

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 25th June - 1st July 2023

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1. IP and Sports

The intersection of Intellectual Property (IP) and sports in India is an emerging area of study and application, fundamentally influenced by the underlying legislations and legal frameworks. A legalistic analysis of this domain needs to consider specific IP laws applicable to the sports industry.

- Trademarks:** Trademarks are protected under the Trademarks Act 1999. Trademarks encompass brand names, logos, and symbols associated with sports teams or events. For instance, the logos and team names of the Indian Premier League (IPL) franchises are registered trademarks, which prevents unauthorised use and counterfeit merchandise, thus maintaining brand integrity.
- Copyrights:** Broadcasting rights of sports events are a key source of revenue for sports entities. The Copyright Act 1957 governs these rights, ensuring that broadcasting is limited to those entities that have legally purchased the rights. The Act provides mechanisms for sports entities to take legal action against copyright infringements, such as unauthorised broadcasts or streaming.
- Patents:** The Patents Act 1970 regulates technological innovations related to sports, ranging from novel sports equipment to viewer experience enhancing technology. Acquiring a patent provides a monopoly right to the inventor, promoting research and development within the industry. However, patent applications must meet the criteria of novelty, inventive step, and industrial applicability.
- Image Rights and Personality Rights:** Currently, India does not have a codified law for image rights or personality rights. These rights typically fall under the purview of the Right to Privacy and Right to Publicity, which are derivatives of Article 21 of the Indian Constitution. The Supreme Court in multiple judgments has upheld these rights, allowing celebrities, including sportspersons, to control the commercial use of their name, image, and likeness.

2. Law Relating to Legal Insanity in India

The criminal law system works on the premise that individuals are aware of their actions and can, thus, be held liable for them. However, the law recognises that an individual's cognitive abilities may be compromised, such as in instances of insanity.

Legal insanity, within the ambit of the Indian Penal Code (IPC), extends beyond the medical or psychiatric state of insanity. It delves into the cognitive and moral understanding of right and wrong by the accused at the time of the act. The basis for this concept is the M'Naughten rule, which presumes every man to be sane, and to possess a sufficient degree of reason to be responsible for his crimes until proven otherwise.

Section 84 of the IPC, the principal legal provision relating to legal insanity in India, asserts: "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

Daniel M'Naghten's Case [1843] UKHL J16: In this case, the House of Lords established the principle that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes until the contrary be proved.

Ratan Lal vs State of Madhya Pradesh, AIR 1965 SC 444: In this case, the Supreme Court held that the crucial point of time for deciding the benefit of Section 84 is the material time when the offence takes place.

Recently, in **Prakash Nayi @ Sen v. State of Goa, 2023**, the Supreme Court reiterated that the burden of proof lies on the accused to establish insanity to the satisfaction of the court. This burden is discharged based on a prima facie case and reasonable materials produced on his behalf. It emphasized that a person of unsound mind is not expected to prove his insanity beyond a reasonable doubt, and the extent of probability is one of preponderance. The court further held that it is the collective responsibility of the person concerned, the court, and the prosecution to decipher the proof of insanity, not treating it as adversarial.

The **Prakash Nayi @ Sen v. State of Goa** case has provided a nuanced perspective on the burden of proof and the role of various stakeholders in a trial involving claims of insanity. However, the controversial space between legal and medical insanity and the burden of proof remains complex.

3. Medical Negligence in Assisted Reproductive Techniques

The field of medical law has seen a significant rise in cases related to medical negligence, especially in the area of Assisted Reproductive Techniques (ART). The case of **X & Anr. vs Bhatia Global Hospital & Endosurgery Institute & Ors.**, adjudicated by the National Consumer Disputes Redressal Commission (NCDRC), throws light on the problematic practices, negligence, and unethical behaviours pervading certain ART Centres in India.

Factual Background of the Case

The complainants, X and her husband Y, approached Bhatia Global Hospital for an In Vitro Fertilisation (IVF) procedure recommended by Dr. Archana Dhawan Bajaj. After successful embryo transfer and pregnancy confirmation, X gave birth to twin girls. However, a discrepancy in blood types led the couple to undergo a paternity test, revealing that Y was not the biological father of the twins.

The couple sought compensation for the emotional distress, family discord, fear of potential genetic diseases, and other grievances resulting from the alleged negligence. The hospital's defense centered around the argument that the doctors involved were independent practitioners, not regular staff. Dr. Archana Dhawan Bajaj and Dr. Indira, both involved in the procedure, deflected responsibility onto each other.

Observations by NCDRC

The NCDRC adjudicated the case as one of *Res Ipsa Loquitor*, with negligence evident from the facts of the case. The handling of the semen and egg samples was in question, revealing a critical absence of an embryologist in the IVF procedure.

