

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

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Traditional Knowledge and Intellectual Property

Traditional knowledge (TK), as defined by the World Intellectual Property Organisation (WIPO), encompasses the knowledge, skills, and practices developed and sustained by indigenous people. This knowledge, often integral to a community's cultural or spiritual identity, is transmitted from one generation to the next. However, TK by itself is not traditionally protected under conventional intellectual property (IP) rights systems.

New Treaty on Traditional Knowledge and Intellectual Property

In May 2024, the member states of WIPO approved a landmark Treaty addressing the interface between intellectual property, genetic resources, and associated traditional knowledge. This Treaty, which emerged from decades of negotiations since 2001, is the first of its kind to include specific provisions for Indigenous Peoples and local communities. Its primary objectives are to enhance the efficacy and transparency of the patent system concerning genetic resources and TK, and to prevent erroneous patent grants for non-novel or non-inventive inventions related to these resources.

Definitions and Disclosure Requirements

Article 2 of the Treaty defines essential terms such as 'genetic material', 'genetic resources', and 'source of traditional knowledge associated with genetic resources'. These definitions are crucial for the Treaty's implementation and ensure clarity in its application.

Disclosure of Genetic Resources (Article 3.1)

The Treaty mandates that patent applications involving genetic resources must disclose:

- The country of origin of the genetic resources, or
- If the origin is unknown or inapplicable, the source of the genetic resources. Applicants must identify the country of origin from which the genetic resources were obtained if multiple countries are involved.

Disclosure of Traditional Knowledge (Article 3.2)

For patent applications based on TK associated with genetic resources, applicants are required to disclose:

- The Indigenous Peoples or local community that provided the TK, or
- If the above information is unknown or inapplicable, the source of the TK. The Treaty emphasises that the term "as applicable" does not allow for flexibility in bypassing these disclosure requirements.

Traditional Knowledge in India

India has been proactive in protecting TK and the rights of indigenous people over their genetic resources. The Council of Scientific and Industrial Research (CSIR) and the Ministry of AYUSH established the Traditional Knowledge Digital Library (TKDL), a comprehensive database of TK from India's indigenous and local communities. This database is accessible to several global patent offices for search and examination purposes, preventing the misappropriation of Indian TK.

Indian laws also offer robust protections against TK misappropriation. The Indian Patents Act, 1970, excludes from patentability any invention that essentially replicates traditional knowledge or aggregates known properties of traditional components (Section 3(p)). Additionally, the Act requires disclosure of the source and geographical origin of biological material used in an invention (Section 10(4)(ii)(D)). If the biological material originates from India, the applicant must obtain approval from the National Biodiversity Authority under the Biological Diversity Act, 2002, before securing a patent.

Murder and Provocation

In the case of Sandeep G v. State of Kerala, the Kerala High Court has reaffirmed the trial court's decision to reject the discharge application of Sandeep, accused of the murder of Dr. Vandana Das.

Background of the Case

Dr. Vandana Das, a 23-year-old house surgeon, was tragically murdered by Sandeep, who had been brought to a government hospital by Pooyappally police. Sandeep, reportedly in a peculiar mental state due to excessive alcohol consumption, attacked police personnel and hospital staff using surgical scissors, eventually causing Dr. Das's death. The prosecution charged Sandeep under several sections of the Indian Penal Code (IPC), including 302 (murder).

Sudden and Grave Provocation

Justice A. Badharudeen, while rejecting the defence argument, made a vital observation regarding the concept of sudden and grave provocation. The defence argued that Sandeep's actions were a result of sudden and grave provocation, lacking intent to murder. However, the court highlighted that prolonged provocation cannot be deemed sudden and grave. Justice Badharudeen noted, "Long lasting provocation, either mild or grave, could not be construed as sudden provocation. Long lasting provocation carries an element of special mens rea or the very intention to commit the crime."

Lok Adalat's Jurisdiction

In a landmark ruling, the Rajasthan High Court has clarified the jurisdictional boundaries of Lok Adalat in the case of *Kripal Singh v. State of Rajasthan & Anr.* The court ruled that Lok Adalat does not possess the authority to dismiss a case due to default in appearance by the parties.

The petitioner, Kripal Singh, had his case referred to Lok Adalat for settlement under the Legal Services Authorities Act, 1987. However, Singh failed to appear before the Lok Adalat, which subsequently dismissed his case for default. Aggrieved by this dismissal, Singh challenged the Lok Adalat's order before the Rajasthan High Court.

Section 20(5) of the Legal Services Authorities Act, 1987

The court's decision heavily relied on the interpretation of Section 20(5) of the Legal Services Authorities Act, 1987. This section stipulates that if Lok Adalat cannot make an award due to the absence of a compromise or settlement between the parties, it must return the case record to the referring court for further proceedings.

