

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

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Unintended Engagements in Armed Conflicts: A Growing Concern

Armed conflicts are often fraught with misidentifications and miscalculations, leading to dire consequences for civilians who bear the brunt of these mistakes. In recent months, reports of unintended engagements have become alarmingly frequent, shedding light on the dangers faced by civilians due to the carelessness of parties involved.

On May 5th, Russia made headlines when it admitted to 'accidentally bombing its own territory,' highlighting the grave consequences of military errors. Similarly, in April, Israel acknowledged a strike that killed World Central Kitchen aid workers as a 'grave mistake' resulting from misidentification.

Moreover, in December, the Israel Defense Forces (IDF) mistakenly killed three Israeli hostages, uncovering a series of errors that led to their tragic deaths. These incidents demand the urgent need for accountability and adherence to international humanitarian law, especially concerning the use of autonomous weapons systems.

The interpretation of international humanitarian law (IHL) is crucial in assessing the implications of unintended engagements in armed conflicts. While these incidents are often labelled as 'accidents,'

it's essential to recognize that unintended consequences do not absolve parties from their legal obligations under IHL.

“Four key obligations are particularly relevant: the obligation to take precautions in attack, the obligation to mitigate the effects of attacks, the prohibition of indiscriminate attacks, and the prohibition of targeting civilians.”

Explosion at Al-Ahli Hospital

One version of events implicates the Palestinian Islamic Jihad (PIJ) in the explosion at Al-Ahli Hospital, attributing it to a failed rocket launch. Under this scenario, PIJ's failure to take feasible precautions against the effects of its attacks raises concerns about its compliance with IHL. The obligation to protect civilians from the dangers of military operations extends to actions by parties under whose control civilians are located, emphasising the need for responsible conduct.

Furthermore, the use of inherently indiscriminate weapons or those incapable of compliance with the principle of distinction may constitute violations of IHL, warranting thorough investigation and accountability measures.

Alternatively, the explosion at Al-Ahli Hospital could be attributed to a mistaken IDF airstrike, highlighting the importance of verifying targets and avoiding attacks on civilian objects. The IDF's obligation to take precautions in attack requires thorough assessment and verification of targets to minimise civilian harm. Failure to adhere to this obligation may result in violations of IHL, particularly concerning the prohibition of attacks on civilian objects.

The legality of the IDF's actions hinges on factors such as the availability of accurate intelligence and the reasonable foreseeability of civilian harm, emphasising the need for meticulous decision-making and adherence to legal standards.

Moving Beyond 'Accidents'

Incidents such as the explosion at Al-Ahli Hospital highlight the urgent need to move beyond labelling them as 'accidents.' Instead, they demand a comprehensive examination of the actions and decisions of parties involved, ensuring accountability and adherence to international legal standards. As civilians continue to suffer the consequences of unintended engagements in armed conflicts, it is imperative to prioritise the protection of human life and uphold the principles of international humanitarian law.

Status Report on 5-Star Hotel Construction

In a significant development concerning environmental conservation, the Supreme Court, in the case of *Jheel Sarankshan Samiti v. Union of India and Ors.*, has directed the Rajasthan state government to furnish a report on the construction of a 5-star hotel within Udai Sagar lake.

Background and Legal Proceedings

The litigation stemmed from the purchase of agricultural land within the lake by Vardha Enterprises in 2008, with subsequent permissions granted for resort construction. However, a series of legal battles ensued, including a Rajasthan High Court order quashing permissions and imposing a fine on Vardha Enterprises. Although the Supreme Court initially ordered a maintenance of status quo, the High Court's decision was eventually overturned.

Recent Developments

During the recent hearing, Advocate Prashant Bhushan, representing the petitioner, highlighted alleged violations of Wetland Rules and environmental damage caused by the construction.

“Bhushan referenced a 2017 report by an Expert Committee of the Urban Improvement Trust, indicating severe environmental ramifications, including the construction of a 13 ft. high permanent boundary wall around the island in Udai Sagar lake.”

Court's Response and Future Proceedings

In response to the petitioner's concerns, a bench comprising Justices Sanjiv Khanna and Dipankar Datta has called for a status report from the state government, to be submitted within six weeks. The matter has been listed for further hearing in September 2024.

Principle of Ex Post Facto Law in J&K Criminal Procedure

In the case of **National Investigation Agency New Delhi v. Owais Amin @ Cherry & Ors.**, the Supreme Court of India clarified the scope of the Code of Criminal Procedure, 1973 (CrPC) in relation to Jammu and Kashmir (J&K). The Court confirmed that the CrPC is applicable in J&K only from October 31, 2019, the date following the Jammu and Kashmir Reorganization Act 2019, which ended J&K's special status under Article 370 of the Constitution.

