

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

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1.Dissenting Opinion in Arbitration: Not An Award

Hindustan Construction Company Limited vs National Highways Authority of India

In a pivotal ruling, the Supreme Court shed light on the status of dissenting opinions in arbitration awards. The Apex Court established that a dissenting opinion cannot be considered as an award if the majority award is annulled.

The case revolved around a dispute between Hindustan Construction Company Limited and the National Highways Authority of India. While a three-member arbitration tribunal largely passed a unanimous award, certain aspects were met with disagreement, resulting in a dissenting view from one of the arbitrators. The Bombay High Court later nullified the majority award, questioning the tribunal's interpretation of the contract.

Key Observations from the Supreme Court:

Standard of Scrutiny:

- The court emphasized the need for restraint while reviewing arbitration awards. They should not be interfered with unless there is clear evidence of patent illegality or perverse interpretation.
- The court cautioned against a corrective approach, akin to appellate review, especially under Section 34 of the Act.
- The Bombay High Court's approach was likened to an "appellate review, twice removed", and the Supreme Court found that such substitution was not permissible.

On the Role of Dissenting Opinion:

- Dissenting opinions can offer valuable insights, especially concerning procedural issues that become vital during challenge hearings.
- When a majority award is under scrutiny, the dissenting opinion does not receive the same level of examination. Therefore, converting a dissenting view into a tribunal's findings and considering it as an award is both inappropriate and improper.

2. Test Identification Parade: An Obligation, Not a Violation

Mukesh Singh vs State (NCT of Delhi)

In a decisive ruling, the Supreme Court of India has affirmed that the Test Identification Parade (TIP) does not contravene Article 20(3) of the Constitution, and an accused cannot refuse to participate in it.

The case in question revolved around an appeal against a concurrent murder conviction. A pivotal issue was whether an accused can decline the TIP proposed by the investigating officer, relying on the constitutional protection that no person accused of an offence shall be compelled to be a witness against himself.

Observations and Rulings:

Legal Framework:

- The bench pointed out Section 54A of the Code of Criminal Procedure. This section facilitates the identification of an arrested person if deemed necessary for an investigation. It allows the court to order the accused's participation in a TIP if requested by the police station's officer-in-charge.

Accused's Obligation:

- The bench elucidated that post the introduction of Section 54A, the accused must participate in the identification parade. They cannot resist on the premise of coercion.
- The constitutional protection under Article 20(3) is applicable if evidence requires a positive volitional act on the accused's part. However, if evidence can be garnered without such an act from the accused, Article 20(3) remains non-applicable.
- Participating in the TIP does not equate to producing evidence or performing any evidentiary act on the accused's part.

Refusing TIP:

- An accused may resist the TIP, stating that the witnesses had an opportunity to see him earlier, but this reason alone is not valid for refusal. The accused can always challenge the TIP's legitimacy or its evidentiary value during the trial.
- If an accused refuses TIP, they cannot later argue that eyewitness accounts identifying them during the trial should be dismissed. Such a defense stands if the prosecution defaults in holding a TIP, but not when the accused themselves decline it.

Evidence & Identification in Court:

- The court emphasized that the importance given to an in-court identification, which hasn't been preceded by a TIP, is a matter for the courts to decide based on the case's facts.

3.NGT Acts Against Illegal Felling of Tree in Nainital

Vivek Verma v. State of Uttarakhand

In a move to protect the forest regions near Nainital city, the principal bench of the National Green Tribunal (NGT) has demanded the Uttarakhand Forest Department act against the illegal tree cutting by imposing punitive costs.

Directives Issued:

- The NGT has instructed the Forest Department to impose punitive costs for trees felled illegally. The cost is not just for the value of the trees, but it aims to deter any potential future violations.
- Prosecution should be initiated as per regulations.
- State PCB, District Magistrate, and the Municipal Corporation must act against illegal tree cutting and oversee the plantation of ten times the number of trees that have been felled.

Underlying Concerns:

- The case emerged due to unauthorized tree felling in the forest area near Nainital, leading to the endangerment of several tree species.
- Concerns about sewage water and solid waste entering the Naini Lake have been highlighted.
- Reckless vertical hill cutting was noted to be a reason for exposed tree roots, making trees prone to falling.
- Annually, the region witnesses environmental degradation and landslides, and constructions within the forest area have led to large patches of tree vegetation drying up.

