

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

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ITLOS Advisory Opinion on Climate Change.....	1
Ruling on the Definition of Rape.....	2
Action Against Public Servants Under SC/ST Act.....	3
Similar Trademarks for Pharmaceutical Products.....	4
Allahabad Bank Held Liable for Deficiency in Services.....	5
Weekly Focus	
Case of the Week.....	6
Repeated PYQ.....	8

We have also separately launched Judiciary specific current affair which can be downloaded from [Here](#)

ITLOS Advisory Opinion on Climate Change

'Necessary' Measures and Limits on States' Discretion

ITLOS (International Tribunal for the Law of the Sea) first addressed the meaning of 'necessary' measures in the context of Article 194(1) of UNCLOS, which mandates States to take all necessary measures to prevent, reduce, and control marine pollution. ITLOS interpreted 'necessary' broadly, encompassing not only indispensable measures but also those facilitating the achievement of pollution control objectives. This expansive interpretation aligns with the comprehensive scope implied by terms like 'all' measures and 'any' source, as well as the inclusive definition of marine pollution under Article 1(1)(4) of UNCLOS.

Despite the broad interpretation, ITLOS clarified that States do not have unlimited discretion. Necessary measures must be determined objectively, considering factors such as scientific evidence, international standards on climate change, and the State's available means and capabilities. ITLOS emphasised that references to States' capabilities should not excuse delays in implementing necessary measures.

Similarly, ITLOS examined 'necessary' measures under Article 194(5), which requires States to protect rare or fragile ecosystems and the habitats of endangered species. ITLOS reiterated the broad interpretation of 'necessary' to include measures enabling the achievement of these protective goals. The Tribunal stressed that States must take specific, context-sensitive measures based on the best available science, although they retain some discretion within the bounds of reasonable and objective assessment.

Obligations of a Continuing Nature

The Advisory Opinion highlighted that several obligations under UNCLOS are of a continuing nature, requiring ongoing efforts from States. For example, the obligation to cooperate in developing international rules for marine environment protection under Article 197 is continuous, necessitating ongoing cooperation and adaptation to evolving scientific knowledge.

ITLOS also found that obligations to prevent, reduce, and control marine pollution from anthropogenic greenhouse gas emissions require continuous, meaningful, and good-faith cooperation among States. This includes ongoing monitoring and surveillance of marine pollution under Article 204, further illustrating the dynamic nature of these obligations.

Interpretation in Light of a Precautionary Approach

ITLOS consistently interpreted obligations under UNCLOS in light of a precautionary approach, even though the Convention does not explicitly reference this principle. For instance, in determining necessary measures to control marine pollution under Article 194(1), ITLOS emphasised that scientific certainty is not required. States must apply the precautionary approach, which is implicit in the notion of pollution encompassing potential deleterious effects.

Similarly, ITLOS limited State discretion in environmental impact assessments under Article 206 by incorporating the precautionary approach, restricting the margin of discretion to ensure effective regulation of marine pollution.

Interpretation of Article 194(5) in Light of Other Instruments

The Advisory Opinion reinforced the approach of interpreting key terms in Article 194(5) of UNCLOS with reference to other international instruments. ITLOS interpreted 'ecosystem' and 'habitat' in light of the definitions in the Convention on Biological Diversity (CBD), and referred to the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to guide what constitutes 'depleted, threatened or endangered species'. This method ensures a harmonised interpretation that aligns with broader international environmental standards.

The ITLOS Advisory Opinion advances the environmental jurisprudence of UNCLOS courts and tribunals, demonstrating a contextual and systemic approach to treaty interpretation. By interpreting obligations in their wider context and in light of other international instruments, ITLOS ensures that UNCLOS functions as a living instrument capable of addressing contemporary challenges, including climate change. This approach not only clarifies the meaning of UNCLOS provisions but also reinforces the Convention's role in safeguarding the marine environment.

Ruling on the Definition of Rape

The Allahabad High Court has recently delivered a significant ruling, in **Pradum Singh vs. State Of U.P. Thru. Prin. Secy. Home Lko**, clarifying the elements required to constitute the offence of rape. The Court emphasized that complete penetration of the penis, emission of semen, and the rupture of the hymen are not necessary for an act to be classified as rape.