Justices MM Sundresh and SVN Bhatti of the Supreme Court emphasised that the CrPC does not apply retrospectively to events in J&K before this date. Consequently, legal proceedings and investigations initiated before October 31, 2019, must adhere to the J&K CrPC 1989.

“The Supreme Court rejected the National Investigation Agency's (NIA) argument, ruling that cases from before October 31, 2019, must follow the J&K CrPC 1989. This included the necessity for prior sanction under the J&K CrPC 1989 for prosecuting certain offences, such as criminal conspiracy under the Ranbir Penal Code.”

While the Court acknowledged that investigations begun under the J&K CrPC 1989 could proceed under the CrPC 1973, it underlined that any failures to comply with the former could not be disregarded. It stated that even with the prospective application of the CrPC 1973, it is essential to address any non-compliance with the J&K CrPC 1989.

In the specific case, where the NIA registered an offence in April 2019, the Court pointed out the need for prior sanction under Section 196A of the J&K CrPC 1989. It determined that the absence of such sanction was a rectifiable error.

The Court clarified that procedural oversights based on the previous J&K CrPC 1989 do not automatically benefit the accused. Such procedural errors are remediable depending on each case's context.

Thus, the Court allowed the NIA to continue the prosecution after rectifying the oversight by obtaining the necessary authorization as per Section 196-A of J&K CrPC 1989. It instructed the Trial Court to proceed in line with the law once the required sanction is obtained.

This decision connects to the principle of ex post facto law as outlined in **Article 20** of the Indian Constitution. Article 20 ensures that no individual can be convicted for actions that were not criminal offences at the time they were committed. Similarly, it prohibits enhancing the severity of penalties retrospectively. The Supreme Court's ruling reflects this principle by ensuring that the procedural laws in effect at the time of the offence are the ones applied, thereby upholding the constitutional protections against retrospective legal changes.

Supreme Court Advocates for Uniform Sentencing Policy

In a notable development addressing disparities in sentencing, the Supreme Court, in the case of Sunita Devi versus The State of Bihar & Anr., has urged the Union Government to consider introducing a comprehensive sentencing policy within six months. The bench comprising Justices MM Sundresh and SVN Bhatti emphasised the need for a clear framework to guide judicial discretion in sentencing.

Urgent Need for Clarity in Sentencing

Highlighting the absence of a clear policy or legislation on sentencing, the Court expressed concern over the subjective nature of sentencing decisions, leading to disparities based on individual judges' perspectives. The bench observed that sentencing, being a crucial aspect of the criminal justice system, should not be judge-centric but guided by established principles and guidelines.

Addressing Disparities

Recognizing the potential for bias and inconsistency in sentencing, the Court emphasised the importance of upholding the principles of fairness and equality before the law.

It noted that factors such as background, gender, and personal beliefs of judges could influence sentencing outcomes, leading to unwarranted disparities.

Models and Precedents

Drawing upon international models from countries like Canada, New Zealand, Israel, and the UK, the Court highlighted the need for India to adopt a distinct sentencing policy. It referenced previous reports and recommendations by the Law Commission, stressing the importance of aligning sentencing practices with constitutional principles and international standards.

Ensuring Compliance with Legal Provisions

The Court reiterated the obligation of trial courts to consider alternatives to imprisonment, such as probation, in accordance with legal provisions such as Section 360 of the Criminal Procedure Code (CrPC), 1973. It emphasised the importance of a thorough assessment of the accused's conduct and behaviour before sentencing.

Calls for Consultation and Expert Input

Recognizing the complexity of the issue, the Court proposed the constitution of a Sentencing Commission comprising legal experts, psychologists, sociologists, criminologists, and stakeholders. It stressed the need for a collaborative approach involving both state and central governments to address the shortcomings in the current sentencing framework.

Supreme Court Clarifies Bigamy Charges: Only Spouse Liable

In a recent landmark ruling, the Supreme Court of India has provided crucial clarification regarding the framing of charges under the offence of bigamy as per Section 494 of the Indian Penal Code (IPC). The Court emphasised that:

“Charges under this section can only be directed against the spouse entering into the second marriage and not against friends or relatives merely present at the ceremony.”

The case, **S. Nitheen & Ors. v. State of Kerala & Anr**, revolved around accusations of bigamy against the accused wife, who allegedly entered into a second marriage while her first marriage was subsisting. The Court's bench, comprising Justices BR Gavai and Sandeep Mehta, asserted that the charge of bigamy can be framed solely against the spouse entering into the subsequent marriage.

The ruling further elaborated that the mere presence of friends and relatives at the second marriage does not automatically imply their involvement or common intention to commit the offence of bigamy. The complainant must establish prima facie evidence of the accused's overt act or omission, along with their awareness of the existing marriage.

The Court emphasised the essential elements of the offence of bigamy, citing the decision in **Gopal Lal v. State of Rajasthan**. These include the contracting of a second marriage while the first marriage is subsisting, with both marriages being valid under the applicable personal laws.

