

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 18th March - 24th March 2024

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1. Laying the Groundwork for Ethical AI: EU's Landmark Legislation

In a watershed moment, the European Parliament has given its seal of approval to the EU AI Act, marking a significant step in regulating artificial intelligence (AI) practices. The Act's passage, celebrated by lead MEP Brandi Benifei, underscores its pivotal role in addressing risks, fostering opportunities, combating discrimination, and ensuring transparency in AI deployment.

Framework for Ethical AI Development

The EU AI Act represents a pioneering effort globally, providing a comprehensive framework for governing AI. By adopting a risk-based approach, it classifies AI applications into low and high-risk categories. High-risk AI systems, prevalent in critical sectors like healthcare and law enforcement, are subject to stringent requirements such as risk assessments and compliance with EU copyright laws. Notably, the Act outright bans certain high-risk AI applications, including social scoring systems.

Businesses operating within the EU must prepare for compliance with the AI Act's provisions. AI developers, providers, and users across diverse sectors, from healthcare to finance, will be subject to regulatory oversight. Furthermore, the Act's extraterritorial reach extends its impact beyond EU borders, affecting companies engaged in AI-related activities within the EU market.

The Role of Regulatory Bodies

Enforcement of the AI Act will be facilitated by regulatory bodies at both EU and member state levels. National AI watchdogs will handle complaints and ensure compliance, while a centralised AI Office at the EU level will supervise enforcement, particularly regarding general-purpose AI models.

Penalties for Non-Compliance

The Act imposes significant penalties for non-compliance, underlining the EU's commitment to ethical AI governance. Fines, ranging from millions to a percentage of global revenue, emphasise the importance of transparency and accountability in AI practices.

2. Supreme Court Overturns PV Narasimha Rao Judgment

In *Sita Soren v. Union of India*, the Supreme Court, in a seven-judge bench led by Chief Justice DY Chandrachud, overturned the 1998 PV Narasimha Rao judgement. This ruling, which held that members of parliament and legislative assemblies could claim immunity under Articles 105(2) and 194(2) of the Constitution for receiving a bribe related to legislative functions, has been overruled.

Background

The PV Narasimha Rao judgement had granted immunity from prosecution to legislators who allegedly engaged in bribery for casting a vote or making a speech in the house. This verdict was challenged in an appeal by Jharkhand Mukti Morcha leader Sita Soren, accused of accepting a bribe for a 2012 Rajya Sabha vote. The latest verdict arose from doubts regarding the earlier ruling's validity.

Court's Observations and Ruling

The apex court emphasised that parliamentary privileges in India are not ancient and undoubted, unlike in the UK, and are subject to constitutional scrutiny. The bench held that bribery by legislators erodes democratic foundations and that such acts cannot be protected under constitutional privileges.

The judgement clarified that bribery is complete upon accepting illegal gratification, irrespective of subsequent actions. It rejected the argument that legislators enjoying immunity must uphold their end of a bargain, citing the Prevention of Corruption Act, where obtaining undue advantage is an offence regardless of performance.

Arguments and Conclusions

During oral arguments, various tests were proposed to define the scope of immunity, with suggestions ranging from 'essential functions' to 'functional tests'. The court rejected these, maintaining that immunity does not extend to acts unrelated to legislative duties.

The ruling highlights the importance of safeguarding parliamentary integrity while ensuring accountability. It signals a departure from past interpretations, aligning with contemporary standards of probity and transparency in public life.

3. Supreme Court Quashes Obscenity Case Against "College Romance" Makers

In *Apoorva Arora v. State*, the Supreme Court overturned a pending obscenity case against the makers of the popular web series "College Romance." The court's decision, delivered by Justices A.S. Bopanna and P.S. Narasimha, emphasised that vulgarity and profanities do not necessarily constitute obscenity under the law.

Background and Legal Battle

The legal saga began when the Delhi High Court upheld the registration of an FIR against the makers under Sections 67 and 67A of the Information Technology Act, 2000. The High Court's

ruling, citing concerns over the moral decency community test, deemed the language used in "College Romance" as crossing the line into obscenity.