Case Background

In the case at hand, Justice Rajesh Singh Chauhan presided over the bail petition of an accused involved in a disturbing case of sexual assault against a minor. The accused was charged with

rape and oral sex with a ten-year-old girl. The prosecution's case highlighted that the accused had taken the victim to a room where they were found naked, following which the girl alleged that the accused had engaged in oral sex and penetrated her genital area.

Charges and Defence Arguments

The accused faced charges under Sections 376AB and 506 of the Indian Penal Code (IPC), and Sections 5 and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The defense argued for bail, claiming the accused was falsely implicated and contended that oral penetration should not be classified as aggravated sexual assault. The defense further argued that the maximum sentence for penetrative sexual assault under these circumstances is seven years, of which the accused had already served over two years.

Prosecution's Counterarguments and Court's Findings

The Additional Government Advocate (AGA) opposed the bail, citing the victim's consistent allegations and the medical report, which corroborated the victim's testimony. The Court meticulously examined the victim's statements recorded under Sections 161 and 164 of the Code of Criminal Procedure (CrPC) and the medical evidence that confirmed oral penetration.

Supreme Court Precedent

The Court referred to the Supreme Court's ruling in **Phool Singh v. State of Madhya Pradesh**, where it was held that a rape accused could be convicted based solely on the testimony of the prosecutrix if found credible and trustworthy. This precedent played a crucial role in the Court's decision to deny bail.

Court's Directive

Considering the comprehensive evidence, including the medical report and the victim's statements, the Court concluded that this was not a fit case for granting bail. However, the Court recognized the prolonged pre-trial detention of the accused and mandated the Trial Court to expedite the trial, ideally concluding it within nine months, in accordance with Section 35(2) of the POCSO Act.

This ruling by the Allahabad High Court reinforces the judicial stance that the absence of complete penetration or physical injury does not negate the occurrence of rape. It shows the importance of the victim's testimony and medical evidence in sexual assault cases, emphasizing the judiciary's commitment to protecting the rights of minors and ensuring timely justice.

Action Against Public Servants Under SC/ST Act

The Supreme Court, in the case of **The State of GNCT of Delhi and Others vs. Praveen Kumar @ Prashant**, held that the absence of a recommendation by an administrative enquiry to initiate a case against a public servant bars the taking of cognizance of an offence of dereliction of duty under the Schedule Caste & Schedule Tribes (Prevention of Atrocities) Act, 1989 ("Act").

Reversal of High Court's Findings

Reversing the findings of the High Court, the bench comprising Justices MM Sundresh and SVN Bhatti emphasised that the recommendation of an administrative enquiry is essential to initiate penal proceedings, including taking cognizance of an offence of commission and omission, such

as wilful neglect or dereliction of duty by a public servant under Section 4(2) of the Act. The Court stated, "The recommendation of the administrative enquiry is a sine qua non to set in motion the penal proceedings including taking cognizance for an offence of commission and omission under section 4(2) of the Act of 1989."

Provisions

Section 4(2) of the Act outlines the duties public servants must perform under the Act. In cases of wilful dereliction or neglect of these duties, Section 4(1) provides for punishment with imprisonment for a term not less than six months and extending up to one year. The proviso to Section 4(2) states that no charges against a public servant shall be booked without the recommendation of an administrative enquiry.

Case Background

In the case, the complainant alleged that the Station House Officer (SHO) had refused to register an FIR for an offence under the Act. The trial court declined to initiate action against the SHO due to the lack of a recommendation from an administrative enquiry. The High Court, however, reversed this decision and directed the initiation of proceedings against the SHO.

Court's Observations

The Supreme Court, in its judgement authored by Justice SVN Bhatti, clarified that taking cognizance of an offence under Section 4(2) must be based on the recommendation from an administrative enquiry. The Court noted, "The recommendation of administrative enquiry on alleged failure of duty or function by a public servant would make the neglect of an offence clear and the cognizance of such an offence is legal."

