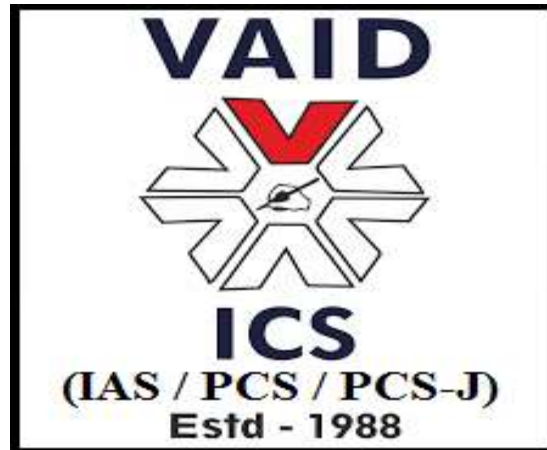


**VAID ICS LAW**

# **VAID ICS LAW**



**(MONTHLY LEGAL CURRENT)**

**(Dec/Jan 2026)**

**UPPCS-J/APO/OTHER JUDICIAL EXAMS**

## Article: Should the age of consent be lowered?

**Why in News ?** On January 10, the Supreme Court (SC), in its judgment in the *State of Uttar Pradesh versus Anurudh & Anr.*, acknowledged the growing misuse of the Protection of Children from **Sexual Offences Act (POCSO), 2012** in consensual, romantic adolescent relationships, where one party is a minor.

### The Legal Framework:

In India, the **POCSO Act (2012)** and **Bharatiya Nyaya Sanhita (2023)** fix the age of consent at **18 years**.

- **Status:** Any sexual act with a person under 18 is "statutory rape," regardless of consent.
- **History:** The age has evolved from **10 years (1860)** to **12, 14, 16**, and finally **18** in 2012.
- **Mandatory Reporting:** **Section 19 of POCSO** requires anyone aware of such an act to report it to the police, leaving no room for "private" consensual adolescent relationships.

### Arguments in Favour (of Lowering the Age):

Advocates for lowering the age to 16 argue that the current law ignores the reality of adolescent sexuality.

- **Autonomy:** 16-18-year-olds are often capable of mature consent; the law should target abuse, not romance.
- **Data on Misuse:** Studies (like those by Enfold) show nearly **25% of POCSO cases** involve consensual romantic relationships. Often, parents "weaponize" the law against their daughters' partners.
- **Global Standards:** Many Western nations use a 16-year threshold or "Romeo-Juliet" clauses (exemptions for peers close in age).

## The Challenge:

Lowering the age presents significant risks to child safety.

- **Deterrence:** A "**bright-line**" rule at 18 prevents predators from using "consent" as a legal loophole for trafficking or exploitation.
- **Position of Trust:** Over 50% of child abuse is committed by known individuals (teachers, family). In these cases, "consent" is often coerced or manipulated.
- **Institutional Resistance:** Parliament and the Law Commission (2023) have consistently rejected lowering the age, fearing it would undermine efforts against child marriage and prostitution.

## Legal Opinions:

Courts are currently divided between the "letter of the law" and "human dignity."

- **Empathetic View:** The Delhi and Bombay High Courts have noted that adolescent love should be free from exploitation, but also free from unnecessary criminalization. **Justice Nagarathna (SC)** recently highlighted the "trauma" girls face when their partners are jailed due to parental disapproval.
- **Strict View:** The Supreme Court reaffirmed in 2024 that "consent is **legally immaterial**" under 18, though it occasionally uses extraordinary powers (Article 142) to waive sentences in specific, non-exploitative cases.

## The Road Ahead:

The path forward requires a balance between protection and reality.

- **Judicial Clarity:** The SC needs to bridge the gap between strict statutes and empathetic High Court rulings to ensure consistency.
- **Holistic Approach:** Beyond law, India needs comprehensive sex education, better reproductive health services, and gender-sensitive policing.

## Conclusion:

Rather than a blanket reduction of the age—which might empower predators—a **nuanced recalibration** is suggested. This includes:

1. "**Close-in-age**" exemptions for 16-18-year-olds with a small age gap (3-4 years).
2. **Mandatory court reviews** to distinguish genuine romance from abuse.

3. **Strengthening school programs** on healthy relationships and emotional resilience.

## Palermo Protocol

**Palermo Protocol (UN, 2000):** Defines child trafficking as the "recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation."

- **Bhartiya Nyaya Sanhita (BNS) 2023 - Section 143:** Provides a stringent domestic definition. It includes the act of recruiting or transporting persons using **threats, force, fraud, or abuse of power** for exploitation.
- **Scope of "Exploitation":** This term covers:
  - Physical and sexual exploitation.
  - Slavery and servitude.
  - Forced removal of organs.
  - **Beggary** (newly highlighted under BNS).

