

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 14th - 20th Aug 2023

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1. Preventive Detention and the Indian Constitution

[Relevant Topic - Article 22, Constitutional Law]

Preventive detention has been a contentious aspect of the legal landscape in India. While the Indian Constitution guarantees fundamental rights, the provisions related to preventive detention under Article 22(3)-(7) have sparked significant debate. Preventive detention is the detention of an individual not on account of a committed crime but to prevent a potential future crime. This article examines the evolution of preventive detention laws, their constitutional validity, and the various Supreme Court judgments that have shaped this area of law.

Historical Perspective: From Rowlatt Act to the Constitution

1. **Rowlatt Act, 1919:** The origins of preventive detention in India can be traced back to the British-enacted Rowlatt Act of 1919, which was widely criticized and resisted by the Indian masses.
2. **Post-Independence Era:** After independence, India continued the legacy of preventive detention through various laws, culminating in the constitutional provision under Article 22.

Constitutional Framework: Article 22 and Preventive Detention

1. **Article 22(1) and (2): Rights of Arrestee:** These clauses guarantee specific rights to a person arrested, such as the right to be informed of the grounds of arrest and to consult a legal practitioner.

2. **Article 22(3): Exceptions for Preventive Detention:** This clause carves out exceptions for preventive detention, allowing the state to detain individuals without trial to prevent potential future crimes.
3. **Parliamentary Control:** The duration of such detention is determined by Parliament, giving the legislative branch significant control over this aspect.

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Landmark Supreme Court Cases

1. **A.K. Gopalan v. State of Madras:** The SC upheld the Preventive Detention Act of 1950, emphasizing the state's power to make laws for public order.

2. **Emergency Era and MISA:** The Maintenance of Internal Security Act (MISA) of 1971 became an instrument of abuse during the Emergency period.

3. **A.K. Roy, etc. v. Union of India, 1980:** The SC upheld the National Security Act, 1980, reiterating the state's right to preventive detention.

4. **Pramod Singla v. Union of India, 2023:** This recent case emphasized rigorous scrutiny of preventive detention laws, stressing the importance of detainee rights.

A Balanced Approach Needed?

Preventive detention in India reflects a complex interplay between individual

liberties and state security concerns. While the legal framework has evolved, the practice continues to generate debate, especially regarding its potential misuse.

Many jurists and legal scholars opine that the provisions concerning preventive detention in the Constitution need to be revisited. Striking the right balance between the state's interest in maintaining law and order and protecting individual rights is a challenge that requires nuanced legal thinking and jurisprudential wisdom.

In light of the evolving stance of the Supreme Court and the global perspective, a comprehensive review and reform of the preventive detention laws may be essential to ensure that justice prevails and the rule of law is upheld in the world's largest democracy. The legislative and judiciary

branches must work together to craft laws and interpretive guidelines that respect democratic values while addressing legitimate security concerns.

2. Transparency and Accountability: Section 4 of the RTI Act

[Relevant Topic- Right to Information Act, CLD]

KISHAN CHAND JAIN v. UNION OF INDIA & ORS.

On August 19, 2023, the Supreme Court of India sent out a strong message endorsing transparency and accountability by emphasizing the mandate of Section 4 of the Right to Information Act (RTI), 2005, in the case filed by Kishan Chand Jain. The case sheds significant light on the RTI Act's purpose and the duties it imposes on public authorities.

The principles

The court underlined that "Power and accountability go hand in hand," reflecting the importance of checks and balances in a democratic setup.

- a. Right to Information (Section 3):** Section 3 of the RTI Act declares the right of all citizens to information.
- b. Duty of Public Authorities (Section 4):** The corresponding duty or obligation of public authorities is outlined in Section 4, which mandates the suo motu disclosure of certain information.

Section 4: The Core Obligation and Its Implementation

Section 4 of the RTI Act specifically requires public authorities to:

- Maintain and catalogue all public records for easy accessibility.
- Publish details of the organizational structure, functions, decision-making processes, salary structure, budget allocation, and reasons for quasi-judicial decisions.

The petition highlighted that only 33 percent of public authorities had conducted transparency audits in the last four years, and even among those, the quality and quantity of proactive disclosure were not in accordance with Section 4. The poor implementation was also criticized by the Department of Personnel and Training.

Court's Observations and Directions

- a. Need for Attention and Monitoring:** The Bench emphasized the necessity for complete attention and strict monitoring by concerned authorities to ensure compliance.

b. Duty Bearers and Right Holders: Public accountability, according to the Bench, forms the relationship between 'duty bearers' (public authorities) and 'right holders' (citizens).

c. Role of Central and State Information Commissions: The court accentuated the significant role played by the Central Information Commission (CIC) and the state information commissions (SICs) in promoting transparency and accountability.

d. Monitoring and Reporting Powers: Special powers conferred on CIC and SICs for monitoring and reporting must be exercised to fulfill the Act's purpose.

e. Section 25: Integration of Rights and Collective Responsibility: The court observed that Section 25 bridges the right to information with the government's collective responsibility under Articles 75(3) or 164(2) of the Constitution.

f. Directions to CIC and SICs: The court directed the CIC and the SICs to continuously monitor the implementation of Section 4 of the RTI Act.

