

## Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

06th Jan - 13th Jan 2025

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### 1. Irregularity in Sanction Order Not Grounds for Acquittal under prevention of Corruption Act.

In **Central Bureau of Investigation vs. Jagat Ram**, Criminal Appeal No. 4964 of 2024, the Supreme Court clarified that procedural irregularities in obtaining sanction for prosecution under Section 19 of the Prevention of Corruption Act, 1988, do not warrant acquittal unless it is demonstrated that such irregularities caused a failure of justice.

The bench, comprising Justices PS Narasimha and Manoj Misra, set aside the Punjab & Haryana High Court's decision acquitting a public servant on procedural grounds.

The High Court had quashed the trial court's conviction, citing the CBI's failure to examine the sanctioning authority. However, the Supreme Court emphasized the restraint imposed by Section 19(3)(a) and 19(4) of the Act, which prohibit appellate courts from reversing findings due to irregularities in the sanction unless failure of justice is shown.

Citing **CBI vs. Ashok Kumar Aggarwal (2014)**, the Court reiterated that the accused must demonstrate how the irregularity caused prejudice or undermined their protections under criminal jurisprudence. It observed that the High Court had acknowledged the trial court's findings of proven demand and acceptance of bribes, uncontroverted by the defence.

The Supreme Court remanded the matter to the High Court to determine whether the irregularity in sanction resulted in a failure of justice, while affirming the trial court's findings on evidence. The ruling underscores the judiciary's focus on substantive justice over procedural lapses.

### 2. Section 14 of the Limitation Act Applies to Arbitration Proceedings: SC

In **Kirpal Singh vs. Government of India**, the Supreme Court held that Section 14 of the Limitation Act, 1963, which allows the exclusion of time spent pursuing bona fide proceedings in a wrong forum, is applicable to proceedings under the Arbitration and Conciliation Act, 1996.

The bench comprising Justices PS Narasimha and Manoj Misra emphasized the need for a liberal interpretation of limitation provisions under the Arbitration Act, given the limited statutory scope for challenging arbitral awards. The Court noted that failure to account for such exclusions could unduly curtail the remedies available under Sections 34 and 37 of the Arbitration Act.

The case involved an appellant who mistakenly filed an appeal against an arbitral award in the High Court instead of the District Court. Upon realizing the error, the appellant approached the District Court under Section 34 of the Arbitration Act, which dismissed the appeal as time-barred, refusing to exclude the period spent before the High Court.

The Supreme Court reversed the District Court's decision, relying on the precedent set in **Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department (2008)**. The Court reiterated that arbitral remedies are "precious" and courts must secure them by interpreting limitation provisions in a manner that preserves access to justice.

Applying Section 14, the Court concluded that the appeal before the District Court was within the permissible limitation period and directed its adjudication on merits.

### **3. Arbitration Clause Cannot Be 'Optional': Supreme Court**

In **Tarun Dhameja vs. Sunil Dhameja & Anr.**, the Supreme Court held that an arbitration clause in an agreement cannot be treated as "optional" merely because it stipulates mutual agreement for the appointment of an arbitrator.

The bench comprising Chief Justice Sanjiv Khanna and Justice Sanjay Kumar overturned the Madhya Pradesh High Court's refusal to appoint an arbitrator, clarifying that arbitration cannot be rendered discretionary when a valid arbitration clause exists.

The dispute arose when the High Court concluded that arbitration could be invoked only if all parties mutually agreed to proceed with arbitration. Rejecting this view, the Supreme Court emphasized that such a narrow interpretation undermines the intent and purpose of arbitration clauses.

The Court noted, *"The arbitration clause cannot be treated as non-existent or contingent upon further mutual agreement. Once invoked by an aggrieved party, it mandates the resolution of disputes through arbitration."*

The Court held that while mutual consent may be required to appoint an arbitrator, it does not make the invocation of the arbitration clause conditional. If parties fail to agree on an arbitrator, courts are empowered under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint one.

Referring to the arbitration clause, the Court stated, "Reliance placed on the second portion of the clause suggesting optional arbitration must be interpreted in conjunction with its primary objective—to ensure dispute resolution through arbitration." The appeal was allowed, and the appointment of an arbitrator was directed.

## 4. Extradition under Indian Laws

Bangladesh has formally requested India's assistance in extraditing former Prime Minister Sheikh Hasina, who fled to New Delhi following political unrest. This case underscores the diplomatic and legal complexities involved in extradition proceedings.

Extradition in India is governed by the **Extradition Act, 1962**, which provides the legal framework for surrendering individuals accused or convicted of offenses in foreign countries. This Act applies to both treaty states (countries with which India has formal extradition treaties) and non-treaty states.

The individuals accused or convicted of serious offenses can be surrendered to requesting countries, provided legal safeguards are met. The principles of dual criminality and protections against political or prejudiced prosecutions are central to this process, maintaining a balance between international cooperation and individual rights

### Key Provisions of the Extradition Act, 1962:

**Extradition Offense:** An offense qualifies for extradition if it is punishable under the laws of both India and the requesting country, typically requiring a minimum punishment of one year of imprisonment.