### Constitutional Safeguards:

- **Article 23:** Explicitly prohibits human trafficking and *begar* (forced labor).
- **Article 24:** Prohibits the employment of children below 14 years in factories, mines, or hazardous industries.
- **Article 39 (e) & (f):** Directs the State to ensure children are not abused and are protected against moral and material abandonment.

### Alarming Statistics:

- **Rescue Operations:** Between April 2024 and March 2025, over **53,000 children** were rescued from labor, trafficking, and kidnapping.
- **Gender Vulnerability:** Recent reports (2022 data) indicate that nearly **75% of missing children are girls**, often targeted for domestic servitude and sexual exploitation.
- **The Conviction Gap:** Despite high rescue numbers, the conviction rate remained a dismal **4.8%** between 2018 and 2022.

### Major Challenges:

- **Socio-Economic Triggers:** Poverty, unemployment, migration, and the breakdown of family systems create a "supply chain" for traffickers.
- **The Digital Frontier:** Social media and online platforms are increasingly used to recruit victims under the guise of "modelling jobs" or educational opportunities.

- **Invisible Labor:** The rise of **quick-commerce (dark stores)** and unregulated sorting hubs has created hidden pockets for child labor.
- **Organized Complexity:** Trafficking operates through "disjointed verticals" (different people handle recruitment, transport, and exploitation), making it difficult for victims to provide a cohesive narrative in court.

## Steps Taken: Legal & Judicial Framework:

### Key Legislations

- **POCSO Act, 2012:** Gender-neutral law with strict punishments (including death penalty). Over **400 Fast Track Courts** are currently operational.
- **Juvenile Justice (JJ) Act, 2015:** Focuses on the care, protection, and rehabilitation of rescued children.
- **BNS 2023:** Consolidates crimes against women and children into a priority chapter (Chapter V). Section 143 prescribes **life imprisonment** for trafficking children or multiple persons.

### Pivotal Judicial Guidelines (K.P. Kiran Kumar vs. State, 2025):

The Supreme Court established a **victim-centric standard** for evidence:

- **"Injured Witness" Status:** Trafficked children are to be treated as injured witnesses, not "accomplices."
- **Sensitivity & Realism:** Courts must not reject a victim's testimony due to minor inconsistencies, recognizing the trauma and secondary victimization they face.
- **Fixed Timelines:** High Courts have been directed to ensure trafficking trials are completed within **six months**.

### Operational Measures:

- **Anti-Human Trafficking Units (AHTUs):** Established in almost every district to specialize in these cases.
- **Operation AAHT (Railways):** A successful RPF initiative that has rescued thousands of children at transit points.
- **Digital Portals:** Integration of **TrackChild** and **Mission Vatsalya** to monitor missing and rescued children in real-time.

**Way Forward & Conclusion:**

- **Improve Conviction Rates:** Move from a "rescue-only" approach to a "conviction-first" approach by training prosecutors on the nuances of organized crime.
- **Center-State Synergy:** Since "Police" is a State subject, the Union must provide financial and intelligence support while States ensure ground-level implementation.
- **Tech-Driven Prevention:** Utilize **AI and data analytics** to map trafficking "hotspots" and monitor suspicious online recruitment trends.
- **Economic Rehabilitation:** Government must guarantee the socio-economic rights of marginalized families to prevent children from being pushed back into the trafficking cycle.

**Conclusion:**

Child trafficking is not just a law-and-order issue but a gross violation of the **Fundamental Right to Life**. While India has built a formidable legal fortress with the BNS and POCSO, the "human factor"—judicial sensitivity and systemic deterrence—will determine if the 53,000 rescued children find permanent freedom or remain statistics in a low-conviction system.

**Article based mains Qn:**

- Despite a robust legal architecture including the POCSO Act and the newly enacted Bhartiya Nyaya Sanhita (BNS), the conviction rate for child trafficking in India remains alarmingly low. Critically analyze the socio-economic and systemic challenges in curbing this menace and suggest a multi-dimensional strategy to ensure a 'conviction-led' deterrence." 200 words

**Uttar Pradesh Subordinate Police Officers (Punishment and Appeal) Rules, 1991:**

**Why in the News?** On January 19, 2026, three police officers from the Kakori police station—SI Usman Khan, SI Lakhman Singh, and Constable Pushpendra Singh—were suspended following a high-drama incident at the Lucknow Bench of the Allahabad High Court.

- **The Incident:** The officers allegedly entered the High Court campus without authorization to arrest an advocate (**Gurfaan Siddiqui**) and his client (**Amina Khatoon**) inside an advocate's chamber.
- **The Context:** The arrest attempt was related to a case under the **UP Prevention of Cow Slaughter Act**.
- **The Reaction:** The move was met with immediate outrage by the Bar Association, who viewed it as a direct violation of the "Temple of Justice" and an intimidation of the legal fraternity.

