

## Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

8th September - 15th September 2024

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### 1. Preventive detention and representation under Article 22(5)

The detenu, one Appisseril Kochu Mohammed Shaji, was detained on August 31, 2023 under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 by the Detaining Authority to prevent him from acting in a prejudicial manner by allegedly indulging in hawala dealings, illegal purchase, sale and carriage of foreign currencies.

The case at hand revolves around a constitutional issue primarily involving the appellant's right to make an effective representation under Article 22(5) of the Constitution of India. The appellant challenged the detention of her husband, ordered under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA).

The Supreme Court quashed the detention order primarily on two constitutional grounds:

1. **Non-supply of Critical Material:** The Detaining Authority had relied on statements made by Ms. Preetha Pradeep while forming the grounds for detention.

These statements were crucial to establishing the link between the detenu and alleged illegal foreign exchange activities. However, these statements were not provided to the detenu, which infringed upon his right to make an effective representation as mandated under Article 22(5).

The Court emphasized that failure to supply material relied upon by the Detaining

Authority violated constitutional safeguards.

2. **Delay in Representation Processing:** The detenu had submitted his representation on 27th September 2023 for consideration by the Detaining Authority and the Central Government. Due to negligence in handling by the jail authorities, these representations were neither transmitted promptly nor received by the relevant authorities. The significant delay in processing, over nine months, was found to have further violated the detenu's constitutional right to have his representation considered "speedily."

The Court held that these constitutional violations rendered the detention order invalid, underscoring the importance of adherence to procedural safeguards in preventive detention cases.

## 2. For Conviction under 304B. Cruelty must be related to dowry Demand

The Supreme Court in *CHABI KARMAKAR & ORS. Vs. THE STATE OF WEST BENGAL*, set aside the conviction for dowry death (under Section 304-B of IPC) after noting that the prosecution was not able to prove that the deceased wife was subjected to cruelty or harassment by the husband soon before her death in connection with the demand of dowry.

The Court set aside the convictions of the husband, sister-in-law and the mother-in-law of the deceased. The trial court had sentenced them to undergo life imprisonment, which the High Court also approved.

Setting aside the conviction, the Supreme Court stated that unless it was proved that the alleged cruelty or harassment faced by the deceased wife from her husband and in-laws was in connection with the demand of dowry, then conviction under Section 304-B of IPC would not be sustainable.

The bench comprising Justices Sudhanshu Dhulia and JB Pardiwala relied on the judgment in the case of *Rajinder Singh vs. State of Punjab (2015)*, where the Court had discussed the ingredients of Section 304B of IPC as follows:

"There are four such ingredients and they are said to be:

1. (a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;
2. (b) such death must have occurred within seven years of her marriage;
3. (c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
4. (d) such cruelty or harassment must be in connection with the demand for dowry."

The Court stated that the mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304B

and 498A of IPC unless the prosecution has not proved that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry.

### 3. International Day for South-South Cooperation, 12 September

UN Celebrates each year 12th sep as International day for South-South Cooperation, South-South cooperation is done through a broad framework of collaboration among countries of the South in the political, economic, social, cultural, environmental and technical domains. Involving two or more developing countries, it can take place on a bilateral, regional, intraregional or interregional basis.

Through South-South collaboration, developing countries share knowledge, skills, expertise and resources to meet their development goals through concerted efforts.

Another modality of South-South cooperation is Triangular cooperation, a collaboration in which traditional donor countries and multilateral organizations facilitate South-South initiatives through the provision of funding, training, management and technological systems, as well as other forms of support.

### 4. ICJ and Disputes between states

The Court can only hear a dispute when requested to do so by one or more States. It cannot deal with a dispute on its own initiative. Neither is it permitted, under its Statute, to investigate and rule on acts of sovereign States as it chooses.

The States involved in the dispute must also have access to the Court and have accepted its jurisdiction, in other words they must consent to the Court's considering the dispute in question. This is a fundamental principle governing the settlement of international disputes, since States are sovereign and free to choose how to resolve their disputes.

A State may manifest its consent in three ways:

- **by a special agreement:** two or more States with a dispute on a specific issue may agree to submit it jointly to the Court and conclude an agreement for this purpose;
- **by a clause in a treaty:** over 300 treaties contain clauses (known as jurisdictional clauses) by which a State party undertakes to accept the jurisdiction of the Court should a dispute arise with another State party about the interpretation or application of the treaty;
- **by a unilateral declaration:** the States parties to the Statute of the Court may opt to make a unilateral declaration recognizing the jurisdiction of the Court as binding with respect to any other State also accepting it as binding. This optional clause system, as it is called, has led to the creation of a group of States each of which has given the Court jurisdiction to settle any dispute that might arise between them in future.