Case of Kishan Chand Jain is a robust affirmation of the principles of transparency and accountability enshrined in the RTI Act. By highlighting the inseparability of power and accountability and mandating proper implementation of Section 4, the Supreme Court has reinforced the democratic values that underpin the legal and administrative framework of India.

3. Unlawful Plastic Recycling Units

[Relevant Topic - Environmental Law. CLD]

Saravanan v. The Member Secretary, TNPCB & Ors.

The case illustrates the vigilance required by regulatory bodies like TNPCB in enforcing environmental laws and the proactive role played by the NGT in ensuring adherence to such laws. The case revolves around the operation of plastic recycling units by M/s. Shiva Sakthi Plastics and M/s. Sakthi Plastics without obtaining the required Consent to Establish and Consent to Operate (CTO). The units were functioning at No. 84/6, Vinayagar Kovil Street, M.Pudhupalayam, Panrutti Taluk, Tamil Nadu. The National Green Tribunal's southern bench was approached by B. Saravanan through a plea seeking a permanent injunction against these units.

Procedural History

The Tamil Nadu Pollution Control Board (TNPCB) received several complaints from the public and the applicant, B. Saravanan, against the units.

a. Initial Inspection (February): Upon inspection, TNPCB found that the unit was operating without obtaining the CTO and had stored plastic scrap in a residential area.

b. Show Cause Notice: A notice was issued under the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981.

c. Water Sample Analysis: Though the analysis revealed no contamination due to the units' activities, further complaints led to another inspection.

d. Consent to Operate (April): M/s. Shiva Sakthi Plastics was subsequently granted Consent to Operate for the unit of M/s. Siva Bottles (earlier known as M/s. Sivasakthi Plastics) in the same village.

Ensuring Compliance

The bench of Justice Pushpa Sathyanarayana and Dr. Satyagopal Korlapati directed TNPCB to levy compensation for the period during which the units operated without consent.

a. Evident Unlawful Operation: The NGT found it evident from the TNPCB's report that the units were operating without consent in the mentioned location.

b. Need to Compute Compensation: The Tribunal observed that TNPCB should have computed the number of days during which the units were operating without consent and levied compensation accordingly.

c. Due Process of Law: The NGT emphasized that the compensation must be levied by following the due process of law, emphasizing the adherence to the legal procedures and norms.

4. Bank's Liability in Unauthorized Transactions

[Relevant Topic: Consumer Protection Act, Contract Act]

Salim P.M. v. State Bank of India

The decision in Salim P.M. v. State Bank of India reflects a pro-consumer approach by recognizing the significant obligation on banks to prevent unauthorized transactions. The ruling emphasizes the role of banks under the Consumer Protection Act, 2019, where providing banking services is considered a service, and any deficiency therein can lead to liability.

Factual Matrix

The case before the Ernakulam Consumer Disputes Redressal Commission pertained to unauthorized withdrawals amounting to Rs. 1.6 Lakhs from the account of a road tarring contractor, who had an educational qualification only up to the 8th grade.

Complainant's Stand: The complainant contended that fraudulent transactions had been made from his account, and after approaching the Banking Ombudsman, he received only part of the lost amount. He sought the direction for the remaining sum.

SBI's Defence: The bank argued that it was not liable as there was no deficiency of service nor unfair trade practice. The bank had sent SMS alerts regarding the withdrawals, and the complainant was duty-bound to abide by the terms and conditions.

Duty of Care Owed by Banks

The Commission, comprising President D.B. Binu and Members V. Ramachandran and Sreevidhia T.N., observed that banks owe a duty of care to protect the interests of customers.

a. Undefined yet Certain Duty: The Bench noted that while the duties of care owed by a bank to its customer might not be exhaustively defined, the bank owes a duty to exercise reasonable care to prevent unauthorized withdrawals.

b. Liability in Case of Unauthorized Transactions: The Commission held that if a customer suffers a loss due to unauthorized transactions, the bank is liable for that loss.

c. SMS Alerts: In this specific case, the Commission opined that the complainant was not duty-bound to read all messages, especially those received at odd hours, thus rejecting the bank's argument regarding SMS alerts.

5. Arbitration Awards and Judicial Intervention

[Relevant Topic: Arbitration Act, Contract law]

In the dispute between Chenab Bridge Project Undertaking and Konkan Railway Corporation Limited, the Supreme Court recently delivered a ruling that reinforces the limited scope of judicial intervention in arbitration awards. The case revolved around the rejection of claims by the Arbitral Tribunal, the confirmation of the award by the Single Judge, and the subsequent appeal.

Relevant Provisions

a. Section 34: This provision sets out the grounds on which an arbitral award can be set aside. It focuses on procedural unfairness, conflict with public policy, and matters beyond the scope of arbitration.

b. Section 37: This section deals with appeals against orders, including those under Section 34.

