

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

7th Dec - 15th Dec 2024

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1. Scope of "Relative" Under Section 498A IPC

The Supreme Court in case of *Dechamma IM @ Dechamma Kaushik v. The State of Karnataka, 2024* has clarified that a woman with whom a husband has an extra-marital relationship does not fall within the definition of "relative" under Section 498A of the Indian Penal Code (IPC). The Court held that criminal proceedings for cruelty under Section 498A cannot be initiated against such a woman

The bench observed that **“a girlfriend or even a woman with whom a man has had romantic or sexual relations outside of marriage could not be construed to be a relative.”**

The judgment reinforces the interpretation that the term "relative" under Section 498A IPC is confined to those connected to the husband by blood, marriage, or adoption, and does not extend to individuals involved in an extra-marital affair with the husband.

The Court relied on the precedent set in *U. Suvetha v. State by Inspector of Police and Another, (2009) 6 SCC 757*. In this case, the Supreme Court had held that the ambit of the term "relative" under Section 498A is restricted to persons who are directly related to the husband by blood, marriage, or adoption. The Court noted that allegations against a woman in a romantic relationship with the husband do not meet this criterion.

2. Supreme Court Expands the Scope of Contempt Jurisdiction

The Supreme Court in *Celir LLP v. Ms. Sumati Prasad Bafna and Others* has clarified that contempt jurisdiction is not limited to the violation of express judicial directions but also extends to acts designed to frustrate court proceedings or circumvent eventual judgments

The Court held that “the deliberate conduct of parties aimed at frustrating court proceedings or circumventing its eventual decision may amount to contempt, even in the absence of explicit prohibitory orders.” The judgment reinforces the principle that respect for the judiciary extends beyond adherence to express orders and includes maintaining the integrity of court proceedings.

Case Background and Findings:

The case arose from a contempt petition filed by **Celir LLP**, an auction purchaser of a property, against the borrower who transferred the property to a third party during the pendency of proceedings before the Supreme Court. Earlier, in a judgment dated September 21 in *Celir LLP v. Bafna Motors (Mumbai)*, the Court had set aside a High Court judgment allowing the borrower to redeem the mortgage. The bank was directed to issue a sale certificate to the auction purchaser.

However, during the pendency of the proceedings, the borrower assigned the property to a third party. The petitioner alleged that this transfer was an act of contempt as it obstructed the Court’s judgment and proceedings. The borrower argued that the transfer predated the judgment, asserting that no contempt had been committed.

Court’s Observations and Ruling:

Rejecting the borrower’s argument, the Court observed:

“Any contumacious conduct of the parties to bypass or nullify the decision of the court or render it ineffective, or to frustrate the proceedings of the court, or to enure any undue advantage therefrom would amount to contempt. Attempts to sidestep the court’s jurisdiction or manipulate the course of litigation through dishonest or obstructive conduct or malign or distort the decision of the courts would inevitably tantamount to contempt sans any prohibitory order or direction to such effect.”

Although the Court refrained from holding the borrower and subsequent transferee guilty of contempt, it declared the property transfer invalid and issued consequential orders, giving the parties an opportunity to comply with the judgment.

3. Public Order and Law and Order vis a vis preventive detention

Preventive detention, being an exceptional remedy, is permissible only where the acts of the detainee exhibit a tendency to disturb public order. The Court has consistently cautioned against its misuse, ensuring that ordinary infractions, which can be addressed by law enforcement under the rubric of law and order, do not attract this extraordinary measure.

The distinction between “public order” and “law and order” has been comprehensively analyzed by the Supreme Court of India, particularly in the seminal judgment of *Ram Manohar Lohia v. State of Bihar* (1966). Hidayatullah, J. elucidated the conceptual framework by likening the two terms to concentric circles, where “law and order” forms the outermost circle, “public order” the middle, and “security of the state” the innermost. His Lordship emphasized that every breach of peace affects “law and order,” but only those infractions that disrupt the even tempo of communal life rise to the level of “public order.”