In principle, any State in this group is entitled to bring one or more other States in the

group before the Court. Declarations may contain reservations limiting their duration or excluding certain categories of dispute. They are deposited by States with the Secretary-General of the United Nations.

### Weekly Focus

#### **Case of the week: Raghunath Prasad Sahu v. Sarju Prasad Sahu(1924, PC 60)**

In the landmark case of *Raghunath Prasad Sahu v. Sarju Prasad Sahu*, the Privy Council laid down key principles regarding the concept of undue influence in contractual relationships. The case clarified the circumstances under which a contract could be set aside on grounds of undue influence.

1. **Dominant Relationship:** The court emphasized that for undue influence to be established, there must first exist a relationship between the parties that allows one party to dominate the will of the other. This dominance typically arises in cases where one party holds authority over the other or where there is a fiduciary relationship, such as between a trustee and a beneficiary, doctor and patient, or parent and child.
2. **Unconscionable Bargain:** If dominance is established, the court then examines whether the resulting transaction or bargain is unconscionable. An unconscionable transaction is one that is excessively one-sided or unjust, indicating that the dominating party might have exploited their position of power.
3. **Mere Unconscionability is Insufficient:** The case importantly noted that mere unconscionability, without the establishment of dominance, is not sufficient to prove undue influence. The court specified that where parties are of equal standing, mere inequality in the bargain does not amount to undue influence. For undue influence to be claimed, there must be evidence of one party's dominance over the other, leading to an unconscionable contract.

The principles established in this case continue to guide courts in assessing claims of undue influence in contractual disputes, emphasizing the need to prove both dominance and unconscionability.

#### **PYQ Solution**

“A hire purchase agreement is a bailment plus an agreement to sell.” Explain. (20 MARKS, 2020)

A hire-purchase agreement is a unique contractual arrangement that combines elements of both bailment and an agreement to sell. This bifurcated nature makes it distinct from other commercial agreements. Below, each component is elaborated upon to illuminate how a hire-purchase agreement is essentially a “bailment plus an agreement to sell.”

**Bailment Component**

In a hire-purchase agreement, the owner (bailor) gives possession of the goods to the hirer (bailee) for a specified period. According to Section 148 of the Indian Contract Act, 1872, bailment is the transfer of the possession of goods by one party to another for some purpose. During the term of the hire-purchase agreement, the hirer gains possession but not ownership of the goods, much like a bailee in a typical bailment contract.

**Responsibilities and Rights:** As per Section 151 and Section 152 of the Indian Contract Act, the hirer is expected to take reasonable care of the goods, similar to a bailee. Additionally, under Section 160, the bailee has the duty to return the goods after the purpose is fulfilled. In hire-purchase, the hirer can either return the goods without any obligation to purchase or proceed to buy them according to the terms.

**Agreement to Sell Component**

An agreement to sell comes into play as the hirer has the option to purchase the goods at the end of the hire term. If the hirer decides to buy, the ownership of the goods is transferred, converting the bailment into a sale.

This is aligned with Section 4(3) of the Sale of Goods Act, 1930, which defines an agreement to sell as a contract where the transfer of property in goods is to take place in the future or upon the fulfilment of some conditions.

**Conditional Sale:** The agreement to sell is conditional upon the hirer making all the payments as stipulated. This aligns with Section 4(4) of the Sale of Goods Act, describing conditional sales.

**Conferment of Title:** Once all payments are made, the hirer gains title to the goods, converting the hire-purchase agreement into an outright sale. This is similar to how an agreement to sell becomes a sale upon fulfilling the conditions per Section 4(8) of the Sale of Goods Act.

[Law Optional and GS Papers overlap](#)

**Law optional and GS - II: Significance of Fundamental Duties**

Rights and Duties are correlative. The fundamental duties (code of conduct) are intended to serve as a constant reminder to every citizen that while the Constitution specifically conferred on them certain fundamental rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour. The fundamental duties seek to limit the operation of fundamental rights - a countervailing factor and a warning to reckless citizens against anti-social activities like destroying public property, burning national flags, and the like.

Some critics held the view that there was too heavy an emphasis on the rights in the Constitution. A society in which everyone is conscious of his rights and not of his duties is bound to find himself in a state of anarchy, sooner or later. However, the Constitution has

incorporated the duties -the preamble emphasises J tiie duties, “justice, social, economic and political”. Further, the State is empowered to impose reasonable restriction and curtail the rights in the interest of society.

Further, some critics question the utility of these duties amidst starvation and : poverty. A poor and unemployed cannot be expected to perform his duties towards the society if the society fails to discharge its obligation towards individuals. The ‘right to work’ should, therefore, be guaranteed to every citizen, who is expected to do certain duties to the nation.