**Dual Criminality:** The principle of dual criminality mandates that the act for which extradition is sought must be a crime in both jurisdictions.

### Procedure:

- **Receipt of Request:** The process begins with a formal request from a foreign state.
- **Magisterial Inquiry:** Upon receiving the request, a magistrate conducts an inquiry to determine the validity and sufficiency of evidence.
- **Surrender Decision:** Based on the inquiry, the Central Government decides whether to extradite the individual.

### Restrictions on Extradition:

- **Political Offenses:** Individuals accused of political offenses are generally protected from extradition.
- **Risk of Prejudice:** Extradition may be denied if the individual is likely to face prejudice or punishment based on race, religion, nationality, or political opinions.

**Extradition Treaties and Arrangements:** India has formal extradition treaties with 50 countries and extradition arrangements with 11 countries. These treaties facilitate the process by outlining agreed-upon terms and offenses eligible for extradition.

## Weekly Focus

### Case of the week: **Puran Singh & Ors. v. State of Punjab, AIR 1975 SC 1674**

In **Puran Singh & Ors. v. State of Punjab, AIR 1975 SC 1674**, the Supreme Court of India addressed the criteria under which a trespasser may exercise the right of private defense of property and person.

The Court outlined the following essential attributes of possession that would entitle a trespasser to such a right:

- **Actual Physical Possession Over a Sufficiently Long Period:** The trespasser must have maintained continuous and undisturbed physical possession of the property for a significant duration. This period should be long enough to establish possession that is recognizable under the law.
- **Knowledge and Acquiescence of the True Owner:** The possession should be either expressly or impliedly known to the true owner, without any attempts at concealment. Additionally, the possession must exhibit an element of animus possidendi, indicating the trespasser's intention to possess the property as their own.
- **Complete and Final Dispossession of the True Owner:** The process by which the trespasser has dispossessed the true owner must be complete and final, with the true owner acquiescing to this dispossession. This means that the true owner has accepted the loss of possession, either explicitly or through their inaction over time.
- **Cultivation as Evidence of Settled Possession:** In cases involving cultivable land, one of the indicators of settled possession is whether the trespasser has sown or harvested crops on the land. If the trespasser has cultivated the land, it demonstrates a degree of control and intention to possess, which even the true owner should not disrupt by destroying the crops.

These criteria emphasize that for a trespasser to claim the right of private defense, their possession must be "settled"—that is, effective, undisturbed, and recognized, either explicitly or implicitly, by the true owner.

The Court clarified that mere temporary or clandestine possession does not confer such a right. The nature of possession is determined based on the facts and circumstances of each case, and the presence of these attributes can justify the exercise of the right of private defense by a trespasser.

### PYQ Solution

**"The maxim is 'volenti non fit injuria' and not 'scienti non fit injuria'." Explain. (10 MARKS, 2014)**

The legal maxim "volenti non fit injuria" translates to "to a willing person, no injury is done." This principle serves as a defense in tort law, asserting that if an individual knowingly and voluntarily consents to a risk, they cannot later claim damages for any harm resulting from that risk.

In contrast, "scienti non fit injuria"—meaning "mere knowledge does not imply consent"—is not recognized as a valid defense. This distinction emphasizes that simply being aware of a risk does not equate to consenting to it; active and voluntary acceptance is essential for the defense to apply.

#### Key Elements of "Volenti Non Fit Injuria":

- **Knowledge of the Risk:** The plaintiff must have full awareness of the nature and extent of the risk involved. Mere awareness, however, is insufficient without the subsequent element of consent.
- **Voluntary Acceptance:** The plaintiff must voluntarily agree to undertake the risk, either expressly or impliedly, without any coercion or undue influence. This consent transforms the individual's status to "volens" (willing), as opposed to merely "sciens" (knowing).

**In Dann v. Hamilton** [1939] 1 KB 509: In this case, the plaintiff chose to ride with a driver she knew to be intoxicated. An accident occurred, leading to her injury. The court held that mere knowledge of the driver's intoxication did not amount to consent to the risk. The defense of "volenti non fit injuria" was not upheld because the plaintiff had not expressly or impliedly consented to waive her legal rights against potential injury.

**Distinction Between "Sciens" and "Volens":**

- **Sciens (Knowledge):** Awareness of a risk does not, by itself, negate a defendant's liability. A person may recognize a danger yet not willingly accept the potential consequences.
- **Volens (Consent):** When an individual, with full knowledge, voluntarily accepts the risk, they are considered to have consented to any resulting harm. This consent serves as a complete defense for the defendant under the maxim "volenti non fit injuria."

The maxim "*volenti non fit injuria*" provided the necessity of voluntary acceptance of risk for the defense to be applicable in tort law. Mere knowledge ("scienti") of a risk does not suffice; there must be clear, voluntary consent ("volenti") to encounter the risk.