The Commission ordered the hospital and its directors to pay Rs. 1 crore to the complainants, along with an additional Rs. 10 lakhs each from Dr. Indu Bhatia, Dr. Archana Dhawan Baja, and Dr. Indira Ganeshan. The Hospital was also fined Rs. 20 lakhs for unfair trade practices. The total compensation, if not paid within six weeks, would attract an 8% interest per annum.

NCDRC's Emphasis on Ethical Practices in ART

The Commission used this case to highlight distressing malpractices in ART centres across the country, underlining the urgent need for strict accreditation, comprehensive knowledge amongst practitioners, and the issuance of DNA profiling of babies born through ART procedures.

Reflection on the Supreme Court Judgments

In determining the compensation, the Commission relied on the Supreme Court Judgments of Sarla Verma & Ors. vs Delhi Transport Corp. & Anr. and Dr. Balaram Prasad vs. Dr. Kunal Saha & Ors. These judgments provided a framework for calculating 'just and adequate compensation', considering the profound emotional and financial impact on the aggrieved couple.

4. Balancing Freedom and Responsibility

Adipurush Controversy: An Overview

"Adipurush" is an upcoming Indian film touted as a retelling of the Indian epic Ramayana. It has sparked considerable controversy, with objections primarily stemming from alleged distortion of the epic. Critics argue that it manipulates the narrative and characters to cater to modern sensibilities, thereby affecting the religious sentiments of those who consider Ramayana an integral part of their faith.

Legal Framework: Cinematograph Act, 1952

Under the Cinematograph Act, 1952, the Central Board of Film Certification (CBFC) has the authority to regulate public exhibition of films. The Act enables the CBFC to refuse certification to a film that undermines the sovereignty and integrity of India, threatens state security, disrupts public order, or offends decency or morality.

Censorship of Adipurush: Legal Justification?

Considering the controversy surrounding "Adipurush," the Courts may potentially justify censorship on the grounds of preserving public order and protecting religious sentiments. The depiction of revered religious figures in ways that deviate from traditionally accepted narratives could incite public unrest or communal tensions. However, this must be balanced against the constitutional right to freedom of speech and expression, which encompasses creative freedom.

Relevant Judicial Precedents

The Supreme Court in the landmark **K.A. Abbas v. Union of India** case acknowledged the visual impact of cinema and its capacity to stir emotions, thereby justifying a separate treatment from other forms of media. However, it was emphasized that any imposed restriction must be justifiable as a reasonable restriction under Article 19(2) of the Constitution. In **S. Rangarajan v. P. Jagjivan Ram**, the court held that freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence

5. Scheme of the Constitution (Seventy-Fourth Amendment) Act, 1992

The Supreme Court of India, in its recent judgment in *State of Rajasthan v. Ashok Khetoliya* (2022), upheld the constitutional validity of the Rajasthan Municipalities (Amendment) Act, 2019, which amended the provisions of the Rajasthan Municipalities Act, 2009, relating to the reservation of seats for Scheduled Castes, Scheduled Tribes, Backward Classes and women in municipal elections. The Court also clarified the scope and extent of the constitutional mandate under Article 243T of the Constitution, which was inserted by the Constitution (Seventy-Fourth Amendment) Act, 1992, to provide for reservation of seats for women and weaker sections in local bodies.

- The main issue before the Court was whether the State Legislature had the power to enact the impugned amendment, which reduced the percentage of reservation for women from 50% to 33%, and also altered the criteria for identifying the reserved seats on the basis of population instead of rotation. The petitioners, who were aggrieved by the amendment, contended that it violated Article 243T and the basic structure of the Constitution, as it diluted the representation of women and weaker sections in local governance.

The Court rejected the petitioners' arguments and held that the State Legislature had the competence and discretion to legislate on the subject of local government, subject to the constitutional limitations and guidelines.

The Court observed that Article 243T did not prescribe a uniform or minimum percentage of reservation for women and weaker sections, but only empowered the Parliament and the State Legislatures to make such provision by law.

The Court also noted that Article 243T did not specify any particular mode or method of reservation, such as rotation or population, but left it to the wisdom and policy of the legislature. The Court further held that

Article 243T did not create a fundamental right to reservation in local bodies, but only a constitutional obligation on the part of the legislature to make such provision.

The Court also emphasized that the scheme of the Constitution (Seventy-Fourth Amendment) Act, 1992 was not to take away or curtail the legislative competence of the State Legislatures to legislate on the subject of local government, but to ensure that the three tiers of governance - Centre, State and local - are strengthened as part of democratic set up. The Court stated that while enacting laws on reservation in local bodies, the State Legislatures have to balance various factors and interests, such as population, geographical spread, social justice, political expediency and administrative feasibility. The Court held that unless such laws are manifestly arbitrary or unreasonable or violative of any constitutional provision or principle, they cannot be struck down by judicial review.

