

**Weekly Update for Law optional**  
**UPSC A mix of Conceptual, Current/Contemporary Topics**

**Date: 6th - 12th November 2023**

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### 1. Modernising India's Criminal Justice System

In a significant move towards modernising India's legal landscape, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) bill was introduced in the Lok Sabha on August 11, 2023. Alongside it, the Bharatiya Nyaya Sanhita, 2023, and the Bharatiya Sakshya Bill, 2023 were also presented. These bills are aimed at liberating India from the vestiges of colonial-era legal frameworks. However, upon closer examination, it becomes evident that the BNSS retains a majority of provisions from the soon-to-be-erstwhile Code of Criminal Procedure, 1973 (CrPC).

#### Introduction of Electronic Communication:

One of the most significant reforms introduced by the BNSS is the incorporation of electronic communication in legal proceedings. Under this provision, all trials, inquiries, and proceedings can now be conducted electronically, using 'electronic communication' or 'audio-video electronic' means.

#### Definitions Introduced:

To support this change, the BNSS introduces two key definitions:

**Audio-Video Electronic:** This encompasses the use of communication devices for video conferencing, recording of identification processes, search and seizure procedures, evidence recording, and more, as determined by State Government rules.

**Electronic Communication:** This broadly includes the transmission of written, verbal, pictorial, or video content via electronic devices such as phones, computers, cameras, or other specified electronic forms.

#### Specific Changes:

Several specific changes have been made in the BNSS to facilitate electronic proceedings, including the following:

- Recording the identification of a person arrested by another person through electronic communication.
- Issuing summons in an encrypted or electronic communication format.
- Explaining charges to accused individuals physically or through electronic means.
- Recording search and seizures through audio-video electronic means.
- Notifying conditional orders for removal of nuisance via electronic communication.
- Recording information in cognizable cases using electronic communication.
- Recording statements by individuals acquainted with case facts through audio-video electronic means.
- Mandating police to inform victims or informants about investigation progress within 90 days, including through electronic communication.
- Serving police reports, FIRs, statements, and documents to accused and victims through electronic communication.
- Requiring police officers conducting searches to record proceedings via audio-video electronic means.
- Modifying procedures for offences involving letters or electronic communication.

## 2. Delhi High Court Upholds Liquidated Damages in Lease Dispute

In a recent case, **Vivek Khanna vs. OYO Apartments Investments LLP**, the Delhi High Court dismissed a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging an arbitral award. The case revolved around the interpretation of liquidated damages in a lease agreement and the requirement for the claiming party to prove incurred losses.

### Background:

The dispute arose from a lease agreement dated February 18, 2019, between Mr. Vivek Khanna (the Petitioner) and OYO Apartments Investments LLP (the Respondent). The agreement included a provision that obligated the Respondent to pay a minimum guaranteed amount or net revenue share each month, with a lock-in period of 36 months. The Respondent terminated the lease prematurely, alleging a breach by the Petitioner, leading to arbitration proceedings.

### Arbitration Outcome:

The arbitral tribunal, constituted pursuant to a Section 11(6) petition, ruled that the Respondent's premature termination was illegal. However, it only partially awarded the Petitioner's claims, including arrears of rent until November 2019, arrears of electricity charges, and arrears of airtel phone/internet charges. The tribunal also granted a counterclaim of Rs. 4,78,841/- to the Respondent.

### Challenged Claim:

The Petitioner challenged the tribunal's dismissal of Claim No.3, which pertained to rent payable for the remaining lock-in period from December 2019 onwards. The Petitioner claimed Rs.

87,00,000/- as rent for the lock-in period, arguing that this loss resulted from the premature termination declared illegal by the tribunal.

**Tribunal's Ruling on Liquidated Damages:**

The tribunal based its decision on legal precedents, including *Deepak Chopra v. FLAKT (India) Pvt. Ltd.*, *Manju Bagai v. Magpai Retail Pvt. Ltd.*, and *Egon Zhender International Pvt. Ltd. v. Namgayal Institute for Research on Ladakhi Art & Culture (Nirlac) & Ors.* It examined the admissibility of liquidated damages and concluded that the agreed-upon sum as liquidated damages did not exempt the claiming party from proving actual losses.

The tribunal emphasised that liquidated damages represent a pre-estimate of the loss likely to be suffered by a party due to a contract breach. To claim liquidated damages, the party must demonstrate that it incurred a loss. Liquidated damages are not a penalty for a breach if no loss is suffered. The quantification of the loss should align with the pre-estimated loss or formula agreed upon by the parties in the contract.