Hotel Menace:

- Over 148 hotels are operating in the Nagar Palika Parishad, Nainital without proper authorization. These hotels discharge untreated water and sewage into the Naini Lake.
- Hotel owners have been implicated in illegal tree felling to expand their properties, posing serious ecological concerns.

Cost Evaluation:

- The NGT noted that the tree cost estimation by the DFO was minimal, indirectly encouraging illegal tree felling due to low penalty costs.

Lapses in Duty:

- The Regional Officer, responsible for acting against such violations, was singled out for not executing his duties adequately.

- The Member Secretary, State PCB, has been directed to initiate action against the concerned Regional Officer for not adhering to environmental regulations.

Next Step:

- An action report is expected from the authorities within three months, and the matter has been listed for November 28.

4. Holding Medical Institutes Accountable

B. Pavan Sai vs Ponnaiyah Ramanujam Institute of Medical Sciences (PRIMS)

The District Consumer Disputes Redressal Commission, Kanchipuram (Tamil Nadu) has ordered Ponnaiyah Ramajayam Institute of Medical Science (PRIMS) to make significant compensation to a student for collecting excess fees and providing subpar educational and medical facilities.

Student's Grievance:

- B Pavan Sai, the complainant, joined PRIMS in 2016 through government counseling.
- He was charged INR 10 lakh as fees for the first year, in stark contrast to the INR 3.25 lakh annual fee set by the Tamil Nadu State Government.
- PRIMS's hospital was found lacking in infrastructure, doctors, and patients for clinical practice.
- The situation worsened when PRIMS demanded another INR 9 lakh in advance for the next academic year.
- After the Madras High Court's intervention, 150 MBBS students, including the complainant, were transferred to other medical colleges due to PRIMS's severe deficiencies, leading to a loss of an academic year for the complainant.

PRIMS's Defense:

- PRIMS contended that educational institutions shouldn't be held liable for service deficiencies and cited previous legal cases.
- They explained the INR 3.25 lakh fee fixed by the government was solely for tuition, with the extra charges being for other services.
- PRIMS denied claims of inadequate facilities and maintained the complainant completed two years of education at their institution, which should invalidate his compensation claim.

Commission's Observations:

- The Commission confirmed PRIMS had charged more than the prescribed fees without delivering on the promised educational and medical facilities.
- PRIMS's failure to offer necessary infrastructure, especially a working hospital for clinical training, was deemed a deficiency in service and an unfair trade practice.
- It rejected PRIMS's claim that education isn't a commodity, focusing instead on PRIMS's failure to offer services for the fees charged.

Judgment:

- PRIMS was ordered to refund INR 19,06,050 in tuition fees taken from the complainant, with a 9% interest rate starting from May 2019.
- PRIMS is to pay INR 6,00,000 as compensation for the academic year the complainant lost due to their insufficient services.
- An added compensation of INR 25,000 was awarded for the mental and physical distress suffered by the complainant.
- PRIMS was also instructed to reimburse INR 10,000 to the complainant for legal proceedings costs, all to be completed within two months from the order's issuance.

5.UK's Surveillance Overreach: A Global Concern?

Tech Talk

- Technical Notifications: Companies may soon need to notify the UK government before making crucial tech updates. This might hinder efforts to enhance security, like software patches or introducing end-to-end encryption.
- Reaching Beyond Borders: The UK's watchful eye might not just be limited to its shores. Proposed changes mean global companies, no matter where they operate, would have to comply with the UK's surveillance mandates.

Human Rights at Risk?

- Privacy vs. Security: The European Court of Human Rights emphasizes necessity and proportionality in any privacy interference. Will the UK's broad measures stand up to scrutiny?
- The Global Domino Effect: Weakening encryption isn't just a UK problem. It's a global one. If tools like end-to-end encryption are compromised, users worldwide—including in authoritarian regimes—face risks.

What You Need to Know:

Extraterritorial Application: Even if your business isn't UK-based, the proposed IPA changes might apply to you if you have users in the UK.

Rights Under Threat: The changes could infringe upon rights enshrined in the European Convention on Human Rights.