In *Lohia*, it was observed:

"Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'.

One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

Contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large." This distinction underscores the necessity for a nuanced approach in determining whether an act warrants preventive detention under legislation such as the Defence of India Act.

The Court, in *Ameena Begum v. State of Telangana* (2023), reiterated this distinction, holding that for an act to disturb public order, it must evoke a palpable fear or insecurity within the broader community. Citing *Arun Ghosh v. State of W.B.* (1970), the Court underscored the test: *"Does the offending act lead to disturbance of the current of life of the community, or does it affect merely an individual leaving the tranquillity of the society undisturbed?"* It further noted that reprehensible individual conduct, even if criminal, does not necessarily amount to a public disorder unless it disrupts societal peace or harmony.

Contextual Application

The differentiation between law and order and public order hinges on the facts of each case. For example, an isolated act of murder within private premises would generally fall under the domain of law and order. Conversely, conduct in a public space that incites terror or disrupts societal harmony, such as creating a ruckus in a crowded area, may escalate to a public order issue.

4. International Law and Aircraft Hijacking

Aircraft hijacking, also referred to as unlawful seizure of aircraft, is a crime condemned globally due to its severe consequences for humanity and international security. Under international law, aircraft hijacking is recognized as a crime against humanity, threatening human lives, destroying property, and undermining values of safety and peace. The issue has led to robust international legal frameworks to address and resolve such acts effectively.

Motivations Behind Aircraft Hijacking

The motives for aircraft hijacking range from personal reasons to broader political objectives. Common motivations include:

1. **Personal Motives:** These may stem from mental health issues, family disputes, or economic despair. For instance, some hijackers have demanded ransoms or sought reunification with estranged family members.
2. **Hostage-Taking:** This motive is often linked to political conditions or disputes, involving demands for the release of political prisoners or other political leverage.

3. **Political Motives:** These are categorized as pure political motives, such as spreading political propaganda, or politically violent acts, such as terrorism. The latter has been particularly prevalent in the Middle East during conflicts involving state and non-state actors.
4. **Seeking Political Asylum:** Hijackings for asylum peaked in the mid-20th century, especially involving individuals fleeing oppressive regimes.

International Legal Frameworks

Efforts to address aircraft hijacking have resulted in several international conventions. The **Tokyo Convention of 1963** provided a foundational framework, granting pilots authority to take necessary actions against offenders on board. However, its limitations led to the adoption of the **Hague Convention of 1970**, which emphasized heavier penalties for hijackers and required member states to establish jurisdiction over such crimes. Complementing these efforts, the **Montreal Convention of 1971** addressed acts endangering the safety of civil aviation.

Key principles established under these conventions include:

- **Jurisdiction:** States where an aircraft is registered have primary jurisdiction over hijacking incidents. However, when an aircraft lands in a foreign state, that state may also take action, including extradition or prosecution.
- **Extradition:** While extradition of hijackers is encouraged, it remains subject to the domestic laws of member states. Political and human rights considerations sometimes complicate extradition efforts.
- **Pilot's Authority:** Pilots are empowered to act as law enforcement during flights to ensure the safety of passengers and crew, with protections from liability for actions taken under these conventions.

Challenges and Evolving Threats

Despite the legal frameworks, challenges persist in addressing hijacking. Coordination among states, varying interpretations of international law, and issues of state sovereignty often hinder effective enforcement. Additionally, evolving motives, such as politically violent acts by non-state actors, have raised the stakes, necessitating more robust international cooperation.

Aircraft hijacking remains a critical threat to global aviation security. International legal instruments like the Tokyo, Hague, and Montreal Conventions provide mechanisms for prevention, enforcement, and resolution. However, their effective implementation requires the consistent commitment of states to cooperate across jurisdictions while respecting human rights and sovereignty.