#### Key Points of the Case:

- **Unlawful Entry:** The police lacked the required "Gate Pass" or specific permission from the High Court's Security Registrar to conduct an arrest within the high-security zone.
- **Criminal Charges:** Unlike a standard departmental inquiry, an **FIR** was registered against the cops under the **Bharatiya Nyaya Sanhita (BNS)**:
  - **Section 329(3):** Criminal trespass.
  - **Section 351(3):** Criminal intimidation.
  - **Section 352:** Provocation with intent to cause breach of peace.
- **Suspension Clause:** They were suspended under **Rule 17(1)(a)** of the *UP Subordinate Police Officers (Punishment and Appeal) Rules, 1991*, which allows for suspension during a pending inquiry for serious misconduct.

#### Legal & Constitutional Provisions:

This incident touches upon several critical legal frameworks regarding the separation of powers and the protection of legal professionals.

##### A. Bharatiya Nyaya Sanhita (BNS) & BNSS:

- **Sanctity of Chambers:** A lawyer's chamber is considered a private extension of the judicial workspace. Unauthorised entry with the intent to "annoy or intimidate" constitutes **Criminal Trespass**.
- **Arrest Procedure:** Under the **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, police must follow strict protocols for arrests, especially when the person is under the protection of legal counsel.

**Constitutional Protections:**

- **Article 21:** Protection of Life and Personal Liberty. The Supreme Court has repeatedly held that "procedure established by law" for arrest must be fair and non-arbitrary.
- **Article 22:** Right to consult and be defended by a legal practitioner of one's choice. Entering a court to arrest a client while they are consulting their lawyer is seen as a **violation of this right**.

**Related Case Law & Precedents:**

The judiciary has historically been very protective of its premises to ensure that litigants and lawyers can attend court without fear of arbitrary detention.

- **D.K. Basu vs. State of West Bengal:** The landmark judgment that laid down the "11 Commandments" of arrest. The Lucknow cops failed to disclose their identity properly and didn't provide memo details during the attempted "campus arrest."
- **Pratibha Pawar vs. State of Maharashtra:** Courts have held that while court premises don't provide "absolute immunity" from arrest for criminals, the police **must** inform the presiding officer or the Registrar before conducting such an operation to maintain the dignity of the court.
- **Supreme Court Bar Association vs. Union of India:** Stressed that the independence of the legal profession is a fundamental pillar of the justice system; police intimidation of lawyers within court grounds is a "contemptuous" act.

**About Uttar Pradesh Subordinate Police Officers (Punishment and Appeal) Rules, 1991:**

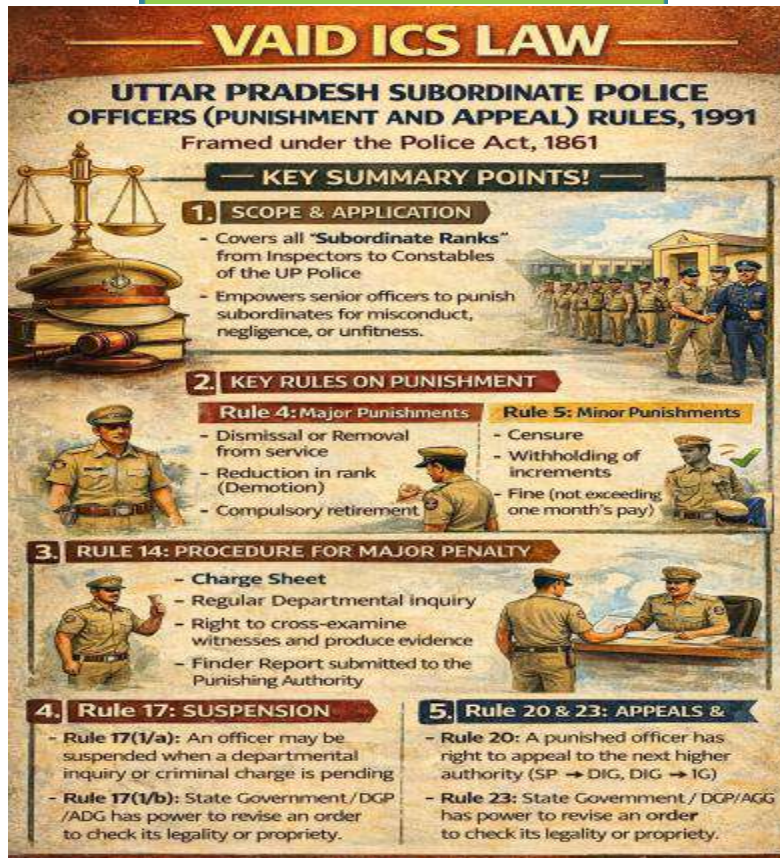
The **Uttar Pradesh Subordinate Police Officers (Punishment and Appeal) Rules, 1991** were framed under the Police Act, 1861. They provide the legal framework for maintaining discipline and conducting departmental inquiries against non-gazetted police officers (from Constables to Sub-Inspectors) in Uttar Pradesh.

