 37]
- Perpetual [Section 38]

Discretion is Judicial discretion based on Principle of Justice, Equity and Good Conscience.

Temporary Injunction

- Such as to continue until a specified time
- Until further order of the Court
- May be granted at any stage of suit
- Regulated by Civil Procedure Code

Perpetual Injunction

- Granted by the decree
- Based on the merits of the suit
- Defendant perpetually enjoined from the assertion of right or commission of an act
- Contrary to the right of plaintiff

When is Perpetual Injunction granted? (Section 38)

- To prevent breach of an obligation
- Whether expressly or by implication existing in his favour

Court may grant perpetual injunction in following cases:-

- a. Where the defendant is trustee of property for the plaintiff where there exists no standard for ascertaining the actual damage caused or likely to be caused by the invasion
- b. Where the invasion is such that compensation in money would not afford adequate relief
- c. Where the injunction is necessary to prevent multiplicity of judicial proceedings

It may be mentioned that No injunction against exercise of legal right and a Permanent injunction binds successors in interest.

Injunction when refused [Section 41]

1. To restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent multiplicity of proceedings
2. To restrain any person from instituting or prosecuting and proceeding in a Court not subordinate to that from which the injunction is sought
3. To restrain any person from applying to any legislative body
4. To restrain any person from instituting or prosecuting any proceeding in a criminal matter
5. To prevent the breach of a contract the performance of which would not be specifically enforced
6. To prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance
7. To prevent a continuing breach in which the plaintiff acquiesced
8. When equally efficacious relief can be obtained by any other usual mode of proceeding except in case of breach of trust
9. When the conduct of the plaintiff or his agent has been such as to disentitle him to the assistance of the Court

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10. When the plaintiff has no personal interest in the matter

Types of Injunction

- Perpetual Injunction [Section 38]
- Mandatory Injunction [Section 39]

Perpetual Injunction is an equitable relief and can be granted in appropriate cases. However, No injunction against the real owner.

Mandatory Injunction – Compel permanence of certain act.

Landmark Cases

1. *Ex-parte* mandatory injunction – *Assam State Electricity Board v. N.W. Cachar Tea Co. Ltd* – Mandatory Injunction can be granted even without notice to prevent grave injustice
2. No mandatory injunction for perpetuating wrongful state of things – *Assam State Electricity Board v. N.W. Cachar Tea Co. Ltd.*

Damages in lieu of or in addition to Injunction (Section 40)

- (i) May claim damages either in addition to or in substitution for such injunction
- (ii) No damages unless plaintiff claims such relief
- (iii) Amendment of plaint allowed
- (iv) Dismissal of suit under Section 38/39 will bar his right to sue

Stay of Proceeding in Criminal Matter

• *Beambar v. Natha* – The basic rule is that when the civil and criminal proceedings are based on one and the same document, let the civil case be decided first, criminal proceeding be stayed in the meanwhile
Section 42 of the Specific Relief Act provides for Injunction to perform negative agreement [Exception to Section 41(e)]

- Contract comprises an affirmative agreement to do a certain act
- Coupled with a negative agreement not to do a certain act
- Court can grant injunction to perform negative agreement
- Provided that the plaintiff has not failed to perform the contract so far as it is binding on him

• Sh. Raj Singh Niranjani is an author & Law Officer. He can be reached at raj.singh.niranjani@gmail.com

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LAW OF BAIL



Raj Singh Niranjani

Introduction

Purpose of arresting a person is to secure the presence of the accused at the time of enquiry, trial or other proceedings. However, consequences of pre-trial confinement are grave, therefore, the provision of Bail is provided. Objective is to release on bail maximum number of accused persons without seriously endangering the objective of arrest and trial since there is presumption of innocence of an accused till he is found guilty.