Call for Balance: As technology and human rights intersect, governments are urged to find a balance between safeguarding nations and protecting individual rights.

Looking Ahead

In our digital age, the intersection of security and human rights is increasingly under the microscope. As the UK navigates these waters, the world watches, knowing that their choices could set precedents for nations everywhere. The question remains: Can a middle ground be found where both security and individual rights are preserved?

6. Case of the Week

Wallis, Son & Wells v Pratt & Haynes [1910] 2 KB 1003

Key Facts:

The plaintiffs, Wallis, Son & Wells, were brewers who entered into a contract to supply beer to the defendants, Pratt & Haynes, who ran a public house.

The agreement did not specify a set quantity of beer to be ordered or supplied.

Despite this, Pratt & Haynes chose to get their beer supply from another source.

Issue: Whether there was an implied term in the contract that Pratt & Haynes would order beer exclusively from Wallis, Son & Wells.

The court held that there was an implied term in the contract that Pratt & Haynes would not obtain beer from another supplier. Thus, they were in breach of contract by sourcing beer elsewhere. The court reasoned that the nature of the agreement and the surrounding circumstances implied that the intention of the parties was that Pratt & Haynes would order beer exclusively from Wallis, Son & Wells, even though the contract did not specify quantities or exclusivity.

Significance: The case serves as an example of how courts may imply terms into a contract based on the intentions of the parties and the surrounding circumstances. This implication is done to give effect to the parties' perceived intentions and to ensure the contract functions as the parties would have reasonably expected.

7. Repeated PYQ

The state liability under the law of tort has undergone metamorphosis. Explain with the help of case laws.

The concept of state liability in the law of torts has evolved considerably over time, particularly with the shifting paradigms of governance and the expansion of the state's role in various sectors. Traditionally, the doctrine of sovereign immunity shielded the state from being sued for tortious acts. However, modern jurisprudence acknowledges the need to balance the state's sovereign status with individual rights, leading to some remarkable shifts.

Doctrine of Sovereign Immunity

Initially, the state's liability in tort was governed by the doctrine of "sovereign immunity," which posited that the king could do no wrong. According to this doctrine, the state could not be held liable for any tortious actions carried out by its officers. This principle was upheld in the seminal case of *Penny v. The Queen* (1861), wherein it was held that the government could not be sued in its own courts.

Evolution of State Liability in India

In India, the Privy Council's decision in *P&O Steam Navigation Company v. Secretary of State for India* (1868) provided an early guideline. The Court adopted the distinction between sovereign and non-sovereign functions, holding the state liable only for the latter. However, this differentiation has been criticized for its vagueness.

The significant transformation occurred with the case of *Kasturilal Ralia Ram Jain v. State of Uttar Pradesh* (1965), which upheld the sovereign immunity principle but also acknowledged exceptions under certain circumstances, like negligence on the state's part.

Article 300 of the Indian Constitution

The constitutional framework for state liability in India can be traced to Article 300, which allows the state to be sued as a private individual under the same circumstances. It does not, however, clarify the extent to which sovereign immunity would apply, leaving room for judicial interpretation.

Recent Trends

Recent cases like *Nilabati Behera v. State of Orissa* (1993) and *Common Cause, A Registered Society v. Union of India* (1999) have favored a rights-centric approach. The courts have started acknowledging the importance of holding the state accountable for safeguarding fundamental rights like the right to life and personal liberty under Article 21 of the Indian Constitution. In *N. Nagendra Rao & Co. v. State of A.P.* (1994), the Supreme Court observed that the modern state has a constitutional duty to protect its citizens' rights and can't claim immunity for activities that harm them.

Judicial Activism and Public Interest Litigation

The courts have also employed Public Interest Litigation (PIL) as a tool to limit state immunity and enhance its liability, especially in environmental torts like the *Oleum Gas Leak Case* (*M.C. Mehta v. Union of India*, 1987). This case established the principle of absolute liability, where the state and private entities were held accountable without exceptions.

Thus, the metamorphosis of state liability under the law of torts reflects a balance between traditional sovereign immunity and modern imperatives of constitutional governance. While the transition is far from complete, the trajectory has been in favor of recognizing and holding the state accountable for its actions or omissions that result in tortious liability. It signifies a legal culture increasingly receptive to the principles of justice, fairness, and individual rights.