**Court's Decision:**

The Delhi High Court upheld the tribunal's decision, finding it consistent with established legal principles. The court emphasised the necessity for the claiming party to prove the actual loss incurred, even when liquidated damages are specified in the contract. The rejection of the Petitioner's claim was deemed in accordance with prevailing legal standards.

### 3. Cautions Against Fixed Time-Schedules for Case Disposal

The Supreme Court's recent observation in **Shaikh Uzma Feroz Hussain vs State of Maharashtra** underscores the challenging issue of pending cases in Indian courts and the need to approach time-bound schedules for case disposal cautiously. Here are the key points from the Supreme Court's stance:

**Pendency in Courts:** The Supreme Court acknowledges that there is a significant backlog of cases in both the Supreme Court and High Courts across the country. This backlog is a systemic issue that has been a concern for a long time.

**Refusal to Fix Time-Bound Schedules:** The Supreme Court is cautious about imposing time-bound schedules for the disposal of cases, except in extraordinary circumstances. This means that while there may be a desire to expedite the hearing and resolution of cases, it's recognized that the current situation in Indian courts makes it challenging to set specific timeframes for case disposition.

**Individual Petitions:** The Court emphasises that individuals with urgent matters can approach the relevant court benches to seek expedited consideration. The court suggests that if a request is genuine and involves extraordinary circumstances, the respective bench is likely to entertain it.

**Constitutional Courts:** The Supreme Court refers to itself and High Courts as "Constitutional Courts," highlighting their crucial role in upholding the constitutional framework and ensuring justice in the country.

**Avoiding Temptation:** The Supreme Court advises that Constitutional Courts should resist the temptation to set time-bound schedules for case disposal unless the situation is truly exceptional.

This cautious approach acknowledges the limitations faced by the judiciary in dealing with a large volume of pending cases.

#### **4. Contempt Notice to Former PWD Principal Secretary**

The Uttarakhand High Court has taken serious note of the alleged non-compliance with its orders regarding the transplantation of fully grown trees that were cut during the widening of Saurashtra Road in Dehradun. Contempt notices have been issued to the former PWD Principal Secretary and Executive Engineer in this regard.

#### **Background:**

The matter pertains to the preservation of the ecological balance in the Shivalik Hills region, particularly concerning the trees that were felled during the road-widening project. The High Court had previously issued directives for the transplantation of these trees, emphasising the use of mechanical devices to uproot and relocate them to ensure their continued growth.

#### **Contempt Plea:**

A contempt petition was filed by Abhishek Kumar Garg, represented by advocate Abhijay Negi, alleging that the concerned officials had failed to adhere to the High Court's orders issued in September 2022.

#### **Court's Observations:**

Justice Ravindra Maithani, presiding over the case, made several critical observations. Notably, the Court noted that photographs presented as evidence indicated that not only were the trees cut indiscriminately, but their branches had also been pruned.

#### **Key Questions:**

The Court issued notices to the respondents and posed a series of questions to be answered, including:

- When were the mechanical devices for tree transplantation purchased?
- Who from the Forest Research Institute assisted in uprooting and transplanting the trees?
- How many trees were successfully transplanted?
- Where were these transplanted trees relocated?
- When were the trees transplanted?
- What is the current condition of the transplanted trees?

The Court requested that this information be accompanied by photographic and videographic evidence.

#### **5. Limited Scope of Section 34 of Arbitration Act**

The Delhi High Court recently ruled that the interpretation of contracts is primarily a matter for the arbitrator to determine. It emphasised the limited scope of Section 34 of the Arbitration and Conciliation Act, stating that a court should not re-interpret the contract between parties or substitute the arbitrator's findings unless the arbitrator's view is not even a possible one.

**Background:**

The case involved the restoration of an arbitral award that had been set aside by a single judge under Section 34 of the Arbitration and Conciliation Act. The court referred to the 2015 Amendment Act, which made it clear that the construction of contract terms should be decided by the arbitrator unless the arbitrator's interpretation is so unreasonable that no fair-minded person could hold that view.

**Scope of Interference:**

The court applied the test laid down in the case of *Associate Builders v. DDA* regarding the scope of interference under Section 34 on the grounds of 'public policy.' It found that the arbitrator's interpretation of the contract did not violate public policy or shock the conscience of the court.

**Arbitrator's Jurisdiction:**

The court clarified that if an arbitrator goes beyond the contract and addresses matters outside their jurisdiction, it would constitute an error of jurisdiction, falling under the new ground of 'patent illegality' added under Section 34(2A).

