

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 24th - 30th June, 2024

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United Nations Report on Gaza Conflict

Allegations Against Israeli Forces

A recent report by the United Nations-backed Independent International Commission of Inquiry on the Occupied Palestinian Territory has presented significant findings regarding the conduct of hostilities in Gaza. The commission, chaired by Navi Pillay, has accused Israeli forces of employing heavy weapons in densely populated areas of Gaza. The report characterises these actions as "intentional and direct attacks on the civilian population," resulting in substantial civilian casualties and extensive damage to infrastructure.

Potential War Crimes and Violations

Among the most serious allegations detailed in the report are claims of forced transfers of Palestinians into unsafe living conditions, sexual and gender-based violence perpetrated by Israeli forces, and the destruction of civilian property. Such actions, the commission states, may constitute war crimes under international humanitarian law. These findings have intensified the scrutiny on Israeli military tactics and their compliance with international legal standards.

Allegations Against Palestinian Armed Groups

The report does not solely focus on the actions of Israeli forces. It also acknowledges accusations of war crimes committed by Palestinian armed groups. These include the intentional targeting of civilians and the use of indiscriminate weapons against civilian areas in southern Israel. This dual acknowledgment highlights the complexity of the conflict and the violations committed by both sides.

Principle of Distinction and Indiscriminate Attacks

Central to the report's findings is the principle of distinction, which requires parties to a conflict to distinguish between civilians and combatants, as well as between civilian objects and military targets. Allegations in the report suggest that Israeli forces may have failed to adequately distinguish between these categories, leading to civilian harm that could potentially constitute war crimes. Rule 8 of the ICRC Study on Customary International Humanitarian Law mandates that

military operations be directed solely against legitimate military targets while minimising harm to civilians and civilian property.

The report also emphasised the prohibition of indiscriminate attacks. These are actions not directed at a specific military objective or those employing weapons that cannot be precisely targeted. Concerns were raised over the reported use of heavy weaponry with wide-area effects in densely populated civilian areas. Indiscriminate attacks, prohibited under Rule 12 of the ICRC Study, are defined by their failure to target specific military objectives or their use of methods and means of combat whose effects cannot be limited as required by international humanitarian law.

Principle of Precautions in Attack

The principle of precautions in attack obliges attacking forces to take feasible measures to minimise harm to civilians and civilian objects. This includes providing effective advance warnings to civilian populations and using weapons and tactics that minimise civilian casualties. The report criticised the lack of adequate precautions taken by Israeli forces during their operations in Gaza, raising questions about their adherence to international legal standards.

Israeli Authorities' Response

Israeli authorities have contended that their military operations were aimed at combating threats from Hamas. However, the tactics employed have raised serious concerns about compliance with international legal standards. The commission's findings suggest a need for greater accountability and adherence to international humanitarian law in the conduct of hostilities.

Role of the Commission and Future Investigations

The Independent International Commission of Inquiry on the Occupied Palestinian Territory (COI-OPT) was established by the United Nations Human Rights Council on May 27, 2021, to investigate violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, and in Israel. In March 2024, the Human Rights Council passed two resolutions requesting the commission to present further reports. These reports will address settlers and settler groups involved in acts of terror, violence, or intimidation against Palestinian civilians and the actions taken by Israel and third States to ensure accountability for violations of international law. They will also analyse the legal consequences of the transfer or sale of arms, munitions, parts, components, and dual-use items to Israel.

For the current affairs of the judiciary, please visit [here](#).

Supreme Court Directs Delhi Authorities to Enhance Green Cover Amidst Heatwave

On June 26, the Supreme Court issued a directive to the Delhi Government and the Delhi Development Authority (DDA) to take effective measures in increasing the green cover of the National Capital. This ruling comes in response to the extreme heatwave conditions affecting the public. The court emphasised the importance of implementing the recommendations of a three-member expert committee appointed earlier to address the issue of illegal tree felling in Delhi Ridge.

Context and Legal Proceedings

A vacation bench comprising Justices Abhay S. Oka and Ujjal Bhuyan was hearing a suo motu contempt case against DDA Vice Chairman Subhashish Panda for violating court orders by allowing the felling of trees. The expert committee, appointed on May 16, found that trees in Delhi Ridge were cleared for a road-widening project without proper assessments related to rainwater harvesting and restoration.