**Scope and Application:**

- **Applicability:** These rules apply to all "Subordinate Ranks" of the UP Police (Inspectors, Sub-Inspectors, Assistant Sub-Inspectors, Head Constables, and Constables).
- **Authority:** The rules empower senior officers (SP, DIG, IG) to punish subordinates for misconduct, negligence, or unfitness.



# VAID ICS LAW



## Key Rules on Punishment:

The rules categorize punishments into two types:

### Rule 4: Major Punishments:

- Dismissal or Removal from service.
- Reduction in rank (Demotion).
- Compulsory retirement.

### Rule 5: Minor Punishments:

- Censure (a formal entry of dissatisfaction in the service record).
- Withholding of increments.
- Fine (not exceeding one month's pay).
- Fatigue duty (for Constables).

**Rule 14: Procedure for Major Penalty:**

This is the most critical procedural section.

- It mandates a **Regular Departmental Inquiry**.
- The officer must be given a **Charge Sheet** with specific allegations.
- The accused has the right to cross-examine witnesses and produce evidence in their defense.
- A "Finding Report" is prepared by the Inquiry Officer and submitted to the Punishing Authority.

**Rule 17: Suspension:**

This rule governs the temporary removal of an officer from active duty.

- **Rule 17(1)(a):** An officer can be suspended when a departmental inquiry or a **criminal charge** is contemplated or pending.
- **Rule 17(1)(b):** Suspension is mandatory if the officer is detained in custody for more than 48 hours.
- **Status:** While under suspension, the officer is not "fired" but is barred from duty and receives a "Subsistence Allowance."

**Rule 20 & 23: Appeals and Revisions:**

- **Rule 20 (Appeal):** An officer punished under these rules has the right to appeal to the next higher authority (e.g., if the SP punishes, the appeal goes to the DIG).
- **Rule 23 (Revision):** The State Government or a high-ranking officer (DGP/ADG) can call for the records of any case to check the legality or propriety of an order, even if no appeal was filed.

**Rule 24: Time Limit:**

- The rules generally stipulate that an appeal must be filed within **90 days** of the punishment order.

**Article based Mains Qn:**

- Discuss the legality of a police officer enter into judicial precinct for the purpose of arrest. Does such an act attract criminal liability under the Bharatiya Nyaya Sanhita (BNS)." 200 words

**Rajasthan Disturbed Areas Bill, 2026:**

**Why in News?** On January 21, 2026, the Rajasthan Cabinet, chaired by Chief Minister Bhajan Lal Sharma, approved the draft of this bill.

- **Legislative Timeline:** The bill is set to be introduced in the upcoming Budget Session of the State Assembly starting January 28, 2026.
- **Core Objective:** The government aims to prevent "**Distress Sales**" in communally sensitive areas. It argues that communal tension and "Demographic Imbalance" often force residents to sell their properties at throwaway prices.

**Key Features of the Act:**

- **Declaration of Disturbed Area:** The State Government or the District Collector can notify any riot-affected or communally sensitive area as a "Disturbed Area" for an initial period of **3 years** (extendable).
- **Mandatory Permission:** No person can transfer (sell, gift, or lease) immovable property (house, shop, or land) in a notified area without the **prior written permission of the District Collector**.
- **Collector's Inquiry:** Before granting permission, the Collector must conduct an inquiry to ensure:
  1. The transfer is happening with **Free Consent**.
  2. The property is being sold at **Fair Market Value**.
  3. The transfer does not adversely affect the **Demographic Structure** or peace of the area.
- **Void Transactions:** Any property transaction conducted without official approval will be considered **null and void** under the law.

- **Tenant Protection:** The bill provides a safety net for tenants in these areas, protecting them from arbitrary or forced eviction by landlords during periods of unrest.

#### **Penal Provisions:**

The bill introduces strict penalties to ensure compliance:

- **Nature of Offence:** Violations are classified as **Cognizable** and **Non-bailable**.
- **Imprisonment:** Offenders may face a jail term ranging from **3 to 5 years**.
- **Fines:** Hefty monetary penalties will be imposed alongside imprisonment.

#### **Legal and Constitutional Context:**

- **Inspiration:** The bill is modeled after the **Gujarat Disturbed Areas Act, 1991**, which has faced various legal challenges but remains operational.
- **Right to Property (Article 300A):** While property is no longer a Fundamental Right (post the 44th Amendment), it remains a **Constitutional Right**. Critics argue this law creates an "unreasonable hurdle" in a citizen's right to dispose of their property.
- **Fundamental Freedoms (Articles 15 & 19):** Human rights activists express concern that the law might lead to "Ghettoization" (segregation of communities) and could violate the right to reside and settle in any part of India (**Article 19(1)(e)**).
- **Government's Defense:** The State invokes "**Reasonable Restrictions**" under Article 19(5), stating that the government has the power to restrict property transfers in the interest of **Public Order** and to prevent communal displacement.