5. Supreme Court issues notice in PIL for Carbon Emission Regulations

In a recent development addressing the urgent issue of climate change, the Supreme Court of India has appointed Advocates Jay Cheema and Sudhir Mishra as **Amici Curiae** to examine the existing legal framework regulating carbon emissions. The case, arising from a plea by 11-year-old environmental activist Ridhima Pandey, highlights the failure of the Indian government to adopt effective and science-based climate policies.

Legal Context and Court Observations

A bench comprising Justice Pamidighantam Sri Narasimha and Justice Manoj Misra noted the critical importance of regulating carbon emissions and directed Senior Advocate Swarupama Chaturvedi, representing the Union of India, to submit a compilation of all relevant rules and regulations pertaining to carbon emissions.

“The issue arising for consideration is of some importance as it relates to Carbon Emissions affecting the environment which require examination of the legal regime regulating such Carbon Emissions,” observed the Court, underlining the significance of integrating climate action into domestic legal systems. The matter is set for further hearing on December 17, 2024.

Background of the Case

The appeal stems from a petition originally filed in 2017 before the National Green Tribunal (NGT), which was dismissed in 2019. The petitioner, Ridhima Pandey, appealed to the Supreme Court, emphasizing India’s vulnerability to the adverse impacts of climate change, including glacier melting, rising sea levels, and extreme weather events.

The plea asserts that while India has committed to international climate agreements like the **Paris Agreement**, its domestic actions often contradict these pledges. Approvals for carbon-intensive projects without rigorous climate impact assessments under the Environment Impact Assessment (EIA) framework exemplify this contradiction. The petitioner highlighted that government decisions often neglect the broader consequences on carbon emissions and climate resilience.

Key Issues Raised in the Petition

1. **Carbon Budget and Recovery Plan:** The plea advocates for the establishment of a national "carbon budget" until 2050 to limit emissions in line with global targets and proposes a time-bound national climate recovery plan to mitigate emissions and enhance carbon sinks.
2. **Integration of Climate Commitments:** The petition highlights the lack of integration of India's international commitments, such as reducing greenhouse gas intensity by 33-35% by 2030, into domestic policies.
3. **Environmental Law Enforcement:** Concerns were raised about weak enforcement of existing laws, including the **Environment (Protection) Act, 1986**, and the **Forest (Conservation) Act, 1980**, in monitoring and controlling emissions.
4. **Impact on Vulnerable Populations:** The plea emphasizes the disproportionate impact of climate change on vulnerable populations, particularly children, necessitating greater government accountability.

Arguments for Urgent Climate Action

The petitioner argues that India, as one of the countries most vulnerable to climate change, has an urgent responsibility to adopt comprehensive measures. Specific demands include:

- Rigorous climate impact assessments for all carbon-intensive projects.
- Alignment of domestic policies with global commitments under the Paris Agreement.
- An actionable framework for mitigating emissions and bolstering carbon sinks.

The petition underscores the immediate need to address the increasing frequency of climate-related events, such as the loss of mangroves, ocean acidification, and extreme rainfall, which are already evident across the country.

Weekly Focus

Case of the week: Satyabrata Ghose v. Mugneeram Bangur & Co., AIR 1954

In the landmark case of *Satyabrata Ghose v. Mugneeram Bangur & Co.*, AIR 1954 SC 44, the Supreme Court of India addressed the doctrine of frustration under Section 56 of the Indian Contract Act, 1872. T

The dispute arose when the respondent company, engaged in developing land for residential purposes, entered into agreements to sell plots to various buyers, including the appellant, Satyabrata Ghose.

Subsequently, during World War II, the government requisitioned the land for military purposes, leading the company to treat the agreement as canceled and offering the buyers either a refund of their earnest money or the option to complete the purchase after the war. The appellant rejected both options and sought specific performance of the contract.