Court's Observations

Justice Oka highlighted the urgent need to restore the green zones in Delhi, particularly given the severe heatwave:

"Now we are feeling the heat wave in the true sense because the green cover has been lost over the years."

The court noted significant lapses by the DDA and the State Forest Department in allowing the illegal felling of valuable trees. Justice Oka remarked:

"We are 100% sure that this is the tip of the iceberg, this must have happened in several cases, and trees must have been felled. This is one case where it comes to the notice of the Court. That's why we are taking a strong view so that the signal goes."

Implementation of Expert Committee Recommendations

The Supreme Court directed the DDA to implement the recommendations of the expert committee urgently. These recommendations include:

1. Clearing the road-widening site to restore the plantation.
2. Providing a detailed land survey for plotting new trees and shrubs.
3. Creating a 'Holding Nursery'.
4. Conducting soil tests at different planting sites.
5. Digging, planting, and irrigating saplings.
6. Establishing a Restoration Management Plan.

The court ordered:

"We direct the DDA to take steps for the implementation of the recommendations made in clause 1 under the heading 'Suggestions/Recommendations' starting from subclause (a). As far as Subclauses (a) and (b) are concerned there is an element of urgency."

Subclauses (a) and (b) specifically require:

- Subclause (a): Commencing operations to remove tarmac, bajri, and stone grit, along with sub-base materials, from roads, drains, and sidewalks to recover a surface of bare soil ready for planting.
- Subclause (b): Urgent site clearance to begin planting before the monsoon season.

Forest Department's Role and Future Steps

The Supreme Court stressed the need for vigilance by the State's Forest Department and Tree Authority to prevent illegal tree felling and ensure strict implementation of environmental statutes. The court ordered:

"We expect the Forest Department and Tree Authority to keep a constant vigil in the entire area of National Capital Territory of Delhi about the activities of illegal felling or damaging of trees. Unless

such authorities do so, the very purpose of enacting various Acts regarding forests as well as trees will be completely frustrated."

Committee for Restoring Green Cover

The bench suggested setting up a committee to recommend steps for restoring the green cover in Delhi. Justice Oka emphasised the need for state authorities to take measures to counter the severe side effects of the ongoing heatwave. The court directed the principal secretary of the Forest Department to convene a meeting with multiple stakeholders and the three-member expert committee to address the issue of green cover restoration.

Role of Lok Adalats: Administrative Acts, Not Adjudicatory Verdicts

In a significant ruling, the Orissa High Court in the case of Station Manager, Railway Station, Balangir Town & Anr. v. Chairman, Permanent Lok Adalat (PSU), Balangir & Ors., clarified the nature of awards passed by Lok Adalats. The Court emphasised that such awards are administrative acts incorporating terms of settlement agreed upon by the parties, rather than independent adjudicatory verdicts.

Court's Observations

The Single Bench of Dr. Justice Sanjeeb Kumar Panigrahi advised Lok Adalats to refrain from acting as regular courts and to function as conciliators. He stated:

"The Lok Adalats should resist their temptation to play the role of regular Judges rather they should constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strengths and weaknesses, advantages and disadvantages of their respective claims."

Factual Background

The case arose from an application filed by two advocates from the Balangir Bar Association under the Legal Services Authority Act, 1987. They sought a directive from the Permanent Lok Adalat, Balangir, requiring the railway department officials to install 'Coach Indication Boards' at Titilagarh and Balangir Railway Stations.

The petitioners, who were the officials of the railway department, contended that the reliefs sought pertained to policy matters decided by the Railway Board and the Government of India through the Ministry of Railways. They argued that the Zonal Headquarters, Divisional Headquarters, and the Station Manager were not competent to address the issue.

Lok Adalat's Decision and Subsequent Appeal

Despite the petitioners' objections, the Lok Adalat directed one of the petitioners to approach the concerned railway authorities within two months to release funds for the installation of Coach Indication Boards. The petitioners, unable to comply with this directive due to their lack of authority over such policy matters, appealed to the Orissa High Court.