The Role of Administrative Enquiry

The Court highlighted the importance of an administrative enquiry to determine whether the neglect of duty by a public servant was bona fide or wilful. The administrative enquiry aims to assess the conduct of the public servant against whom allegations are made. The Court referred to the Delhi High Court's decision in *Bijender Singh v. State and Anr.*, which held that an enquiry report must be sought before initiating criminal proceedings against a public servant under the Act.

Magistrate's Duty to Call for Reports

The Supreme Court held that if a complaint against a public servant is filed without the recommendation of an administrative enquiry, the magistrate must call for a report or recommendation from the relevant department. The Special Court or Exclusive Special Court can then take cognizance of the alleged offence based on this report and direct penal proceedings.

Similar Trademarks for Pharmaceutical Products

A single judge bench of the Bombay High Court, comprising Justice Firdosh P. Pooniwalla, has ruled that structurally and phonetically similar trademarks cannot be registered for drugs treating similar ailments but having different compositions, as this may create confusion among consumers, potentially leading to harmful side effects. The ruling came in the case of **Glenmark Pharmaceuticals Ltd. vs. Gleck Pharma (OPC) Pvt Ltd. & Ors.**

Background Facts

Glenmark Pharmaceuticals Ltd., a company engaged in manufacturing, marketing, and selling pharmaceutical products, had registered the trademark "ZITA-MET" for an anti-diabetic drug. In August 2020, Glenmark discovered that Gleck Pharma (OPC) Pvt Ltd. had filed a trademark application for "XIGAMET" in the same class. Glenmark opposed this application and later issued a cease and desist notice to Gleck upon discovering that they were selling products under the "XIGAMET" trademark.

Gleck responded by filing a suit in Srinagar court, which temporarily restrained Glenmark from interfering with the sale of "XIGAMET." In response, Glenmark filed an interim application in the Bombay High Court to restrain Gleck from using the "XIGAMET" trademark, arguing that it was deceptively similar to "ZITA-MET."

Contentions of the Parties

Glenmark's Arguments: Glenmark contended that "ZITA-MET" and "XIGAMET" are phonetically, aurally, visually, and deceptively similar. They argued that dissecting the trademarks into "ZITA" and "MET" versus "XIGA" and "MET" violated the anti-dissection rule. Furthermore, both trademarks pertained to anti-diabetic drugs used for treating the same ailment but with different active ingredients—sitagliptin for Glenmark's product and teneligliptin for Gleck's. Glenmark emphasised that any confusion could lead to dangerous side effects for consumers.

Gleck's Arguments: Gleck contended that their product was distinct from Glenmark's, arguing that the trademarks were visually, phonetically, and aurally different. They emphasised the unique starting letters, hyphenation, and the industry-wide use of the suffix "met" in diabetes medications.

Court's Findings

The Court observed that "XIGAMET" and "ZITA-MET" were word marks that were structurally similar, containing the same number of letters and syllables. It held that "XIGAMET" was phonetically similar to "ZITA-MET," creating a likelihood of confusion. The Court cited the Supreme Court's ruling in **Cadila Health Care Ltd. vs. Cadila Pharmaceuticals Ltd.**, which requires a lesser quantum of proof for determining confusing similarity in medicinal products due to potential health risks.

Justice Pooniwalla highlighted that many purchasers of medicinal products in India might not have a good command of English, making slight differences in spelling or pronunciation insignificant from their perspective. The Court noted that, to an ordinary person of average intelligence, "XIGAMET" and "ZITA-MET" could sound similar enough to cause confusion.

Allahabad Bank Held Liable for Deficiency in Services

The District Consumer Dispute Redressal Commission-V, North-West Delhi, comprising President Sanjay Kumar, and Members Nipur Chandna and Rajesh, has held Allahabad Bank liable for deficiency in services due to its failure to investigate unauthorised transactions in a customer's account. The Commission directed the bank to refund Rs. 46,000 along with interest and compensate the complainant for mental anguish and litigation costs in the case of Parmatma Prasad vs. Allahabad Bank.