#### **AFSPA (Armed Forces Special Powers Act, 1958):**

This is the most well-known use of the term.

- **Definition:** An area is declared "disturbed" if it is in such a dangerous condition that the use of **armed forces** in aid of civil power is necessary.
- **Criteria:** Section 3 of AFSPA states that an area can be declared disturbed due to differences or disputes between religious, racial, linguistic, or regional groups, castes, or communities.
- **Who declares it?** The Central Government, the Governor of a State, or the Administrator of a Union Territory.

- **Legal Effect:** Once declared, the armed forces gain special powers, such as the authority to arrest without a warrant and use force (even causing death) to maintain public order.

### **The Disturbed Areas (Special Courts) Act, 1976:**

This act is focused on the **judiciary** rather than the military.

- **Definition:** An area where there is (or was) "extensive disturbance of the public peace and tranquillity" due to communal, racial, or linguistic disputes.
- **Legal Effect:** The primary purpose is to set up **Special Courts** for the speedy trial of "scheduled offences" (like rioting or murder) committed during the period of disturbance.

### **Article based Mains Qn:**

"While the right to property under Article 300A is not a fundamental right, it remains a significant constitutional protection against arbitrary state action." In the context of the **Rajasthan Disturbed Areas Bill, 2026**. Examine 200 words

## **Menstrual Health is a Fundamental Right**

**Background:** Dr. Jaya Thakur v. Government of India and Ors. (2026):

The journey of this case began as a **Public Interest Litigation (PIL)** aimed at addressing the systemic barriers faced by adolescent girls in educational institutions.

- **Initial Filing:** The petition sought the provision of free sanitary napkins and proper, separate toilet facilities for all adolescent girls in schools.
- **Judicial Timeline:**
  - **November 28, 2022:** The Supreme Court (Bench of CJI DY Chandrachud and Justice PS Narasimha) issued notices to the Centre and all States/UTs.

- **April 10, 2023:** The Court directed the Central Government to frame a **National Policy on Menstrual Hygiene**. It emphasized low-cost absorbents and safe disposal mechanisms.
- **November 12, 2024:** The Union Government was directed to formulate a concrete action plan for the implementation of the national policy.
- **January 30, 2026:** The final judgment was delivered by the bench of **Justices JB Pardiwala and R Mahadevan**.

### Key Court Observations:

The Court's observations moved beyond administrative requirements to address the **bodily autonomy** and **dignity** of the girl child.

- **Menstrual Health as Article 21:** The Court declared that the **Right to Menstrual Health** is an integral part of the **Right to Life**.
- **Bodily Autonomy:** Lack of safe management undermines a dignified existence and violates a girl's autonomy over her own body.
- **Health Implications:** Justice Pardiwala noted that poor hygiene leads to reproductive tract infections (e.g., bacterial vaginosis) and potential infertility, which constitute a violation of the right to health.
- **Societal Message:** The judgment aimed to communicate to every girl child that her body and its natural biological processes should **not be perceived as a burden**.

### Comprehensive Court Directions:

The Court issued specific, mandatory directions for pan-India implementation in schools (Classes 6-12):

#### Infrastructure and Facilities:

- **Gender-Segregated Toilets:** All schools (Govt/Private, Urban/Rural) must have functional, separate toilets with water connectivity.
- **Privacy & Accessibility:** Toilets must be designed for privacy and be accessible to children with disabilities.
- **Washing Facilities:** Functional washing facilities with constant soap and water supply.
- **Free Absorbents:** Provision of free **oxo-biodegradable sanitary napkins** within toilet premises via vending machines.
- **MHM Corners:** Establishment of "Menstrual Hygiene Management Corners" containing spare innerwear, uniforms, and disposable pads for emergencies.



**Sanitary Waste Disposal:**

- **Environmental Compliance:** Schools must establish hygienic disposal mechanisms as per **Solid Waste Management Rules**.
- **Wastebins:** Each toilet unit must have covered wastebins with a strict cleaning and maintenance schedule.

**The Four Constitutional Questions Examined:****Question 1: Violation of Article 14 (Equality):**

The Court held that the absence of these measures converts a **biological reality into structural exclusion**. Menstruating girls face a double disadvantage—socio-economic (affordability) and gender-based (against non-menstruating counterparts). Substantive equality requires the State to remedy these structural disadvantages.

**Question 2: Part of Article 21 (Life and Dignity):**

The Court answered **Yes**. Inaccessibility forces girls into absenteeism or unsafe practices (using rags, ash, or husk), which violates human dignity. Since privacy is linked to dignity, the State is obligated to provide a private environment for menstrual management.