Precedents and High Court's Clarification

The High Court referred to the Supreme Court judgement in State of Punjab & Anr. v. Jalour Singh & Ors., where the Apex Court criticised the tendency of Lok Adalats to act like regular courts. The Supreme Court had clearly stated that Lok Adalats do not have the power to "hear" parties and adjudicate cases; instead, they are meant to discuss the subject matter with the parties and persuade them to reach a just settlement.

In line with this precedent, the Orissa High Court reiterated that the awards passed by Lok Adalats do not constitute independent verdicts. The Court observed:

"The "award" of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision-making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat."

Cruelty in Marital Relations

Telangana High Court in the case of D. Narsimha v. Smt. D Anita Vaishnavi has broadened the understanding of cruelty within marital relationships. The court has determined that any act that damages a spouse's reputation, social standing, or work prospects can be considered cruelty. This decision highlights the evolving nature of the concept of cruelty, particularly in the context of modern digital interactions.

Expanding the Scope of Cruelty

A bench comprising Justice Moushumi Bhattacharya and Justice M.G. Priyadarshini extended the principle of cruelty to contemporary contexts, suggesting that depriving a spouse of access to social media platforms like Facebook and Instagram could also be seen as an act of cruelty. This insight reflects the pervasive role of social media in personal and professional lives and acknowledges the potential psychological impact of such deprivation.

Observations on Divorce and Marital Relations

The observations were made while allowing a husband's appeal for divorce under the Hindu Marriage Act. The Court highlighted that marriage cannot be imposed on individuals, emphasising the limited role of the judiciary in such personal matters. The bench noted:

"The Court has a limited role in the whole affair and should not act as an executioner (in the sense of a hangman) or a counsellor to compel the parties to continue living as wife and husband, particularly where the meeting of minds between them has irrevocably ended."

This statement highlights the judiciary's stance that it is not its place to force a continuation of a marriage that has fundamentally broken down. The Court stressed that mental cruelty cannot be boxed into a rigid definition, as perceptions of cruelty can vary greatly among individuals.

Factual Background of the Case

The case involved a couple who married in 2010 but experienced severe marital discord shortly after the wedding. The wife left the matrimonial home in 2011 and subsequently filed five criminal cases against her husband, including allegations of cruelty and dowry harassment under Section

498A IPC. Although the wife briefly returned to live with the husband in 2015, she soon left and filed more criminal cases against him.

The trial court had dismissed the husband's petition for divorce in November 2021, citing insufficient evidence of cruelty. However, the husband appealed to the High Court, arguing that his wife's actions constituted both physical and mental cruelty and amounted to desertion.

High Court's Ruling

Upon reviewing the facts and arguments, the High Court found that the wife's actions, including the repeated filing of criminal cases, amounted to mental cruelty. The Court held that the marriage had irretrievably broken down and could not be preserved or rebuilt.

"Cruelty is just one of the splinters of a collapsing structure where the substratum of the marriage has broken down in a way in which the structure cannot be preserved or re-built," the Court stated. The High Court acknowledged that the concept of cruelty is dynamic and must adapt to societal changes. It recognized that repeated false accusations and legal harassment could constitute significant mental cruelty and provide sufficient grounds for divorce.

Transfer Petitions under Section 138

The Supreme Court of India in the case of *Kasthuripandian S. v. RBL Bank Limited* has reiterated that the transfer of a case for the offence of dishonour of cheque under Section 138 of the Negotiable Instruments Act, 1881 cannot be sought at the instance of the accused. This decision was delivered by a vacation bench comprising Justices A.S. Oka and Rajesh Bindal, who dismissed the transfer petition filed by the accused.

Background of the Case

The petitioner, accused under Section 138 of the Negotiable Instruments Act (NIA), sought a transfer of the case to another jurisdiction. Section 138 of the NIA deals with the offence of dishonour of cheque for insufficiency of funds or if it exceeds the amount arranged to be paid from that account. The petitioner aimed to move the case citing personal inconvenience, but the Court stood firm on its earlier stance regarding such petitions.