**Comparison with Directive Principles** - Fundamental Duties are comparable to the Directive Principles. The duties are addressed to the citizens. The country expects them to perform certain duties as citizens. They are not spectators but active Participants in the attainment of national goals. The Directive Principles are goals set up in the Constitution for all governments. It is the duty of the State to apply these principles in making laws (Art. 37).

But in case a State does not implement a Directive Principle it cannot be penalised. There is no legal sanction attached. The citizen must introspect and endeavour to perform these duties. The sanction should be self imposed. They cannot be enforced by a court.<sup>6</sup>

In *Union of India v Navin Jindal* (2004) 2 SCC 410, the Supreme Court observed: For the purpose of interpretation of the constitutional scheme and for the purpose of maintaining a balance between the fundamental/legal rights of a citizen vis-a-vis, the regulatory measures/restrictions, both Parts IV and IV-A of the Constitution can be taken recourse to.

**Enforcement of Duties** - Parliament may, by law, provide penalties to be imposed for failure to fulfil fundamental duties and obligations. The success of this provision would, however, depend much upon the manner in which and the person against whom these duties would be enforced.

For the proper enforcement of duties, it is necessary that it should be known to all. Most of the people of this country are illiterate and not politically conscious of what they owe to society and country. Thus, what is needed is a systematic and intensive education of the people.

In *M.C. Mehta v Union of India* (1983) 1 SCC 471, held that under Art. 51-A(g) it is the duty of the Central Government to introduce compulsory teaching of lessons at least for one hour in a week on protection and improvement of the natural environment in all educational institutions.

A court in determining the constitutional validity of any law seeking to give effect to duties, may consider law to be ‘reasonable’ in relation to Art. 14 or 19. The courts will uphold as void any law which prohibits an act which is violative of the duties.

Fundamental duties provide a valuable guide and aid to interpretation of the Constitution. The Supreme Court has held that the duties must be used as a tool to control State action drifting from constitutional values [*AIIMS Students’ Union v AIIMS* (2002) 1 SCC 428



## Law Optional and GS - IV: Media Trial and Accountability

Former Chief Justice of India N V Ramana's criticism of the media, particularly TV and social media, of running "kangaroo courts" that conduct "ill-informed and agenda-driven debates" demands some serious attention.

Justice Ramana's comments, delivered at a lecture in Ranchi, did not name any entity but he has expressed misgivings frequently articulated in recent years. India has gained something of an unsavoury reputation for the blatantly partisan, crudely combative and low intellectual standard of discourse on sub-judice subjects that saturates the social media and the evening TV discussions.

Social media, with its enormous reach among all levels of society and largely unregulated and unmoderated universe, remains the bigger offender in this respect.

But TV has not lagged far behind with its blatant biases and commentary that has frequently spilled over into law and order problems. As the chief justice pointed out, pre-judging issues before the courts, some of them involving complex constitutional issues that demand thoughtful reflection, tends to vitiate the functioning of the judiciary. It may be argued that judges need not, indeed should not, take notice of media comment, and base their judgments on independent interpretations of the rule of law.

This point is valid in theory but it becomes moot when inflamed and biased media discussions provoke attacks on judges, who, after all, live and work in the same society as the freelance commentators.

The key point, of course, is that neither media is restrained by any meaningful checks and balances. The print media is subject to legal accountability as Justice Ramana pointed out, though it, too, cannot be described as the soul of responsible reportage or commentary in its entirety. But most print media houses will restrain themselves when it comes to topics that are sub-judice, for the simple reason that they can invite contempt proceedings. But TV and social media exist in an environment where accountability is virtually non-existent.

No less concerning is the symbiotic nature of the two media, which enables offensive TV clips to be aired ad nauseam on social media without check. In the latter, it is no secret that internal moderation is almost non-existent since platforms lack the wherewithal to police content effectively.

It is also fair to say that when the Centre or state governments do choose to intervene and order the occasional shutdown or takedown, the impulse is driven by their own political agendas rather than the cause of impartiality or accuracy.

As a general principle, organised governmental oversight on the media—or censorship by any other name—is not a desirable development in a democracy. But several governments over the

years have intended to do so and the more incendiary the discourse, the greater the encouragement for the government to make moves in that direction.

That is why, as Justice Ramana pointed out, measured self-regulation by these online and broadcasting organisations is imperative. This is not just a need to ensure their survival but in the interests of the country too. A responsible, independent media is an indispensable tool of democracy that makes elected representatives and public servants accountable. Hampering the functioning of the judiciary by pre-judging issues is the last thing that will enhance this process.