Exceeding Jurisdiction

Justice Arun Monga, presiding over the case, noted that the Lok Adalat had overstepped its jurisdiction by dismissing the case. The court emphasised that the only action permissible under Section 20(5) is to remand the matter back to the appropriate court. The dismissal of a case for default in appearance is beyond the scope of Lok Adalat's authority.

Quoting Section 20(5)

In the judgement, Justice Monga stated, "The only recourse available to the Lok Adalat was to remand the matter back to the appropriate court for further proceedings in accordance with the law." This interpretation indicates the limited jurisdiction of Lok Adalat, which is primarily aimed at facilitating settlements rather than adjudicating or dismissing cases.

Setting Aside the Lok Adalat's Order

Given the overreach by Lok Adalat, the High Court set aside the dismissal order and restored the case to its original status in the appropriate court. This decision reaffirms the procedural boundaries within which Lok Adalat must operate and ensures that parties are not unfairly prejudiced by procedural defaults.

Saregama Takes Emami to Court Over Iconic Song's Use

In a dramatic legal confrontation, Saregama India Limited has filed a lawsuit against Emami Limited in the Delhi High Court. At the heart of this dispute is Emami's alleged unauthorised use of the iconic song "Udi Jab Jab Zulfein" from the classic film 'Naya Daur' in an advertisement for its "Emami Kesh King Anti Hairfall Shampoo."

Saregama India Limited asserts that it holds exclusive rights to the song "Udi Jab Jab Zulfein," granted by M/s BR Films, the original producer of 'Naya Daur.' Saregama claims these rights encompass the entire copyright term of sixteen years, allowing them to reproduce or make any sound recording of the song.

Saregama's Standpoint

Represented by Senior Advocate Gopal Jain, Saregama argued that under Section 14(a) of the Copyright Act, 1957, it possesses exclusive rights to the song. Jain contended that Emami's use of the song in its shampoo advertisement without obtaining a proper licence amounts to clear copyright infringement. Saregama emphasised the financial impact, stating that it typically charges Rs. 40-50 lakhs per annum for such licences.

Emami's Defence

Emami's counsel presented a robust defence, asserting that the Agreement with Saregama only covered sound recording rights, which have expired. According to Emami, these rights were valid for sixty years from the film's release date, August 15, 1957, meaning they expired in 2017. Hence, Emami argued that Saregama's claim of infringement is unfounded.

Court's Interim Orders

Justice Mini Pushkarna issued summons in the case and requested Emami's response to Saregama's application for an interim injunction within four weeks. In an interim measure, Justice Pushkarna directed Emami to deposit Rs. 10 lakhs with the court Registry. The court clarified that this is a provisional arrangement, subject to revision after hearing from both parties.

Section 14(a) of the Copyright Act, 1957

A crucial element of this case is the interpretation of Section 14(a) of the Copyright Act, which delineates the exclusive rights of copyright holders. If the court upholds Saregama's claim to these rights, Emami's unlicensed use of the song would constitute copyright infringement.

Duration of Copyright

The dispute also highlights issues surrounding the duration of copyright protection. Emami's assertion that the sound recording rights expired after sixty years from the film's release is an important point. The court's ruling on this matter will significantly impact the case's outcome.

NGT Mandates Clean Ganga-Yamuna Waters for Kumbh Mela

The principal bench of the National Green Tribunal (NGT) has instructed state authorities to ensure that the water quality of the Ganga and Yamuna rivers meets drinking water standards for the upcoming Kumbh Mela in 2024-25, to be held in Prayagraj, Uttar Pradesh. The bench, chaired by Justice Prakash Shrivastava along with Justice Arun Kumar Tyagi and Dr. A. Senthil Vel, emphasised the necessity of maintaining high water quality for the millions of pilgrims expected to attend the event.

NGT's Directive and Expectations

The NGT, while granting the state eight weeks to file a progress report, mandated that the authorities ensure the water quality of the rivers is suitable for drinking and that this suitability is visibly communicated to pilgrims at various bathing ghats. This directive came in response to an application highlighting the severe pollution due to untreated sewage discharge into the Ganga and Yamuna rivers, particularly concerning the Kumbh Mela.

Findings from the Joint Committee Report

The joint committee report, filed in adherence to the NGT's previous directions, provided a detailed analysis of the current state of sewage management in Prayagraj:

- **Untapped Drains:** The report identified 44 untapped drains discharging untreated sewage directly into the Ganga.
- **Total Drains and Sewage Discharge:** Prayagraj has a total of 81 drains discharging 289.97 million litres per day (MLD) of sewage, with the existing 10 sewage treatment plants (STPs) handling 178.31 MLD.
- **Gap in Treatment Capacity:** The untapped drains alone are responsible for 73.80 MLD of untreated sewage, with an overall gap in treatment capacity amounting to 128.28 MLD.