Court's Observations

Justice A.S. Oka, while delivering the judgement, observed that the accused could seek an exemption from personal appearance but cannot file for a transfer petition. He remarked:

"At the instance of the accused, we cannot issue an order of transfer of a complaint under Section 138 of the Negotiable Instruments Act, 1881. The petitioner can always apply for grant of exemption from personal appearance to the concerned Court."

Consistent Judicial Approach

Justice Oka highlighted his consistent approach towards such matters, emphasising the Court's unwillingness to entertain transfer petitions filed by the accused in cheque dishonour cases. He orally stated:

"I have been a party to a dozen of such matters where I have rejected such transfer petitions."

This consistency indicates the Court's firm position on preventing any misuse of the legal provisions for transferring cases based on the accused's convenience.

Provision for Exemption from Personal Appearance

Justice Oka further noted that while the Court does not entertain transfer petitions from the accused, it remains considerate towards their potential hardships by allowing the possibility of seeking exemption from personal appearances. He indicated that trial judges should favourably consider such applications from the accused:

"If the accused makes an application for exemption, the Trial judge shall favourably consider the same."

Ethics and Law: UPSC Synergies and Recent Legal Trends

The connection between General Studies Paper IV (Ethics, Integrity, and Aptitude) and the Law Optional syllabus in the UPSC exam shows how closely ethical principles and legal practice are related.

Chief Justice of India (CJI) DY Chandrachud's recent comments at the East Zone II Regional Conference of the National Judicial Academy in Kolkata offer a modern view on this relationship. His thoughts on the judiciary's role and the idea of constitutional morality highlight how ethical principles apply in law.

The Role of Ethics in Governance

CJI Chandrachud's focus on judges as public servants fits well with these ideas. He opposes treating judges as infallible figures and instead promotes viewing them with compassion and empathy. This view is essential for understanding the ethical aspects of public service and justice administration.

Ethical Governance in Legal Practice

Principles like natural justice, judicial review of administrative actions, and the ethical challenges faced by public officials show the significance of ethical governance. A recent case where the Securities and Exchange Board of India (SEBI) banned 4W Wealth Management for illegal activities highlights the need for integrity in governance. Ethical failures in finance require strict legal oversight and enforcement, showing the connection between ethics and law.

Probity in Public Life and Legal Practice

Probity in public life involves the philosophical foundation of governance, accountability, and transparency. CJI Chandrachud's talk on constitutional morality highlights the judiciary's duty to uphold these values. He believes that real merit lies in addressing current societal issues and serving the common people.

Recent court cases further illustrate this link. For instance, the Gujarat court's handling of NEET-UG exam malpractices, with the Central Bureau of Investigation's involvement, demonstrates the judiciary's commitment to ethical governance. These cases show the judiciary's role in keeping public institutions honest and ensuring justice.

Influence of Moral Thinkers on Legal Practices

Impact of moral thinkers and philosophers on ethical governance is huge. CJI Chandrachud's remarks align with the philosophical foundations of constitutional morality, reflecting India's rich cultural and ethical traditions. He stresses the importance of preserving India's diversity within its federal system, as guided by the values in the Constitution's Preamble.

Legal education involves studying legal philosophers and their influence on jurisprudence. Principles like natural justice, separation of powers, and the ethical basis of laws are deeply rooted in philosophical thought. The Chief Justice's emphasis on constitutional morality as a guiding principle for judges shows the need for a legal system that embodies ethical values and addresses societal issues.

Landmark Judgments and Ethical Governance

Landmark judgments often exemplify ethical governance. The recent initiative to translate Supreme Court judgments into regional languages aims to make justice more accessible, ensuring language barriers do not hinder justice. This initiative reflects a commitment to inclusivity and the right to information.

Case of the Week: Anun Dhawan vs Union of India

Facts of the Case

The petitioners, led by Anun Dhawan, are social activists who filed a writ petition under Article 32 of the Constitution of India. They sought various directions against the States and Union Territories to implement Community Kitchens to combat hunger, malnutrition, and starvation. They also sought a directive for the National Legal Services Authority to create a scheme under Article 50(1)A of the Constitution and for the Central Government to establish a National Food Grid beyond the Public Distribution Scheme.

Arguments

Petitioners: The petitioners argued that despite the existence of several government schemes aimed at combating hunger and malnutrition, there was still a need for a more systematic approach like Community Kitchens to ensure basic human sustainability.