Brief Facts of the Case

The complainant, Parmatma Prasad, held a savings account with Allahabad Bank. He claimed that multiple withdrawals totaling Rs. 46,000 were made from his account without his knowledge, and he did not receive any SMS notifications regarding these transactions. It was only upon updating his passbook that he discovered the unauthorised transactions. Prasad reported the matter to the bank manager, filed a police complaint leading to an FIR, and escalated the issue to the Reserve Bank of India (RBI) and the banking ombudsman. Despite these steps and requests for CCTV footage, the bank only credited the deducted amount after RBI intervention but did not allow Prasad to withdraw it. Aggrieved by the bank's actions, Prasad approached the District Consumer Dispute Redressal Commission-V, North-West Delhi.

Complainant's Contentions

Prasad argued that the RBI guidelines mandated the return of unauthorised amounts if reported within 15 days, which he had promptly done. He contended that the bank's withholding of the credited amount was arbitrary and constituted a deficiency in service under the Consumer Protection Act. Prasad emphasised that the bank failed to comply with RBI guidelines and deprived him of access to his funds.

Observations by the District Commission

The District Commission noted that the bank acknowledged the complainant's report of ten unauthorised withdrawals from his account. The bank admitted to escalating the matter with its ATM back office in Mumbai and contacting other banks involved in the fraudulent transactions. Despite these efforts, the other banks only provided SMS details but failed to furnish CCTV footage or initiate chargebacks to refund the money. Consequently, the bank withheld the credited shadow balance of Rs. 46,000 pending the outcome of its investigation. The RBI ombudsman closed Prasad's case without issuing a decision.

Findings and Decision

The District Commission found that the bank failed to adequately investigate the disputed transactions. The bank's response indicated a lack of diligence, and its argument that it would further escalate the complaint suggested a prolongation of the resolution process rather than expeditious action.

The Commission acknowledged that Prasad diligently followed RBI guidelines by approaching the bank, law enforcement, and the banking ombudsman. While the bank initially credited the disputed amount, it subsequently withheld it without conducting a thorough investigation.

The District Commission held that the bank was liable for a deficiency in service. It instructed Allahabad Bank to refund Prasad Rs. 46,000 along with 6% interest per annum. Additionally, the bank was directed to pay Rs. 15,000 as compensation for pain, mental agony, and litigation costs.

Case of the Week

Annapurna B. Uppin & Ors. v. Malsiddappa & Anr.

Facts: An appeal arose from the order of the National Consumer Disputes Redressal Commission (NCDRC) dated April 1, 2022. The appellants, Annapurna B. Uppin and others, challenged the NCDRC's decision, which upheld the State Consumer Disputes Redressal Commission's (SCDR) decision.

and the District Consumer Disputes Redressal Forum's (DCDRF) orders. These orders directed the appellants to pay Rs. 5 lakhs with interest and compensation to the respondent, Malsiddappa.

The respondent had invested Rs. 5 lakhs in the partnership firm M/s Annapurneshwari Cotton Co., with the agreement that it would be repayable after 120 months with interest at 18% per annum. Upon the maturity of the investment, the respondent's request for repayment was denied, leading him to file a complaint with the DCDRF, alleging deficiency in service.

Procedural History:

1. DCDRF Order: Allowed the complaint, directing the appellants to pay Rs. 5 lakhs with interest.
2. SCDRC Order: Initially set aside the DCDRF's order and remanded the matter for reconsideration. Upon remand, the DCDRF again allowed the complaint.
3. NCDRC Order: Dismissed the revision petition filed by the appellants, leading to the present appeal in the Supreme Court.

Issues:

1. Whether the complaint filed by the respondent under the Consumer Protection Act, 1986, was maintainable.
2. Whether the appellants, as legal heirs of the deceased partner, were liable for the partnership firm's debts.
3. Whether the respondent's investment was a commercial transaction, thereby outside the purview of the Consumer Protection Act, 1986.

Judgment

Maintainability of the Complaint: The Supreme Court held that the complaint was not maintainable under the Consumer Protection Act, 1986. The respondent's investment in the partnership firm was deemed a commercial transaction intended for profit. The Act does not cover commercial disputes, which are to be decided by civil courts.