Reservation is means not End

The Court also observed that reservation is not an end in itself, but a means to achieve substantive equality and empowerment of women and weaker sections in local governance. The Court opined that reservation alone cannot ensure effective participation and representation of women and weaker sections in local bodies, unless they are provided with adequate training, resources and opportunities to perform their roles and responsibilities. The Court urged the Central and State Governments to take necessary steps to enhance the capacity and capability of women and weaker section representatives in local bodies.

The judgment of the Supreme Court in *State of Rajasthan v. Ashok Khetoliya* (2022) is a significant contribution to the jurisprudence on reservation in local bodies. It reaffirms the constitutional mandate under Article 243T to provide for reservation of seats for women and weaker sections in local bodies. It also clarifies the scope and extent of legislative competence and discretion of the State Legislatures to enact laws on reservation in local bodies. It also highlights the need for ensuring effective participation and representation of women and weaker sections in local governance.

6. Case of the week: Kihoto Hollohan v. Zachillhu and Others (1992)

Background: This case arose due to the enactment of the 52nd Amendment to the Indian Constitution in 1985, which added the Tenth Schedule, commonly known as the Anti-Defection Law. The purpose of the law was to combat "political defections" by members of the legislature, which were causing instability in the governments. Kihoto Hollohan and others challenged the constitutional validity of the Tenth Schedule before the Supreme Court.

Issue: The key issue before the Supreme Court was whether the Tenth Schedule infringes upon the freedom of speech, conscience, and voting of a member of the Parliament or State Legislature, thus violating their fundamental rights and the principles of parliamentary democracy.

Key Decision: The Supreme Court upheld the constitutional validity of the Tenth Schedule. However, it struck down Paragraph 7 of the Tenth Schedule, which sought to keep the Speaker's decision beyond judicial review, asserting that it was in violation of the basic structure of the Constitution.

Rationale: The Court recognized the harm caused by frequent and unprincipled defections to the democratic political processes. The Tenth Schedule was justified to prevent such immoral political behavior. However, excluding judicial review was seen as a violation of the principle of rule of law, which is a part of the basic structure of the Constitution.

Impact: The Kihoto Hollohan case has had significant impact on the political scenario in India. It validated the need for an Anti-Defection Law to curb political instability caused by opportunistic shifts of allegiance by legislators. At the same time, it asserted the power of judicial review, reaffirming that even decisions made by the Speaker under the Tenth Schedule are subject to judicial scrutiny. This ensures a check on possible arbitrary or malafide decisions by the Speaker. The judgment thus strikes a balance between the need for political stability and the necessity of safeguarding constitutional principles.

7. Repeated PYQ Model Answer of the Week

Question: Explain in detail the discharge of surety.

The discharge of a surety refers to the release of a person who has guaranteed the performance of a contract by the principal debtor. Sections 133 to 139 of the Indian Contract Act, 1872, outline the various circumstances under which a surety may be discharged from their obligations.

Variance in terms of the contract (Section 133): If there is a variation in the terms of the contract between the principal debtor and the creditor without the surety's consent, the surety is discharged from liability for transactions subsequent to the variance. The rationale behind this provision is to protect the surety from being bound by terms they did not agree to.

Release or discharge of principal debtor (Section 134): A surety is discharged if the creditor enters into a contract with the principal debtor that releases or discharges the principal debtor from their obligations. Similarly, any act or omission by the creditor that legally results in the discharge of the principal debtor also discharges the surety. This provision aims to ensure that the surety's liability is tied to the liability of the principal debtor.

Composition, giving time, or agreement not to sue (Section 135): When the creditor enters into a contract with the principal debtor, which involves a composition of debts, granting of time for repayment, or an agreement not to sue the principal debtor, the surety is discharged unless the surety consents to such a contract.

Agreement with a third person to give time (Section 136): If the creditor makes an agreement with a third person, rather than the principal debtor, to give time for repayment, the surety is not discharged.

Forbearance to sue (Section 137): Mere forbearance by the creditor to sue the principal debtor or enforce any other remedy against them does not discharge the surety, unless the guarantee explicitly provides for such discharge. The surety remains liable until the creditor takes action to enforce the debt.

Release of one co-surety (Section 138): If there are multiple co-sureties, the release of one co-surety by the creditor does not discharge the other co-sureties. The released surety remains responsible to the other sureties.

Creditor's act impairing surety's remedy (Section 139): If the creditor performs an act that is inconsistent with the rights of the surety or fails to perform a duty owed to the surety, thereby impairing the surety's eventual remedy against the principal debtor, the surety is discharged. This provision safeguards the surety's ability to seek recourse against the principal debtor.

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