**Question 3: Right to Participation and Opportunity:**

The lack of clean washrooms and absorbents causes "leakage anxiety" and embarrassment. This strips away the right to participate on equal terms in school, leading to a "domino effect" that limits future participation in professional and public life.

**Question 4: Violation of Article 21A (Right to Education):**

Under the **RTE Act 2009**, education must be "quality-driven." If a biological process becomes a barrier to attending school, the Right to Education is rendered illusory. Non-compliance can now lead to **derecognition** for private schools or State accountability for government institutions.

**V. Understanding Article 21 of the Constitution:**

**Overview:**

- **Definition:** "No person shall be deprived of his life or personal liberty except according to procedure established by law."
- **The "Heart of Fundamental Rights":** It is not merely about physical survival but includes the right to live with **human dignity**.
- **Applicability:** Available to both citizens and foreigners.
- **Protection:** Provided primarily against State action.

**Evolution through Case Laws:**

1. **Kharak Singh v. State of UP (1963):** "Life" means more than "animal existence"; it includes all limbs and faculties by which life is enjoyed.
2. **Francis Coralie Mullin v. Administrator (1981):** Embodies a constitutional value of supreme importance; any act that degrades human dignity is a violation.
3. **Jaya Thakur v. GOI (2026):** Establishes menstrual health and hygiene as a non-negotiable component of a dignified life.

## **Judicial Intelligence vs. Artificial Intelligence: The Case of Gummadi Usha Rani (2025)**

The Andhra Pradesh High Court, through Justice Ravi Nath Tilhari, has delivered a crucial precedent regarding the intersection of technology and the law in **Gummadi Usha Rani v. Sure Mallikarjuna Rao (2025)**.

**Core Legal Ruling:**

The High Court held that the mere inclusion of **non-existent citations** generated by Artificial Intelligence (AI) does not automatically invalidate (*vitiate*) a judicial order, provided:

1. The **legal principles** applied in the order are correct under the law of the land.
2. The **application of the law** to the specific facts of the case is sound.
3. The order is supported by **independent reasoning** and judicial application of mind.



**Background of the Case:**

- **Trial Court Action:** A judicial officer upheld an "Advocate Commissioner's Report" as a valuable piece of evidence.
- **The AI Error:** While drafting the order, the officer used an AI tool for research and included citations that were later found to be fabricated/non-existent because they were not verified manually.
- **The Challenge:** Petitioners moved the High Court to set aside the order, arguing that an order based on "phantom" or non-existent authorities is illegal and lacks judicial character.
- **Trial Court's Reasoning:** Despite the faulty citations, the officer had recorded that a Commissioner's report should only be rejected if there is proof of bias or misconduct; otherwise, it is a matter of evidence for the trial stage.

**Observations of the High Court:**

The High Court dismissed the petition based on the following observations:

**A. Substance over Form:**

The Court ruled that if the "view taken" by the judge is perfectly justified and has the support of actual law, the "mere mentioning" of incorrect rulings is a technical error that does not cause prejudice to the parties.

**B. Rule of Interference:**

Interference by a higher court is warranted only if:

- The principle of law applied is **not** the law of the land.
- The application of the law is fundamentally flawed *because* of the reliance on the AI-generated hallucination.

**C. The Role of Evidence:**

The Court noted that the Commissioner's report is not a final judgment but a piece of evidence. Petitioners retain the right to cross-examine and raise objections during the final hearing.

### Judicial Caution: The Perils of Unregulated AI:

While the Court did not quash the order, it issued a stern **cautionary note** regarding "blind reliance" on AI in judicial writing:

- **Fabrication of Authorities:** AI tools often "hallucinate," producing persuasive-sounding legal arguments that cite cases that simply do not exist.
- **Lack of Comprehension:** AI may fail to understand the nuance of a legal query or overlook binding material authorities from superior courts.
- **Actual Intelligence (RI) > Artificial Intelligence (AI):** Justice Tilhari emphasized that the **application of actual intelligence** by a human judge must remain the primary driver of judicial decision-making.
- **Verification:** Legal professionals and judges must rigorously scrutinize AI outputs. AI should be a tool for efficiency, not a substitute for the judicial mind.

### Concerns with AI in Legal Practice:

- **Privacy:** Unregulated AI usage in courts raises significant data privacy and confidentiality concerns.
- **Public Trust:** Reliance on fabricated data can damage the public's confidence in the accuracy and integrity of the judiciary.
- **Incompleteness:** AI models are trained on specific datasets and may lack access to the latest amendments or the full body of relevant case law.

### Conceptual Definition: What is an "Order"?

To understand the context of this case, one must distinguish between the various expressions of a Civil Court under the **Code of Civil Procedure (CPC)**.

#### Definition

Under **Section 2(14)** of the CPC, an "**Order**" means the formal expression of any decision of a Civil Court which is **not a decree**.