Respondents: The Union of India and the States submitted detailed responses outlining existing schemes such as Poshan Abhiyan, Pradhan Mantri Garib Kalyan Anna Yojana, and Mid-Day Meal Scheme, among others. They contended that these schemes were effectively addressing hunger and malnutrition, and no deaths were reported due to starvation.

Issues

1. Whether the implementation of Community Kitchens is necessary to combat hunger and malnutrition.
2. Whether the existing schemes under the National Food Security Act (NFSA) and other government initiatives are sufficient to ensure food security.

Judgment

Justice Bela M. Trivedi delivered the judgement, noting that the Constitution implicitly includes the right to food within the right to life under Article 21. The NFSA was highlighted as a significant legal

framework ensuring food security through schemes like the Targeted Public Distribution System, Mid-Day Meal Scheme, and Integrated Child Development Services.

The Court acknowledged the detailed efforts and schemes implemented by both the Central and State Governments to combat hunger and malnutrition. It was observed that these schemes were well-structured and included mechanisms for monitoring and grievance redressal.

Repeated PYQ

Q. “An invention has to satisfy certain conditions in order to get a patent.” Examine the statement critically.

Ans. The law governing patents is primarily encapsulated in the Patents Act, 1970, as amended from time to time, most notably by the Patents (Amendment) Act, 2005. To secure a patent, an invention must meet specific statutory requirements.

Conditions for Patentability

1. Novelty

The foremost requirement for patentability is that the invention must be novel. As per Section 2(I) of the Patents Act, an invention is deemed novel if it has not been anticipated by prior art. Prior art includes any information disclosed to the public in any form before the filing date of the patent application. The novelty criterion ensures that patents are granted only for new inventions and not for mere discoveries of something already existing in the public domain.

The novelty requirement is stringent and often leads to the rejection of many applications. A critical issue is the exhaustive search for prior art, which can be cumbersome and costly. Moreover, the interpretation of what constitutes 'novel' can sometimes be subjective. For instance, in the case of *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*, the Supreme Court held that the novelty must involve a new product or process that has never been disclosed in prior art.

2. Inventive Step (Non-obviousness)

Section 2(ja) of the Act defines an inventive step as a feature of an invention that involves a technical advance as compared to the existing knowledge or having economic significance or both, and that makes the invention not obvious to a person skilled in the art. This criterion is intended to ensure that the patent system rewards genuine innovation and not trivial improvements.

The inventive step requirement addresses the need to avoid granting patents for minor tweaks to existing products. However, determining what constitutes a significant technical advance can be challenging. The subjective nature of 'non-obviousness' has led to varied judicial interpretations. For example, in *F. Hoffmann-La Roche Ltd. v. Cipla Ltd.*, the Delhi High Court delved into the depth of non-obviousness, emphasising that the invention should not be an obvious solution to someone skilled in that particular field.

3. Industrial Applicability

An invention must be capable of being made or used in some kind of industry, as per Section 2(ac) of the Act. This requirement ensures that the invention has practical utility and is not merely a theoretical concept.

The industrial applicability criterion is straightforward but essential. It prevents the patenting of inventions that have no practical use. However, the definition of 'industry' can be broad, potentially encompassing a wide range of activities, which might dilute the strictness of this requirement. For instance, in *The Bajaj Auto Ltd. v. TVS Motor Company Ltd.* case, the court highlighted the necessity for an invention to have a specific, substantial, and credible utility in the industry.

4. Patentable Subject Matter

Under Section 3 of the Patents Act, certain inventions are explicitly excluded from patentability. These include, but are not limited to, frivolous inventions, inventions contrary to public order or morality, mere discoveries of scientific principles, and methods of agriculture or horticulture.

This provision is crucial for maintaining ethical standards and societal norms within the patent system. However, it also leads to ambiguity and legal disputes over what constitutes non-patentable subject matter. The landmark judgement in *Novartis AG v. Union of India* (also known as the Glivec case) is a significant example where the Supreme Court denied a patent for a pharmaceutical derivative on the grounds that it did not satisfy the requirements of Section 3(d), emphasising the need to prevent evergreening of patents.