Liability of Legal Heirs: The Court observed that the legal heirs of a deceased partner do not automatically become liable for the firm's debts unless there is evidence of a fresh partnership deed reconstituting the firm with the legal heirs as partners. In this case, no such evidence was presented, and thus, the appellants could not be held liable for the firm's obligations.

Commercial Transaction: The Court noted that the respondent's investment aimed at earning an interest return constituted a commercial transaction. Therefore, the appropriate remedy for the respondent was to approach a civil court rather than filing a complaint under the Consumer Protection Act, 1986.

Conclusion

The Supreme Court allowed the appeal, setting aside the impugned orders of the DCDRF, SCDRC, and NCDRC. The complaint filed by the respondent was dismissed. However, the Court granted liberty to the respondent to seek appropriate remedies in a competent forum as per the law.

Legal Principles

1. **Consumer Protection Act, 1986:** The Act does not cover disputes arising from commercial transactions intended for profit or gain.
2. **Partnership Liability:** Legal heirs of a deceased partner do not inherit the liabilities of the firm unless they have explicitly joined the partnership through a formal reconstitution.

Repeated PYQ

Q. "Distinction between quasi-judicial and administrative functions is no longer the exclusive criteria for deciding whether or not the rule of Natural Justice apply." Critically examine this statement.

Ans. The principles of natural justice, primarily 'audi alteram partem' (the right to be heard) and 'nemo iudex in causa sua' (no one should be a judge in their own cause), are fundamental to ensuring fairness in decision-making processes. Traditionally, the application of these principles was confined to quasi-judicial functions, while purely administrative functions were often excluded.

However, the distinction between quasi-judicial and administrative functions has evolved, and the criteria for the application of natural justice have expanded.

Traditional Distinction

1. **Quasi-Judicial Functions:** These involve adjudication of disputes and determination of rights, where the decision-making authority functions similarly to a court. The authority must act judicially and follow the principles of natural justice. Examples include tribunals, disciplinary committees, and regulatory bodies.
2. **Administrative Functions:** These involve the execution of policies, management of public affairs, and decision-making without necessarily adjudicating disputes or determining rights. Traditionally, administrative functions did not require adherence to natural justice principles unless specifically mandated by statute.

Evolution of the Distinction

The rigid distinction between quasi-judicial and administrative functions has been gradually diluted through judicial interpretation. Courts have increasingly recognized that administrative decisions, particularly those affecting individual rights and interests, must also adhere to the principles of natural justice.

1. **A.K. Kraipak v. Union of India (1969):** This landmark case marked a significant shift. The Supreme Court held that the distinction between quasi-judicial and administrative functions was not absolute, and principles of natural justice could apply to administrative actions as well. The Court emphasised that the nature of the decision and its impact on individual rights should determine the application of natural justice, rather than the classification of the function as quasi-judicial or administrative.
2. **Maneka Gandhi v. Union of India (1978):** The Supreme Court further expanded the scope of natural justice. It ruled that any administrative action affecting the rights of individuals must be just, fair, and reasonable, and must comply with the principles of natural justice. In this case, the impounding of Maneka Gandhi's passport without giving her a chance to be heard was deemed a violation of her right to a fair hearing under Article 21.

Current Criteria for Application of Natural Justice

- 1. Impact on Rights and Interests:** The primary criterion for the application of natural justice is the impact of the decision on the rights and interests of individuals. If an administrative decision adversely affects an individual's rights, the principles of natural justice must be followed, regardless of whether the function is quasi-judicial or administrative.
- 2. Fairness and Reasonableness:** The principles of natural justice ensure that administrative actions are fair and reasonable. This requirement has been reinforced through various judicial pronouncements, emphasising that procedural fairness is crucial in administrative decision-making.

The distinction between quasi-judicial and administrative functions is no longer the sole criterion for the application of natural justice. Judicial interpretations have broadened the scope of natural justice, emphasising fairness, reasonableness, and the protection of individual rights in administrative decision-making.