#### Comparison: Decree vs. Order

Feature	Decree	Order
Origin	Arises from the presentation of	May arise from a suit, application, or

Feature	Decree	Order
	a <b>Plaint</b> (Suit).	petition.
Nature	Can be Preliminary, Final, or Partly both.	<b>Cannot</b> be a Preliminary order.
Frequency	Usually one decree per suit.	Multiple orders can be passed in one suit.
Appealability	Every decree is appealable (unless barred).	Only specific orders (under Sec 104/Order 43) are appealable.
Second Appeal	Permissible on substantial questions of law.	<b>No second appeal</b> lies for appealable orders.

#### Distinction: Judgment vs. Decree/Order

- **Judgment:** The statement given by the Judge on the grounds of a decree or order. It contains the **reasons** for the decision.
- **Decree/Order:** These are the **formal expressions** of the adjudication that follow the pronouncement of the judgment.

### Sections 215 /379 BNSS

In the case of **Shailendra Sharma and Others v. M/s Indus Residency Pvt. Ltd and Others (2026)**, the Madhya Pradesh High Court, presided over by **Justice Vivek Jain**, delivered a significant ruling concerning the procedural sanctity of court proceedings. The judgment clarifies the boundaries between judicial oversight and police authority in cases involving offences against public justice, specifically **impersonation of a surety**.

#### I. Background of the Case:

The dispute originated from a recovery suit where the petitioners (Decree Holders) had won a money decree against the respondents (Judgment Debtors).

1. **Interim Conditions:** While a First Appeal was pending in the High Court, the Judgment Debtors deposited **₹35.25 lakhs** with the Executing Court as per interim orders.
2. **The Surety:** The Executing Court permitted the disbursement of this amount to the Decree Holders, provided they furnished a solvent surety. A person named **Jugal Kishore** was presented as the surety.
3. **The Fraud:** It was later discovered that the agricultural land used for the surety had been pledged nine times previously. Subsequently, the real Jugal Kishore appeared in court, stating he had been **impersonated** and never signed the bond.
4. **Application for Prosecution:** The Judgment Debtors filed an application under **Section 379 of the Bharatiya Nagarik Suraksha Sanhita (BNSS)** [formerly Section 340 CrPC] seeking criminal prosecution for the fraud committed upon the court.
5. **Executing Court's Order:** On November 18, 2025, the Executing Court directed the police to enquire into the matter. Critically, it gave the police the **discretion to register an FIR** if they found evidence of fraud.

## II. Observations of the High Court:

The Decree Holders challenged the Executing Court's order, arguing that the court had abdicated its judicial function to the police. Justice Vivek Jain made the following observations:

- **Judicial Mind over Police Discretion:** The Court held that when an offence is committed "in or in relation to" a court proceeding, a police officer **cannot directly register a crime** under Section 215 BNSS.
- **Procedural Requirement:** Under Section 379 BNSS, the Court itself must conduct a preliminary enquiry and record a **prima-facie satisfaction** before a written complaint is made to a Magistrate.
- **Modification of Order:** The High Court modified the lower court's order. While the police can investigate the impersonation at the court's request, they **cannot register an FIR suo-motu**.
- **Mandate:** The investigation report must be submitted back to the Executing Court. The **Executing Court alone** must then apply its judicial mind to decide whether to authorize the registration of an FIR.

### III. Statutory Analysis: Sections 215 and 379 BNSS:

The transition from the Code of Criminal Procedure (CrPC) to the **Bharatiya Nagarik Suraksha Sanhita (BNSS)** retains the protective shield around judicial processes to prevent motivated litigation.

#### 1. Section 215 BNSS (Formerly Section 195 CrPC):

This section acts as a "bar" to taking cognizance. It ensures that for certain offences, only the "aggrieved" authority (the Court or Public Servant) can initiate prosecution.

- **Scope:** Includes offences relating to contempt of lawful authority and offences against public justice (like perjury or producing false evidence/sureties in court).
- **Mechanism:** Cognizance requires a **complaint in writing** from the Court or the concerned public servant.

#### 2. Section 379 BNSS (Formerly Section 340 CrPC):

This section outlines the specific "how-to" for the bar mentioned in Section 215.

- **Inquiry:** The Court must form an opinion that an inquiry is "expedient in the interests of justice."
- **Actionable Steps:**
  1. Conduct a preliminary inquiry.
  2. Record a finding of the offence.
  3. Make a written complaint.
  4. Send the complaint to a **First Class Magistrate**.
- **Hierarchy:** If a lower court refuses to act or fails to act, a **Superior Court** (to which the lower court is subordinate) can exercise these powers.