Limited Scope of Judicial Review

The Apex Court's bench consisting of CJI DY Chandrachud, Justices PS Narasimha, and JB Pardiwala elucidated the scope of judicial intervention in arbitration awards.

a. Not an Appellate Jurisdiction: The Court asserted that the jurisdiction under Section 37 in examining an order that sets aside or refuses to set aside an award is restricted and not akin to normal appellate jurisdiction.

b. Limited Review under Section 34: The Court emphasized that the Section 34 jurisdiction exists only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary, not to re-interpret the contract or take an alternative view.

The decision in this case strongly upholds the principle of limited judicial interference in arbitration awards, reflecting the philosophy underlying the Arbitration and Conciliation Act, 1996. The ruling is in consonance with international practices where courts refrain from delving into the merits of the dispute, focusing instead on procedural aspects and fundamental policy considerations. The clear articulation of the restricted scope under Sections 34 and 37 provides guidance for lower courts and reinforces legal certainty.

Case of the Week

India Solar Dispute at WTO

Background

The India solar dispute at the World Trade Organization (WTO) began with a complaint filed by the United States against India in 2013. The dispute, known formally as DS456, concerned the domestic content requirements (DCRs) under India's National Solar Mission (NSM), which mandated that a certain percentage of solar cells and modules be sourced from domestic manufacturers.

Legal Framework

The U.S. contended that India's DCRs were inconsistent with India's obligations under the General Agreement on Tariffs and Trade (GATT) 1994, particularly Article III:4, and the Trade-Related Investment Measures (TRIMs) Agreement, specifically Article 2.1.

- **GATT 1994 Article III:4:** This provision prohibits any internal regulation that affords protection to domestic products.
- **TRIMs Article 2.1:** This provision prohibits trade-related investment measures that are inconsistent with the GATT 1994.

Panel Proceedings

The Panel was established in May 2014, and it found in favor of the U.S., determining that India's DCRs were in violation of the cited provisions.

GATT 1994 (Article III:4)

The Panel held that India's measures, by requiring the use of domestically manufactured products, accorded less favorable treatment to imported products. Hence, they were inconsistent with Article III:4 of GATT 1994.

TRIMs Agreement (Article 2.1)

The Panel also found that India's measures were trade-related investment measures that were inconsistent with Article 2.1 of the TRIMs Agreement, read in conjunction with Article III:4 of GATT 1994.

Appellate Body Decision

India appealed the Panel's decision, but the Appellate Body upheld the Panel's findings in 2016. The Appellate Body confirmed that India's DCRs violated the above-cited provisions and recommended that India bring its measures into compliance.

Impact

The India solar dispute is a crucial case in international trade law, highlighting the tensions between promoting domestic industries and complying with international trade obligations. While India's intention was to foster its domestic solar manufacturing industry, the WTO's ruling emphasized the importance of non-discriminatory trade practices.

Additionally, the case reflects broader debates on the right of sovereign states to pursue their environmental and sustainable development goals versus the principles of free trade. Jurists like Daniel Bodansky have emphasized the need for an equilibrium between international economic laws and environmental protection.

Repeated PYQ

Explain the significance of audi alteram partem . What are the case or circumstances in which the aforesaid principle of natural justice can be excluded?

The principle of "audi alteram partem" is one of the foundational principles of natural justice. Translated from Latin, it means "hear the other side" or "let the other side be heard as well." This principle ensures that no person should be judged without a fair hearing in which the affected party is given an opportunity to answer the charges against them.

The audi alteram partem principle is an inherent part of constitutional jurisprudence. It is not codified in Indian statutory law, but it has been read into Article 14 (Equality before the law) and Article 21 (Protection of life and personal liberty) of the Indian Constitution.

Importance in Legal Proceedings

Fairness: It guarantees that both sides are heard, ensuring a fair and just process.

Legitimacy: By allowing parties to present their case, the decision-making process gains credibility and acceptability.

Preventing Arbitrary Action: It ensures that the decision-making authority does not act arbitrarily or biasedly, thereby upholding the rule of law.

Circumstances for Exclusion

Legislative Actions: This principle does not apply to legislative functions, as seen in the case of **A.K. Kraipak v. Union of India, AIR 1970 SC 150**.

Emergency Situations: In matters of urgency where immediate action is required, the principle may be bypassed. For instance, during natural disasters, national security threats, etc.

Impracticability: If applying the principle becomes impracticable, it may be excluded. For example, in the case of **Tulsiram Patel v. Union of India, AIR 1985 SC 1416**, compulsory retirement was upheld without a hearing when applying the principle would have defeated the purpose.

Interference with Administrative Efficiency: In cases where applying the principle would severely impede the administrative efficiency of an organization, it may be excluded.

Confidentiality Requirements: When confidentiality is paramount, as in certain matters of state security or sensitive information, the principle may be excluded.

The principle of audi alteram partem stands as a bulwark against arbitrary and biased decision-making, epitomizing the concept of fair play in law. However, the exceptions noted above ensure that this principle does not become an inflexible rule, thereby allowing the legal system to function efficiently and effectively in various circumstances.

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