Supreme Court's Observations

The apex court critiqued the High Court's approach, highlighting that not every vulgar or profane expression automatically qualifies as obscene. The judgement underscored that obscenity pertains to material that incites sexual and lustful thoughts, which the language in question did not achieve. Instead, it noted that such language may evoke feelings of disgust or shock, not sexual arousal.

Rejecting Equating Profanity with Obscenity

The Supreme Court firmly rejected the equation of profanity and vulgarity with obscenity, emphasising the need for a nuanced analysis. It pointed out that the High Court's failure to consider the context in which the language was used led to an erroneous conclusion.

The court stressed the importance of considering the context of the web series, which depicted the lives of college students in a light-hearted manner. It emphasised that the language used was not sexually connotated and did not intend to arouse sexual feelings.

Criticising the lack of objectivity in the High Court's approach, the Supreme Court noted that the literal interpretation of the language disregarded its common usage and emotional connotations. It also dismissed the High Court's standard of assessing the impact on impressionable minds, arguing for a more balanced approach.

4. Consumer Dispute: Flipkart and Samsung Under Scrutiny

Facts of the Case

The case revolves around a complaint filed by a consumer who purchased a Samsung AC from Flipkart on EMI for Rs. 30,000. The AC failed to function properly shortly after purchase, prompting the consumer to seek redressal from both Flipkart and Samsung. Despite attempts to resolve the issue through customer service channels and legal notices, the consumer received no satisfactory response.

Contestations by Flipkart and Samsung

Flipkart contended that it was not directly liable for product defects or after-sales service, as it served as a platform for the transaction between the consumer and a third-party seller. Samsung, on the other hand, claimed no record of complaints from the consumer and suggested the absence of a valid complaint lodged with their service centre.

Observations by the District Commission

The District Commission observed that the consumer initially approached Flipkart regarding the malfunctioning AC within the warranty period. As such, Flipkart had a duty to advise the consumer to seek resolution with Samsung, the manufacturer. Additionally, Samsung was expected to address the issue within the warranty period, considering the complaint was filed promptly.

Ruling and Directive

In light of these observations, the District Commission directed Samsung to promptly address the issues with the AC outlined by the consumer within 30 days. Failure to comply would hold Samsung and Instakart Services liable to pay Rs. 5000 as compensation for mental agony and harassment caused to the consumer.

5. Arbitration Membership Not Mandatory

In *Rani Construction v. Union of India*, the Delhi High Court clarified that membership of an arbitral institution cannot be insisted upon as a prerequisite for invoking arbitration. Justice Sachin Datta's bench emphasised that parties agreeing to resolve disputes through an arbitral institution do not automatically imply agreement to its membership.

Case Background

The case stemmed from a contractual dispute between Rani Construction and the Union of India, governed by an agreement referring disputes to the Society for Affordable Redressal of Disputes (SAROD). Despite invoking the arbitration clause, disputes arose over the appointment of arbitrators due to SAROD's insistence on membership.

Court's Observations and Analysis

The Court scrutinised the agreement and found no stipulation mandating SAROD membership for arbitration. While the agreement referred to SAROD rules for arbitration procedures, it did not impose membership as a prerequisite. This led the Court to conclude that insisting on membership introduced an additional obligation not agreed upon by the parties, affecting the agreement's validity.

Ruling and Implications

The High Court ruled that SAROD's insistence on membership impinged on the agreement's validity and the arbitration process. Consequently, the Court asserted its authority under Section 11(6) of the Arbitration and Conciliation Act to appoint an arbitrator. Additionally, in the absence of specification regarding the number of arbitrators, the Court inferred an agreement for a sole arbitrator.

6. Case of the Week: Aruna Shanbaug v. Union of India & Ors

Aruna Shanbaug v. Union of India is a significant verdict by the Supreme Court of India that delved into the complex ethical, legal, and medical terrains of euthanasia. Aruna Shanbaug, a former nurse at the King Edward Memorial Hospital in Mumbai, was rendered in a Persistent Vegetative State (PVS) after being sexually assaulted by a hospital sweeper in 1973. In 2009, journalist Pinki Virani filed a writ petition on Shanbaug's behalf, seeking permission for euthanasia to end her prolonged suffering.