### IV. Key Legal Distinction:

Feature	General Criminal Offence	Offence in Relation to Court (Sec 215/379)
FIR Registration	Police can register FIR (Cognizable)	Police <b>cannot</b> register FIR directly

<b>Feature</b>	<b>General Criminal Offence</b>	<b>Offence in Relation to Court (Sec 215/379)</b>
<b>Investigation</b>	Police initiate on their own	Inquiry initiated by the <b>Court</b>
<b>Cognizance</b>	On Police Report or private complaint	<b>Only</b> on the written complaint of the Court
<b>Objective</b>	Punish the offender	Protect the sanctity of judicial proceedings

**Significance:** This ruling reinforces that the "**Master of the Inquiry**" in cases of courtroom fraud is the Judge, not the Police. This prevents the police from interfering in judicial administration without specific judicial authorization.

### Section 12(1)(c) of HMA , 1955

**Why in News?** A Division Bench comprising Justice Sujit Narayan Prasad and Justice Gautam Kumar Choudhary **held that the** non-disclosure of a prior live-in relationship **before marriage constitutes** fraud as to a "**material fact**" under Section 12(1)(c) of the Hindu Marriage Act, 1955 (HMA). **Consequently, such a marriage is rendered voidable and can be annulled by a decree of nullity.**

#### Background of the Case:

- **The Marriage:** The parties were married on December 2, 2015, according to Hindu rites.
- **The Discovery:** Upon entering her matrimonial home, the wife was introduced to a woman described as the husband's "girlfriend." She later discovered the husband had been in a long-term live-in relationship with this woman prior to their marriage.
- **The Allegations:** The wife alleged that her consent was obtained by fraud—specifically the concealment of the husband's character. She further claimed she was subjected to physical and mental torture over a dowry demand of ₹15,00,000 and was ousted from her matrimonial home in 2016.

- **Cross-Appeals:** \* The **Wife** sought an enhancement of the permanent alimony awarded by the Family Court.
  - The **Husband** challenged the annulment, arguing that the allegations were false and that the marriage had suffered an "irretrievable breakdown."

### Key Court Observations:

#### *A. Distinct Definition of 'Fraud' in Matrimonial Law:*

The Court clarified that "fraud" under the Hindu Marriage Act differs fundamentally from "fraud" under the Indian Contract Act, 1872.

- **Sacrament vs. Contract:** Since Hindu marriage is a **sacrament** and not a mere civil contract, the definition of fraud under Section 17 of the Contract Act cannot be applied "lock, stock, and barrel."
- **Material Fact:** The Court observed that the status of a prior live-in relationship is a material fact. Suppression of this fact implies that consent was obtained by practicing fraud.

#### *Quantification of Alimony:*

- The Court took note of the husband's financial standing (Manager at Hindustan Zinc Ltd, earning ~₹1,56,000/month) and the wife's educational background (LL.B. degree). To ensure a dignified life for the wife, the Court **enhanced the permanent alimony to ₹50,00,000** as a one-time settlement.
- **Understanding Section 12 of the Hindu Marriage Act (Voidable Marriages):**
- Unlike a **void marriage** (which is invalid from the start), a **voidable marriage** is valid until it is annulled by a court decree at the instance of one of the parties.

#### *Statutory Grounds for Annulment:*

1. **Impotency:** Non-consummation of marriage due to the respondent's impotency.
2. **Unsoundness of Mind:** Incapacity to give valid consent due to mental disorder or recurrent attacks of insanity (referencing Section 5(ii)).
3. **Consent by Force or Fraud:** Consent obtained by the petitioner or their guardian through coercion or suppression of material facts (the ground used in the *Priyanka Sahi* case).

4. **Pre-marital Pregnancy:** The respondent was pregnant by someone other than the petitioner at the time of marriage.

**Legal Effect:** Until annulled, the parties retain the status of husband and wife. Children born from such marriages are protected as **legitimate** under **Section 16 of the HMA**.

### **Live-In Relationships in India: The Legal Landscape:**

A live-in relationship is a domestic cohabitation between two unmarried individuals. While it lacks a specific central statute, it has gained legal recognition through judicial activism.

- **Constitutional Protection:** Recognized under **Article 21** (Right to Life and Personal Liberty).
- **Domestic Violence Act, 2005:** Section 2(f) protects women in "relationships in the nature of marriage," granting them rights to maintenance and residence.
- **Judicial Criteria (Indra Sarma Case, 2013):** The Supreme Court established that for a live-in relationship to have legal standing, it must involve:
  - Significant duration of cohabitation.
  - Shared household and pooling of resources.
  - Public socialization as a couple.
- **Rights of Children:** Children born out of such unions are legitimate and have full rights to ancestral and self-acquired property.

### **Conclusion: The Impact of the Judgment:**

The *Priyanka Sahi* ruling reinforces the requirement of **transparency and "uberrima fides"** (**utmost good faith**) in matrimonial alliances. It sets a precedent that significant past domestic arrangements, like live-in relationships, are "material facts" that must be disclosed to ensure valid consent.