Applicability of Section 56 and the Doctrine of Frustration

The central issue before the Court was whether the requisitioning of the land by the government frustrated the contract under Section 56 of the Indian Contract Act, rendering it void due to impossibility of performance. The Court observed that the requisition was of a temporary nature and did not make the performance of the contract impossible but merely suspended it.

The Court emphasized that the term "impossible" in Section 56 should be interpreted in a practical, not literal, sense, encompassing scenarios where performance becomes impracticable due to unforeseen events. The Court stated, "The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose of the parties."

Independence from English Law Principles

A significant aspect of the judgment was the Court's stance on the applicability of English law principles. The Court asserted that the Indian Contract Act is a comprehensive code on the matters it addresses, and it is impermissible to import doctrines from English law where the Act provides specific provisions.

The Court noted, "To the extent that the Indian Contract Act deals with a particular subject, it is exhaustive upon the same and it is not permissible to import the principles of English law de hors these statutory provisions."

This underscored the Act's self-sufficiency and the limited role of English legal principles in interpreting Indian contract law.

The Court referred to the Privy Council decision in *Lakeman v. Pollard*, (1864) 7 LT 378, to illustrate that the doctrine of frustration applies when unforeseen events fundamentally alter the contract's nature.

Additionally, the Court discussed *Taylor v. Caldwell*, (1863) 3 B & S 826, where a music hall's destruction by fire excused performance due to impossibility.

The Supreme Court concluded that the requisitioning of the land did not frustrate the contract, as the performance was not rendered impossible but only delayed. The Court allowed the appeal, setting aside the High Court's judgment and restoring the decrees of the lower courts, thereby granting specific performance of the contract.

PYQ Solution

“A man’s nationality is a continuing legal relationship between the sovereign state on the one hand and the citizen on the other.” Explain the above statement. Also mention the difference between ‘nationality’, ‘double nationality’ and ‘statelessness’.

The statement "A man's nationality is a continuing legal relationship between the sovereign state on the one hand and the citizen on the other" encapsulates a profound legal concept in international law. Let's explore this statement and distinguish between 'nationality', 'double nationality', and 'statelessness'.

1. **Definition of Nationality:** Nationality signifies a legal bond between an individual and a state, establishing mutual rights and duties. It is often determined by domestic law and usually conferred by birth, naturalization, descent, or marriage.
2. **Rights and Obligations:** This relationship grants the citizen certain rights, such as protection, the right to vote, and diplomatic protection abroad. Conversely, it imposes obligations, such as obeying the law and paying taxes.
3. **International Recognition:** Nationality also has international implications, affecting a state's duties towards other states concerning its nationals. This principle was affirmed in the *Nottebohm Case* (1955), where the ICJ elaborated on the genuine link required between an individual and a state.
4. **Sovereign Authority:** The state's sovereign power allows it to define the criteria for nationality, subject to international law principles, such as the prohibition of arbitrary deprivation of nationality (Article 15 of the Universal Declaration of Human Rights).

Term	Definition	Examples/Remarks
Nationality	The legal bond between an individual and a state, conferring rights and imposing duties.	Determined by domestic laws; Recognized internationally.
Double Nationality	The simultaneous holding of nationality of two states.	This can result from birth, marriage, or naturalization; Can lead to conflicting rights and obligations.
Statelessness	The absence of a legal bond of nationality with any state.	This can occur due to gaps in nationality laws; Leads to lack of legal protection and basic rights.

Nationality, as a continuing legal relationship between the sovereign state and the citizen, is a foundational concept that affects both domestic legal status and international legal interactions. This relationship's complexity is further nuanced by variations like double nationality, where an individual has legal obligations to two sovereigns, and statelessness, where the absence of such a bond leaves individuals vulnerable and without clear legal rights or protections.

The distinctions between these concepts demonstrate the multifaceted nature of nationality and its profound impact on both individual rights and state sovereignty. Understanding these variations is essential for comprehending the role of nationality in shaping the legal landscape within and between states.