**Single Judge Decision:**

The single judge set aside the arbitral award, prompting the appellant to appeal.

**Division Bench Decision:**

The Division Bench disagreed with the single judge's reappreciation of facts and upheld the arbitrator's interpretation of the contract terms. It reiterated that the scope of grounds for challenging an arbitral award under Section 34 is limited. The Division Bench emphasised that the interpretation of a contract is primarily the arbitrator's responsibility, even if it involves questions of law.

## 6. Case of the Week

**N.R. Dongre and Ors. v Whirlpool Corporation And Anr . (1977)**

The case of *N.R. Dongre vs Whirlpool Corporation* is a significant legal battle involving trademark infringement and the concept of passing off in Indian law. The Whirlpool Corporation, a multinational company, had been using the trademark 'WHIRLPOOL' since 1937 for their electrical goods, including washing machines. This trademark was registered in India until 1977.

The case centred around the use of the 'WHIRLPOOL' trademark by N.R. Dongre and others, which led to a legal dispute. Whirlpool Corporation filed a lawsuit to prevent the defendants from passing off their goods as those of Whirlpool. They sought an ad interim injunction to restrain the

appellants from manufacturing, selling, advertising, or using the 'WHIRLPOOL' trademark or any similar mark deceptively or confusingly.

The Delhi High Court initially ruled in favour of Whirlpool Corporation. The judge emphasised that the issue of registration was not crucial in cases of passing off. It was held that the prior use of the trademark by Whirlpool Corporation played a significant role in obtaining a temporary injunction against the defendants

**Significance of Trans-Border Reputation:** An important aspect of this case was the acknowledgment of the trans-border reputation of Whirlpool's products. Even though Whirlpool's trademark registration in India had lapsed in 1977, their global reputation played a crucial role in the legal proceedings, as the court recognized the value and recognition of the Whirlpool brand internationally

## 7. Repeated PYQ

Explain void agreements. Discuss the rules regarding void agreements.

According to Section 2 (g) of the Contract Act, 1872, an agreement not enforceable by law is said to be void. This definition clarifies that a void agreement is one that lacks enforceability under the law. It means that if parties enter into a void agreement, they cannot legally compel each other to perform their respective obligations or seek remedies for any breach of the agreement.

A void agreement is essentially treated as if it never existed, and it holds no legal validity or consequences. It cannot create legal rights or obligations between the parties involved. The purpose of declaring certain agreements void is to protect the interests of the parties and prevent the enforcement of contracts that are contrary to public policy.

The Indian Contract Act, 1872, provides following rules regarding void agreements:

### 1. Agreement without consideration (Section 25):

A contract without consideration is generally void. Consideration refers to something of value exchanged between the parties as part of the contract. Section 25 states that an agreement without consideration is void, except in certain specified cases, such as natural love and affection between family members.

### 2. Agreement in restraint of marriage (Section 26):

Any agreement that imposes a restraint on marriage is void. This means that contracts that restrict a person's freedom to marry are not enforceable. However, agreements that impose reasonable restrictions on the marriage of a minor or a person of unsound mind may be valid.

### 3. Agreement in restraint of trade (Section 27):

Agreements that impose unreasonable restraints on trade are void. However, reasonable restrictions, such as non-compete clauses in employment contracts, are allowed if they are necessary to protect legitimate interests of the parties and are not against public policy.

**Superintendence Company of India (P) Ltd. v. Krishan Murgai (1980 AIR 1717)**- The Supreme Court held that a non-compete clause that unreasonably restricts an employee's right to practice a trade or profession is void.

**4. Agreements in restraint of legal proceedings (Section 28):**

Any agreement that seeks to restrict a party's right to enforce legal rights through the court system is void. Public policy favours the access to justice and does not permit parties to contractually waive their right to approach the courts.

**5. Uncertain agreements (Section 29):**

Agreements that are uncertain and vague, and where the meaning cannot be determined with reasonable certainty, are void. For a contract to be valid, the terms and intentions of the parties must be clear and definite.

**6. Wagering agreements (Section 30):**

Wagering agreements, which are based on future uncertain events and involve a chance of winning or losing, are considered void.

**7. Agreements contingent on impossible events (Section 36):**

Any agreement that is contingent on the happening of an impossible event is void. If the performance of a contract becomes impossible due to unforeseen circumstances, the contract may be discharged.

8. Section 23 of the Indian Contract Act states that any agreement that is opposed to public policy is void. This provision gives the courts the power to declare contracts void if they are against public interest or morals.