Regarding the charge of common intention under Section 34 of the IPC, the Court stressed the need for clear evidence demonstrating the accused's active involvement and awareness of the ongoing marriage. It noted that vague allegations or assumptions of facilitation are insufficient grounds for charging individuals with common intention.

In light of these principles, the Supreme Court set aside the charges framed against the friends and relatives of the accused wife, emphasising the absence of sufficient evidence to establish their complicity in the offence of bigamy.

Case of the Week: A.K. Kaul vs. Union of India

This case follows the landmark decision of S.R. Bommai vs. Union of India, where the Supreme Court defined the scope and limitations of judicial review concerning the President's use of Article 356(1) of the Constitution, which allows for the imposition of President's Rule in a state.

The court reiterated and summarised the principles laid down by the nine-judge bench in S.R. Bommai vs. Union of India. It highlighted the following key points:

- 1. Justiciability of the President's Satisfaction:** The President's satisfaction in issuing a Proclamation under Article 356(1) is justiciable. It is not beyond the scope of judicial scrutiny.
- 2. Grounds for Challenge:** The proclamation can be challenged on grounds of mala fides or if based entirely on irrelevant or extraneous considerations.
- 3. Irrelevance of Some Materials:** If certain materials used in the decision-making are found irrelevant, the court will not interfere as long as there exists some relevant material supporting the action.
- 4. Limitation on Judicial Review:** The courts will not delve into the truth or correctness of the material, nor assess the adequacy of such material. The opinion of the President will not be substituted by that of the court.
- 5. Mala Fides and Abuse of Power:** Mala fides include situations where the proclamation is a clear case of power abuse. However, courts will not assume misuse of power lightly and will make allowances for the judgement of the President and the Union Council of Ministers, recognizing that the Constitution trusts their judgement.
- 6. Non-Finality of Presidential and Ministerial Opinion:** The opinion of the President and the Council of Ministers is not conclusive or the final arbiters in matters under Article 356.
- 7. Scope of Article 74(2):** The prohibition under Article 74(2) on court inquiries into the advice given by the Council of Ministers to the President is limited to the advice itself and does not extend to the materials on which such advice was based.

Repeated PYQ

Q. PIL is not the pill of all ills, it is the boon of the Courts. However, it is also the duty of the Court to prevent its misuse. Elucidate

Ans: Public Interest Litigation (PIL) has evolved significantly since its inception with Justice V.R. Krishna Iyer's pivotal judgement in **Mumbai Kamgar Sabha v. Abdulbhai**. This mechanism has been instrumental in providing a voice for marginalised communities and addressing larger societal concerns. However, alongside its numerous benefits, the potential for misuse of PIL poses a serious threat, necessitating judicial vigilance to preserve its sanctity.

The Boon of PIL

Empowering Marginalised Communities

PIL has redefined the traditional notion of locus standi, as highlighted in **S.P. Gupta v. Union of India**, where it was established that any member of the public acting bona fide could approach the court for redressing public wrongs. This has enabled marginalised communities to challenge violations of constitutional and legal rights, promoting broader access to justice.

Fostering Judicial Activism

The judiciary has utilised PIL as a tool to proactively address systemic issues and enforce public welfare. Landmark cases like **Sheela Barse v. Union of India** have highlighted the role of PIL in transcending traditional litigation to safeguard public interests, particularly for those unable to assert their rights.

Preventing Misuse of PIL

Judicial Caution in Entertaining PILs

The apex court has been prudent in exercising its jurisdiction over PILs to ensure that they are not exploited for personal gains. In **R & M Trust v. Koramangala Residents Vigilance Group & Ors.**, the court emphasised that PIL should not be used as a tool to settle personal scores or garner publicity, stressing the importance of judicial discretion in such matters.

Establishing Strict Guidelines

To curtail frivolous and opportunistic PILs, the judiciary has outlined parameters, as in **Balco Employees Union (Regd.) v. Union of India & Ors.**, which dictate the acceptability of PILs based on the collective interest they serve rather than individual concerns. This ensures that only petitions with a legitimate public interest are entertained.

Deterring Frivolous Litigations

Recognizing the drain on judicial resources caused by baseless PILs, the Supreme Court in **Holicow Pictures Pvt. Ltd. v. Prem Chandra Mishra & Ors.** lamented the misuse of PILs and highlighted the need for responsible utilisation. The court has often imposed penalties on litigants misusing the PIL mechanism, thus upholding the integrity and purpose of public interest litigation.

While PIL is an essential tool for justice and societal reform, the duty of the courts to prevent its misuse is paramount. By maintaining rigorous standards for the evaluation and acceptance of PILs and imposing strict consequences for frivolous litigations, the judiciary ensures that this powerful instrument remains a beacon of hope and justice for the underprivileged and does not become a vehicle for personal agenda.