NGT's Observations and Concerns

The NGT expressed concerns over the insufficient measures planned to address the untreated sewage discharge ahead of the Kumbh Mela. The Tribunal highlighted that effective and prompt actions are imperative to ensure that pilgrims, who will be using the river water for bathing and drinking, are not exposed to polluted water.

Action Plan and Timeline

Acknowledging the gravity of the situation, the NGT emphasised the need for a time-bound action plan aimed at minimising and eventually stopping the discharge of untreated sewage into the Ganga and Yamuna. The Tribunal has granted the Uttar Pradesh government an additional eight weeks to submit an updated progress report that should reflect tangible improvements and effective measures taken to address the sewage discharge issue.

Case of the Week: Cox v. Hickman (1860)

Cox v. Hickman, (1860) 8 H.L.C. 268, is a landmark case in English partnership law. The case fundamentally addresses the principles of partnership and the implications of profit sharing on the determination of partnership existence. It elucidates whether mere profit sharing constitutes a partnership, thereby influencing the liabilities of the parties involved.

Facts of the Case

The case involved the business of two traders, Smith and Hickman, who found themselves in financial difficulties. To manage their debts, they executed a deed of arrangement with their creditors. This deed transferred the management of their business to trustees, including Mr. Cox, with the authority to carry on the business and distribute the profits to the creditors. The issue arose when goods were supplied to the business, and the suppliers sought to hold Cox and the other trustees personally liable as partners for the debts of the business.

Legal Issues

The central issue in Cox v. Hickman was whether the trustees, by virtue of the profit-sharing arrangement, were to be considered partners in the business, thereby rendering them liable for the debts incurred. The broader legal question was whether the sharing of profits, in itself, is sufficient to constitute a partnership under English law.

Judgment

The House of Lords held that the mere sharing of profits does not necessarily establish a partnership. The court distinguished between the existence of a partnership and a mere arrangement to share profits. It was determined that the trustees, including Cox, were not partners and thus not liable for the debts of the business. The reasoning was that they did not have the requisite intention to form a partnership nor did they have control over the business operations in a manner typical of partners.

Repeated PYQ

Q. Discuss the doctrine of 'Pith and substance relating to the distribution of legislative powers between the Centre and the states with the help of landmark judicial decisions.

The doctrine of 'Pith and Substance' is a judicial principle used to resolve conflicts concerning the distribution of legislative powers between the Centre and the States in India. This doctrine plays a role in maintaining the federal structure by ensuring that laws are classified correctly according to their true nature and substance, even if they incidentally encroach upon the jurisdiction of another legislature.

Constitutional Framework

The Indian Constitution establishes a quasi-federal structure with a clear demarcation of legislative powers between the Centre and the States. This division is outlined in the Seventh Schedule, which consists of three lists: the Union List, the State List, and the Concurrent List. Articles 246 and 254 govern the distribution of legislative powers, stipulating that Parliament has exclusive authority over subjects in the Union List, State Legislatures have exclusive authority over subjects in the State List, and both can legislate on subjects in the Concurrent List, with federal law prevailing in case of conflict.

Doctrine of Pith and Substance

The doctrine of pith and substance is employed to determine the true character and substance of legislation when there is a conflict over legislative competence. If the true nature of the law falls within the jurisdiction of the legislature that enacted it, the law will be valid even if it incidentally encroaches upon matters within the jurisdiction of another legislature.

State of Bombay v. F.N. Balsara (1951)

One of the earliest applications of the doctrine was in State of Bombay v. F.N. Balsara (1951), where the Bombay Prohibition Act was challenged. The Act, which aimed to prohibit the manufacture, sale, and consumption of liquor, was alleged to encroach upon the Central List as it dealt with import and export across customs frontiers. The Supreme Court upheld the Act, emphasising that its true character was prohibition within the state, a matter within the State List, even though it incidentally affected import and export.

State of West Bengal v. Kesoram Industries Ltd. (2004)

In State of West Bengal v. Kesoram Industries Ltd. (2004), the Supreme Court faced a challenge to the validity of cess on coal levied by the West Bengal government, which was argued to encroach upon the Union List entry related to regulation of mines and minerals development. The Court

upheld the levy, determining that its pith and substance related to taxation, a State List subject, and any incidental impact on the Union List did not render the legislation invalid.

Federation of Hotel and Restaurant Association of India v. Union of India (1989)

This case involved the validity of a tax on luxuries by the State of Karnataka, challenged on the ground that it encroached upon the Union List entry relating to service tax. The Supreme Court upheld the tax, emphasising that in pith and substance, the legislation was a tax on luxuries (a State subject), and its incidental effect on services did not undermine its validity.

Impact

The doctrine of pith and substance ensures that legislative actions are evaluated based on their true nature and primary objective rather than their incidental effects. This approach promotes legislative efficacy and prevents technicalities from obstructing governance. By focusing on the essence of legislation, the judiciary has effectively balanced the distribution of powers, maintaining the federal structure while accommodating necessary overlaps in legislative functions.