It is improper to release on bail a person who-

- Absconds or jumps bail
- Is likely to destroy evidence
- Tempers with prosecution witness or is likely to commit more offences

Circumstances in which release on bail is mandatory

1. Arrestee not accused of non-bailable offence
 - Ready to execute / furnish bond
 - Bail- not excessive
 - Detention illegal (contravention of Section 436) (Officer will be guilty of wrongful confinement under section 342 of IPC)
2. Investigation not complete within time prescribed
 - Maximum detention
 - 90 days – when punishment from the crime is more than 10 years
 - 60 days – all other cases
 - Object – investigation must be completed expeditiously and within reasonable time
3. No reasonable ground exists for believing the accused guilty of non-bailable offence
4. Trial before Magistrate not concluded within 60 days
5. No reasonable ground exists for believing the accused guilty after conclusion of trial but before judgment

Discretion in granting bail in cases of non-bailable offences

- "May" clearly indicates discretion
- Allowance of bail is the rule and refusal of it is an exception
- Circumstances for granting bail
 - Severity of punishment
 - Evidence in support
 - Danger of witness being tempered
 - Likelihood of accused fleeing from justice
 - Access to his counsel
 - Health, age and sex of the accused
- Accused required for identification parade not a ground for refusing bail
- No bail in case of offence punishable with death or imprisonment for life
 - Exception
 - Person under 16 years
 - Woman
 - Sick or infirm person
- Conditions for bail
 - Comply with conditions of bail bond (Chapter 33)
 - Ensuring the accused shall not commit similar offence
 - In the interest of justice

- When Conditions to be imposed
 - Imprisonment more than seven years
 - Chapter 16 of IPC (Offences affecting human body)
 - Chapter 17 of IPC (Offences against property)
 - Chapter 6 of IPC (Offences against State)
 - Abetment, Conspiracy and attempt of abovementioned offences

Power of High Court and the Court of Sessions

The Court may-

- Impose conditions
- Conditions may be set aside or modified

Before granting bail, in cases of offences triable exclusively by Sessions Court the Court must give notice to the Public Prosecutor. The powers of High Court in granting bail is very wide.

Anticipatory Bail (Section 438 Cr.P.C.)

Section 438 provides for discretion to release a person on bail issued even before the person is arrested.

The ingredients of the section are:

- Only High Court and Sessions Court
- Commission of non-bailable offence
- Apprehension of arrest
- Event of arrest – release on bail
- Conditions and directions
 - Available for interrogation by the police
 - No inducement, threat or promise to any person acquainted with the facts
 - Person shall not leave India
 - Fulfil conditions for bond, if any
 - Not commit similar offence
 - In the interest of justice
- Shall be released on bail

vii. Magistrate may issue bailable warrant in conformity with the direction of the Court

It may be mentioned that Section 438 applies to both bailable and non-bailable offences and it is not necessary that FIR or police complaint has been registered before granting Anticipatory Bail. This is an extraordinary power – exercised sparingly and in exceptional cases. However, the power not unguided or uncanalised – all limitations of Section 437 to apply.

In case incriminating material is found (under section 27 Evidence Act) – anticipatory bail must not be granted. Anticipatory Bail is also not granted in case of economic offence and dowry death cases. It may further be pointed out that Prosecution must be given notice – opportunity to oppose application and no order for granting anticipatory bail after person is arrested.

Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act provides for exclusion of provision for granting anticipatory bail. The Courts have consistently held that the said section is not violative of Article 21 of the Constitution.

Cancellation of Bail

- Obstructs the smooth progress of a fair trial
- Jumps bail
- Absconds
- Runs away to foreign country
- Conditions of the bail regarding time/ place of attendance
- Discretionary
- Cancellation necessarily involves review of decision already made (*Public Prosecutor v. George William alias Victor*)

Cases where Bail is cancelled

- Commits the same offence again
- Hampers investigation
- Tempers evidence
- Runs away to foreign country
- Acts of violence against police or prosecution witness

* Sh. Raj Singh Niranjani is an author & Law Officer. He can be reached at raj.singh.niranjani@gmail.com

LAW CAPSULE



For Law Competitive Exams OFFENCES RELATING TO MARRIAGE

Raj Singh Niranjani*

Introduction

Section 493 to Section 498A of the Indian Penal Code, 1860 (hereinafter referred to as IPC) defines and provides for Offences relating to Marriage. Section 494 states that Marrying again during lifetime of husband or wife is Bigamy [Read with section 50 of the Evidence Act and Section 198(1)(c) of CrPC].

However, the IPC provides for Exceptions to Section 494 of IPC, which are as follows:-

- (a) First marriage has been declared void by a court of competent jurisdiction;
- (b) Former husband/wife has been continuously absent for a period of seven years and not heard of as being alive provided that these facts are disclosed to the person with whom second marriage is contracted.