The legal battle raised critical questions about the nature of the right to life under Article 21 of the Indian Constitution, particularly whether it encompasses a right to die. The Supreme Court was tasked with delving into the intricacies of euthanasia, a subject that sits at the intersection of legal,

medical, and ethical considerations. The court had to distinguish between active and passive euthanasia and decide on their legal status within the Indian context.

On the central issue of euthanasia, the Supreme Court clarified that the right to life under Article 21 does not include a right to die, thereby maintaining the sanctity of life as a core legal principle. However, the Court made a groundbreaking distinction between active and passive euthanasia. It held that while active euthanasia, which involves taking specific steps to cause a patient's death, remains illegal in India, passive euthanasia, which entails withdrawing life support from patients in a permanent vegetative state, could be allowed under specific circumstances.

The judgement laid down strict guidelines for passive euthanasia, including requiring the approval of the high court concerned to ensure that such decisions are made in the best interest of the patient, based on medical advice and ethical considerations.

7. Repeated PYQ

Q.: 'A master is not responsible for a wrongful act unless it is done in the course of employment'. Comment and explain the circumstances when wrongful acts are deemed to be done "in the course of employment." Refer to decided cases

The principle that a master is liable for the wrongful acts of his servant, committed in the course of employment, is a well-established tenet of tort law, particularly under the doctrine of vicarious liability. This principle asserts that an employer (master) is legally responsible for the actions of their employees (servants) when such actions occur within the scope of their employment. This form of liability hinges on the relationship between the employer and employee, distinguishing it from the liability that one might hold for their own actions or for the actions of independent contractors.

Servant

A servant, in this context, is someone employed to perform duties under the direction and control of their employer. This relationship is characterised by the employer's power to not only dictate the tasks to be accomplished but also the manner in which they are to be executed. This is in stark contrast to an independent contractor, who, although engaged to perform a specific task, retains control over the method of execution. The critical distinction lies in the degree of control: a master is vicariously liable for the actions of a servant but not for those of an independent contractor.

Essentials for Master's Liability

For a master to be held vicariously liable, two essential criteria must be met:

The Wrongful Act Committed by the Servant: The action in question must be a tortious act, constituting a wrongful deed under the law.

Act Committed in the Course of Employment: The act must have been performed within the scope of the servant's employment, encompassing actions directly authorised by the master or wrongful methods of executing authorised acts.

Course of Employment Explained

Determining whether an act was committed in the "course of employment" involves analysing whether the act was authorised by the employer or was a wrongful means of performing an authorised act. For instance, in **Lloyd v. Grace, Smith & Co.**, the fraudulent act of a managing clerk was considered within the scope of employment, thereby rendering the firm liable. Similarly, in **Century Insurance Co. Ltd. v. Northern Ireland Road Transport Board**, a servant's negligent act leading to a fire and explosion was deemed to occur in the course of employment, attributing liability to the employer.

Contrarily, acts entirely outside the scope of authorised tasks absolve the master from vicarious liability. An illustrative case is **Beard v. London General Omnibus Co.**, where a conductor's unauthorised act of driving a bus resulted in an accident, and it was ruled that the master was not liable as the act was outside the conductor's scope of employment.

Furthermore, the concept of vicarious liability also considers situations where the employer's specific prohibitions are defied. For instance, in **Limpus v. London General Omnibus Co.**, despite explicit instructions against racing and causing obstruction, the driver's actions were deemed within the course of employment, making the employer liable for the resulting harm.

The doctrine of vicarious liability establishes that a master is responsible for the wrongful acts of a servant committed within the course of employment. This principle underscores the importance of the relationship between the employer and employee, particularly the degree of control and direction the former has over the latter. Judicial decisions have played a pivotal role in defining and refining the contours of this liability, taking into account the evolving dynamics of the workplace and societal expectations.



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