(For better understanding of the above provision please refer to Section 17 of the Hindu Marriage Act and Section 108 of the Evidence Act along with the judgment of Supreme Court in the Landmark case of *Sarla Mudgal v. Union of India*).

Adultery

The husband alone has the right to prosecute the man who had an adulterous relationship with the wife [Read with Section 198(2) CrPC and Section 50 of the Evidence Act].

Essential ingredients of Adultery are stated in Section 497. They are as follows: -

1. Sexual intercourse
2. Woman must be married
3. Knowledge
4. Consent or connivance of Husband
5. Should not constitute rape

Note: This section provides for Exception of woman from prosecution.

Cruelty by Husband or Relatives of Husband

Section 498A of IPC provides for punishment for husband or relatives of husband of a woman subjecting her to cruelty. The said section is strengthened by following provisions of CrPC and Evidence Act :-

- Section 174 CrPC- inquest proceedings **compulsory**
- Section 113B of the Evidence Act – Presumption as to dowry death
- Section 198A CrPC – Prosecution of offence

It may be mentioned that the offence of Cruelty by Husband or relatives of the Husband is not compoundable offence.

* Sh. Raj Singh Niranjani is an author & Law Officer. He can be reached at raj.singh.niranjani@gmail.com

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PROPERTY OF FEMALE HINDU AND RULES OF SUCCESSION IN HER CASE

Raj Singh Niranjani

According to the Indian Law, property of a female Hindu to be her absolute property.

Ingredients of Hindu Female Property are:

- The property must be acquired by a female Hindu;
- Before or after 1956;
- She must be full owner of the property and not limited owner;
- The property may be movable or immovable.

Property is defined as Property-

- Received by way of inheritance;
- Received by way of partition;
- Received by way of arrears of maintenance;
- Received as gift from any person (before or after marriage);
- Acquired by own skill and exertion;
- Acquired by purchase;
- Received by way of prescription;
- Acquired in any other manner;
- Stridhan.

Exceptions

In the following cases the Hindu female shall be a limited owner (if restricted estate given):-

- Gift;
- Will;
- Other instruments;
- Decree, Order or Award.

GENERAL RULES OF SUCCESSION OF PROPERTY OF A FEMALE HINDU

Succession may be-

- i. Intestate, or
- ii. Testamentary.

Intestate Succession

- Intestate succession, *i.e.* succession without Will;
- Property devolves according to rules in Section 16 of the Hindu Succession Act.

Groups of Heirs

- (a) • Sons and daughters;
 - Children of any pre-deceased sons or daughters;
 - Husband.
- (b) Heirs of the husband (as determined by sections 8 to 13 of the Succession Act);
- (c) Mother and father of the deceased;
- (d) Heirs of the father (as determined by sections 8 to 13 of the Succession Act);
- (e) Heirs of the mother (as determined by sections 15 and 16 of the Succession Act).

Kinds of Property of a Deceased Hindu Female

1. Inherited from her father or mother
2. Inherited from her husband or father-in-law
3. Rest of the property

Conditions

- i. Absence of any son or daughter of deceased

ii. Absence of children of any pre-deceased son or daughter

Conditions +1 = Upon the heirs of father.

Conditions +2 = Upon the heirs of husband.

Section 16 of the Hindu Succession Act provides for order of Succession and manner of distribution among heirs of a female Hindu.

Rules of Order of Succession

Rule 1- First entry (from the five categories in Section 15) shall be preferred to those in any other succeeding entry. And those included in the same entry shall take simultaneously.

Rule 2- Share of children of pre-deceased sons and daughters shall be divided per capita.

Rule 3- In case of Group (b), (d), (e) (as stated above), same rules would apply as if such person had died immediately after the intestate's death (female Hindu).

Stridhana

Stridhana means women's property.

Property of Women

i. Stridhana – Absolute owner.

ii. Women's estate – Limited owner.

Test of Stridhana

- Status of the woman at the time of acquisition of the property (Married/Unmarried/Widow);
- Source from which the property was acquired;
- School of law to which the woman belonged.

Definition of Stridhana

i. Yajnavalkya School (the definition is narrow).

ii. Vijananeswar School (the definition is wide).

Rights of Woman over Stridhana

- Absolute and exclusive right of possession and enjoyment of it;
- Absolute power of disposal;
- Devolves on her own heirs.

* Sh. Raj Singh Niranjana is an author & Law Officer. He can be reached at raj.singh.niranjana@gmail.com

